



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

December 23, 1991

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New York State Credit Union League, Inc.
Box 15201
Albany, New York 12212-5021

Re: Preemption of New York State Law on Designation of Beneficiary for Shares (Your November 25, 1991, Letter)

Dear Mr. Bascom:

You requested our opinion on whether Section 701.35 of NCUA's Rules and Regulations (the "Regulations") preempts a New York statute that limits the amount that a financial institution may pay upon an account holder's death. In our opinion, the statute is not preempted. You also asked why the NCUA Accounting Manual does not allow the use of a Designation of Beneficiary for Shares with a single ownership account. Please see our response below.

Preemption

Background

The New York League requested guidance from the State of New York Banking Department on the use of Designation of Beneficiary forms by credit unions. The Banking Department wrote back, indicating that credit unions must comply with Section 1310 of New York's Surrogate's Court Procedure Act when releasing monies pursuant to a Designation of Beneficiary form, and that under that statute, a credit union may not honor a Designation of Beneficiary form if the amount of "debt"

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(SCPA §1310(1)(a)(i)) owed to the deceased by all "debtors" (SCPA §1310(1)(b)), including the credit union, exceeds \$10,000.

You interpret the Banking Department's letter to mean that a credit union located in New York may only use a Designation of Beneficiary for Shares if "the aggregate of all deposits does not exceed \$10,000." You state that such a limitation could prove cumbersome for credit unions, as an individual's aggregate deposits could exceed \$10,000 at any time without a credit union's knowledge.

You suggest that SCPA Section 1310 is preempted by Section 701.35(c) of the Regulations, which permits a federal credit union ("FCU") to determine "all matters affecting the opening, maintaining or closing" of an account, and preempts any state law attempting to regulate such activities. You ask for our opinion on SCPA Section 1310's applicability to both FCUs and federally insured state-chartered credit unions ("FISCUs").

Analysis

We note at the outset that Section 701.35(c) only preempts state laws insofar as they attempt to regulate practices by FCUs. Therefore, even if we were to find that Section 701.35(c) preempts the New York statute, FISCUs would not be affected by our determination and would still have to comply with the statute. In any event, we do not believe that SCPA Section 1310 is preempted.

We have reviewed SCPA Section 1310, and our interpretation differs both from yours and from that of the Banking Department. You state that the statute precludes use of a Designation of Beneficiary for Shares when the aggregate of the deceased's deposits exceeds \$10,000. However, what the statute actually provides is that a financial institution may pay only so much from the deceased's account as will bring the aggregate paid to the deceased's representatives by all "debtors" to \$10,000. (See, SCPA §§1310(2) and (3).) As we read the statute, the amount on deposit is irrelevant; it is the amount paid by all debtors that is dispositive. Moreover, nothing in the statute precludes use of Designation of Beneficiary for Shares form.

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The Banking Department states that Designation of Beneficiary forms cannot be honored when the aggregate amount of debt owed to the deceased by all debtors exceeds \$10,000. We interpret the statute differently. First, as discussed above, the \$10,000 limit governs the amount paid, rather than the amount owed. Second, both sections 1310(2) and (3) provide for payments in compliance with the limit. However, by their express terms, Sections 1310(2) and (3) only govern payment "unless otherwise provided by a designation of a beneficiary which is then in effect." Payment under Section 1310 is made only when an affidavit is filed and there is no designation of beneficiary. It seems to us that the designation of beneficiary supersedes the payment rules and limitations of Section 1310(2) and (3). This interpretation is bolstered by the Practice Commentary to Section 1310 (copy enclosed), which states in part, "Note that payment may not be made under this section if there is in effect a valid designation of a beneficiary who is entitled to the debt in question." In our view, if a Designation of Beneficiary for Shares has been filed and is in effect at the time of the account holder's death, the statute does not apply.

Federal preemption of a state statute becomes an issue only when there is a conflict between the federal and state laws. We do not perceive any conflict between SCPA Section 1310 and either the Federal Credit Union Act or NCUA's Regulations. Therefore, we need not address the preemption issue. However, please feel free to contact us if you have further questions regarding this matter.

Accounting Manual

You also asked for the reasoning behind the statement, in Section 5150.12 of the Accounting Manual, to the effect that for a single ownership account, a beneficiary may not be designated to receive the member's shareholdings upon the member's death. While the owner of an individual account may designate a beneficiary to receive his shares upon his death, his doing so changes his account from a single ownership account to a "payable on death" or "testamentary" account. Testamentary accounts are classified separately from single ownership accounts, and their insurance coverage may differ from that of single ownership accounts, depending upon the

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identity of the beneficiary. You may wish to consult Section 745.4 of the Regulations for an explanation of the insurance coverage for testamentary accounts.

Sincerely,

Hattie M. Ulan

Hattie M. Ulan
Associate General Counsel

Enclosure

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91-1208

account for such payments to the extent of the exemption provided therein, and the amount so received shall be credited to such exemption.

7. Nothing in this section shall deprive any person of any right which he would otherwise have to receive payment of a debt, except as against a debtor who has made a payment which is a discharge under subdivision 5, nor shall anything in this section deprive any debtor of any right to make or refuse payment which it would otherwise have. This section does not limit articles 10-c and 26 of the tax law.

8. This section applies only to creditors who die on or after September 1, 1952. L.1966, c. 953, amended L.1967, c. 685, § 72.

Amendments

Subd. 2 amended by L.1967, c. 685, § 72, eff. Sept. 1, 1967, which deleted "of this section" following "under this subdivision".

Subd. 6 amended by L.1967, c. 685, § 72, eff. Sept. 1, 1967, which deleted "lawful" preceding "fiduciary".

Source of Section

Decedent Estate Law, § 103-a, added L.1952, c. 824; amended L.1953, c. 401; L.1957, c. 471; L.1960, c. 553; L.1965, c. 1051.

Practice Commentary

By Ralph D. Semerad

This is the basic facility of payment provision formerly found in section 103-a of the Decedent Estate Law. It permits certain debtors to discharge their obligations to a deceased creditor by paying designated persons without the formality of administration proceedings. The debtors who may avail themselves of this privilege are various banking organizations, employers of decedents, insurance companies, governments and governmental agencies. These entities are not likely to act fraudulently and can be relied upon to keep accurate records of payment. Bank accounts, insurance proceeds, employee's death benefits, and unpaid wage or retirement obligations will most often fall within the section. Note that payment may not be made under this section if there is in effect a valid designation of a beneficiary who is entitled to the debt in question.

The person who may be paid, the time when payment may be made, and the amount that may be paid will be determined by reference to subdivisions 2, 3 and 4. Under subdivision 2, payment may be made as soon as the decedent dies, but only to the surviving spouse. Total payments from all sources may not exceed \$3,000 in the aggregate. The debtor must obtain an affidavit from the spouse to the effect that the payment re-

to the extent of the exemption provided so received shall be credited to such

shall deprive any person of any amount he has to receive payment of which he who has made a payment which is in subdivision 5, nor shall anything in this section deprive any right to make or refuse payment. This section does not limit the right to sue at law.

to creditors who die on or after September 1, 1953, amended L.1967, c. 685, § 72.

Amendments

Subd. 6 amended by L.1967, c. 685, § 72, eff. Sept. 1, 1967, which deleted the words "lawful" preceding "fiduciary".

Section

L.1952, c. 824; amended L.1953, c. 401; L. 1051.

Commentary

1. Semerad

The payment provision formerly in the decedent Estate Law. It permits creditors to enforce their obligations to a deceased decedent without the formality of a court proceeding. Creditors who may avail themselves of this provision are banks, banking organizations, employers, labor unions, companies, governments and other organizations. Creditors are not likely to act on this provision to keep accurate records of the decedent's estate. The estate proceeds, employee's benefits, and retirement obligations will be paid to the decedent. Note that payment may not be made until the creditor is in effect a valid designee of the decedent. Payment made to the decedent in question.

The time when payment may be made will be determined by subdivision 4. Under subdivision 2, if the decedent dies, but only to the extent of the payment from all sources may be made. The debtor must obtain an affidavit from the creditor to reflect that the payment re-

quested and all other payments received under this subdivision do not exceed \$3,000. Obviously, the affidavit should also show the death of the creditor and the relationship of the affiant.

Subdivision 3 payments are not available until 30 days after the death of the decedent. This subdivision does not limit the right of the spouse to take immediately upon death under subdivision 2. The group of persons who may be paid is expanded to include not only the spouse but also children 18 or over, a parent, a brother or sister, and, upon proper request, a creditor or a person who has paid or incurred funeral expenses. Note that if more than one of the named persons requests payment, the debtor must pay according to the priorities established by subdivision 3. Payment to a creditor of the decedent or to a person who has paid funeral expenses will be made upon the request and affidavit of one of the named relatives. The affidavit to be submitted under this subdivision is more detailed than that required in subdivision 2. It must contain, in addition to statements concerning death, relationship and amounts being collected, the names and addresses of the persons entitled to and who will receive the payment, and a statement that no fiduciary has qualified or been appointed.

Payment under subdivision 4 may not be made until six months after decedent's death. The persons who may be paid thereunder are distributees, creditors of the decedent, and persons paying or incurring funeral expenses. The latter two categories are not entitled to collect any funds that are exempt from the claims of creditors. Only \$500 or less may be paid under subdivision 4. The affidavit submitted to the debtor must show the date of death; that no fiduciary has been appointed; that no spouse or minor child survived decedent; that affiant is entitled to payment; and that all payments by all debtors do not aggregate over \$500.

A payment in good faith under this section discharges the debtor; it does not matter that the affidavit is false, or that the payment disregards the order of preference in subdivision 3. However, the debtor must be certain that the required number of days has elapsed since death, that the payee bears the statutory relationship to decedent, and, under subdivision 4, that the affiant is a creditor or person who has paid funeral expenses.

Note that this section protects only the paying debtor. Persons receiving payment are accountable to a duly appointed personal representative or to a public administrator for any money they receive. However, a surviving spouse is entitled to \$1,000 under the family exemption provisions of EPTL 5-3.1 and need not account for payments up to that amount. The rights of debtors to make or refuse payment are not af-

§ 1310 SURROGATE'S COURT PROCEDURE Art. 13

fects by these provisions; the rights of creditors remain intact except to the extent that subdivision 5 provides the debtors with a discharge. Attention is called to the fact that the estate tax law is not limited by this section.

Revisers' Notes

DEL § 103-a with minor changes in phraseology and addition of Article 26 of the Tax Law to subdivision 7.

Cross References

Payments to survivors of deceased state employees, see Civil Service Law, § 154. Survivor's benefits under state university optional retirement program, see Education Law, § 394.

Notes of Decisions

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Library references

Executors and Administrators
↔7.
C.J.S. Executors and Administrators §§ 11, 1056 et seq.

1. Purpose

The policy of the State of New York to avoid the trouble and expense of administering wholly insignificant estates is demonstrated by DEL §§ 103-a [now this section] and 103-b [now section 1311]. In re Matthews' Estate, 1940, 175 Misc. 524, 24 N.Y.S.2d 249.

2. Checks

Check of not over \$500 may be cashed without appointment of administrator of estate of deceased collector. 3 Op.State Compt. 307, 1947.

Duplicate checks may be issued to replace checks presumed lost or destroyed provided security is given to provide against possibility checks were negotiated. 1 Op.State Compt. 408, 1945.

3. Personal effects

Where personal effects of a deceased person come into the possession of the Suffolk County Police Department, the delivery of such property to the relatives of the de-

ceased is not subject to the provisions of DEL § 103-a [now this section]. 19 Op.State Compt. 467, 1963.

4. Persons entitled to payment

Salary of a justice of the peace is payable only to the time of his death and any unpaid portion thereof is payable either to his estate or to certain distributees. 20 Op.State Compt. 486, 1964.

A town may pay to a person properly entitled to share in the estate, an amount for services rendered by a deceased employee of the town, as prescribed in DEL § 103-a [now this section]. 17 Op.State Compt. 334, 1961.

A town supervisor may pay accrued wages of a deceased tax collector to his estate or representatives. 13 Op. State Compt. 355, 1958.

Salary accrued to an improvement district employee at the time of his death may, within limitations, be paid to his widow or others, but no such payment may be made on account of accrued vacation. 13 Op. State Compt. 277, 1957.

Where a town employee dies, survived by a spouse, and where the town is indebted to the employee at the time of death by reason of wages, earnings or salary accrued to such employee, the town may pay over such wages, earnings or salary to the surviving spouse in an amount not in excess of \$1000 provided that the terms of subdivisions 1 and 2 of DEL § 103-a [now this section] are met. 12 Op.State Compt. 293, 1956.