

The “Daily Plan-It™”

HELLMUTH & JOHNSON, PLLC

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Blended Families and Retirement Accounts —Is This Combination a Minefield or Opportunity for Advisors?

Retirement funds — IRAs and 401(k)s — account for about 60 percent of assets in U.S. households. Other than your clients’ homes, this is probably the most consistent form of wealth building. What many clients don’t realize is that these accounts are surrounded by complicated rules, and when key questions about beneficiaries are not asked and coordinated with their estate planning goals, major mistakes are made.

Nothing illustrates this more than trying to find out what is “fair” and “right” among clients.

Consider the Following Case

Your client, Sam, married Marge when they were 21. They had two children within the first ten years. When Sam began to contribute to his 401(k) plan, he assumed he would die before Marge and wanted her to have the money to live on after he was gone. Their two children were to receive whatever remained after Marge died.

But it didn't happen that way. Marge died first. And so, Sam updated his paperwork to name his children as beneficiaries of his 401(k). Once again, he thought he had done everything necessary.

At 65, Sam married a woman 20 years younger, Tabitha. Two years into this marriage, Sam died of a heart attack. His children tried to claim the 401(k) assets but were denied by Sam's employer. Under the terms of the plan, if an employee dies, the surviving spouse has a right to the assets, unless the spouse waives the right in writing.

Tabitha sues and wins the entire account: \$450,000. Sam and Marge's kids were effectively disinherited!

It's Tough and Complex

Where Sam failed his children was to ask Tabitha to waive her right to his 401(k) money in writing before he would marry her.

Even when clients think they know what they want to do, 401(k) plans cannot be conveyed regardless of who is listed on a beneficiary form, unless he or she waives this right in writing.

In the case of a divorced client, things can be even messier.

If your client was divorced when he died, his 401(k) assets will pass to whoever is listed as beneficiary on his plan paperwork, no matter what his Will says or any agreements he made before death.

Divorce Does Not Matter

If your client fails to remove his ex-wife's name from these forms, those funds will still be awarded to her — even if she waives her right to the assets as part of a divorce. Basically, the ex-wife your client divorced 20 years ago will receive his retirement money, not their adult child. Your client should have changed the beneficiary listed on the 401(k) forms. Understanding these rules about retirement beneficiaries is important. It can mean the difference between your client's wishes being followed or having a court decide who gets his retirement money.

I hope this article has helped you and your clients. If you have a specific case or concern you'd like to discuss, please contact our office.

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Tim is a partner in the firm with 30 years of experience.

Susan brings over 17 years experience. Both Tim and Susan specialize in Estate and Business Planning, Probate and Trust Law, and related Tax matters. They assist clients in creating estate plans that provide for the control, maintenance, and disposition of their assets in a manner consistent with their objectives.

Hellmuth & Johnson, PLLC has 36 attorneys and is a full service firm offering legal services to individuals and businesses, with a heavy concentration in real estate, real estate construction and litigation matters.



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