

# JOSEPH D. WELCH

## ATTORNEY AT LAW

Partner: Cary (1940-2005), Welch♦ & Hickman♦ LLP

♦LICENSED IN MISSOURI & ILLINOIS

♦LICENSED IN MISSOURI

Telephone: (573)221-0080 Toll Free: 1-866-566-0088 Facsimile: (573)221-3856

[www.josephdwelch.com](http://www.josephdwelch.com)

*Please address all correspondence to the Hannibal office.*

### The IRA Inheritance Trust

Those of you who have been to my classes may remember the "Stretch IRA" concept, which, if properly structured, can allow you to pass tax-qualified retirement funds (*IRA, 401(k), etc.--for purposes of this article, all tax-qualified retirement plans (QRP's) will be referred to as "IRA's"*) to your beneficiaries in a manner which allows them to *keep the IRA assets growing tax-deferred during the beneficiaries' lifetime*, resulting in exponential growth in the account.

Your ability to do the "Stretch IRA" pre-supposes that your retirement plan allows for payout of plan proceeds over the life expectancy of a non-spousal beneficiary. However, very few 401-K, 403(b) (typically hospital employee) or 457 (state employee) plans allow for payout over the life expectancy of a non-spousal beneficiary. Consequently, if you want your beneficiaries to have the advantage of the stretch IRA, you will need to confirm with your plan administrator to ensure that your plan allows payout over the life expectancy of a non-spousal beneficiary. If it does not, you may want to consider rolling the account over at your retirement into an IRA, which typically does allow payout over the life expectancy of a non-spousal beneficiary.

Some of you may already have living trust planning in place. If I designed your plan, you were offered the opportunity to provide **personal protections** for your beneficiaries, including lifetime asset management assistance, spendthrift protection, divorce protection, lawsuit protection, and bankruptcy protection. (Simple IRA beneficiary designations to individuals without accompanying trust planning do not provide these advantages.)

Most estate plans have not been designed to enable the Stretch IRA. If yours is one of the *very rare* plans that do enable the Stretch IRA, odds are that it was written using a technique called a "conduit trust." However, conduit trusts do not provide a high-level of asset protection or spendthrift protection for retirement plan assets, since the conduit trust *mandates* that the distributions be *paid out* to the beneficiary each year. This may be undesirable if the beneficiary is involved in a divorce, a lawsuit, or a bankruptcy, or is a minor or a "special needs" person, or has a tendency to dissipate assets (and most people do).

Furthermore, with a "conduit trust," whether or not the "Stretch IRA" will really stretch throughout the lifetime of the next generation usually depends solely on the child's willpower and his or her ability to say "no" to withdrawing more than the required minimum distribution each year. A "conduit trust" estate plan may *enable* a stretch (assuming the retirement plan itself allows it) but does not *ensure* the stretch, since the child can always pull out more than the required minimum distribution (and most children do).

#### Hannibal Office\*

Cary, Welch, & Hickman, L.L.P.  
1000 Center St. / P.O. Box 710  
Hannibal, MO 63401  
Local: 573-221-0080

#### Lake of the Ozarks Office\*

Cliffside Centre  
2140 Bagnell Dam Blvd., Ste 302-B  
Lake Ozark, MO 65049  
Toll Free: 866-566-0088

#### Columbia Office\*

Buttonwood Business Center  
3610 Buttonwood Drive, Ste. 200  
Columbia, MO 65201  
Toll Free: 866-566-0088

#### Quincy Office\*

Joseph D. Welch, Attorney  
3835 East Lake Centre  
Quincy, IL 62305  
Toll Free: 866-566-0088

**GOOD NEWS:** The IRS has now issued a Private Letter Ruling giving guidance on our ability to use a **separate** "standalone" IRA Inheritance Trust to accomplish maximum planning flexibility, spendthrift and asset protection, postmortem flexibility, and asset growth for the benefit of subsequent generations. The technique is described in the enclosed article. (While IRS Private Letter Rulings do not have the force of law, they do provide valuable insight into the thinking of the IRS.)

In the absence of an IRA Inheritance Trust, problems may also arise when trying to synchronize the IRA beneficiary designation with the estate plan. Making the living trust the beneficiary of the IRA can result in two significant problems:

1. The oldest life expectancy may be used to determine the maximum "stretch" ability of the IRA (*which may even be the surviving spouse!*), thus denying most of the benefits of the "stretch" to the next or a subsequent generation (*to avoid this result, your spouse should be named as the primary beneficiary of your IRA and your living trust as the secondary beneficiary*); and
2. Naming the trust as the beneficiary of the IRA may completely disqualify the trust from the "stretch," because of other usually desirable features in the design of the living trust (including powers of appointment), or the very small possibility that, if you should die with no descendants then living, the benefits could be paid to an older family member, or the estate of the beneficiary, or an older adopted beneficiary.

Interested persons should contact an attorney who has expended a considerable amount of time in the study and implementation of the new techniques and is now offering this type of planning to clients with substantial retirement funds. I am recommending that you investigate the benefits of this new technique to you and your family if you have a substantial IRA or other tax-deferred retirement plan and either *now have* or *may have*:

1. A minor child or grandchild beneficiary who is a beneficiary now or might be a beneficiary in the event of the death of another beneficiary;
2. A desire to protect your beneficiaries from divorces and lawsuits;
3. A desire to *ensure* that the account will continue to grow tax-deferred during the beneficiaries' lifetime; or
4. A desire to protect your beneficiaries from the very human tendency to take all or a large portion of the money out of the account prematurely; or
5. A "special needs" beneficiary - - **Parents or Supporters of "Special Needs" Children**: I am strongly recommending that those of you who have established special needs trusts for your family members investigate establishing a standalone IRA Inheritance Trust.

*Pursuant to U.S. Treasury Department Regulations, I am now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.*

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*The Canons of Ethics prohibit attorneys from soliciting clients. You will need to contact me if you would like to speak to me regarding estate planning or asset protection issues.*

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