



MoneyTalk

Nominate a Beneficiary to your Life Policy

Another reason to nominate beneficiaries of Life Policies

A RECENT decision of the Supreme Court of Appeal ("the SCA") illustrates the importance of nominating beneficiaries of life insurance policies.

There has always been at least one good reason to nominate beneficiaries for the proceeds of life policies rather than allow the proceeds to accrue to the deceased estate of the insured person.

Although such proceeds form part of the deceased estate and are therefore subject to estate duty, the executor is not entitled to remuneration on them, and this translates into a saving of 3.5 per cent of the proceeds for the estate.

However, since the judgement in *Shrosbree NO v Love 2005 (1) SA 309* there is another, more compelling reason to nominate beneficiaries. This arises when the insured person is insolvent on death.

CONFLICT BETWEEN DECISIONS NOW RESOLVED

The SCA resolved a conflict between two High Court decisions. In one instance the court found

that, where a person dies insolvent, the proceeds of a policy form part of the estate and must therefore be used to pay creditors, to the evident prejudice of the nominated beneficiaries.

Another division of the High Court had found that the proceeds bypassed the estate and accrued directly to the nominated beneficiary.

The SCA found that, when a person takes out a life policy and nominates a beneficiary, the contract is a *stipulation alteri*, a contract for the benefit of a third person. On the death of the insured, the beneficiary, on accepting the terms of the contract, has an enforceable right against the insurer. The estate does not enter the picture at all.

Therefore any person whose estate is to any degree vulnerable to market risk should seriously consider nominating beneficiaries for any life policies. The proceeds will still be subject to estate duty, but there is a saving of 3.5 per cent executor's remuneration and, most importantly, protection of the beneficiaries from the predations of creditors.

This article is extracted from a publication, *Tax Breaks*, written by Prof. Peter Surtees (a tax consultant at Deneys Reitz).

This publication is subject to our standard Disclaimer to be found at our website www.sjcasa.co.za.

November 2005

