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SHOULD YOU NAME A TRUST AS THE BENEFICIARY OF AN IRA OR OTHER QUALIFIED RETIREMENT PLAN

Most estate plans which incorporate Trusts, generally don't consider using the Trust for retirement benefits. This is because retirement plans already have a designated beneficiary, so the assets don't necessarily need to be considered as part of the estate upon death. Hence, there is no need to change that as part of the estate plan.

However, there are certain situations when this general rule of thinking can have a negative effect on the resulting distributions as intended by the decedent. There are a variety of reasons why considering a Trust for the distributions of retirement benefits is worth considering. Situations such as spendthrifts, poor investment management, health care concerns and the various needs of certain non-spouse beneficiaries are typical concerns.

However, another, more common, yet more complex reason is when there is a remarriage but the decedent has children from a previous marriage. In that situation, the second spouse is typically named as the retirement benefits recipient. However, once the spouse receives the benefits, she can do whatever she wants with them, which may not necessarily include the children from the decedent's first marriage.

This situation can be avoided by naming the Trustee of the Trust as the beneficiary of the benefits. Remember that one of the main purposes of setting up a Trust is the ability to control the assets via the terms of the Trust. Control that "extends from the Grave", so to speak.

Of most importance when even considering this type of estate planning is that there are many specific rules which must be followed exactly in order to avoid any tax consequences and more importantly, to avoid losing the unified credit entitlement. However, if the Trust is carefully planned and written so that the assets "look through" the Trust to a Trust beneficiary, it is possible to avoid these taxation issues. It's a little tricky, but definitely worth doing if you have a difficult situation such as that listed above.

Second marriage situations where one or both spouses have children from a prior marriage often call for estate planning that is more detailed than the typical or common plan. However, there are many estate planning techniques, which are designed specifically for this type of family. If you have this situation, and you want to prepare your estate so that you can better prepare for your children and control their share of your estate, including your retirement benefits, I suggest speaking with your attorney or a qualified estate planner to discuss the use of a Trust to accomplish your goals in this regard.



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