

## “Considerations before naming a minor child as a beneficiary”

“Designating a beneficiary to receive your TRS benefits can be one of the most important things you do as a member. Because this decision is such a personal one, TRS encourages you to carefully consider your options to ensure that your decision best serves your interests--particularly when designating a minor child.

While the law provides members with an option to name minor children as their beneficiaries, the benefit must be paid to an adult on behalf of the minor child. Complications sometimes arise that prevent the member's wishes from being carried out when the benefit cannot be paid directly to a minor.

If you, as a member, designate a minor child as your beneficiary, TRS cannot make benefit payments directly to that child if he or she is less than 18 years of age. In Texas, unless a guardian of the estate has been appointed for a minor child, the surviving parent may receive the benefit on behalf of the child.

Establishing a guardianship for a minor child requires a legal proceeding in which the court appoints the guardian and issues letters of guardianship. After presenting the letters of guardianship, the guardian with authority over the child's estate may receive the TRS benefit on behalf of a child. While naming a guardian in your will gives notice to the court of your desire to have a specific individual named, your will alone does not establish that guardian of your child's estate. Laws in other states may differ from those in Texas.

TRS members should also carefully consider the unintended consequences of naming an adult friend or relative with the intent that this person will distribute the benefit to a minor child. When an adult is named individually, TRS will pay the benefit to the individual using that person's Social Security number. All the tax consequences become the responsibility of the named beneficiary. You should also consider what could happen if that person is injured or killed before the benefit is distributed to your child. While the person you designate might follow through with your request to distribute the benefit to your child, there is no legal obligation to do so. If that person is incapacitated and a guardian is appointed, or if that person dies and an executor is appointed, the guardian or executor would be legally obligated to use the proceeds for the benefit of the beneficiary or the beneficiary's estate.

*Also consider the risk, even if it may appear minimal, that the person you designate may not follow through with your request. These unintended consequences become real-life dilemmas that only a court of law - not TRS - may resolve.*

Complications may also arise if multiple beneficiaries are involved. For example, death benefits paid on behalf of an active member include an option of a lump sum payment and for certain beneficiaries, survivor benefits. The lump sum amount is equal to twice the member's annual rate of compensation up to a maximum of \$80,000. Survivor benefits for a spouse or minor child usually include a smaller lump sum amount of \$2,500 and a monthly annuity. When adults *and* a minor child are named as joint beneficiaries, the adult beneficiary may have to make a difficult choice. The child may receive the child's portion of the \$2,500 benefit *plus* a monthly annuity which is paid until the child reaches age 18, while the adult beneficiaries may only be eligible to receive their portion of the smaller \$2,500 lump sum benefit. For the adult, their portion of the lump sum benefit may be greater than their portion of the smaller \$2,500 benefit. But for the child, the smaller portion of the \$2,500 benefit *plus* the monthly annuity may be the greater benefit. Adult joint beneficiaries must elect the smaller survivor benefit in order to allow a minor child to receive the annuity.

If you wish to name a minor child as a beneficiary, TRS encourages you to consider seeking legal advice to fully understand the options available to you. Your attorney can advise you regarding methods of designating a beneficiary that will legally obligate the adult you select to act for the benefit of your child with regard to TRS benefits.

You may want to consider establishing an inter vivos or testamentary trust for the benefit of your minor child and designating the trust as the beneficiary of your TRS benefits. By doing so, you can determine who will manage the benefit paid on behalf of your child. Please keep in mind that if you name a testamentary trust (one established in your will) your estate must be probated in a way that allows TRS to pay the benefits in this manner. You may also want to talk with your attorney about making a designation under the Texas Uniform Transfer to Minors Act. This act allows you to designate a custodian to receive the benefit on behalf of a child under the age of 21.”