# Life After Death (Maybe)

## Dealing With IRAs After The Participant's Death
## When Things Are Not As They Seemed

Sara Goldman Curley, Esq. &
John A. McBrine, Esq.

December 5, 2017

# Laying The Groundwork

## During participant's lifetime:

- Required Beginning Date
- Minimum Required Distributions ("MRD")
- Consequence to missed distributions

## On participant's death:

- Rule for year of death
- Four different payout methods after the year of death, depending on the identity of the beneficiary and whether the participant died before or after his Required Beginning Date.

## Designated Beneficiary

- "any individual designated as a beneficiary by the employee". See IRC § 401(a)(9)(E). See also Treas. Reg. § 1.401(a)(9)-4, A-1.

- "General rule. In order to be a designated beneficiary, an individual must be a beneficiary as of the date of death. Except as provided in paragraph (b) and §1.401(a)(9)-6, the employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of the employee's death." Treas. Reg. § 1.401(a)(9)-4, A-4(a). This deadline is known by practitioners as the "**Beneficiary Finalization Date**".

Source: Natalie B. Choate, Life and Death Planning for Retirement Benefits (7th ed. 2011) ¶1.7.03

# Naming spouse as beneficiary of retirement plans

- Spousal rollover of inherited benefits
- Election to treat decedent's IRS as spouse's own
- Leaving benefits in inherited plan
    - Special rule if participant died before required beginning date
    - Recalculation method

# Naming a trust as beneficiary of retirement plans

- Why are trusts named as beneficiaries?
- Requirements for a “see through” trust
  (Treas. Reg. § 1.401(a)(9)-4, A-5(b))
  - Valid under state law
  - Irrevocable
  - Identifiable beneficiaries
  - Documentation
  - Beneficiaries are individuals
- Types of “see through” trusts
  - Conduit trusts
  - Accumulation trusts

# Income Tax Issues

For trust's distribution of income in respect of a decedent (IRD) to carry out income tax to beneficiary as part of DNI:

- Trust must authorize the distribution
- Income must be required to be, or must actually be, distributed, in year received
- Allocation of DNI when separate share rule applies
- Transfer of the plan does not carry out DNI
- No DNI deduction for distribution to charity
- No DNI deduction for certain pecuniary bequests

Source: Natalie B. Choate, Life and Death Planning for Retirement Benefits (7th ed. 2011) ¶16.5.02

# For charitable deduction under IRC § 642(c):

- Applicability and effect of separate share rule under § 663(c)
- Taxable year income is received and paid out
- “Pursuant to the governing instrument”
- Out of gross income - tracing
- Out of gross income – authorization
- Out of a particular class of income

Source: Natalie B. Choate, Life and Death Planning for Retirement Benefits (7th ed. 2011) ¶7.4.03

# What could possibly go wrong?

Mishaps on the planning side:

Drafting the beneficiary designation

- Nonexistent or out of date
- Ambiguous provisions

Complications from naming a trust as beneficiary

- Beneficiary is a trust for surviving spouse
- Beneficiary is a trust for children
- Beneficiary is a trust with pecuniary devises

Potential problems with boilerplate trust language when IRA payable to trust:

- Prohibition on paying retirement benefits to charity
- Provisions dealing with income in respect of a decedent (“IRD”)
- Direction that trustee must withdraw MRD
- Statement of intent to have life expectancy of beneficiaries used to calculate MRDs

Possible solutions to consider:

- Non-judicial settlement agreements and judicial interpretation
- Invalid beneficiary designation
- Distribution of IRA intact
- Timing/fiscal year selection
- Disclaimers
- Spousal rollover “through” an estate and/or trust

Mishaps on administration:

- Nothing happens (nobody takes MRDs)
- MRDs are incorrectly determined

Possible solutions to consider:

- Request waiver of penalty (Form 5329)
- Lawsuit

# Takeaways

## Planning

- Avoid DIY beneficiary designations
- Be careful when naming a trust as beneficiary

## Administration

- Identify the beneficiary
- Calendar important dates and act early
- Be careful in communicating with the plan administrator and establish a clear understanding of responsibilities