



# South Carolina Department of Insurance

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## MEMORANDUM

**TO:** All Insurers in South Carolina

**FROM:** Raymond G. Farmer  
Director  
South Carolina Department of Insurance



**DATE:** March 22, 2016

**ISSUE:** Divorced Beneficiaries of Life Insurance

On January 1, 2014, Act 100 became effective and provides that in the event of a divorce or annulment, a former spouse, who was earlier listed as the beneficiary to a life insurance policy, would not receive the proceeds of the policy, unless the life insurance policy, a court order, or a marital settlement contract expressly provides for the former spouse to continue as the beneficiary.

Please find attached a copy of Section 62-2-507 of the South Carolina Code Annotated. This provision was enacted as 2013 S.C. Act No. 100. Please review the highlighted area of this code in its entirety. This section provides that an order or decree for divorce or annulment revokes any prior disposition of property, beneficiary designation, *inter alia*, unless the life insurance policy, a court order, or a marital settlement contract expressly provides for the disposition of the property or for the former spouse to continue as the beneficiary of the policy...”.

This provision is not in Title 38 (Insurance), but does indirectly affect the insurance relationship. For that reason, please educate your clients and their producers and brokers to ensure they are aware of the requirements of this provision.

This proactive review of the law will ensure that the policyholder’s wishes are met after they are deceased.

Your assistance in this important matter is much appreciated.

**SECTION 62-2-507.** Revocation by divorce, annulment, and order terminating marital property rights; no revocation by other changes of circumstances.

(a) In this section:

(1) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(2) "Divorce or annulment" means any divorce or annulment or declaration of invalidity of a marriage or other event that would exclude the spouse as a surviving spouse in accordance with Section 62-2-802. It also includes a court order purporting to terminate all marital property rights or confirming equitable distribution between spouses unless they are living together as husband and wife at the time of the decedent's death. A decree of separate maintenance that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(3) "Divorced individual" includes an individual whose marriage has been annulled.

(4) "Governing instrument" means an instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse including, but not limited to wills, revocable inter vivos trusts, powers of attorney, life insurance beneficiary designations, annuity beneficiary designations, retirement plan beneficiary designations and transfer on death accounts.

(5) "Revocable" with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the divorced individual's former spouse, whether or not the divorced individual was then empowered to designate the divorced individual in place of the divorced individual's former spouse and whether or not the divorced individual then had the capacity to exercise the power.

(b) No change of circumstances other than those described in this section and in Section 62-2-803 effects a revocation.

(c) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable:

(i) disposition or appointment of property or beneficiary designation made by a divorced individual to the divorced individual's former spouse in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse; or

(iii) nomination in a governing instrument, nominating a divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, trustee, conservator, agent, attorney in fact or guardian;

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship so that the share of the decedent passes as the decedent's property and the former spouse has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

(d) A severance under subsection (c)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed,

or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving the property, as evidence of ownership.

(e) Provisions of a governing instrument and nomination in a fiduciary or representative capacity that are revoked by this section are given effect as if the former spouse predeceased the decedent.

(f) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(g)(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(2) Written notice of the divorce, annulment, or remarriage under subsection (g)(1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(h)(1) A person who purchases property from a former spouse or any other person for value and without notice, or who receives from a former spouse or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 24; 2013 Act No. 100, Section 1, eff January 1, 2014.