

Drafting IRA Beneficiary "See-Through" Trust Provisions

Meeting Complex IRS Rules to Qualify a Trust as a Conduit Trust or an Accumulation Trust

WEDNESDAY, JULY 18, 2018

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Gary D. Altman, Principal and Founder, **Altman & Assoc.**, Rockville, Md.

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*Special Thanks to Owen Kaye, Esq., **Givner & Kaye**, Los Angeles for submission of materials

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EXHIBIT "A"

ARTICLE V.

Specific Trust for Retirement Plan Benefits

Conduit Trust for CLYDE SMITH

It is the Testator's intent that any trust created under this Article V. (hereinafter referred to as a "Retirement Trust") be a "qualified trust" under Reg. 1.401(a)(9), often referred to as a see-through trust or conduit trust for the primary purpose of receiving Retirement Plan Benefits for CLYDE SMITH.

To the extent permitted by law, any provision in this Article that would result in a Retirement Trust created hereunder to fail to comply with the rules and regulations necessary to qualify such trust as a qualified trust shall not apply and any provision needed for said qualification which has been omitted from this Article shall be added. The following provisions shall apply to any trust created under this Article:

A. Deferred Distribution and Asset Protection. Testator acknowledges that the provisions of this Article are intended to balance Testator's objective to achieve income deferral and other estate planning objectives, including but not limited to asset protection and preservations of assets. As such, the Retirement Trust created hereunder shall be administered by the Trustee keeping these objectives in mind.

B. Trust Name. Any trust created under this Article shall be called "Qualified §409 Trust for the Benefit of [named beneficiary]" or similar name to indicate the trust is for the benefit of receiving Retirement Plan Benefits and is to be administered in a way to comply with all Income Tax Regulations that allow for deferral of income based on a measuring life of the beneficiary in a manner to allow for the most favorable deferral of income allowed. Testator acknowledges under the current law, a trust deferral within a trust is limited to the measuring life of the oldest beneficiary of a trust for minimum required distributions.

C. Minimum Distributions from Retirement Plans. Each year, beginning with the year of my death (to the extent not already distributed prior to my death), my Trustee shall withdraw from any Retirement Account (or Retirement Accounts) payable to the Retirement Trust created hereunder, the Minimum Required Distribution for such plan(s) as calculated under the Minimum Required Distribution Rules set forth in Reg. §1.401(a)(9)-4, A-5(b), plus such additional amount or amounts as the Trustee deems

EXHIBIT "A"

advisable in his or her discretion. Such Minimum Required Distributions and other amounts paid out from the Retirement Plan shall (whether paid out in accordance with the Trustee's direction or inadvertently), less any expenses properly charged thereto, immediately be distributed as income to the Retirement Trust beneficiary subject to 5.5 below.

D. Final Distribution. Upon the death of CLYDE SMITH, the Trustee shall **[PERSONALIZE AS TO CLIENT – DOESN'T MATTER WHO OR WHAT IS HERE BECAUSE THE TRUST IS A CONDUIT TRUST, THE ONLY BENEFICIARY WHO COUNTS IS CLYDE]**

E. Prohibition on Distribution to Non-individuals and Other Defined Persons. Notwithstanding any other provision herein, it is my intent that the Trustee may not distribute Retirement Benefits to or for the benefit of my estate, or my spouse's estate, any charity or any other non-individual beneficiary; it is my intent that any Retirement Benefits payable to a Retirement Trust be administered and distributed pursuant to the terms of this Retirement Trust solely for the benefit of individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. Moreover, notwithstanding any other provision of this instrument or application of state law, "issue" or "descendants" for purposes of this Article shall not include an individual who was adopted after my death and is older than the oldest beneficiary of a trust who is living on my date of death and whose life is a measuring life for distribution purposes.

F. Trust Documentation to IRA Plan Administrator. I direct my Trustee to provide the custodian or plan administrator of any Retirement Benefit with a copy of the provisions of this Retirement Trust in a timely manner, as required by law. I give my Personal Representative (if any) and/or my Trustee full power and authority to request information from and provide information to the custodian or plan administrator of any Retirement Benefit.

G. Additional Instructions to Trustee. I direct my Trustee to comply with any other administrative duties necessary to qualify each trust created hereunder as a qualified trust and to seek assistance from a professional, if needed, to ensure the deferred payment of Qualified Plan Benefits.

EXHIBIT "A"

H. Definitions.

1. Retirement Benefits. The term Retirement Benefits shall mean and refer to any plan or account which is subject to the minimum distribution rules of IRC §401(a)(9).

2. Minimum Distribution Rules. The term Minimum Distribution Rules mean the rules of Section 401(a)(9) of the Internal Revenue Code of 1986 as amended.

3. Minimum Required Distribution. The term Minimum Required Distribution means the amount calculated under the Minimum Distribution Rules.

4. Retirement Account. Retirement Account refers to any tax-advantaged account subject to Minimum Distribution Rules.

5. Conduit Trust. Conduit Trust shall mean a trust created to comply with the IRC provisions allowing for the payment of Retirement Benefit payments over a period of time commonly referred to as "stretch-out" period based on the life expectancy of the oldest beneficiary of a qualified trust (AKA "see-through trust').

ARTICLE V.

Specific Trust for Retirement Plan Benefits

Accumulation Trust For BONNIE SMITH

It is the Testator's intent to create a trust under this Article V (hereinafter referred to as a "Retirement Trust") to be a "qualified trust" under Reg. 1.401(a)(9) for the primary purpose of receiving Retirement Plan Benefits for my daughter BONNIE SMITH. Any provision in this Article that would result in a Retirement Trust created hereunder to fail to comply with the rules and regulations necessary to qualify such trust as a qualified trust shall not apply and any provision needed for said qualification which has been omitted from this Article shall be added. The following provisions shall apply to any trust created under this Article:

A. Deferred Distribution and Asset Protection. Testator acknowledges that the provisions of this Article are intended to balance Testator's objective to achieve Testator's estate planning objectives, including but not limited to tax planning, asset protection and asset management. As such, the Retirement Trust created hereunder should be administered by the Trustee keeping these objectives in mind.

B. Trust Name. The trust created under this Article shall be called "Qualified §409 Trust for the Benefit of BONNIE SMITH" or similar name to indicate the trust is for the benefit of receiving Retirement Plan Benefits and is to be administered in a way to comply with all Income Tax Regulations that allow for deferral of income based on a measuring life of a trust beneficiary in a manner to allow for the most favorable deferral of income allowed. Testator acknowledges under the current law, a trust deferral within a trust is limited to the measuring life of the oldest beneficiary of the trust for minimum required distributions.

C. Minimum Distributions from Retirement Plans. Each year, beginning with the year of my death (to the extent not already distributed prior to my death), my Trustee shall withdraw from any Retirement Account (or Retirement Accounts) payable to the Retirement Trust created hereunder, the Minimum Required Distribution for such plan(s) as calculated under the Minimum Required Distribution Rules set forth in Reg. §1.401(a)(9)-4, A-5(b). Following my death, the trustee may accumulate or pay to or apply for the benefit of BONNIE SMITH, all income of the trust and such amounts of the

EXHIBIT "B"

principal as the trustee deems advisable in its discretion, provided however no distribution shall be made which is not in accordance with this Article V, provisions _____ **(would reference article of special needs provisions following here if appropriate and of course change all references when adding more paragraphs).**

D. Final Distribution. Upon the death of the primary trust beneficiary, all property of the trust shall be distributed outright and free of trust to _____. (THIS CAN NOT BE AN ESTATE OR CHARITY OR NON INDIVIDUAL ENTITY AND SHOULD BE AN INDIVIDUAL YOUNGER OR NEAR AGE OF BENEFICIARY FOR ULTIMATE DEFERRAL – MAY DESIRE TO ADD AT LEAST ONE PERSON BACK UP TO FINAL DISTRIBUTION)

E. Prohibition on Distribution to Non-individuals and Other Defined Persons. Notwithstanding any other provision herein, it is my intent that the Trustee may not distribute Retirement Benefits to or for the benefit of my estate, or my spouse's estate, any charity or any other non-individual beneficiary; it is my intent that any Retirement Benefits payable to a Retirement Trust be administered and distributed pursuant to the terms of this Retirement Trust solely for the benefit of individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. Moreover, notwithstanding any other provision of this instrument or application of state law, "issue" or "beneficiaries" for purposes of this Article shall not include an individual who was adopted after my death and is older than the oldest beneficiary of this trust who is living on my date of death and whose life is a measuring life for distribution purposes.

F. Trust Documentation to IRA Plan Administrator. I direct my Trustee to provide the custodian or plan administrator of any Retirement Benefit with a copy of the provisions of this Retirement Trust in a timely manner, as required by law. I give my Personal Representative (if any) and/or my Trustee full power and authority to request information from and provide information to the custodian or plan administrator of any Retirement Benefit.

G. Additional Instructions to Trustee. I direct my Trustee to comply with any other administrative duties necessary to qualify each trust created hereunder as a qualified trust and to seek assistance from a professional, if needed, to ensure the deferred payment of Qualified Plan Benefits.

EXHIBIT "B"

H. Definitions.

1. Retirement Benefits. The term Retirement Benefits shall mean and refer to any plan or account which is subject to the minimum distribution rules of IRC §401(a)(9).

2. Minimum Distribution Rules. The term Minimum Distribution Rules mean the rules of Section 401(a)(9) of the Internal Revenue Code of 1986 as amended.

3. Minimum Required Distribution. The term Minimum Required Distribution means the amount calculated under the Minimum Distribution Rules.

4. Retirement Account. Retirement Account refers to any tax-advantaged account subject to Minimum Distribution Rules.

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