

# Filing a disclaimer for late son's insurance policy

Published: Sunday, September 12, 2010, 9:45 AM



Karin Price Mueller/The Star-Ledger



Q. My son recently passed away and I am the primary beneficiary of his insurance policy. The second beneficiary named was his sister. Because I do not need the money and his sister could use the funds to pay off her mortgage, is there any way I can have the insurance company make the payment directly to her?

— FAS

A. The Brain is very sorry to hear about your son.

In answer to your question: yes, but make sure you work with an attorney.

The New Jersey Probate Code (NJPC) allows a person to disclaim (decline to accept) many forms of property interest, said Ronald Garutti, a certified financial planner with Newroads Financial Group in Clinton.

“There are very specific requirements under the NJPC to which a person wishing to disclaim a property must comply,” Garutti said.

All disclaimers must be in writing, and the disclaimer must be filed with the applicable surrogate and must be served on the personal representative of the estate. Garutti said any person wishing to make a disclaimer must avoid exercising any ownership or control over the property interest — in this case, the insurance proceeds.

“In addition to the requirements imposed by the NJPC, if a disclaimer is done for federal tax purposes, the disclaiming party must comply with Internal Revenue Code (IRC) 2518. IRC requires that this be done within 9 months of the date on which the property interest was created,” he said.

Given all the complexities, you should work with a qualified estate planning attorney to make sure it's all done right.

Also, keep in mind there is no income tax due on life insurance proceeds, said Marnie Aznar, a certified financial planner with Aznar Financial Advisors in Morris Plains. The proceeds are included in the taxable estate of the decedent, which may or may not be federally and state estate taxable, she said.

"The actual estate tax consequences will depend on the size of the estate and the estate tax laws in effect in the year of death," Aznar said. "There is currently no federal estate tax for 2010 unless Congress decides to retroactively instate it and New Jersey estate taxes would only be an issue if the value of your son's total estate were in excess of \$675,000."

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*E-mail your questions to [askbiz@starledger.com](mailto:askbiz@starledger.com).*