

Client Advisory

Re: SECURE Act: How It Will Affect You and the Beneficiaries of Your Retirement Accounts

On December 20, 2019, President Trump signed the Setting Every Community Up for Retirement Enhancement Act (SECURE Act). The SECURE Act, which is effective January 1, 2020. The Act is the most impactful legislation affecting retirement accounts in decades. The SECURE Act has several positive changes: 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, and it eliminates the age restriction for contributions to qualified retirement accounts. However, perhaps the most significant change will affect the beneficiaries of your retirement accounts: 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.¹

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, the account owner's children who have not reached the "age of majority," disabled individuals, and chronically ill individuals. However, proper analysis of your estate planning goals and planning for your intended beneficiaries' circumstances are imperative to ensure your goals are accomplished and your beneficiaries are properly planned for.

Under the old law, beneficiaries of inherited retirement accounts could take distributions over their individual life expectancy. Under the SECURE Act, the shorter ten-year time frame for taking distributions will result in the acceleration of income tax due, possibly causing your beneficiaries to be bumped into a higher income tax bracket, thus receiving less of the funds contained in the retirement account than you may have originally anticipated.

Your estate planning goals likely include more than just tax considerations. You might be concerned with protecting a beneficiary's inheritance from their creditors, future lawsuits, and a divorcing spouse. In order to protect your hard-earned retirement account and the ones you love, it is critical to act now.

Review/Amend Your Revocable Living Trust (RLT) or Standalone Retirement Trust (SRT)

Depending on the value of your retirement account, we may have addressed the distribution of your accounts in your RLT, or we may have created an SRT that would handle your retirement accounts at your death. Your trust may have included a "conduit" provision, and, under the old law, the trustee would only distribute required minimum distributions (RMDs) to the trust beneficiaries, allowing the continued "stretch" based upon their age and life expectancy. A conduit trust protected the account balance, and only RMDs--much smaller amounts--were vulnerable to creditors and divorcing spouses. With the SECURE Act's passage, a conduit trust structure will no longer work because the trustee will be required to distribute the entire account balance to a beneficiary within ten years of your death. We should discuss the benefits of an "accumulation trust," an alternative trust structure through which the trustee can take any required distributions and continue to hold them in a protected trust for your beneficiaries.

Consider Additional Trusts

For most Americans, a retirement account is the largest asset they will own when they pass away. If we have not done so already, it may be beneficial to create a trust to handle your retirement accounts. While many accounts offer simple

¹ If a beneficiary is not considered a *designated beneficiary*, distributions must be taken by the fifth year following the account owner's death. Common examples of beneficiaries that are not *designated beneficiaries* are charities and estates. See Treas. Reg. § 1.401(a)(9)-3, Q&A (4)(a)(2) and 1.401(a)(9)-5, Q&A (5)(b).

beneficiary designation forms that allow you to name an individual or charity to receive funds when you pass away, this form alone does not take into consideration your estate planning goals and the unique circumstances of your beneficiary. trust is a great tool to address the mandatory ten-year withdrawal rule under the new Act, providing continued protection of a beneficiary's inheritance.

Review Intended Beneficiaries

With the changes to the laws surrounding retirement accounts, now is a great time to review and confirm your retirement account information. Whichever estate planning strategy is appropriate for you, it is important that your beneficiary designation is filled out correctly. If your intention is for the retirement account to go into a trust for a beneficiary, the trust must be properly named as the primary beneficiary. If you want the primary beneficiary to be an individual, he or she must be named. Ensure you have listed contingent beneficiaries as well.

If you have recently divorced or married, you will need to ensure the appropriate changes are made because at your death, in many cases, the plan administrator will distribute the account funds to the beneficiary listed, regardless of your relationship with the beneficiary or what your ultimate wishes might have been.

Other Strategies

Although this new law may be changing the way we think about retirement accounts, we are here and prepared to help you properly plan for your family and protect your hard-earned retirement accounts. If you are charitably inclined, now may be the perfect time to review your planning and possibly use your retirement account to fulfill these charitable desires. If you are concerned about the amount of money available to your beneficiaries and the impact that the accelerated income tax may have on the ultimate amount, we can explore different strategies with your financial and tax advisors to infuse your estate with additional cash upon your death.

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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