

PLANNING FOR YOUR FUTURE

Retirement benefits and trusts

By Bernard A. Krooks, Certified Elder Law Attorney

In our last column, we talked about retirement benefits and estate plans and how important it is for us to plan for these assets to make sure our family gets what we worked so hard for. In previous columns, we have emphasized the importance of using trusts in your estate planning. With a trust, you can ensure that your assets are protected against creditors, death or divorce of a family member. There are many different types of trusts and one size does not fit all. In particular, if you want to leave your retirement assets to a trust there are certain things you should be aware of.

First, let's discuss specifically why you might wish to leave your retirement assets to a trust. If you have a child who is a spendthrift, or married to a spendthrift, or who is involved in tax or other legal proceedings, you should consider leaving your retirement assets to a trust. If the assets are left outright to the spendthrift child, then there is a good chance that they be spent sooner than you would like and on items that you might not approve of. If the child is involved in a tax controversy with the IRS or has other creditors making claims against him, then leaving money outright to the child means that those assets will be subject to the claims of the IRS and other creditors. If the retirement assets are left to a trust, they can be protected against such claims. In addition to the foregoing reasons, if you worry that your child may have marital problems or get divorced, then a trust may be right for you. Although we don't like to think about it, the divorce rate in this country is about 50 percent. If you leave your retirement assets to your son and he gets divorced, then those assets could end up in the hands of your ex-daughter-in-law. Even if divorce is not a concern, your child could predecease you, in which case your assets will go to the people designated under his will and not necessarily the people you would have selected. By leaving your retirement assets to a trust, this can be avoided.

Before naming a trust as the beneficiary of your retirement account, make sure the custodian of your retirement account is on board. Although the IRS has permitted trusts to be beneficiaries of retirement accounts for some time, many banks and brokerage firms have their own rules and procedures which must be followed. If it becomes a problem, you can always switch to a more accommodating financial institution.

It is also important to understand the tax ramifications of naming a trust as the beneficiary of your retirement accounts. Depending on the ages of all the beneficiaries and potential beneficiaries, a trust may shorten the stretch-out time to a period less than the life expectancy of the primary beneficiary. If this happens, it will result in income tax being paid by the beneficiaries sooner than it otherwise would have to be paid.

Of course, regardless of the income tax consequences your retirement accounts will be included in your estate and subject to estate taxes. The federal estate tax is scheduled to return in 2011 and New York has its own estate tax for estates over \$1 million.

So, bottom line is that while it may make sense for you to name a trust as the beneficiary of your retirement accounts you should not do so without speaking to your professional advisors and taking into account all of the tax and other considerations. Even if you decide not to use a trust, it is important to make sure that your retirement account beneficiary designations are coordinated with your overall estate plan.

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