



Investment Advice  
For Every Generation

Member FINRA • MSRB • SIPC

# Fiscal Fitness



Vorpahl Wing Securities 505 W. Riverside, Ste 205 Spokane, WA 99201  
Cell: (509) 590-7156 (509) 747-1749 denniscr@vorpahlwing.com

November 2011

Volume 11, Issue 11

## Who Inherits Your Retirement Account Assets After Your Death? Part II

BY DENNIS ROGINSKI

In the October issue of *Fiscal Fitness*, we showed how Janet's new husband (let's call him Paul) inherited her 401(k) assets instead of her children, her intended beneficiaries. We also mentioned how this could be avoided for women in similar situations.

In this issue of *Fiscal Fitness*, we will discuss other scenarios, and show you how to avoid leaving your 401(k) assets to unintended beneficiaries.

### A two-step process

Janet could have left her 401(k) assets to her children by having Paul sign a spousal waiver. Under the Employee Retirement Income Security Act (ERISA), if a 401(k) participant names a beneficiary other than her spouse, the spouse is required to sign a spousal waiver, giving his okay to leave the assets to beneficiaries other than him. **THIS IS ONLY THE FIRST STEP.**

The next step is for Janet to update her beneficiary form, removing Paul from being a primary beneficiary. Signing a spousal waiver, as Paul did, simply means that he will waive his right as the primary beneficiary. But if he is still listed as the primary beneficiary, he will receive the assets after Janet dies. So for Janet, this is a two-step process: get Paul's signature on a spousal waiver *and* update her 401(k) beneficiary form to remove Paul as primary beneficiary.

### Transfer to an IRA

Let's change Janet's situation a bit. This time her first husband died, and shortly after his death, Janet retired. She transferred her 401(k) to an IRA, naming her children as primary beneficiaries. Janet later remarries. In this case, a spousal waiver is normally not required because Janet was not married when the transfer to the IRA took place. IRAs are

more flexible than ERISA type 401(k)s, so it might be better to transfer assets out of a 401(k) into an IRA. This transfer should be a direct transfer to avoid any taxes or penalties. Call me if you need assistance with this direct transfer.

### A prenuptial agreement

What if Janet and Paul had a prenuptial agreement stating that Janet's children would inherit her 401(k) assets, and because of this agreement, no spousal waiver was signed. Would this work? Nope! Technically, Paul was a fiancé' and not a spouse when the prenuptial agreement was signed. ERISA rules are very specific: only a spouse can waive his/her rights to the plan assets.

As you can see, naming beneficiaries is not always straight forward. Do you have questions about your situation? Email me to the address above, and I will be happy to answer them.

The content of this material is for informational purposes only and is based on sources considered reliable, but its accuracy is not guaranteed and is not intended to be nor should it be relied upon as a complete record or analysis; neither is it an offer or a solicitation of an offer to sell or buy any security mentioned herein. Any returns of investment securities mentioned herein were based on the past performance and is no guarantee of future results. Indices are unmanaged and are not available for direct investment. An investor should consider their personal objectives, risk, time frame, along with all fees and expenses associated with investing. The information and expressions of opinion contained herein are subject to change without notice.