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Table of Contents

# Coordinating Retirement Accounts With Estate Planning 101 (What every estate planner needs to know)

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A substantial portion of the wealth possessed by Americans today consists of tax-deferred retirement accounts such as traditional IRAs, 401(k)s, and 403(b)s. In 2002, the IRS issued final regulations under Code § 401(a)(9) clarifying and simplifying many of the rules applicable to retirement accounts. See Treas. Reg. § § 1.401(a)(9)-0 through 1.401(a)(9)-9, and Treas. Reg. § 54.4974-2. These rules apply to 401(k)s, 403(b)s, and IRAs, but not to Roth IRAs.

**Retirement Accounts Present Unique Problems**

In general, the receipt of inherited property usually is not subject to income tax. The major exception to this rule is retirement accounts because these accounts represent income that the government has not previously subjected to income tax. After a taxpayer's death, the beneficiaries usually will owe income tax on the amount withdrawn from the taxpayer's retirement account. When dealing with retirement accounts, the primary goal is to allow the taxpayer's beneficiaries the opportunity to defer this income tax for as long as possible by postponing withdrawals from the account.

An estate planning attorney must deal with all of the following issues regarding a client's retirement accounts:

- Who will be the primary and contingent beneficiaries?
- How long can the beneficiary defer withdrawals from the account and the attendant income tax liability?
- Is there a compelling reason to name a trust as a beneficiary?
- Do any retirement account proceeds passing to a spouse, in trust, qualify for the marital deduction?
- What is the most tax efficient source of payment for estate taxes on the retirement account?

**Basic Distribution Rules**

During the Taxpayer's Lifetime. The required minimum distribution (RMD) rules specify how long a taxpayer (and after the taxpayer's death, the beneficiary) may defer withdrawals from a retirement account. Code § 401(a)(9). During life, the taxpayer must generally begin taking withdrawals by April 1 of the year after the taxpayer reaches age 70 1/2 . This date is referred to as the required beginning date (RBD). An IRS table that takes into account the taxpayer's life expectancy sets the RMD amount that the taxpayer must withdraw in each year after the RBD. Treas. Reg. § 1.401(a)(9)-5.

Distributions After Death If the Spouse Is the Beneficiary. A taxpayer can obtain the most favorable income tax results by naming the taxpayer's spouse as the primary beneficiary. A surviving spouse is the only person who has the option of rolling over the retirement account into his or her own IRA. Code § § 402(c)(9) (qualified plans), 408(d)(3)(C)(ii) (IRAs). Often the simplest way to accomplish the rollover is to retitle the account into the surviving spouse's name. By rolling over the account, the surviving spouse can defer withdrawals from the account until the spouse turns 70 1/2 ; any other beneficiary must begin taking withdrawals the year after the taxpayer's

death. In addition, the spouse can name his or her own beneficiaries of the IRA. Those beneficiaries may use a life expectancy payout; when other beneficiaries of a retirement account die, the RMD continues to be based on the deceased beneficiary's life expectancy.

Distributions After Death If a Non-spouse Is the Beneficiary. If someone other than the spouse is the beneficiary, the beneficiary's RMD depends on whether there is a "Designated Beneficiary" of the account, as that term is specifically defined in Treas. Reg. § 1.401(a)(9)-5. The term "Designated Beneficiary" does not just refer to the individual or entity named by the taxpayer to inherit the account after death; rather, it is a specific tax concept. Although individuals and certain qualified trusts can be "Designated Beneficiaries," estates, charities, and business entities are not "Designated Beneficiaries." Treas. Reg. § 1.401(a)(9)-4.

If there is a Designated Beneficiary and the taxpayer died before the taxpayer's RBD, then the beneficiary's RMD is based on an IRS table that takes into account the beneficiary's life expectancy. If there is a Designated Beneficiary and the taxpayer died after the taxpayer's RBD, then the beneficiary's RMD is based on an IRS table that takes into account the longer of the (1) beneficiary's life expectancy or (2) taxpayer's life expectancy.

If there is no Designated Beneficiary and the taxpayer died before the taxpayer's RBD, then the beneficiary must withdraw all of the retirement account within five years of the taxpayer's death. If there is no Designated Beneficiary and the taxpayer died after the taxpayer's RBD, then the beneficiary's RMD is based on an IRS table that takes into account the deceased taxpayer's life expectancy.

The beneficiary may withdraw more than the RMD each year, but the beneficiary must withdraw at least the RMD each year in order to avoid a penalty. When a beneficiary takes his RMD based on his own life expectancy, it is often referred to as a "stretch" distribution. Most 401(k) plans do not allow a life expectancy payout option, as they typically require a lump sum distribution on death. Even though life expectancy payout options in IRAs are more common, not all IRA plan documents offer this option. An estate planner should always check with the plan administrator or IRA custodian to determine that specific plan's rules for distributions to the beneficiary after the taxpayer's death.

**Separate Accounts and Multiple Beneficiaries**

If there are multiple beneficiaries of a retirement account, then the RMD is based on the life expectancy of the oldest beneficiary. Treas. Reg. § 1.401(a)(9)-5, A-7(a)(1). But if separate accounts are "established" for multiple beneficiaries, then the RMD rules will apply separately to each separate account. Treas. Reg. § 1.401(a)(9)-4, A-5(c); Treas. Reg. § 1.401(a)(9)-8, A-2(a)(2). This allows the RMD to be calculated based on the life expectancy of the oldest beneficiary of the separate account. To establish separate accounts, the beneficiaries' interests in the account must be fractional (not pecuniary). In addition, some affirmative act must establish the separate accounts--for example, a physical division of a single account into completely separate accounts or the use of separate account language on the beneficiary designation form. Whenever possible, it is best to create the separate accounts with appropriate language directly on the beneficiary designation form.

**Eliminating Unwanted Beneficiaries Before September 30**

The deadline for determining who are the initial beneficiaries of a retirement account is the date of the taxpayer's death. Between the taxpayer's death and September 30 of the following year, troublesome beneficiaries, such as beneficiaries that do not qualify as Designated Beneficiaries, may be removed by disclaiming the interest, creating separate accounts, or eliminating them as beneficiaries by distributing their benefits to them. Treas. Reg. § 1.401(a)(9)-4, A-4(a).

**Avoiding Trusts as Beneficiaries**

Because of the complexity associated with using a trust as a Designated Beneficiary, a revocable trust should be avoided as the beneficiary of retirement accounts in most cases. Before naming a trust as a beneficiary of a retirement account, the attorney

and the client should decide that the reasons to name a trust as a beneficiary outweigh the time and costs of establishing a qualified trust. The client may decide that the use of a trust is more important than the lost ability to plan for income tax deferral that often can occur by naming a nontrust as beneficiary. A trust may be more attractive if a life expectancy payout option or spousal rollover is not important or not available.

In a typical first marriage situation, the taxpayer might consider naming the spouse as the primary beneficiary and the adult children as the contingent beneficiaries. If there is a minor child, then a custodian account is a possible alternative if the terms of the retirement account allow a life expectancy payout option. A client might consider the following language:

> The total account assets shall be divided to provide one equal share of the account, as of my date of death, for each of my children who is either living on my date of death or is deceased on my date of death but who has one or more descendants living on my date of death. Any share created for a deceased child of mine shall be divided into separate shares for such deceased child's descendants, per stirpes. Each such share of my IRA account created for a descendant of mine who has not attained the age of twenty-one (21) shall be held by _____, as a custodian for the descendant under the [state of residency] Transfers to Minors Act or similar minor's custodian law of any state where the minor then resides.
>
> Each of my beneficiaries designated above shall have the right (with respect to the death benefits as to which that beneficiary is then the designated beneficiary) to elect any method of payment provided for in the IRA agreement, including any method that was available to me while living.
>
> The assets of my IRA shall be segregated, effective as of the date of my death, into separate subaccounts of my IRA, one for the share representing each beneficiary, so that all post-death IRA investment gains, losses, contributions and forfeitures are determined separately for each sub-account. Each beneficiary shall have the right to direct changes to investments held in his or her separate subaccount.

If the retirement account does not allow a life expectancy payout (or a life expectancy payout does not matter), then the taxpayer's revocable trust can be named directly as the contingent beneficiary of the required lump sum payment.

**When Avoiding Trusts Does Not Matter**

There are a number of instances when planning for income tax deferral is not a significant consideration. For example, if the IRA or 401(k) plan requires a lump sum distribution at the taxpayer's death, then deferring income taxes by naming a Designated Beneficiary is not an issue. After retirement, a taxpayer may wish to consider a rollover of a 401(k) or IRA that does not offer a life expectancy payout option to an IRA that does offer this option.

In addition, income tax deferral will not be as important if the beneficiary will withdraw the entire account on the taxpayer's death for an immediate need, such as to pay estate taxes or to support minor children. Income tax deferral will not be a major consideration if the size of the account is so small that a withdrawal of the entire amount will not cause a substantial amount of additional income tax to be due.

If the beneficiary's age and the taxpayer's age are close and the taxpayer is over age 70 1/2 , then naming a Designated Beneficiary will not have a significant effect on the RMD. In this case, the account must be withdrawn over basically the same time period whether or not the beneficiary is a Designated Beneficiary. Finally, naming a Designated Beneficiary is not an issue if the taxpayer names only charitable organizations as the beneficiaries, as the income of charitable organizations is not subject to tax.

**Trusts as Beneficiary**

Qualified trusts also can be Designated Beneficiaries. (The term "qualified trust" is used as a matter of convenience in this article, but is not an IRS-defined, or commonly used, term.) There are a number of reasons to use a trust as a beneficiary of a retirement account. A trust can limit the beneficiary's control over the trust assets. Trusts can provide the beneficiary with creditor protection, including protection from division in the event of the beneficiary's divorce. Finally, a trust can be used to exclude the trust assets from the estate tax at the beneficiary's death. If one of these reasons is more important than allowing the beneficiary to defer withdrawals from the retirement account in order to defer income taxes, then a traditional trust can be named as the beneficiary of the retirement account. The taxpayer should be informed, however, that the beneficiary will lose possible income tax deferral opportunities. If a taxpayer qualifies a trust as a Designated Beneficiary, then the trust may make withdrawals from the account based on the life expectancy of the oldest beneficiary of the trust (that is, the trust's RMD is based on the age of the oldest beneficiary).

**When Trusts Are Crucial**

Naming a trust is crucial in certain circumstances. For example, if the beneficiary is a special-needs child who relies on government benefits, a trust must be used. Clients often use trusts when the beneficiary is a second spouse and the client wants the spouse to have limited access to the trust principal. A parent may wish to use a trust if the beneficiary is a minor, is a spendthrift, or has substance abuse problems. Finally, retirement account assets can fund a credit shelter trust. In these situations, the client may decide that the reason for the trust may outweigh the lost income tax deferral or may decide that the added cost of a private letter ruling for a custom-designed accumulation trust is justified.

A trust must satisfy five tests to qualify as a Designated Beneficiary: The first four tests are as follows:

> 1. the trust must be valid under state law;
> 2. the trust must be irrevocable or become irrevocable at the taxpayer's death;
> 3. the trust beneficiaries must be identifiable; and
> 4. certain documentation must be provided to the plan administrator or IRA custodian by October 31 of the year after the taxpayer's death.

Treas. Reg. § 1.401(a)(9)-4, A-5. If these four tests are met, then the trust generally will be treated as a Designated Beneficiary and the RMD will be based on the oldest trust beneficiary's life expectancy. Treas. Reg. § 1.401(a)(9)-5, A-7(a)(1). But there is, in essence, a fifth test for the trust to be a Designated Beneficiary, because all of the beneficiaries of the trust must be individuals the age of whom can be identified. Treas. Reg. § 1.401(a)(9)-4, A-5(c); Treas. Reg. § 1.401(a)(9)-4, A-3. Therefore, the fifth requirement is to draft the trust so that it is possible to determine the identity of the oldest beneficiary and to require that only individuals may be beneficiaries of the trust. This fifth test can create problems, especially with multi-beneficiary common pot trusts or multi-generation dynasty trusts.

It is difficult to draft a trust that only has individual and ascertainable beneficiaries because the IRS has not explained which contingent beneficiaries can be ignored. The regulations provide that if the first four tests above are met, then the IRS will treat the beneficiaries of the trust as the potential Designated Beneficiaries of the retirement account. It then becomes necessary to determine three things: (1) the identity of the beneficiaries of the trust, (2) the identity of any beneficiaries of the trust that are not individuals, and (3) the identity of the oldest beneficiary. In making these determinations, the trust's "contingent beneficiaries" must be taken into account. Treas. Reg. § 1.401(a)(9)-5, A-7(b). The regulations provide that

> [a] person will not be considered a beneficiary for purposes of determining who is the beneficiary with the shortest life expectancy under paragraph (a) of this A-7, or whether a person who is not an individual is a beneficiary, merely because the person could become the successor to the interest of one of the employee's beneficiaries after that beneficiary's death. However, the preceding sentence does not apply to a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor to the

> interest of one of the employee's beneficiaries upon that beneficiary's death.

Treas. Reg. § 1.401(a)(9)-5, A-7(c)(1). This rather unhelpful regulation gives the guidance that a "mere potential successor" beneficiary can be ignored. The regulation also specifically states that one cannot ignore contingent beneficiaries simply because the current beneficiary is entitled to all of the trust income, as is the case with a QTIP trust or QSST:

> [i]f the first beneficiary has a right to all income ... during that beneficiary's life and a second beneficiary has a right to the principal but only after the death of the first income beneficiary ..., both beneficiaries must be taken into account in determining the beneficiary with the shortest life expectancy and whether only individuals are beneficiaries.

Treas. Reg. § 1.401(a)(9)-5, A-7(c)(1). Although the regulation clearly contemplates that some beneficiaries can be ignored, it never really explains the circumstances in which they can be ignored. A recent private letter ruling takes a date-of-death look at then-living trust beneficiaries to determine which contingent remainder beneficiaries can be ignored. PLR 200438044. Under this ruling's analysis, if a trust is to terminate upon a beneficiary's reaching a certain age, then the only remainder beneficiaries that must be counted are the individuals that would receive the trust assets upon termination, provided those individuals are alive on the taxpayer's death and they have already attained the age for termination. This ruling is not helpful to dynasty trusts or lifetime trusts with rights of withdrawal, as the beneficiary is never required to take outright ownership of the trust assets. It will be interesting to see if the analysis of this ruling is consistently applied by the IRS. Until the IRS or Congress clarifies these rules, practitioners in this area must proceed very carefully.

**Conduit and Accumulation Trusts**

Fortunately, the regulations do set forth a type of safe harbor trust that has beneficiaries that the IRS will treat as Designated Beneficiaries. The qualified trusts are often referred to as "conduit trusts." A conduit trust requires the trustee to distribute all of the retirement account withdrawals by the trust to the beneficiary. PLR 200537044. As the trust may not accumulate any assets withdrawn from the retirement account, the IRS allows the beneficiary to be treated as the oldest beneficiary. Treas. Reg. § 1.401(a)(9)-5, A-7(c)(3), ex. 2. Although conduit trusts have the advantage of certainty because they are specifically described in the Treasury Regulations, they also have major disadvantages. A conduit trust cannot withdraw retirement account proceeds and accumulate them inside of the trust. This is often contrary to the intent of the client, who is often specifically using a trust to prevent the retirement account assets from being distributed to the beneficiary for one reason or another.

A trust that allows accumulations of retirement account withdrawals (an "accumulation trust") should qualify as a Designated Beneficiary if certain provisions are added to the trust. First, only individuals may be beneficiaries of the accumulation trust. Second, to avoid an argument that the taxpayer's estate is a beneficiary of the trust, because an estate cannot be a Designated Beneficiary, the trust must provide that any debts, taxes, or expenses payable from the trust cannot be paid after September 30 of the year after the calendar year of the taxpayer's death. Third, the trust agreement must prohibit trust distributions to anyone who is older than the person whose life expectancy is used to calculate the RMD, to an estate, or to a charity. Finally, the beneficiaries of the trust must be identifiable. For this purpose, if the remainder beneficiary involves a class capable of expansion or contraction, the beneficiaries will be treated as being identifiable if it is possible to identify the class member with the shortest life expectancy.

Accumulation trusts require very careful drafting to ensure that the trust assets can never pass (under any circumstances) to an older sibling or relative, an estate or charity, nor escheat to the state under the intestacy laws. Typical trusts will always fail these rules, under the typical heirs-at-law contingent beneficiary clause that reverts to state intestacy laws if all of the primary family line die off. Under most state intestacy laws, an older relative may inherit, and the property may escheat to the state. Trusts also typically provide that if a beneficiary dies without descendants, the

trust property passes to the beneficiary's siblings (who may be older than the beneficiary). Powers of appointment also cause uncertainty in this area.

If properly drafted, an accumulation trust can help coordinate a taxpayer's retirement accounts with his or her estate plan. Because of uncertainty in this area of the law, a private letter ruling should be obtained before naming such a trust as a beneficiary. Obtaining a private letter ruling can be an expensive and time-consuming procedure, but is well worth it for individuals with large retirement accounts if naming a trust as the beneficiary is crucial.

**Separate Accounts for Trusts**

Treas. Reg. § 1.401(a)(9)-4, A-5(c) provides that "the separate account rules under A-2 of section 1.401(a)(9)-8 are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit." The IRS takes the position that separate account treatment is not available when a single trust is named as the beneficiary, despite a contrary holding in various private letter rulings. See, e.g., PLR 200432029. Under the IRS's interpretation, if all of the separate trusts created under a revocable trust are qualified trusts, then the RMDs of all such separate trusts will be based on the oldest beneficiary of any of the separate trusts, not the beneficiary of each trust at issue. Therefore, whenever possible, it is best to directly name the separate trusts to be created on the beneficiary designation form, as opposed to naming the funding trust. PLR 200537044. For example, instead of naming the "John T. Smith Revocable Trust" as the beneficiary, one should consider the following language:

> Upon my death the remaining account assets shall be divided into fractional shares so as to provide an undivided equal share for each of the separate trusts created pursuant to Article __ of the John T. Smith Revocable Trust, and so that each such share shall be segregated, effective as of my date of death, into separate subaccounts, one for the share representing each separate trust, so that all postdeath investment gains, losses, contributions and forfeitures, are determined separately for each subaccount. The trustees of each separate trust shall have the right to direct changes to investments held in such separate trust's separate sub-account.

Separate account treatment for trusts is an issue only if each such separate trust is a qualified trust (a conduit trust or an accumulation trust). Otherwise the ages of the trust beneficiaries are irrelevant in determining the trust RMDs, and separate account treatment is not necessary.

**Credit Shelter Trust Issues**

Retirement accounts are not only subject to income tax when distributed to the beneficiary, but they are also subject to estate tax at the death of the owner. For the year 2005, the combined effect of the 47% estate tax, a top federal income tax rate of 35%, and a possible state income tax can be debilitating. This heavy tax burden makes tax-deferred retirement accounts the best source for charitable bequests at death, as charities are exempt from the income tax.

These taxes may be payable from the taxpayer's probate estate or a trust, or they may need to be paid by a withdrawal from the IRA. A client's estate planning documents should be drafted to ensure, to the extent possible, that any tax due is paid from nonretirement assets, as the withdrawal of retirement assets to pay taxes will cause additional income tax. Drafters should pay close attention to the tax apportionment clauses in the wills and trusts of clients with large retirement accounts.

For estates that are subject to the federal estate tax, one of the most troublesome areas is the use of retirement assets to fund a credit shelter trust. Many of the reasons to use a trust involve nontax issues, which may outweigh any possible income deferral possibilities. When dealing with funding a credit shelter trust, however, the choice is between deferring one tax and avoiding another tax. Often, an advisor must ask the client to choose between competing tax concerns. The uncertainty of the estate tax, combined with an increasing exemption, will often lose out to the more certain income tax liability resulting from the loss of the spousal rollover and life expectancy payout option.

If a conduit credit shelter trust is named as the primary beneficiary of the retirement account, then the entire retirement account will be paid out over the spouse's life expectancy. This will save very few estate tax dollars, as the retirement account assets will be added to the spouse's estate just as if the spouse had been named directly as the beneficiary, but without the income tax advantages of the spousal rollover. A conduit trust is usually a poor alternative when dealing with funding a credit shelter trust.

A better option is to name an accumulation trust as the primary beneficiary of the retirement account, preferably with a favorable private letter ruling from the IRS in hand. The accumulation trust allows the spouse to be treated as the Designated Beneficiary of the retirement plan. Although the spousal rollover may not be available, a life expectancy payout option will allow distributions from the retirement account (and the associated income tax liability) to be gradually withdrawn over the spouse's life expectancy. The accumulation trust will usually be subject to income tax at the highest marginal rate, but amounts actually distributed to the beneficiary are taxed at the beneficiary's presumably lower income tax rate. The accumulation trust's advantage over the conduit trust is that the accumulation trust can retain the distributions in the retirement account inside of the trust. In other words, the trust is not required to distribute the retirement account withdrawals directly to the spouse; the withdrawals accumulate inside of the trust until needed for the support of the spouse or children. This means that all of the retirement account withdrawals not distributed out of the trust will pass estate tax free to the next generation. The disadvantages of the accumulation trust include the high trust income tax rates, the inability to do a spousal rollover, and the added costs and complexity of drafting the trust, educating the client, and obtaining a private letter ruling.

If the expense of obtaining an IRS private letter ruling is not justified, then an alternative is simply to name the spouse directly as the beneficiary. If the spouse will consume a substantial portion of the retirement account during the spouse's lifetime or the increasing estate tax exemption is enough to shield all of the taxpayer's assets, then there may be no future estate tax to worry about. This option also has an advantage over the accumulation trust in that the spousal rollover may allow more income tax deferral. In addition, the spouse can name new beneficiaries that may use a life expectancy payout after the spouse's death. Obviously, the disadvantage to this option is that the retirement account cannot be used to fund a credit shelter trust and may cause a future estate tax if the assets are not consumed by the surviving spouse.

If the spouse is not expected to consume most of the retirement account before death, then naming a traditional credit shelter trust (as opposed to a conduit trust or accumulation trust) as the primary beneficiary of the retirement account can be the best approach, as the estate tax savings will outweigh the lost income tax deferral. A traditional credit shelter trust is also a wise option if the spouse is not much older than the remainder beneficiaries.

**Other Issues**

It is often impossible to fit the necessary language on the beneficiary designation form itself. The best approach is to write the words "See Attachment" on the form and place all of the necessary language on an attachment that is submitted along with the preprinted signed form. To ensure a beneficiary designation form is accepted by the IRA custodian or plan administrator, the attorney should always submit the forms to such parties with a receipt (including a complete copy of the signed form attached) that requires the custodian/administrator to sign and date a statement to the effect that the attached beneficiary designation forms were accepted and are now effective. If the attorney does not receive the receipt back, then a simple follow-up phone call can fix a problem that, if left until death, could be catastrophic to the estate plan.

Because of the complexity of this area of law and the ability of a stubborn IRA custodian to frustrate the income tax planning of a testator, an attorney should review the IRA agreement before deciding on a retirement planning course of action. To avoid problems after death, Ted Riseling and Jeff Rhodes in their newsletter, The Riseling Report, suggest sending a letter to the IRA custodian during the client's lifetime asking for a written response to the following questions:

1. Do you honor the designated beneficiary rules, contained in Treas. Reg. § 1.401(a)(9)-4, A-5, when a trust is named beneficiary of an IRA and allow the beneficiaries of the trust to be considered designated beneficiaries of the IRA?
2. Do you permit the beneficiary of an IRA to make investment decisions concerning that beneficiary's portion of the IRA?
3. Will you permit the beneficiary of an IRA to name a successor beneficiary for any undistributed portion of the original beneficiary's share of the IRA?
4. Will you let the IRA beneficiary move the IRA to another IRA custodian after the account owner's death as permitted by Rev. Rul. 78-406?
5. If an IRA beneficiary elects the five-year payout method, will you permit multiple withdrawals during the five-year period?
6. If an IRA beneficiary elects to receive distributions over the beneficiary's lifetime, will you allow the beneficiary to take more than the required minimum distribution in any year?
7. If (a) a trust is named as the beneficiary of the IRA, (b) the trust qualifies as a beneficiary under the applicable Treasury Regulations, (c) the trust agreement provides for separate shares to be created on the account owner's death, and (d) the beneficiaries comply with all other Treasury Regulations and other tax laws, will you permit the beneficiaries to split the IRA into multiple IRAs in accordance with the trust agreement to create separate shares consistent with the trust agreement?
8. Do you accept customized beneficiary designation forms?

Ted M. Riseling & Jeff K. Rhodes, The Riseling Report, January 2003, located at www.oktrustlaw.com/reports/JANUARY03.doc (for items 1-7). The questions above are not intended to be an exhaustive list and other questions may be appropriate depending on the particular client situation. The taxpayer should consult with his or her attorney if the custodian's response to any of these questions is no.

**Conclusion**

One of the most important areas of estate planning is dealing with tax-deferred retirement accounts. Unfortunately, this is an extremely complicated area of law. Becoming familiar with the issues discussed in this article is crucial for estate planning attorneys.

Attorneys should consider the following points when dealing with retirement accounts:

- Retirement accounts present unique problems because withdrawals after the owner's death trigger income taxes.
- Be mindful of the reasons why income tax deferral is not at issue.
- Trusts should be avoided as beneficiaries, unless a nontax reason for creating the trust outweighs the lost income tax deferral of using the trust (or income tax deferral is not at issue for some reason).
- If income tax deferral is important and a trust must be used (as when a credit-shelter trust must be funded with retirement benefits), consider whether the expense of a private letter ruling is justified to allow the use of an accumulation trust.
- Draft tax apportionment clauses in wills and trusts to provide for estate tax payments from funds other than the retirement accounts (if such funds are available).
- Ensure that beneficiary designation forms are drafted to create separate accounts when multiple beneficiaries are being named under a trust and a life expectancy payout option is desired.
- If there are substantial funds in an IRA, then make sure to ask the IRA custodian the questions above to avoid problems after the owner's death.
- Always have written documentation from the retirement account administrator confirming that the beneficiary designation form was accepted.

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Back to Top

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