

Use of disclaimers in IRA beneficiary planning

A disclaimer is a formal decision to refuse a gift or an inheritance and can be used if a beneficiary wishes to decline their interest in a decedent's IRA assets. Generally, the person disclaiming will be treated as if they had died before the IRA holder's death. There are various reasons why a disclaimer may be used, such as:

- estate-planning strategies
- tax issues
- special needs of named beneficiaries
- change in a beneficiary's financial situation

Disclaiming may allow another named beneficiary, often a contingent, to take advantage of the IRA asset's tax-advantaged status. Additionally, disclaiming might help fix an unintentional beneficiary situation post-death.

Key considerations

While it may seem unlikely that anyone would not want their inheritance, the use of planned disclaimers can be a possible strategy to help build flexibility into beneficiary planning. Having a basic understanding of the rules and the possible use of disclaimers can help you create IRA beneficiary designations to benefit one or possibly two generations.

- A qualified disclaimer must usually be completed within nine months of the IRA owner's death, even though the gap period is longer. The gap period is when IRA beneficiaries are determined for purposes of post-death required minimum distributions (RMDs).
- The gap period begins upon the IRA owner's death and ends on September 30 of the year following the owner's year of death.
- The gap period allows for the heirs' advisors (estate attorneys, CPAs, and Financial Advisors) to assist in post-mortem planning.

- This is not an all-or-nothing decision. A beneficiary can disclaim all or just a portion of the assets they inherit.
- Each person inheriting as a result of the disclaimer is a designated beneficiary for purposes of determining post-death RMDs.
- Typically, the IRA passes to any other primary beneficiaries or if none, then to any contingent beneficiaries named on the IRA beneficiary form.
- However, the IRA default beneficiaries may be used if there was not a per stirpes designation, no remaining beneficiaries, or no valid beneficiaries on file. The contract defaults on a Wells Fargo Advisors IRA are:
 - first, the surviving spouse
 - second, the surviving children (as defined under state law)
 - third, the deceased's estate.

Disclaiming and per stirpes

Interestingly, beneficiaries of your Wells Fargo Advisors IRAs may enjoy additional flexibility in disclaiming. Most IRA contracts have a standard designation where if your beneficiary predeceases you, their share is divided proportionately among the remaining primary (or contingent) beneficiaries based on the percentage they are to receive. An IRA with Wells Fargo Advisors lets you choose between a standard designation or a per stirpes designation. With a per stirpes designation, if a beneficiary predeceases you or disclaims their portion, and you do not update your beneficiary designations, their share would go to their descendants; usually their children. Keep in mind per stirpes, generally, follows the blood line so a spouse is not an heir under a per stirpes designation.

Disclaiming rules

It is always wise to rely on your trusted advisors when planning and effecting a disclaimer. These professionals should assist you in enacting a “qualified” disclaimer. The following four rules must be followed for the disclaimer to be considered “qualified” under federal tax law. (State law may impose its own requirements.)

1. The disclaimer must be in written form.
2. The disclaimer must generally be made no later than nine months from the date of death of the IRA holder. If the IRA beneficiary is under age 21, the nine-month period will be counted from the date of the beneficiary’s 21st birthday.
3. The individual disclaiming cannot direct who is to receive the assets and has no interest in that beneficiary. So, in most cases, the disclaimed property will pass to the next beneficiary in line according to the beneficiary designation on file with the custodian, the IRA custodial agreement, and/or state law.
4. The person disclaiming the IRA must receive no benefit from the disclaimed property. However, under IRS Revenue Ruling 2005-36, a beneficiary can distribute the owner’s RMD for the year of death from the IRA and still later disclaim the balance of the IRA, as long as the disclaimer rules are satisfied.

If a disclaimer is made properly under both federal and state law, the disclaimed property is treated as having never been in the possession of the disclaiming individual. If however, the disclaimer is not properly executed then the party disclaiming is considered to have taken possession of the account and then made a taxable gift to the person receiving the account.

Disclaimer—hypothetical example

Rick passes away on February 3 of this year. He has named his wife, Bobbie, as primary beneficiary of his IRA. Their children, Leslie and Patrick, are listed as contingent beneficiaries, each to receive 50% of the assets. During the post-mortem period, Bobbie meets with her advisors and realizes that she has sufficient assets to maintain her

lifestyle and that her children would benefit long-term if she disclaimed the IRA. Bobbie will formally disclaim the IRA within nine months of Rick’s death.

The assets will be split 50/50 and moved into two Inherited IRAs; one for each child. Each beneficiary will empty their Inherited IRA based on their beneficiary category. The Setting Every Community Up for Retirement Enhancement (SECURE) Act created three beneficiary categories: Non-Designated Beneficiary, Designated Beneficiaries, and Eligible Designated Beneficiaries. This allows Rick’s children to benefit from these IRA assets for as long as the law allows.

Talk to Wells Fargo Advisors

The use of disclaimers has become more popular as it gives families flexibility in post-mortem estate planning. Remember that a disclaimer can be used for a portion of the IRA—an individual is not required to disclaim his or her entire interest in the account. It is important to name not only primary but contingent beneficiaries for IRAs to maximize the planning options available to your heirs. The thoughtful completion of a Wells Fargo Advisors IRA beneficiary form should be a first step in ensuring that your IRA assets can help fulfill your legacy plans.

Disclaimers have important legal and tax implications, so be sure to work closely with your attorney and CPA. Your Financial Advisor from Wells Fargo Advisors can help you and your beneficiaries understand the financial benefits of careful IRA planning.

With you every step of the way

Everyone has a different vision of retirement that requires a unique financial strategy. Wells Fargo Advisors can support you in your retirement planning process by providing the guidance needed to make informed choices. We will meet with you and help create a comprehensive plan that takes into account your complete financial picture. Your Financial Advisor will be with you every step of the way to meet to review your progress and adapt your plan as needed. Working together, we’ll design and implement a retirement plan that can help you live out your unique vision of retirement.

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