

INFORMATION PAPER

SUBJECT: Designation of a Minor as the Beneficiary of SGLI Life Insurance Proceeds

1. Purpose. To provide a basic overview of available options and recommended language for designating a minor beneficiary to receive SGLI proceeds.
2. Overview. SGLI intended for minors may be designated by the soldier for placement in a trust; for placement in a custodianship under the Uniform Gifts or Uniform Transfers to Minors Act (UGMA/UTMA); or for outright gift to the minor (in which case a court must appoint a guardian or conservator to receive and maintain the proceeds).
3. Designating A Trustee Under A Trust Established In A Will. A Soldier who wishes to designate a *trustee* under a trust established in a will (a testamentary trust) as a primary or contingent beneficiary for proceeds left to a minor must have a will prepared that contains a trust and must sign (execute) the will *before* completing the Servicemembers' Group Life Insurance Election and Certificate (SGLV 8286). Specific advantages of designating a trustee in this manner include:
 - a. The ability to use the will to waive a surety bond and related expenses;
 - b. The ability to dictate the manner in which the proceeds will be used for the benefit of the minor; and
 - c. The ability to designate the conditions upon which proceeds ultimately are distributed to the beneficiary. Direct distribution of SGLI proceeds may be delayed beyond the 18th birthday of the minor (for example, upon completion of college, or age 25, which ever occurs first).

Prior to making such a designation, however, the Soldier should consider several disadvantages:

- a. The will, which might not have otherwise required probate (for example, because of the small amount of other property in the Soldier's estate), must be probated and the court must appoint the trustee before the designated trustee may receive the SGLI proceeds. As a result, the distribution of SGLI proceeds will be delayed.
- b. Court and legal expenses must be paid.
- c. If waived by the will, there is no surety bond required that could protect the minor's funds from theft, fraud, waste, and other such acts by the trustee.

The following language is recommended for designation of a trustee on SGLV-8286:

". . . for the benefit of my children, including my stepchild, [name of child(ren)] . . . under my will."

4. Designating a Trustee under a Trust Established in a Trust Document (Outside a Will). A Soldier who wishes to designate a *trustee* under a trust established in a trust document as a primary or contingent beneficiary must have a trust document prepared, and signed *before* completing the SGLV 8286. There are specific advantages of designating a trustee in this manner:

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- a. Court involvement is not required. The court appointment of a guardian and the probate of a will are not required in order to distribute SGLI proceeds. This usually avoids court costs and attorney's fees.
- b. A surety bond (and related expense of maintaining the bond) is not required.
- c. Ordinarily, there is no delay in the distribution of SGLI proceeds to the trustee.
- d. The trustee can use the SGLI proceeds for the benefit of the minor for the time specified in the trust document in the manner stated in the trust document. Direct distribution of SGLI proceeds may be delayed beyond the 18th birthday of the minor (for example, upon completion of college, or age 25, whichever occurs first).

There also are disadvantages:

- a. The court does not supervise the trustee.
- b. Surety bond that could protect the minor's funds from theft, fraud, waste, and other such acts by the trustee is not required.
- c. The Soldier must usually pay a civilian lawyer to draft and execute a trust document.

The following language is recommended for designation of a trustee on SGLV-8286:

"[Name of trustee], my trustee, pursuant to a trust agreement dated [date]."

5. Designating a Custodian. A Soldier may name a *custodian* for a minor as the principal or contingent beneficiary under the UGMA or the UTMA of a particular state. However, before completing the SGLV 8286, the Soldier should obtain the approval of the friend, relative, or financial or other institution he/she wants to serve as the UGMA/UTMA custodian for distribution of the SGLI proceeds. Transfer of SGLI benefits under the UGMA/UTMA may be for the benefit of a minor child or children, regardless of the minor's relationship to the Soldier.

There are several advantages to designating a custodian under the UGMA/UTMA:

- a. There is no requirement for court involvement. The court appointment of a custodian and the probate of a will are not required in order to pay SGLI proceeds. If the SGLI proceeds are the only major asset in the Soldier's estate, the delay and expense involved in probate may be avoided altogether.
- b. The Soldier, not a court, determines who will act in the minor's best interest with regard to the use of SGLI proceeds.
- c. The UGMA/UTMA custodian can use the SGLI proceeds, as the UGMA/UTMA custodian determines is appropriate, for the benefit of the children during the time the children remain minors.
- d. Ordinarily the UGMA/UTMA custodian will not be required to pay for a surety bond to receive the SGLI proceeds.
- e. There ordinarily will be no delay in the distribution of SGLI proceeds to the designated UGMA/UTMA custodian.

However, certain disadvantages to designating a custodian under the UGMA/UTMA should be kept in mind:

- a. All SGLI proceeds must be paid to the minor at age 18 (21 in Massachusetts), regardless of the minor's maturity, or lack thereof.

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- b. There is no automatic court supervision of the UGMA/UTMA custodian.
- c. There is no surety bond required that could protect the minor's funds from theft, fraud, waste, and other such acts by the UGMA/UTMA custodian.

The following language is recommended for designation of a custodian on SGLV-8286:

"[Name of custodian], as custodian for each of my children, pursuant to the UGMA/UTMA of the State of [name of state], with distribution to each minor when that minor reaches age [desired age]."

6. Designation Of Minors Directly By Name. A Soldier may name a minor as a principal or contingent beneficiary *directly by name*; however, SGLI proceeds cannot be directly paid to the named minor.

Advantages of such a designation include:

- a. Avoidance of probate because, the probate of a will is not required in order to pay SGLI proceeds. If the SGLI proceeds are the only major asset in the Soldier's estate, the delay and expense involved in probate may be avoided altogether.
- b. Court involvement to determine the person best qualified to serve as guardian of the SGLI proceeds for the benefit of the minor.

Disadvantages include:

- a. Before the SGLI proceeds may be released and used for the benefit of a minor (other than a minor spouse), an adult acting on behalf of the minor (or appointed by a court to do so) must petition a court to appoint the guardian for the SGLI proceeds. The distribution of SGLI proceeds are delayed pending the appointment of a guardian.
- b. Since the appointment of a guardian takes place after the Soldier's death, the Soldier has no input about the person selected to act for the minor. In many cases, the person appointed guardian for a child who is designated as an SGLI beneficiary *may be the Soldier's spouse or former spouse*.
- c. Most courts will require the guardian to pay for a surety bond to ensure payment of the SGLI proceeds.
- d. Under some state laws, only a certain amount of money may be spent on behalf of a minor each month or year, despite the Soldier's election. If more is needed, a judge must approve.
- e. Certain bond, court, and legal expenses are paid out of the SGLI proceeds, initially, as well as while the designated beneficiary remains a minor.
- f. All SGLI proceeds must be paid to the minor at age 18, regardless of the minor's maturity, or lack thereof.

7. Failure to Properly Name Beneficiary. If a Soldier does not designate beneficiaries, or the designation fails, (for example, the designated beneficiary dies before the Soldier dies; a trustee is designated, but no trust was established), payment of SGLI proceeds will be made in the following order (see 38 U.S.C. 1970):

- a. Widow or widower; if none, to
- b. Child or children in equal shares with the share of any deceased child distributed among the descendants of that child; if none, to

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- c. Parents in equal shares; if none, to
- d. The executor or administrator of the Soldier's estate; if none, to
- e. Other next of kin (NOK).

8. Change or Cancellation of Beneficiary Designation. Soldiers must execute a new SGLV Form 8286 to change a beneficiary designation. Any event that occurs after the Soldier completes the SGLV 8286 (for example, divorce, annulment) will *not* change the Soldier's beneficiary designation. A last will and testament, a power of attorney, or any other document will not and cannot change or cancel any SGLI beneficiary designation. *To change a beneficiary, the Soldier must complete a new SGLV 8286.*

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