

**Steve Leimberg's Estate Planning  
Email Newsletter Archive Message #2687**

**Date:05-Dec-18**

**Subject: Marc Soss on New York Life Insurance Company v. Sahani  
– Does Your State’s Statute Really Disinherit an Ex-Spouse?**

*“In New York Life Insurance Company v. Sahani, the Circuit Court addressed the issue of whether the states’ ‘revocation on divorce statute,’ N.Y. Est. Powers & Trusts Law § 5-1.4, applied when a former spouse was the owner of a life insurance policy on a decedent. The Circuit Court, in affirming the lower court ruling, found that under the statute a divorce only revokes a revocable disposition or appointment of property made by a divorced individual to, or for the benefit of, their former spouse, including a ‘beneficiary designation in a life insurance policy’ and does not apply to a non-revocable beneficiary designation. The importance of this ruling is that it affirms the statute’s inapplicability to life insurance policies not owned by the decedent at death and those owned by an Irrevocable Life Insurance Trust.”*

**Marc Soss** provides members with his analysis of *New York Life Insurance Company v. Sahani*.

**Marc Soss’** practice focuses on estate planning, probate and trust administration and litigation, guardianship law, and corporate law in Southwest Florida. Marc is a frequent contributor to **LISI** and has published articles in the Florida Bar, Rhode Island Bar, North Carolina Bar, Association of the United States Navy and Military.Com. Marc also serves as an officer in the United States Naval Reserve.

Here is Marc’s commentary:

## **EXECUTIVE SUMMARY:**

In *New York Life Insurance Company v. Sahani*, the Second Circuit Court addressed the issue of whether the states’ “revocation on divorce statute,” N.Y. Est. Powers & Trusts Law § 5-1.4, applied when a former spouse

was the owner of a life insurance policy on a decedent. The Circuit Court, in affirming the lower court ruling, found that under the statute a divorce only revokes a revocable disposition or appointment of property made by a divorced individual to, or for the benefit of, their former spouse, including a "beneficiary designation in a life insurance policy" and does not apply to a non-revocable beneficiary designation. The importance of this ruling is that it affirms the statute's inapplicability to life insurance policies not owned by the decedent at death and those owned by an Irrevocable Life Insurance Trust.

## **FACTS:**

In 2001, the decedent purchased from New York Life Insurance Company ("New York Life") a \$250,000 whole life insurance policy (the "Policy") and named his mother as the beneficiary. Years later the decedent married Seema Sahani ("Sahani"), transferred ownership of the Policy to her and designated her as the primary beneficiary. Subsequently, New York Life issued a \$1 million term life insurance policy on the decedent to Sahani. Sahani was both the beneficiary and owner of the term life policy.

In 2013, the decedent and Sahani divorced and the decedent died a year later. After his death, both Sahani and the decedent's mother made claims to the New York Life policies. The decedent's mother argued that the state's revocation on divorce statute revoked Sahani's beneficiary designation under the policies. Both the lower court and Second Circuit disagreed and held that since "the beneficiary designation was not 'revocable' only Sahani was empowered to cancel it as the policy owner. In contrast, if the decedent had retained ownership of the policies, the ex-spouse would not have been entitled to the death benefits under the statute.

## **COMMENT:**

Most states have enacted legislation that prevents a former spouse from inheriting from a decedent's estate and trust. The legislation applies when an individual executes a Last Will and Testament or Revocable Trust during the marriage and never revises it after divorce or annulment of the marriage. However, the legislation in most cases only impacts assets that

the decedent owned at death and not assets owned by the former spouse.

In Florida, the statutory scheme prevents a former spouse from inheriting from both Wills and Revocable Trusts (Florida Statutes §§ 732.507(2) and 736.1105, respectively). Similarly, under Georgia law, once a divorce has been finalized, if a former spouse has not been excluded from a Will, probate law will consider them to be predeceased (Ga. Code Ann. §53-4-49).

State legislation will not impact an ex-spouse's ability to inherit under a life insurance and pension plans subject to ERISA. In *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001), the Supreme Court held that the Washington law stating that the designation of a spouse as the beneficiary of a non-probate asset was revoked automatically upon divorce was preempted by ERISA, and therefore, the ex-spouse was entitled to the proceeds of the policy and plan.

### **Side Note**

In the case of *Smoot v. Smoot*, No. 2:13-cv-00040-LGW-RSB, 2015 BL 102347 (S.D. Ga. Mar. 31, 2015) the above cited Georgia statute worked to an estate's disadvantage. *Smoot* involved a divorced individual who died with his wealth held in life insurance and pension plans. As a result of his failure to change the policy and plan beneficiaries after his divorce, his ex-spouse received over \$5 million while his son received \$2.2 million and his business partner received \$100,000. This resulted in the estate being obligated to pay over \$1.4 million in estate taxes to the IRS.

In reliance on the apportionment clause contained in the decedent's Will, the ex-spouse was asked to pay \$1 million of the \$1.4 million estate tax liability. However, the U.S. District Court for the Southern District of Georgia did not agree with that analysis and in reliance on the above provision of Georgia law found that since the ex-spouse was excluded from receiving anything under the Will she was not subject to the apportionment provision. The Court also took note of the fact that the life insurance and pension plans passed directly to the ex-spouse outside of probate.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!**

# Marc Soss

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## CITES:

*New York Life Insurance Company v. Sahani*, Nos. 17-1804-cv, 17-1804-cv; §732.507(2), Florida Statutes §736.1105; Ga. Code Ann. §53-4-49; N.Y. Est. Powers & Trusts Law § 5-1.4; *Smoot v. Smoot*, No. 2:13-cv-00040-LGW-RSB, 2015 BL 102347 (S.D. Ga. Mar. 31, 2015); *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001).