Retirement Funds and SNTs

Watch Out for the Details

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Retirement accounts are often among a family's largest assets, so you may have thought about leaving a portion to your son or daughter with disabilities. But if they will ever need means-tested benefits, your good intentions could disqualify them for important programs such as Medicaid and SSI (Supplemental Security Income). Instead, consider establishing a special needs trust (SNT) for them, with the trust as beneficiary of the retirement account. In that way, you can protect both the funds and your child's eligibility for benefits.

Details matter, and it's important that the trust be named beneficiary in the *retirement fund contract*, not your will. If both you and your spouse are *grantors*, or creators, of the SNT, the trust must become irrevocable upon the death of the person who is bequeathing the retirement fund.

Taxes and Required Distributions

Unless you're dealing with a Roth IRA, your retirement fund contains pre-tax dollars, and there are convoluted rules regarding *required minimum distributions* (RMDs) – how much money must be disbursed when. When the money leaves the retirement account, it incurs tax liability, so you probably won't want it to remain in the trust, which is subject to a high tax rate. On the other hand, you don't want the RMDs to be large enough to affect your child's eligibility for benefits. So, in general, families will want to spread the RMDs over as many years as possible.

Questions to consider are:

- How much money is likely to be left in the account on your death?
- How important is it to stretch out distributions?
- How will your age and working situation be likely to affect the payout schedule?
- Are there remainder beneficiaries that could affect the payout schedule?

Named Beneficiaries Affect RMDs

The payout period for retirement accounts is determined by the life expectancy of the *oldest* person in your list of beneficiaries. That means that, if possible, *remainder* *beneficiaries*– those who are to receive funds left upon the primary beneficiary's death– should be younger than the individual with disabilities.

Naming a favorite charity complicates things. Since a charity has no life expectancy, the payout period is determined by *your age and working situation* at time of death:

- If you are still working or under 70 ½, the fund must pay out all assets in five years.
- If you have already retired, the payout will be based on what your life expectancy would have been.

The way to avoid this is to list at least one other remainder beneficiary ahead of the charity.

But what if it's important to include someone older than the primary beneficiary on your list? In that case, it may be advisable to set up *two SNTs*, one to hold the retirement fund and a second to include other assets meant for your child with disabilities. The second one should include the older remainder beneficiary. Have both SNTs administered by the same trustee, who should first spend down the trust that's holding the retirement account.

SNT as Remainder Beneficiary

What if, for instance, a husband leaves his retirement fund to his wife and names their child's SNT as the *contingent beneficiary*, meaning that it will receive any assets that remain upon the wife's death? If the wife has her own retirement account, she should roll over the one she inherits from her husband into hers and then name the SNT as *primary beneficiary* of her own account. Otherwise, the payout period upon her death will be determined by *her* age, work status or life expectancy. It may be wise to write instructions to this effect into a spouse's power of attorney so that a designated agent can handle the rollover, if necessary.

Seek Legal Help

As you can see, this is complicated stuff, with lots to consider. In fact, families are often counseled *not* to fund SNTs with their retirement accounts. On the other hand, a special needs attorney can ensure proper drafting and designation of beneficiaries, putting your hard-earned retirement savings to work for a child with disabilities.

One final note: You may want to consider creating trusts of some sort for *all* your children to protect their inheritances from creditors and divorcing spouses.

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