



IRA and QRP Advanced Beneficiary Topics



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Learning Objectives

At the completion of this course you will be able to

- ✓ identify special issues that arise in processing death claims, and
- ✓ explain the procedures for handling special issues.

Icon Legend

 Individual Exercise	 Group Exercise	 Group Discussion
 Example	 Job Aid	 Additional Information

Naming a Beneficiary

Per Capita vs. Per Stirpes Beneficiary Designations

IRA owners are adopting more sophisticated estate planning goals. Financial organizations are sometimes asked if they will accept a different, often more complicated, type of beneficiary designation, usually drafted by an estate planner or attorney. One such form of designation is a “per stirpes” beneficiary designation.

- A per capita designation generally passes assets to members of the same “class” of living beneficiaries based on the percentage determined in the document.
- A per stirpes designation generally allows assets to flow through a deceased beneficiary to that beneficiary’s descendants, but can have different meanings based on how the IRA document or state law defines it.

Financial organizations are not required to accept any specific beneficiary designation presented by an IRA owner, including the per stirpes beneficiary designations. Financial organizations, therefore, should consult with their forms provider or legal counsel to determine the presumption under the existing document and whether alternative designations can be accommodated under the existing document.

If willing to accept beneficiary designations not typically used by the financial organization, procedures should be established to ensure that the designations received contain proper information so that the financial organization will understand who the beneficiaries are and how to pay out assets after death.



Per Capita

Carol names her two kids, Peter and Cindy, as equal primary beneficiaries on her IRA. Carol’s IRA document has a presumption of a per capita designation. If Peter predeceases Carol, his share (50 percent) of the IRA assets will pass to Cindy (upon Carol’s death). Cindy will receive 100 percent of the IRA assets, leaving Peter’s family with no share of the IRA.



Per Stirpes

Carol’s attorney drafts a typical per stirpes beneficiary designation that names her two kids, Peter and Cindy, as equal primary beneficiaries of her IRA. If Peter predeceases Carol, his share (50 percent) of the IRA assets will pass to his heirs (upon Carol’s death) rather than 100 percent passing to Cindy. Thus, Carol ensures that each child’s family will benefit equally.

Community Property Laws

State community or marital property laws may give a surviving spouse rights to the IRA assets even if she is not named as a beneficiary.

The spouse may waive community or marital property rights.

The following states have community or marital property laws that control the payment of IRA assets after the IRA owner's death.

- Alaska*
- Arizona
- California
- Idaho
- Louisiana
- New Mexico
- Nevada
- Texas
- Washington
- Wisconsin

* Alaska requires both spouses to "opt-in" to community property law.



Additional Information

If the IRA owner names beneficiaries in California or Louisiana, death claims processed under Ascensus' *Fully-Administered Program* are not affected by these laws as long as there is a named beneficiary. All other financial organizations should seek legal counsel regarding these claims.

Although the spouse's right to the IRA assets may arise at the time the contributions are made, no payment usually is made until divorce or the IRA owner's death. If IRA assets have not been transferred to the former spouse incident to divorce, the former spouse may still have a claim on the assets when the IRA owner dies. For these reasons, the financial organization should consult with its legal counsel before distributing any assets.

Any of the following facts may allow a financial organization to process a beneficiary payment without considering community or marital property laws.

- The IRA owner was not married at any time.
- The surviving spouse signed the “Spousal Consent” section of the beneficiary form (or application) that determines the beneficiaries.
- The IRA owner did not live in a community or marital property state during the time he was married to the surviving spouse.



Community Property

Bobby, a lifelong resident of Culdesac, Idaho, recently died. When his wife, Tracy, went to the financial organization to settle his accounts, she found that Bobby had named his business partner, Oliver, as his primary beneficiary. Tracy maintains that, as Bobby’s wife, she is entitled to the IRA assets.

Is Tracy entitled to any portion of the assets?

Minor Beneficiaries

When an IRA owner dies and the beneficiary is a minor, the financial organization may not be able to pay death benefits directly to the minor.

Under the Ascensus IRA plan agreement, the laws of the state in which the IRA is domiciled will govern the payment options. As a reminder, the age of majority for most states and territories is 18.

U.S. exceptions

Alabama	19	Mississippi	21
Nebraska	19	Puerto Rico	21

In some states, payment must be made to an adult who has been legally appointed as the guardian of the minor's estate. The minor's parent is not always automatically a guardian of the minor's estate, and the parent may need to be designated as such by a court.

In other states, payment may be made to a parent or legal guardian if the total assets the minor is receiving are less than a specified dollar amount. In some cases, the only viable option will be to hold the assets in the IRA until the minor becomes an adult. Keep in mind that no exception applies for a minor beneficiary who is required to take beneficiary payments.

A financial organization should always consult with its legal counsel for assistance in handling payments to minors.

Organization or Charity as Beneficiary

The IRA owner may name a foundation, charity, or other entity as an IRA beneficiary.

When a charitable organization or other entity is named as an IRA beneficiary, the financial organization should obtain documents identifying who has the authority to select a payment option and to receive the IRA assets on the organization's behalf.

- A financial organization should complete this task after the IRA owner's death as it prepares to process the death claim.
- This often calls for consultation with the financial organization's legal counsel.

Authority of an Agent to Designate Beneficiaries

The authority of a conservator, guardian, or power of attorney (herein referred to as “agent”) to designate who receives death distributions is a matter of the governing document’s scope.

For example, if the power of attorney document states that changes to IRA beneficiary designations may be made, then the allowable action is clear.

In cases where the governing documentation is not clear, or is silent, the financial organization should consult its state law and involve its legal counsel to set a policy as to what the financial organization will allow. Agents should also consult with their legal counsel for guidance on the powers they have regarding IRA management.

Power of Attorney: A written instrument signed by one person (the “principal”) that grants another person (sometimes called the “attorney-in-fact”) the authority to act as an agent on the principal’s behalf.

- If the IRA owner did not designate beneficiaries, the IRA plan agreement will generally dictate who should receive the IRA assets after death. Before allowing an agent to change a beneficiary designation, the financial organization must verify that the agent has the authority to do so. The financial organization may also choose to retain the previous beneficiary designation completed by the IRA owner, in case issues arise after the IRA owner’s death.
 - The financial organization should check with its legal counsel if it allows an agent to name an IRA beneficiary or change an existing IRA beneficiary to ensure that the agent has the authority to do this. If the financial organization allows an agent who lacks authority to name an IRA beneficiary or change an existing IRA beneficiary, the financial organization could be liable if the IRA assets are distributed after death based upon an invalid beneficiary form.
 - If a financial organization has any other questions, it should always consult with legal counsel.



Additional Information

If a financial organization submits a beneficiary designation form to Ascensus that is signed by an agent, Ascensus will assume the financial organization verified that the agent has the authority to name an IRA beneficiary or to change an existing IRA beneficiary.

Divorce and Beneficiary Designations

If the IRA owner's former spouse is named as a beneficiary under the most recent beneficiary designation, the financial organization's legal counsel should determine whether the former spouse's rights were terminated by the divorce.

- A beneficiary designation naming the IRA owner's former spouse that is signed by the IRA owner after a divorce is effective in all states.
- In states that have adopted Section 2-804 of the Uniform Probate Code (UPC), a beneficiary designation executed before the divorce is revoked by the subsequent divorce or annulment of marriage, except for rights granted under the "express terms" of a court order or contract relating to the division of the marital estate.
- Some states that have not adopted the UPC have similar statutes.
 - The courts of states that have not adopted such revocation statutes are not consistent in their rulings, with some courts concluding that a divorce does not affect the rights of a named beneficiary.
- In cases where a former spouse was named as the primary IRA beneficiary of a deceased IRA owner, the divorce court may have granted the former spouse a right in the IRA, which was not transferred upon divorce. Instead, the court may order the former spouse to remain as an IRA beneficiary.
 - The best way to comply with such a court order may be to complete a new beneficiary designation—with the same (now former spouse) as beneficiary—rather than simply leaving the predivorce beneficiary designation in place.

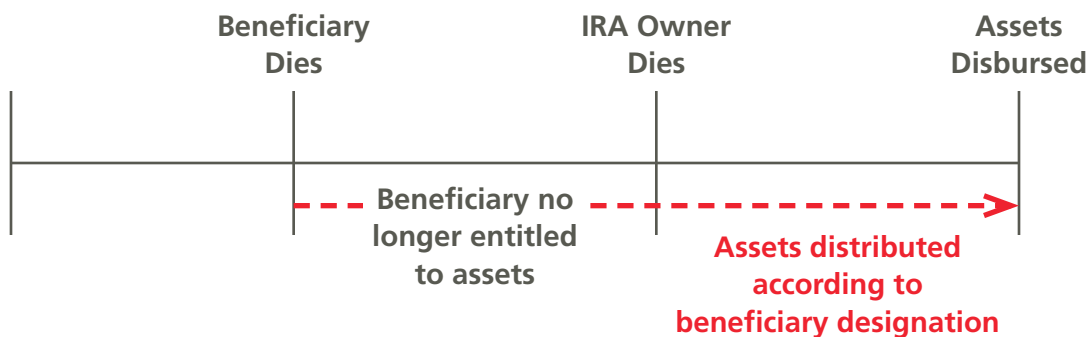
A financial organization should consult with its legal counsel when faced with this situation.

Beneficiary Issues

Primary Beneficiary Dies Before the IRA Owner

In general, primary beneficiaries who die before the IRA owner are no longer entitled to the assets.

- The financial organization should process the death claim as though the primary beneficiary was never named.
- The deceased IRA owner's share goes to the
 - remaining primary beneficiaries, if any,
 - contingent (secondary) beneficiaries, or
 - default beneficiaries stated in the plan agreement.
 - Ascensus plan agreements default to the IRA owner's estate.
 - The IRS plan agreement is silent on default beneficiaries.
 - State laws generally default to the IRA owner's estate or surviving spouse.



Beneficiary Dies After the IRA Owner Before Receiving the Assets

A primary beneficiary who is alive after the original IRA owner’s death continues to be treated as a primary beneficiary even if she dies before taking the IRA assets.

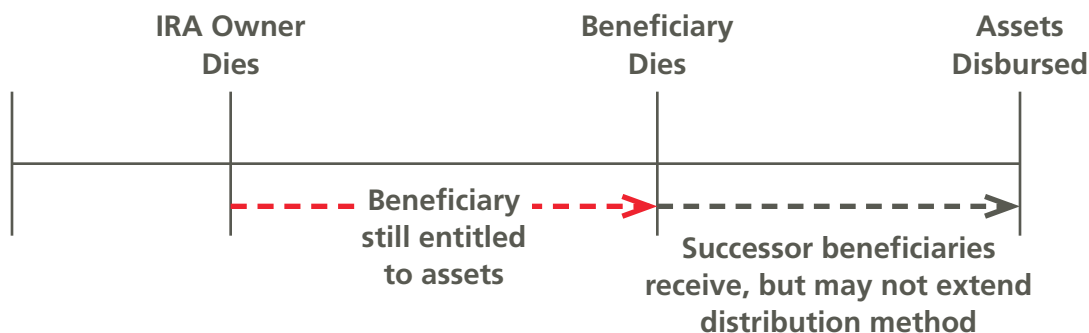
- A person is a beneficiary if the person has not received his entire share of the IRA assets and has not disclaimed the IRA assets.
 - This rule applies even if the beneficiary dies (unless he dies before the IRA owner).
 - If the beneficiary dies after the IRA owner, but within a certain timeframe (e.g., one day or one week), the financial organization, along with its legal counsel, must determine if the beneficiary is entitled to the assets. Some state laws determine that beneficiaries are not entitled to the assets if they die within a certain timeframe after the IRA owner. Laws vary among states, so legal counsel should review the financial organization’s state law regarding this issue.
- If the beneficiary named successor beneficiaries for his share of the IRA assets, the successor beneficiaries must continue the same payment methods that the original beneficiary was using.
- If the primary beneficiary did not name successor beneficiaries before his death, the assets will be distributed according to the IRA plan agreement.

Ascensus Plan Agreement

- The beneficiary’s share is payable to her estate.

IRS Model IRA Document

- The IRS agreement is silent on this issue.
- The laws of the state where the IRA owner lived determine how the beneficiary’s assets are distributed.





Additional Information

If an IRA owner dies before the RBD and the beneficiary is the spouse, the spouse is treated as the IRA owner for purposes of determining the beneficiary's options if the spouse dies before payments are required to begin.



Spouse Inherits and Dies before Payments Required to Begin

Cindy, age 50, died in 2018. Her husband, Gary, age 51, is the primary beneficiary on her Traditional IRA. Gary decides to take life expectancy payments, which are not required to begin until 2038. Gary names his son, Jake as his successor beneficiary.

Gary passes away in 2021. Because Gary dies before he is required to begin taking payments in 2038, he is treated as the IRA owner when determining Jake's payment options. Jake can choose between distributing the IRA assets over his own single life expectancy or depleting the IRA within five years.

Notified of Death After December 31 of the Year After Death

In some situations, the financial organization is notified of the IRA owner's death after the deadline to elect a payment option.

This could cause a beneficiary to miss a required payment and become subject to a 50 percent excess accumulation penalty tax for one or more years.

- The IRA owner died before the required beginning date (RBD) and the beneficiary defaulted to life expectancy payments, which generally must begin by December 31 of the year after the IRA owner's death.
 - For example, an IRA owner died in 2015 at age 67 and left his entire IRA to his daughter. The financial organization did not learn of the death until 2017. According to the IRA plan agreement, his daughter defaults to life expectancy payments. She should have taken a required distribution for 2016, calculated using her life expectancy. She owes the 50 percent excess accumulation penalty tax because she did not receive this required distribution before December 31, 2016. But if she receives the entire IRA balance by the end of the fifth year following the IRA owner's death, the penalty tax is automatically waived.
- The IRA owner died after the RBD and the beneficiary did not withdraw any assets from the IRA or transfer the assets to an inherited IRA before December 31 of the year after the IRA owner's death.
 - Assume the same facts apply as in the previous example, except the IRA owner died at age 77, which is after his RBD. Because the IRA owner died after his RBD, the 50 percent penalty tax cannot be waived, which means the beneficiary will owe a 50 percent penalty tax for 2016.

NOTE: *The beneficiary could also apply for a waiver of the penalty tax by attaching a letter of explanation with Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts. If the IRS agrees that the mistake was because of reasonable error, it may waive the penalty tax amount.*

Assets Disbursed After the IRA Owner's Death

In some cases, distributions are made to the IRA owner before the financial organization is notified of the IRA owner's death. No IRS guidance specifically addresses this issue.

Ascensus believes that financial organizations are not obligated to try to "undo" the distribution to the decedent in this scenario because the distribution was processed according to the information that was available at the time of the distribution.

Once the financial organization receives notification of the IRA owner's death, it should stop all distributions from the IRA and work with the named IRA beneficiaries to distribute the assets according to each beneficiary's distribution election.

Because the IRS has not specifically addressed this issue, financial organizations that make a business decision to attempt to recover distributions paid out before notification of death do so without IRS reliance. Financial organizations may want to discuss the issue with their legal counsel.

Who receives the money may determine the course of action for the financial organization. Because there is no IRS guidance on what MUST be done in each of these situations, each financial organization will need to make its own determination on which course of action it should take.

- Assets are paid to the sole beneficiary.
 - The financial organization is not required to retrieve the money.
 - No corrective tax reporting is required if not retrieved.
- Assets are paid to a beneficiary who is entitled to only a portion of the IRA and receives less than her share.
 - The financial organization is not required to retrieve the money.
 - No corrective tax reporting is required if not retrieved.
- Assets are paid to a recipient who is not entitled to the assets.
 - This can occur when too much is disbursed to a named beneficiary or when a recipient other than a named beneficiary receives the assets.
 - The financial organization may attempt to retrieve the assets from the recipient.
 - If the recipient does not voluntarily return the assets, the financial organization must determine if it wants to pursue the assets.
 - If the assets are not returned, the financial organization may be liable to pay those assets to the correct beneficiary.
 - No corrective tax reporting is required unless the financial organization retrieves the assets.
 - If assets are returned after the distribution is reported, the financial organization should correct the reporting by preparing a new IRS Form 1099-R to show the amount disbursed to the beneficiary.

Beneficiaries Naming Beneficiaries

Financial organizations should establish policies on whether an IRA beneficiary may name his own beneficiaries. Allowing a beneficiary to name a beneficiary does not violate any federal laws, as long as no attempt is made to extend the life expectancy beyond the original beneficiary's life expectancy. While there is no prohibition to naming a subsequent beneficiary, IRS rules do prohibit extending the IRA's tax-deferred status beyond which is available to the original IRA owner.

Consider State Trust Laws

IRAs are trusts, created for the exclusive benefit of an individual or her beneficiaries. Trust laws generally permit only the grantor (in this case, the IRA owner) to name beneficiaries of the trust. While nothing in the Treasury regulations appears to prohibit a beneficiary from naming a beneficiary, the IRS rules are unclear.

A private letter ruling clarified the IRS' position that the distribution requirements do not preclude an IRA beneficiary from naming a subsequent beneficiary, as long as the previously established payout schedule is not lengthened.

State trust laws may differ, and may pose obstacles to someone other than the original IRA owner who attempts to name a beneficiary of the assets. Financial organizations should carefully explore applicable state statutes before allowing a beneficiary to name a subsequent beneficiary.

Review IRA Documents

IRA documents may limit beneficiary designation options. It is relatively safe to say that many documents have not been drafted to explicitly allow a beneficiary to name a beneficiary, though they may not preclude such an option. Therefore, financial organizations should consult with their legal counsel to determine whether a beneficiary may name a beneficiary under the terms of the documents being used.

Before adopting a policy of allowing beneficiaries to name beneficiaries, financial organizations should carefully

- review applicable state trust law to ensure there are no prohibitions against such a practice, and
- examine their IRA documents to determine whether document language supports beneficiaries naming beneficiaries.

Successor Beneficiary Title on IRS Form 5498

The *Instructions for Forms 1099-R and 5498* contain guidance for successor IRA beneficiary reporting. According to the instructions, when generating Form 5498 for a successor IRA beneficiary, financial organizations must treat the original beneficiary as the deceased IRA owner and the successor beneficiary as the new beneficiary. When generating year-of-death reporting for an original beneficiary, the financial organization should still generate a Form 5498 showing the deceased beneficiary as beneficiary of the deceased IRA owner.



Successor Beneficiary

Jessica Logan named Patty Covington as the beneficiary of her IRA. Jessica died in 2017. The titling on Patty's 2017 Form 5498 was titled, "Patty Covington as beneficiary of Jessica Logan." In 2019, Patty dies. Before she died, Patty named a successor beneficiary, Matt Kelly, to continue her IRA distributions. The titling on Matt's 2019 Form 5498 will read, "Matt Kelly as beneficiary of Patty Covington." The final Form 5498 for Patty (generated for the year of death) will read, "Patty Covington as beneficiary of Jessica Logan."

Beneficiaries Disclaiming Interest in the IRA

An individual entitled to receive death benefits from an IRA can file a disclaimer with the financial organization that renounces all or a portion of the beneficiary's interest in the IRA. In such a case, the disclaimed assets pass as if the disclaiming beneficiary had died before the IRA owner.

- A disclaimer cannot be used to steer the death benefits to a selected person. The disclaimed interest must pass to another beneficiary (based on the beneficiary designation form or the IRA agreement defaults, whichever applies).

A beneficiary may disclaim his rights **only** if **all** of the following criteria are met.

- Qualified disclaimers must be a written, irrevocable refusal to accept interest in the property. This means that the beneficiary cannot change his mind after signing the disclaimer. It is recommended that the beneficiary sign a disclaimer in the presence of a notary public.
- The disclaimer must be presented to the financial organization before the later of
 - nine months after the IRA owner's death, or
 - nine months after the date on which the beneficiary turns age 21.
- The beneficiary may not disclaim any portion of the IRA assets that were already distributed.

Partial disclaimers are allowed, even if the beneficiary submitting the disclaimer has already received some of the assets. The assets received, however, may not be disclaimed. If the beneficiary receives a year-of-death RMD before disclaiming, the earnings on the RMD amount cannot be disclaimed. These earnings must be distributed to the beneficiary or segregated in a separate account from the assets being disclaimed.

Financial organizations should consult their legal counsel if questioning whether a disclaimer is qualified.



Disclaiming an Interest in the IRA

Wally, age 74, died on June 10, 2019. His primary beneficiary is his second wife, Marcia. He named his two children from his first marriage Mickey, age 46, and Jessica, age 44, as contingent beneficiaries. Because Mickey and Jessica are both in their 40s, Marcia decides that she wants them to receive the IRA assets.

Can Marcia disclaim her interest in the assets?

If yes, what is her deadline to disclaim the assets?

Contesting Beneficiary Designations

From time to time, a financial organization discovers that family members or other individuals intend to challenge a beneficiary designation. In other cases, there may be a dispute between the various beneficiaries as to the portion of the balance they are to receive. In such cases, the beneficiary designation under the IRA generally is controlling. Other legal instruments, such as a will drafted later in time, may be claimed to supersede the beneficiary designation.

Whether the IRA owner's will takes precedence over the IRA beneficiary designation (or vice versa) depends on state law. There are two common approaches: the document that was executed last governs or the more specific document (typically the IRA beneficiary designation) governs.

NOTE: *Property passed by terms of a will is subject to the probate process.*

If a financial organization learns that there is a beneficiary designation dispute, the matter should be immediately referred to the financial organization's attorney. The attorney can assess the possible consequences of the dispute and the effect of any other documents that may be involved.

If a legal claim is filed, the financial organization typically is named as a party to the lawsuit through a process called "interpleader". In this type of suit, the financial organization, which has no legal claim or interest in the IRA assets, seeks a court determination regarding payment to the proper party.



Job Aids

BENEFICIARY PAYMENT OPTIONS WHEN...

1. The Traditional IRA owner dies before the required beginning date, or the IRA is a Roth IRA.
2. There is more than one primary IRA beneficiary on December 31 of the year after death.
3. A separate account has not been established for the beneficiary by December 31 of the year after death.

IF THERE IS A DESIGNATED BENEFICIARY

Beneficiary	Payment Option	Deadline
Spouse	Lump sum	December 31 of the fifth year after the IRA owner's death, or any time after another payment option has begun.
	Payments over five years	The final payment must be made by December 31 of the fifth year after the IRA owner's death.
	Payments over the oldest designated beneficiary's life expectancy in the year after the IRA owner's death, recalculated (or a lesser number of years)	The first payment must be made by December 31 of the year after the IRA owner's death.* (Ascensus and IRS default)
	Distribute and roll over	December 31 of the fifth year after the IRA owner's death, or any time after another payment option has begun.
Nonspouse beneficiaries or qualified trusts	Lump sum	December 31 of the fifth year after the IRA owner's death, or any time after another payment option has begun.
	Payments over five years	The final payment must be made by December 31 of the fifth year after the IRA owner's death.
	Payments over the oldest designated beneficiary's life expectancy in the year after the IRA owner's death, nonrecalculated (or a lesser number of years)	The first payment must be made by December 31 of the year after the IRA owner's death.* (Ascensus and IRS default)

IF THERE IS NO DESIGNATED BENEFICIARY (i.e., a nonperson is named)

Beneficiary	Payment Option	Deadline
All beneficiaries	Lump sum	December 31 of the fifth year after the IRA owner's death
	Payments over five years	The final payment must be made by December 31 of the fifth year after the IRA owner's death. (Ascensus and IRS default)

* If first payment is not taken until after December 31 of the year after the IRA owner's death, the beneficiary may owe a 50 percent excess accumulation penalty tax for each year a payment was missed.

BENEFICIARY PAYMENT OPTIONS WHEN...

1. A Traditional IRA owner dies on or after the required beginning date.
2. There is more than one primary beneficiary of the IRA on December 31 of the year after death.
3. Separate accounts have not been established for each primary beneficiary by December 31 of the year after death.

NOTE: All beneficiaries must receive the portion of the IRA owner's year-of-death RMD that was not distributed to the IRA owner before death.

IF THERE IS A DESIGNATED BENEFICIARY

Beneficiary	Payment Option	Deadline
Spouse	Lump sum	December 31 of the year after the IRA owner's death, or any time after another payment option has begun.
	Payments over the longer of the oldest designated beneficiary's life expectancy in the year after the IRA owner's death, OR the IRA owner's life expectancy in year of death minus one, using nonrecalculation for either life expectancy	The first payment must be made by December 31 of the year after the IRA owner's death.* (Ascensus and IRS default)
	Distribute and roll over	December 31 of the year after the IRA owner's death, or any time after another payment option has begun.
Nonspouse beneficiaries or qualified trusts	Lump sum	December 31 of the year after the IRA owner's death, or any time after another payment option has begun.
	Payments over the longer of the oldest designated beneficiary's life expectancy in the year after the IRA owner's death OR the IRA owner's life expectancy in year of death minus one, using nonrecalculation for either life expectancy	The first payment must be made by December 31 of the year after the IRA owner's death.* (Ascensus and IRS default)

IF THERE IS NO DESIGNATED BENEFICIARY (i.e., a nonperson is named)

Beneficiary	Payment Option	Deadline
All beneficiaries	Lump sum	December 31 of the year after the IRA owner's death, or any time after another payment option has begun.
	Payments over IRA owner's life expectancy in year of death minus one, nonrecalculated	The first payment must be made by December 31 of the year after the IRA owner's death.* (Ascensus and IRS default)

* If first payment is not taken until after December 31 of the year after the IRA owner's death, the beneficiary may owe a 50 percent excess accumulation penalty tax for each year a payment was missed.