Retirement Asset Planning for Estate Planners: Compelling Practical Advice

Cannon Financial Institute, Inc.

Presents

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By:

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A. Roth Conversions

1. In General

Upon a conversion from a traditional IRA to a Roth IRA, the assets held in the IRA, other than IRA contributions that were not deductible upon contribution, are fully and immediately subject to ordinary income tax. However, the owner may receive qualified distributions from the Roth IRA tax-free (after satisfying a five-year waiting period and reaching age 59½, discussed below), the assets in the Roth IRA grow tax-free, and the Roth IRA is not subject to required minimum distributions ("RMDs") during the owner's lifetime. However, a non-spouse beneficiary (including a trust) of the Roth IRA will be subject to the RMD rules. A surviving spouse who is the beneficiary of a Roth IRA still has the ability to treat the Roth IRA as his or her own. IRC § 408A(c)-(e); Treas. Reg. § 1.408A-6, A-14. The surviving spouse who is the beneficiary of a Roth IRA, therefore, is essentially a "substituted owner," with no RMDs or income tax.

Thus, an individual who is likely to be in the same or a higher income tax bracket at the time he or she receives a distribution, or a person who believes that the assets in the Roth IRA will grow substantially in value, will benefit from a Roth conversion. Reduced income tax rates under An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018 (the "2017 Tax Act") may favor conversion now. Under the 2017 Tax Act, the maximum individual federal income tax rate was reduced from 39.6% to 37%. Thus, for individuals subject to the maximum federal income tax rate, deferring tax under a traditional IRA may not be as beneficial as converting to a Roth IRA and paying the tax now at lower tax rates. State income tax rates can also factor into the tax savings arising from a conversion, assuming the IRA owner does not already live in or does not retire to a non-income tax state such as Florida.

2. Mechanics of a Conversion

The conversion can be accomplished through: (a) a rollover of a distribution within 60 days of receiving the distribution; (b) a trustee-to-trustee transfer; or (c) redesignating a traditional IRA as a Roth IRA (which is the form of most conversions). Treas. Reg. § 1.408A-4, A-1(b). A conversion may be made at any time; the one-year waiting period that limits successive rollovers between traditional IRAs does not apply to Roth conversions. Announcement 2014-32, 2014-46 I.R.B. 907; Holt, *Conversions, Recharacterizations, and Reconversions*, 46TH ANNUAL HECKERLING INSTITUTE ON ESTATE PLANNING (2012).

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One of the biggest impediments to converting is the up-front tax cost, and, if the IRA owner is under 59½, any amount withdrawn to pay the tax usually will be subject to a 10% penalty. Treas. Reg. § 1.408A-6, A-5. In addition, the funds used to pay the tax and penalty will reduce the future tax-free growth of the assets in the Roth IRA because there will be fewer assets in the Roth IRA. *See* Miller & Mohr, "Consider Annuities and Roth IRAs in Retirement Planning," Estate Planning J., July 2010. The IRA owner may address this issue by implementing only a partial conversion so that the resulting tax will be affordable. The portion of the traditional IRA that is not converted can be converted later in the same year or in future years.

3. Contributions to a Roth IRA

Unlike a traditional IRA, which restricts contributions to taxpayers who have not attained the age of 70½ in the year of the contribution, there is no age limit on the ability to make a regular contribution to a Roth IRA. Holt, *supra*. With regard to the amount of regular contributions, the maximum amount in 2018 (whether made to a Roth IRA or a traditional IRA or both) is $5,500, plus an additional $1,000 if the individual is age 50 or over. IRC § 219(b)(5)(B); Notice 2017-64, 2017-45 I.R.B. 486 (November 6, 2017).

Regular contributions (*i.e.*, contributions of cash) to a Roth IRA are subject to the same limitations on modified adjusted gross income ("MAGI") as contributions to a traditional IRA but are not deductible (IRC § 408A(c)(1)) like most contributions to a traditional IRA. The dollar amounts are indexed for inflation. For 2018, if an individual is married and will be filing a joint return, the amount of regular contributions that the individual may make to a Roth IRA begins to be phased out when MAGI reaches $189,000 and is completely phased out when it reaches $199,000. If the individual is single, the dollar amounts are $120,000 and $135,000. If the individual is married and filing a separate return, the dollar amounts are $1 and $10,000. MAGI is generally the individual's adjusted gross income, except that income attributable to RMDs is excluded, and any deduction for contributions to an IRA does not reduce MAGI. Treas. Reg. § 1.408A-3, A-5, 6; Notice 2017-64, 2017-45 I.R.B. 486 (November 6, 2017).

4. Distributions From a Roth IRA

Qualified distributions from a Roth IRA are not includible in gross income. A qualified distribution is a distribution made after the five-taxable-year period (*i.e.*, five years after the conversion) under Treas. Reg. § 1.408A-6, A-1: (a) on or after the owner reaches age 59½; (b) to a beneficiary after the owner's death; (c) because of the owner's disability; or (d) for a first time home purchase (but only up to a maximum lifetime amount of $10,000, referred to as a "qualified special purpose distribution" under IRC § 408A(d)(5)). Treas. Reg. § 1.408A-6, A-1. Upon the Roth IRA owner's death, the beneficiary will inherit the owner's holding period, so the beneficiary will not have to restart the five-taxable-year period. Treas. Reg. § 1.408A-6, A-7(a). However, an IRA owner who makes a Roth conversion during life cannot treat the holding period of the traditional IRA as the holding period of the new Roth IRA. Treas. Reg. § 1.408A-6, A-2.

Nonqualified distributions may be included in gross income and may also be subject to the 10% additional tax that applies to distributions before reaching age 59½. Treas. Reg. § 1.408A-6, A-5. In general, nonqualified distributions are characterized as first coming from amounts that already have been subject to income tax and, therefore, will not be taxed again. Thus, only post-conversion earnings of a nonqualified distribution are includible in gross income. Because of these ordering rules, even though a distribution is nonqualified, if the distribution is small enough, the taxpayer may be able to avoid recognizing taxable income. A qualified rollover from a Roth IRA is not included in gross income, even if it is not a qualified distribution. Treas. Reg. § 1.408A-6, A-4.

5. Trust as Beneficiary of a Roth IRA

Funding a credit shelter trust with a traditional IRA is usually not an advantageous course of action, at least with regard to income tax exposure and investment growth. However, estate planning with a Roth IRA involves considerations almost entirely contrary to those that arise in connection with estate planning with a traditional IRA or qualified plan. So long as a Roth IRA remains intact, it is a tax-exempt entity and so can continue to compound, tax-free. Further, in general, distributions from a Roth IRA, unlike a traditional IRA or qualified plan, do not give rise to any income taxes. Thus, there is no built-in income tax "lien" on the assets of a Roth IRA. Accordingly, a Roth IRA can be an excellent growth-oriented asset with which to fund a credit shelter disposition. It is important to remember, however, that a Roth IRA is subject to the RMD rules during any period in which its owner is not living, and so a Roth IRA whose beneficiary is a trust will, sooner or later, have some "leakage," albeit income tax-free leakage.

Furthermore, pre-residuary, pecuniary distributions to a credit shelter trust of a retirement asset usually gives rise to income in respect of a decedent ("IRD") under IRC § 691. As long as the distribution meets the requirements of a qualified distribution, the use of a Roth IRA will avoid the acceleration of IRD.

To preserve the tax-free growth of the Roth IRA, estate taxes should not be apportioned to the Roth IRA. Mezzullo, *Roth IRAs: Time for a New Look*, ESTATE PLANNING STUDIES, January 2010; Keebler, *What Every Lawyer Should Know About Roth Conversions - Beyond the Numbers*, LISI EMPLOYEE BENEFITS AND RETIREMENT PLANNING NEWSLETTER #502 (November 2, 2009).

6. Roth IRAs and Charitable Giving

If a charitable entity is the beneficiary of the IRA, converting to a Roth IRA will likely result in a larger gift to the charitable beneficiary due to tax-free growth and the lack of RMDs (and, of course, resulting in a larger charitable deduction for estate tax purposes). In addition, during the owner's lifetime, withdrawals of Roth IRA assets followed by a transfer of funds to a charitable entity will result in a charitable deduction with no offsetting income tax upon the receipt of the funds from the Roth IRA. Goldman Sachs Private Wealth Management, "Action: Converting a Traditional IRA to a Roth IRA in 2010" (November 2009).

If a noncharitable entity is the beneficiary of the IRA, converting to a Roth IRA may still give rise to benefits from charitable giving if the IRA owner has charitable deduction carry forwards, especially if those carry forwards are about to expire. These carry forwards can be used to reduce the income tax incurred due to the conversion. Hoyt, "Rethinking Roth IRA Conversions in 2010," Probate & Property, Sept/Oct 2010.

7. Elimination of Recharacterization

Before the enactment of the 2017 Tax Act, a Roth IRA that resulted from conversion of a traditional IRA could be recharacterized as a traditional IRA before the due date of the owner's income tax return for the taxable year in which the conversion occurred. One might wish to recharacterize, for example, if the assets in the Roth IRA declined in value and a recharacterization could avoid income recognition from the conversion. However, the 2017 Tax Act eliminates the recharacterization option for conversions after 2017, and this provision does not sunset after 2025. IRC § 408A(d)(6)(B)(iii); Akers, *Selected Highlights of 2017 Tax Act and Estate Planning Considerations*, May 2018, at http://www.bessemertrust.com.

While there is no option to recharacterize after 2017, there is some ambiguity regarding how the 2017 Tax Act will impact conversions that were completed during 2017. Before the 2017 Tax Act, a conversion to a Roth IRA in 2017 would have been reversible until October 15, 2018 (assuming the individual also timely filed a 2017 income tax return). Under the 2017 Tax Act, the provision disallowing recharacterization "shall apply to taxable years beginning after December 31, 2017." Some have interpreted this to mean that the ban applies only to Roth conversions that occur after 2017, and any 2017 conversions can still be recharacterized until the October 15, 2018 deadline. However, others interpret the 2017 Tax Act to mean that all recharacterizations are banned after December 31, 2017, which effectively shortened the recharacterization time frame for 2017 converters to the end of last year. If the latter interpretation prevails, many 2017 converters may not have learned about the accelerated deadline in time to act. Recharacterization is still an option to fix a mistaken IRA rollover or contribution. *Natalie Choate – How the Tax Cuts and Jobs Act Affects Retirement Benefits*, LISI EMPLOYEE BENEFITS AND RETIREMENT PLANNING NEWSLETTER #685 (January 2, 2018).

B. Modification of Trusts to Alter Provisions Affecting Retirement Assets

1. Introduction

The governing investment of a trust named as the owner or beneficiary of an IRA or qualified plan may not contain the appropriate language to facilitate distribution of the IRA or qualified plan proceeds to the trust beneficiaries in a manner that will defer the greatest amount of income tax. For example, the trust may not meet the requirements of a valid see-through trust or conduit trust, which would prevent the trust from stretching out distributions over the life of the oldest trust beneficiary. Treas. Reg. § 1.401(a)(9)-4, A-5.

Treas. Reg. § 1.401(a)(9)-4, A-4 provides that certain actions taken after the death of the owner of an IRA or qualified plan will be taken into account in determining the beneficiaries of

the IRA or qualified plan on the beneficiary determination date (*i.e.*, September 30 of the year following the date of death). These post-mortem actions include disclaimers and distributions to a beneficiary of such beneficiary's entire interest when such beneficiary will not qualify as a designated beneficiary under Treas. Reg. § 1.401(a)(9)-4. The regulations do not provide any authority for modifying trust beneficiaries after the beneficiary determination date.

When the Trustee wishes to change the beneficiaries entitled to distributions from an IRA or a qualified plan, and this change cannot be effectuated through disclaimers or distributions of a beneficiary's entire interest, the Trustee may seek a court order to modify the trust instrument. In several PLRs, Trustees have sought IRS approval of the trust modification for income tax purposes. Before 2010, the IRS approved these modifications without much reasoning. *See, e.g.*, PLR 200620025; *see* Herman, "How to Draft Trusts to Own Retirement Benefits," 39 ACTEC LAW JOURNAL 101 (2014).

2. PLR 201021038

The IRS appeared to change its position in PLR 201021038 (May 28, 2010). In this PLR, a husband and wife created a revocable trust (the "Trust"). Upon the death of the latter to die, assets would be divided into lifetime trusts for their children. The children held powers of appointment over the trust assets in favor of certain individuals and charities. Before their deaths, the spouses amended the Trust instrument to provide that, with respect to any retirement asset payable to the Trust, the Trustee was to maximize the deferral of income as much as possible and withdraw only the RMDs from retirement assets. The amended provisions also stated that,

> "[f]or purposes of qualifying as a Designated Beneficiary under IRC and applicable regulations, each beneficiary may amend the terms of the trust which govern the distribution of his or her trust at death in the absence of a complete and effective exercise of any applicable power of appointment; . . .."

Following the surviving spouse's death, the children assumed their roles as successor Co-Trustees. They then obtained a court order modifying the Trust instrument, which, in pertinent part, removed various charities as potential recipients of distributions from the surviving spouse's IRA and named the eldest lineal descendant of the spouses the designated beneficiary of the IRA under Treas. Reg. § 1.401(a)(9)-4, A-4.

Under Treas. Reg. § 1.401(a)(9)-4, a designated beneficiary need not be specified by name to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable. In general, if a participant does not have a designated beneficiary, the applicable distribution period is measured by the participant's remaining life expectancy. Treas. Reg. § 1.401(a)(9)-5, A-5(c)(3).

The IRS explained that a designated beneficiary must be in existence as of an IRA owner's date of death. A designated beneficiary cannot be created after the date of death through a court order even if such order is valid under applicable state law. Thus, the eldest child could

not be treated as a designated beneficiary of the IRA based on the court order. The IRS stated that "[t]here is no applicable federal statute which authorizes [the children's] retroactive reformation of [the Trust]. Accordingly, absent specific authority in the Code or Regulations, the modification of the [] Trust will not be recognized for federal tax purposes."

The IRS concluded that the charities were part of the class of remainder beneficiaries and had to be considered beneficiaries of the IRA for purposes of determining the designated beneficiary of the IRA. Accordingly, the applicable distribution period for the IRA was the surviving spouse's remaining life expectancy, not the eldest beneficiary's life expectancy as would have been the case had the eldest lineal descendant been recognized as the designated beneficiary. Treas. Reg. § 1.401(a)(9)-5, A-5(c)(3).

C. IRC § 403(b) Plans

IRC § 403(b) plans, also known as tax-sheltered annuities ("TSAs"), are available to employees of IRC § 501(c)(3) organizations, public schools, state colleges and state universities and certain other narrow categories of employees. Allowable contributions to a TSA are excluded or deducted from the employee's taxable income and earnings, and gains on these contributions are not taxed until they are withdrawn. For 2018, employees can contribute $18,500 to a TSA and those age 50 and older may be able contribute an additional $6,000. The total combined employer and employee contributions cannot exceed $55,000 in 2018. Notice 2017-64, 2017-45 I.R.B. 486 (November 6, 2017).

Most TSAs are held in the name of the individual employee or in a group annuity contract with an employer. IRC § 403(b) plans are also permitted to be held in custodial accounts by a financial institution and invested in mutual funds. TSAs are also held in a "retirement income account" for church employees. Kushner, Tax Practice Series: Compensation Planning, ¶5630.02.

Like any other annuity contract purchased outside of a retirement plan, annuity payments from an annuity contract in a TSA can be structured to last for the life of the employee (or the joint lives of the employee and a named beneficiary), for a term certain or some combination thereof. TSAs are generally subject to the required minimum distribution ("RMD") rules imposed on IRC § 401(k) plans and IRAs by IRC § 401(a)(9), so the annuity payments from a TSA must be structured to fit within those rules. IRC § 403(b)(10). Each annuity payment from a TSA is generally taxable in full as ordinary income. Post-death distributions from an IRC § 403(b) plan are subject to the same post-death distribution rules that apply to IRC § 401(k) plans and IRAs under IRC § 401(a)(9). Hughes & Olsen, 388 T.M., *Section 403(b) Arrangements*.

D. ERISA Issues for Estate Planners

1. Introduction

Most types of qualified plans must comply with the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406 ("ERISA"). ERISA was intended to provide a uniform

scheme of regulation of various types of qualified plans and preempt state law. Choate, "Practical Strategies in Estate Planning for Retirement Benefits: Benefitting the Spouse or Charity…or Yourself!" AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL, Annual Meeting (2015).

Estate planners must understand which plans are subject to ERISA, as a plan's status under ERISA determines whether a spouse's or creditors' rights under state law are preempted by ERISA. For example, IRAs, Roth IRAs and governmental plans are not subject to ERISA. On the other hand, IRC § 401(k) plans and most other qualified plans are subject to ERISA provisions. Hoyt, "Retirement Accounts: Challenges in Second Marriages," The American Law Institute's Estate Planning In Depth, June 2018. ERISA may apply to IRC § 403(b) plans if such plans meet certain requirements. Labor Dept. Reg. § 2510.3-2(f); *see* Trytten, "Practical Estate Planning Strategies for Retirement Assets," AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL, Annual Meeting (2015).

The Retirement Equity Act of 1984, Pub. L. No. 98-397 ("REA"), added important provisions that are applicable to ERISA plans. REA provides that the "nonparticipant spouse" is entitled to at least portion of a death benefit of an ERISA plan. The participant may waive the surviving spouse's benefit, but the nonparticipant spouse must consent to such waiver. The plan must provide a written explanation of the participant's and nonparticipant's rights under the plan. IRC §§ 401(a), 417; Treas. Reg. § 1.401(a)-20; *see* Trytten, *supra*.

Generally, ERISA funds held in an ERISA-qualified profit sharing or pension plan are protected from creditors. This protection stems from the fact that, to qualify under ERISA, the plan holding the funds must contain an anti-alienation provision. 29 USC § 1056(d)(1); IRC § 401(a)(13)(A). This provision is effective regardless of whether or not the debtor has declared bankruptcy, *Patterson v. Shumate*, 504 U.S. 753 (1992), and regardless of whether the debtor is the original owner/participant with respect to the ERISA funds or inherited the ERISA funds from the original owner/participant.

2. Case Law Regarding Spousal Rights

a. *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, 129 S. Ct. 865 (January 26, 2009), *aff'g*, 497 F.3d 426 (5th Cir. 2007). The participant had the power to designate beneficiaries under his ERISA plan (a savings and investment plan) and remove and replace such designations. If the participant was not survived by a spouse and no beneficiary was designated, the plan provided that the plan proceeds would be distributed to the participant's estate. The participant designated his spouse as beneficiary under the plan. The participant did not designate a contingent beneficiary. The participant and the spouse were later divorced, and, as specified in the divorce decree, the spouse released any rights to the plan. The participant never removed the spouse as the beneficiary under the plan.

The participant was survived by his spouse. After the participant's death, the participant's employer distributed the plan proceeds to the spouse. The participant's estate sued

the employer, claiming that the distribution to the spouse, after she waived her right to distributions under the divorce decree, violated ERISA.

ERISA generally obligates plan administrators to manage ERISA plans "in accordance with the documents and instruments governing" them. 29 U.S.C. § 1104(a)(1)(D).

The United States Court of Appeals for the Fifth Circuit found that the divorce decree constituted an invalid assignment or alienation of the plan benefits under ERISA. Under 29 U.S.C. § 1056(d)(3), the divorce decree must qualify as a Qualified Domestic Relations Order ("QDRO"), according to the Fifth Circuit, before the decree may be exempt from the anti-assignment and anti-alienation provisions of ERISA. The divorce decree did not meet the QDRO requirements.

The United States Supreme Court first asserted, contrary to the decision of the Fifth Circuit, that the spouse did not assign or alienate her benefits to the participant or the estate. The Treasury Regulations define "assignment" and "alienation" to include:

> Any direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary.

Treas. Reg. § 1.401(a)-13(c)(1)(ii).

Because the spouse never actually had a present interest in the plan benefits, the Supreme Court stated that "it would be odd usage to speak of an estate as the transferee of its own decedent's property." In addition, "it would be hard to say the estate or future beneficiary 'acquires' a right or interest when at the time of the waiver there was no estate and the beneficiary of a future estate might be anyone's guess."

The Supreme Court then pointed to other transfers of ERISA benefits similar to the waiver here that would not violate the anti-assignment or anti-alienation provision. A surviving spouse, for example, may waive his or her interest in the deceased spouse's pension benefits without violating the anti-assignment or anti-alienation provision. Also, a beneficiary of an ERISA plan may disclaim benefits under the IRC without violating the anti-assignment or anti-alienation rule. IRC § 2518. According to the Supreme Court, these exceptions help show that the Fifth Circuit's interpretation was erroneous; if the divorce decree constituted a waiver that was invalid under ERISA, such an interpretation would be inconsistent with these exceptions to the anti-assignment and anti-alienation provision.

The Supreme Court also rejected the Fifth Circuit's position that the spouse could waive her interest only if it was held in a QDRO, explaining that a beneficiary is actually prohibited from waiving an interest in a QDRO as well. 29 U.S.C. § 1056(d)(3)(B)(i)(I). "Not being a mechanism for simply renouncing a claim to benefits, then," explained the Supreme Court, "the QDRO provisions shed no light on whether a beneficiary may waive by a non-QDRO."

The Supreme Court then turned to the separate issue of whether the plan administrator was required to honor spouse's waiver and distribute the balance of the plan benefits to the Estate. The Supreme Court explained that the plan administrator is obligated to act in accordance with the governing documents of the plan, and ERISA provides no exception to this duty regarding the distribution of benefits. The Supreme Court then explained that one of the policies of ERISA is to establish rules that provide participants and employers with certainty; the governing documents of the plan (including a QDRO) control the administration and disbursement of benefits, and establishing rules that would allow other documents, such as a divorce decree, to control the disbursement of benefits would be contrary to this policy. Thus, the Supreme Court stated that "the federal common law of waiver" may "obscure a plan administrator's duty to act" in accordance with the governing documents of the plan. Consequently, the Supreme Court ruled that the plan administrator properly distributed the plan benefits to the spouse.

b. ***Mays-Williams v. Williams*, 777 F.3d 1035 (9th Cir. 2015)**. The decedent was a participant in two ERISA-qualified employee benefit programs at his death. The decedent named his then-spouse as beneficiary of the plans. Following their divorce, the decedent called and told the plan representative that he wished to name his son as beneficiary of the plans. Each time the decedent was sent beneficiary forms, which he failed to complete and return to the plan administrator. After the decedent's death, his former spouse as well as his son submitted claims for the retirement benefits. The plan administrator then interpleaded both parties for a determination as to the proper beneficiary.

The plan administrator must distribute benefits "in accordance with the documents and instruments governing the plan." 29 U.S.C. § 1104(a)(1)(D). The United States Court of Appeals for the Ninth Circuit analyzed the plan documents and determined that such documents did not require use of the beneficiary designation form to change beneficiaries.

Further, the Ninth Circuit relied on an interpretation of ERISA from a previous ruling finding that plan documents and "other instruments under which the plan is established or operated" relate only to those documents that provide information about the plan and describe the benefits in more detail. *See Hughes Salaried Retirees Action Comm. v. Adm'r of the Hughes Non-Bargaining Ret. Pl*an, 72 F.3d 686 (9th Cir. 1995). The Ninth Circuit cited the Supreme Court decision in *Kennedy*, summarized above, in which it is stated that "documents and instruments governing the plan" under 29 U.S.C. § 1104(a)(1)(D) and "other instruments" under 29 U.S.C. § 1024(b)(4) overlap, for the notion that only documents providing "information as to 'where [the participant] stands with respect to the plan'" qualify as documents with which a plan administrator must comply in awarding benefits. Additionally, the plan documents on record did not reference any required forms for *unmarried* persons. (Emphasis added.) Accordingly, the beneficiary designation forms were not plan documents governing benefit awards.

Decedent's former spouse then argued that, even if beneficiary designation forms are not "plan documents," if a plan grants the administrator discretion to determine benefit eligibility, then the exercise of such discretion should be upheld as reasonable. The Ninth Circuit rejected

the former spouse's contention that either the employer or the plan administrator exercised any discretion. On the contrary, the plan administrator failed to exercise any discretion as evidenced by its decision to interplead the former spouse and the son into a court action rather than determine whether Decedent's telephonic designation was valid. The Ninth Circuit concluded that none of the plan documents explicitly required unmarried persons to use the beneficiary designation form but the plan documents did encourage participants to call the employer to change beneficiaries. Thus, the Ninth Circuit concluded that decedent substantially complied with the plan documents by calling the employer about his intentions.

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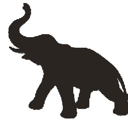

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(Participant Name)

Has successfully completed the Cannon Financial Institute, Inc. course:

Retirement Asset Planning for Estate Planners: Compelling Practical Advice

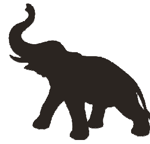
August 28, 2018

Laurie Frye
Professional Education Coordinator

Continuing Education Credits for this course are as follows:

- **Certified Public Accountant** — **1.5 credit hours**
  In accordance with the National CPE Registry of CPE sponsors, CPE credits have been granted based on a 50-minute hour. For information regarding available CPE credits please visit http://cpemarket.nasbatools.com/index.
  Instructional delivery method: Group-Live
  NASBA #103655; Field of Study –Specialized Knowledge & Application
- **Enrolled Agent (IRS)** — **2.0 credit hours**
  Cannon is designated as a qualified education sponsor by the IRS and can offer continuing education credit to Enrolled Agents. Cannon's agreement with the IRS' Office of Professional Responsibility does not constitute an endorsement by the IRS as to the quality of the programs or their contribution to the professional competence of the enrolled individual.
  Course # (VRUGV-T-00107-18-O)
- **Certified Financial Planner (CFP™)** — **1.5 credit hours**
  Course #245342
- **Accredited Fiduciary Investment Manager (AFIM™)** — **1.5 credit hours**
- **Certified Wealth Strategists (CWS®)** — **2.0 credit hours**
- **Certified Investment Management Analyst (CIMA®)** — **1.5 credit hours**
  Course # **17CFI045**
  If you hold the CIMA®, CIMC® or CPWA® certification, you may report this pre-accepted CE program online by logging into your My IMCA account at www.imca.org/user
- **Certified Trust Financial Advisor (CTFA™)** — **2.0 credit hours**
- **Certified Securities Operations Professional (CSOP™)** — **2.0 credit hours**
- **Certified IRA Services Professional (CISP™)** — **2.0 credit hours**
- **Certified Retirement Services Professional (CRSP™)** — **2.0 credit hours**
- **Chartered Life Underwriter & Chartered Financial Consultant (**No Individual State Insurance Credit Available)** — **1.5 credit hours**
- **Fiduciary Investment Risk Management Association (FIRMA®)** — **2.0 credit hours**

Any questions regarding CE credit, please contact Laurie Frye at (706) 353-3346.
Fax (706) 353-3994, Email lfrye@CannonFinancial.com
PO Box 6447, Athens, Georgia 30604



CANNON

FINANCIAL INSTITUTE

Certificate of Attendance

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(Participant Name)

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(Attorney Bar # or Social Security #)

Has successfully completed the Cannon Financial Institute, Inc. course:

Retirement Asset Planning for Estate Planners: Compelling Practical Advice

August 28, 2018

Laurie Frye
Professional Education Coordinator

Continuing Legal Education Credits for this course are as follows:

The following states have been approved for 1.5 hours of General Credit: (Course number is indicated in parenthesis):Alabama, Arkansas (TWE59215), California, Delaware, Georgia, Idaho, Illinois, Iowa (270897), Kentucky (181466), Louisiana, Maine (045193), Minnesota (251573), Mississippi, Montana (19368), Nebraska(151288), Nevada (31172), New Mexico, New York, North Carolina, North Dakota, Oregon (1048*262), Pennsylvania, South Carolina, Tennessee (Distance Ed), Texas(928014017), Utah , Vermont, Virginia, Washington, Wisconsin, & Wyoming

These states have been approved for the following General Credit: Colorado – 2 hours, Florida - 2 hours (1706361N), Missouri –1.8 hours, Oklahoma – 2 hours, West Virginia – 1.8 hours

The following states either do not require/do not accept outside CLE Credit/or do not accept teleconference calls for CLE Credit: District of Columbia, Hawaii, Maryland, Massachusetts, Michigan & South Dakota

The following states have special circumstances:

Alaska-Attorneys can use this certificate to submit to Alaska State Bar
Arizona-On honor system
Connecticut-Attorneys can use this certificate to submit to Connecticut MCLE
Indiana & Ohio-Site Coordinators must apply for credit as the sponsor in order for participants to receive credit
Kansas–Attorney or Site may apply 30 days prior to program
New Hampshire- *NHMCLE does not approve or accredit CLE activities for the NH Minimum CLE requirement. NH attendees must self-determine whether a program is eligible for credit and self-report their attendance.*
New Jersey-Attorneys can use this certificate for New Jersey CLE for 1.5 General credits (Reciprocity Rule)
New York–Attorneys may use this certificate to report their attendance as it is accredited by Approved NY Jurisdictions: AL, AR, CO, DE, GA, KY, LA, MS, NM, NC, ND, OK,. Type of credit: Areas of Professional Practice 1.5 Credits
* In order for PA attorneys to receive credit they must listen to the teleconference in a live classroom setting. The teleconference site must also be listed on the PACLE website and the site must be open to any PA attorney who desires to listen to the program. Call PACLE at 1-800-497-2253 with questions on website listing.
****As required by the following State Bars, and in order to obtain CLE in these states, Cannon will submit the mandatory attendance rosters for the attorneys seeking CLE credits **ONLY** in the following states: Alabama, Delaware, Georgia, Idaho, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington and West Virginia. ****

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