My EVEPC Membership Value

The organization values feedback from all members, guests,

attendees and those that could not attend before, during and after each event

You can fill out the survey online: SAVE TIME! SAVE MONEY! IMPROVE ACCESS TO YOUR COMMENTS!

EVEPC Website Services I used/referenced this month: (select all that are applicable)

Home Page Calendar and Events Reference	
Online membership directory	
Event Registration	
Membership News	
Board Members Section	
Members Only Section	

Other

____

____

Website Features I would like to see added: (select all that are applicable)

Active/Current job Bank	
Active Advocacy Page	
E newsletter	
Twitter or Facebook Presence	

Other:

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Recent EVEPC Membership Impacts

Reached or met a new professional contact	
Networked with a fellow member to solve a problem or open a new opportunity	
Made or received a referral to/from a fellow member	
Utilized information learned from a current or past EVEPC program with a client or peer	
Utilized EVEPC program for completing professional continuing education requirements	
Learned of an advocacy issue important to my profession	

Other:

____

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If you unable to join this month's meeting, or if you have other items for board consideration that would keep your membership value high, please let us know here.

Know of an associate or colleague we should invite to the upcoming meetings.....
Please provide contact information below or email evepc@premiumorganization.com

Name: ______________________________

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EVEPC Program Evaluation

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Topic: *"IRA Trusts"* Date: May 18, 2016

Speaker: Matthew Dana, J.D., L.L.M., CPA

Did we select the right topic?	**Strongly Disagree**	**Disagree**	**Neither Disagree or Agree**	**Agree**	**Strongly Agree**
The presentation matched the topic/ content I was expecting	1	2	3	4	5
The presentation topics is/ was relevant to my practice	1	2	3	4	5
The presentation as planned was easy to follow	1	2	3	4	5
The level of the presentation was appropriate	1	2	3	4	5
The presentation handouts were relevant, helpful and complete	1	2	3	4	5

I learned at least one useful or new thing today Yes No (circle one)

Additional comments on the presentation topic or suggestions for future topics

Did we get the right presenter?	**Strongly Disagree**	**Disagree**	**Neither Disagree nor Agree**	**Agree**	**Strongly Agree**
The presenter was well informed on the topic	1	2	3	4	5
Presenter delivered information in a way I could follow & learn	1	2	3	4	5
Presenter's communication style kept me focused & interested	1	2	3	4	5
I would recommend this presenter	1	2	3	4	5

Additional comments on the presenter or other presenters you'd like to see.

Please tell us about the venue and logistics experience.	**Strongly Disagree**	**Disagree**	**Neither Disagree or Agree**	**Agree**	**Strongly Agree**
The breakfast buffet met my expectations	1	2	3	4	5
The event logistics supported a positive membership	1	2	3	4	5
The room logistics supported a positive learning and networking experience	1	2	3	4	5

Additional comments on the venue and logistics:

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IRA BENEFICIARY DESIGNATION -
NAMING A TRUST - GOOD IDEA OR BAD?

By: Matthew S. Dana, JD, CPA, LLM, CLU, ChFC
M. Todd Smith, JD
Trevor S. Whiting, JD, MBA, LLM

I. Introduction:

A. Hot topic

1. Baby Boomers - 10,000 per day.

   a) *Complex Rules - entire program a few weeks ago with the Arizona Community Foundation.*

   b) *Quarles Expertise Listing*

   c) *Most professionals don't see enough large IRAs to get proficient.*

2. Lots of publicity recently with the US Supreme Court Case.

3. Resonates with clients - Too much focus on the tax aspects of the stretch out. Need more focus on the non-tax benefits of a Trust, like keeping the kids from cashing in early, taking larger distributions then the minimum distribution, and allowing the client to name the successor beneficiary, in the event the intended beneficiary survives, and then subsequently dies.

4. Optional distribution choices may not be available - Employers may limit the selection of methods of distribution and types of beneficiaries. For example, and as an extreme, an employer plan might permit only individuals or charities as permissible beneficiaries.

B. Choices - spouse, children, grandchildren, marital trusts, credit shelter trusts, charitable trusts, special needs trusts, generation skipping trusts, etc.

II. Change in Historical Thinking

Generally, it was thought that people and only trusts in special circumstances like Special Needs Trusts, Marital Trusts, Credit Shelter Trusts, or Trusts for minors should be beneficiaries. Now, my general thinking is that we should use Trusts for most situations, instead of outright beneficiary designations to people.

A. Stretch Out opportunities with IRA regulations - Used to be much more difficult to get "stretch out" outside of a trust (does anyone remember the 9 different options, recalculate participant life expectancy but not the spouse beneficiary , or recalculate the spouse beneficiary life expectancy but not the participant, etc. etc.) and much speculation as to whether or not you could get any stretch out inside of a Trust.

B. Remember the huge conflict between the income tax and the estate tax with respect to naming the Credit Shelter Trust as the beneficiary of the IRA (the underfunded Credit Shelter Trust when the IRA was a large percentage of the estate). Now, with "portability", not the huge problem it once was. Also, remember the problems in naming a QTIP Trust as a beneficiary of an IRA and trying to reconcile the "all income requirement" with the minimum distribution rules and whether or not the distribution from an IRA to a QTIP was a distribution of income or principal.

C. Generally assumed that creditor protection in the hands of the participant and his or her spouse would carry over into the hands of the beneficiary. What happens if you name Johnnie as the beneficiary and Johnnie has huge creditor claims? Is there still protection in bankruptcy for Johnnie on IRA proceeds?

D. IRAs historically were 10% or less of the total value of one's estate. Now you see IRAs that are more than 60% or 70% of one's estate. As such, nobody really paid much attention to the provisions of the Custodial Agreement because it really didn't matter much for smaller sums. Who gets the IRA if Johnnie is the beneficiary and Johnnie subsequently passes away after the death of the participant? Can Johnnie name a beneficiary? What if the participant wouldn't like who Johnnie named?

E. Using a Trust as a beneficiary of an IRA was only warranted in special situations for non-tax reasons - including QTIP Trusts for 2nd marriages, Special Needs Trust, and Trusts for minor beneficiaries. The non-tax reason outweighed the income tax complications in getting stretch out, and in some situations, the non-tax reason outweighed losing stretch out all together.

III. Naming the Trust as a Beneficiary Gains in Popularity.

A. Permanent Regulations passed giving clarity as to how you can achieve "stretch out" inside of a Trust. Four requirements for Trusts to be a "See-Through" Trust - in some cases, the beneficiaries of a trust will be regarded as beneficiaries with respect to the plan. This permits a Designated Beneficiary to be identified. Such trust is sometimes called a "see-through trust" because, for purposes of determining the identity of designated beneficiary, it is permitted to look through the trust to its beneficiaries.

To achieve this, the trust must comply with the requirements of Reg. § 1.401(a)(9)-4, A-5 and A-6.

Prop. Reg. § 1.401(a)(9)-4, A-5 permits recognition of trust beneficiaries as Designated Beneficiary candidates, provided the following conditions are met for any period during which a Required Minimum Distribution must be made:

1. The trust is a valid trust under state law, or would be but for the fact that there is no corpus.

2. The trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

3. The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument.

4. Certain documentation has been provided to the plan administrator, as provided in Reg. § 1.401(a)(9)-4, A-6.

B. Loss of creditor protection on inherited IRAs - Supreme Court decision (*Clark v. Rameker*). Naming a Trust as a beneficiary provides the beneficiary with creditor protection of all assets in the trust, including the IRA. Use a typical "spendthrift" Trust.

C. Most advisors do seminars and work really hard in getting stretch out for the kids. However, the kids don't see the value of stretch out and would rather cash in, pay the tax and get the cabin of their dreams (national average is 18 months).

D. Control against undesirable subsequent beneficiaries. In a Trust, the grantor, and not the named beneficiary, gets to choose who inherits the IRA in the event the beneficiary passes away and is in "pay status".

E. The grantor gets to choose who is the Trustee, which means the grantor dictates who manages the money instead of allowing the child to do a rollover to an inferior money manager.

F. The grantor may engage in "generation skipping planning" inside of the trust that he cannot embrace outside of the trust.

G. The grantor can dictate the distributions options available to the beneficiary to use instead of allowing the beneficiary to take out distributions larger than the minimum distributions for bad reasons (buy a car, tour Europe, etc.).

IV. Analysis - a few questions to ask.

A. Ignoring tax consequences, who do you want to benefit from the IRA (spouse, kids, etc)?

B. Are there compelling factors to require the proceeds to be in a controlled environment (historical factors, 2nd marriages, special needs beneficiaries, and minor children)?

C. What are the tax efficient ways to reconcile these often conflicting concerns -conflicts between the estate tax and the income tax (underfunding a credit shelter trust as a result of rollover benefits to a spouse)?

D. How important is it to you to prevent the beneficiary from cashing in early?

E. How important is it to you to name the "subsequent beneficiaries"?

F. How important is creditor protection in the hands of the beneficiary, divorce, bankruptcy, car accident, etc.

G. How important is it to you to dictate the money manager?

V. Get involved in helping a client choose the appropriate Custodial Agreement

Discuss the Default clauses - Larger IRAs require more thought and discussion - Many of the IRS rules and the provisions in the Custodial Agreements were drafted when the IRAs were $100k or less and maybe only 10% of the estate. Now, it is not uncommon for the IRA to be 50% of the entire estate.

1. Does the contract allow the beneficiary, in pay status, to choose a subsequent beneficiary? Many Custodial Agreements still don't allow subsequent beneficiaries and if the current beneficiary dies, the remaining balance must be paid.

2. What are the default clauses in the event the beneficiary designation fails? We have all heard stories where the custodian, for whatever reason, never received the change of beneficiary form. Does it pay to the beneficiary's spouse? To his kids? Worse yet, to his estate?

3. What investment choices are available inside of the IRA?

4. Does the custodian accept "multi-prong" beneficiary designations using disclaimers?

5. What are the requirements in mandating spousal consents with respect to naming a non-spouse as beneficiary (normally mandatory spousal consents only apply to ERISA plans).

6. What rights does a spouse have absent spousal consents? (what about the guy that has a $2M IRA, then marries, and dies a day later?)

VI. Types of IRA "Look-Through" Trusts

Types of IRA "Look-Through" Trusts - As has been discussed, designating a trust as an IRA beneficiary with the objective of protecting IRA assets as a component of estate planning has become a valuable tool. This section of the presentation will highlight, for practical application purposes, a few options for how our clients can use this tool in real life situations.

A. **Sub-Trusts vs. Stand-Alone Trusts** - All trusts can be neatly divided into these two broad categories. Keep in mind the primary difference for most practical purposes, is the fact that a sub-trust usually cannot be funded until some future event, while a stand-alone trust is a separate legal entity that can own assets as soon as it is established.

1. Sub-Trusts - Often the dispositive provisions of a trust, including very basic revocable trusts, direct the trustee to establish a separate trust for the beneficiary, in lieu of making an outright distribution. We refer to these trusts within trusts as sub-trusts. The provisions of the sub-trusts vary from very boilerplate age restrictions to very complex special purpose trusts.

2. Stand-Alone Trusts - It is also common to establish a separate trust, the legal existence of which is immediately realized upon signing the trust agreement.

While every basic revocable trust meets this definition, we are usually referring to irrevocable trusts when we talk about stand-alone trusts. These irrevocable trusts usually have a very specific special purpose and they are often funded by making a gift of assets to the trust.

B. **Special Purpose Trusts** - There are several types of trusts that can be established for other specific reasons, but at the same time can be designated as the beneficiary of an IRA.

1. **Marital Trusts ("QTIP" Trusts)** - It is not unusual for a person in a second marriage to have substantial separate property assets that were accumulated before the marriage, while the new spouse has very few assets. In that situation, the wealthy spouse has two competing objectives: on the one hand, the wealthy spouse will want to make sure the surviving spouse is taken care of for the remainder of the surviving spouse's life; and on the other hand, the wealthy spouse will want to restrict the surviving spouse from being able to change who ultimately inherits the assets (often children from the prior marriage) or drain the assets leaving nothing to the remainder beneficiaries. Marital Trusts offer a compromise solution to this dilemma by giving the income to the surviving spouse, but restricting the principal.

2. **Credit Shelter Trusts ("B" Trusts)** - Similar to a Marital Trust, a surviving spouse is usually the beneficiary of a credit shelter trust, but the reasons for establishing the trust are diverse; preserve two estate tax exemptions, allow income shifting among multiple beneficiaries, creditor protection, second marriage issues, etc.

3. **GST Trusts (Generation Skipping Transfers)** - Many clients prefer leaving their kids' inheritance in the controlled environment of a trust in order to keep the IRS from hitting every generation with the estate tax, but there are also many of the same non-tax benefits that we see with other types of trusts; i.e. creditor protection.

4. **Special Needs Trusts** - If there is an heir to an estate that will need to qualify for government benefits related to a disability or any other reason, the inheritance could jeopardize the heir's ability to continue to qualify for those benefits. The IRS has held, in private letter rulings, that the right to receive retirement death benefits may be transferred to a trust that is a grantor trust with respect to the named beneficiary of those death benefits. Such transfer will not cause acceleration of income taxation of the benefits. Nor will such a transfer accelerate Requirement Minimum Distributions.

5. **Boilerplate Age Restriction Trusts** - Often the only reason a client wants to keep an inheritance in trust rather than distributed outright is the fact that the heir is a minor child. Almost every trust has boilerplate provisions that direct the trustee to withhold and stagger distributions at various ages; i.e. 25/30/35. The boilerplate provisions were probably not prepared with the strict requirements for an IRA "look-through" trust in mind, though it is possible to do so with good drafting.

VII. Required Distributions from Inherited IRAs

A. Who is the beneficiary?

1. Surviving spouse
   - (a) Spousal Rollover:
     - (i) Spouse is treated as the owner of the IRA
     - (ii) Required minimum distributions ("RMDs") same for spouse's own IRA
   - (b) If no Rollover, treated the same as an individual, non-spouse beneficiary

2. An individual other than the surviving spouse
   - (a) Required distributions depend on whether the IRA owner died before or after the "Required Beginning Date"
   - (b) Required Beginning Date = April 1 of the year following the year in which the owner reaches age 70 1/2
   - (c) Death of owner prior to Required Beginning Date:
     - (i) In general, RMDs must start the year after the owner's death (i.e., if the IRA owner dies on Feb. 25, 2015, the beneficiary must begin taking annual RMDs in 2016)
     - (ii) Beneficiary uses their single life expectancy from IRS "Table 1" (see copy of Table 1 for 2015 attached) to calculate RMD
     - (iii) Calculating the RMD with Table 1:
       - (1) "Simple" formula:
         - a.) For first year after year of death: divide IRA account balance from Dec. 31 of the year of death by the appropriate life expectancy from Table 1 for the beneficiary's age as of his or her birthday in the year following the year of death

           Example:
           - Year of death = 2015
           - IRA balance on Dec. 31, 2015 = $500,000
           - Beneficiary's age on birthday in 2016 = 52
           - Life Table "Factor" from Table 1 for a 52 year old = 32.3
           - RMD = $500,000 / 32.3 = $15,480 for 2016

       - (2) For each following year, reduce the "Factor" by one and divide the IRA balance from the prior year by the reduced factor
         - a.) Example of RMD for 2017 (continuing from above):
           - IRA balance on Dec. 31, 2016 = $550,000
           - Reduced "Factor" for 2017 = 31.3 (i.e., original factor of 32.3 reduced by 1)
           - RMD = $550,000 / 31.3 = $17,570 for 2017

b.) Example of RMD for 2026 (continuing from above):

- IRA balance on Dec. 31, 2015 = $1,000,000
- Reduced "Factor" for 2026 = 22.3 (i.e., original factor of 32.3 reduced by 10)
- RMD = $1,000,000 / 22.3 = $44,840 for 2026
-

(iv) CAUTION: most IRA plans allow for distributions using the life expectancy rules explained above, but the IRA plan documents could require withdrawal of 100% of the IRA by Dec. 31 of the year that is 5-years after the date of death (the "5-Year Rule"). Plan documents must be reviewed to determine if this is the case.

(d) Death of owner on or after the Required Beginning Date:

(i) If the owner died before the Required Beginning Date, RMDs are based on the longer of:

(1) The beneficiary's life expectancy from Table 1, or

(2) The owner's life expectancy from Table 1 for the owner's age as of his or her birthday in the year of death

(ii) In general, the calculation will be the same as above, unless the beneficiary was older than the owner of the IRA

3. A non-individual (i.e., the owner's estate, a trust, a charity, etc.)

(a) If the non-individual qualifies as a "designated beneficiary" (i.e., a "look-through" or "stretch" IRA trust), then calculate distributions the same as for an individual

(b) Like for an individual beneficiary, required distributions depend on whether the IRA owner died before or after the Required Beginning Date

(c) Death of owner prior to Required Beginning Date:

(i) The 5-Year Rule applies

(ii) The entire account must be distributed by the end of the fifth year following the year of the owner's death (i.e., if the owner died on March 29, 2015, entire account must be distributed by the end of the year 2020)

(iii) No distributions are required for any years prior to the fifth year after the year of death

(d) Death of owner on or after the Required Beginning Date:

(i) RMDs are based on the owner's life expectancy from Table 1 for the owner's age as of his or her birthday in the year of death

<u>Tax Disclaimer</u>

Any U.S. federal tax advice contained in this outline is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter that is contained in this outline.

Appendix B. Life Expectancy Tables

Table I
(Single Life Expectancy)
(For Use by Beneficiaries)

Age	Life Expectancy	Age	Life Expectancy
0	82.4	28	55.3
1	81.6	29	54.3
2	80.6	30	53.3
3	79.7	31	52.4
4	78.7	32	51.4
5	77.7	33	50.4
6	76.7	34	49.4
7	75.8	35	48.5
8	74.8	36	47.5
9	73.8	37	46.5
10	72.8	38	45.6
11	71.8	39	44.6
12	70.8	40	43.6
13	69.9	41	42.7
14	68.9	42	41.7
15	67.9	43	40.7
16	66.9	44	39.8
17	66.0	45	38.8
18	65.0	46	37.9
19	64.0	47	37.0
20	63.0	48	36.0
21	62.1	49	35.1
22	61.1	50	34.2
23	60.1	51	33.3
24	59.1	52	32.3
25	58.2	53	31.4
26	57.2	54	30.5
27	56.2	55	29.6

Appendix B. (Continued)

Table I
(Single Life Expectancy)
(For Use by Beneficiaries)

Age	Life Expectancy	Age	Life Expectancy
56	28.7	84	8.1
57	27.9	85	7.6
58	27.0	86	7.1
59	26.1	87	6.7
60	25.2	88	6.3
61	24.4	89	5.9
62	23.5	90	5.5
63	22.7	91	5.2
64	21.8	92	4.9
65	21.0	93	4.6
66	20.2	94	4.3
67	19.4	95	4.1
68	18.6	96	3.8
69	17.8	97	3.6
70	17.0	98	3.4
71	16.3	99	3.1
72	15.5	100	2.9
73	14.8	101	2.7
74	14.1	102	2.5
75	13.4	103	2.3
76	12.7	104	2.1
77	12.1	105	1.9
78	11.4	106	1.7
79	10.8	107	1.5
80	10.2	108	1.4
81	9.7	109	1.2
82	9.1	110	1.1
83	8.6	111 and over	1.0