

Use An Accumulation Trust To Hold Retirement Assets For Special Needs Beneficiaries

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A previous blog posted “Naming a Trust as Beneficiary of Retirement Benefits,” discussed the usefulness of a Conduit Trust (or “See-Through” Trust) as a beneficiary of one’s qualified retirement plan or IRA benefits for ultimate distribution to the trust’s named individual beneficiary (“designated beneficiary”). Under the Conduit Trust, the trustee would pay to the designated beneficiary the annual required minimum distribution calculated using the designated beneficiary’s life expectancy, while safeguarding the remaining benefits from the claims of the beneficiary’s creditors. Because the Conduit Trust requires an annual distribution to the designated beneficiary of the required minimum distribution, it would be an inappropriate vehicle for any special needs beneficiary.

An “Accumulation Trust,” another type of “see-through” trust, is the proper vehicle to use as a supplemental needs trust funded with one’s retirement benefits where the designated beneficiary of the trust is a special needs individual. A trust such as a Conduit Trust that requires the distribution of the annual required minimum distributions to the special needs beneficiary would disqualify that beneficiary from means-tested government benefits, such as Medicaid. The Accumulation Trust allows the trustee to accumulate, but does not require the trustee to distribute, the required minimum distributions to the special needs beneficiary each year. The trustee can actually hold on to the undistributed retirement benefits for future distribution to the special needs beneficiary or the remainder beneficiaries of the special needs trust.

The authority for creating the Accumulation Trust is found in Treasury Regulation Section 1.401(a)(9)-5, Q&A-7(c)(3), Example 1.

To be valid, the Accumulation Trust must satisfy the same four requirements as a Conduit Trust. Those requirements are:

1. The trust is a valid trust under state law, or would be but for the fact that there is no corpus until the participant’s death;

2. The trust is irrevocable or will, by its terms, become irrevocable upon the death of the participant;
3. The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the participant's benefit are identifiable from the trust instrument on the date of the participant's death; and
4. Certain required documentation has been provided to the plan administrator.

The trustee may accumulate all or a portion of the retirement benefits, subject to the trustee's unfettered discretion to make distributions. The trustee will be required to receive the required minimum distributions from the qualified plan or IRA based on the life expectancy of the special needs individual, who is the designated beneficiary of the trust. If, however, the trust has a remainder beneficiary whose life expectancy is shorter than that of the special needs beneficiary, the required minimum distributions will have to be paid to the trust over that shorter time period.

Where the parent or other third party desires to create as supplemental needs trust but only has retirement benefits to fund the trust for the special needs beneficiary, the Accumulation Trust will allow the trustee to receive the annual required minimum distributions from the qualified plan or IRA, as the case may be, preserve the assets from any creditor of the special needs beneficiary, and allow that beneficiary to continue to remain eligible to receive means-tested benefits from the government.