

## Retirement Plan Beneficiary Designations Part 4

### *The Trust as Primary Beneficiary*

Typically, when a participant dies and names his or her trust as a primary beneficiary, the surviving spouse and the surviving spouse's advisors will contact the estate planning attorney prior to making any decisions in relation to the Plan or IRA.

This gives the attorney the opportunity to counsel the surviving spouse on appropriate decisions in order to attain the client's goals. It also effectively reduces the likelihood that the surviving spouse will "automatically" roll over the Plan, thus potentially under funding the deceased spouse's Family Trust, and failing to fully utilize the deceased spouse's applicable estate tax exemption.

**Advantages:** Not only does naming the trust as the primary beneficiary help ensure that the surviving spouse will obtain legal advice before electing a spousal rollover, it also facilitates planning for bloodline protection, creditor protection, catastrophic illness protection, and confidence that the participant's beneficiaries inherit pursuant to detailed instructions contained in the trust.

In addition, if the spouse is named as the primary beneficiary of the retirement plan, he/she may be reluctant to disclaim the asset to the trust or may be unable to disclaim because of a disability. Naming the trust as a beneficiary eliminates the problem of a disabled spouse not being able to disclaim as there is always a successor trustee who can make the disclaimer.

**Disadvantages:** Although there are numerous advantages to naming a trust as the primary beneficiary of the retirement plan, there may be adverse income tax consequences unless care is taken to ensure that all of the regulations are followed precisely. In order to understand what steps need to be taken to name a trust as the primary beneficiary of a plan, it is important to understand several legal issues.

**Separate Accounts:** When a participant dies and names several people as the beneficiary of a plan, a question arises as to whose life expectancy is utilized to calculate the Required Minimum Distributions (RMD) from the plan. The general rule is that the oldest beneficiary (i.e. the beneficiary with the oldest and weakest heart beat and therefore the shortest life expectancy) is utilized to calculate the RMD. For example, if Dad names his three children, ages 45, 40, and 35, as the beneficiaries, then the RMD for all three children will be based on the shorter life expectancy of the 45-year-old. Thus, the younger children will be penalized by having to take larger distributions.

There is an exception to the general rule called the *Separate Accounts Rule*. The Separate Accounts Rule provides that the plan can be split into separate accounts with one account being established for each named beneficiary. Thus, the RMD for each new account is then based on the life expectancy of that particular beneficiary, not the oldest beneficiary.

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*Please look for further seminar dates, including an upcoming seminar on IRA Beneficiary Designations. We truly appreciate the opportunity to enhance your client relationships.*



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We will be announcing the February/March dates for educational series at the law office of Ketra A. Mytich, Ltd. in our January issue.