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How can I protect my kids' inheritance from divorce, bankruptcy, and their own poor decisions?

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The Michigan Elder Law Reporter™

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IRS SCREWS UP TAXES, FORGIVES ITSELF INHERITED IRAS, 3 YEARS LATER IRS STILL HASN'T FIGURED IT OUT YOU SCREW UP TAXES, IRS INTRODUCES YOU TO HELL

YOU HAVE AN IRA

Ordinary Americans like their IRA and 401(k) accounts. Regular folks have stuffed these accounts with tens of trillions of dollars. For retirement. For the future. For not spending right now. For not spending ever because it makes Ordinary Americans feel good to know they've got a nest egg.

Ever the spoilsport, at some point, the government says, "Hey you! You with that IRA (or 401(k) or 403(b) or 457 or Thrift Savings Plan)(all references to IRAs include these other accounts)! You gotta start spending that IRA money so we can tax it!"

Ordinary Americans do not like to be told to start spending their IRAs. Ordinary Americans do not like to start paying the income tax on their IRAs.

THE SECURE ACT & SECURE ACT II

People are living longer. People do not like to spend their IRA money and pay income taxes. But people must start taking money out of their IRAs, based on their life expectancy. Forced withdrawals from your IRA are called Required Minimum Distributions.

A few years ago, the rule was that you had to start taking your money out, taking your RMDs, when you were 70½ years old. Then the bad orange man asked Congress to change the rules. Congress passed the SECURE Act that raised the age from 70½ to 72. People liked that. So Congress passed the SECURE Act II that gradually raises the RMD age to 75. People like that too!

This means that more and more money is held in IRAs. Where the government can easily find it. And tax it. Eventually.

YOU DIE, NOW WHAT?

Sooner or later, Ordinary Americans with IRAs die. And there's still lots of money in the IRA. What to do with this money?

Everybody tells you to put your spouse on your IRA account, and then your kids. As usual, everybody is wrong. Here's why.

YOU DIE, SPOUSE IS BENEFICIARY

If you are married, 99.99% of the time (I just made that up, but you know I'm right) your spouse is the primary beneficiary on your IRA. When you die, the IRA will "roll over" to your surviving spouse. She will be treated as though the IRA was her's from the start (yes yes, sometimes women die first, but not usually). Anyway, from the guy's death onwards, she must take Required Minimum Distributions (RMDs) from the IRA based on her own life expectancy.

That's good, right? Maybe. But what if your spouse is in long-term care? What if the pool boy swept her off her feet? What if the Fabio next door targeted her for his next romantic victim? What if she gives all the money to an Internet Prince? Of course, none of these things ever happen.

If the IRA beneficiary is a proper trust... no worries. Surviving Spouse can have complete access and practical control without sacrificing your 40-50 years of scrimping and saving. And she gets all the tax advantages with minimal risk.

YOU ARE SINGLE, YOU HAVE AN IRA, YOU DIE

SOMEBODY NOT YOUR SPOUSE IS YOUR BENEFICIARY

Maybe you were always single. Maybe you survived your spouse. Irrelevant! You are dead and your IRA is going to somebody to whom you are not married.

You die. Happy day! Your chosen beneficiary (probably your kid(s)) gets your IRA. As your beneficiary. No fuss, no muss, no probate.

YOUR BENEFICIARY HAS A COURT JUDGMENT

But what if the kid has a court judgment against him? Which NEVER HAPPENS! Maybe

the judgment came from student loans... or bankruptcy... or divorce... or some other challenge in the Fun House of Life? Whoever has the court judgment can seize the IRA from your kid, after you're dead.

Here's how it goes:

1. You leave your kid (or other beneficiaries) a traditional IRA.
2. The kid has judgments against him.
3. The person with the judgment(s) seizes the IRA.
4. The kid has no money.
5. The kid owes 40+% of the IRA for income tax.
6. The kid is now in federal and state tax debt for the rest of his life.
7. Whoops! Thanks Mom & Dad!

You can use a trust to protect against this sort of seizure. Your trust ensures that your hard-earned IRA would guaranteed go to the beneficiary. So why haven't you heard of these? Beats me!

YOUR BENEFICIARY IS NORMAL AND BLOWS THE MONEY

Once again, you are dead. The kid is beneficiary on the IRA. Now your beneficiary will have a grand old time! Kids love taking all your IRA money out, all at once, 99.99% of the time (I just made that one up too, and you know I'm right). Kids love paying ridiculous rates of income tax with your money. They treat your IRA like a pinata, smashing it open, sharing your hard-earned money with the government. "A bird in the hand is worth 2 in the bush!" I've heard them say.

A few years ago, you could "stretch out" your IRA over your beneficiary's life expectancy. Kids hated that. Moms and Dads loved it! (One guy still bad-mouths me on social media, years later, because his mom stretched out her IRA. He uses different aliases, but you can tell!)

When given the opportunity, most folks will provide their kids with a secure lifetime income based on the IRA. So, of course, the SECURE Act took that option away.

**SECURE ACT & SECURE ACT II:
BALL OF CONFUSION**

Congress does not like to wait for its money. Meaning your money. Congress likes getting the income tax on your IRA right away. Congress noticed that most families, given the chance, would "stretch out" the IRA over the kid's life expectancy. Congress wanted to accelerate tax payments so it eliminated the lifetime stretch-out.

In the SECURE Act, Congress replaced the lifetime stretch with a 10-year period. By the 10th anniversary of your death, all the money must be gone from the inherited IRA your kids got from you. (There are some exceptions, for little kids, etc. Write me a letter if you want details.)

Everybody thought Congress would allow the kids to wait for 10 years after Mom's death and take the IRA all at once. In a given case, waiting might be a good idea or really stupid from a tax perspective, but you have to run the numbers to find out. But we all thought we had 10 years.

Then the IRS said, "Surprise! The kids have to start taking RMDs almost immediately! We want our money!"

Then everyone else said, "WTF!?" (Meaning: "Goodness gracious are you serious?")

Now the IRS, for the third time, has said, "This is all so confusing, that we're going to postpone that whole RMD thing for another year... until 2024."

Then everyone else said, "Thanks for nothing. You've had 3-4 years, why don't you just figure it out!?"

Then the IRS said. Nothing.

NEXT WEEK: IRA POT OF GOLD – THE FEDS WILL HIT YOUR IRA WITH A 40% TAX AND YOU WON'T EVEN KNOW IT!

Tune in next week when we continue to reveal the dark secrets that are available for anyone to see so I guess they're really not secrets anyway but we're going to shine the spotlight on 'em! And most folks will continue to do nothing. Still, better to light one candle than curse the darkness, I guess.

CAN YOUR PLAN SURVIVE A PUNCH IN THE MOUTH?

“EVERYBODY’S GOT A PLAN... UNTIL THEY GET PUNCHED IN THE MOUTH”

IRON MIKE TYSON, PHILOSOPHER



WHY DO 96% OF TRUST-BASED ESTATE PLANS FAIL? YOU PAID GOOD MONEY, WHY DID YOU GET SUCH A LOUSY PLAN?

YOUR BANKER, ACCOUNTANT, INSURANCE AGENT, TAX PREPARER, FINANCIAL ADVISOR, ATTORNEY ALL KNOW YOUR TRUST WON'T WORK... WHY AREN'T THEY TELLING YOU?

"No plan of operations extends with certainty beyond the first encounter with the enemy's main strength."

*Von Moltke the Elder,
German Field Marshal*



Is it easy to plan for the future? How can we anticipate changes in the law, changes in the rules, changes in our health? Sure, you like your kids now, but what if one of them [Fill-In-The-Blank]? Do things always turn out just as you expect?

For example, let's say you are evil. And decide to invade a neighboring country. Seems like a good idea to you. Everybody thinks it'll be super. Plus, everybody says the people in that neighboring country will welcome your bullets, bombs, death and destruction. They simply cannot wait for you to rescue them from independence. So you plan. Poorly. Who needs extra food rations or ammo? Not us! Instead, your invading soldiers pack their dress uniforms for a Victory Parade. What? Me worry?

What if things do not go according to your plan? What if you get punched in the mouth? What if your invasion takes months or years rather than hours? Hundreds of thousands of your guys dead? Your missiles are falling on maternity hospitals! You have run out of gas, your vehicles break down, and your tires are falling apart! And because your military radios don't work, you use open access civilian walkie-talkies. Your economy in shambles? Then what, Mr. Evil Invader Guy? Are you in deep trouble?

Maybe. But what if your primary geopolitical adversary is a corrupt career grifter whose primary skill is steering bribes to family

members? What if this opponent was also an aw-shucks front for multinational corporations? What if he was well known for plagiarizing the homespun life stories of other politicians? Lucky you, Mr. Evil. Maybe you'll be OK.

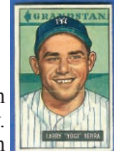
Of course, that is all so unrealistic and fantastical, it could never happen in real life. Ha ha. Mr. Evil invading a sovereign country in the heart of Europe... ridiculous! Bumbling, ineffective opposition who claims "I may be Irish, but I'm not stupid!"... preposterous!

And since we are being so silly and ridiculous, let's add a few more what-if's, shall we? What if that grifting politician was also suffering from the onset of dementia? And what if the second-in-command was also a grifter, as well as a national embarrassment and disgrace? And what if the next backup replacement was, of course, also a grifter, but over 80 years old with mannerisms indistinguishable from public drunkenness? Absurd, of course, Mr. Evil Invader Guy would sure have to be lucky!

Too outlandish. But remember what Yogi Berra said:

"It's tough to make predictions, especially about the future!"

What if you seek normalcy? You have had enough excitement. All you want is for things to go smoothly. Calm. Peaceful. Simple. So you plan for peace. To run things, you hire a guy who says he is a no malarkey, Wikimedia Commons Public Domain



All of a sudden, Mr. Evil appears. Wars erupt. Prices skyrocket. Food shortages are threatened. People getting shot in the streets. Atomic war back on the table. People at each others' throats. And all you did was hire a nice old man to take care of things for a little while so the world could simmer down. So much for your plans.

Planning is tough. No kidding. It takes a lot of work to make things work. As the Dread Pirate Roberts, a/k/a Farmboy Wesley, said to Princess Buttercup:

*"Life is pain, highness.
Anyone who says differently is selling something."*

William Goldman, The Princess Bride

WHY YOUR TRUST WILL FAIL, DESPITE YOUR BEST LAID PLANS

Your trust will fail because you will not retitle your assets to the trust. That is it. Simple. In your trust binder is a memo telling you to put your stuff into the trust. You did not do it. That is how your assets will wind up in probate. That is why your trust will not avoid probate. And because you got the memo, it is all your fault.

CAN YOU REALLY DO THAT? IS THAT LEGAL?

Faithful readers know that The Elder Law Reporter does not write the rules, we merely read them. And report the results to you. Not making stuff up. Whose fault is it that nobody told you about these things? Sure, the blame game is pretty popular with some folks. We think it is better to light one candle than curse the darkness. Let's take it from here without the coulda, shoulda, woulda, shall we?

IS NOW A BAD TIME FOR A REAL SOLUTION?

Do you have all the answers? Maybe you do not see any problems at all. Is it possible that you do not believe in the passage of time or its effects on you?

Peace of mind and financial security are waiting for everyone who practices LifePlanning™. You know that peace only begins with financial security. Are legal documents the most important? Is avoiding probate the best you can do for yourself or your loved ones? Is family about inheritance? Or are these things only significant to support the foundation of your family?

Do you think finding the best care is easy? Do you want to get lost in the overwhelming flood of claims and promises? Or would you like straight answers?

Well, here you are. Now you know. No excuses. Get information, insight, inspiration. It is your turn. Ignore the message? Invite poverty? Or get the freely offered information. To make wise decisions. For you. For your loved ones.

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