

## **Testamentary Life Insurance Trusts for Minors**

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If you are a married military service member, you probably named your spouse as the primary beneficiary of your life insurance policies, including your policy with Service Members' Group Life Insurance (SGLI). However, there are some recurring situations in which a service member does not wish to name a spouse as the beneficiary and instead desires that a child benefit from the insurance proceeds. Typically, the desire to make a child rather than the spouse the primary beneficiary arises from one of the following causes:

- The insured parent's marriage is failing; divorce is on the horizon;
- The insured parent is already divorced from the child's other parent;
- The insured parent's spouse is deceased.

In many cases, the service member has a stable, intact, marriage, and identifies the spouse as the principal beneficiary. However, the member may desire that, if the spouse predeceases, or the married couple both die in the same disaster, the minor children should receive the benefit of the life insurance proceeds.

In all of these situations, the insured member wants a minor child to benefit from the insurance. In the first two situations, the insured member is usually also motivated by a desire to prevent the spouse or former spouse from having any access whatsoever to the insurance proceeds.

Consult appropriate legal counsel before attempting to use a testamentary life insurance trust to bar an estranged spouse's access to life insurance proceeds. All states have some form of elective share statute; that is, a statute that prevents wills from completely disinheriting a spouse (although such complete disinheritance can often be accomplished by contract, such as an appropriate provision in a marital separation agreement). Such elective share statutes provide that the spouse has the right to choose between the gifts, if any, provided in the will, and the elective share amount. Elective shares are typically expressed as a percentage of the estate; e.g., one half or one third. In some cases, the elective share is only a percentage of the

*probate estate*; that is, property passing in accordance with the will. In such states, pouring life insurance proceeds into a testamentary trust may have the unfortunate result of giving the estranged spouse a portion of the insurance proceeds that s/he might not otherwise be entitled to.

In all of these cases the main problem is the same; how can the member make sure that the child benefits from the insurance?

Too often, service members try to resolve the problem by naming the minor child as the life insurance beneficiary on the SGLI beneficiary election form, SGLV form 8286. Unfortunately, naming a child as the life insurance beneficiary is a strategy that is unlikely to succeed. Neither SGLI nor any other life insurance company is likely to make a check out to a minor. The insurer will want to see *court ordered* guardianship and will make the check out to the guardian named by the judge.

Merely identifying a person in your will as the guardian is insufficient for that person to receive the insurance check. The insurer will almost certainly want to see a court order naming a guardian. And just who do you suppose is going to show up in court and ask to be named the guardian to control the SGLI proceeds? Your estranged or former spouse, or some long lost relative just itching to get their hands on \$400K SGLI money, that's who, precisely the people that you don't want to give your life insurance funds to. What's more, your estranged or former spouse probably will be successful in his / her quest to be named by the court as the guardian of his/her children.

Even if your ex or some other rascal doesn't show up to ask the court for guardianship, there's no telling who will show up and there's no way to predict for certain who the judge will choose to be guardian. The judge should consider any guardian you have named in your will, and perhaps your choice will be persuasive, but the guardian you have named in the will is not binding on the court.

On the other hand, you can use a testamentary life insurance trust to make sure that *you*, not the court, pick the agent who will manage the life insurance proceeds for your child.

The testamentary life insurance trust is a provision in your will that says, essentially, that if there are any life insurance policies existing that name the trust as the beneficiary, then the agent that you name in the will manages the

funds for your minor child, spending the proceeds as he sees fit for the health, education, and welfare of the child. Such a trust is called “testamentary” because it is created by language in the last will and testament. The agent, or manager, is called the trustee. The trust typically ends when the child reaches a specific age that you choose, generally between the ages of 18 and 21, inclusive. When the trust ends, any remaining funds in the trust are given to the child outright, to do with as s/he wishes.

The will can not go out and grab insurance proceeds; think of the testamentary trust as a suitcase, a receptacle into which you can pour insurance money. The way to pour funds into the trust is to make the trust the beneficiary of your insurance. Until you do so, the trust is unfunded; it is just an empty suitcase. Make sure you complete the documents in the proper order; first the will, then the insurance election form. If you do not execute the will first, you are attempting with your election form to pour funds into a trust that does not yet exist, and there can be problems.

In order to pour your SGLI funds into the testamentary trust, you must fill out SGLV form 8286 in a peculiar way. Have your legal assistance attorney help you with the process. In the beneficiary line, you should print the following words:

“To the trustee of my trust established in my will for the benefit of my child, Joseph A. Smith [or whatever the child’s name is] and if the trust is invalid for any reason or if I die without a valid will, to [name of child].”

A fillable form is available on line [simply Google “SGLV”] and the beneficiary blank expands as needed to accommodate the greater number of characters in the aforementioned election. The form can be filled out on line, printed, and then brought to the unit administration office for signature.

If you have more than one child, you can have a will with a single (or “pooled”) trust for all children, with the trust ending when the youngest child reaches the designated age. Having a single trust has the benefit of allowing the trustee to spend unequally on the children, according to their needs, which may be vastly different. This single trust option gives the trustee greater latitude and is easier for your trustee to administer than having

separate trusts for each of the children. The trick, of course, is identifying a trustee or co-trustees in whom you have a great deal of confidence.

A downside of the pooled trust is the length of time the oldest child will need to wait for outright distribution of funds, especially if the children have widely disparate ages. For example, let's say that you have two children, one aged 2, the other aged 18, with the trust ending at when the youngest reaches age 21. The older child will need to wait until age 34, before the trust is disbanded and the remaining proceeds distributed.

If the will contains a single trust for multiple children, your SGLV election language will be slightly different than the language provided above; example:

“To the trustee of my trust established in my will for the benefit of my son Joseph A. Smith and my daughter Sally B. Smith and if the trust is invalid for any reason or if I die without a valid will, to Joseph A. Smith and Sally B. Smith.”

You can elect to pour all or just a portion of the SGLI proceeds into the trust. You may make the trust a primary or contingent beneficiary. For example, you can name your living spouse your primary beneficiary and the trust for minors the contingent beneficiary; that is, the trust is unfunded unless your spouse dies before you do and is therefore not living at the time of your death.

Occasionally, service members run into difficulties with their unit administration office and are told that they can not fill out the SGLI election in the manner indicated above. This administrative unwillingness to process the SGLV form invariably results from the unit administration clerk's unfamiliarity with the trust beneficiary designation. Often, the problem can be resolved by going to a more experienced administration officer. (Not surprisingly, this problem of administrative refusal to process the SGLV 8286 rarely, if ever, occurs when the person making the request is a senior officer.)

Section 6.04 of the SGLI Handbook provides a short and somewhat confusing discussion of the means by which a minor can obtain the benefit of life SGLI proceeds. It advises that the use of a “pre-appointed trustee” can

be used to avoid court delays and other problems, encouraging discussion of this matter with legal counsel.

SGLV Form 8286 also has little to say about designating a trust for minors as a beneficiary. It advises that if you wish to name a minor as a beneficiary, “You can establish a trust for the benefit of the children and name the trust as beneficiary. A trust names a trustee of your choice to be legally responsible for administering the insurance proceeds for the children. n Naming a trust as a beneficiary on this form does NOT create a trust.”

The form further advises that if you wish to name a trust as beneficiary, you should consult with a military attorney, professional financial planner, or estate planner to help you create Trust documents.

You can also make your trust the beneficiary of any commercial life insurance policy you may have. Consult your insurance agent concerning how to fill out the beneficiary election to effectively pour proceeds of commercial policies into the trust.

The testamentary life insurance trust is a useful tool to ensure that your children receive the benefit of your life insurance. Those who wish to consider this option are encouraged to discuss the matter further with a military legal assistance officer or civilian legal counsel.