

Life insurance

beneficiary designation guide

Quebec version

Life insurance can help clients achieve their estate planning objectives, as long as the insurance payout (also known as a “death benefit”) reaches the right person without attracting unwanted costs or fees.

In many real-world situations, reaching the right person can be complicated, personally and from a legal perspective. Particularly when the intended beneficiary is mentally incapable, a minor, a class of people, a trust, or a business entity like a corporation or partnership.

Use this guide to help clients navigate common issues and designate the right beneficiary for their policy. They’ll learn:

- How to communicate their chosen beneficiary
- What to consider and what could go wrong
- Alternatives for designating a beneficiary in different situations

Beneficiaries are organized by class so you can quickly access descriptions, guidance and procedures within each category.

1

Individuals

(including estates)

2

Trusts

(excluding estates)

3

Business entities

(corporations and partnerships)

This guide is intended for information purposes only and shouldn’t be construed as advice or a comprehensive resource on the legal or tax consequences to policyowners and beneficiaries arising from a particular beneficiary designation. Reasonable efforts have been made to ensure the accuracy of this document, but errors and omissions are possible. All comments related to taxation are general in nature and are based on current Canadian tax legislation and interpretations for Canadian residents, which is subject to change. For individual circumstances, consult with your legal or tax professional. This information is provided by The Canada Life Assurance Company and is current as of December 2019.

Tax consequences generally don’t apply when individual policyowners designate other individuals or certain trusts as beneficiaries. In contrast, for tax purposes, corporate policyowners typically designate themselves or in select cases other corporations, as beneficiaries. In the case of trust-owned policies, the policy beneficiary is typically the trust as well.

Beneficiary designations can be complicated. They’re affected by rules made in statutes and by the courts. This guide provides an overview of issues only. Clients should obtain their own legal and tax advice. This guide reflects Quebec law and isn’t intended for use by advisors outside of Quebec.

1 Individuals (including estates)

Designation format	Benefits and considerations	Alternatives
The succession		
<p>“The succession of John Doe”</p>	<ul style="list-style-type: none"> • Insurance payout made to the succession and subject to the claims of the succession’s creditors • Money distributed according to the policyowner’s will or provincial law if there’s no will 	<p>Name a beneficiary directly</p>
A family member		
<p>“Jane Doe”</p> <ul style="list-style-type: none"> • Name the beneficiary directly • Avoid using descriptions like “my wife” or “my brother” • (For spousal designations, see section below) 	<ul style="list-style-type: none"> • Insurance payout made directly to beneficiary; bypasses the succession and isn’t subject to the succession’s creditors • Policy potentially protected from the policyowner’s creditors under provincial law where a member of a statutorily protected class is named as beneficiary (the legal spouse, child, grandchild or parent of the person insured or the policyowner) • Be specific to avoid litigation and possible need for the insurer to pay proceeds into court 	<p>If regulating access to insurance payouts is desired, designate a formal trust or use a settlement option if available</p>
A minor child		
<p>“My son, James Doe”:</p> <ul style="list-style-type: none"> • Parents of a minor are automatically the minor’s tutors. If a minor is named as beneficiary, the insurance payout will be paid to the minor’s parents (on the minor’s behalf). • The insurance payout can’t be made directly to the minor. 	<ul style="list-style-type: none"> • The insurance payout will be paid to the minor’s parent(s) (on the minor’s behalf) • If the child doesn’t have a tutor, the insurance payout may need be paid into court. Should that happen, a tutorship council would be convened in order to recommend a tutor, subject to their confirmation by the court • If no tutor can be named to act on the minor’s behalf, the public curator will act 	<ul style="list-style-type: none"> • Designate a formal trust • (See section below for designating trusts)
Descendents		
<p>John and Jane Doe are looking to name their children James and Jen, as beneficiaries, and include their grandchildren in case one of their children predeceases them</p> <p>“To James Doe and Jen Doe in equal shares if living, otherwise their share is paid to their surviving descendants by representation”</p>	<ul style="list-style-type: none"> • Unless there’s specific wording to the contrary, the default provisions of the Civil Code of Québec apply. This means that, if all primary beneficiaries split the shares equally, the predeceased beneficiary’s share is dividedequally among the surviving primary beneficiaries. • If John and Jane want their surviving grandchildren to take their deceased parent’s share equally, representation (distribution by family branch) must be specified. • Must update beneficiary designation to account for future children of the policyowner. You can designate “my children.” 	<ul style="list-style-type: none"> • If policyowner wants to benefit all descendants, use a formal trust so the trustee(s) can determine the issue of John and Jane • If policyowner designates: “To James Doe and Jen Doe in equal shares if living, otherwise their share is paid to their descendants,” without specifying “representation,” the insurer may have to pay the insurance payout into court if the identity of Johnand Jane’s descendants is uncertain

1 Individuals (including estates)

Designation format	Benefits and considerations	Alternatives
Mentally incapable		
<ul style="list-style-type: none"> • A mentally incapable person’s tutor or curator (designated by the court) is responsible for administering their property and they would receive the insurance payout on their behalf • The insurance payout can’t be made directly to the mentally incapable person 	<ul style="list-style-type: none"> • If the individual doesn’t have a tutor or curator and they prepared a valid mandate in case of incapacity, the mandate needs to be homologated (court proceeding) in order for the tutor/curator to have full powers to administer the individual’s property • If the individual doesn’t have a mandate, an application for protective supervision would need to be presented before the courts in order to designate a tutor or curator for the administration of the individual’s property • Consider establishing a Henson Trust, a formal trust that protects the insurance payout for the individual without affecting the individual’s government benefits • A Henson Trust is drafted by a lawyer or notary and its terms give the trustee absolute discretion over trust assets 	<p>Establish and designate a trust for mentally incapable beneficiaries (use a Henson Trust inside or outside a will to avoid jeopardizing government benefits)</p>
Irrevocable /spousal designation		
<p>“Jane Doe”</p> <ul style="list-style-type: none"> • Name the beneficiary directly and check “irrevocable” in the insurer’s forms (if desired) • Married or civil union spouses (i.e. not common law spouses) are automatically irrevocable beneficiaries, unless stated otherwise 	<ul style="list-style-type: none"> • Policy may be protected from the policyowner’s creditors under provincial law • Irrevocable beneficiary must consent to policy changes including, assignments, surrenders and policy loans • Irrevocable beneficiary can’t give consent if they’re a minor or mentally incapable. Any policy changes may require the tutor, curator or the public curator, as the case may be • In case of divorce, the spousal beneficiary designation is automatically revoked, regardless of whether the designation was irrevocable or revocable, unless otherwise specified in the divorce judgment or accessory measures 	<p>Designate a formal trust as owner of the policy to address concerns about control</p>

1 Individuals (including estates)

Designation format	Benefits and considerations	Alternatives
Multiple beneficiaries/survivorship		
<p>“John Doe” (as one of multiple primary beneficiaries) or “John Doe, if living at the time of my death, otherwise his share of the death benefit shall be payable to Jane Doe.”</p> <p>Wording depends on whether the policyowner wants the surviving primary beneficiaries to receive the insurance payout or whether they'd prefer to name a contingent beneficiary in respect of a deceased's primary beneficiary's share of the insurance payout</p>	<ul style="list-style-type: none"> Unless the policy or designation form provides otherwise, a predeceased beneficiary's payout portion is shared between surviving primary beneficiaries if the insurance payout is to be divided equally Subject to the wording in the insurer's forms, if the insurance payout is split unevenly between primary beneficiaries, the predeceasing primary beneficiary's share is payable to the life insured's succession, unless a contingent beneficiary was specifically designated to receive this share If a policyowner has other objectives, add these details to the designation If necessary, draft a letter attached to the designation form explaining how the payout should be distributed; ensure it's signed and dated by the policyowner 	<ul style="list-style-type: none"> Use a will or the insurer's forms to explain how to distribute the insurance payout Have a formal trust receive the insurance payout and include terms for distributing proceeds

2 Trusts (excluding estates)

Designation format	Benefits and considerations	Alternatives
Formal trust		
<p>“Jim Smith, trustee, or any successor trustee of the [name of trust], dated [insert date]”</p> <p>Trusts must be formally established in a separate document (i.e. a contract or a will)</p>	<ul style="list-style-type: none"> Provide a copy of the trust agreement (and any amendments) to the insurer If limited by characters in an electronic application use “Trustees for [name of trust], [insert date]” Insurer will verify it's dealing with the correct person(s) as trustee(s) when insurance payout distributed 	<p>Name a beneficiary directly and, if available, use a settlement option (i.e. payout made in installments) to regulate access to the insurance payout</p>
Informal trust – not available in Québec		
<p>“Jim Smith, trustee for James Doe”</p>	<p>In Quebec, insurers can't pay an insurance payout to a “trustee” solely on the basis of a designation made on a life insurance form. Trusts must be formally established, in a separate document (for instance, a contract or a will).</p>	<ul style="list-style-type: none"> Use a formal trust Name a beneficiary directly (either in the application or in a subsequent amendment) and, if available, use a settlement option to regulate access to the insurance payout
Formal insurance trust setup inside a will		
<p>“As per the will, dated [insert date], of [the life insured]”</p> <ul style="list-style-type: none"> Use this language in the insurer's forms The trust must be set up by way of a formal trust, which may be established in a will 	<p>Follow this procedure and use the language from the left column in the insurer's forms:</p> <ol style="list-style-type: none"> Provide a cover letter informing the insurer that trustee(s) designated in the will are to receive the insurance payout on behalf of the insurance trust Include a copy of the terms of the trust in the will and its signature pages 	<p>Name a beneficiary directly (either in the application or in a subsequent amendment) and, if available, use a settlement option to regulate access to the insurance payout</p>

2 Trusts (excluding estates)

Designation format	Benefits and considerations	Alternatives
Formal insurance trust setup outside of a will		
<p>“As per the Insurance Trust, dated [insert date], of [the life insured]”</p> <ul style="list-style-type: none"> • Use this language in the insurer’s forms • The trust must be set up by way of a formal trust, which may be established outside of a will 	<p>Follow this procedure and use the language from the left column in the insurer’s forms</p> <ol style="list-style-type: none"> 1. Provide a cover letter informing insurer that trustee(s) designated in the will are to receive the insurance payout on behalf of the insurance trust 2. Include a copy of the terms of the insurance trust and its signature pages 	<p>Name a beneficiary directly and, if available, use a settlement option to regulate access to the insurance payout</p>

3 Business entities (corporations and partnerships)

Designation format	Benefits and considerations	Alternatives
Corporation		
<p>“ABC Corporation Inc.”</p> <ul style="list-style-type: none"> • Use the full legal name of the corporation • Avoid using a trade name 	<ul style="list-style-type: none"> • Ensure policyowner’s tax advisors are aware of the beneficiary designation • Provide notice to insurer if the corporation is amalgamated or continued in another jurisdiction • Consider using a shareholders’ agreement to address distribution of the insurance payout and use of the capital dividend account • Insurance payout will be available to corporate beneficiary’s creditors; if bankrupt, payout is made to trustee in bankruptcy 	<p>If the policyowner is a corporation then the beneficiary of the policy may also need to be that corporation, to avoid negative tax implications</p>
Partnership		
<p>“ABC Partnership”</p> <ul style="list-style-type: none"> • Use the firm name described in the partnership, limited partnership or limited liability partnership agreement • Avoid using a trade name 	<p>Provide a copy of the partnership agreement to the insurer</p>	<p>Use a formal trust if partners are individuals and coverage is to fund a buyout on death</p>

