<u>Why You Should Consider Using IRA Beneficiary Trusts</u>

By Neil R. Lubarsky, Esq.

A recent trend in the way that families are accumulating wealth is the dramatic increase in the amount of money they have saved in the form of qualified retirement assets. In addition to the equity in homes, many people have most of their investment assets in retirement plans including their Individual Retirement Accounts (IRAs).

There are many benefits to putting money away into retirement plans or IRAs. One major benefit is that IRAs grow income tax free over an owner's lifetime. A second major benefit of IRA's, which should not be overlooked, is the protection they can generally provide against creditors, particularly when the IRA owner is a resident of New York State. If an IRA owner is sued or files for bankruptcy, creditors generally cannot access the owner's IRA accounts.

This valuable protection against creditors, which both Federal and New York law provides to IRA owners, however, cannot be transferred to the IRA owner's heirs. In a recent United States Supreme Court case, *Clark v. Rameker*, the Court held that an "inherited IRA," which is also sometimes referred to as a "beneficiary IRA" was not a protected retirement fund under federal law, and that it is not protected against creditors; as a personal IRA would be.

In order to protect these inherited IRA's from the beneficiaries' creditors, one might want to have an attorney create an IRA Beneficiary Trust, and then name this trust as the beneficiary of the IRA, rather than specifically naming children or grandchildren. A properly drafted IRA beneficiary trust can protect the assets from the children's and grandchildren's creditors, while simultaneously deferring the required payout and the payment of taxes on such distributions over the children's or grandchildren's life expectancies. There are many other benefits available from creating this type of trust, including the following:

1. <u>Protection of IRA From Being Irresponsibly Spent:</u> A child or grandchild might have trouble responsibly handling a large sum of money, and might spend it irresponsibly if it were made fully available to the child or grandchild at any particular point in time. Using an IRA beneficiary trust as the designated beneficiary of the IRA, rather than the child or grandchild, will result in the IRA assets being protected for your child or grandchild over their lifetime.

2. <u>Protection of IRA Assets from Invasion by Sons-in-law and Daughters-in-law</u>: Naming an IRA beneficiary trust as the beneficiary of an IRA can protect such inherited IRA from being

split up in the event of a child's divorce. The use of such a trust as an IRA beneficiary can ensure that your IRA funds will be made available only for use by your children and grandchildren, rather than also being available to divorcing in-laws.

3. Protection of IRA from Costly Court Supervision: If a child under 18 years of age is named as an IRA beneficiary, and the IRA owner dies while the beneficiary is still a minor, the IRA will end up being subject to court supervision, and as a result, the owner's estate will likely incur substantial related court costs. If, instead, an IRA beneficiary trust is set up for the benefit of such minor, the court's need to appoint and pay an independent attorney of the Court's choice to oversee and distribute the monies held in the IRA accounts will be avoided.

With an IRA Beneficiary Trust in place, clients can have the peace of mind that their IRA assets will end up being preserved for and ultimately spent only on behalf of their loved ones, as and when needed. The rules involved with respect to properly naming a trust as an IRA beneficiary are very exacting, and it is therefore imperative that anyone wishing to create such a trust consult an experienced estate planning attorney.

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