

**ADVISING ON MAKING IRA BENEFICIARY DESIGNATIONS
BEFORE DEATH AND TAKING MINIMUM DISTRIBUTIONS AFTER DEATH**

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**ADVISING ON MAKING IRA BENEFICIARY DESIGNATIONS
BEFORE DEATH AND TAKING MINIMUM DISTRIBUTIONS AFTER DEATH**

- I. IRA Case Study I – “To Trust or Not to Trust.”
- A. Your client -- 78 years old, widower.
 - B. Referred to you, because he heard that you are a straight talker.
 - 1. His last advisor wanted to make everything too complicated.
 - C. Two children:
 - 1. Daughter, age 52.
 - a. Married for the second time in 2015.
 - b. Two kids from first marriage.
 - c. Went through an acrimonious divorce, but her new marriage is good -- “a real nice guy,” who was also married before and has 3 children of his own.
 - d. Never worked outside home; very little saved for retirement.
 - 2. Son, age 48.
 - a. Married for the first time; married for 11 years.
 - b. Works very hard, self-starter, entrepreneur, lives slightly above his means, has lots of debt, but always figures out a way to make ends meet, keep his businesses afloat.
 - c. No kids of his own; his wife has 3 kids from a prior marriage.
 - d. Very little saved for retirement.
 - 3. After consulting with you, your client decides that a “liberal” trust for each child is a good idea:
 - a. Protect assets from creditors.
 - b. Protect assets from potential divorces.
 - c. Provide a nest egg for child’s retirement.
 - d. Nothing too restrictive – let each child be his or her own Trustee with a corporate co-Trustee that can be removed by the child.

- D. His Assets:
1. IRA with \$4,000,000 in assets.
 2. Bank account with \$23,000.
 3. Condo worth \$325,000.
 4. Old LI policies with about \$150,000 in death benefit.
- E. Consider three scenarios for IRA beneficiary designation:
1. Name two children as Beneficiaries.
 2. Name separate “conduit trusts” for each child as 50% beneficiaries.
 3. Name trust as beneficiary and create “accumulation trust” for each child.
- F. Poll: Who likes option 1? 2? 3?
1. Name children as Beneficiaries.
 - a. Good RMD result for each child.
 - (1) 30-35 year payout for each (theoretically).
 - (2) Each child uses own LE.
 - b. Inherited IRA is not protected from child’s creditors.
 - c. Inherited IRA is pretty well protected from divorce, but child must be careful about where the amounts distributed from the IRA are deposited.
 - d. May not serve as a “nest egg” if child spends all assets in inherited IRA.
 - e. Each child will pay income tax on IRA distributions at his or her personal marginal rate.
 2. Name separate “conduit trusts” for each child as beneficiaries (50% to each conduit trust).
 - a. Conduit trust requires that ALL distributions from the IRA to the trust must be distributed to the child who is the bene.
 - b. Not just RMDs but ALL distributions from IRA.
 - c. What will the RMD rules be next year?

- (1) Acceleration is a possibility.
 - d. Good RMD result for each child.
 - (1) Regs provide a “safe harbor” for the “conduit trust” approach.
 - (2) 30-35 year payout for each.
 - (3) Each child can use his or her life expectancy if Bene Des names each separate trust to receive one half of the IRA.
 - (a) Need to take care in drafting beneficiary designations, particularly with respect to contingent beneficiaries if a child predeceases the client.
 - e. IRA balance remaining to be distributed is protected from child’s creditors.
 - f. IRA distributions that flow to child from conduit trust not protected from creditors.
 - g. Inherited IRA and distributed assets pretty well protected from divorce; child must be careful about where the amounts distributed from the IRA and conduit trust are deposited.
 - h. May not serve as a “nest egg” if child spends all assets distributed from inherited IRA to conduit trust to child.
 - i. Each child will pay income tax on IRA distributions at his or her personal marginal rate.
3. Name revocable trust as beneficiary and create “accumulation trust” for each child.
 - a. Good RMD result for each child.
 - (1) 30-35 year payout for each.
 - (2) Son has to use daughter’s birthday in calculating RMDs (unless your Bene Des names separate trusts for each child).
 - (3) Regs do not provide a “safe harbor” for the accumulation trust approach, but many PLRs confirm this result applies.
 - b. Inherited IRA FBO Trust and trust account well protected from creditors.

- (1) No worries about RMDs from Inherited IRA to trust (trust assets remain protected from creditors).
- c. Inherited IRA FBO Trust is well protected from divorce.
 - (1) No worries about RMDs from Inherited IRA to trust (trust assets remain protected from divorce).
 - (2) Child must be careful about where the amounts distributed from the IRA and trust are deposited.
- d. Trust will serve as a “nest egg”.
- e. Trustees will determine whether trust will pay income tax on IRA distributions at its marginal rate or each child will pay income tax on IRA distributions at his or her personal marginal rate.

II. IRA Case Study II -- “The Troublesome Trust.”

- A. Decedent died in 2014 at age 78.
- B. Decedent’s LE in year of death is 11.4 years.
- C. IRA balance of approximately \$1,500,000.
- D. IRA is payable to Trust.
 - 1. Trust beneficiaries are identifiable, but some question about charities, powers of appointment, etc.
 - 2. Trust agreement lacks “latest and greatest” language concerning identification of beneficiaries.
- E. Trust assets are distributable to:
 - 1. Spouse;
 - 2. Two adult children from Decedent’s prior marriage; and
 - 3. A trust FBO adult child from Decedent’s prior marriage.
- F. Could make a good argument for distribution to all beneficiaries over LE of spouse (oldest beneficiary of trust), but the trust agreement leaves some open questions.
- G. Could get a PLR.
- H. Recommendation:

1. Refer to Box #3 & Box #9 of Appendix C.
 2. Every beneficiary should withdraw over 11.4 years.
 - a. 2015 – Divisor is 10.4; 2016 – Divisor is 9.4.
 - b. Appropriate deferral, even if deferral is not “maxed out.”
 - c. Eliminates risk of calculating RMDs incorrectly.
 - d. Relatively easy to administer.
- I. Post Script: By June of 2017, all three children had withdrawn all funds from their respective inherited IRAs.
- III. IRA Case Study III – “The Intestate Estate with Troublesome Beneficiaries.”
- A. Decedent died in September 2014 at age 64.
 - B. IRA balance = \$1,900,000.
 - C. No beneficiary named for IRA.
 1. Payable to estate.
 2. Intestate
 - a. Wife qualified as Administrator.
 3. Decedent married for second time.
 - a. One adult child from prior marriage in prison.
 - b. One adult child from prior marriage who is “troubled.”
 - D. Almost nothing else in the probate estate.
 1. Reasonable argument for spousal rollover.
 - a. Spouse is sole fiduciary.
 - b. Spouse is “sole” beneficiary of 1/3 of IRA.
 - E. To establish Inherited IRAs for each beneficiary, Financial Institution serving as custodian wants a somewhat troublesome indemnification from Administrator.
 1. What if beneficiary in prison fails to take proper RMD?

2. What if a beneficiary blames Financial Institution for bad advice, sues, loses, then Financial Institution seeks indemnification (for legal fees) against Administrator?

F. Solution:

1. Refer to Box #8 of Appendix C.
2. Distribute entire IRA balance by February of 2016 (within 18 months after death).
3. Elect fiscal year ending January 31.
4. Distribute from IRA to estate account (then to beneficiaries of estate):
 - a. One third before 1/31/15.
 - b. One third on 2/1/15.
 - c. Balance on 2/1/16.
 - d. Close estate in March of 2016 --Estate is open less than two years.
5. Beneficiaries receive:
 - a. Two thirds of their \$\$ within 6 months of death; and
 - b. Remaining \$\$ within 18 months of death.
6. Beneficiaries report income as follows:
 - a. 1/9 of IRA balance reported to each beneficiary on 1040 for 2015.
 - (1) Tax due 16 months after receipt of funds.
 - b. 1/9 of IRA balance reported to each beneficiary on 1040 for 2016.
 - (1) Tax due 26 months after receipt of funds.
 - c. 1/9 of IRA balance reported to each beneficiary on 1040 for 2017.
 - (1) Tax due 26 months after receipt of funds.

IV. Form Language to Consider

Notwithstanding any provision in this trust agreement to the contrary, if any descendant of mine is living at the time of my death, I prohibit my Trustee from distributing any assets that are payable to my Trustee from any qualified retirement plan as defined in I.R.C. § 401(a), any qualified retirement annuity as defined in I.R.C. § 403(a) or 403(b), or

any individual retirement account as defined in I.R.C. § 408(a) to any beneficiary that is not a living person or to any living person who is older than the oldest descendant of mine who is alive on the date of my death.

APPENDIX A

UNIFORM LIFETIME TABLE

Age of the Participant	Distribution Period	Applicable Percentage	Age of the Participant	Distribution Period	Applicable Percentage
70	27.4	3.65%	93	9.6	10.42%
71	26.5	3.77%	94	9.1	10.99%
72	25.6	3.91%	95	8.6	11.63%
73	24.7	4.05%	96	8.1	12.35%
74	23.8	4.20%	97	7.6	13.16%
75	22.9	4.37%	98	7.1	14.08%
76	22.0	4.54%	99	6.7	14.93%
77	21.2	4.72%	100	6.3	15.87%
78	20.3	4.93%	101	5.9	16.95%
79	19.5	5.13%	102	5.5	18.18%
80	18.7	5.35%	103	5.2	19.23%
81	17.9	5.59%	104	4.9	20.41%
82	17.1	5.85%	105	4.5	22.22%
83	16.3	6.13%	106	4.2	23.81%
84	15.5	6.45%	107	3.9	25.64%
85	14.8	6.76%	108	3.7	27.03%
86	14.1	7.09%	109	3.4	29.41%
87	13.4	7.46%	110	3.1	32.26%
88	12.7	7.87%	111	2.9	34.48%
89	12.0	8.33%	112	2.6	38.46%
90	11.4	8.77%	113	2.4	41.67%
91	10.8	9.26%	114	2.1	47.62%
92	10.2	9.80%	115 & older	1.9	52.63%

Note: The distribution period is the joint and last survivor expectancy of an individual with an age in the first column and a beneficiary 10 years younger than the participant. The applicable percentage, which is not included in the final regulations, is the percentage, rounded to two decimal places, determined by dividing the distribution period into 100. This is the percentage of a participant's plan benefit or IRA balance that must be distributed by the end of each distribution calendar year, except the distribution for the first distribution calendar year, which can be deferred until April 1 of the following calendar year. However, if the participant's sole designated beneficiary is a spouse who is more than ten years younger than the participant, the applicable distribution period is their joint and last survivor expectancy, determined each year, while both of them are alive. The joint and last survivor expectancy is determined under the Joint and Survivor Table contained in Treas. Reg. § 1.402(a)(9)-9, A-3.

APPENDIX B
SINGLE LIFE TABLE

Age	Multiple
0	82.4
1	81.6
2	80.6
3	79.7
4	78.7
5	77.7
6	76.7
7	75.8
8	74.8
9	73.8
10	72.8
11	71.8
12	70.8
13	69.9
14	68.9
15	67.9
16	66.9
17	66.0
18	65.0
19	64.0
20	63.0
21	62.1
22	61.1
23	60.1
24	59.1

Age	Multiple
38	45.6
39	44.6
40	43.6
41	42.7
42	41.7
43	40.7
44	39.8
45	38.8
46	37.9
47	37.0
48	36.0
49	35.1
50	34.2
51	33.3
52	32.3
53	31.4
54	30.5
55	29.6
56	28.7
57	27.9
58	27.0
59	26.1
60	25.2
61	24.4
62	23.5

Age	Multiple
76	12.7
77	12.1
78	11.4
79	10.8
80	10.2
81	9.7
82	9.1
83	8.6
84	8.1
85	7.6
86	7.1
87	6.7
88	6.3
89	5.9
90	5.5
91	5.2
92	4.9
93	4.6
94	4.3
95	4.1
96	3.8
97	3.6
98	3.4
99	3.1
100	2.9

25	58.2
26	57.2
27	56.2
28	55.3
29	54.3
30	53.3
31	52.4
32	51.4
33	50.4
34	49.4
35	48.5
36	47.5
37	46.5

63	22.7
64	21.8
65	21.0
66	20.2
67	19.4
68	18.6
69	17.8
70	17.0
71	16.3
72	15.5
73	14.8
74	14.1
75	13.4

101	2.7
102	2.5
103	2.3
104	2.1
105	1.9
106	1.7
107	1.5
108	1.4
109	1.2
110	1.1
111 & older	1.0

Note: This table is contained in Treas. Reg. § 1.401(a)(9)-9, A-1. Under the minimum distribution rules, this table is used for determining the life expectancy of a participant who dies after the RBD if there is no designated beneficiary by September 30 of the calendar year following the participant’s death (or if the designated beneficiary’s life expectancy is shorter than the participant’s), or the life expectancy of the participant’s designated beneficiary after the participant’s death (regardless of whether the participant dies before or after the RBD) if there is a designated beneficiary by September 30 of the calendar year following the participant’s death (unless the participant dies after the RBD and the participant’s life expectancy is longer than the designated beneficiary’s life expectancy). See the chart in Appendix D for when the life expectancy of an individual is determined (or, in the case of a spouse, redetermined each year).

APPENDIX C

CHART FOR DETERMINING APPLICABLE DISTRIBUTION PERIOD

Designated Beneficiary	Applicable Distribution Period at RBD	Applicable Distribution Period if P dies before RBD	Applicable Distribution Period if P dies after RBD
P's Spouse is not P's sole DB	Table 1	DB's L EX, determined 2 in the year following the year of P's death, reduced by 1 for each year thereafter	The longer of the 3 period determined in box 2 or 9
P's sole DB is P's Spouse	Table, or, if S is 4 more than 10 years younger than P, J&S redetermined each year (if Spouse no longer P's sole DB at end of a calendar year, the Table must be used unless the spouse died or there was a divorce and P did not name a new beneficiary before the end of that year)	S's L EX, beginning 5 in the year P would have reached age 70½, redetermined each year until S's death, when it becomes S's L EX in the year of death, reduced by 1 for each year that elapses after the year of S's death (consider spousal rollover)	S's L EX, redetermined 6 each year until S's death, when it becomes S's L EX in the year of death, reduced by 1 for each year that elapses after the year of S's death (consider spousal rollover)
No DB	Table 7	By the end of the 5 th 8 calendar year following the calendar year of P's death	P's L Ex determined in 9 the year of P's death, reduced by 1 for each year thereafter

RBD = Required beginning date.

Table = The uniform lifetime table.

P = Participant, which includes a participant in a qualified retirement plan or an account holder in an IRA.

S = Spouse of the Participant.

DB = Designated Beneficiary.

J&S = Joint & survivor expectancy of the Participant and Spouse.

L EX = Life expectancy of the Designated Beneficiary.