

TO PROBATE OR NOT TO PROBATE - - THE POTENTIAL LIFE INSURANCE POLICY/STOCK QUAGMIRE

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You have gone through months of planning and reams of paper working with your team of advisors – the goal? “I want to avoid probate for my estate”. You did everything you were advised to do. You have created trusts, established ownership of real estate in various forms, such as joint ownership, properly identified your beneficiaries on your retirement accounts and life insurance policies, etc. etc. You can sleep peacefully knowing your heirs will not be burdened with the administrative hassle of probate. But then, in the mail you receive a dividend check from the life insurance company that issued the life insurance policy you own on your life or maybe it's just an informational notice about the stock you own in that life insurance company. Must be part of the life insurance policy you own – a dividend - right? Maybe not and maybe your “non-probate” estate just became a “probate” estate.

You may not know it but you may be a stockholder in a life insurance company even though you never purchased the stock and even though you don't have a stock certificate. You may have purchased a life insurance policy from a “mutual life insurance company”. A mutual life insurance company is an insurance company in which the policy owners own the company. But, many of these mutual companies have “demutualized” over the years, converting their form to what is known as a publicly traded “stock company”. The stock is generally issued on the major stock exchanges just like General Electric, Apple, Google and the like. The demutualized company issues stock to its policy holders following demutualization. There may be just a few shares or hundreds of shares – depends on the policies that are owned and the terms under which the company demutualized.

But, the bottom line is that upon demutualization, the insurance company issues stock to the owners of its policies – you. Although this may be a nice surprise to someone who did not know they own stock in a life insurance company, the end result is there are now assets in your probate estate that must be taken care of at the time of your death. Life insurance proceeds are generally not a probate asset. They pass by beneficiary designation in the same manner as retirement accounts and annuities. However, stock issued by the life insurance company is owned by the policy holder and if not handled properly during the policy holder's lifetime, it is an asset that passes under the terms of the policy holder's will. Depending on the value of the stock, this may cause a full probate (if probate assets are over \$30,000 in New York State) or it may only be subject to a Small Estate proceeding. Much depends on the value and whether the decedent left a spouse. In any event, it's still a nuisance. And, one of the problems with these types of probate assets, it is very possible that it isn't even discovered until

years following the person's death. Even if a probate estate was intended, this can still cause time, expense, and administrative headaches.

So, what do you do? If you have a revocable trust or even an irrevocable trust, consider changing the ownership to the trust. If you wish to have the stock pass directly to a beneficiary, contact the insurance company transfer agent and have the certificates "jointly owned" or "payable on death". Or, cash in the stock and have a nice dinner – after calculating your tax liability first.

Some of the major insurance companies have demutualized over the past several years. These include companies such as John Hancock, MetLife, Prudential, Sun Life, UNUM, Equitable – AXA and many others. Bottom line is to not ignore the notices you receive from the insurance company like you have for all the years you have owned those life insurance policies. You may have spent a great deal of time and effort to get your estate planning right where it needs to be so ensure (no pun intended) that a demutualization doesn't throw a wrench in your plan.

If you have any questions, please do not hesitate to contact me or the attorney in our firm with whom you typically work.