Avoiding Pitfalls for Minor Beneficiaries of IRAs and Other Qualified Retirement Benefits

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This article discusses pitfalls to avoid when naming a minor as the beneficiary of a retirement account. Specifically, it addresses using "see-through" trusts as a vehicle for managing the retirement account proceeds for the minor.

Individual retirement accounts (IRAs) and other qualified retirement plans are increasingly common assets in a client's estate. Thus, determining how to properly transfer and distribute such assets is critical to proper estate planning. A client wishing to transfer such an asset to an adult child on the client's death will have different estate planning considerations than a client wishing to give such an asset to a minor grandchild as a primary or contingent beneficiary.

This article focuses on the distribution of an IRA or other qualified retirement plan (also referred to as retirement account or retirement benefits) to a minor beneficiary at the plan participant's death. Such distributions present unique considerations and demand careful and customized estate plan drafting.[1]

Considerations for Retirement Accounts Payable to Minors

Designating retirement benefits payable to a minor can help ensure that the minor has access to funds throughout his lifetime while minimizing or deferring the minor's income taxation on those benefits. Once the retirement account participant passes away, the minor beneficiary's life expectancy can be used to calculate the applicable distribution period (ADP) and required minimum distributions (RMDs) that must be made each year.[2] Because a minor's life expectancy is longer than that of an adult beneficiary, the RMDs are smaller and spread out over a longer period of time for a minor. This "stretch" not only ensures a longer stream of income throughout the minor's lifetime, it also allows for the longest tax deferral on the total income received from the retirement account.

IRAs and other qualified retirement accounts have been the target of potential legislative change, including proposals to limit the amount of income available for the stretch for non-spouse beneficiaries.[3] Such changes would reduce the need for special planning regarding minors. But under current law, there are potential pitfalls to naming a minor as the beneficiary of a retirement account. How will the participant ensure that the funds are managed prudently by the minor, or that the minor does not take all the proceeds in one lump sum, increasing and accelerating income taxation and squandering the retirement benefits? In the absence of customized estate planning, a custodian may be needed to manage the minor's retirement account proceeds until the minor reaches age 21. The minor, however, is not prevented from withdrawing and squandering the retirement account proceeds upon reaching adulthood. What if the proceeds are needed to provide financial support and security for the minor's entire lifetime? What if the client wants more control of when and how the retirement account proceeds are distributed to the minor, even after the minor turns 21?

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In these situations, rather than simply designating the minor as a beneficiary, the client should consider using a trust as a vehicle for managing the retirement account proceeds for the minor. For the trust to use the benefits of the minor's life expectancy in calculating the RMDs and ADPs, extra care must be taken to ensure that the trust qualifies as a "designated beneficiary"[4] for tax purposes. If the trust fails to so qualify, the retirement account proceeds must be distributed to the beneficiaries in full either (1) within approximately five years of the participant's date of death, if the participant died *before* the beginning of the required beginning date of distributions,[5] or (2) "over the remainder of what would have been the participant's life expectancy," if the participant died *after* the start of the required beginning date for distributions.[6] This outcome results in larger and earlier distributions to minors, loss of control of the retirement account's management and distributions, and significant tax ramifications to the recipient, which can be particularly disadvantageous for larger retirement accounts, especially if the participant had not yet reached the "required beginning date" for distributions at the time of death. (Typically, the required beginning date is April 1 of the calendar year following the calendar year that the participant reaches age 70½.[7])

The following discussion focuses on how to ensure that a trust holding retirement benefits for minors is able to use the longer life expectancies of the minor beneficiaries to calculate RMDs while still allowing for significant control by the participant and/or third parties over how the account is managed and distributed.[8]

The Trust as Designated Beneficiary

To use a beneficiary's life expectancy for purposes of calculating RMDs, the beneficiary must qualify as a designated beneficiary.[9] This is not problematic when *individuals* are specifically named as beneficiaries under the retirement account's beneficiary designation, but it becomes more complicated when a *trust* is named as the retirement account's beneficiary.

While the IRS typically does not consider a trust to be a true designated beneficiary,[10] an exception is allowed when the trust qualifies as a "see-through" trust. The logic behind this exception is that when trusts are structured such that the IRS can essentially "see through" the trust to all of its individual beneficiaries, the beneficiaries of the trust, and not the trust itself, are considered the retirement account's true designated beneficiaries.

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Ensuring "See-Through" Trust Status

There are four IRS rules with which a trust must comply to qualify as a see-through trust and allow the trust's beneficiaries to be treated as the designated beneficiaries of the retirement account.[11] Three of these rules are relatively straightforward: (1) the trust must be valid under state law; (2) the trust must be irrevocable as of the participant's date of death; and (3) the trustee must provide certain documents to the plan's administrator by October 31 of the year following the participant's date of death. The remaining rule requires more attention and careful drafting: (4) trust beneficiaries must be "identifiable" from the trust instrument.[12]

Beneficiaries Must Be Identifiable

The IRS regulations require that "[a] designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is 'identifiable' under the plan. The members of a class of beneficiaries capable of expansion or contraction will be treated as being identifiable if it is possible to identify the class member with the shortest life expectancy."[13]

While this rule appears simple, it holds traps for the unwary that could cause a trust to inadvertently run afoul of this rule. Depending on the type and terms of the trust, in addition to the named beneficiaries under the beneficiary designation, certain remote or contingent beneficiaries may all need to be "identifiable." If some such beneficiaries are not identifiable, they will cause the stretch to be lost for all beneficiaries. Whether and to what extent these more remote beneficiaries need to be considered depends on the type of trust at issue—that is, whether it is an accumulation trust or a conduit trust, as discussed below.

Beneficiaries Must Be Individuals

Once the trust qualifies as see-through by complying with the above four rules, the trust's beneficiaries are considered the true designated beneficiaries of the retirement account rather than the trust itself. Implicit in the designations is a fifth rule for a trust to be able to use the life expectancies of its beneficiaries in calculating RMDs: *all of the trust's beneficiaries themselves must be considered "individuals" as of the "beneficiary finalization date."*[14]

Beneficiaries that do not qualify as "individuals" within the meaning of the Internal Revenue Code include charities, business entities, and estates.[15] Special care should therefore be taken to ensure that no part of the distribution goes to the participant's estate, as this could cause the stretch to be lost (depending on the age of the participant). For example, having retirement account proceeds pass as directed under a will, either by failing to name specific beneficiaries under the retirement account's beneficiary designation, or by specifically directing under the beneficiary designation that proceeds be paid according to the client's will, will likely disqualify the recipients as designated beneficiaries.[16] It is therefore necessary to specifically name the intended beneficiaries in the beneficiary designation instrument. As an added precaution, do not include any provisions in the client's estate plan documents allowing for such things as a decedent's debts, expenses, or final taxes to be paid from the retirement account proceeds.[17]

Note, however, that if otherwise disqualifying designated beneficiaries of a deceased participant's retirement benefits (such as charitable or business entities) receive their share of outright distributions before September 30 of the year following the participant's death, they will not disqualify the remaining individual beneficiaries of the retirement benefits from the stretch.[18]

Structuring the Trust

Once the drafting attorney ensures that the qualifications for a see-through trust are met, there are various ways to structure the trust that will depend on the client's estate planning goals. Does the client need to accumulate retirement account distributions in trust to protect the proceeds for later use by a minor beneficiary? Is it better for the proceeds to be taxed to the trust or to the beneficiary, given the trust's higher tax brackets, versus the application of the "Kiddie Tax"? Is the primary goal to ensure that taxation of the proceeds is delayed as long as possible? Does the retirement account name multiple minor beneficiaries?

The two most common forms of see-through trusts used to manage retirement account proceeds are conduit trusts and accumulation trusts. While both types of trusts share certain traits (e.g., both can be used for single beneficiaries or for multiple beneficiaries, and trustees under both trusts can request distributions above the RMD, if desired), the client's estate planning goals will dictate which of these two basic models should be used.

Conduit Trusts

A conduit trust[19] is the most basic form of see-though trust and demands less custom drafting by the attorney than an accumulation trust. When structured as a trust for one individual beneficiary, the conduit trust is considered a "safe harbor" trust: no remote beneficiaries need to be considered with regard to the identifiable beneficiaries analysis because (1) retirement account beneficiaries are considered "mere potential successors,"[20] (2) see-through status is guaranteed, and (3) retirement account beneficiaries' life expectancies can be used to calculate RMDs. This form of trust may be ideal for clients who do not require proceeds to be protected and preserved for a later date and are comfortable with the proceeds being controlled at a sooner time by the beneficiaries.

The conduit trust is so named because it behaves as a mere conduit between the retirement account and its beneficiaries. A conduit trust may be created either by inserting "conduit" language into a trust instrument that may hold other non-retirement assets, or by creating a stand-alone conduit trust for the proceeds.[21] To ensure the trust qualifies for conduit status, the drafting attorney must have the conduit provisions take effect immediately upon the participant's death.[22] Thus, for example, the beneficiary designation must give the proceeds directly to the conduit trust and not to a master trust that gets divided among conduit trusts at the participant's death. A conduit trust must also be structured so that all retirement account distributions, not only RMDs, are distributed immediately and in full to the designated beneficiaries.

While a conduit trust allows the stretch of taxable income over the beneficiary's lifetime, it comes at the expense of flexibility under the terms of the trust as to the disposition of the account proceeds. In addition, because the trust cannot accumulate any distributed proceeds, all proceeds distributed while any beneficiary remains a minor must be managed by a custodian for that minor. A disadvantage here is that those proceeds distributed to the minor's custodian are distributable outright to that minor when he reaches age 21.

In drafting a conduit trust for multiple beneficiaries, extra care must be taken.[23]

Accumulation Trust

In contrast to the conduit trust (and as implied by its name), the accumulation trust[24] allows retirement account proceeds received by the trust to be accumulated without having to pay all proceeds directly and immediately to the trust beneficiaries. Accumulation trusts are ideal for clients who want at least a portion of the retirement account proceeds to be retained for a beneficiary's future benefit. However, the benefits of this form of trust come with an increased price tag, as this type of trust requires custom and precision drafting to ensure that the trust does not violate the see-through trust rules. And the remainder beneficiaries' life expectancies must be taken into account when calculating the RMDs for the primary beneficiaries.

The trustee of an accumulation trust can choose to accumulate as much of the retirement account proceeds in the trust as she deems prudent. From a practical standpoint, however, the trustee should typically accumulate only so much of the proceeds as necessary to take advantage of the trust's tax bracket. The remainder (and likely the majority) of the proceeds should be distributed to the minor beneficiary's custodian, which will result in distribution in full at age 21. The proceeds will be taxed to the minor and until age 19 (or 24 for college students) will be subject to the Kiddie Tax.[25]

Because an accumulation trust does not qualify as a safe harbor see-through trust, the drafting attorney must take great care to

ensure that all of the see-through trust rules are met. Perhaps the most difficult of these rules with which to comply is the identifiable beneficiaries rule.

With a conduit trust, because the retirement account proceeds are paid immediately and outright to the primary trust beneficiaries and no proceeds are retained for any remainder beneficiaries, the identities of all possible beneficiaries can be determined with certainty. The same is not always true with regard to accumulation trusts, where the account proceeds are accumulated for future and/or contingent beneficiaries who often cannot be ascertained with certainty as of the date of the participant's death.[26] With careful drafting, however, the trust instrument can mandate that any future or contingent beneficiaries pass the identifiable beneficiaries rule as of the participant's date of death,[27] thereby maintaining the trust's see-through status.

An example from Natalie Choate's *Life and Death Planning for Retirement Benefits* illustrates one way in which an accumulation trust could fail the identifiable beneficiaries rule: where the participant names as beneficiaries "all my issue living from time to time," and after the participant's death a person *older* than the oldest living child at the time of the participant's death is adopted into the participant's family.[28] To avoid this result, the trust instrument must direct that no persons older than the beneficiary with the shortest life expectancy at the time of the participant's death be permitted as a future beneficiary.[29]

An accumulation trust could also potentially fail the identifiable beneficiaries rule where the trust document grants its beneficiaries a power of appointment, and after the participant's death a beneficiary exercises that power in favor of someone older than the beneficiary with the shortest life expectancy at the time of the participant's death. To avoid this result, the power of appointment should either be removed altogether or strictly limited to exclude any possible beneficiaries with a shorter life expectancy than that determined at the participant's date of death.

When an accumulation trust is drafted properly, it passes the identifiable beneficiaries rule and can qualify as see-through. The RMDs for both the primary and remainder beneficiaries are then calculated based on the life expectancy of the oldest beneficiary, whether primary or remainder. This may be problematic for a client who wishes to use the life expectancy of a minor primary beneficiary for RMD purposes, but also wants to designate an older person (e.g., an older sibling) as a remainder beneficiary. For example, if the client creates a trust for persons under 25 under his will to hold retirement account proceeds, and the client wants to use the age of that person to calculate RMDs, the client should designate as remainder beneficiaries only individuals younger than the primary beneficiary to avoid potential loss of the stretch. This results in the client having to exclude potential remainder beneficiaries that he would otherwise designate, such as children of the client who are older than the primary beneficiary.

> "Carefully drafted beneficiary designation forms can alternatively be used where the participant desires that the retirement proceeds be placed in trust, but also wants the option to use the potential stretch."

"Pot" Versus Separate Trusts

Sometimes a client may want to have one trust hold retirement account proceeds for the benefit of multiple beneficiaries. Advantages to this method include simpler estate plan drafting, the ability to treat beneficiaries unequally, and reduced administrative fees associated with having only one trust instead of many. However, as discussed above with regard to accumulation trusts, when such a "pot" trust (whether conduit or accumulation) is used for multiple beneficiaries, the life expectancy of the oldest beneficiary must be used to calculate the RMDs for all beneficiaries. If all of the trust beneficiaries are relatively close to one another in age, this may not be an impediment. However, if the trust beneficiaries' ages vary significantly, the client may instead want to establish separate trusts for each beneficiary, thereby allowing for separate account treatment for purposes of RMD calculations, but also adding complexity to the trust administration.

Sub-Trusts

Often in estate plans a single master trust gets subdivided into multiple trust shares, or sub-trusts, for the client's children, grandchildren, and so forth upon the client's death. For such sub-trusts to get separate account treatment and allow for each beneficiary's individual life expectancy to be used for calculating RMDs, each sub-trust must be specifically named in the retirement account's beneficiary designation instrument. These sub-trusts can be established and funded after the owner's death, and they can technically be created under a single master trust; however, it is critical that each sub-trust be considered a separate trust under state law, with its own tax ID number, *by the time the beneficiaries receive the retirement benefit.*[30] If only the master trust is named on the beneficiary designation, the sub-trusts cannot attain separate account treatment, even if the master trust splits the received retirement account proceeds into the sub-trusts for each beneficiary.

Taking Advantage of the Stretch

A client may designate minor beneficiaries for her retirement benefits, but not wish to direct the proceeds into trust. This may occur when the retirement account is relatively small or the proceeds are to be divided many ways with only a small amount going to each beneficiary, thereby reducing the need for specialized planning to reduce income taxation. Or the client may not feel that the cost associated with drafting a proper see-through trust is justified by the potential tax deferral benefits of having such a trust. Sometimes the client wants the proceeds to go into trust, but also wants the benefit of an alternative option should laws change and cause the trust to lose the benefit of the stretch at the time of the client's death. In such situations, there are ways to help ensure that the potential stretch is not lost.

If the client knows he does not want the retirement account proceeds to go into trust, an attorney can draft a beneficiary designation form so that the proceeds are payable directly to a custodian for the minor beneficiary. This allows for the minor's individual life expectancy to be used to calculate the stretch. The language of this beneficiary designation should specify that any proceeds to be paid to a minor beneficiary shall instead be paid to a custodian for the minor.

Carefully drafted beneficiary designation forms can alternatively be used where the participant desires that the retirement proceeds be placed in trust, but also wants the option to use the potential stretch. The participant's designated beneficiary form can provide the personal representative or trustee with the discretion to either pay the proceeds outright to the minor's custodian or pay the proceeds into trust, depending on which option is most desirable at the time of death. Such language gives the personal representative the ability to either use the trust for persons under 25 (if such trust does not include a disqualifying power of appointment and the class of contingent beneficiaries is limited to beneficiaries younger than the minor beneficiary) or instead pay the proceeds to the custodian for the minor beneficiary, free from trust:

BENEFICIARY DESIGNATION

Company: ___________________________
Policy No. or Account No.: ____________
Insured Or Account Owner: ___________

The proceeds shall be paid to my spouse, ________________, if my spouse survives me; or, if my spouse does not survive me, the proceeds shall be paid in equal shares to those of my children, ______________, ______________, and ______________, who survive me; provided, however, that the issue who survive me of any child of mine who does not survive me shall receive by representation that share which such deceased child would have received, if such child had survived me.

If a separate trust is established under my Last Will and Testament and held for any beneficiary of mine under the age of twenty-five (25) years, who, as beneficiary, is entitled to receive the proceeds or a portion of the proceeds hereunder, such proceeds to which my beneficiary is entitled shall be, at the sole and absolute discretion of the Personal Representative of my Estate (such discretion to be exercised within ninety (90) days of the date of my death), paid to the trustee of such separate trust, to be added to and held as a part of such separate trust for disposition.

In the alternative, such proceeds to which any beneficiary of mine under the age of twenty-one (21) years is entitled shall be, at the sole and absolute discretion of my Personal Representative (such discretion to be exercised within ninety (90) days of the date of my death), paid to an individual named by my Personal Representative as custodian for such minor person under the Colorado Uniform Transfers to Minors Act or similar law for gifts or transfers to minors of any other jurisdiction.

____
[Name]

____
Date

This sample language avoids giving the institution with which the retirement account is invested any discretion or responsibility as to the disposition of the proceeds, which institutions are typically reluctant to exercise and that may cause them to reject the beneficiary designation altogether.

Post-Death Corrective Options

In addition to the techniques listed above, it is also possible, under certain circumstances, to retroactively reform estate plan documents to maximize the retirement account tax benefits to beneficiaries.

The Treasury Regulations state that a participant'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 [participant's] death*."[31] Thus, if a potentially disqualifying individual is a named designated beneficiary as of the participant's date of death but is removed, disclaims her interest, or receives her entire benefit before September 30 of the following year, that person "is not taken into account in determining the [participant's] designated beneficiary for purposes of determining the distribution period for required minimum distributions after the [participant's] death."[32]

Additionally, Colorado's reformation statute provides that "[t]he court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence that the transferor's intent and the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement."[33] Colorado defines "governing instrument" as "a deed, will, trust, insurance or annuity policy, multiple-party account, security registered in beneficiary form (TOD), pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or power of attorney, or a donative, appointive, or nominative instrument of any other type."[34]

While Colorado courts may permit certain post-death reformations to estate plan documents, recent Private Letter Rulings (PLRs) indicate that the IRS is increasingly declining to uphold state courts' post-death reformations to estate plan documents for federal tax purposes. This restrictive position was applied with regard to reformation of trusts in *Estate of La Meres v. Commissioner*.[35] The IRS recently took a similar position with regard to the retroactive reformation of beneficiary designations for federal tax purposes. In three 2016 PLRs relating to the same set of facts, the IRS upheld a Tax Court ruling that a state court could not retroactively modify a participant's beneficiary designation for tax purposes if a "completed transaction" had occurred.[36] In these cases, because the participant executed a new beneficiary designation naming his estate as the IRA beneficiary, even though the state court determined that the participant did not actually intend to change his designated beneficiaries from the see-through trusts he had previously designated, this change was considered a completed transaction that could not be retroactively reformed by someone other than the participant. These PLRs, though not binding precedent, indicate that while the IRS may permit removal of a disqualifying designated beneficiary after the participant's death (if done prior to the September 30 deadline), it will not allow a state court to create or change a designated beneficiary.[37]

Though the IRS appears to be limiting the ability to reform estate plan documents after the participant's death, this option should not necessarily be ruled out. There may be circumstances in which a mistake of fact or law, or a scrivener's error, caused unintended consequences for retirement benefits, in which case a post-death reformation may be appropriate and acceptable by both a state court and the IRS. The difficulty in convincing the IRS to accept such post-death reformation may lie in proving that the purpose of such change is not solely for federal tax-related purposes.

One way a participant could potentially increase the odds that a post-death reformation is successful would be to include in his estate plan documents a statement indicating that one of his primary goals is to maximize income tax benefits for the retirement account's beneficiaries. If the proceeds were paid into a trust that violates the stretch rules, for example, such language of intent may help give a Colorado court the clear and convincing evidence it needs to reform a beneficiary designation to permit alternative dispositions of the proceeds, thereby allowing beneficiaries to take advantage of the stretch. Such language may also bolster the argument that the estate plan document that did not maximize income tax benefits to its beneficiaries was improperly drafted and did not conform to the participant's true wishes; thus, it could be argued that post-death reformation would not only be for the purpose of maximizing income tax benefits, but also for the primary purpose of conforming the instrument to the decedent's actual intent.

Conclusion

Some proposed legislative changes to IRAs and other qualified retirement accounts would reduce the need for special planning for retirement accounts going into trust for minors. Under current law, however, naming a trust as a designated beneficiary of a retirement account should be done considerately, as it involves significant complexity in drafting an appropriate trust to maximize the stretch. If the client wants control of the payment and use of the proceeds throughout the recipient's life, or if significant proceeds are to go to a minor beneficiary, a trust may be the best vehicle, but it is fraught with traps for the unwary, and other options, such as a custodianship, should be considered. CL

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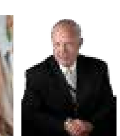

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NOTES

1. While the same or similar issues regarding generation-skipping trusts for adult beneficiaries may arise, the solutions for those issues may be different from the solutions discussed in this article.

2. With regard to inherited retirement accounts, if the beneficiary named by the participant dies, the successor beneficiary must continue taking out RMDs using the ADP that applied to that deceased beneficiary.

3. *See, e.g.*, Zaritsky, "Significant Restrictions on Stretch-IRAs May Be Coming," 44(1) *Estate Planning* 46 (Jan. 2017).

4. IRC § 401(a)(9)(E); 26 CFR § 1.401(a)(9)-4, A-1.

5. Under this "five-year rule," the retirement account proceeds must be distributed "by the end of the calendar year which contains the fifth anniversary of the date of the employee's death." 26 CFR § 1.401(a)(9)-3, A-2. *See also* IRC § 401(a)(9)(B)(iii)-(iv) and 26 CFR § 1.401(a)(9)-3, A-1.

6. Choate, *Life and Death Planning for Retirement Benefits: The Essential Handbook for Estate Planners* 410 (Ataxplan Publications 7th ed. 2011).

7. Note that Roth IRAs do not have a required beginning date, and thus the five-year rule would always apply in situations where a designated beneficiary is wanting. *See* 26 CFR § 1.408A-6, A-14(b).

8. Drafting a trust that complies with all IRS regulations required to ensure that the trust allows for the stretch can be a complicated matter. It is suggested that the drafting attorney carefully consult Choate's book, *supra* note 6, before drafting and having the trust executed.

9. *Id.* at 101.

10. *Id.* at 102.

11. 26 CFR § 1.401(a)(9)-4, A-5(b).

12. "The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit" must be "identifiable within the meaning of A-1 of this section from the trust instrument." 26 CFR § 1.401(a)(9)-4, A-5(b)(3).

13. 26 CFR § 1.401(a)(9)-4, A-1.

14. Choate, *supra* note 6 at 421–22; IRC § 401(a)(9)(E) (a designated beneficiary is "any individual designated as a beneficiary by the employee").

15. 26 CFR § 1.401(a)(9)-4, A-3. *See also*

Choate, *supra* note 6 at 102, 446.

16. Choate, *supra* note 6 at 103 (citing PLR 2006-50022, PLR 2008-46028).

17. *Id.* at 421. Though the IRS has not clearly indicated whether such provision(s) violate the requirement that the retirement account's beneficiary be a qualified "individual" (as evidenced by conflicting implications in various PLRs), it is recommended that a drafting attorney should err on the side of caution and exclude any such provisions to avoid this risk of disqualification.

18. 26 CFR § 1.401(a)(9)-4, A-4(a).

19. This type of trust could be structured as a single trust for each minor beneficiary, or a "pot" trust for multiple minor beneficiaries, among other possibilities. However, if structured as a trust for multiple beneficiaries, it is no longer guaranteed as a safe harbor trust under IRS regulations.

20. *See* Choate, *supra* note 6 at 433 (citing 26 CFR § 1.401(a)(9)-5, A-7(c)).

21. *See id.* at 437 for further discussion on which type of conduit trust to draft.

22. *Id.* at 434.

23. Choate addresses the various considerations involved with drafting such documents in her handbook. ***Id.*** at 438 (regarding multiple beneficiaries of a conduit trust).

24. This type of trust could be structured as a single trust for each minor beneficiary, or a "pot" trust for multiple minor beneficiaries, among other possibilities.

25. IRS Pub. 929, Part 2: Tax on Unearned Income of Certain Children, www.irs.gov/publications/p929/ar02.html#en_US_2016_publink1000203791.

26. For a more in-depth analysis of which potential/contingent beneficiaries of an accumulation trust need to be considered with regard to the identifiable beneficiaries rule, *see* Choate, *supra* note 6 at 440, which describes a process of going down the "chain" of beneficiaries until identifying all of the beneficiaries who will be entitled to receive the trust property "immediately and outright upon the death of the prior beneficiary(ies)."

27. The general rule is that the beneficiaries must be identifiable as of decedent's date of death. If, however, a designated beneficiary initially violates this rule, but is eliminated as a beneficiary before September 30 of the year after the participant's death (e.g., because the beneficiary disclaimed or received the total benefit to which she was entitled), the trust will not lose its see-through status. 26 CFR § 1.401(a)(9)-4, A-4.

28. Choate, *supra* note 6 at 416–17.

29. *See id.* at Appendix B, Form 4.3 for model language to avoid this possibility ("A person's 'issue' shall not include an individual who is such person's issue by virtue of adoption if such individual was so adopted after my death and is older than the oldest individual who was a beneficiary of this trust at my death").

30. *Id.* at 429.

31. 26 CFR § 1.401(a)(9)-4, A-4(a) (emphasis added).

32. *Id.*

33. CRS § 15-11-806

34. CRS § 15-10-201(22)

35. *Estate of La Meres v. Comm'r*, 98 T.C. 294 (1992).

36. Ltr. Ruls. 201628004, www.irs.gov/pub/irs-wd/201628004.pdf; 201628005, www.irs.gov/pub/irs-wd/201628005.pdf; and 201628006, www.irs.gov/pub/irs-wd/201628006.pdf.

37. *Id. See also* Ross, "Designating an IRA Beneficiary? Choose Carefully," 44(3) *Estate Planning* 28, 29–30 (Mar. 2017).