

ESTATE PLANNING ALERT!

A Special Publication of

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IRAs, Retirement Plans and Life Insurance

Most of our clients have a substantial portion of their total wealth in the form of IRAs, qualified retirement plans and life insurance policies. These so-called "non probate assets" are not controlled by your Will. Instead, when you die, they pass directly to the person named in the beneficiary designation. As a result, it is vitally important that all of your beneficiary designations be worded properly to coordinate with your Will; otherwise important tax and other estate planning benefits can be impaired or lost completely.

When someone passes away, the surviving spouse and other family members are often given lots of advice by well meaning friends and relatives. "Pay off the mortgage." "Take a trip." "Cash in the life insurance and get that money in the bank." "Be sure to withdraw that retirement money and roll it over into an IRA." They may have your best interests at heart but they are often unaware that their advice may have disastrous income or estate tax consequences. In most cases, none of the things they suggest needs to be done right away; in many cases, they shouldn't be done at all. *Frequently, the best advice is "do nothing until you have spoken with competent estate planning counsel."*

For example, there is a very important post-death planning device called a "qualified disclaimer" that we often recommend to our clients. The goal of the disclaimer is generally to maximize the tax savings potential of the bypass trust created in the Will of the first spouse to die. By making a qualified disclaimer according to IRS rules, the surviving spouse effectively transfers the disclaimed assets to the bypass trust, but is not treated as making a taxable transfer.

Here's the catch: In order for the disclaimer to qualify, the surviving spouse must not have assumed any aspect of ownership of the asset.

For example, if the surviving spouse files a claim with the insurance company, receives a check for the insurance proceeds, and places that check in her personal account, then the surviving spouse has accepted that gift and the disclaimer option is lost. Likewise, if the surviving spouse is named as the primary beneficiary of an IRA and, following the first spouse's death, does a "spousal IRA rollover" of the deceased spouse's IRA into a new IRA in his or her name, the spouse has effectively accepted that gift and the disclaimer option is again precluded. Thus, following the death of the first spouse, *before* changing title on an account, *before* applying for insurance benefits, *before* making an IRA rollover, the

surviving spouse should contact us (or other qualified advisors) to discuss whether a disclaimer might be worthwhile.

There's one more catch: the disclaimer will work properly only if the beneficiary designations and the Will have the necessary wording in place before death. It is not enough for the surviving spouse to be listed as the primary beneficiary on a beneficiary designation form; the "Trustee in the Will of [the first spouse]" must also be listed as the contingent (or secondary) beneficiary. Some people list "the estate of the [participant/employee]" or "the trust in [participant's/employee's] Will", or "Will of the [participant/employee]" as contingent beneficiary. This is not at all the same as naming the "trustee in the participant's/employee's Will". Further, some people fail to list any contingent beneficiary at all. All of these technical problems will result in the disclaimer option being unavailable, ineffective or problematic.

So, what are we recommending?

- Make sure that all of your beneficiary designations for all of your non-probate assets are in conformity with the written beneficiary designation wording we provided to you when your estate planning was being done. If you cannot locate the written instructions previously provided to you, please call our office and we will mail, fax or e-mail those instructions to you.
- Confirm that your financial institution has properly noted your beneficiary designation wording in their records. Again, be careful of slight changes in wording made by the financial institution that could have a substantial, negative effect.

- Make sure that your financial institution has not lost your beneficiary designation form (this has been happening lately as a result of mergers).
- Make sure that you have not elected to recalculate both your life expectancy and your spouse's life expectancy with respect to the required minimum distributions from qualified retirement plans and IRAs. For more discussion of this issue, see the July 31, 2000 issue of our quarterly Newsletter. Copies of this Newsletter can be found on our website, www.drjg.com.
- If you have named multiple beneficiaries of your IRA or qualified plan benefits, please call us to discuss this issue immediately. All of the beneficiaries younger than the oldest beneficiary will have to use the oldest beneficiary's life expectancy for their own distributions unless you have used special "separate account" language taken from the United States Treasury Regulations in your beneficiary designation form.
- If your spouse passes away, please do not change the title on any assets, file claim forms to receive non-probate benefits (unless they are of a very modest value), roll over IRAs, or otherwise sign documents that might preclude the disclaimer option before you have had an opportunity to speak with us (or with another qualified advisor).
- Please call us as soon as possible after your spouse has passed away to discuss the disclaimer option, and other important post-death estate planning issues.

We hope that this information is helpful to you. If you have any questions, please do not hesitate to call us. Our fee for an estate plan checkup is typically \$250, and that is frequently sufficient to confirm or correct your beneficiary designations. Even in unusual cases where the fee may be more, we can usually provide a fee quote or fee estimate at the conclusion of the checkup meeting so that you can decide whether you wish to proceed. Please let us know how we may be of assistance to you.

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