

**MSBA ELDER LAW SECTION E-NEWSLETTER**  
**March 29, 2011**

**Vol. 4, No. 12**

**E-Newsletter Editorial Staff:**

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**ITEMS OF INTEREST**

**Leaving Retirement Assets to Disabled Beneficiaries**

Many clients wishing to leave their estate to disabled individuals own retirement assets. In fact, these assets often make up the bulk of their estate. This article explains how, using the IRS rules relating to required minimum distributions and “see-through” trusts, we can advise our clients to leave these assets to disabled family members and still protect eligibility for benefits.

The most valuable component of a retirement plan is the ability to defer taxation on the investment profits. The compounded effect of the tax deferral can be significant. Holding the assets in a retirement account allows a participant to benefit from investing not only the money they have saved, but the money that would have been used to pay taxes to the IRS. As the assets are distributed to a plan participant, they are taxed at the time of distribution. The benefit of tax deferral can also be taken advantage of when a person inherits an IRA. For example, “a 38 year old beneficiary who inherits a \$500,000 IRA and withdraws it using the life expectancy method will have a \$1,696,000 investment portfolio inside the IRA plus \$1,432,000 outside of the IRA in 30 years; if she cashes out the entire account when she inherits it, she will have (outside the IRA) only \$1,517,000 (assuming an 8% constant investment return for all assets and a 36% tax rate on plan distributions and investment income).” 1[1]

In order for a beneficiary to “stretch-out” the payments of an IRA, the beneficiary must be an individual or qualify under the “see-through” trust rules.2[2] If the beneficiary

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1[1] See Life and Death Planning for Retirement Benefits page 28, Natalie Choate, page 28 on Sixth Edition 2006.

2[2] Reg. § 1.401(a)(9)-5, A-5(a)(2).

qualifies, the rules allow the retirement plan death benefits to be distributed over the life expectancy of the participant's Designated Beneficiary.<sup>3</sup><sup>[3]</sup>

A standard see through trust is also known as a "conduit trust." A conduit trust requires the trustee to distribute any required minimum distributions ("RMDs") made from the retirement account outright to the trust beneficiary each year. In this type of trust, the trustee has no powers to hold assets inside the trust. Therefore, a standard conduit trust would disqualify disabled individuals who are on medical assistance or other social security benefits.

In certain circumstances, the IRS has allowed trusts to qualify as "Designated Beneficiaries" even where they do not require the distributions of the RMDs each year. The IRS ruled that a charitable remainder trust which requires an annual unitrust or annuity payment to be made to a trust *for the benefit of* a disabled individual can be treated as a payment to an individual.<sup>4</sup><sup>[4]</sup> This is particularly useful where the clients are charitably inclined and want to leave assets to the disabled individual during their lifetime and then any remaining amounts to charity.

Natalie Choate discusses in her book the issue of using standard supplemental needs trusts and still qualifying as a see-through trust. Although supplemental needs trusts allow the trustee discretion regarding whether to distribute trust funds on behalf of the disabled individual, the trusts can still qualify for the stretch-out. This type of trust is considered an accumulation trust for RMD purposes but may still qualify as a see-through trust depending upon the distribution of the trust at the death of the disabled beneficiary. If the principal of the trust passes outright at death to other now-living individuals, such as the disabled beneficiary's siblings, then the trust will qualify for the stretch-out.<sup>5</sup><sup>[5]</sup> Using this IRS ruling, we can advise our clients on how to leave assets to their disabled family members and maximize the tax benefits of the retirement plan.

This article is intended to focus on qualifying trusts for disabled individuals under the IRA stretch-out rules. It is not intended to be a comprehensive explanation of IRA rollovers or stretch-outs. I would encourage anyone not familiar with these rules to consult the IRS codes and regulations pertaining to these rules. In addition, the book referenced above provides a comprehensive look at the retirement planning opportunities using IRAs.

Submitted by Sarah Rowley, Esq.  
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Member of the Advisory Council  
Elder Law Section.  
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<sup>3</sup><sup>[3]</sup> Reg. 1.401(a)(9)-4, A-5(b). Please note that this rule may change depending upon the actual plan documents or the age and distribution status of the owner at the time of death.

<sup>4</sup><sup>[4]</sup> Rev. Rul. 2002-20, 2002-1, I.R.B. 794. See also, Choate, 325.

<sup>5</sup><sup>[5]</sup> Choate, 326. PLR 2004-38044

1[1] See Life and Death Planning for Retirement Benefits page 28, Natalie Choate, page 28 on Sixth Edition 2006.

1[2] Reg. § 1.401(a)(9)-5, A-5(a)(2).

1[3] Reg. 1.401(a)(9)-4, A-5(b). Please note that this rule may change depending upon the actual plan documents or the age and distribution status of the owner at the time of death.

1[4] Rev. Rul. 2002-20, 2002-1, I.R.B. 794. See also, Choate, 325.

1[5] Choate, 326. PLR 2004-38044

### **Governing Council Nominations**

The Elder Law section Governing Council is seeking nominations for both the Governing Council, two year terms beginning July 1, 2011, and nominations for council officers, one year terms also commencing July 1, 2011.

The Governing Council typically meets every other month and helps guide and direct the activities of the Elder Law section. We encourage nominations of both individuals you believe would be interested in serving and who would have something to contribute, and self nominations.

Please contact either nominations chair Dan Steinhagen at [dsteinhagen@steinhagen-crist.com](mailto:dsteinhagen@steinhagen-crist.com), or council chair, Jennifer Wright at [jlwright1@stthomas.edu](mailto:jlwright1@stthomas.edu) with any questions or nominations.

Submitted by Jennifer L. Wright  
Associate Professor of Law  
University of St. Thomas School of Law  
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### **Elder Law Institute Planning to Begin**

The 2011 ELI Planning Committee will meet three times over the summer to develop the program for this year's ELI, which will be held on October 6-7, 2011. The ELI Planning Committee will meet at the Minnesota CLE offices in St. Paul from 11:00 a.m. to 1:00 p.m. on May 11, May 25, and June 22, 2011. A box lunch will be served at all meetings. Anyone interested in serving on the ELI Planning Committee, submitting ELI

program ideas, or speaking at the ELI, may contact the 2011 Elder Law Institute Chair, Suzy Scheller, at [suzy@schellerlegalsolutions.com](mailto:suzy@schellerlegalsolutions.com).

Submitted by Vicki M. McIntyre, Esq.  
McIntyre Legal Services, LLC  
Member Governing Council  
Elder Law Section  
[vmcintyre2@yahoo.com](mailto:vmcintyre2@yahoo.com)

### **LINK OF THE WEEK**

#### **Upper Midwest Pension Rights Project out of the Metropolitan Area Agency on Aging**

The Upper Midwest Pension Rights Project (UMPRP) is a free legal counseling service for people having problems with their pensions. The project serves Minnesota, North Dakota, South Dakota, Wisconsin and Iowa. There is no income requirement for people to obtain their services because they are funded by the Administration on Aging. Check out their regional page at: <http://www.tcaging.org/findinghelp/pension.html>.

Submitted by Sarah J. Leonard  
Law Student Representative  
William Mitchell College of Law  
[Sarah.leonard@wmitchell.edu](mailto:Sarah.leonard@wmitchell.edu)

### **ELDER NEWS**

Remember to file for property tax refunds--Seniors and disabled persons living in non-tax-exempt nursing home or health care facilities may qualify for renters' refunds  
<http://www.albertleatribune.com/2011/03/26/remember-to-file-for-property-tax-refunds/>

Minnesota Department of Health verifies assault at Rochester care facility  
<http://www.postbulletin.com/news/stories/display.php?id=1449071>

Elderly Minnesotans hit hard in latest flu wave  
<http://minnesota.publicradio.org/display/web/2011/03/24/minnesota-flu-deaths/>

Free tax help available for many as filing deadline nears  
<http://minnesota.publicradio.org/display/web/2011/03/22/free-tax-help-in-minnesota-as-deadline-looms/>

Here's to You: Alcohol and meds can be lethal mix for senior citizens  
<http://www.bemidjipioneer.com/event/article/id/100026937/>

Spike in flu activity reported by MN Dept. of Health

<http://www.kare11.com/news/article/915898/14/Spike-in-flu-activity-reported-by-MN-Dept-of-Health>

Few complaints from Minn. health plans over Dayton order

<http://minnesota.publicradio.org/display/web/2011/03/25/health-plans-reax/>

### **MINNESOTA CASES**

*There are no Minnesota Cases to report this week.*

### **STATUTES, REGULATIONS, BULLETINS**

*There are no Statutes, Regulations, or Bulletins to report this week.*

### **UPCOMING EVENTS AND CLE PROGRAMS**

#### **Hennepin County Bar Association**

#### **Probate & Trust Law Section**

#### **A Review of Changes in the Guardianship and Conservatorship Laws**

April 25, 2011

<https://www.hcba.org/Calendar/Signup.aspx?EventNo=3546>

#### **Minnesota State Bar Association**

#### **Probate & Trust Law Section Conference**

June 6 & 7, 2011

Contact Information: <http://www.minncle.org/seminardetail.aspx?ID=100641101>

### **ELDER LAW SECTION ACTIVITIES**

**MA COMMITTEE MEETING:** The next MA Committee meeting will be at 3:30 p.m. on Tuesday, April 19, 2011. Topics for the meeting may be submitted to MA Committee Chair, Cathryn Reher, at [creher@mnelderlaw.com](mailto:creher@mnelderlaw.com), or faxed to 952-542-9201. For directions, or to attend by phone, please contact Tracie Fenske with Long, Reher & Hanson, P.A. at 952-929-0622. Please be reminded that the meeting location is: Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room.

**GOVERNING COUNCIL:** The next meeting of the Elder Law Section Governing Council will be 3:30 p.m. on Friday, April 22, 2011, at Estate & Elder Law Services (formerly MAO Legal Services), Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis, Minnesota 55418. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room. For further information, please contact Jennifer Wright, Chair, at [jlwright1@stthomas.edu](mailto:jlwright1@stthomas.edu).

**ELDER LAW SECTION ANNUAL MEETING:** The 2011 Annual Meeting of the Elder Law Section will be held at 3:30 p.m. on Friday, June 17, 2011, at the offices of Estate & Elder Law Services (formerly MAO Legal Services), located at Monroe Village, 1900 Central Avenue NE, Suite 106, Minneapolis. Please note the meeting date and location changes. There are a few parking spaces behind the building and lots of street parking. People should walk to the back of the building and come to the back door which faces directly into the meeting room. For further information, please contact Vicki McIntyre, Esq. at [vmcintyre2@yahoo.com](mailto:vmcintyre2@yahoo.com).

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**DON'T FORGET THAT THE ELDER LAW WEBSITE IS A GREAT RESOURCE.** Here's what you can find on the Website: Links to the DHS Health Care Programs Manual, the DHS Bulletin on treatment of uncompensated transfers, the Minnesota Bankers Association Compliance Bulletin on Powers of Attorney, legislative summary; Practice Links to organizations such as NAELA, ABA Commission on Law and Aging, Links to Federal and State Government Agencies, Statutes, and Regulations; Meeting Notices, Listings of Officers and Council Members, Section Bylaws, and more.

To access the ELDER LAW SECTION WEBSITE  
Click here: <http://www.mnbar.org/sections/elder-law/index.asp>

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Please send E-Newsletter contributions by 10 p.m. on Sunday of each week to Marjorie Austin at [mj@mjaustinlaw.com](mailto:mj@mjaustinlaw.com).

If you do not wish to receive this E-Newsletter, send your request to be removed from the mailing list to Elyse Farnsworth at [efarnsworth@statebar.gen.mn.us](mailto:efarnsworth@statebar.gen.mn.us).

Current and prior E-Newsletters are posted on the website for the MSBA Elder Law Section and are available at: <http://www2.mnbar.org/sections/elder-law/newsletter.asp>.

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