

Frequently Asked Question:

May I designate The Trustee of THE PLAN LIFE TRUST as beneficiary of my tax deferred retirement account?

Yes, but we advise you to learn and understand the complex IRS rules involved before signing any beneficiary forms.

Tax deferred retirement accounts typically are Individual Retirement Accounts (IRAs), Thrift Savings Plans (with the federal government), 403(b)s (typically with TIAA-CREF), and 401(k)s (administered by your employer). They are accounts to which you and (in some cases) your employer have made contributions over time without first paying federal or state income taxes on the contributions. The plans allow you to fill out a Designation of Beneficiary Form specifying *who* will receive the account funds if any remain at the time of your death. Usually, you name your spouse as *primary beneficiary* of the remaining funds. However, you can name *other beneficiaries*, including the Trustee of THE PLAN LIFE TRUST. If you do so, then after your death, PLAN would contact the retirement account plan administrator, provide a copy of the master discretionary trust and Joinder Agreement, and would make withdrawals from the retirement account for deposit into the Trust Account (actually, into a sub-trust) established for your disabled child.

Normally, you would not want the plan administrator to disburse the entire retirement account in a *lump sum* to your child's Trust Account after your death. This would result in income taxation of the whole amount in one year (or spread out over five years under applicable tax code provisions). It is usually much preferable to take withdrawals of limited amounts *annually* from the retirement account, in which case income tax would be paid only on the portion withdrawn, allowing the lump sum to continue to grow income tax deferred. The law allows these limited annual withdrawals, which are referred to as the required minimum distributions or RMD's:

(a) if the annual amount withdrawn is calculated based on the life expectancy (using IRS Life Expectancy Tables) of *either* the beneficiary *or* other persons specified in the Designation of Beneficiary Form B explained below; and

(b) if certain other requirements are met some of which (but not all) are set forth in Article 9 of the PLAN LIFE TRUST.

If you do wish to name the Trustee of THE PLAN LIFE TRUST, as beneficiary of your retirement account, then it is essential for you:

(a) to confirm with your plan administrator that the plan you participate in does in fact *allow* payments to be spread out over the life expectancy of your disabled child. Currently, all Individual Retirement Accounts as well as the Thrift Savings Plan *do allow* this arrangement. Your 401(k) or 403(b) plans may or may not allow this arrangement. In 2006, the federal law was changed to *authorize all* tax deferred retirement plans to make distributions over the beneficiary's life expectancy. However, the administrators of many such plans, particularly 401(k)s, have not yet changed their internal paperwork to *amend* the plan documents to allow this arrangement.

(b) to consult with your estate planning attorney or other professional for assistance in filling out your Joinder Agreement and preparing the Designation of Beneficiary Form that you submit to your retirement plan administrator so as to assure that distributions can be taken over your Beneficiary's

lifetime rather than in a lump sum. **PLAN cannot take responsibility for the outcome of your choices in these documents.**

The amount PLAN would withdraw from the retirement plan annually is based on the *life expectancy* of some person. Ideally, you would like withdrawals to be made over the life expectancy of *your disabled child*. However, there are some wrinkles. Under current Internal Revenue Service rules, the life expectancy of your disabled child can be used *only if* all the funds withdrawn by the Trustee annually from the retirement account are *passed through* the Trust to or for the benefit of your beneficiary and are not accumulated (at the discretion of the Trustee) in the Trust Account. This is called a conduit trust and can be selected in your Joinder Agreement with the following language:

Mandatory Distribution by Trustee. Upon receipt of the Retirement Account distribution from a plan administrator, the Trustee shall pay all such amounts withdrawn or received from such plan, less any expenses chargeable to such amounts, to or for the benefit of the Beneficiary in the year of receipt.

Here is the downside of a conduit trust provision: If the retirement plan account you leave for your child is *large*, resulting in large annual distributions that pass through the trust to your child (or for his/her benefit), the Trustee might not be able to find ways to spend the funds on your child and would have to disburse excess cash directly to your disabled child. If your child is receiving SSI and Medicaid, this would likely have the effect of disqualifying him or her from these needs based public benefits.

There is an alternative. You could avoid the conduit trust language in your Joinder Agreement and use language, such as the following, that gives PLAN, as Trustee, the discretion to leave some of the withdrawn retirement account funds in the Trust Account rather than distributing them all to your child or for his/her benefit. This alternative can be selected in your Joinder Agreement with the following language:

Discretionary Distribution by Trustee. Upon receipt of a Retirement Account distribution from the plan administrator, the Trustee may distribute the same to or for the benefit of the Beneficiary if, as and when the Trustee, in its sole discretion, may deem the same appropriate. The Trustee may, in its sole and absolute discretion, elect to retain and accumulate said distribution in the sub-account if distribution of such benefits would effectively disqualify the Beneficiary from needs-based public benefits.

If this alternative is used, then, under IRS rules, the life expectancy of your beneficiary can be used to define the payout period only if your beneficiary is the *oldest person* named in the group consisting of your beneficiary and the remainder beneficiaries (i.e. persons named to receive the benefits if any are left after your beneficiary dies). For example: You state in your Joinder Agreement that, upon your beneficiary's death, any remaining retirement plan benefits are to go to your aunt. Assume that, at the time of your death, your beneficiary is age 25 and the aunt is age 80. The IRS rules require that aunt's life (as oldest beneficiary) be used as the measuring life. If her life expectancy is 5 years, then all benefits must be withdrawn in a 5 year period. If, in contrast, the named remainder beneficiaries are the beneficiary's siblings (who are approximately the same age as the beneficiary), then the measuring life of the eldest of your children could be used as the life expectancy for making payouts. Thus, it is advantageous to name remainder beneficiaries who are approximately the same age or younger than the beneficiary.

PLAN does not encourage or discourage you from naming the PLAN LIFE TRUST as beneficiary (either contingent or primary) of some percentage, or all, of your tax deferred retirement accounts. However, as you can see, consultation with your estate planning attorney or other professional is essential to avoid any unexpected negative income tax results.