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### IRS: No Automatic Beneficiary Revocation on Legal Separation

The [IRS recently issued guidance](#) clarifying that qualified retirement plans *may not* automatically revoke a participant's beneficiary designation of his or her spouse upon legal separation.

**Background - Divorce Versus Legal Separation.** Legal separation generally differs from divorce in that the couple remains married but may live separately and may divide assets, child support obligations and custody rights. The rules and requirements for legal separation vary from state to state, and not all states recognize the concept of legal separation.

**No Automatic Revocation - But Affirmative Election to Revoke.** Many retirement plans automatically revoke a participant's designation of his or her spouse as beneficiary upon either divorce or legal separation. The IRS has clarified that, while a plan may automatically revoke the election upon divorce, a plan may not automatically do so upon a participant's legal separation from his or her spouse. However, the participant may change the beneficiary designation without spousal consent.

**Action Steps.** In light of this new IRS guidance, we recommend that plan administrators:

- **Review Procedures.** Review their administrative procedures to determine whether they provide for automatically revoking participants' beneficiary elections upon legal separation;
- **Advise Participants.** Advise participants who are legally separated that they must affirmatively change their elections if they want their separated spouses not to be their beneficiaries; and
- **Review Documentation.** Review plan documents and summary plan descriptions to determine whether any amendments or clarifications are necessary.

**Contact Information.** For more information please contact [David Putnal](#) (404.888.8836), [Toby Walls](#) (404.888.8870), [Teri King](#) (404.888.8847), or [Jared Beckerman](#) (404.888.8857).

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