

Planning for a Disclaimer in 5 Easy Steps



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Beth Blecker, RFC
bblecker@easternplanning.com

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What is a disclaimer?

A disclaimer is a formal refusal of an inheritance (or part of an inheritance) by a beneficiary. By creating a “path” for disclaimed assets to follow, a skilled planner can provide a beneficiary with the option to pass assets to alternate beneficiaries.

1 Make sure the IRA owner names contingent beneficiaries. Naming a contingent beneficiary directly on the beneficiary form is good practice and a pivotal part of most disclaimer planning. When a disclaimer is executed, the person making the disclaimer is treated as if he or she had predeceased the IRA owner. The contingent beneficiary would then inherit the property. If there is no contingent beneficiary listed, often times the funds will default to the estate of the deceased IRA owner.

2 Touch nothing after death! In order to execute a disclaimer, beneficiaries cannot have “accepted” the property. Typically, this includes taking distributions from the account, actively transferring or retitling the account or making investment changes within the account. An exception does exist, however, for a beneficiary taking the year of death Required Minimum Distribution for a deceased account owner.

3 Consult with a qualified estate planning attorney. A disclaimer isn't a simple form you get from your IRA custodian, just sign and send back. It's a legal document generally prepared by an estate planning attorney. Since property law is governed primarily at the state level, there may be slight variations from state to state regarding how the disclaimer must actually be executed or worded.

4 Be mindful of the deadline. Under the Tax Code, a disclaimer must be delivered to the IRA custodian, in writing, within nine months of the date of the IRA owner's death. In the case of a beneficiary who inherits prior to age 21, the disclaimer must be made within nine months of turning 21.

5 Review the disclaimer's impact. There is no changing course with a disclaimer. Once it's been executed, you can't go back. Before you disclaim, make sure you've considered all implications. Will it trigger an estate or generation skipping tax? Will it leave a beneficiary with too little? Will it give another beneficiary too much?

One Blue Hill Plaza, Fifth Floor
Pearl River, NY 10965
845-627-8300

www.easternplanning.com

800 Westchester Av, Ste 641N
Rye Brook, NY 10573
914-552-2718