



Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila



Legal Opinion No.:	LO-2018-12
Date:	May 17, 2018

MS. EVELYN T. CARADA

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Fortune Life Building, 162 Legazpi Street,
Legaspi Village, Makati City

SUBJECT: **Legal Opinion on Application of Article
2012 of the Civil Code of the Philippines
on the Designation of Beneficiary/ies of
a Life Insurance Policy**

Dear Ms. Carada:

This refers to your letter dated 12 April 2018 requesting for this Commission's legal opinion "*x x x on the payment of the proceeds of the insurance benefit to the second wife as the sole beneficiary taking into account the prohibition under Article 739 of the Civil Code which has suppletory application in insurance application regarding the appointment of persons guilty of adultery and concubinage at the time of designation as beneficiary.*"

This Commission understands that the issue relative to your request is thus: **"Can a woman married to a legally married man be named as a beneficiary in the life insurance policy of the latter and claim the proceeds thereof in case of death of the latter?"**

Our Opinion

In relation to your request for legal opinion, the pronouncement of the Honorable Supreme Court in "***The Insular Life Assurance Company, Ltd. v. Ebrado***" (G.R. No. L-44059; 28 October 1977) is particularly instructive on the issue. The pertinent portion of said jurisprudence is quoted hereunder, viz:

"1. It is quite unfortunate that the Insurance Act (RA 2327, as amended) or even the new Insurance Code (PD No. 612, as amended) does not contain any specific provision grossly resolutive of the prime question at hand. Section 50 of the Insurance Act which provides that '(t)he insurance shall be applied exclusively to the proper

interest of the person in whose name it is made¹ cannot be validly seized upon to hold that the mm includes the beneficiary. The word 'interest' highly suggests that the provision refers only to the 'insured' and not to the beneficiary, since a contract of insurance is personal in character. Otherwise, the prohibitory laws against illicit relationships especially on property and descent will be rendered nugatory, as the same could easily be circumvented by modes of insurance. Rather, the general rules of civil law should be applied to resolve this void in the Insurance Law. Article 2011 of the New Civil Code states: 'The contract of insurance is governed by special laws. **Matters not expressly provided for in such special laws shall be regulated by this Code.**' When not otherwise specifically provided for by the Insurance Law, the contract of life insurance is governed by the general rules of the civil law regulating contracts. **And under Article 2012 of the same Code, 'any person who is forbidden from receiving any donation under Article 739 cannot be a named beneficiary of a life insurance policy by the person who cannot make a donation to him'.** Common-law spouses are, definitely, barred from receiving donations from each other. Article 739 of the new Civil Code provides:

'The following donations shall be **void**:

1. **Those made between persons who were guilty of adultery or concubinage at the time of donation;**
2. Those made between persons found guilty of the same criminal offense, in consideration thereof;
3. Those made to a public officer or his wife, descendants or ascendants by reason of his office.

In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; **and the guilt of the donee may be proved by preponderance of evidence in the same action.**

2. In essence, a life insurance policy is no different from a civil donation insofar as the beneficiary is concerned. Both are founded upon the same consideration: liberality. A beneficiary is like a donee, because from the premiums of the policy which the insured pays out of liberality, the beneficiary will receive the proceeds or profits of said insurance. As a consequence, the proscription in Article 739 of the new Civil Code should equally operate in life insurance contracts. The mandate of Article 2012 cannot be laid aside: **any person who cannot receive a donation cannot be named as beneficiary in the life insurance policy of the person who cannot make the donation.** Under American law, a policy of life insurance is considered as a testament and in construing it, the courts will, so far as possible treat it as a will and determine the effect of a clause designating the beneficiary by rules under which wills are interpreted.

3. Policy considerations and dictates of morality rightly justify the institution of a barrier between common law spouses [with respect] to property relations since such relationship ultimately encroaches upon the nuptial and filial rights of the legitimate family. **There is every reason to hold that the bar in donations between legitimate spouses and those between illegitimate ones should be enforced in life insurance policies since the same are based on similar consideration.** As above pointed out, a beneficiary in a life insurance policy is no different from a donee. Both are recipients of pure beneficence. So long as marriage remains the threshold of family laws, reason and morality dictate that the impediments imposed upon married couple should likewise be imposed upon extra-marital relationship. If legitimate relationship is circumscribed by these legal disabilities, with more reason should an illicit relationship be restricted by these disabilities. x x x

¹ Now Section 53 of Republic Act No. 10607.

4. We do not think that a conviction for adultery or concubinage is exacted before the disabilities mentioned in Article 739 may effectuate. More specifically, with record to the disability on 'persons who were guilty of adultery or concubinage at the time of the donation,' Article 739 itself provides:

*'In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; **and the guilty of the donee may be proved by preponderance of evidence in the same action.**'*

The underscored clause neatly conveys that no criminal conviction for the offense is a condition precedent. In fact, it cannot even be [inferred] from the aforequoted provision that a prosecution is needed. On the contrary, the law plainly states that the guilt of the party may be proved 'in the same action for declaration of nullity of donation'. And, it would be sufficient if evidence preponderates upon the guilt of the consort for the offense indicated. The quantum of proof in criminal cases is not demanded." [Emphasis supplied.]

Article 2012 of the Civil Code is clear: "**Any person who is forbidden from receiving any donation under Article 739 cannot be named beneficiary of a life insurance policy by the person who cannot make a donation to him.**"

Admittedly, the factual antecedents that you presented are not on all fours with those in *Ebrado* because in the latter case, the common-law (second) wife was not married to the insured. However, this Commission believes that the above-mentioned jurisprudence and provision of the Civil Code still apply since under the facts you presented, the deceased insured and the second wife are "guilty of adultery or concubinage" at the time of designation in the subject life insurance policy. Note that in *Ebrado*, a conviction for adultery or concubinage is not even required before the disabilities mentioned in Article 739 of the New Civil Code may effectuate. In consequence, the second wife in your presentation cannot receive the benefits under the insurance policy as she is legally proscribed from being a beneficiary thereof.

Please note that the opinion rendered by this Commission is based solely on the particular facts disclosed in your query and relevant solely to the particular issue/s raised therein and shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in other cases whether for similar or dissimilar circumstances.

For your information and guidance.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner

