Court Drowns Floating Spouse

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One of the more interesting terms we run into in the estate planning world is the term "floating spouse", used to refer to naming a "spouse" as a beneficiary in a trust document, rather than the spouse's name specifically. The implication (and often hope) is that if the first spouse dies or divorces and the other party remarries, the new "spouse" would become a beneficiary in place of the old spouse.

In Ochse v. Ochse, a settlor established a trust for "her son, her son's descendants, and her son's spouse" as beneficiaries. The son had lifetime and testamentary powers to appoint to spouse or descendants as well. After 30 years of marriage, the son and his wife divorced and the son remarried.

Which "spouse" was now the beneficiary and potential appointee?

In some portions of the trust the first spouse was mentioned by name, and in other portions not. There was no clear definition of "son's spouse" in the document. Naturally, litigation ensued, with the children from the son's first marriage and his first spouse on one side, and the son and his new spouse on the other. The trial court decision and the appeals court ultimately affirmed that the settlor's intent was to only benefit the "spouse" of her son at the time of executing the trust and not some future spouse of her son.

This case could have easily gone the other way with slightly different facts or in a different state court. One or two simple clarifying sentences in the trust could have saved thousands of dollars of legal costs and years of litigation. So, make sure the settlor defines what they mean when they use the term "spouse" in the event of divorce, death, or remarriage.

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