

# WHY YOU NEED AN IRA/401K TRUST

Individual Retirement Accounts (“IRAs”) and 401Ks were not originally designed to be wealth transfer vehicles. In 2007 the IRS issued final regulations governing the calculation of required minimum distributions (“RMD”) from inherited IRAs and 401Ks. These regulations dramatically change the way that we now plan IRA and 401K beneficiaries from tax, financial, and estate planning viewpoints.

The key aspect of these regulations is that they permit a non-spouse beneficiary to “stretch out” the taxable required minimum distributions over his or her actuarial lifetime. The ability to compound IRA and 401K investments, tax deferred, over a much longer period of time can make IRAs and 401Ks efficient ways to pass wealth from one generation to the next. A \$200,000 IRA, inherited by a 40-year-old, could be worth \$1 million or more over his and his children’s lifetimes! In other words, obtaining maximum income tax stretch out may now be a prime planning objective.

## *Something to Consider:*

Although income tax stretch out can be obtained by naming individuals as beneficiaries instead of a qualified trust, naming

individuals as beneficiaries exposes your estate to a host of problems:

**Problem 1.** The IRA/401K can become community property and end up in the hands of the beneficiary’s spouse in a divorce or death;

**Problem 2.** Lawsuits and creditors could seize the IRA/401K;

**Problem 3.** The beneficiary may decide to take out more than the required minimum distributions as a result of ignorance, bad advice, or the self-interest of others. This would result in much earlier taxation and the loss of years of tax-deferred compounding, negating the benefit of the IRA/401K;

**Problem 4.** You do not control who will eventually inherit the IRA/401K assets after the primary beneficiary;

**Problem 5.** The beneficiary may have poor money management skills, be a spendthrift, be too young or too disabled to manage money;

**Problem 6.** A beneficiary receiving government benefits could lose those benefits;

**Problem 7.** The primary beneficiary may not survive you and the successor beneficiary may need different distribution rules; and

**Problem 8.** Even if none of the above occurs, what could represent a substantial sum when the beneficiary dies may then be subject to estate taxes when it gets passed to future generations.

All of these problems can be avoided by naming a qualified trust as beneficiary instead of an individual.

Unfortunately, under IRS regulations, a trust named as a beneficiary must jump through a number of hoops in order for the IRA/401K to obtain maximum stretch out over the lifetime of the beneficiaries. A typical Living Trust designed to handle non-tax deferred assets cannot meet all of these requirements. Therefore, a separate trust, an IRA or Retirement Plan Trust, is instead established as the IRA/401K beneficiary.

At the Greening Law Firm, P.C. our IRA Trusts are specially designed to not only meet IRS requirements for a qualified “Designated Beneficiary Trust” in order to obtain maximum stretch out over the successor beneficiaries’ lifetimes, but also can provide protection against all of the eight problems recited above that may occur when an individual is named beneficiary.

Remember,

***Planning Adds Predictability!***

## Action Plan

You will want to consider visiting with us about implementing an IRA/401K with a specially designed trust as a beneficiary if you fit any of these conditions:

- You have a substantial IRA or 401K;
- Your IRA or 401K names an individual or individuals as beneficiary;
- Your IRA or 401K names a trust as beneficiary but that trust is not an IRA or Retirement Plan Trust;
- You want your beneficiaries to have asset protection from predators, creditors, divorce, and estate taxes;
- You prefer to designate minor beneficiaries if your primary beneficiaries do not survive you; or
- You are interested in maximizing your bequeathal's capacity to make a large and enduring impact on the lives of your beneficiaries.



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*Practice Limited to Estate Planning,  
Estate Administration, Probate, and Elder Law*

The hiring of an attorney is an important decision. The items discussed in this brochure are of a general nature and not intended to provide legal advice. Please consult a qualified estate planning/elder law attorney to determine the best options for your personal circumstances.

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## About the Author



Ronald Greening, Attorney and Counsellor at Law, is the founder of The Greening Law Firm, P.C. Ron grew up in Houston and after earning a B.S.E.E. from the University of Texas at Austin in 1969, he worked as an electrical engineer for three years. He has practiced law since 1975, starting in Washington, D.C. for six years,

then for two years on Wall Street before returning home to central Texas in 1983. He is a member of the Real Estate, Probate & Trust Law Sections of the State Bar of Texas and the Probate and Estate Planning Law Section of the Austin Bar Association. He is a founding member and past president of the American Association of Trust Estate and Elder Law Attorneys, a member of the Texas and National Association of Elder Law Attorneys and a member and director of the Estate Planning Council of Central Texas. He is fully licensed by the Texas Supreme Court, Washington D.C. Court of Appeals, and various federal courts. His practice is limited to estate planning, estate administration, probate and Medicaid planning.

Ron continues to be active in Westlake Hills Presbyterian Church, WHPC.org, serves on the Board of Directors and Secretary of the Board of the Georgetown Community Foundation, GACF.org, belongs to the Rotary Club of Austin, Rotary-Austin.org, the Texas Longhorn Breeders Association, TLBAA.org, serves on the Advisory Board of the Travis County Retired and Senior Volunteer Program, RSVPAustin.org, and other community and professional organizations. Ron lives on Lake Travis and has a herd of one Longhorn steer who lives in his backyard.

Mr. Greening is committed to researching and preparing high quality, tax-sensitive estate plans. His mission in law is to help people accomplish their estate planning goals, and to take the mystery out of the estate planning process. His clients have their estate plans explained in straight-forward language that they and their families can understand. Good planning avoids needless court interference, public records, attorney fees, and government interference when an estate is settled.

Ron teaches workshops for the public as well as accredited continuing education seminars for C.P.A.s, nursing home administrators, attorneys, C.F.P.s, and other financial advisors. He provides complimentary initial office consultations for estate planning.

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## IRA/401K TRUSTS



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