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IRA Beneficiary Trusts and Post-Death Administration: Strategies and Tools for Implementation

Navigating RMD Issues, Income Tax and Asset Protection Elections, Establishing Sub-Share Trusts, and More

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1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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Checklist for Implementation of The IRA Inheritance Trust®

Meet Following Deadlines: On or Before 9 Months After Date of Death

____ Install the Trustee

1. Of the master IRA Inheritance Trust®, rather than the individual sub-share trusts
2. Trust Certification

____ Communicate with the IRA custodian or company qualified retirement plan (“QRP”) administrator and determine/verify

____ Primary and secondary beneficiaries recorded on custodian’s records

- a. Problems may arise if records do not match planning done or known Beneficiary Designation Form (“BDF”) filed

____ Whether individual IRAs (or QRPs) are traditional or Roths

____ Whether the Trustor took RMD for year of death

- b. Technically required by 12/31 of the year of death, but IRS typically waives late penalty
- c. Should be properly calculated and taken before sub-trusts established

____ Establish communication with beneficiaries

____ Trustee Notice

____ Advise to seek appropriate professional assistance regarding income tax and asset protection choices to be made at time sub-share trusts established

- a. May offer your services by separate engagement, with Trustee’s consent?
- b. Opportunity to coordinate with beneficiary’s (or Trustee’s) CPA, financial advisor, attorney (or make referral to the beneficiary or Trustee)

____Key decisions to be made by Trustee and/or beneficiaries

____Will the trust qualify as a see-through trust, allowing the beneficiaries' life expectancies to be used for RMD purposes? (If not, Trustee may need to reform or modify Trust utilizing Trust Protector or local court.)

____If surviving spouse is primary IRA beneficiary, will he/she do rollover to own new IRA?

- a. Preferable in most cases
- b. May then need to do (or amend) own IRA Inheritance Trust® and file appropriate BDF with custodian
- c. IRA Inheritance Trust® of deceased Trustor then "dies on the vine"
- d. Note: spousal rollover can be done more than 9 months after death

____Will a beneficiary exercise a disclaimer?

- a. Surviving spouse may disclaim and IRA passes to IRA Trust (or directly to Exemption and/or Marital sub-trusts), if so designated on BDF
 - i. May want to do to utilize more estate tax exemption (but weigh option of new "portability" election)
 - ii. May want asset protection afforded by Exemption and Marital Trusts
 - iii. Required to also disclaim any powers of appointment over Exemption and Marital Trusts
- b. Surviving spouse may thereafter disclaim interest in Exemption and/or Marital Trusts (if they are established)
 - i. Stretchout, estate tax and asset protection reasons

- c. Non-spouse beneficiaries may also disclaim
 - i. Stretchout, estate tax and asset protection reasons
- d. Disclaimers must be done timely and in writing
 - i. Although may have until 9 months after death, should be done much earlier

____ Once disclaimers are made (or beneficiaries have decided not to do), then know “final” beneficiaries of the Trust and can determine type of sub-share trust most appropriate to each

- a. Trustee, in consent with beneficiaries and their advisors, needs to make the following decisions
 - i. Conduit trust? (if adult, capable of handling money and little or no asset protection concerns) [NOTE: income tax consequences pass to beneficiary]
 - ii. Accumulation trust? (lifetime, spendthrift or special needs trust warranted, or asset protection concerns) [NOTE: trust may pay income tax at higher bracket, unless discretionary distribution timely made to beneficiary, which may lower asset protection]
- b. Depending on trust design, Trust Protector may need to exercise “toggle switch” to implement above decision; this should be done within 9 months of death, though appears not technically required before 9/30 YAD
- c. May be other ways to reform trust

____ Will the Trust Protector need to come in and act?

- a. If so, the Trust Protector must be installed
 - i. First Successor Trustee who is independent (within meaning of IRC 674(c)) acts as “Special Co-Trustee”

- ii. Special Co-Trustee appoints Trust Protector
- iii. Attorney acts only as temporary Trust Protector (not preferred, but may need to if time running short)

b. If a sub-share trust is converted from conduit to accumulation, special other steps may need to take place to maximize RMD stretchout

- i. Limit future beneficiaries under beneficiary's limited power of appointment and contingent beneficiary paragraph of trust
- ii. Renounce Trust Protector power to again exercise toggle switch

_____ Should a post-death Roth conversion be made for QRP accounts payable to the Trust?

- a. If beneficiary has accumulation trust, may need beneficiary or third party to loan funds to Trust to pay tax on conversion
- b. Conversion may not be required until December 31 of year after decedent's death, but advisable for conversion to occur prior to September 30, prior to or concurrently with split of account into separate shares

_____ Should each beneficiary do some additional estate planning?

- a. Name successor Trustees of their individual sub-share trust
- b. Exercise any limited power of appointment
- c. Coordinate these with own Living Trust/estate plan

_____ Coordination with the Trustee/Executor of Decedent Living Trust/Estate

1. Should be determination made if 706 will be filed for estate tax or portability reasons and calendared to occur timely

	<p>2. If a 706 will be filed (or extended) and a tax payment will be due, how will estate taxes be allocated?</p> <ul style="list-style-type: none"> a. May be an issue if the beneficiaries of the IRA Trust (or their %s) are different then under the Living Trust b. Must refer to specific tax allocation paragraphs of each trust <ul style="list-style-type: none"> i. Consider also possible right of Estate to seek reimbursement under IRC 2207A <p>3. If Exemption Trust of IRA Trust is to be set up, Living Trust should be given first priority in utilizing exemption amount (or Executor given first choice to utilize "portability")</p> <ul style="list-style-type: none"> a. May depend upon respective document terms b. Same regarding allocation of generation skipping transfer tax ("GST") exemption amount (normally don't prefer to use GST exemption for IRAs because RMDs make then wasting assets)
<p>_____</p>	<p>Meet Following Deadlines: On or Before <u>September 30th Year After Death</u></p> <p>_____ Payment of the Decedents' (or his/her estate's) debts, taxes and expenses</p> <ul style="list-style-type: none"> 1. The preference is <u>not</u> to pay these from the IRA Trust, but this could become necessary if decedent's Living Trust and estate lack cash or the ability to raise cash by sales of assets or loans <ul style="list-style-type: none"> a. The Trustee should be directed to seek loans from the IRA Trust beneficiaries before paying these items from trust assets 2. If these will be paid from the IRA Trust, they should be paid on or before 9/30 or stretchout of RMDs may jeopardized <ul style="list-style-type: none"> a. Trust provisions may so require payout by this date

_____ Determine the final “measuring lives” for RMD stretchout

1. Who is left after disclaimers?
2. Who is left after possible payouts by Trustee to eliminate “bad” beneficiaries, such as older individuals or charities?
3. Death of a beneficiary between Trustor’s death and 9/30 YAD irrelevant for RMD purposes but may affect establishment of sub-share trusts
4. Which beneficiaries are “counted”?
 - a. Conduit trust
 - b. Accumulation trust

_____ Establish sub-share trusts

1. Typical sub-share setup procedures as with a Living Trust
 - a. Sub-share trust named
 - i. Should include name of beneficiary, for custodian RMD reasons
 - b. Trustee of particular sub-share trust installed
 - i. A young beneficiary may be a Co-Trustee until reaches certain age and becomes sole Trustee
 - ii. If beneficiary is sole Trustee and asset protection concerns, can bring in independent bank or trust company as a Co-Trustee and later replace with same type Co-Trustee (or Trust Protector can appoint Co-Trustee and later remove without having to replace)
 - c. File for EIN
 - i. Income tax returns will be due for trust sub-share

ii. Conduit trust will result in any tax being paid at beneficiary's rate, so long as distribution made from Trust within 65 days of end of calendar year when RMD received by trust

d. In some cases, more than one sub-share trust may be established for a beneficiary

iii. If to allocate GST exemption

iv. If some Roth IRAs, for practical reasons may want them payable to one sub-share trust and the traditional IRAs to another

2. Transferring assets to sub-share trusts is different with IRAs or QRPs

a. Not transferred into name of the sub-share trust

b. "Retitled" with the custodian, keeping the original owner's name on it

i. Should have already given custodian a copy of the Trust, though not required until October 31 (see below)

ii. "(Decedent's name) IRA FBO (Name of beneficiary's sub-share trust)"

iii. If a QRP, the Trustee must establish new "Inherited IRA" as above and have administrator transfer funds directly to it

iv. If a QRP and was not already a Roth, the Inherited IRA may be designated from the start as a Roth (but must consider income tax consequences first)

c. If IRA will go to more than one beneficiary sub-share trust, custodian should split the IRA first

i. Each individual new IRA retitled as above

ii. Must be prorata division of assets between the new IRAs

	<p>3. Note: while it is not technically required that establishment and funding of the sub-share trusts be finalized by 9/30 YAD, this is the conservative reading of the Regulations by many commentators</p> <p>4. If problems encountered in dealing with custodian or administrator when implementing items on this checklist:</p> <ul style="list-style-type: none"> a. Execute a hold harmless agreement relieving the custodian or administrator from liability, with consent of beneficiaries b. As last resort, change custodian or roll QRP to an IRA with Trustee's chosen custodian
<p>_____</p>	<p>Meet Following Deadlines: On or Before <u>October 31st Year After Death</u></p> <p>_____ Copy of IRA Trust to the Custodian (or Plan Administrator)</p> <ul style="list-style-type: none"> 1. Or summary of its beneficiary provisions, per the Regulations 2. Don't bother sending while Trustor alive 3. Should be done when IRA custodian first contacted? <ul style="list-style-type: none"> a. More conservative approach, so don't miss deadline b. However, if all beneficiaries not yet settled (disclaimers or Trust Protector powers may be exercised), could confuse custodian and result in paperwork being processed that could later be difficult to reverse and may jeopardize stretchout
<p>_____</p>	<p>Meet Following Deadlines: On or Before <u>December 31st Year After Death</u></p> <p>_____ Trust should employ a CPA or other tax preparer</p> <ul style="list-style-type: none"> 1. To do required returns for master trust and then subshare trusts 2. Assist in decision whether, with an accumulation trust, to distribute some or all of RMD to the beneficiary

____ First annual RMDs must be paid out

1. IRA withdrawals made by Trustee, payable to the trust
2. Deposited into a trust account
3. If conduit trust, same amount then paid out to beneficiary
4. Preferably on or before 12/31 YAD (or same calendar year as IRA withdrawal)
5. In any event, should be done no later than 65 days after the end of the calendar year
6. Note: the Trustee may deduct, before paying out to beneficiary, normal/regular trust administration expenses (such as Trustee or custodian fees, tax return prep fees)
7. If beneficiary is a minor, an UTMA account should be established (with Trustee or guardian as custodian) and payment made from the trust to this account
8. Later years' RMDs done in same manner

____ Final distribution of a sub-share trust

1. IRA "retitled" FBO individual name of beneficiary (decedent's name still remains on it, so not a taxable event)

**If you need further assistance in the administration of
The IRA Inheritance Trust® (or any other IRA Beneficiary Trust),
please contact The Ultimate Estate Planner, Inc. at 1-866-754-6477.**