



ESTABLISHED 1924

FARR LAW FIRM *Newsletter*

FARR, FARR, EMERICH, HACKETT AND CARR, P.A.

WWW.FARR.COM

e-law

PERSONAL INJURY &
WRONGFUL DEATH

LITIGATION

ESTATE PLANNING

REAL ESTATE & TITLE
INSURANCE

MARITAL & FAMILY

ENVIRONMENTAL
& LAND USE

BUSINESS

TAXATION

ELDER LAW

ASSET PROTECTION

ATTORNEYS

EARL DRAYTON FARR, JR.
(Senior Counsel)

GUY S. EMERICH

JACK O. HACKETT II

MICHAEL P. HAYMANS

CHARLES T. BOYLE

DAROL H.M. CARR

DAVID A. HOLMES

GARY A. KAHLE

JENNIFER R. HOWELL

ROGER H. MILLER III

DOROTHY L. KORSZEN

JILL C. McCRORY

WILL W. SUNTER

ARETI G. TSITSAKIS

COORDINATING IRA BENEFICIARIES WITH YOUR ESTATE PLANNING

By: Dorothy L. Korszen
April 2008



For many people, IRAs make up a large part of their estate. Many employer sponsored defined benefits plans, such as 401(k), 403(b) and 457 plans, are rolled over to IRAs because of the added flexibility and features IRAs provide. When you prepare and execute your estate planning documents, you should ensure that the beneficiary designations in your investment accounts, including IRAs, life insurance policies and bank accounts, are consistent with your estate plan. Otherwise, the results you achieve may not be what you expected. For example, if your will or trust leaves your assets to your children, but your beneficiary designations on your investment accounts name a different person, the named beneficiary may receive a larger portion of your estate than intended. In an extreme case, a former spouse could be a lucky recipient of a large IRA, totally unexpected by everyone involved.

Typically, people name family members and friends as beneficiaries of their IRAs and other investments. When the account owner passes, the beneficiary submits a death certificate to the custodian of the account, files a death claim, and obtains the assets. In many cases, this is a simple and expeditious way to transfer assets at passing and avoid probate. As long as an outright distribution to a named person is consistent with the account owner's wishes, this can be quite effective.

In some estate plans, there may be good reasons not to name an individual as the beneficiary of an IRA. For example, if all investments have designated beneficiaries, there may not be sufficient cash available to make specific distributions or to pay taxes or creditors, or you may wish to put restrictions on when and how beneficiaries may receive their inheritance, such as distributions over time instead of outright at your passing. For estate tax reasons, you may wish to name your spouse as the primary beneficiary of your IRA, and name your trust as the contingent beneficiary. Then, if the spouse disclaims any portion of the IRA, those funds can be used to fund a credit shelter trust, thereby preserving the estate tax exemption for the first spouse to pass away. In these cases, you may wish to name a trust as a beneficiary of your IRA.

As an initial matter, you should not retitle your IRA into the name of your trust because this would be considered a taxable transfer. Instead, you could name your trust as the beneficiary or contingent beneficiary of your IRA as long as certain conditions, some of which are discussed below, have been met.



ESTABLISHED 1924

FARR LAW FIRM *Newsletter*

FARR, FARR, EMERICH, HACKETT AND CARR, P.A.

WWW.FARR.COM

PERSONAL INJURY &
WRONGFUL DEATH

LITIGATION

ESTATE PLANNING

REAL ESTATE & TITLE
INSURANCE

MARITAL & FAMILY

ENVIRONMENTAL
& LAND USE

BUSINESS

TAXATION

ELDER LAW

ASSET PROTECTION

If a trust meets certain rules, then the trust may be considered a “see-through trust” and the beneficiaries of the trust will be treated as “designated beneficiaries” of the IRA. As designated beneficiaries, they will be able to take advantage of certain stretch provisions which allow them to take their distributions over a longer period of time. These requirements are:

1. Certain documentation and information about beneficiaries must be provided to the IRA custodian or trustee by October 31 of the year after the IRA owner dies;
2. The trust must be valid under state law;
3. The trust must be irrevocable, or become irrevocable by its own terms upon the IRA owner's death;
4. The beneficiaries must all be identifiable from the trust instrument itself; and
5. All of the trust beneficiaries must be individuals, i.e., no charities can be named as trust beneficiaries.

Based on these rules, you may choose not to name your trust as a beneficiary of an IRA if you have charitable beneficiaries named in your trust because it would not be classified as a “see-through trust.” However, naming only a charity as the beneficiary of your IRA is ideal because, unlike individual beneficiaries, a charity would not have to pay income tax on the distributions from your IRA, which would maximize the gift you make to charity. If your IRA is larger than your planned gift to charity, during your life you can divide your IRA into smaller IRA accounts based on specific beneficiaries. Then you can name your favorite charity as the beneficiary of an IRA account funded with the amount you wish to donate to that charity at passing.

There are many issues to consider when making beneficiary designations, either to named individuals, your trust, or other organizations. Your attorney, financial planner and tax accountant may advise you before making beneficiary designations on the estate planning and tax issues relating to your decisions. Also, in the future, if you amend your beneficiary designations, you should make sure that your attorney, financial planner and tax accountant review the changes to advise you whether your beneficiary designations are still appropriate. Your estate planning attorney and financial advisor can work with you to help you achieve your estate planning goals.

To subscribe to our monthly newsletters, please visit our website at www.FARR.com

This newsletter is for general information and education purposes only.

It is not offered as legal advice or legal opinion.

To the extent this message contains tax advice, the U.S. Treasury Department requires us to inform you that any advice in this letter is not intended or written by our firm to be used, and cannot be used by any taxpayer, for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code. Advice from our firm relating to Federal tax matters may not be used in promoting, marketing or recommending any entity, investment plan or arrangement to any taxpayer.

Punta Gorda Office:
99 Nesbit Street
Punta Gorda, FL 33950
Phone: 941.639.1158
Fax: 941.639.0028

Englewood Office:
33 S. Indiana Avenue
Englewood, FL 34223
Phone: 941.460.9334
Fax: 941.460.9443