



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

DESIGNATION OF BENEFICIARIES UNDER BENEFIT PLANS ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to December 3, 2008. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office

Tel: (902) 368-4292

Email: legislation@gov.pe.ca



DESIGNATION OF BENEFICIARIES UNDER BENEFIT PLANS ACT

CHAPTER D-9

1. Definitions

In this Act

- (a) “**designation**” means a written instrument referred to in section 2;
- (b) “**investment corporation**” means an investment corporation as defined in the *Income Tax Act* (Canada);
- (c) “**participant**” means a person who is entitled to designate another person to receive a benefit payable under a plan on the participant’s death;
- (d) “**plan**” means
 - (i) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement or a fund, trust, scheme, contract or arrangement for other benefits for employees, former employees, directors, former directors, agents, or former agents of an employer or their dependants or beneficiaries,
 - (ii) a fund, trust, scheme, contract, or arrangement for the payment of a periodic sum for life or for a fixed or variable term, or
 - (iii) a fund, trust, scheme, contract or arrangement of a class that is prescribed as a plan for the purposes of this Act,and includes a tax-free savings account, retirement savings plan, home ownership savings plan and a retirement income fund as defined in the *Income Tax Act* (Canada);
- (e) “**trust company**” means a trust company that is authorized by law to carry on business in the province. *R.S.P.E.I. 1974, Cap. D-8, s.1; 1981, c.11, s.1; 1987, c.17, s.1; 2008, c.38, s.1.*

2. Effect of designation of beneficiary under a plan

Where, in accordance with the terms of a plan, a participant, by a written instrument signed by him or on his behalf by another person in his presence and by his direction, has designated a person to receive a benefit payable under the plan in the event of the death of the participant,

- (a) the person administering the plan is discharged on paying the benefit to the person designated under the latest designation made in accordance with the terms of the plan, in the absence of actual notice of a subsequent designation or revocation of the designation; and
- (b) subject to section 3, the person designated may, on the death of the participant, enforce payment of the benefit to himself for his own use. *R.S.P.E.I. 1974, Cap. D-8, s.2; 1981, c.11, s.2; 1987, c.17, s.2; 2008, c.38, s.2.*

3. Setting up defence

Where a person designated under section 2 seeks to enforce payment of the benefit payable under the plan, the person administering the plan may set up any defence that he could have set up against the participant or his personal representative. 1974(2nd), c.68, s.3; 1981, c.11, s.3; 2008, c.38, s.3.

4. Revocation of designation

A participant may alter or revoke a designation made under a plan; but, subject to section 7, any such alteration or revocation may be made only in the manner set forth in the plan. *R.S.P.E.I. 1974, Cap. D-8, s.4.*

5. Designation in will

Where a designation is contained in a will, the designation, notwithstanding section 76 of the *Probate Act R.S.P.E.I. 1988, Cap. P-21* has effect from the time of its execution. *R.S.P.E.I. 1974, Cap. D-8, s.5; 1975, c.83, s.3.*

6. Designation in instrument purporting to be a will

A designation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a testamentary instrument; and it may be revoked or altered by any subsequent designation. *R.S.P.E.I. 1974, Cap. D-8, s.6.*

7. Revocation of designation in will

Where a designation is contained in a will, and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked. *R.S.P.E.I. 1974, Cap. D-8, s.7.*

8. Application of Act

This Act does not apply to a designation of a beneficiary to which the *Insurance Act R.S.P.E.I. 1988, Cap. I-4* applies. *R.S.P.E.I. 1974, Cap. D-8, s.8.*

9. Plan money not part of estate and free from creditors

Where a beneficiary is designated, any benefit payable to the beneficiary is not, from the time of the happening of the event upon which it becomes payable, part of the estate of the participant, and is not subject to the claims of the creditors of the participant. *1992, c.16, s.1.*

10. Plan exempt from execution

- (1) Where a designation in favour of a spouse, child, grandchild or parent of a participant is in effect, the assets of the plan and the rights and interests of the participant therein and in the plan are exempt from execution or seizure.

Application

- (2) Subsection (1) does not apply to
- (a) a tax-free savings account; or
 - (b) any other plan that is prescribed as being exempt from the application of subsection (1). *1992, c.16, s.1; 2008, c.38, s.4.*



11. Regulations

The Lieutenant Governor in Council may make regulations

- (a) prescribing classes of funds, trusts, schemes, contracts or arrangements as plans for the purposes of subclause 1(d)(iii); and
- (b) exempting plans prescribed under clause (a) from the application of subsection 10(1).
2008, c.38, s.5