

Comparison of IRA and Trust Estate Planning Options

Obviously individual situations of products/services below will vary widely: for instance, some custodial IRAs do not permit full stretch out, some trustee IRAs are so inflexible as to be no different than custodial IRAs, some annuity companies do not offer restricted beneficiary options, and, of course, individual trusts vary widely as well and scant guidance is available for qualifying "accumulation trusts". And many clients may opt not to use the maximum protections below. These are generalizations based on using the maximum capability and flexibility of the services. State law and individual plans differ.

"RMD"=required minimum distribution. "QRP"=qualified retirement plan. "LE"=life expectancy, aka applicable distribution period
 "RBD"=required beginning date. "LPOA"=limited power of appointment. "GPOA"=general power of appointment. "ET"=estate tax
 "DB"=designated beneficiary. "IRD"=income in respect of a decedent. "IM"=investment management/trustee fee
 Comments/Criticism welcome, permission to reprint liberally given: edwin.morrow3@gmail.com

<u>Characteristics:</u>	Custodial IRA w/ indiv. as bene	Trusteed IRA (aka IRT) indiv. as bene	IRA Annuity ind. as bene	IRA payable to Conduit Trust trust as bene	IRA payable to Accumul. Trust trust as bene
During Owner's Lifetime					
1 Income tax deferral during owner's lifetime	yes	yes	yes	yes	yes
2 Optimal tax table if spouse >10 yrs younger	yes	yes	yes	yes	no
3 Ability to customize bene. designation form	very limited	probably	no	NA	NA
4 Ability to pay RMD in incapacity situation	no	yes	no	NA	NA
5 Any IRA permitted Investment choices	yes	yes	no	NA	NA
6 Surrender charges to owner	no	no	yes	NA	NA
7 Appropriate for small asset level	yes	no	yes	no	no
8 High internal investment fees/expenses	no	no	yes	no	no
9 Attorney fees for drafting/review/updating (of course, depends on level of customization)	low	low-medium	low	medium	high
10 Appropriate for QRP while owner working (unless or until IRA rollover is available)	no	no	no	yes	yes

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Characteristics:

After Owner's Death

	Custodial IRA w/ indiv. as bene	Trusteed IRA (aka IRT) indiv. as bene	IRA Annuity ind. as bene	IRA payable to Conduit Trust trust as bene	IRA payable to Accumul. Trust trust as bene
11 Allows beneficiaries/trust to "Stretch" out RMDs	yes	yes	yes	yes	yes
12 Allows owner to restrict bene to RMDs	no	yes	yes	yes	yes
13 Can restrict bene to RMDs, but more w discr.	no	yes	no	yes	yes
14 Can restrict trust so that not even RMDs paid	no	no	no	no	yes
15 Allows owner to mandate remainder beneficiary (keep IRA not distributed "in the bloodline")	no	yes	yes	yes	yes
16 Allows longer spousal deferral via LE recalc (if owner dies < RBD and spouse is sole bene)	yes	yes	yes	yes	no
17 Allows longer spousal deferral via delayed RBD	yes	yes	yes	yes	no
18 Allows spouse to name new DB and use new LE (if spouse dies < RBD commencement of RMDs)	yes	yes (if spouse is sole bene and can appoint BDF)	yes	probably	no
19 Bankruptcy protection from bene's creditors (a few states protect inherited IRA or annuities)	probably not (Clark case)	yes	probably not (Clark case)	yes	yes (best)
20 Protection from division in beneficiary divorce (varies depending on residency, "vesting", etc)	some (if kept in IRA)	good	good	good	best (potentially)
21 State spendthrift protection from bene's creditors	no	yes	probably not	yes	yes
22 Pure discretionary trust (optimum) protection	no	no	no	no	if so drafted
23 "To or for the benefit of" protection for RMDs paid indirectly for bene's expenses? (varies by state)	no	probably	no	probably	probably, moot if discretionary

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Characteristics: After Owner's Death	Custodial IRA w/ indiv. as bene	Trusteed IRA (aka IRT) indiv. as bene	IRA Annuity ind. as bene	IRA payable to Conduit Trust trust as bene	IRA payable to Accumul. Trust trust as bene
24 Simple post-mortem accounting/administration (no Forms 1041, K-1, \$500-\$2000/yr. acct fees)	yes	yes	yes	no	no
25 Ability to grant broad LPOA equivalent	n/a	yes	probably not	yes	no, limited
26 Ability to grant GPOA equivalent	default	yes	yes	yes	no, limited
27 Appropriate for GST non-exempt trust (w/GPOA)	no	yes	maybe	yes	no
28 Ability to Remove IRA from Beneficiary's Estate	no	yes	probably	yes	yes
29 Can easily name charitable contingent or remainder beneficiaries & "stretch" for primary	no	yes	yes	yes	no
30 Can exploit NUA LTCG for employer stock in QRP	n/a	n/a	n/a	only if distributed (must go to trust/bene, not to IRA)	yes
31 Can pay IM fees from outside IRA accts (deduct) (see Rev. Rul. 84-186 and IRC §212)	yes	yes	no	yes	yes
32 Leverage \$5.43m exclusion (Bypass/CST, GST)	none	"leaky"	"leaky"	"leaky"	optimal
33 Possibility of <i>multiple</i> states taxation of income, state tax <i>even when</i> bene lives in no-tax state, or state income tax <i>avoidance</i> even when bene is in a taxing state, to extent no distributions	no	no	no	no	yes (depends on state of settlor, trustees, bene)
34 Possible pecuniary funding IRD disaster (review GST funding, 1/3 at age X, not just A/B)	no	no	no	yes	yes
35 Possibility of income trapped at 39.6% >\$12,300 (may indirectly cause 3.8% surtax on other inc)	no	no	no	yes but unlikely	yes
36 Get §691(c) ET deduction w/o §68 Pease haircut (#31, #33-36 may not apply to Roth IRAs)	no	no	no	probably not	yes, if accum.