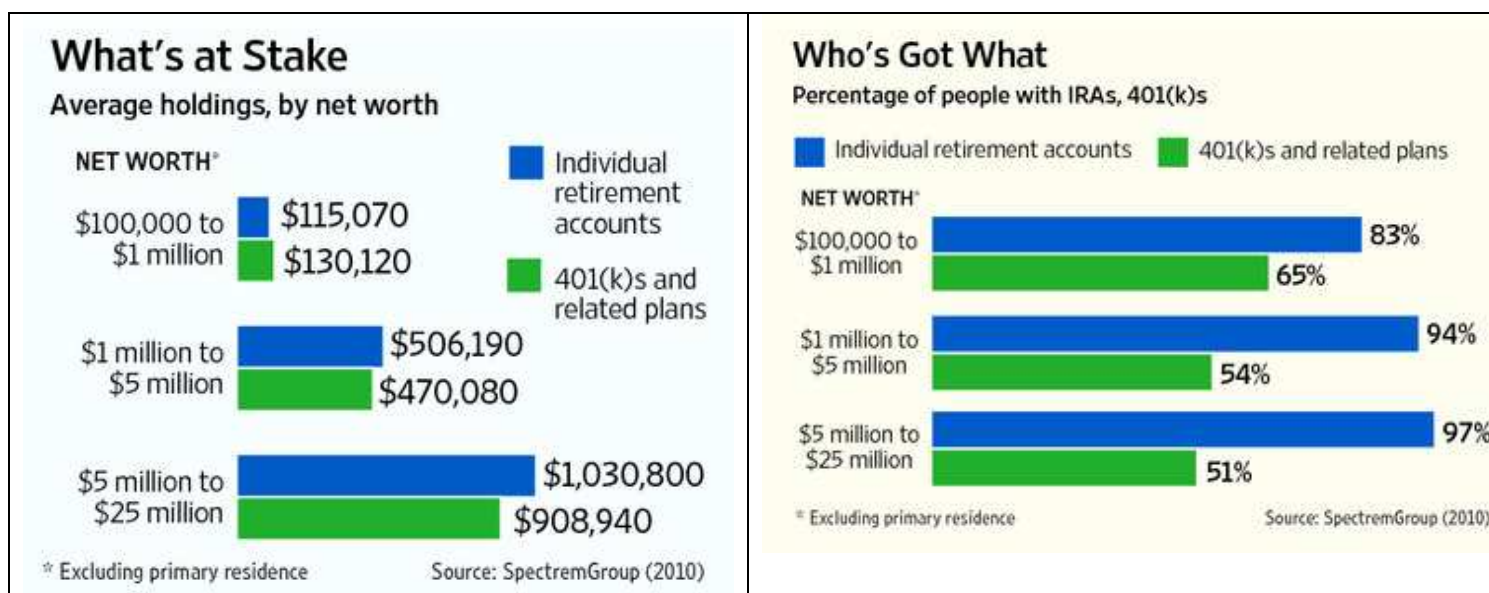


# THE WALL STREET JOURNAL

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## Family Feuds: The Battles Over Retirement Accounts

Who's in line to get your account—or that of a parent or spouse—in case of death? You could be surprised.



### Spouse Gets Priority

**Rule No. 1:** With 401(k)s, your spouse is the presumed beneficiary of your account upon your death—regardless of who is listed on the beneficiary form—unless he or she previously consented to your naming someone else beneficiary. These plans are governed by the federal Employee Retirement Income Security Act, or Erisa. Under this law, plans can provide for those spousal rights to kick in immediately, or no later than a year after the marriage. This general rule cannot easily be circumvented with a prenuptial agreement. Only a spouse can waive the right to 401(k)-plan assets—those who are engaged cannot.

**Rule No. 2:** If you are single when you die, your 401(k) assets pass to the person designated on your beneficiary form—regardless of what your will says or what other agreements you made before your death. The U.S. Supreme Court has said so.

### Seeking More Latitude

**Rule No. 3:** With IRAs, which are subject to state law, you generally can name anyone you like as the beneficiary, with or without your spouse's consent. (Certain restrictions apply in community-property states.)

**Rule No. 4:** Workers generally don't need a spouse's consent to cash out a 401(k) or roll it to an IRA when they change jobs or retire. Although employers may impose such a rule, the vast majority do not, as there is no federal law requiring them to do so, says Amy Matsui, senior counsel at the National Women's Law Center, which advocates improving spousal protections for 401(k)s and IRAs.

### Comments September 7, 2011

Your company's 401(k) plan document determines when you can rollover your 401(k) account into an IRA account. Some plan documents are liberal about in-service withdrawals while you are still employed, while others require certain events to occur. Common events include separation of service, 10 years of service or reaching the age of 59 ½.

Once you move the assets into your IRA account you can name your beneficiaries without another party's consent. The beneficiaries can be trusts, children, grandchildren, a spouse, an ex-spouse and/or a charity. You can establish primary and contingent beneficiaries in any proportion you choose.

You can add a *per stirpes* stipulation to all named primary and/or contingent beneficiaries. With the addition of *per stirpes*, the share of any individual beneficiary who predeceases you will pass to his or her descendants.

Aaron Skloff, AIF, CFA, MBA  
CEO – Skloff Financial Group

[www.skloff.com/services-401k-403b-457.htm](http://www.skloff.com/services-401k-403b-457.htm)

Aaron Skloff, Accredited Investment Fiduciary (AIF), Chartered Financial Analyst (CFA), Master of Business Administration (MBA), is the Chief Executive Officer of Skloff Financial Group, a NJ based Registered Investment Advisory firm. The firm specializes in financial planning and investment management services for high net worth individuals and benefits for small to middle sized companies. He can be contacted at [www.skloff.com](http://www.skloff.com) or 908-464-3060.