

Attorney Timothy P. Crawford, CPA, CELA*, CAP**
wanted to share this information with you.

IRAs – WHAT MAKES THEM DIFFERENT?

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With the evolution of retirement plans changing the way Americans save for retirement, it is safe to assume that most retired individuals have IRA accounts, funded by rolling over assets from their company retirement plans, i.e., their 401(k), 457, 403(b) plans, profit sharing plans, etc. It is important to understand what makes your IRA assets "different" from your other assets so that you can plan accordingly. Failure to understand these differences may prove costly in the form of excess taxation or "broken hearts", in the event the "wrong" individuals inherit your IRA assets.

I have listed a few of the major differences between your IRAs and your other assets that an IRA owner should take into consideration when putting your affairs in order:

- IRAs pass by "contract" to your designated beneficiaries and NOT through your Will
- IRAs have mandated "minimum distribution requirements"
- IRAs have their own set of complex "distribution rules", both during lifetime and at death
- IRA Distributions can incur significant tax penalties if the proper amount is not distributed from your IRA
- IRAs do not receive a "Step-Up" in cost basis upon death - distributions are taxable to your beneficiaries
- IRAs cannot be gifted or transferred into trust during your lifetime

These are a few of the more important reasons why IRAs are different than your other assets and why it is important to recognize that they are different. The first reason listed above is extremely important. IRA assets do not pass under the terms of your Will, they pass to the designated beneficiary listed on the IRA Adoption Agreement. It is important to make sure

that both your primary and contingent beneficiaries are kept up to date. If the primary beneficiary predeceases the IRA owner, the assets will pass to the contingent beneficiaries. A common mistake made by clients and their advisors is to leave the contingent beneficiary blank for any number of reasons, i.e., "there are not enough lines to list the client's four or five children". If the spouse was the primary beneficiary and predeceased the IRA owner, if the contingent beneficiary was left blank, it will typically default to the estate, which may not be desirable for many reasons, primarily for tax reasons. Your children would be unable to establish "Beneficiary IRAs", which would have allowed them to continue to defer the lion's share of the IRA from taxation since they are only mandated to take minimum distributions over their lifetimes. If the estate was named as a beneficiary, either intentionally or inadvertently, the taxation of the IRA would be greatly accelerated. If you had a "special needs child", he or she would unnecessarily inherit a portion of your IRA causing him or her to possibly lose public assistance. It is rarely ever a good idea to name your estate as your IRA Beneficiary OR to leave your contingent beneficiary blank.

One recommendation we often make to our clients who own IRAs and would like to leave some of their assets to charity, is to use the "tax-infested" IRA assets to fulfill their charitable intentions. Rather than make a special bequest to the charity or charities out of their estate assets, establish a "Charitable IRA", which is simply a separate IRA that names ONLY charitable beneficiaries. The charities would be listed on the IRA Adoption Agreement on the beneficiary form. More importantly, you can change the beneficiaries and the percentages paid to each by simply submitting a new beneficiary form. The advantage of funding charitable bequests using IRA Assets is that if you want to leave your church \$10,000, all you need is \$10,000 of IRA assets since the charity can withdraw the funds tax-free. Your family is better off inheriting non-IRA assets than IRA assets since the taxes on the IRAs have yet to be paid. Look at it this way, what is more valuable to your child, a \$10,000 IRA, or \$10,000 worth of stock that receives a "step up" in cost basis upon death?

In closing, while IRAs are great tools to help taxpayers accumulate wealth for retirement, they are very inefficient assets to transfer to your children upon death. IRAs were not intended to act as a wealth transfer mechanism. If you have significant IRA assets, it is imperative that you seek the guidance of an advisor, ideally legal and financial, that understand the complex rules that govern distributions from IRA, both during your lifetime and upon death. There are some very creative planning strategies that can turn your "tax-infested" IRA assets into tax-free assets for your beneficiaries.

**“Those Who Plan Ahead Win.
Those Who Don’t Plan Ahead Lose.”**

This article is for informational purpose only and is not intended as legal advice. It is recommended that you call Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Crawford can be reached at 1-262-634-6659. Please refer to this article when you call.

*Attorney Timothy P. Crawford is a Nationally Board Certified Elder Law Attorney (CELA). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

**Timothy P. Crawford was invited to join the Council of Advanced Practitioners (CAP) of the National Academy of Elder Law Attorneys (NAELA) in August of 2005. CAP is a small group of premier elder law attorneys, all of whom

have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated by Martindale Hubbell, a service that provides an independent rating of the quality of attorneys, as one of the top attorneys in the nation.

Attorney Timothy P. Crawford has been selected as a **Fellow** of NAELA. **Fellow** is the highest honor bestowed by the Academy. Selection as a **Fellow** signifies that his peers recognize the lawyer as a model for others and as an exceptional lawyer and leader.

Attorney Timothy P. Crawford has a superb rating of 10 out of 10 with A V V O.

A V V O has awarded to Attorney Timothy P. Crawford the A V V O Client's Choice Award.

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