

Planning for Retirement Benefits

Basic Fiduciary Practice

March 23rd, 2018

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Disclosure

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What We Will Cover Today

- IRA Custodians
- What Happens When an IRA Owner is Alive
- What Happens When an IRA Owner Dies
- Naming Charities and Trusts as Beneficiaries
- Available Resources



Quick Summary:

Traditional Deductible IRA

Non-Deductible IRA

401(k) & Roth 401(k)

Deferred Comp Plans, Pension Plans, etc

IRA Custodians



Know Your Client's Custodian

Some Custodians require specific language in a POA relating to what the agent is authorized to do with an IRA.

It's important estate planning attorneys be aware of this!

- *Hire/fire Investment Advisor*
- *Act on Tax Matters*
- *Act on Retirement Accounts*



Georgia Power of Attorney Act

- Effective July 1st, 2017
- Powers by Incorporation / Reference
- Grant of General Authority
 - “All preceding subjects”; OR at least
 - Stocks and Bonds, Banks and other Financial Institutions, Retirement plans, and Taxes
- Grant of Specific Authority
 - Create/Change beneficiary designation
- Form is being updated!

****Practice Tip – still use the custodians form if possible****

How Complete is Your Financial POA?

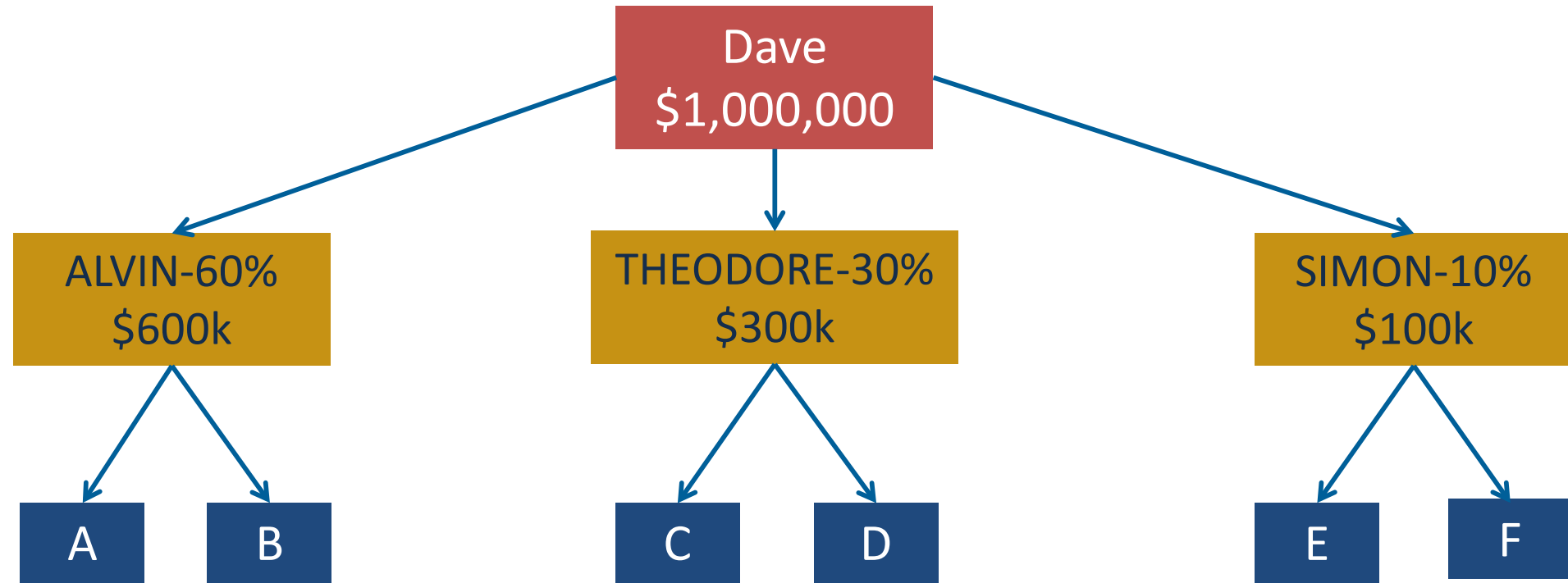
Does it address whether an agent can:

- Act individually, if two of more Agents named
- Open and/or maintain brokerage accounts
- Delegate authority to an Investment Advisor
- Represent the Principal in all tax matters
- Designate or change beneficiaries
- Select or change payment options for retirement accounts
- Apply for and make distributions from retirement accounts

Know Your Client's Custodian

- Have your clients listed secondary (or contingent) beneficiaries of their IRA(s)?
- Did they elect “per stirpes?”
- If not, what does their IRA agreement say will happen?

An Example- Client's Intentions

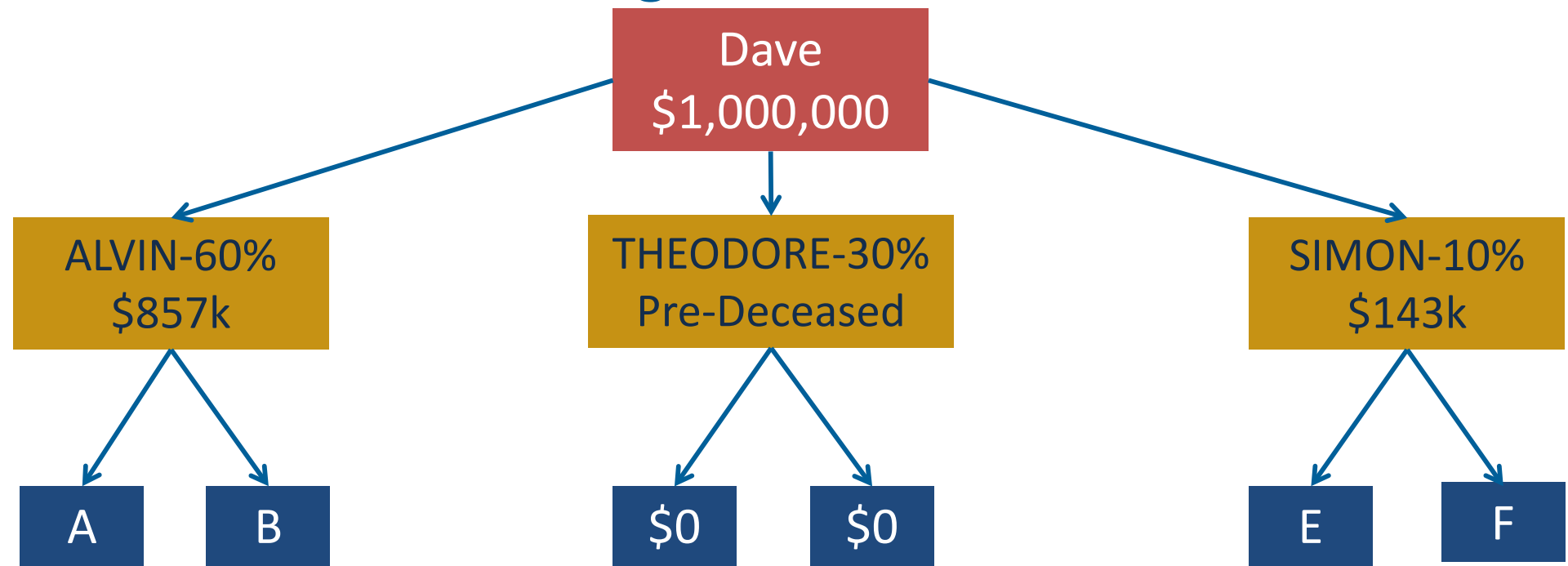




Per Charles Schwab, Merrill Lynch, and T. Rowe Price IRA Agreements:

- The predeceased primary beneficiary's portion will be proportionately allocated among surviving primary beneficiaries.
- Contingent beneficiaries only receive distributions if NO primary beneficiaries survive the Account Contributor.

Per Charles Schwab, Merrill Lynch, and T. Rowe Price IRA Agreements:

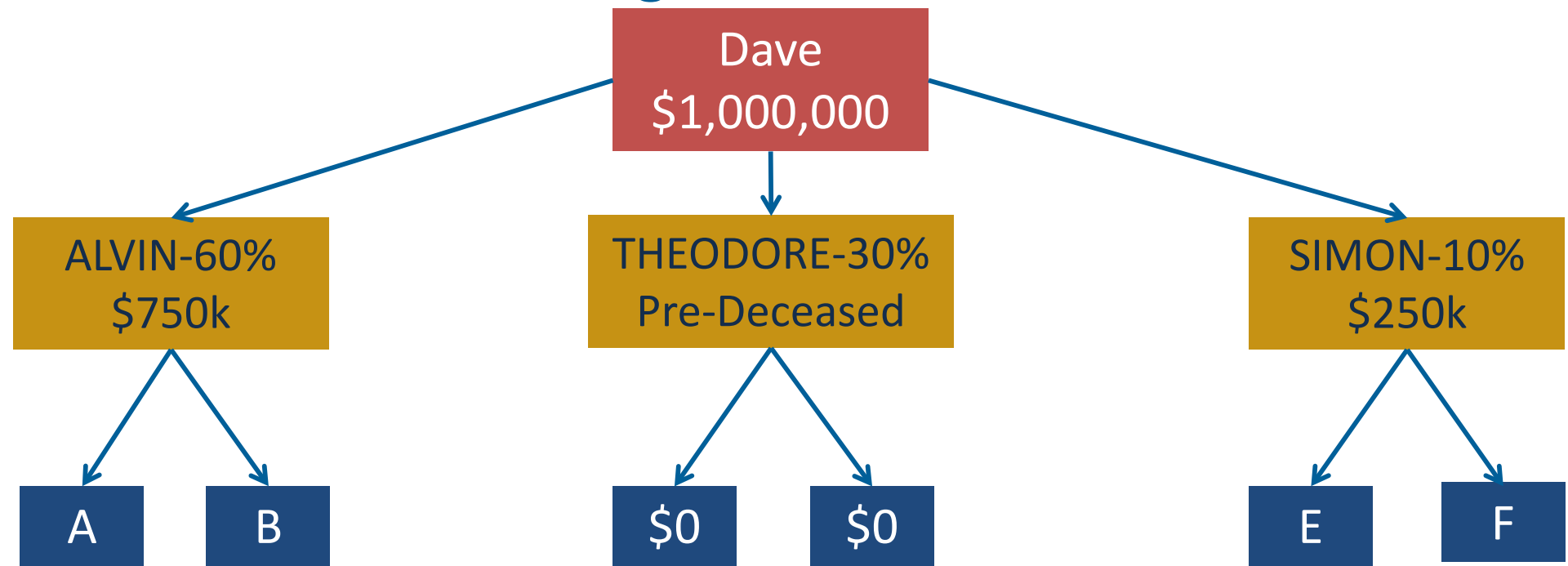




Per Fidelity and Morgan Stanley Smith Barney IRA Agreements:

- The predeceased primary beneficiary' portion will be divided equally among surviving primary beneficiaries
- Contingent beneficiaries only receive distributions if no primary beneficiaries survive the Account contributor.

Per Charles Schwab, Merrill Lynch, and T. Rowe Price IRA Agreements:



Vanguard

- Account Contributor must choose on application: per stirpes or equally to surviving beneficiaries.
- Must make election as it pertains to surviving primary and surviving contingent beneficiaries.



Custodians - Conclusion

Important Points:

- Ensure your Financial PoA complies with the new law
- Review and consider updating IRA beneficiary designations every few years
- Specifically name all primary and contingent beneficiaries
- Use per stirpes language on the beneficiary form, unless the client wishes otherwise
- Caution with **Springing powers**
- Is it **Durable**?

****Use the Custodians Forms if possible!****

What Happens When an IRA Owner is Alive



Required Minimum Distributions

Must begin by April 1st of year following the year client turns 70 ½:

- Based on Uniform Lifetime Table
- If spouse is more than 10 years younger, use Joint Life Table
- RMDs payable to IRA Owner
- Calculated based on year-end value
- RMDs for 401(k)s can be delayed if client is still working
- Can satisfy using Qualified Charitable Distribution

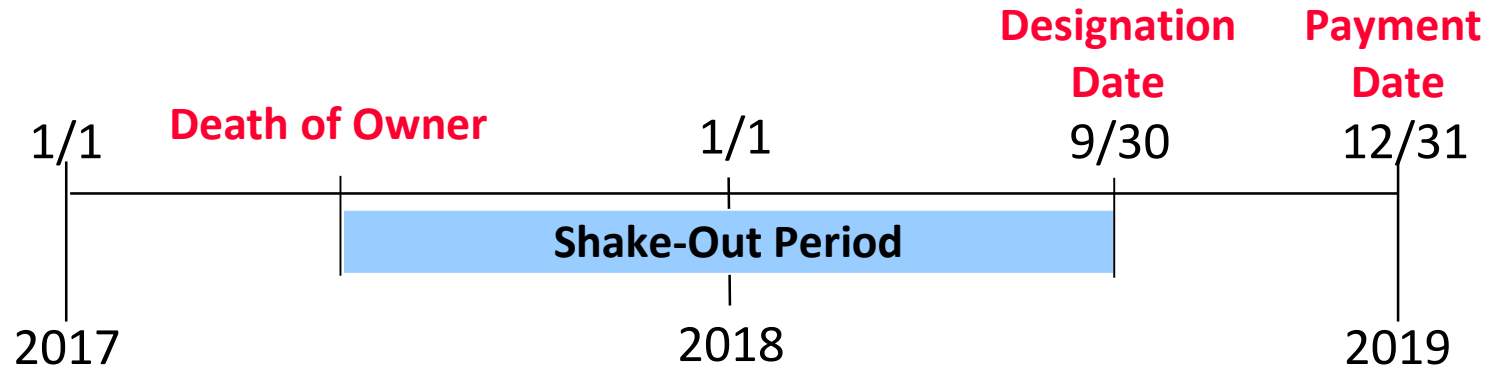
Required Minimum Distributions

- No RMDs required for Roth IRAs during the life of the Roth IRA Owner
- Numerous online tools, excel templates, or software solutions

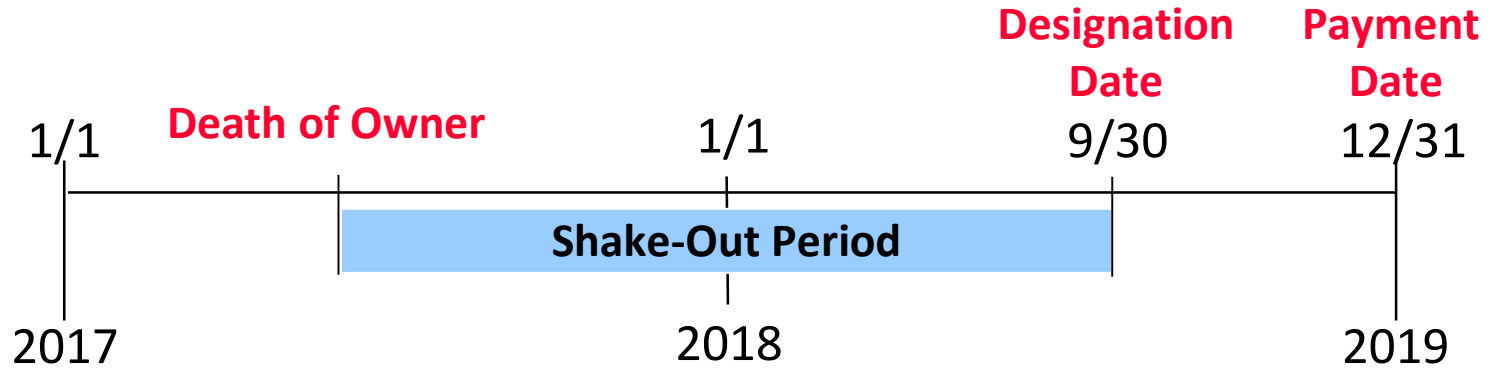
****50% Federal Excise Tax for undistributed RMDs!****

What Happens When an IRA Owner Dies

“Designation Date”, “Shake-Out Period”, “Payment Date” and “Disclaimer Date”



When to Separate The Accounts



IRA – At Death

Don Smith, IRA, Deceased,
FBO Jane Smith and Cindy Smith,
Beneficiaries

\$600,000

$$1/20.2 = 4.950\%$$

Jane, Age 65
\$14,851

Cindy, Age 5
\$14,851

Separating the Accounts Makes a Big Difference

Don Smith IRA, Deceased,
FBO Jane Smith,
Beneficiary

\$300,000

\downarrow $1/20.2 = 4.950\%$

Jane, Age 65
\$14,851

Don Smith, IRA, Deceased,
FBO Cindy Smith,
Beneficiary

\$300,000

\downarrow $1/76.7 = 1.304\%$

Cindy, Age 5
\$3,911

IRA Distribution Planning

Fractional vs. Pecuniary Bequest

Fractional Bequest:	Fractional Amount	½, or 50%
Pecuniary Bequest:	Fixed Dollar	\$100,000

IRA Distribution Planning

Separate Share Treatment

Example: \$1,000,000 in an IRA.
IRA owner dies at age 68.

Beneficiaries: Uncle Joe, Age 75
 Son - Tom, Age 42
 Son - Sam, Age 35

IRA Distribution Planning

Fractional Bequests To Individuals

Example: “I leave 20% of my IRA to Uncle Joe, 40% to my son Tom and 40% to my son Sam.”

Result: Each life expectancy can stand on its own for RMD purposes, as long as separate accounts are established by the 12/31 Payment Date.

IRA Distribution Planning

Fractional Bequests To Individuals & Charity

Example: “I leave 20% of my IRA to First Church, 40% to my son Tom and 40% to my son Sam.”

Result: Each life expectancy can stand on its own for RMD purposes, as long as separate accounts are established by the 9/30 Designation Date.



IRA Distribution Planning - Pecuniary Bequests To Charity With Fractional Bequests To Individuals

Example: “I leave \$200,000 of my IRA to First Church. The remaining balance should then be split as follows: 50% of the remaining balance to my son Tom, and 50% of the remaining balance to my son Sam.”

Result: Each son’s life expectancy can stand on it’s own ONLY if the charity is cashed out by the 9/30 Designation Date and the IRA is split into separate accounts for Tom and Sam by 12/31. Otherwise, the 5-year rule will apply to the whole IRA!

IRA Distribution Planning

Pecuniary Bequests To Individuals

Example: “I leave \$200,000 of my IRA to Uncle Joe and the balance in equal shares to my 2 children.”

Result: Children will have to base their distributions on Uncle Joe’s life expectancy unless:

- A. Uncle Joe’s portion is paid out to him (100% taxable income—Ouch!) before the 9/30 Designation Date, or
- B. Uncle Joe and the kids agree to share, pro-rata, in all gains and losses from the IRA owner’s date of death. (Martin Silfen, IRA expert, thinks this works).



IRA Magic Class 101

How to make a pecuniary bequest look like a fractional bequest:

Example: Numerator equals \$200,000

Denominator equals “IRA value on date of death”

(Assume \$1,000,000)

Sample Beneficiary Wording

I leave a fractional share of my IRA to Children's Healthcare of Atlanta, Atlanta, GA, where the numerator equals \$200,000 and the denominator equals the value of the IRA on my date of death, and

I leave a fractional share of my IRA to my granddaughter, Sophia Brown, if she survives me, where the numerator equals \$50,000 and the denominator equals the value of the IRA on my date of death, and

100% of the account balance in such IRA remaining after making any of the foregoing distributions shall be divided into separate accounts, one account for each child of mine, Isabella Brown and Corey Brown (on Brightworth form their DOB, SS#, per stirpes and UTMA language follows.....).

The Bottom Line

If Pecuniary: Make sure all pecuniary bequests are **cashed out** by the 9/30 Designation Date.

If Fractional: Make sure all fractional bequests to charities are divided into a separate account by the 9/30 Designation Date.

Few More Practical Tips



Spouse is Listed as Beneficiary

Spousal Rollover

**Spouse's Inherited IRA
(No Rollover)**



Spouse as Listed as Beneficiary

Important Points:

Inherited IRAs provide much more flexibility for young spouse beneficiaries (i.e., spouse beneficiaries who are under age 59 ½) than spousal rollovers

401(k) – Must waive the right to be Primary

IRA – Does NOT have to waive the right to be Primary

Unless community property state

RMD at Death – Keep in Mind...

Important Point:

In the year of the IRA owner's death, the RMD is payable to the beneficiary, not the IRA owner's estate, if it hasn't already been taken.

Income in Respect of a Decedent - IRD

Have Taxable Estates at Death

The 691(c) Deduction – Allows an IRD Recipient to claim a miscellaneous itemized deduction for the attributable Federal Estate Taxes.

IRD

Important Point:

Even if the beneficiary did not pay any of the estate taxes attributable to the IRA, they are still entitled to claim the IRD deduction on their income tax return!



Protection of Assets in Inherited IRAs

Important Point:

The Supreme Court held that assets in an Inherited IRA for a non-spouse beneficiary no longer constitute retirement funds for bankruptcy purposes

****Consider a trust structure for Inherited IRAs if of sufficient size****

Naming a Charity as Beneficiary

Naming a Charity as Beneficiary of an IRA

- Decedent's estate can take a charitable deduction for estate tax
- Charity does not pay ordinary income tax on the distributions from the IRA (whereas a non-charitable beneficiary DOES!)
- If IRA fulfills charitable bequest, assets going to other beneficiaries may have stepped-up basis



Naming a Charity as Beneficiary of an IRA

- Name a charity (or multiple) outright as primary beneficiary
- Name a charity (or multiple) as contingent beneficiary and allow the primary to disclaim the assets
- Name a Donor-Advised Fund or Charitable Trust as beneficiary
- If planning partial charitable bequest, consider splitting the IRA before death to avoid potential distribution issues

IRAs and Charity

Important Points:

If your client is charitably inclined and has an IRA, in many cases the IRA is the optimal asset to bequeath to charity.

There are several strategies that can be used to provide additional flexibility while the participant is alive and after death.

If alternative assets are available, don't leave Roth funds to charity!



Charitable IRA Rollover, or “QCDs”

- Know as Qualified Charitable Distributions
- Now permanent
- Allows direct transfer of up to \$100,000 per year from an IRA to a charity
- Now even more attractive with new tax law!



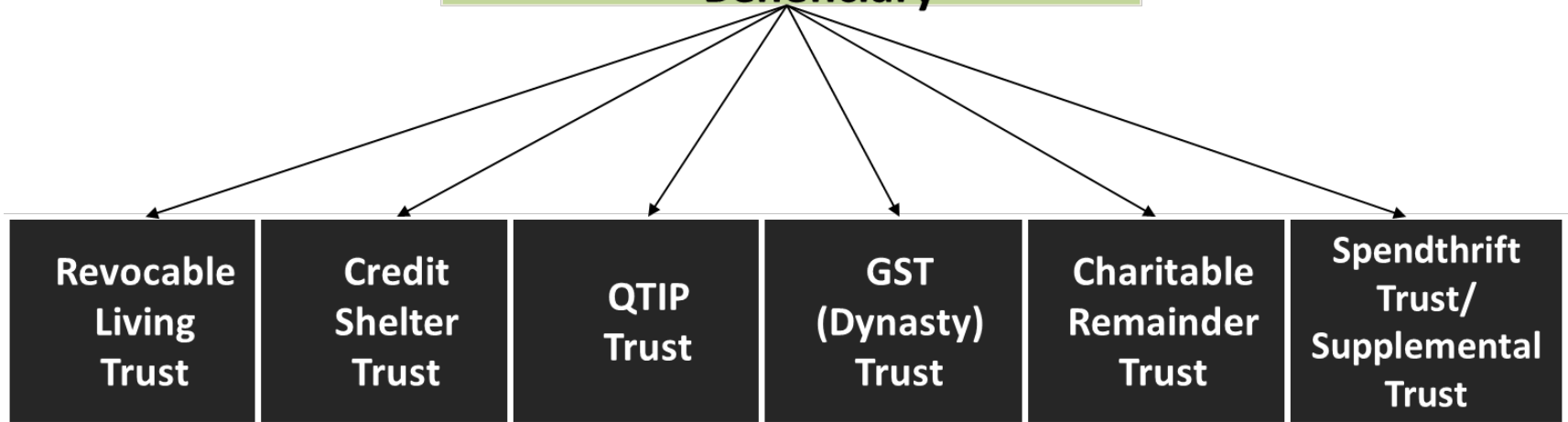
Charitable IRA Rollover, or “QCDs”

- Owner must be 70 & ½ or older
- Distributions can be used to satisfy RMD
- Distribution excluded from income and no itemized deduction allowed

Naming a Trust as a Beneficiary

Types of Trusts Commonly Named as Beneficiaries of IRAs

**Don Smith, IRA, Deceased, FBO,
“The Trust Named Below” As
Beneficiary**



Trusts Named as IRA Beneficiaries

**Don Smith IRA, Deceased,
FBO XYZ Bank as Trustee of
The Don Smith IRA Benefits Trust
\$642,000**

Trusts Named as IRA Beneficiaries

IRA

**Don Smith IRA, Deceased,
FBO XYZ Bank as Trustee of
The Don Smith IRA Benefits Trust
\$642,000**

Trust

**XYZ Bank as Trustee of
The Don Smith IRA Benefits Trust**

Trusts Named as IRA Beneficiaries

IRA

Don Smith IRA, Deceased,
FBO XYZ Bank as Trustee of
The Don Smith IRA Benefits Trust
\$642,000

Trust

XYZ Bank as Trustee of
The Don Smith IRA Benefits Trust
(Only IRA Distributions Are Paid to the Trust!!!)

Alan

Julia

Trusts Named as IRA Beneficiaries

To be able to use each beneficiary's life expectancy for payout purposes to get a "stretch-out"



Trusts Named As IRA Beneficiaries

Question:

What if the trust is not a “Qualifying Trust” for see-through purposes?

Answer:

The trust beneficiaries are treated as “non-humans” for payout purposes. 5-Year Rule!



IRA Distribution Rules at Death

No Individual Beneficiary

Death Occurs:

	Pre-RBD	Post-RBD
Payout Period:	“5 Year Rule”	Single Life Expectancy of IRA Owner in the year of death, and reduced by one for each succeeding year thereafter.

Qualifying Trusts vs. Non-Qualifying Trusts

Joe Thomas and Sam Parsons have the following in common:

1. Both age 80
2. Both have \$1mm in an IRA
3. Both have a 20 year-old granddaughter who is the beneficiary of a trust
4. Joe and Sam name their respective trusts as beneficiary of their IRA
5. Both die in 2017
6. IRAs grow at 7% per year*

**For illustrative purposes only. Does not represent a specific investment or guarantee of future returns.*

Qualifying Trusts vs. Non-Qualifying Trusts

They have one item that is different:

Joe's trust qualifies for stretch-out, and Sam's trust does not!

Qualifying Trusts vs. Non-Qualifying Trusts

Outcome:

Joe's trust pays out based on his granddaughter's life expectancy. Assuming she lives to age 70, the trust would have distributed about \$6.6M and would have about \$5.9M remaining.

Sam's trust makes distributions based on his life expectancy and is depleted in about 10 years. (Estimated distributions are \$1.4M)

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Qualifying Trusts Named As IRA Beneficiaries

Four Requirements:

1. Trust is valid under state law.
2. Trust is irrevocable upon death of owner.
3. Beneficiaries of the trust are identifiable from the trust instrument.
4. Documentation requirement is satisfied.

Qualifying Trusts Named As IRA Beneficiaries

At Least Three Additional Requirements:

1. All trust beneficiaries are individuals.
2. A person may have only limited power to change the beneficiary after the Designation Date.
3. Payments of estate taxes, debts and administrations should be made prior to Designation Date.



Trusts Named As IRA Beneficiaries

Two Basic Categories:

Conduit Trust: All distributions made to the trust from the IRA are immediately distributed to the beneficiary.

Accumulation Trust: IRA distributions and other trust assets may be accumulated for a beneficiary or beneficiaries.

Ex: “Health, Education, Maintenance, and Support”

Trusts Named As IRA Beneficiaries

TAKE **CAUTION** WHEN USING
ACCUMULATION TRUSTS!



- IRS Ruling: “Contingent beneficiaries must be considered in determining the beneficiary with the shortest life expectancy.”
- Failure of Beneficiaries must be considered.

Conduit vs. Accumulation

The Bottom Line:

- A Conduit Trust has been blessed by the IRS and is a “safe” way to go.
- An expert is needed if a client wants to name an Accumulation Trust as beneficiary



Drafting Styles

- Integrated in Will/Rev Trust vs Stand Alone Trust
- Qualifies per rules vs walkthrough requirements and specify
- Boilerplate Retirement Language vs Naming Specific Article
- Pre-Separate Trusts vs Powers to create subtrusts

Questions



Available Resources

Software:

- *Brentmark Software* - This company has been developing retirement planning software for years. www.Brentmark.com

Websites:

- www.ataxplan.com Natalie Choate's website— Great Q&A Section
- www.rothira.com Great website on the Roth IRA
- www.ira-help.com Ed Slott's website

Available Resources

Books / Newsletters:

- *Life and Death Planning for Retirement Benefits*, by Natalie B. Choate, www.ataxplan.com
- *Ed Slott's IRA Advisor*, by Ed Slott, CPA, Published monthly by E. Slott & Co. (800)663-1340. www.ira-help.com

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About Brightworth

- Brightworth provides an institutional global investment solution to individuals, trusts, foundations and endowments, currently managing over \$3 billion for our clients.
- Brightworth has an experienced professional team of wealth advisors, investment analysts, financial planners, and client service staff.
- Brightworth has been built to last, with a business succession plan in place to assure continuing independence with 17 partners and over 35 staff members.

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