

Changing Retirement Plan Beneficiaries

By Mark Binstock

You have just spent months working with your lawyer to draft an estate plan that suits your needs. You created one trust for your beloved second wife and another trust for your equally beloved children from your first marriage. In order to take advantage of the unlimited marital deduction currently available under the federal estate tax laws, you have made your kids the beneficiaries of your current wife's marital trust upon her death. She will hopefully live a long time and be able to enjoy the benefits of your successful career and when she dies there will still be assets to provide for your children.

An integral part of your estate plan is to change the beneficiaries of your multiple retirement accounts from your current designated beneficiaries to the Marital Trust that you have just created. This should be the case whether the assets are in the form of IRAs, 401Ks or retirement annuities. The income from these assets will permit the Trust to support your current wife's lifestyle and have something left over for your children after she dies.

Some people believe that you can make the change in your retirement assets by identifying them in your trust and then indicating your wish to have the retirement assets be made part of your trust. I am very much in disagreement with that concept and believe that the safer route is to contact each retirement asset manager and create a new beneficiary designation identifying your Trust as the beneficiary. This is a purely administrative task and you may feel that there is no need for you to incur additional legal expenses in order to have your lawyer handle this simple function. For the most part you are correct, but, if you are like many people, you will procrastinate and quite possibly neglect to do it altogether. It is also possible that unexpected illness or catastrophe could prevent you from completing the task.

The better practice is to make the signing and transmitting of the beneficiary designations part of the execution of your estate plan. Prior to executing your new estate documents you should send a letter to the appropriate financial institution requesting the specific form they require to change your beneficiary designation. Most institutions require you to use their form, not because there is anything magic about the form, but because it makes it easier for them to handle the transaction administratively. In addition to requesting the form, your letter should authorize the financial institution to speak directly with your attorney, if necessary, and any other representative that you may wish to designate to have access to the information in your account. Without this authorization the financial institution may refuse to divulge any information to anyone but you because of privacy concerns. Just having the attorney sign the letter transmitting the documents is probably not sufficient for most financial institutions. This can cause unnecessary complications in getting changes accomplished *if* for any reason you are unable to communicate directly with the financial institution. In addition, the financial institution that is the custodian of the retirement account may have certain questions or stipulations that it requires in order to recognize a trust as a beneficiary of the account.

It is highly recommended that you follow up and confirm receipt and acceptance of the change of beneficiary designation, since you never know when a document may be misfiled or not received by the proper entity. This can be particularly important if you maintain more than one account at the institution question. You should obtain written confirmation of receipt and acceptance of the change in beneficiary since many institutions' retirement agreements require that the change in beneficiary be accepted by the institution before it is deemed effective. This can be significant if your account is not held directly by the financial institution where you opened your account but is instead handled by a separate banking institution. That is not an unusual situation since many financial institutions offering retirement products are merely brokers that maintain their accounts at larger banking institutions.

While incurring the expense to have your attorney monitor the status of your beneficiary designations may seem unnecessary, it can prevent some disastrous circumstances from rendering all the time, expense and effort that went into creating your estate plan from becoming ineffective. The message here is *don't be pennywise and pound foolish when it comes to getting things done correctly*. While all of the above is good practice, there is no substitute for you being personally involved each step along the way. In particular, you should retain copies of all current beneficiary designations and make sure to let someone know where they are located.

