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The SECURE Act and its Impact on Your Retirement Assets

On December 20, 2019, the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) was signed into law. The SECURE Act, which became effective January 1, 2020, is the most impactful legislation affecting retirement accounts in decades.

The SECURE Act makes several positive changes to retirement assets:

- It increases the required beginning date (RBD) for required minimum distributions (RMDs) from your individual retirement accounts from 70 ½ to 72 years of age.
- It eliminates the age restriction for contributions to qualified retirement accounts.
- It allows penalty-free withdrawals of up to $5,000 by each parent in the year of birth or adoption of a child.
- It expands options to use annuities in retirement plans.

However, the most significant change may not be positive for those looking to maximize the value of the estate they leave to their heirs. The SECURE Act requires most designated beneficiaries to withdraw the entire balance of an inherited retirement account within ten years of the account owner's death (charities, estates, and other non-designated beneficiaries are still

subject to a five-year rule). The SECURE Act does provide a few exceptions to this new mandatory ten-year withdrawal rule: spouses, beneficiaries who are not more than ten years younger than the account owner, children of the account owner who have not reached the "age of majority," disabled individuals, and chronically ill individuals. These "excepted" beneficiaries may still be able to stretch the IRA distributions over longer periods of time.

Under the old law, the designated beneficiary of an inherited retirement account could take distributions over his or her individual life expectancy. For example, under the old law a 25-year-old would have a 58.2 year life expectancy to "stretch" distributions over (and to pay the income taxes). Under the SECURE Act, that same 25-year-old, with only a ten-year distribution time frame, would have to fully withdraw the retirement account more than four decades sooner, resulting in the acceleration of income taxes due on the distributions. The taxes paid by the beneficiary are no longer available to invest for additional earnings, and the compressed payout of the account may possibly cause your beneficiaries to be bumped into a higher income tax bracket. The end result is that they may be receiving less of the funds contained in the retirement account than you may have originally anticipated.

Anyone with a trust in their Last Will and Testament or with a Revocable Living Trust should immediately review that document with their attorney to determine if that trust contains "conduit trust" language. Under the old law, the trustee of a conduit trust would only distribute required minimum distributions (RMDs) to the trust beneficiary, allowing the continued "stretch" of the account based upon the beneficiary's age and life expectancy. A conduit trust protected the account balance by retaining it in trust, while only the RMDs (much smaller amounts) had to be distributed to the beneficiary. With the SECURE Act's passage, instead of protecting the account by only distributing small RMDs to the beneficiary, the entire amount of the retirement account will be in the beneficiary's control within ten years, and vulnerable to the trust beneficiary's creditors and/or a divorcing spouse under a conduit trust.

For those with conduit trusts, there is an alternative called an "accumulation trust," through which the trustee can take any required distributions and continue to hold them in a protected trust for your beneficiaries. Trusts with "accumulation" provisions may be a more appropriate strategy if you wish to ensure that retirement account funds have protection from a beneficiary's creditors, future lawsuits, or a divorcing spouse. Although the income taxes are

fully paid on the accumulation trust account balance within ten years, the distributions can be retained in trust longer.

Other strategies to consider under the SECURE Act:

- **Roth Conversion**: Under the right circumstances, a Roth conversion of a traditional retirement account under today's historically low tax rates may avoid higher income taxes later, and will also avoid the compressed income tax brackets that can be found in a trust.
- **Standalone Retirement Trust (with accumulation provision)**: For most Americans, a retirement account is the largest asset they will own when they pass away. As such, it may be beneficial to create a separate trust to handle your retirement accounts. These trusts are designed specifically to receive retirement accounts only. They ensure that any specific instructions pertaining to the retirement account are not muddled together with those for other assets and allow a trustee to accumulate required distributions in a trust rather than distributing them outright to a beneficiary.
- **Charitable Remainder Trust**: For those that are charitably inclined, consider leaving the retirement account outright to a charity to avoid the income (and possible estate) tax on the account. If you don't want to leave the entire balance of the account to charity, then consider creating a Charitable Remainder Trust (CRT). The Charitable Remainder Trust could effectively act as a stretch IRA, even under the new rules. With a CRT, a non-charitable beneficiary, such as a child, would receive annual payments from the CRT over his or her lifetime (or a pre-determined period of years), with income tax assessed as payments are made. Whatever remains in the account upon the child's death (or the expiration of the term of years) would pass to one or more charities of the owner's choosing, tax-free.
- **Irrevocable Life Insurance Trust (ILIT)**: Life insurance owned by an irrevocable trust can add some additional cash to your estate that effectively offsets the accelerated income tax liability under the new SECURE ACT rules. The Irrevocable Insurance Trust can protect the proceeds of the life insurance from a beneficiary's creditors and give the trustee discretion on how and when to make distributions. If there is concern about an estate tax being due at death, the Irrevocable Insurance Trust can be structured to remove the proceeds of the life insurance from the taxable estate of the decedent.

> Certain life insurance policies can grow inside the trust in a tax-deferred, or upon death tax free, manner.

With the changes to the laws surrounding retirement accounts, as well as changes that arise in life, such as marriage, death, or divorce, now is a great time to review and confirm your retirement account information. It is important that your beneficiary designations are filled out correctly and in accordance with your estate-planning objectives. Although this new law may be changing the way we think about retirement accounts, we are here to help you properly plan for your family and protect your hard-earned retirement accounts.

Give us a call today to schedule an appointment to discuss how your estate plan and retirement accounts might be impacted by the SECURE Act.

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