Three Weddings and a Funeral

When it comes to protecting your assets, covering all of your bases is a best practice. The Employee Retirement Security Act (ERISA) lists specific provisions for which your 401(k) can be protected in the event of your passing, a divorce, or other major life changes.

Specific documents regarding your 401(k) plan should be considered in conjunction with a prenuptial or postnuptial agreement.

In this case study, we will discuss a recent ruling by the 8th Circuit Court of Appeals. The ruling stated that a surviving spouse's signing of a postnuptial agreement did not waive her rights to her husband's 401(k) funds because the agreement was written incorrectly. We will discuss further in this article.

Background

Picture two people who have been married and divorced twice, getting married a third time. Let's call them John and Jane. John and Jane decided to sign a prenuptial agreement, which stated that in case of a third divorce, both John and Jane waived their rights to each other's property.

Since a prenuptial agreement can't be used to waive a spouse's rights to the 401(k) plan, John and Jane also signed a postnuptial agreement after their marriage, in which John specifically noted Jane had no rights to his 401(k) and his parents would remain the beneficiaries in the event of his death. They also agreed that they each wouldn't obtain a Qualified Domestic Relations Order (QDRO) if this were to happen. According to the United States Department of Labor, a QDRO is a domestic relations order that creates or recognizes the existence of an alternate payee's right to receive, or assigns to an alternate payee the right to receive, all or a portion of the benefits payable.[1]

What Happened Next

The postnuptial agreement also addressed Jane's rights under ERISA. In the event of a divorce, she was supposed to give her consent, in writing, acknowledging that her rights to John's retirement assets would be waived, and wouldn't have the ability to change the beneficiary of his property.

The next turn of events happened swiftly – after more than one year of marriage, John and Jane filed for a divorce. Seven days later, in the midst of a not-yet-finalized-divorce, John passes away.

Jane and John's parents argued over who should receive the retirement funds. In deciding what would happen next, the 401(k) plan administrator referred back to the postnuptial agreement, which stated that John's parents are the beneficiaries of his 401(k). The plan administrator sent a waiver to Jane to validate the agreements; she refused to sign.

Is This Going to Work?

While the plan administrator believed John's parents were authorized to receive the benefits, Jane thought otherwise. The plan administrator filed an "interpleader", for the purpose of having the courts decide who was legally entitled to the property.

Ruling

Despite the specificity of the prenuptial and postnuptial agreements, the District Court ruled that the postnuptial agreement was ineffective. Jane never acknowledged the effect of signing a waiver, which is required under ERISA, nor did it spell out in clear terms Jane, as a surviving spouse, was entitled to John's funds in the retirement plan, another requirement under ERISA. [2] Lawfully, Jane had rights to her not-quite-ex-husband's property, and ironically, as beneficiaries, John's parents did not receive any benefits of the 401(k).

Lesson Learned

Furthermore, John and Jane should have implemented documents within the 401(k) that waived spousal rights. Postnuptial agreements have their limitations when it comes to 401(k) plans and ERISA has specific requirements. Moral of the story: third time isn't always a charm.

Conclusion

Finding out if your pre- and post- nuptial agreements meet the standards under ERISA by working with our advisors and network of outside professionals is crucial to the future of your retirement. We, at Riverview, can assist you as you consider the concept of 401(k) planning.

Sources

Articles

1. http://www.dol.gov/ebsa/faqs/faq_qdro.html
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