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TABLE OF CONTENTS

Trustee Selection for Irrevocable Trusts.....1

Trustee Selection for Irrevocable Trusts

Most professionals who work with trusts have plenty of “nightmare stories” about trustees chosen by clients for their irrevocable trusts. No doubt this is because trustees are often chosen without careful consideration of the qualifications required.

In this issue of The Planner, we will examine who can, who should, and who should not serve as trustee; non-tax and tax factors that should be considered when selecting a trustee; who can, and should, be given the right to remove and replace a trustee; and using a team approach to segregate duties among lay and professional trustees.t

Background

Irrevocable trusts are created in two ways:

- 1) A revocable trust becomes irrevocable after the grantor has died.
- 2) An irrevocable trust is established while the grantor is

living to save estate taxes (by removing assets from the grantor’s estate) and/or for asset protection or Medicaid (Medi-Cal in California) planning..

Planning Tip: An alimony trust may be useful if a business owner cannot or does not want to sell an interest in the family business to make payments to his former spouse or if the business lacks the liquidity to redeem the stock of the former spouse. It can protect the payee in the event the payor should die or become financially insolvent before all payments have been made. Also, the trustee can be a neutral third-party who can act as an intermediary between the former spouses. One downside is that the trust can become under- or over-funded, so care should be taken when drafting the document and funding the trust.

While a grantor may technically be allowed to serve as the trustee of an irrevocable trust he creates, it is not a good idea at best. That is because if the grantor has any

discretion with trust asset distributions, it could lead to inclusion of the trust assets in his estate for tax, Medicaid and other purposes, which could frustrate the trust's objectives.

Often there is someone the grantor knows who the grantor suggests to be the trustee. Typical choices are the grantor's spouse, sibling, child, or friend. Any of these may be an acceptable choice from a legal perspective, but may be a poor choice for other reasons. For example, some families would be torn apart if one sibling had to ask another for a distribution.

Left to their own devices, clients trustee appointments will frequently be made (out of ignorance) with little consideration of the qualifications the trustee should have. Likewise, those who agree to be trustees typically have no idea what they are getting into. Non-professional trustees often are overworked, underpaid, unappreciated, find they are dealing with unhappy and unappreciative beneficiaries, and may even wind up being sued by the beneficiaries.

With this in mind, let's look at some factors (non-tax and tax) that should be considered when selecting a trustee.

Non-Tax Considerations for Selecting a Trustee

Here are some of the characteristics that the client should consider in choosing an individual trustee:

Judgment: Clients typically want their trustee to make the same decisions they would. Someone who shares the grantor's values, virtues, spending habits and faith is more likely to do this. Also, consider whether the trustee candidate will be aware of his own capabilities and weaknesses. If the trustee candidate does not have accounting or investment experience, would she have the judgment to admit this and engage an appropriate qualified professional?

Availability/Location: Does this trustee candidate have the time required to be a trustee? Will he be available when needed or will work and/or family demands leave too little time for trust responsibilities? Where does the candidate live? If the trustee lives in a place different than the trust situs, different laws may apply. Is living near the beneficiary important?

Longevity: How long will the trustee be needed? Many grantors are most comfortable with friends who share their values and have gained wisdom from life experiences, but someone near the grantor's age may not live long enough to fulfill the job. A trust established for the grantor's child will likely need a trustee for many years to come. Thus, for trusts that may last a long time, a corporate trustee is often the preferred choice.

Impartiality: The trustee must be capable of being impartial among the beneficiaries. This is especially difficult to do if the trustee is one of several beneficiaries. Corporate trustees, because they can be impartial, are often chosen to prevent a sibling or relative from being placed in an uncomfortable (and often unfair) position.

Interpersonal Skills: The trustee needs to be able to communicate well and effectively to the beneficiaries and to professionals who may be involved with the trust. Some people may be good record keepers or investors, but lousy at diplomacy or feel intimidated or even be offended if a beneficiary gets an attorney. A good trustee will need to be able to work calmly and well with all involved.

Attention to Detail: Does the trustee understand the serious duties that come with the job and is she willing to be accountable for her actions? Fiduciaries are often thought by the beneficiaries to be guilty until proven innocent. While it may not happen, the trustee should assume he will be sued at some point and keep meticulous records as a ready defense. A trustee who expects to be sued will be much better prepared than one who doesn't think it will happen and, as a result, does not take the record keeping requirement seriously.

Investment Experience: While it is helpful to have investment experience, the trustee can certainly get by without it, as long as he/she recognizes this is an area for which to secure professional help. Also, if the trustee lives in a place different than the trust situs, different investment laws may apply, making it especially prudent or even essential to seek professional assistance.

Planning Tip: CPAs can make good trustees, but often are unwilling or unable (because of insurance considerations) to serve. Sometimes, the best choice would be a corporate trustee. Seldom will the unguided

grantor even think of using a team, which can include both various professionals and friends and family members.

Fees: The non-professional trustee rarely discusses fees with the beneficiaries. Often, family members and friends will not charge a fee for their services out of a sense of family duty or respect for the grantor. But trustees should be paid and, more often than not, an unpaid trustee will eventually come to that conclusion or fail to diligently carry out his duties. From the outset, a trustee should keep close track of time and expenses so that a reasonable fee can be substantiated. Generally, a reasonable fee is what a corporate trustee would charge, so thinking that a non-corporate trustee will do the same necessary work for less is false economy.

Planning Tip: Become knowledgeable about the fees charged by corporate trustees in your area as a guideline. Talk about trustee fees when establishing the trust to avoid problems and misunderstandings later.

Insurance: Anyone serving as a trustee needs to have plenty of insurance (errors and omissions or liability). Some of the laws that govern trustees are absolute standards, so a trustee needs to have adequate insurance for protection in the event of a mistake or an innocent error. The amount of insurance needed can depend on the degree to which a trustee is indemnified. However, legal defense costs in trustee litigation can be very large and are typically borne by the insurer.

Indemnification: This often comes up when family members or friends are serving as trustee. Grantors want to indemnify family members and their friends; they do not want them to be sued. It is possible to reduce or eliminate the prudent investor rule for such trustees. However, indemnification is a two-edged sword because it may result in the non-professional trustee not taking the job seriously.

Planning Tip: A good alternative is to have a family member or friend serve with a corporate fiduciary that is assigned the administrative and investment responsibility. The family member or friend trustee could make or veto discretionary distributions, but having no oversight, administration, or investment obligations would be less

likely to be sued if something goes wrong.

Planning Tip: Indemnification might be appropriate in a situation with obvious bad family dynamics, where the siblings are already fighting each other yet the grantor insists on naming one sibling as trustee. In such a situation, your recommendation to name a corporate fiduciary instead should be well documented.

Planning Tip: Waiving the prudent investor rule can also be helpful in other situations, depending on the use of the trust. For example, with the sale of an appreciated asset(s) to a grantor trust, the trustee is usually buying hard-to-value assets (real estate, wholesale business interest) from the client in order to shift future appreciation to the trust and away from the grantor. Rather than starting initially with a corporate fiduciary who is not familiar with the asset or situation, it may be more effective (saving both time and money) to have the initial trustee be someone close to the family who better understands the issues, and then change later to a corporate fiduciary. Waiving the prudent investor rule and providing indemnification for the initial trustee in this situation could make sense.

Planning Tip: Being able to waive all or part of the prudent investor rule when using an irrevocable life insurance trust (ILIT) gives greater latitude and peace of mind to make some of the transactions meet the unique needs of the client. Beware, however, of the risk that the trustee, shielded from liability, may fail to do the appropriate work to make sure that the insurance held in the ILIT is appropriate as markets change.

Note: Florida is considering a statute that would relieve trustees of the duty to review the propriety of investments in life insurance policies, which would, in effect, waive the prudent investor rule for life insurance policies owned by ILITs. This would help to solve the problem of corporate trustees not wanting to serve as the trustee of ILITs due to the obligation to review policies that have not performed very well.

Tax Considerations: Estate Tax

If a purpose of the trust is to remove assets from the grantor's estate, the grantor cannot have any role in

determining who gets distributions or when they occur. However, the grantor can have the power to remove and replace the trustee or to control the investments of the trust. Neither of those will cause estate tax inclusion providing the grantor cannot appoint a trustee who is related or subordinate to the grantor (as would be a brother, employee or someone else who will capitulate to the grantor's wishes). Interestingly, there is no problem appointing, at the inception of the trust, an initial or successor trustee who is related or subordinate to the grantor.

Planning Tip: It is unclear if a grantor can have the right only to remove a trustee and allow the next named successor trustee to take over. While also unclear, it seems that a grantor can reserve the right to remove and replace someone who is not a fiduciary (for example, a trust protector).

Income Tax

A non-adverse trustee having certain powers may trigger grantor trust rules and cause the grantor to be taxed on the trust's income. In some instances the client may not want the tax to come back to the grantor and instead want a trust that is a separate tax-paying entity for which the income that is distributed to the beneficiaries is be taxed to the beneficiaries.

Planning Tip: Because the trustee's identity may affect state income tax as well, you may be able to shift the trust situs to a state with a lower income tax rate. Depending on the trust assets, this could be important as some investments (such as oil and gas) may be taxed significantly higher in some states than in others.

Beneficiary Removal and Replacement of Trustee

This is an area that is customizable for each trust and can help maintain some downstream flexibility. Some grantors may not want the beneficiaries to be able to remove the trustee, especially if the grantor is aware of family quarreling. But if the corporate or individual trustee knows it cannot be replaced there is little need for responsiveness or careful attention to investments. Because there does need to be a way to have the trustee removed if things should deteriorate, the document can

include that the trustee can only be removed for cause as determined by the court. On the other end, spendthrifts may want to "trustee shop" until they find one that will do whatever they want, so there will need to be some restraints on when a trustee can be replaced.

Team Approach

There are times when a team can do a better job than a single trustee. Having more than one trustee, even with different duties and responsibilities, can work well for many situations. The trust can benefit from assigning the trustees specific duties based on their strengths and experience. Of course, the fewer people who are involved, the less complicated the administration. Also, disagreements will have to be worked out. If there are two trustees or any even number, deadlocks are possible. With an odd number, a simple majority would be needed. If an agreement cannot be reached, the court can be allowed to intervene as a last resort.

Also, as mentioned earlier, family member trustees can work with professionals as paid advisors instead of as trustees. This would allow the advisors to provide valuable input and insight into both the grantor's desires and the personalities of the beneficiaries, without being so exposed to possible lawsuits.

Planning Tip: Ethical issues can arise if the attorney represents more than one trustee, so she should be sure to have a waiver of conflict or other plan in place.

Planning Tip: Naming someone as trustee is a nomination. The person named is under no obligation to accept the responsibility when the time comes, and it is not unusual for someone to refuse to serve or to step aside once he understands the duties and responsibilities involved. For this reason, it is important for the trust maker to name several successor trustees and to clearly communicate with each before finalizing the choices. Most drafting attorneys will also recommend naming a corporate trustee as trustee of last resort, especially if no procedure for appointing successors is provided to the beneficiaries, short of going to court.

The Trustee's Duties and Responsibilities

- Administer the trust

- Be loyal
- Be impartial
- Be prudent
- Control and protect trust property
- Collect trust property
- Inform and report to beneficiaries
- Diversify investments
- Keep records and no commingling
- Enforce and defend claims

Conclusion

A competent trustee is as important to the success of a trust as its being well-drafted. Naming a favorite family member as trustee may not be the smartest (or kindest) thing the grantor can do. As experienced professionals who have seen the consequences of unwise choices for trustee, we are in a unique position to counsel our clients with their and their beneficiaries' best interests in mind.

Long Term Care Benefits Available to Surviving Spouses of Wartime Veterans

There are over 9 million surviving spouses of veterans currently living in the United States. Many of these surviving spouses are receiving long term care or will need some type of long term care in the near future, and there are funds available from the Veterans Administration ("VA") to help pay for that care. Unfortunately, many of those who are eligible have no idea that any benefits exist for them or that an attorney can help them become eligible.

Benefits Available

There are three types of pension benefits available that provide monthly cash payments to surviving spouses who either have low income, long term health care needs, or both. The pension benefit is referred to as "Death Pension." Below is an overview of the three benefits, and more detail will be provided on each benefit in the following paragraphs.

Death Pension.

The VA provides a monthly cash payment to surviving spouses of veterans who meet active duty and discharge requirements, who are either 65 or older or disabled,

and who have limited income and assets. A surviving spouse can receive up to \$661 per month (with additional payments available if dependent children are present in the home).

Death Pension with Housebound Allowance.

A slightly higher monthly payment is available to surviving spouses of wartime veterans (who meet the same service requirements as Service Pension) but who are confined to their home for medical reasons. A surviving spouse can receive up to \$808 per month (with additional payments available if dependent children are present in the home).

Death Pension with Aid and Attendance.

The highest monthly benefit is available when a surviving spouse requires the assistance of another person to perform activities of daily living, or is blind or nearly so, or is a patient in a nursing home. This benefit, often referred to simply as "Aid and Attendance" is the most widely-known and talked-about benefit as it offers the highest possible monthly payment. A surviving spouse can receive up to \$1056 per month (with additional payments available for dependent children).

Planning Tip: While Aid and Attendance is the most popular VA benefit, it is important to remember that Death Pension (with no additional allowances) is available to surviving spouses who do not require assistance with activities of daily living but are either disabled or 65 or older and have low income.

Eligibility Requirements

Valid Marriage. The surviving spouse and the veteran must have been married for at least one year prior to the veteran's death. This particular requirement is met, however, if the couple was married for any period of time and a child was born to them before or during the marriage, if the marriage occurred before or during the veteran's service, or if the marriage occurred prior to the following dates:

- a) World War II veteran: January 1, 1957
- b) Korean War veteran: February 1, 1965
- c) Vietnam War veteran: May 8, 1985
- d) Persian Gulf war veteran: January 1, 2001

Next, the surviving spouse must not have remarried or lived with someone and held themselves out as married, unless the remarriage ended prior to November 1, 1990, by death, or unless legal proceedings to end the remarriage were started by November 1, 1990. Additionally, the surviving spouse must have been living with the veteran at the time of the veteran's death. If the couple was living apart, it must have been for medical, business, or other reasons besides marital discord, unless the marital discord was not the fault of the surviving spouse.

Wartime service and discharge. As noted above, the deceased veteran must have met certain service and discharge requirements before the surviving spouse can be considered for any type of pension benefit. The deceased veteran must have served 90 days of active duty with at least one day beginning or ending during a period of war. After September 1, 1980, the active duty requirement increases to 180 days. In addition, the veteran must have been discharged under circumstances other than dishonorable.

Disability. To qualify for any type of pension benefit, a surviving spouse must also be 65 or older or be permanent and totally disabled.

Permanent and total disability includes a claimant who is:

- In a nursing home;
- Determined disabled by the Social Security Administration;
- Unemployable and reasonably certain to continue so throughout life; or
- Suffering from a disability that makes it impossible for the average person to stay gainfully employed.

Asset and Income Requirements

The financial eligibility requirements of any pension benefit address a claimant's net worth and income. A claimant is the individual filing for benefits. A surviving spouse should have no more than \$50,000 in countable assets. Retirement assets are counted, but a claimant's home and vehicle are not. However, the \$50,000 limit is a guideline only – it is not a rule set by the VA. The VA looks at a claimant's total net worth, life expectancy, income and medical expenses to determine whether the

surviving spouse is entitled to any monthly death pension benefits.

Planning Tip: Many times the most difficult task in this area is to reduce a claimant's assets down to the applicable level (or what one hopes will be acceptable to the VA). The assistance of legal counsel is important to insure the right strategies are used with minimal impact on Medicaid in the future.

A surviving spouse must have Income for VA Purposes ("IVAP") that is less than the benefit for which he or she is applying. IVAP is calculated by taking a claimant's gross income from all sources less countable medical expenses. Countable medical expenses are recurring out-of-pocket medical expenses that can be expected to continue throughout a claimant's lifetime. If a claimant's IVAP is equal to or greater than the annual benefit amount, the veteran or surviving spouse is not eligible for benefits. Table 2 below shows the applicable income and pension amounts for surviving spouses.

Is the Surviving Spouse Housebound?

If a surviving spouse qualifies for regular death pension and is housebound, her maximum allowable income increases (as does the annual benefit amount). The VA defines housebound as being substantially confined to the home or immediate premises due to a disability that will likely remain throughout the claimant's lifetime. A surviving spouse with no dependent children who is housebound is eligible for benefits of up to \$808 per month.

Unreimbursed medical expenses will reduce a surviving spouse's income dollar for dollar after a small co-pay (5% of the annual pension amount) is met. But remember, to be eligible for an additional allowance for being housebound, the surviving spouse's IVAP must be less than the annual income threshold.

To illustrate, a surviving spouse with \$20,00 in annual income would not be eligible for a special monthly pension for being housebound. However, if the surviving spouse is able to show annual income of \$20,000 and unreimbursed medical expenses of \$25,000, the veteran would be eligible for \$9,696 in annual death pension with housebound allowance (paid on a monthly basis) because

the surviving spouse has negative IVAP.

Does the Surviving Spouse Require the Aid and Attendance of Another?

If a surviving spouse can show, through medical evidence provided by a primary care physician or facility, that he or she requires the aid and attendance of another person to perform activities of daily living, that surviving spouse may qualify for an additional monthly death pension allowance commonly referred to as “aid and attendance.”

The VA defines the need for aid and attendance as:

- Requiring the aid of another person to perform at least two activities of daily living, such as eating, bathing, dressing or undressing;
- Being blind or nearly blind; or
- Being a patient in a nursing home.

Table 2 below shows the applicable pension amounts for each type of VA pension available to a surviving spouse.

Practice Tip: The maximum death pension for a surviving spouse is \$1,056 per month (\$12,681 per year). The VA pays this amount directly to the surviving spouse regardless of where he or she is living.

Qualification

As stated above, the VA looks at a surviving spouse’s total net worth, life expectancy, and income and expenses to determine whether the spouse should qualify for special monthly pension. Unlike Medicaid, there is no look-back period and no penalty for giving assets away. However, one must use caution when considering a gifting strategy to qualify a surviving spouse for death pension benefits as this will cause a period of ineligibility for Medicaid which could be as long as five years. Other Medicaid planning strategies may apply when trying to qualify a surviving spouse for death pension with aid and attendance.

Practice Tip: The client’s trusted advisors must work together to determine the best combination of strategies and financial products that will gain eligibility for monthly death pension but not disqualify the client from Medicaid.

An illustration.

James, age 82, is the surviving spouse of a World War II veteran. James’ total monthly income consists of Social Security income of \$1500 per month. James was

diagnosed last year with dementia and now lives in an assisted living facility as he needs help bathing, dressing and taking his medication. The assisted living facility costs \$3000 per month. James has liquid assets totaling \$100,000.

James’ IVAP:

Income \$1500

Unreimbursed recurring medical expenses \$3000

Total IVAP (\$1500)

The maximum monthly benefit that James could qualify for is \$1,056 – death pension with an allowance for aid and attendance. Because James has a negative IVAP of \$1500, he is eligible for the full death pension with aid and attendance benefit. However, his assets are too high. But because James has negative income of \$1500, one option may be to take a portion of his liquid assets and convert them into an income stream through the use of an immediate annuity or promissory note. As long as James’s IVAP remains a negative number or \$0, he can qualify for the full death pension with aid and attendance amount.

The Application Process

While the application process for special monthly pension can be agonizingly slow – some applications take over a year before the VA makes a decision – the benefit is retroactive to the month after application submission. Having the proper documentation in place at the time of application (for example, discharge papers, medical evidence, proof of medical expenses, death certificate, marriage certificate and a properly completed application) can cut the processing time in half.

Practice Tip: Benefits are retroactive to the month after application submission. Therefore, it is imperative for potential claimants to seek legal help immediately to become eligible and to apply as quickly as possible.

Other Benefits

Dependency and Indemnity Compensation (“DIC”). DIC is a monthly benefit paid to a surviving spouse whose veteran spouse died (1) while on active duty, (2) from a service-related injury or disease, or (3) from

a non service-related injury or disease, and who was receiving or was entitled to receive VA compensation for a totally disabling service-connected disability for the 10 years immediately preceding the veterans death, or since the veteran's release from active duty and for at least 5 years immediately preceding death, or for at least one year before death if the veteran was a former prisoner of war who died after September 30, 1999.

Like death pension, DIC is a monthly payment provided to the surviving spouse. However, the surviving spouse does not have to prove a medical need, nor are there income or asset limits for DIC. The basic monthly rate of DIC is \$1,154 for an eligible surviving spouse. See Table 3 below for the definition of "surviving spouse" for DIC purposes.

Burial Reimbursement. A surviving spouse who paid for a veteran's burial and/or funeral may be eligible for partial reimbursement if the veteran's death was due to the following:

- The veteran died because of a service-related disability,
- The veteran was receiving VA pension or compensation at the time of death,
- The veteran was entitled to receive VA pension or compensation, but decided not to reduce his/her military retirement or disability pay,
- The veteran died while hospitalized by VA, or while receiving care under VA contract at a non-VA facility,
- The veteran died while traveling under proper authorization and at VA expense to or from a specified place for the purpose of examination, treatment, or care,
- The veteran had an original or reopened claim pending at the time of death and has been found entitled to compensation or pension from a date prior to the date of death, OR
- The veteran died on or after October 9, 1996, while a patient at a VA-approved state nursing home.

Reimbursement for Service-Related Death.

VA will pay up to \$2,000 toward burial expenses for deaths on or after September 11, 2001. VA will pay up to \$1,500 for deaths prior to September 10, 2001. If the veteran is buried in a VA national cemetery, some

or all of the cost of transporting the deceased may be reimbursed.

Reimbursement for Nonservice-Related Death.

VA will pay up to \$300 toward burial and funeral expenses and a \$300 plot-interment allowance for deaths on or after December 1, 2001. The plot-interment allowance is \$150 for deaths prior to December 1, 2001. If the death happened while the veteran was in a VA hospital or under VA contracted nursing home care, some or all of the costs for transporting the veteran's remains may be reimbursed.

Conclusion

Time is of the essence for surviving spouses who may be eligible for benefits available through the Veterans Administration. Failing to apply as soon as possible after a veteran's death could result in the loss of monthly payments the surviving spouse would otherwise be eligible to receive. It is imperative for those who work with surviving spouses of veterans to be aware of these benefits and to help potential claimants obtain legal help to qualify for these benefits. If you know of someone who may be eligible, please give us a call – we would be happy to help!

THESE ARTICLES ARE PURELY INFORMATIONAL AND CAN NOT BE RELIED UPON AS LEGAL ADVISE OR CONSTITUTE LEGAL ADVISE FROM THE AUTHOR. To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

Table 1: Wartime Periods

World War I	April 6, 1917 through November 11, 1918, inclusive. If the veteran served with the United States military forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 12, 1921 is considered World War I service if the veteran served in the active military, naval, or air service after April 5, 1917 and before November 12, 1918.
World War II	December 7, 1941, through December 13, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947, is considered World War II service.
Korean Conflict	June 27, 1950, through January 31, 1955, inclusive.
Vietnam Era	The period beginning on February 28, 1961, and ending on May 7, 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975, inclusive, in all other cases.
Future Dates	The period beginning on the date of any future declaration of war by the Congress and ending on a date prescribed by the Presidential proclamation or concurrent resolution of the Congress.
Mexican Border Period	May 9, 1916, through April 5, 1917, in case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.
Persian Gulf War	August 2, 1990, through date to be prescribed by Presidential proclamation or law.

Table 2: 2011 Pension Benefit Figures - Surviving Spouse

Type of Benefit	Maximum Annual Pension Rate (Income Limit)	Monthly Maximum Annual Pension Rate (Income Limit)
Death Pension	\$7,933	\$661
- One dependent child	\$10,385	\$865
Housebound	\$9,696	\$808
- One dependent child	\$12,144	\$1,012
Aid and Attendance	\$12,681	\$1,056
- One dependent child	\$15,128	\$1,260
- Each add'l dependent child	\$2,020	\$168

Table 3: Marriage Requirements for DIC

The veteran and surviving spouse were validly married before January 1, 1957
The surviving spouse was married to a service member who died on active duty, active duty for training, or inactive duty training
The surviving spouse married the veteran within 15 years of discharge from the period of military service in which the disease or injury that caused the veteran's death began or was aggravated
The surviving spouse was married to the veteran for at least one year
The surviving spouse had a child with the veteran, and
<u>cohabitated</u> with the veteran continuously until the veteran's death, or if separated, was not at fault for the separation
<u>is not currently remarried</u> .*
* A surviving spouse who remarries on or after December 16, 2003, and at or after age 57, is entitled to continue to receive DIC.



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