

Comment,  
STATUTORY TERMINATION OF PROPERTY  
RIGHTS AND INTERESTS UPON DIVORCE

### Introduction

Divorce has become a prevalent part of American family law. Perhaps in response to this high rate of divorce, many states have begun statutorily terminating a spouse's rights and interests in certain property automatically upon the entry of a decree of dissolution of marriage, or an annulment of marriage. The states have removed discretion from the courts in a variety of areas, such as terminating the former spouse's status as a surviving spouse, or terminating the former spouse as a beneficiary under life insurance benefits. These statutes also serve as a way to further eliminate the ties that connect the parties after they are divorced.

In Part I of this comment, the discussion will focus on certain interests in property which have been statutorily terminated by some states upon divorce or annulment. Included in the discussion are examples of state statutes which are representative of those in other jurisdictions. These examples are intended to assist in researching one's own jurisdiction to see if there are similar statutory provisions. In Part II, discussion will turn to the United States Supreme Court decision of *Egelhoff v. Egelhoff*<sup>1</sup>, in which a Washington state statute<sup>2</sup>, that terminated a former spouse's interest in life insurance benefits and pension plans once the parties were divorced, was found to be preempted by the Employment Retirement Income Security Act (ERISA).<sup>3</sup>

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<sup>1</sup> 532 U.S. 141 (2001).

<sup>2</sup> WASH. REV. CODE ANN. §11.07.010 (West 2004).

<sup>3</sup> 29 U.S.C.A. § 1001 et seq.

## **I. Statutes Which Terminate Certain Property Rights Upon Dissolution or Annulment of Marriage**

### *1. Property Rights Generally*

Pennsylvania appears to have the most expansive statutory termination of property rights upon the dissolution of a marriage, whether through a divorce or annulment. Its statute provides:

Whenever a decree or judgment is granted which nullifies or absolutely terminates the bonds of matrimony, *all property rights which are dependent upon the marital relation, except those which are vested rights, are terminated* unless the court expressly provides otherwise in its decree.<sup>4</sup> (emphasis added)

A Pennsylvania court has held that this statutory provision does not apply to property purchased prior to the parties' marriage because the spouse's rights were not dependent upon the marital relation.<sup>5</sup>

### *2. Revocation of Survivorship Rights in Personal Property*

Under Ohio law, how married individuals have titled their personal property may affect their rights in said property after divorce. If the personal property is titled as a joint tenancy with the right of survivorship to the survivor of the couple, then subsequent to the entry of a decree or judgment granting a divorce, the right of survivorship terminates.<sup>6</sup> Once this right is terminated, each former spouse is deemed the owner of an interest in common in the title of the personal property.<sup>7</sup>

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<sup>4</sup> 23 PA. CONST. STAT. §3503 (2001).

<sup>5</sup> *Bower v. Bower*, 611 A.2d 181 (Pa.1992) (holding that a spouse's rights to property acquired by the parties before the marriage was not terminated by entry of a divorce decree).

<sup>6</sup> OHIO REV. CODE ANN. §1339.64(A)(1) (2003).

<sup>7</sup> *Id.*

### 3. *Revocation of Death Benefits, Retirement Benefits, Pension Plans*

In some states, a divorce or annulment revokes a former spouse's status as a beneficiary of certain death benefits.<sup>8</sup> Oklahoma's statute, is typical of other state statutes in this area:

If, after entering into a written contract in which a beneficiary is designated or provision is made for the payment of any death benefit. . . , *the party to the contract with the power to designate the beneficiary or to make provision for payment of any death benefit dies after being divorced from the person designated as the beneficiary or named to receive such death benefit, all provisions in the contract in favor of the decedent's former spouse are thereby revoked. Annulment of the marriage shall have the same effect as a divorce.*<sup>9</sup> (emphasis added)

Under Oklahoma's statute, death benefits include "life insurance contracts, annuities, retirement arrangements, compensation agreements, depository agreements, security registrations, and other contracts designating a beneficiary of any right, property, or money in the form of a death benefit."<sup>10</sup> A death benefit, however, does not include any interest in property in which the former spouse has an interest as a joint tenant, or an interest in property in which the former spouse has an interest in an express trust, created by the decedent.<sup>11</sup>

Several exceptions exist under Oklahoma law, which allow the former spouse to remain the decedent's beneficiary. Some exceptions include instances when the parties' divorce or annulment is vacated, the parties remarry, or the decree of divorce or annulment contains a provision which expresses a contention in opposition to the statutory presumption.<sup>12</sup> The Oklahoma statute does not apply retroactively, so any policy or contract entered into before the statute was adopted, is not affected by it.<sup>13</sup>

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<sup>8</sup> See OHIO REV. CODE ANN. §1339.63 (2003), VA. CODE ANN. §20-111.1 (1993).

<sup>9</sup> 15 OKL. STAT. ANN. § 178(A) (West 2003).

<sup>10</sup> 15 OKL. STAT. ANN. § 178(A) (West 2003).

<sup>11</sup> 15 OKL. STAT. ANN. § 178(C)(1),(2) (West 2003).

<sup>12</sup> 15 OKL. STAT. ANN. § 178 (B) (West 2003).

<sup>13</sup> See, *First Nat'l Bank & Trust Co. v. Coppin*, 827 P.2d 180 (Okla. Ct. App. 1992) (holding that when a decedent purchased a life insurance policy and named his wife his beneficiary, and the parties later divorced, 15 Okla. Stat. §178 was not in effect when decedent named her as the beneficiary, and therefore did not apply), *Bruner v. Bruner*, 864 P.2d 1289 (Okla. Ct. App. 1993)

When dealing with death benefits of public employees, some jurisdictions have statutes which automatically terminate the former spouse's revocable status as a beneficiary of the public employee's retirement system's death benefits or awards.<sup>14</sup> Timing, however, is important in these cases; should the employee designate the soon-to-be former spouse as the beneficiary after divorce proceedings are commenced, the entry of a divorce decree may not terminate the former spouse's status.<sup>15</sup>

Upon the entry of a divorce or annulment, a former spouse may be automatically terminated as the beneficiary of certain other retirement benefits or financial plans. Texas's statute is illustrative:

(a) If a decree of divorce or annulment is rendered after a spouse, acting in the capacity of a participant, annuitant, or account holder, has designated the other spouse as a beneficiary under an individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan of an employee or a participant in force at the time of rendition, the designating provision in the plan in favor of the other former spouse is not effective unless:

(1) the decree designates the other former spouse as the beneficiary;

(2) the designating former spouse redesignates the other former spouse as the beneficiary after rendition of the decree; or

(3) the other former spouse is designated to receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either former spouse.<sup>16</sup>

Many of these state pre-designation statutes, such as Texas's, may be expressly preempted by the Employee Retirement Income Security Act (ERISA)<sup>17</sup>

#### 4. *Public Employees and Retirement Systems*

Former spouses who are named as beneficiaries in municipal retirement funds may also have their rights terminated automati-

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(holding that 15 Okla. Stat. §178 did not apply when the statute did not take effect until after the death of the decedent).

<sup>14</sup> See e.g. CAL. GOV'T. CODE §21492 (West 2003).

<sup>15</sup> See *Coughlin v. Board of Admin., Public Employees' Retirement System*, 199 Cal.Rptr. 286 (App. 2 Dist. 1984).

<sup>16</sup> TEX. FAM. CODE §9.302 (Vernon 2003).

<sup>17</sup> 29 U.S.C. secs. 1001 et seq. (1974).

cally by statute. Illinois has a typical statute covering this property:

(a). . . *Divorce, dissolution or annulment of marriage revokes the designation of an employee's former spouse as a beneficiary on a designation executed before entry of judgment for divorce, dissolution or annulment of marriage.*<sup>18</sup> (emphasis added)

Divorcing parties, however, can overcome this termination of the former spouse's designation as the beneficiary of a municipal fund or system should they enter a provision in their marital settlement agreement stating a desire for the former spouse to remain the beneficiary under said fund or system.<sup>19</sup> Legislation currently pending in the Illinois legislature would change this provision only in placement in the overall statute, leaving this principle otherwise intact.<sup>20</sup>

California's public employee retirement system has a similar provision relating to the designation of a beneficiary for certain death benefits; a member's dissolution or annulment of marriage, among other things, "shall constitute an automatic revocation of his or her previous designation of beneficiary"<sup>21</sup> Arizona's public officers and employees face a similar statute should their marriages be dissolved or annulled.<sup>22</sup> In Hawaii, a public official or employee's designation of a former spouse as a beneficiary for government retirement benefits becomes null and void upon divorce.<sup>23</sup>

## 5. Probate and Non-Probate Transfers

### A. Surviving Spouses

Many states have adopted language based on, or similar to, the Uniform Probate Code section 2-802, which provides that a former spouse is not a surviving spouse upon obtaining, or con-

<sup>18</sup> 40 ILL. COMP. STAT. 5/7-118(a) (2003).

<sup>19</sup> *Smithberg v. Illinois Mun. Retirement Fund*, 735 N.E.2d 560 (Ill. 2000) (finding that decedent's first wife was entitled to his municipal retirement fund benefits, despite the fact that he named his second wife as beneficiary, where such designation violated his marital settlement agreement, incorporated in the judgment of dissolution, with his first wife).

<sup>20</sup> 2003 IL H.B. 4948 (SN) (Feb 05, 2004).

<sup>21</sup> CAL. GOV'T. CODE §21492 (West 2003).

<sup>22</sup> ARIZ. REV. STAT. §38-773 (2003)

<sup>23</sup> HAW. REV. STAT. §88-93 (2003).

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senting to, a final decree of judgment of divorce.<sup>24</sup> In some states, however, a decree of separation does not terminate the status of the parties, and therefore the spouse remains the surviving spouse.<sup>25</sup>

B. *Transfers Under a Will*

One's status as a beneficiary under the will of his or her former spouse may also be statutorily terminated in some jurisdictions.<sup>26</sup> Minnesota's statute governing this area is illustrative:

Revocation upon dissolution. Except as provided by the express terms of a governing instrument, *other than* a trust instrument under section 501B.90, executed prior to the dissolution or annulment of an individual's marriage, a court order, a contract relating to the division of the marital property made between individuals before or after their marriage, dissolution, or annulment, or a plan document governing a qualified or nonqualified retirement plan, *the dissolution or annulment of a marriage revokes any revocable:*

(1) *disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse* in a governing instrument;

(2) *provision in a governing instrument conferring a general or nongeneral power of appointment on an individual's former spouse;* and

(3) *nomination in a governing instrument, nominating an individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian.*<sup>27</sup> (emphasis added)

It must be remembered, however, that statutes which revoke the status of a former spouse as a beneficiary under a will do not affect other designations of said former spouse as a beneficiary. Careful analysis and examination of the state's laws is needed to determine when, and under what provisions of a will, a former

<sup>24</sup> See e.g. Unif. Probate Code §2-802 (2003), TENN. CODE ANN. §31-1-102 (2003), S.C. CODE ANN. §62-2-802 (Law. Co-op. 1976), 84 OKL. STAT. ANN. §114 (West 2003), NY EST. POWERS & TRUST §5-1.4, COLO REV. STAT. §15-11-804 (2003); N.M. STATE. ANN. § 45-2-802(Michie 2003), HAW REV. STAT. §560:2-802 (2003).

<sup>25</sup> See UTAH CODE ANN. §75-2-802 (2003), TENN. CODE ANN. §31-1-102 (2003).

<sup>26</sup> See e.g. S.C. CODE ANN. §62-2-507 (Law. Co-op 2003), CONN. GEN. STAT. §45a-257c (2003).

<sup>27</sup> MINN. STAT. §524.2-804 (2003); See also ARIZ REV. STAT §14-2804 (2003).

spouse's status as a beneficiary is terminated upon the Court's entry of a decree of dissolution or annulment. For example, an Oklahoma statute revoking provisions of a will which benefit a former spouse upon the entrance of a judgment or decree of divorce, did not affect the designation of a former husband as the beneficiary in a Teacher's Retirement System.<sup>28</sup> Additionally, the dissolution or annulment of the parties' marriage may not affect other provisions or designations in the will itself.<sup>29</sup>

### C. Non-Probate Transfers

Jurisdictions may also have statutory provisions which terminate non-probate transfers in favor of a former spouse. Non-probate transfers, in California, as in other states, often include any provision in a document, other than a will, which operates upon death which confers power of appointment or names a trustee.<sup>30</sup> These statutes often look similar to those terminating provisions in a will which favor a former spouse. California's statute terminating non-probate transfers is instructive:

Except as provided in subdivision (b), *a nonprobate transfer to the transferor's former spouse, in an instrument executed by the transferor before or during the marriage, fails if, at the time of the transferor's death, the former spouse is not the transferor's surviving spouse as defined in Section 78, as a result of the dissolution or annulment of the marriage.*<sup>31</sup> (emphasis added)

Upon the Court entering a decree of dissolution which invokes the terminating statute, the former spouse, and relatives of the former spouse, are treated as if they had disclaimed the provisions benefiting them.<sup>32</sup> And, as in other areas dealing with such property rights and the terminations of these rights, a determination of legal separation may not invoke the statutory termination of the spouse's designation as beneficiary.<sup>33</sup> These statutes which terminate, or attempt to terminate, a former spouse's interest in

<sup>28</sup> *Pepper v. Peacher*, 742 P.2d 21 (Okla. 1987); *See* 84 OKL. STAT. ANN. §114.

<sup>29</sup> *See e.g. Matter of Estate of Cullen*, 663 N.Y.S.2d 508 (1997) (holding that the testator's divorce did not revoke his will's designation of former wife's mother as substitute executor).

<sup>30</sup> *See* CAL. PROB. §5600 (West 2004).

<sup>31</sup> CAL. PROB. §5600 (West 2004).

<sup>32</sup> *See e.g. HAW REV. STAT. §560:2-804* (2003).

<sup>33</sup> *See* CAL. PROB. §5600 (West 2004).

non-probate assets have been called into questions following the United States Supreme Court decision in *Egeloff v. Egeloff*, which dealt with a Washington statute terminating employment pension plans and life insurance policies and ERISA.<sup>34</sup>

#### D. *Revocable Inter Vivos Trusts*

Revocable inter vivos trusts may also be affected by divorce or annulment. South Carolina's statute terminating a disposition in an inter vivos trusts to a former spouse is helpful in understanding other statutes relating to these trusts:

*If after executing a revocable inter vivos trust the trust creator is divorced or his marriage annulled or his spouse is a party to a valid proceeding concluded by an order purporting to terminate all marital property rights or confirming equitable distribution between the spouses, the divorce or annulment or order revokes any disposition or appointment of property including beneficial interests made by such trust to the spouse, any provision conferring a general or special power of appointment on the spouse, and any nomination of the spouse as trustee, unless the trust expressly provides otherwise. Property prevented from passing to a spouse because of revocation by divorce or annulment or order passes as if the spouse failed to survive the trust creator, and other provisions conferring some power or office on this spouse are interpreted as if the spouse failed to survive the trust creator.*<sup>35</sup> (emphasis added)

Should the parties remarry, the South Carolina statute allows for the revival of the provisions which were revoked due to the statute. Additionally, only the changes in the relationship of the parties as described in the statute revoke the revocable inter vivos trust; in other words, the statute *explicitly* states that no other change of marital or parental status will affect these trusts.<sup>36</sup> Other states, with statutes relating to these trusts, have similar language, and some will allow for a separation agreement to provide an alternative to the statute's automatic termination of the former spouse's designation under the trust.<sup>37</sup>

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<sup>34</sup> 532 U.S. 141 (2001); WASH. REV. CODE ANN. §11.07.010 (West 2004). See footnotes and accompanying text for a more complete discussion of *Egelhoff*.

<sup>35</sup> S.C. CODE ANN. §62-7-114 (Law. Co-op 2003)

<sup>36</sup> *Id.*, See also 760 ILL. COMP. STAT. 35/1 (2003).

<sup>37</sup> See OHIO REV. CODE ANN. §1339.62 (2003).

## II. ERISA, the Supreme Court, and *Egelhoff*

### 1. ERISA

In 1974, Congress passed the Employee Retirement Income Security Act (ERISA) in order to establish a comprehensive federal scheme for protecting participants and beneficiaries of employee benefit plans.<sup>38</sup> The plans covered under ERISA are quite expansive:

The terms “employee welfare benefit plan” and “welfare plan” mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).<sup>39</sup>

The Supreme Court has found that state laws “relate” to employee benefit plans covered under ERISA, when the state law “has a connection with or reference to such a plan.”<sup>40</sup> A beneficiary means “a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.”<sup>41</sup> ERISA also contains a preemption provision, stating that:

Supersede; effective date. Except as provided in subsection (b) of this section, *the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan* described in section 4(a) [29 USCS § 1003(a)] and not exempt under section 4(b) [29 USCS § 1003(b)]. This section shall take effect on January 1, 1975.<sup>42</sup> (emphasis added)

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<sup>38</sup> Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 44 (1987).

<sup>39</sup> 29 U.S.C. §1002 (1) (West’s 1999).

<sup>40</sup> Shaw v. Delta Air Lines, 463 U.S. 85, 96-97 (1983).

<sup>41</sup> 29 U.S.C. §1002 (8).

<sup>42</sup> 29 U.S.C. §1144(a).

## 2. Egelhoff v. Egelhoff

The most recent decision regarding ERISA and a state's statutory termination of property rights in a benefit plan or life insurance plan was the United States Supreme Court decision in *Egelhoff v. Egelhoff*.<sup>43</sup> In *Egelhoff* the Supreme Court was faced with the question of whether Washington's statute preempting a former spouse's designation as a beneficiary of a non-probate asset conflicted with the goals and purpose of ERISA. Under Washington's statute, the assets preempted included life insurance and employee benefit plans.<sup>44</sup>

### A. *Facts and Procedural Posture*

The petitioner, Donna Rae Egelhoff, had been married to the deceased, David A. Egelhoff, who, before his death, was employed by Boeing. Through the company, the deceased had a life insurance and retirement plan; the Supreme Court found that both of these plans were covered by ERISA.<sup>45</sup> The deceased had designated his wife, the petitioner, as the beneficiary under both the insurance and the retirement plan prior to the parties' divorce.<sup>46</sup> When the couple divorced, the court awarded both plans to the deceased, who died two months later in a car accident.<sup>47</sup> After his divorce, the deceased had not removed petitioner as his beneficiary under those plans. Because of this failure to remove her as the stated beneficiary, she was awarded the life insurance proceeds and pension benefits.<sup>48</sup> The deceased's two children, from a prior marriage sued the petitioner in two actions in state court to recover both the proceeds and the benefits.<sup>49</sup>

The question facing both trial courts was whether the Washington statute was preempted by ERISA; if the courts determined that ERISA did not preempt the statute, the respondents, the deceased's children, would receive the benefits of their father's pension plan and life insurance policy. At the trial court

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<sup>43</sup> 532 U.S. 141 (2001).

<sup>44</sup> WASH. REV. CODE ANN. §11.07.010 (West 2004).

<sup>45</sup> 532 U.S. at 144.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 144-145.

level, it was held that both the life insurance and pension plans would be administered under ERISA, thereby the state statute was preempted, and Petitioner was granted summary judgment in both cases.<sup>50</sup> Washington's Court of Appeals reversed the trial courts' determinations after consolidating the two cases, finding that ERISA did not preempt the Washington statute terminating a former spouse's designation as beneficiary upon the entry of a decree of dissolution of marriage.<sup>51</sup> Because of this, the respondents would recover the proceeds and the benefits of their deceased father's life insurance policy and pension plan. Washington's Supreme Court affirmed the Court of Appeals, and petitioner sought, and received, certiorari to the United States Supreme Court.<sup>52</sup>

### B. *The Supreme Court's Decision*

The Supreme Court, in an opinion by Justice Thomas, reversed the decision of the Washington Supreme Court, and found that ERISA expressly preempted the Washington statute.<sup>53</sup> The Court found that the language of the statute as a whole, but particularly the preemption section, required the determination that ERISA shall "supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA.<sup>54</sup> The Court explained that a state law covers a plan regulated by ERISA when the law has a connection with, or reference to, the plans. Since the Washington statute did not specifically mention or reference ERISA, the Court then turned to the question of whether the Washington's statute was connected to ERISA regulated plans.<sup>55</sup>

The Court laid out the guidelines used to determine whether there was such a "forbidden" connection. To answer this question, the Court will look "both to 'the objectives of the ERISA statute as a guide to the scope of the state law that Congress

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<sup>50</sup> 532 U.S. at 145.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 145-146.

<sup>53</sup> *Id.* at 143, 146.

<sup>54</sup> *Id.* at 146 (quoting 29 U.S.C. §1144(a) (1994)).

<sup>55</sup> 532 U.S. at 147. *See* WASH REV. CODE ANN. §11.07.010 (West 2004).

understood would survive,'” and additionally at “the nature of the effect of the state law on ERISA plans.’”<sup>56</sup>

Applying this framework, the Court found the Washington statute had an impermissible connection with ERISA because the statute “binds ERISA plan administrators to a particular choice of rules for determining beneficiary status. The administrators must pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents.”<sup>57</sup>

Additionally, the Court found that the Washington statute “interferes with nationally uniform plan administration.”<sup>58</sup> One of the principle goals of ERISA “is to enable employers ‘to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits.’ Uniformity is impossible, however, if plans are subject to different legal obligations in different States.”<sup>59</sup> The Court found that the Washington statute posed a threat to uniformity because it placed on plan administrators the requirement that they “familiarize themselves with state statutes so that they can determine whether the named beneficiary’s status has been “revoked” by operation of law. And in this context the burden is exacerbated by the choice-of-law problems that may confront an administrator when the employer is located in one State, the plan participant lives in another, and the participant’s former spouse lives in a third.”<sup>60</sup>

### *C. Affect on Other Terminating Statutes*

The Supreme Court’s determination that the Washington statute was preempted by ERISA will continue to affect other state statutes which terminate the status of a former spouse as a beneficiary of probate and non-probate assets. As the respondents in *Egelhoff* noted in their Brief to the Supreme Court, statutes similar to Washington’s as they relate to former spouse designations in wills, are longstanding and now exist in virtually

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<sup>56</sup> *Id.* at 147 (quoting *Cal. Div. of Labor Standards Enforcement v. Dillingham Constr., N. A., Inc.*, 519 U.S. 316, 325 (1997) (citations omitted))

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 148.

<sup>59</sup> *Id.* (quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9, (1987) (citations omitted))

<sup>60</sup> *Id.* at 147-148

every state.<sup>61</sup> As such, these statutes will be analyzed under *Egelhoff*, and should the courts find that there exists an impermissible connection between the state law and ERISA plans because the statutes bind plan administrators to specific “rules for determining beneficiary status,” and impermissibly interferes with a national uniform plan for administration, the state statutes will be preempted by ERISA.<sup>62</sup>

## Conclusion

Each state has its own laws regarding how property is treated after the court enters a judgment and decree of dissolution of marriage or annulment of marriage. In some states, statutes provide for the automatic termination of certain property rights or interests after a divorce is entered. To some, this may be preferable, as it assists in terminating an important aspect joining the former couples. By terminating a former spouse’s interest in property, the states are eliminating a connection that may continue after divorce or dissolution.

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<sup>61</sup> Respondent’s Brief at 22, *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001), available at 2000 WL 1369495. Respondents, in note 8, list the following states:

Only the District of Columbia, Louisiana, Mississippi, and Vermont lack revocation-by-divorce statutes applicable to wills. Ala. Code § 43-8-137; Alaska Stat. § 13.12.804; Ariz. Rev. Stat. § 14-2804; Ark. Code Ann. § 28-25-109; Cal. Prob. Code § 6122; Colo. Rev. Stat. § 15-11-804; Conn. Gen. Stat. § 45a-257c; Del. Code Ann. tit. 12, § 209; Fla. Stat. § 732.507; Ga. Code Ann. § 53-4-49; Haw. Rev. Stat. § 560:2-804; Idaho Code § 15-2-508; 755 Ill. Comp. Stat. § 5/4-7; Ind. Code § 29-1-5-8; Iowa Code § 633.271; Kans. Stat. Ann. § 59-610; Ky. Rev. Stat. Ann. § 394.092; Me. Rev. Stat. Ann. tit. 18-A, § 2-508; Md. Code Ann., Est. & Trusts § 4-105; Mass. Ann. Laws ch. 191, § 9; Mich. Stat. Ann. § 27.12807; Minn. Stat. § 524.2-804; Mo. Rev. Stat. § 474.420; Mont. Code Ann. § 72-2-814; Neb. Rev. Stat. § 30-2333; Nev. Rev. Stat. § 133.115; N.H. Rev. Stat. Ann. § 551:13; N.J. Stat. Ann. § 3B:3-14; N.M. Stat. Ann. § 45-2-804; N.Y. Est. Powers & Trusts Law § 5-1.4; N.C. Gen. Stat. § 31-5.4; N.D. Cent. Code § 30.1-10-04; Ohio Rev. Code Ann. § 2107.33; Okla. Stat. tit. 84, § 114; Or. Rev. Stat. § 112.315; 20 Pa. Cons. Stat. § 2507; R.I. Gen. Laws § 33-5-9.1; S.C. Code Ann. § 62-2-507; S.D. Codified Laws § 29A-2-804; Tenn. Code Ann. § 32-1-202; Tex. Prob. Code Ann. § 69; Utah Code Ann. § 75-2-804; Va. Code Ann. § 64.1-59; W. Va. Code § 41-1-6; Wis. Stat. § 854.15; Wyo. Stat. Ann. § 2-6-118; Wash. Rev. Code § 11.12.051.

<sup>62</sup> 532 U.S. at 147-148.

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The difficulty for practitioners in this area is knowing the language to look for, and where to look for it. In some states, provisions can be placed in the probate code, as to be expected, while others are placed along with commercial transactions. By using common language, practitioners will likely find the statutes in their jurisdiction which appear to terminate a former spouses' interest in property upon divorce.

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