HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 401 Effect of Dissolution or Annulment of Marriage on Certain Designations
SPONSOR(S): Judiciary Committee; Moraitis
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1146

REFERENCE	**ACTION**	**ANALYST**	**STAFF DIRECTOR** or **BUDGET/POLICY CHIEF**
1) Civil Justice Subcommittee	14 Y, 0 N	Caridad	Bond
2) Judiciary Committee	16 Y, 0 N, As CS	Caridad	Havlicak

SUMMARY ANALYSIS

Current law provides that a provision of a will which affects a decedent's spouse is void upon the dissolution or annulment of the marriage. As a result, if the individual dies without changing the will following divorce or annulment, the will is executed as though the former spouse predeceased the decedent. In contrast, there is no such provision under Florida Statute for the disposition of certain non-probate or non-trust assets (i.e., a life insurance policy; an employee benefit plan) where the decedent is no longer married but has failed to remove the former spouse as the designated beneficiary.

The bill provides that when an individual dies after a dissolution or annulment of marriage, a beneficiary designation, created by the individual prior to the divorce, which designates the spouse as a beneficiary, becomes void. Whether a payor must make payment to or transfer an interest in an asset to a beneficiary is governed by the information provided in the decedent's death certificate.

This bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 732 governs wills. Section 732.507(2), F.S., provides that a provision of a will which affects a decedent's spouse is void upon the dissolution or annulment of the marriage. As a result, if the individual dies without changing the will following the dissolution or annulment, the will is executed as though the former spouse predeceased the decedent.

There is no such provision regarding the disposition of non-probate or non-trust assets (i.e., a life insurance policy; an employee benefit plan) where the decedent is no longer married at the time of death but has failed to remove the former spouse as the designated beneficiary.[1] Currently, when an individual dies after a divorce or annulment without removing his or her former spouse as the designated beneficiary of certain assets, the former spouse will remain the designated beneficiary, despite the dissolution or annulment of marriage. The company or entity administering the policy or account then pays the beneficiary listed on the governing document. Under current law, the company or entity is under no obligation to investigate the claim beyond looking to the governing document for the named beneficiary.

There are many cases where a decedent owned an interest in non-probate assets, divorced, and subsequently died without changing the beneficiary designation to remove the former spouse. When a party challenges the distribution of assets to the former spouse, the court's determination turns on the specificity of the language in the marital settlement agreement.[2] In *Crawford v. Barker*, the Florida Supreme Court explained that:

> [A]bsent the marital settlement agreement providing who is or is not to receive the death benefits or specifying who is to be the beneficiary, courts should look no further than the named beneficiary in the separate document of the policy, plan, or account. General language in a marital settlement agreement, such as language stating who is to receive ownership, is not specific enough to override the plain language of the beneficiary designation in the separate document. The spouse, who owns the policy, plan, or account following the dissolution of marriage, is otherwise free to name any individual as the beneficiary; however, if the spouse does not change the beneficiary, the beneficiary designation in the separate document controls. [3]

Ultimately, a divorce or annulment does not remove the former spouse as the designated beneficiary unless the settlement agreement specifically makes such a change.[4]

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[1] *See generally Luszcz v. Lavoie*, 787 So.2d 245, 250 (Fla. 2d DCA 2001) (Blue, J., dissenting) ("[T]he legislature may wish to consider enacting a law similar to sections 732.507 and 737.106 to cover assets passing outside an estate or trust.")

[2] *See Cooper v. Muccitelli*, 682 So.2d 77 (Fla. 1996) (holding that former spouse as named beneficiary was entitled to term insurance proceeds, notwithstanding general release clause in marital settlement agreement).

[3] *Crawford v. Barker*, 64 So.3d 1246, 1248 (Fla. 2011).

[4] *See, e.g., Id*. (holding that the former spouse as named beneficiary was entitled to the death benefits on the decedent's deferred compensation fund despite language in the settlement agreement which provided that the decedent "shall retain money with" the deferred compensation fund as the agreement did not state who would receive the death benefits or who should be the beneficiary of the fund); *see also Smith v. Smith*, 919 So.2d 525 (Fla. 5th DCA 2005) (holding that the former wife was entitled to the proceeds from certain assets, even though the marital settlement agreement specifically identified the assets at issue and provided that the former wife would have "no further rights or responsibilities regarding these assets," because the decedent failed to change the beneficiary designation on any of the policies or accounts at issue).

Effect of Bill

This bill provides that when an individual dies after dissolution or annulment, a beneficiary designation which designates the spouse as a beneficiary becomes void upon the divorce and the spouse is deemed to have predeceased the decedent. The bill also provides a list of assets which are subject to the bill, specifically:

- A life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan;
- An employee benefit plan;
- An individual retirement account described in s. 408 or s. 408A of the Internal Revenue Code of 1986;
- A payable-on-death account;
- A security or other account registered in a transfer-on-death form; and
- A life insurance policy, annuity or other similar contract that is not held within an employee benefit plan or tax-qualified retirement account.

The bill provides certain exceptions. For instance, it does not apply:

- To the extent that controlling federal law provides otherwise;
- If the governing instrument[5] expressly provides that the interest will be payable to the designated former spouse regardless of dissolution or invalidity of the decedent's marriage;
- If a court order or decree required the decedent to maintain the asset for benefit of the former spouse or children of the marriage;
- If the decedent did not have the ability to unilaterally change the beneficiary or pay-on-death designation;
- If the designation of the decedent's former spouse as a beneficiary is irrevocable under applicable law;
- If the contract or agreement is governed by state law other than Florida.
- To an asset held in two or more names as to which the death of one co-owner vests ownership of the asset in the surviving co-owner or co-owners; or
- If the decedent remarries the person whose interest would otherwise have been revoked under this section and the decedent and that person are married to one another at the time of the decedent's death.

The bill sets forth procedures for companies or entities charged with making payment of the decedent's interest in an asset to determine the proper payee of the account. If the governing instrument does not specify the relationship between the designated beneficiary and the decedent, the payor may pay the account to the named beneficiary without further inquiry. If the governing instrument specifies the beneficiary to be the spouse of the decedent, the payor must first look to the death certificate. If the death certificate provides that the decedent was married to the named beneficiary at the time of death, the payor may pay out the benefits to the named beneficiary. If the death certificate provides that the decedent was not married, or was married to another individual other than the person specified on the account as the spouse, the payor may pay the interest out to the secondary beneficiary under the governing instrument.

In instances where the death certificate is silent as to the marital status of the decedent, the bill provides two form affidavits. One affidavit is for execution by someone alleging to be the surviving spouse of the decedent. If the alleged surviving spouse executes the affidavit, certifying that he or she is the surviving spouse of the decedent and that the decedent was married to him or her at the time of the decedent's death, the payor may pay the account to such individual without further inquiry. Similarly, the other affidavit is for execution by a secondary beneficiary, certifying that the primary beneficiary was not married to the decedent at the time of the decedent's death. The payor may also pay out the interest to the secondary beneficiary upon receipt of a properly executed affidavit.

[5] Defined in the bill as "any writing or contract governing the disposition of all or any part of an asset upon the death of the decedent."

The bill provides that in the case of pay-on-death accounts, securities or other accounts registered in transfer-on-death form, and life insurance policies, annuities or other similar contracts not held within an employee benefit plan or a tax-qualified retirement account, the payor may pay out those interests without further inquiry.

The provisions of the bill do not affect the ownership of an interest in an asset as between the former spouse and any other person entitled to such interest, the rights of any purchaser for value of any such interest, the rights of any creditor of the former spouse or any other person entitled to such interest, or the rights and duties of any insurance company, financial institution, trustee, administrator, or other third party.

B. SECTION DIRECTORY:

Section 1 creates s. 732.703, F.S., regarding effect of dissolution on beneficiary designations.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Companies administering the non-probate assets at issue may incur some additional administrative costs. However, such costs are unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2012, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes provisions relating to healthcare surrogates. This analysis is drafted to the committee substitute as passed by the Judiciary Committee.