



PERS BENEFICIARY DESIGNATIONS

A little-known section in the Oregon Revised Statutes relating to the distribution of a PERS member's benefits on the pre-retirement death of the PERS member may surprise you. Assume these facts: Your client, a PERS member, was married to a man who had three children from a previous marriage. Your client has no natural-born or adopted children. The husband dies in 2004, survived by your client and all three of his children.

Your client dies in 2005 before retiring under the PERS system. At the time of your client's death, her PERS designated beneficiary was her husband. To whom does PERS distribute the funds?

Pursuant to ORS 238.390(5), on the pre-retirement death of your client, PERS will distribute the assets to the personal representative of the *deceased husband's* estate. If the husband died intestate, under ORS 112.025(2), half of the PERS account returns to the wife's estate; the rest will be distributed equally among the husband's three children. This result – distribution of retirement benefits to the estate of a deceased spouse – is contrary to what most estate planners would expect, that is, distribution of assets to the *member's* estate. The legislative history of ORS 238.390(5) reveals nothing to indicate that this result was not intended by the Legislature.

Bottom line: If you have a client who participates in the PERS system, and the designated beneficiary predeceases your client, the client should consider changing the beneficiary designation to avoid an unintended result.

Jay Richardson and June Wyrick
Buckley LeChevallier, PC

Our thanks to Daniel Ricks, of Kennedy, Watts, Arellano, & Ricks, LLP, for his assistance with this article.

DISCLAIMER

THIS NEWSLETTER INCLUDES CLAIM PREVENTION TECHNIQUES THAT ARE DESIGNED TO MINIMIZE THE LIKELIHOOD OF BEING SUED FOR LEGAL MALPRACTICE. THE MATERIAL PRESENTED DOES NOT ESTABLISH, REPORT, OR CREATE THE STANDARD OF CARE FOR ATTORNEYS. THE ARTICLES DO NOT REPRESENT A COMPLETE ANALYSIS OF THE TOPICS PRESENTED, AND READERS SHOULD CONDUCT THEIR OWN APPROPRIATE LEGAL RESEARCH.