

**CONSOLIDATION OF BENEFICIARIES DESIGNATION ACT
(RETIREMENT, SAVINGS AND OTHER PLANS)
R.S.N.W.T. 1988,c.R-6**

(Current to: March 10, 2010)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:
S.N.W.T. 1995,c.26

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2009,c.14

In force December 8, 2009, except s.3

s.3 in force January 1, 2009 (deemed)

Note: see s.6 of S.Nu. 2009,c.14 for transitional provisions.

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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BENEFICIARIES DESIGNATION ACT (RETIREMENT, SAVINGS AND OTHER PLANS)

Definitions

1. In this Act,

"annuity" includes an amount payable on a periodic basis, whether payable at intervals longer or shorter than a year; (*rente*)

"participant" means a person who is entitled to designate another person to receive a benefit payable under a plan on the death of the first person; (*participant*)

"plan" means

- (a) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement for the benefit of employees, former employees, agents or former agents of an employer or their dependants or beneficiaries, whether established by or under a statute or otherwise,
- (b) a fund, trust, scheme, contract or arrangement for the payment of an annuity for life or for a fixed or variable term,
- (c) a retirement savings plan or retirement income fund as defined in the *Income Tax Act* (Canada),
- (c.1) a tax free savings account (TFSA) as defined in the *Income Tax Act* (Canada), or
- (d) a fund, trust, scheme, contract or arrangement prescribed as such by the Commissioner in Executive Council; (*régime*)

"will" means a will as defined in the *Wills Act*. (*testament*) S.N.W.T. 1995,c.26,s.2; S.Nu. 2009,c.4,s.2,3.

Application

2. This Act does not apply to a contract of insurance or to a designation or revocation of a designation to which the *Insurance Act* applies.

Designation

3. (1) A participant may

- (a) designate a person to receive a benefit payable under a plan on the death of the participant
 - (i) by an instrument signed by the participant or signed on behalf of the participant by another person in the presence and by the direction of the participant, or
 - (ii) by will; and
- (b) revoke the designation by either method referred to in paragraph (a).

Effect of designation where participant dies

(2) A designation under subsection (1) in respect of a plan referred to in paragraph (c) of the definition "plan" in section 1 has effect whether it is made, or the participant who made it died, before or after that paragraph came into force.

Idem

- (3) Subsection (2) does not apply if its application would
- (a) alter the result in any proceeding in which a judgment or final order was granted before subsection (2) came into force, regardless of whether the judgment or order is appealable; or
 - (b) impose on a person the obligation to repay or account for proceeds of a plan referred to in paragraph (c) of the definition "plan" in section 1 received or paid out by that person before that paragraph came into force. S.N.W.T. 1995,c.26,s.3.

Designation in will

4. A designation in a will is effective only if it refers to the plan generally or specifically.

Revocation in will

5. A revocation in a will of a designation made by an instrument is not effective to revoke the designation unless the revocation refers to the plan or the designation generally or specifically.

Wills Act

- 6.** Notwithstanding the *Wills Act*,
- (a) a later designation revokes an earlier designation to the extent of any inconsistency; and
 - (b) a designation or revocation in a will is effective from the time when the will is signed.

Revocation of will

7. A revocation of a will revokes a designation in the will.

Invalid will

8. A designation or revocation contained in an instrument that purports to be a will is not invalid by reason only that the instrument is invalid as a will.

Effect of certain events

9. A designation in an instrument that purports to be a valid will, but is not, is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

Earlier designation

10. A revocation of a designation does not revive an earlier designation.

Enforcement of payment

11. After the death of a participant who has made a designation that is in effect at the time of the death, the person designated may enforce payment of the benefit payable to him or her under the plan, but the person against whom the payment is sought to be enforced may set up any defence that he or she could have set up against the participant or the personal representative of the participant.

Where Act inconsistent with plan

12. Where this Act is inconsistent with a plan, this Act applies to the extent of any inconsistency unless

- (a) the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment, and
- (b) the benefit payment referred to in paragraph (a) would have been different if the designation had been made before the benefit payment was made,

in which case the plan applies.

Regulations

13. (1) The Commissioner in Executive Council may make regulations prescribing any fund, trust, scheme, contract or arrangement to be a plan for the purposes of paragraph (d) of the definition "plan" in section 1.

Retroactivity

(2) A regulation made under subsection (1) may have retroactive effect from a day that is not more than one year before the day on which the regulation is made.

Limitation

(3) Where a regulation made under subsection (1) has retroactive effect, a designation made in respect of a plan referred to in the regulation between the day the regulation is deemed to come into effect and the day the regulation is made is not effective if its application would

- (a) alter the result in any proceedings in which a judgment or final order was granted before the regulation was made, regardless of whether the judgment or order is appealable; or
- (b) impose on a person the obligation to repay or account for proceeds of a plan referred to in the regulation received or paid out by that person before the regulation is made. S.Nu. 2009,c.14,s.5.