

Family Feuds: The Battles Over Retirement Accounts

Who's in line to get your account—or that of a parent or spouse—in case of death? You could be surprised.

September 7, 2011

Written by [CAROLYN T. GEER](#)

Stock-market turmoil once again has Americans worrying about their 401(k)s and individual retirement accounts. But families can be blindsided by another aspect of these accounts: confusing rules about who is entitled to the assets in circumstances such as the account holder's death.

Take the case of Leonard Kidder, who worked at Cajun Industries, a privately owned construction company in Baton Rouge, La., for nearly 20 years. The carpenter-turned-superintendent named Betty Kidder, his wife of 41 years, the beneficiary of his 401(k) account in the event he died before her.

As fate would have it, Betty died first, so Leonard updated his account paperwork, naming their three adult children the beneficiaries of the 401(k).

Eventually he got remarried, to Beth Bennett Kidder, and was on the verge of retiring. Six weeks later, at the age of 66, he died.

When Mr. Kidder's children from his first marriage tried to claim the assets, reasoning they were the ones named on the most recent beneficiary form, they were rebuffed by Cajun, which ended up asking a court to determine the rightful owner of the money. Under the terms of the company's 401(k) plan, if an employee dies, the employee's spouse has the right to the account assets, unless the spouse waives that right in writing. (That priority for spouses springs from federal law.) Beth Bennett Kidder had never signed such a waiver.

The new Mrs. Kidder filed a motion for summary judgment, and the matter eventually ended up in federal district court in Baton Rouge, which this year awarded the approximately \$250,000 in the account to her, disinheriting the children.

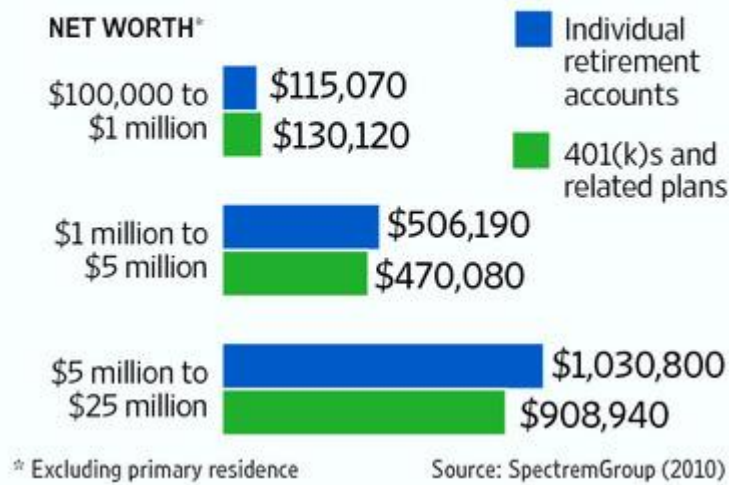
"I think Leonard Kidder would be shocked," says Charles Dirks III, the Baton Rouge lawyer representing the children, who are appealing. "It is a trap, an absolute trap" for an individual such as Mr. Kidder, he says. Neither Cajun nor Beth Bennett Kidder would comment.

'Labyrinth of Rules'

As the amount of money stashed in 401(k)s and individual retirement accounts has grown, more and more families are finding themselves locked in battles over who has rights to the assets, especially in cases involving divorce and remarriage.

What's at Stake

Average holdings, by net worth



According to Cogent Research LLC, a Cambridge, Mass., research and consulting firm, IRAs and 401(k)s now account for roughly 60% of the assets of U.S. households with at least \$100,000 to invest.

"That's where most of the wealth in America ends up," says Ed Slott, a certified public accountant in Rockville Centre, N.Y. "But what most people don't realize is it's surrounded by this complex labyrinth of rules," he says, so when "key questions are not asked, people make mistakes, and many times it involves their life savings."

The patchwork of federal and state laws governing these plans is partly to blame. "Even the best attorneys and accountants are bedeviled by it," says Edwin Morrow III, a lawyer with KeyCorp's private-banking unit in Dayton, Ohio.

Here are some key rules governing retirement accounts, and lessons from financial professionals on how to navigate them as families grow and change:

Spouse Gets Priority

Rule No. 1: With 401(k)s, your spouse is the presumed beneficiary of your account upon your death—regardless of who is listed on the beneficiary form—unless he or she previously consented to your naming someone else beneficiary. These plans are governed by the federal Employee Retirement Income Security Act, or Erisa. Under this law, plans can provide for those spousal rights to kick in immediately, or no later than a year after the marriage. This general rule cannot easily be circumvented with a prenuptial agreement. Only a spouse can waive the right to 401(k)-plan assets—those who are engaged cannot.

If you are contemplating remarrying and are concerned about providing for children from a prior marriage, consider rolling your 401(k) to an IRA, where you have more latitude to name beneficiaries of your choosing, says Mr. Slott.

Rule No. 2: If you are single when you die, your 401(k) assets pass to the person designated on your beneficiary form—regardless of what your will says or what other agreements you made before your death. The U.S. Supreme Court has said so.

William and Liv Kennedy called it quits after 20-plus years of marriage. As part of their divorce agreement, Liv waived her rights to any benefits under William's DuPont Co. retirement plan. William never remarried. He also never changed the beneficiary designation on his retirement account from Liv.

When William died, a dispute arose between Liv and the couple's daughter, Kari Kennedy, over who had the right to the funds in the DuPont plan.

After conflicting rulings in the lower courts, the Supreme Court agreed to hear the case and in a unanimous decision in 2009 held that the person named on the beneficiary form gets the money—even if that person happens to be the employee's ex-spouse, and even if that ex-spouse waived any right to the money in a divorce agreement. Kari Kennedy was disinherited.

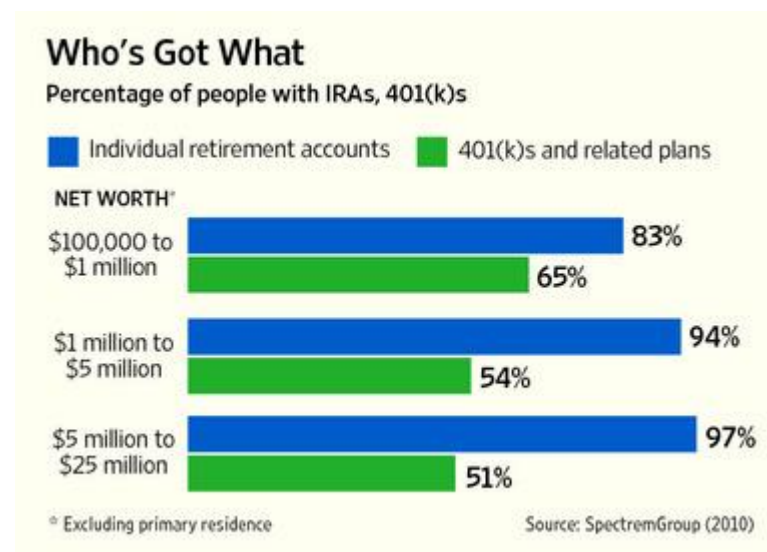
The lesson: If you get divorced and your ex-spouse gives up any claim to your 401(k), update your account paperwork with the name of your new beneficiary, says Mr. Slott.

Seeking More Latitude

Rule No. 3: With IRAs, which are subject to state law, you generally can name anyone you like as the beneficiary, with or without your spouse's consent. (Certain restrictions apply in community-property states.)

Wayne Wilson married Katherine Chandler in 2000. Two years later he opened an IRA at Charles Schwab Corp. and named his four grown children from a prior marriage as beneficiaries. Three years after that, at the age of 65, he died.

His wife tried to claim the IRA assets, arguing they had originated from Wilson's Siemens AG 401(k) plan.



But last year the U.S. Court of Appeals for the Ninth Circuit awarded them to the children, ruling that spouses have no ERISA rights to IRA benefits. Robert Olson, the Los Angeles lawyer representing Ms. Chandler, says his client asked the court to rehear the case, arguing that the decision results in a "stunning loophole" affecting the retirement security of "millions of unsuspecting American spouses," but her request was denied.

What if you designate your spouse as your IRA beneficiary and later get divorced? Under most states laws, the designation would become null and void upon your death, unlike with 401(k)s, says Robert Keebler, a CPA in Green Bay, Wis. Your assets will pass according to the default plan laid out in the IRA document—typically to your estate if you are single, he says.

If you actually want your ex-spouse to inherit your IRA, you must fill out a new beneficiary form indicating so, says Natalie Choate, an estate-planning lawyer at Nutter, McClennen & Fish in Boston.

Rule No. 4: Workers generally don't need a spouse's consent to cash out a 401(k) or roll it to an IRA when they change jobs or retire. Although employers may impose such a rule, the vast majority do not, as there is no federal law requiring them to do so, says Amy Matsui, senior counsel at the National Women's Law Center, which advocates improving spousal protections for 401(k)s and IRAs.

"It is an enormous loophole," says Ms. Choate.

What it means, she says, is that once you change jobs or retire, there is usually nothing preventing you from spending the money on a trip to Tahiti or rolling it to an IRA and leaving it to the gardener, rather than your spouse.

To be sure, most states have laws ensuring that a spouse cannot be totally disinherited. These rules might guarantee that your spouse will receive at least one-third to one-half of your estate. But, says Ms. Matsui, this is cold comfort to spouses who have little retirement savings of their own, perhaps because they interrupted a career to care for children.

Ms. Geer is a writer in Connecticut. Email her at reports@wsj.com.