

Beneficiary Disclaimer

Our ERISA consultants on the Columbia Management Learning Center Resource Desk regularly receive calls from financial advisors who are working with beneficiaries of IRA and/or retirement plan assets. Sometimes the beneficiaries do not want to inherit the assets—perhaps because they want the assets to pass to another, or they do not want the tax consequences of the inheritance. Section 2518(b) of the Internal Revenue Code provides a means by which an individual can disclaim—in whole or in part—his/her beneficial interest. A beneficiary who executes a “qualified disclaimer,” as outlined below, is treated as never having been named as a beneficiary.

A qualified disclaimer must be

- 1) Executed before the beneficiary accepts or uses any of the assets;
- 2) In a written format;
- 3) Delivered to the trustee, custodian or plan administrator of the IRA or retirement plan no later than nine months after *the later of* the date of the participant’s death, or the date the beneficiary attains age 21; and
- 4) Nondirective, meaning, it cannot direct how the assets will be distributed, nor to whom they will pass.

Once a retirement plan beneficiary properly disclaims the assets, his/her share generally will pass to the other remaining named primary or contingent beneficiaries or, if none are named, to the beneficiary prescribed by the plan document (e.g., participant’s estate).

Through our relationship with the Columbia Management Learning Center, we regularly guide Columbia Management’s financial advisor partners through beneficiary issues, including understanding qualified disclaimers. Because beneficiary disclaimers are a complex legal matter, we instruct financial advisors to encourage their clients to work with an attorney. A recent call with a Wells Fargo investment advisor in San Diego, CA, is representative of a common beneficiary disclaimer scenario. The wife of a plan participant was named as the beneficiary on her deceased husband’s qualified plan account. The wife did not need the money, and wanted the assets to be paid to their three children.

Highlights of Recommendations

- The qualified disclaimer rules allow a beneficiary to disclaim inherited assets in whole or in part.
- We discussed the four primary conditions of a “qualified” disclaimer, but stressed the need for the client to consult with his/her attorney on the matter.
- As mentioned previously, the disclaimant cannot direct to whom the assets will be paid under a qualified disclaimer. For example if the disclaimed assets were held in a qualified plan, the plan administrator would be required to follow the terms of the plan document to determine who or what entity would receive the assets.
- Regarding the calculation of required minimum distributions (RMDs), if the beneficiary of a retirement plan properly disclaims the inherited assets after the participant’s death and on or before September 30th of the year following the year of death, the disclaimant’s life expectancy will not be used to determine RMD amounts.

Conclusion

It is possible for a beneficiary of retirement plan assets to forego receipt of the inheritance by executing a qualified disclaimer pursuant to IRC Sec. 2518(b). The consultants with the Columbia Management Learning Center can help advisors better understand beneficiary

disclaimers. However, the decision of whether or not to disclaim inherited retirement plan assets resides solely with the beneficiary and his/her legal counsel.