

## **DESCHENE: Keys to protecting retirement accounts**

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**BY ROBERT DESCHENE**

My name is Robert Deschene, an attorney who does estate and elder law planning. I'll be writing this column, "Life Lines," for The Sun Chronicle to provide you with important information you should have about estate and elder law planning because I have seen first-hand what happens when people don't have that basic information.

I regularly see families in chaos, devastated, either emotionally or financially, because they didn't take the steps to plan ahead for disability, divorce, long-term care or death. The number one comment I hear is "If only I'd known."

Sometimes, we don't even know what we need until someone asks us the right questions.

Knowledge empowers us to take action, so I write topical blogs, speak at public educational events and provide client newsletters. Thanks to The Sun Chronicle, I now have the opportunity to help an even larger audience.

Helping others is one reason I choose to do estate and elder law planning in my practice, and why I find it so rewarding. We all know that, in many areas of the law, people end up feeling worse off than before. But estate and elder law planning focuses on helping people to prevent bad things from happening. It's satisfying to have a client walk out of my law office with peace of mind, knowing they have done everything they can do to protect themselves and their loved ones. I hope this column is an encouragement to those looking to have the same peace of mind.

With that said, on to this month's topic.

Retirement accounts, or RAs, often have the greatest value of any property you own, even more than your home.

The Investment Company Institute estimates that about \$19.4 trillion is held in RAs, 35 percent of all personal financial assets. RA balances can appreciate tax-free quickly, since taxes are delayed, and a modest RA can become worth millions over your beneficiary's lifetime. It's important to make sure you maximize the benefit of your hard-earned RAs for your family.

If you have an RA, here are two basic red flags to which you should pay attention.

First, it's crucial to realize that neither your will nor your living trust controls who will inherit your RA. You must designate the person or persons by filing a beneficiary designation form with your RA plan. Many of us made a designation years ago when we first enrolled, but it may no longer be valid. For example, if you named your mother as beneficiary back in 1990, and she has since died, you no longer have a valid named beneficiary.

Not updating to a valid designation may have a terrible and unintended consequence: Your RA account will go to your estate by default. Retirement plans often provide for a default beneficiary in the event you did not name one, or if the beneficiary you did name is no longer around to inherit. But, IRS regulations don't recognize your estate as a qualified beneficiary, and they treat the distribution as cashing in the RA, resulting in income taxes on the cash payout. The top federal income tax rate is now a whopping 39.5 percent. Taxed at that rate, your \$600,000 RA might be worth \$363,000 to your estate; state income taxes reduce it even more.

Check your beneficiary designation periodically to make sure you have named a qualified beneficiary. Keep a copy of your designation form in case there is a claim by the RA plan that none was filed.

Second, your hard-earned nest egg can still be depleted by your designated beneficiary with the same federal and state tax consequences. On your death, he or she can choose to cash out the RA. One sad fact about inheritance is that, because your beneficiary did not work for the money, he or she may consider it found money, ripe for spending. Your hard-earned nest egg just got scrambled.

Another option your beneficiary has is to stretch out the RA over his or her lifetime. Your RA, now retitled in the name of "John Doe, Deceased, IRA for the benefit of Tom or Jane Doe," is now his or her nest egg. If your beneficiary is 30 years old at your death, your RA trusts distributes money over his actual life expectancy, resulting in maximum tax deferral.

There is also a way to ensure that he gets the benefit. You create a specially designed RA Trust, with the trust as your RA beneficiary. Under IRS regulations, a properly drafted RA Trust is a qualified beneficiary, and does not trigger massive income taxes on your death, and is better protected from the beneficiary's creditors, ex-spouses or own bad spending habits. You can also protect the RA account if you have a special needs beneficiary, who may otherwise be disqualified from government benefits. With an RA trust, your beneficiary no longer has the tempting option of a spending spree.

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