

LIFE INSURANCE MAY BE A MARITAL ASSET

By K. Dean Kantaras

THE IDENTIFICATION OF marital assets is one of the critical factors in the dissolution of a marriage. Florida's equitable distribution laws require the court to find and value all of the marital assets so the estate may be divided equitably. The starting point for the division is fifty-fifty, unless justification is shown to allow an unequal division. The value of the assets and liabilities must be known before a division is made, so the value of each often becomes a major area of disagreement.

The Florida Statute on equitable distribution states that the determination of whether or not an asset is "marital" is to be determined by a "cut-off" date. That can be the date a valid agreement was entered into by the parties, another date agreed to by the parties in an agreement, or the date the petition seeking dissolution of the marriage is filed, whichever is the earliest.

The statute also defines what categories of assets are to be part of the marital estate. Included in the definition is life insurance. Unfortunately, at times it may be difficult to determine its value.

"Whole life" insurance policies accrue a cash value. In that case, the cash value is a marital asset, if it was accumulated on or before one of the cut-off dates. There are other forms of life insurance that accrue cash values as soon as they are purchased, and they, too, are marital assets to be divided as part of the marital estate.

However, "term" policies are different, as they have no cash value until the death of the insured occurs. How term life insurance policies factor into an equitable distribution equation can be confusing.

A recent case decided by the appellate court in West Palm Beach helps us to understand this situation. In that case, two brothers operated a business together.



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They decided to buy "key man" term life insurance policies so each would be the beneficiary of the other's policy. The insurance totaled \$1,000,000 for each life and were bought in 2002. One of the brothers ended up in a divorce. He was married in 2000, so the policies were clearly purchased during the marriage, and the premiums were paid during the marriage. However, they were paid with income from the business. Unfortunately, the other brother was killed in an accident that occurred after the petition for dissolution was filed, which is one of the cutoff dates to determine which assets are marital. The surviving brother received over \$1,000,000 from the insurance company, but his wife claimed the proceeds were marital assets and asked the trial judge to include them in the equitable distribution scheme. The trial judge did just that. The judge's rationale was that the policy existed on the date of filing, which is the cutoff

date in this case, so the proceeds should be included as part of the marital assets. The appellate court was not sympathetic to that argument and reversed the trial judge.

The appellate court accepted the husband's argument that the death occurred and that the proceeds were not received until after the cutoff date established by the date of filing the petition and, therefore, ruled that the proceeds of the policy should not be shared with the wife. Since no court in Florida had yet considered the question in this case, the court relied on precedent from the states of Pennsylvania and Missouri in reaching its decision.

The result would have been different if the policy had been purchased using marital funds and the brother had died prior to filing the petition for dissolution. Even if the proceeds were not paid by the insurance company until after the filing, the right to the proceeds would have accrued at the time of death and, therefore, would have been a marital asset to be divided with the wife. ■■■

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