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A Closer Look at IRA Protection Trusts

1. What is an IRA Protection Trust?

The IRA Protection Trust[1] is a sophisticated estate planning technique intended to coordinate the administration and distribution of IRA assets after death. While generally reserved for persons with more than $100,000 in tax-deferred retirement accounts[2], the IRA Protection Trust has become an integral component of comprehensive estate planning. An IRA Protection Trust formalizes the availability of the income tax-saving "Stretch-out" rules and permits extensive post-death contingency planning and asset protection planning.

Will-based estate planning fails to adequately address the complex issues relating to tax-deferred retirement accounts, including the IRA, 401(k), and 403(b). The beneficiaries of a tax-deferred retirement account are named on a separate beneficiary designation form, not a will. Even when completed accurately, the pre-printed options on a beneficiary designation form fail to provide all of the planning benefits available under current law.

A revocable living trust can be used to address some of the issues, but not very well. Think of the difference between a family mini-van and a Formula One racing car. A living trust is like the mini-van. It is utilitarian in design and intended to carry the entire family, pets, groceries, luggage, and furniture in a safe, reliable manner. An IRA Protection Trust is like the racing car. It is designed to do one thing well – win the race. It has very specific design elements that make it a race car. No matter how good the engine is, the mini-van is still not going to win races. If you try to retro-fit the race car into a vehicle that transports the entire family, pets, groceries, etc., then it will not function as well as the mini-van would (nor will it work as a race car).

The lesson here is to respect the unique nature of your tax-deferred retirement accounts. Your estate plan may need a "stand-alone" retirement plan trust – the race car – to achieve all of your estate planning objectives.

[1] This technique may be referred to as an IRA Protection Trust, IRA Retirement Plan Trust, IRA Inheritance Trust, or simply an IRA Trust. All of the terms describe the same IRS-approved strategy. The term "IRA Inheritance Trust" is trademarked by California attorney Philip J. Kavesh, who is a leading proponent of the strategy.
[2] The author suggests using $100,000 multiplied by the number of non-spouse beneficiaries as a minimum to justify the cost and added complexity. For example a married couple with two children should consider using the strategy if tax-deferred retirement accounts exceed $200,000 in value.

2. What are the benefits of an IRA Protection Trust?

Typically, an individual beneficiary of an IRA has the option to take a lump sum distribution[3] or take smaller required minimum distributions ("RMDs")[4] each year, which are calculated using the beneficiary's life expectancy. The latter is referred to as a "Stretch-out" because the account is distributed gradually over many years. The Stretch-out is generally a better choice because it allows for continued income tax deferral inside the account. An IRA Protection Trust establishes the Stretch-out for the individual trust beneficiaries by satisfying the various requirements found in the Internal Revenue Code and its accompanying Treasury regulations. In other words, the IRA Protection Trust is a technique that seeks to compel long term income tax deferral rather than assuming the beneficiaries will elect it.

Depending on the specific provisions of the trust document and beneficiary designation form, implementing an IRA Protection Trust can provide the following benefits:

(a) From the account owner's perspective

- Account owner can compel long term income tax deferral rather than hope the beneficiary elects it.

- Account owner can establish a post-death contingency plan in the event of a beneficiary's premature death, divorce, or extended mental incapacity.

- Account owner can redirect remaining balance at surviving spouse's death to account owner's children from a prior marriage, rather than spouse's children or new spouse due to remarriage.

- Account owner can provide logical argument why inheritance has been restricted for an irresponsible child because trust appears to treat all children equally whether responsible or not.

(b) From the beneficiary's perspective

- Beneficiary receives a much larger inheritance by leveraging the income tax deferral over a long period of time.

- Beneficiary inherits an asset that is protected in all 50 states from ex-spouses, personal judgment creditors, and bankruptcy trustees.

- Beneficiary receives an inheritance fund that may pass to the beneficiary's heirs free of estate tax at the beneficiary's death.

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[3] The lump sum distribution would be taxable to the beneficiary if coming from a traditional IRA, although not if coming from a Roth IRA.
[4] Other IRA educational resources may refer to RMDs as Minimum Required Distributions or MRDs.

- Beneficiary will not lose eligibility for needs-based government benefit programs (if drafted and managed as a supplemental needs trust).

3. How is the IRA Protection Trust implemented?

An IRA Protection Trust is a legal document that may be named as beneficiary of tax-deferred retirement accounts instead of naming an individual person as beneficiary. In addition to allocating retirement account assets among named trust beneficiaries after the account owner's death, the document establishes the framework for continued income tax-deferral, post-death contingency planning, and asset protection for the trust beneficiaries. The trust is designed to give your trustee specific instructions about how to administer your tax-deferred retirement accounts and coordinate their distribution with the rest of your estate plan. The document may include customized post-death contingency options, which a standard beneficiary designation form cannot. For example, you can designate your grandchildren to inherit the remaining assets in your IRA should your daughter die before the account is depleted, instead of it going by default to your daughter's spouse.

After your death your retirement account will be converted (or if necessary, "rolled over") to an IRA, also known as an inherited IRA. The document will give instructions regarding how and when withdrawals should be made from the inherited IRA and then distributed to your trust beneficiaries. The document will also include successor trustee provisions so you know who will be carrying out your wishes. The trustee is responsible for making sure that all requirements are met for having an inherited IRA payable to a trust. If there are multiple beneficiaries of the trust, then the trustee may direct the custodian to divide the account into a separate account for each beneficiary.

As soon as practicable the IRA custodian will begin to calculate RMDs. The custodian will either send the RMD amount to the trustee or directly to the beneficiaries depending on the provisions in your trust document.

4. Does the IRA Protection Trust provide any asset protection?

Yes. This is a key feature of IRA Protection Trusts. During your lifetime your retirement accounts are protected from most creditors by a combination of federal and state laws. Federal law (known as "ERISA") protects the assets in a qualified retirement plan. This includes all 401(k), 403(b), and TSP accounts. Arizona law goes further by protecting the assets in an Individual Retirement Arrangement ("IRA") by statute.[5]

Arizona law goes even further yet by protecting IRA assets from a beneficiary's creditors after the original account owner's death, provided the account is treated as an inherited IRA. This result is supported by an important Arizona bankruptcy case,[6] but later the US Supreme Court overruled a portion of the case in *Clark v. Rameker* (June 12, 2014). The

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[5] See A.R.S. 33-1126(B).
[6] See In re Thiem, Bktcy Ct AZ 1/19/2011, 107 AFTR 2d 2011-529.

Clark case ruled that an inherited IRA is not protected in a bankruptcy proceeding, although the court did not specifically address whether a conflicting state statute might change the result. Therefore, the Arizona statute continues to protect an Arizona resident's inherited IRA assets from seizure and attachment outside the bankruptcy context (from personal judgment creditors) and also in bankruptcy (although there is some minor uncertainty about this latter point). This makes Arizona one of only eight states that offers this protection. The others are Alaska, Florida, Idaho, Missouri, Ohio, North Carolina, and Texas.

However, any retirement account owner with beneficiaries living in other states – or who might become a resident of another state – should be aware that an inherited IRA may be exposed to the beneficiary's bankruptcy creditors and to the beneficiary's personal judgment creditors during a lawsuit. The IRA Protection Trust addresses this concern by incorporating powerful legal provisions including a spendthrift clause, purely discretionary distribution provisions, and optional use of an independent trustee. In addition, most IRA Protection Trusts include trust protector provisions to adjust for law changes after the account owner's death. All of these combine to provide significantly enhanced creditor protection for the beneficiaries no matter where they live.

Notwithstanding the above, an IRA Protection Trust does have a weak spot in regards to asset protection. An inherited IRA – whether paid to an IRA Protection Trust or not – requires at least the withdrawal of RMDs each year. If paid outright to an individual trust beneficiary, the RMDs are exposed to the beneficiary's creditors. This is usually the case because most IRA Protection Trusts are drafted by default with conduit provisions. This means that RMDs are forwarded immediately to the beneficiaries and not retained by the trustee. The IRS has specifically approved this arrangement, so it is commonly used when there are no known clear and present dangers. However, it is possible to protect the RMDs if the trust is drafted with accumulation provisions. This alternative permits a trustee to retain – accumulate – the RMDs inside a separate cash or brokerage account owned by the trust instead of giving them outright to the beneficiary. The accumulated assets are secure from most creditors.

Thus, there are two types of IRA Protection Trusts: conduit and accumulation. While both provide asset protection for the beneficiaries, the accumulation provisions enhance the level of protection. Accumulation provisions are appropriate when the intended beneficiary is receiving government needs-based benefits, or shows evidence of being a spendthrift, or is involved in ongoing litigation, or is in a fragile marriage, or is recovering from a bankruptcy, or works in a high risk profession for getting sued. An IRA Protection Trust with accumulation provisions can protect both the IRA assets and the RMDs paid out each year.

The IRS has issued a ruling[7] suggesting it is possible to give an independent person (aka trust protector) the power to convert the provisions governing a beneficiary's interest in RMDs from conduit to accumulation. This "toggle" concept requires precise drafting and hinders some flexibility when choosing contingent beneficiaries.

[7] See PLR 200537044.

5. Do I lose any control of the IRA before I die?

No. The IRA Protection Trust is only named as beneficiary after death and will not change any aspects of your retirement planning during your lifetime. If you are married and you name each other as primary beneficiaries, nothing will change until both you and your spouse have died. While you are living you retain total control over the IRA investments, distributions, and choice of beneficiaries. You may withdraw all of the money and spend it on whatever you want. There are no restrictions.

6. Who manages the IRA account after my death?

Every trust is managed by a trustee. The IRA Protection Trust is no different. You will need to name a successor trustee in the trust document who will be responsible for administering the trust after your death. However, your successor trustee has no control over your IRA during your lifetime. The most important task of a successor trustee is to communicate with the IRA custodian after your death in order to set up the long term investment and distribution plan for the beneficiaries.

You may appoint anyone as successor trustee. The trustee is responsible for choosing the investment strategy, insuring that distributions are made in a timely and appropriate manner, and completing the trust's annual tax returns.

Many people appoint a younger family member or friend who is financially savvy and comfortable interacting with service professionals in the financial industry. Alternatively, you can appoint a professional trustee such as a trust company. Family members and friends may receive compensation for their work, although they rarely accept it. Professional trustees will charge an annual fee based on the value of the IRA, but the fee may be well worth the cost in order to avoid potential conflicts of interest among trust beneficiaries and to ensure the various IRS tax rules are met in a timely manner.

After the investment and distribution plan is established, your trust document might appoint a beneficiary as trustee of his or her own separate trust.[8] This is appropriate for responsible adult children who are unaware of any clear or present dangers to their inheritance (e.g., personal judgment creditors, bankruptcy, pending divorce). For a younger child, you might include a provision that permits the child to become trustee of his or her own trust when reaching a specific milestone, such as age 25 or graduation from college.

7. What typically happens to an IRA after the account owner's death?

Tax-deferred retirement accounts are not designed to serve as wealth transfer vehicles. They were created by Congress to encourage retirement savings, and lessen the burden on the social security system when people reach retirement age. Thus, the simplest

[8] This strategy also permits the beneficiary to manage the investments inside the beneficiary's inherited IRA sub-account.

distribution plan – and the one the federal government wants you to use – is to withdraw all of your retirement savings gradually during your retirement years and then die when your account reaches zero. However, as tax-deferred retirement accounts have become more popular during the last 25 years, it is more likely that you will have assets remaining in your retirement accounts when you die.[9] Thus, it is important that you be intentional when determining how you want to distribute your retirement accounts after death.

Before proceeding further, a summary of the *lifetime* distribution rules is in order. During your working years the federal government wants you to set aside a portion of your wages and other income into retirement savings. The federal government has established a tax policy that encourages savings by giving various tax breaks to those who are able to save. The most valuable tax break is that money invested through an IRA (or 401k, 403b, etc.) may grow income tax-deferred. Investment profits are reinvested without having to pay income tax on that profit each year. This tax-free compounding can permit extraordinary increases in value over a long period of time. But there is a catch.

The federal government does not provide this tax break for free. Uncle Sam wants his share eventually. Basically, there are two choices. You can pay the income tax up front; i.e., when you make the contribution (e.g., Roth IRA), or you will have to pay income tax on the amounts you withdraw later (e.g., Traditional IRA, 401k). If you take the second choice, you cannot wait forever. In fact, you must begin to take withdrawals during the year that you attain 70 1/2 years of age ("the required beginning date") even if you do not want or need them.[10] This is called the Required Minimum Distribution or RMD for short. Each subsequent year the tax law requires you to take a taxable distribution from your account. The initial RMD is small (in percentage), but the distributions will increase in size as you get older. The good news is that RMDs are usually small enough – especially before you reach your mid-80s – that with reasonable investment returns your account may continue to increase in value even though you are taking out RMDs each year.

The tax laws for retirement accounts are very complex. You probably do not need to know all the details, but you should always remember that RMDs are a good thing. They balance the federal government's objective of acquiring tax revenue and your objective to prevent your retirement savings from eroding too quickly. RMDs are so good that you should want your beneficiaries to use them too. Unfortunately, it is not as easy as you might hope. Remember the federal government never intended for tax-deferred retirement accounts to serve as wealth transfer vehicles. They were intended to supplement your Social Security benefits during your retirement years. In other words, if you end up being one of those people who still has a large amount of money in your IRA after death, then the federal government will expect your beneficiaries to withdraw the funds you did not need and close the account. Although we tend to focus primarily on *who* should be named as beneficiaries of a retirement account, a comprehensive estate

[9] Tax-deferred retirement accounts are also likely to be the last place you look when needing money during retirement (because of their tax-deferred nature).
[10] This is not true for Roth IRAs, which do not require withdrawals during lifetime.

plan will also consider *when* and *how* the beneficiaries must withdraw the assets. For example:

- How quickly must the beneficiary withdraw the money?
- What are the tax consequences to the beneficiary?
- Who inherits the account if a beneficiary dies while receiving RMDs?
- Are the distributions received by a beneficiary protected in the case of divorce or lawsuit?

When considering these issues there are some general rules that you need to know:

(a) Life expectancy tables

During your lifetime any RMDs are calculated using your attained age and an IRS tax table that estimates your remaining life expectancy. The older you are, the larger the RMD. After your death any RMDs for a named beneficiary who elects the Stretch-out option are based on the remaining life expectancy of the beneficiary. In general, the beneficiary must be an individual person to use the Stretch-out option.[11]

For example, assume Dad dies and leaves a $100,000 IRA to his 55 year old son. The IRS tax tables calculate the first year RMD using a 29.6 year life expectancy for the son (the "divisor"). Thus, the RMD is $3,378 ($100,000 divided by 29.6). In other words, if the investments in the IRA achieve a return higher than 3.38%, then the total value of the IRA will actually increase higher than $100,000 by the end of the year. In year two, the son's RMD will be calculated by dividing the remaining value of the IRA by 28.6 (29.6 less one each year).

(b) Benefits of naming spouse as beneficiary

For married couples, there are three tax advantages to naming a spouse as beneficiary. First, a surviving spouse can "rollover" the deceased spouse's IRA into the surviving spouse's IRA. This permits the spouse to wait until age 70 1/2 before starting to take RMDs.[12] Second, a surviving spouse calculates RMDs using a different, more favorable, IRS tax table. The RMDs will be smaller for a spouse than they would be for a similar age non-spouse beneficiary. Third, a surviving spouse's life expectancy is recalculated each year so that RMDs increase at a slower pace than they would for a non-spouse beneficiary. All three of these advantages permit

[11] When certain rules are met the IRS will permit the beneficiaries of a trust to qualify for the Stretch-out.
[12] Although the rollover may be best from a pure tax-savings perspective, a surviving spouse under age 59 1/2 might elect Ghost Life Expectancy or the Five Year Rule if there is an immediate need for funds.

a surviving spouse to achieve additional income tax deferral when compared to a non-spouse beneficiary.

(c) Payout options for non-spouse beneficiary

When a non-spouse individual is named as beneficiary and the account owner had already attained age 70 1/2 prior to death, the individual beneficiary has three basic choices for how to receive the IRA assets:

- Lump sum distribution (aka “Blow-out”)
- RMDs based on account owner’s remaining life expectancy (aka “Ghost Life Expectancy”)
- RMDs based on beneficiary’s life expectancy (aka “Stretch-out”)

If the account owner died before attaining the required beginning date (age 70 1/2), the Ghost Life Expectancy option is replaced by a different option, called the Five Year Rule. Under this rule, annual distributions are not required. The only requirement is that the entire IRA must be distributed by December 31 of the year that contains the fifth anniversary of the account owner’s death.

Accordingly, since Roth IRAs do not have a required beginning date for RMDs during the account owner’s lifetime, a Roth IRA beneficiary may choose the Five Year Rule, but not Ghost Life Expectancy.

The Stretch-out option means that the beneficiary must withdraw the RMD each year until the beneficiary dies or the IRA is depleted. The younger the beneficiary is, the smaller the RMD will be. Meanwhile the remaining IRA assets continue to be invested in a tax-deferred environment.

The Blow-out option means that the beneficiary’s entire share will be treated as taxable income if coming from a traditional IRA. The after-tax balance will be owned outright by the beneficiary. Future investment income is also taxable each year because the IRA no longer exists.

As mentioned previously, some retirement plans will not provide all the options available by law. Some employer sponsored retirement plans will mandate the Blow-out option, even though they are permitted to offer other options. Most plans will permit “trustee-to-trustee” transfers to an inherited IRA with another custodian, but some will not. On the other hand, almost all (but not all) major IRA custodians offer the Stretch-out option.

(d) Individual beneficiary has full control

When the beneficiary is an individual person (as opposed to a trust), there is nothing to prevent the beneficiary from depleting the account. Even if the Stretch-out option is chosen, the beneficiary may choose to withdraw more than the RMD at any time. This is an important point to remember if your named beneficiary might benefit from protections or restrictions of the inheritance. Your choice to name an individual as beneficiary may conflict with protective or restrictive provisions you included in your will or living trust.

8. How are the RMDs handled by an IRA Protection Trust?

An IRA Protection Trust may include conduit or accumulation provisions for each individual trust beneficiary. Conduit provisions require the trustee to distribute the RMDs from the inherited IRA outright to the beneficiary each year. The trust simply serves as a flow-through – conduit – when RMDs are paid out. Accumulation provisions permit the trustee to retain – accumulate – the RMDs inside a separate cash or brokerage account owned by the trust instead of paying them outright to the beneficiary. The difference is that accumulated assets may be protected in the event of divorce, litigation, bankruptcy, or when the RMDs might disqualify a beneficiary from needs-based government benefits.

Conduit provisions are simpler to administer and have been specifically approved by the IRS, so it is customary to include conduit provisions unless there is a clear and present danger in paying RMDs outright to a beneficiary. A commonly used hybrid approach is to permit an independent trust protector to convert the trust from conduit to accumulation if necessary.

9. Can I use an IRA Protection Trust with a 401(k) or 403(b) account?

Yes, but it requires a little more work by your Trustee.[13] Assuming the plan custodian does not permit the "Stretch-out" option, your Trustee will need to establish an Inherited IRA account prior to requesting a Trustee-to-Trustee transfer of the assets. The Trustee would need to select an IRA custodian that permits the "Stretch-out" option, which is available from most custodians but not all.

In practice it is unusual for someone to die while still contributing to a 401(k) or 403(b) type retirement plan. Most deceased persons have previously retired or left their place of employment for other reasons and moved their tax-deferred retirement savings to an IRA in order to obtain more investment options. Once the retirement savings are held in an IRA, the IRA Protection Trust is almost certain to achieve its desired objectives.

[13] See IRS Notice 2007-7.

10. What situations are best suited for IRA Protection Trusts?

The IRA Protection Trust may be inappropriate when retirement assets are less than $100,000 per non-spouse beneficiary. For example, if Husband and Wife have two children, then an IRA Protection Trust may not be worth the additional cost and complexity if their tax-deferred retirement assets are less than $200,000 total. Also, if you have little or no concern about whether your beneficiaries continue the income tax deferral of your retirement assets after death, and there is no need to restrict the inheritance, then just list beneficiaries by name on the standard beneficiary designation form.

The following list describes a wide variety of circumstances where an IRA Protection Trust does make a good option.

(a) Value of retirement accounts is unusually high

You may want to avoid having your large retirement account decimated by income taxes after your death. Even responsible children may not be able to resist the immediate gratification that comes with a lump sum inheritance, rather than choose the Stretch-out option which, over time, will produce a larger and safer inheritance. An IRA Protection Trust can assure that your beneficiaries take full advantage of the Stretch-out option.

(b) Beneficiaries have legitimate asset protection concerns

Depending on the state where the beneficiary lives, an inherited IRA may be seized by a beneficiary's personal judgment creditors or in bankruptcy. An IRA Protection Trust will provide enhanced creditor protection, especially useful if the beneficiary works in a high risk profession for getting sued.

(c) Beneficiary's marriage is unstable

If a beneficiary gets divorced, an inherited IRA may be treated as joint property that is available to the ex-spouse during settlement negotiations. Also, lump sum payouts and RMDs received by the beneficiary prior to the divorce are likely to be commingled with the other spouse's assets. An IRA Protection Trust will keep the IRA assets on your beneficiary's side of the ledger.

(d) Beneficiary is eligible for needs-based government benefits

IRA distributions to a beneficiary who receives needs-based government benefits (e.g., SSI or ALTCS) will likely be counted as income when determining eligibility. An IRA Protection Trust can be designed to supplement these government benefits without replacing them.

(e) Beneficiary has substance abuse, gambling, or criminal problems

Any inheritance left to beneficiaries with drug addictions or trouble with the law carries the risk of hurting the beneficiaries instead of helping them. This type of beneficiary is likely to choose a lump sum distribution and then use the windfall to finance a bad decision. An IRA Protection Trust transfers control to a responsible trustee.

(f) Beneficiary lacks money management skills

A naïve beneficiary may not realize the complex factors involved when choosing how to receive an Inherited IRA. An IRA Protection Trust grants a trustee and/or professional advisors an opportunity to educate the beneficiary.

(g) Account owner has children from a prior marriage

If you have children from a prior marriage, and leave your IRA outright to your surviving spouse, you may want to assure that the balance of your IRA, after your spouse's death, is distributed to your children by your first marriage, not the children or new spouse of your current spouse. An IRA Protection Trust can be designed to give your surviving spouse a lifetime income stream, but prevent changes to the ultimate beneficiaries.

(h) Account owner has taxable estate, but few assets to fund credit shelter trust

If you are married and have more than $11.4 million[14] of assets, and they consist primarily of retirement assets, then naming your spouse as primary beneficiary is likely to create a larger estate tax burden at the survivor's death. An IRA Protection Trust can be designed to shield a portion or all of the retirement assets from estate tax.

(i) Account owner wants to treat all children equally but one child is irresponsible

Sometimes a parent wants to prevent one child from receiving a lump sum inheritance without appearing to single out that child from the others. The IRA Protection Trust permits a parent to accomplish this discretely. The trust can be drafted to treat all children equally when its actual purpose is to mandate the Stretch-out option for the child who would never choose it voluntarily.

[14] This amount is shielded from federal estate tax for deaths in 2019. It is adjusted each year for inflation. Arizona does not have a state estate tax.

(j) Beneficiary is minor child

RMDs paid to a minor child are usually subject to the custodianship rules (UTMA) in the state where the child resides. However, the child's parent or guardian may choose a lump sum payment instead of the more tax favorable Stretch-out option. Under most state custodianship laws, a child is granted full control of UTMA assets upon attaining age 21. An IRA Protection Trust will continue to keep the money available for important needs, and retain the balance safely in trust, without the need for a custodianship.

11. What is the process to set up an IRA Protection Trust?

The first step is to consult with an estate planning attorney in order to tailor the trust to your needs. Upon signing of the trust document, the next step is to submit a new beneficiary designation to the account custodian and make sure it is accepted.

12. Can I make changes to the trust after it is established?

Yes. The trust is usually drafted as a revocable trust, which may be amended by the Trustor. However, even if the trust is drafted as an irrevocable trust (which may be preferred in some cases), nothing prevents the Trustor from submitting a new beneficiary designation.

13. Why does my financial advisor question whether this works?

A common objection to the naming of a trust as beneficiary of a retirement account is that it will spoil the possibility of continued income tax deferral, which is correct if the trust document fails to address the issue properly. In general, a trust does not qualify for use of the "Stretch-out" option (aka life expectancy payout method) because it is not an individual with a life expectancy. In order to make a trust qualify, the trust must meet specific requirements. If they are met, then the IRS permits the account custodian to "look through" the trust to the beneficiaries and use their life expectancies to calculate the RMDs. When drafted correctly, it is perfectly acceptable to name a trust as beneficiary. The document must comply with all the appropriate tax rules, but otherwise there are no restrictions on what it may provide, other than what the custodian will approve.

Although this is a common estate planning technique for individuals with large amounts of tax-deferred retirement assets (and has been so since 2003), many financial advisors are still unfamiliar with it. Your advisor should have no trouble finding additional information about the technique from nationally recognized experts including Philip Kavesh, Natalie Choate, Ed Slott, and Robert Keebler.

The IRA Protection Trust became more popular after the U.S. Supreme Court issued its June 2014 *Clark v. Rameker* ruling, which said that inherited IRAs are not protected in bankruptcy proceedings.

14. Why not incorporate these provisions into my living trust?

A living trust is an excellent technique for avoiding probate and dealing with extended incapacity issues. However, living trusts fail to consider all of the complex rules regarding tax-deferred retirement accounts payable to trusts. For example, if a living trust directs IRA assets to a trust with accumulation provisions, then the RMDs must be calculated using the life expectancy of the oldest trust beneficiary. Even potential beneficiaries count, so for example, naming an older brother as contingent beneficiary in a living trust is enough to trigger use of the brother's life expectancy instead of using the longer life expectancy of a younger child. An even worse result might occur if a charitable bequest is present because a charity does not have a life expectancy. Living trusts are rarely drafted with the necessary precision to mandate the Stretch-out for beneficiaries and respond to post-death contingencies or asset protection threats.

A separate "stand-alone" trust will alert your beneficiaries to the special treatment of your tax-deferred retirement accounts. A stand-alone trust will also facilitate the naming of a trust as beneficiary because it will expressly include the provisions a custodian expects to find. Because custom drafting is required, it makes better sense to isolate treatment of tax-deferred retirement accounts from other assets in order to avoid any unintended consequences.

15. Why not use a Trusteed IRA?

A handful of financial institutions offer a product called the Trusteed IRA (aka individual retirement trust). This is similar to an IRA Protection Trust because it gives the owner additional control over the choice each beneficiary makes regarding the distribution plan. A Trusteed IRA will often limit a beneficiary's access to IRA assets by using conduit provisions. The remaining assets are managed by the trustee. The owner can also exercise more control over post-death contingency planning.

Here are the drawbacks when compared to the IRA Protection Trust:

- Trusteed IRA does not permit the use of accumulation provisions, so its usefulness is limited to situations when all beneficiaries are mature, responsible, financially astute, and relatively safe from potential creditor and divorce problems.

- Loss of trustee discretion, so there is no flexibility to turn on accumulation feature in case of major anticipated tax increase or change in RMD rules.

- Trusteed IRA does not allow highly customized trust provisions, which are often desired for large IRAs and complex family issues.

- Trusteed IRA custodians typically require a substantial account minimum.

- Trusteed IRA custodians will charge a fee to serve as trustee.

One way to think about this comparison is to use the Three Little Pigs folktale (as suggested by IRA expert Robert Keebler). Which do you want to build your house on?

- Straw Name your child as the outright beneficiary
- Sticks Name your child as beneficiary of a Trusteed IRA
- Bricks Name your child as beneficiary of an IRA Protection Trust

As the mother of the little pig who built his house upon the bricks said, "You see it is just as I told you. The way to get along in the world is to do things as well as you can."