



Naming Your Trust as Your Retirement Plan Beneficiary

Many persons' estates include various types of retirement plans such as IRAs and qualified plans such as 401(k)s and 403(b)s. As a general rule, the named beneficiary under such a plan will receive those assets at your passing regardless of the provisions in your will or trust. In many cases, it is appropriate to name your spouse as the primary beneficiary of a retirement plan, with your children named as contingent beneficiaries. Upon your death, the beneficiary will inherit the assets held in the plan and can handle them as he or she wishes.

In some situations, it may not be the best option to name a person as the beneficiary of a retirement plan. For example, if the beneficiary is a spendthrift, that person may liquidate the plan in short order and spend all of the money. Or perhaps the beneficiary is a minor and you would prefer someone to have authority over those assets until that child is older. In these types of cases, you may wish to name a trust as the beneficiary of your retirement plan.

There are numerous issues to consider when naming a trust as the beneficiary of a retirement plan. The first issue is to decide how you wish for your beneficiaries to receive payments from your retirement plan. For example, if you wish your beneficiary to receive the entire Required Minimum Distribution (RMD) every year, then a "conduit trust" for that beneficiary can be created and named as the beneficiary for that gift. If you wish for the trustee to be able to use the assets in your retirement plan for living expenses, then those terms would need to be spelled out in your trust.

When naming a trust as a beneficiary, you should make sure that the trust complies with "see-through" trust provisions. This allows the benefits to



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Dorothy's practice focuses on trusts and estates, real estate, and business and corporate law.

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be distributed over the life expectancy of the oldest trust beneficiary. If the trust does not qualify as a see-through trust, then the retirement benefits must be distributed under a different rule which may require the plan to be fully distributed within five or six years after the person's death. A trust must meet five criteria to qualify as a see-through trust: (1) The trust must be valid under state law, (2) the trust must be irrevocable or become irrevocable upon the death of the participant, (3) the beneficiaries must be identifiable from the trust instrument, (4) certain documentation must be provided to the plan administrator, and (5) all trust beneficiaries must be individuals. Your estate planning attorney can advise you as to whether your trust qualifies as a see-through trust.

There are tax considerations when naming your trust as a beneficiary for retirement benefits. Trust tax rates are compressed, so trusts begin paying income tax at highest rates. You should discuss any tax concerns with your estate planning attorney or accountant. Your attorney can also help you correctly name the beneficiaries to meet your objectives.

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