INTEGRATING RETIREMENT PLANNING INTO ESTATE PLANNING
PART I
(IRAs/401K/Pension Plans)*

PRESENTED FOR

ELDER LAW SECTION
FLORIDA BAR

FEBRUARY 2, 2001

BY

LINDA SUZZANNE GRIFFIN, J.D., LL.M., C.P.A.
1455 COURT STREET
CLEARWATER, FL 33756
727.449.9800
Email:lawyergrif@aol.com

Integrating Retirement Planning into Estate Planning*
PART I
(IRAs/401K/Pension Plans)*

I. Areas of Interest to Clients

A. Initial designation of beneficiary. If no named beneficiary, then be careful of default beneficiary.

B. Division of benefits upon divorce will be taxed to former spouse and not Participant by use of qualified domestic relations order ("QDRO").

C. Method to receive benefits once retired or when required.

D. Distribution plans when Participant dies.

E. Conversion of traditional IRA balances into Roth IRA.

II. Plan Documents

A. Read the Plan document.

B. May be limited to joint and survivor annuity for spouse.

C. May not be entitled to lump sum or annuity.

III. Spousal Rights

A. In certain qualified plans spouse is entitled to at least 50% of Participant's plan benefits. See Sections ("§") 401(a)(11) and 417 of the Internal Revenue Code of 1986, as amended (the "I.R.C.").

B. Must receive qualified joint and survivor annuity unless spouse consents. See I.R.C. §417(b).

C. Obtaining consent before marriage. See Treas. Reg. §1.401(a)-20. Individual may only consent after marriage to waive benefit at death.

D. In prenuptial agreement may be able to enforce under state contract law.

*This outline is taken in part from Lou Mezullo's, the Great Southern Tax and Estate Planning Conference outline "Designating Trusts as Beneficiaries of Retirement Plans and Coordinating Death Benefits with the Estate Plan", with Mr. Mezullo's consent.

E. Valid consent to waiver of QJSA must be made within 90 days of commencement. See I.R.C. §417(a)(3)(A).

F. Individual Retirement Account ("IRA") is not subject to spousal annuity rights. See Treas. Reg. §1.401(a)-20.

IV. Penalty Taxes

A. Premature distributions.

(1) 10% penalty on distributions prior to age 59½. See I.R.C. §72(t).

(2) Exceptions. See I.R.C. §72.
a. Death.
b. Disability.
c. Rollover.
d. QDRO.
e. Separation from service after age 55.
f. Receipt of nondeductible contribution.
g. Certain medical expenses.
h. Medical insurance.
i. Qualified higher education expense.
j. First time home buyer.
k. Substantially equal periodic payments
(i) only if separated from service;
(ii) beneficiary whose life is being used to calculate payouts must be same person entitled to benefits at death; and
(iii) any modification of payout, other than death or disability, will cause penalty tax, plus interest, unless modification occurs the later of the 5 year period beginning with first payment or date beneficiary reaches 59½.
l. Federal tax levy.

B. Excess retirement distribution tax of 15% has been repealed.

C. Excess retirement accumulation tax of 15% has been repealed.

D. Minimum distribution.

(1) 50% penalty on minimum distribution not made.

(2) Not later than required beginning date ("RBD"). Must pay as follows (I.R.C. §401(a)(9)):
  a. Lump sum.
  b. Substantially equal periodic payments over:
    (i) life of Participant;
    (ii) joint lives of Participants and a designated beneficiary ("DB");
    (iii) period not extending beyond life expectancy of Participant; or
    (iv) period not extending beyond joint and last survivor expectancy of Participant and designated beneficiary.

(3) RBD defined.
  a. If own more than 5% of employer, then April 1 following calendar year in which Participant reaches age 70½.
  b. If own less than 5% of employer, then April 1 following the later of the calendar year in which Participant reaches age 70½ or the calendar year in which Participant retires.
  c. What does retire mean?
  d. **NEW RULES ALLOW THE RBD TO BE APRIL 1 OF YEAR FOLLOWING YEAR TURN 70½ REGARDLESS OF 5% OWNER**

(4) **DEATH BEFORE RBD.** Distribution must be made by December 31 of the 5^{th} calendar year of the year of death. <u>See</u> I.R.C. §401(a)(9).
  a. If DB other than spouse, then over life of DB or life expectancy of DB. Payments must begin by December 31 of year after death.
  b. If DB is spouse, then over life of DB or life expectancy of spouse, provided payments begin no later than December 31 of calendar year immediately following calendar year when Participant dies or December 31 of calendar year when Participant would have reached age 70½.
    (i) Spouse may only get distribution when Participant would have reached age 70½ if spouse is only beneficiary, unless beneficiary has separate share or account.
    (ii) In Revenue Rulings 2000-2, 2000-3 IRB1 spouse had the right to compel trustee to withdraw all income generated by the IRA assets. Therefore, the IRA payable to QTIP trust qualified for the marital deduction even though income was

not required to be distributed to the trust. Furthermore, because spouse was not sole beneficiary (children were remainder beneficiaries) trustee must have minimum distributions received no later than December 31 of the year following decedent's death.

c. Spouse can rollover.

d. **NEW RULES**

   (i) NONSPOUSE DB CHANGES 5 YEAR RULES TO LIFE EXPECTANCE RULE OF DB

   (ii) IF NO DB AS OF END OF YEAR FOLLOWING YEAR OF BENEFICIARY'S DEATH, THEN 5 YEAR RULE

(5) **DEATH AFTER RBD** distribution must be made at least as rapidly as determined at RBD <u>unless</u> spouse can rollover. **IF DB, THEN REMAINING BALANCE PAID OUT OVER LIFE EXPECTANCY OF DB. IF NO DB AND DEATH AFTER RBD, THEN PAID OUT OVER LIFE EXPECTANCY OF OWNER.**

(6) What is a DB? **CAN ELIMINATE BY CASHING OUT OR DISCLAIMER. DETERMINED BASED ON BENEFICIARY DESIGNATION AS OF THE END OF THE YEAR FOLLOWING YEAR OF ACCOUNT OWNER'S DEATH**

a. Must be an individual because only individual has life expectancy.

b. Trust can be DB if meets requirements.

   (i) Trust must be valid under state law.

   (ii) Beneficiaries of trust must be identifiable.

   (iii) Trust must be irrevocable at death.

   (iv) Documentation requirements.

c. If two (2) or more DB, then oldest unless separate shares.

e. If two (2) or more beneficiaries and one is not a DB, then no DB unless beneficiaries have separate shares.

f. Nonspouse beneficiary is only treated as 10 years younger when calculating while Participant is alive. When Participant dies then DB's <u>actual</u> life expectancy used.

(7) Minimum distribution calculated by dividing life expectancy into value.

(8) Recalculation allowed only when DB is spouse.

a If recalculating, then Participant never runs out of payments.

b. If recalculating over life of Participant and spouse, then all will be distributed when spouse dies. Therefore, never recalculate spouse's life.

c. Default rule is usually recalculated.

V. Trust as Beneficiary

A. Valid trust under state law.

B. Beneficiaries identifiable. If there is a power of appointment, then the power should be effective only after death of DB and should be limited to only those individuals younger than the DB.

C. Trust irrevocable.

D. Documentation requirements - **NEW LAW CHANGES THIS**

(1) Participant furnishes to plan administrator at RBD either trust or list of beneficiaries.

(2) No later than end of ninth month following death must provide documentation.

VI. QTIP Trust As Beneficiary - **CONSIDER NO ROLLOVER BECAUSE OF NEW LAW REQUIREMENTS**

A. Wants to qualify benefits for marital deduction but avoid control by spouse.

B. Participant has ultimate control.

C. Spouse must consent to designation of trust as primary beneficiary under qualified plan but not IRA.

D. Spouse must be treated as DB to use life expectancy.

E. Must distribute income to spouse annually.

F. What if income is greater than minimum distribution?

(1) Participant dies before 70½ and surviving spouse rolls over.

(2) In the first few years required minimum distribution may not equal income.

(3) In Revenue Rulings 2000-2, 2000-3 IRBl, IRA payable to QTIP and qualifies as long as spouse has right to compel the QTIP trustee to withdraw income earned on assets in IRA.

VII. Credit Shelter Trust As Beneficiary

A. To utilize each Participant's applicable exclusion amount.

B. Can use spouse's life expectancy if other remainder beneficiaries are younger individuals.

C. No option of rollover.

D. Use disclaimer if spouse is original beneficiary.

VIII. Estate Taxes

A. Apportionment is imperative.

B. Using income taxed proceeds to pay estate taxes.

IX. Charitable Gifting

A. Estate tax deductible if charity is beneficiary.

B. Exempt from income taxes if no unrelated business income ("UBI").

C. The individual beneficiary of charitable remainder trust only pays taxes on income distributed to the individual.

D. Example:

IRA	1,000,000
Federal estate tax	〈550,000〉
	450,000
Income tax (39.6%)	〈178,200〉
Amount received	271,800

If charity had been beneficiary, then cost to individual beneficiaries is $271,800.

E. Minimum distribution rules if charity is beneficiary.

(1) Charity is not a DB.

(2) If charity is one of many beneficiaries, then no DB unless charity is entitled to a separate account which shares in investment gains and losses.

F. Charitable remainder trust as beneficiary.

(1) If spouse is noncharitable beneficiary, then entire value deductible.

(2) Disadvantages:

a. If CRT is beneficiary, then RBD can only use Participant life expectancy because CRT is not DB.

b. Cannot give distributions to spouse other than fixed percentage or dollar amount.