The SECURE Act of 2019: Does Your Estate Plan Need Updating?

By Carolyn Ohlsen

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The Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") was signed into law on December 20, 2019, and became effective on January 1, 2020. The Act introduces many changes that are significant to retirement planning. The SECURE Act aims to encourage employed-sponsored retirements plans and promote retirement savings. The Act will bring many changes to the American retirement system, it will increase an individual's ability to save more for their retirement and create mechanisms for them to generate lifetime income. It will also accelerate the payout time frame for certain beneficiaries and thus presents an opportunity to ensure your beneficiaries are updated and that your estate planning goals are being met. The most relevant change is to the IRA stretch strategy for non-spouse beneficiaries who inherit retirement accounts.

How Long Has It Been Since You Had Your Estate Plan Reviewed?

After the changes in the law, it is important to have your estate planning documents reviewed to ensure that they accurately reflect your current objectives. With the recent overhaul in the law and changes from the SECURE Act, it may be time to amend or revise your current plan, especially if your plan designates a trust as the beneficiary of a retirement plan. If that is the case, your beneficiary designations should be evaluated to confirm that the most tax-efficient plan is in place moving forward.

Who Is Affected by the SECURE Act's New Distribution Requirements?

The Act has substantial effects on those who will leave a significant portion of their estate in IRAs and 401(k)s and on the beneficiaries of those plans. For plan owners, retirement accounts can be a substantial component of their estate plan and the SECURE Act changes the tax implications of passing those accounts to a beneficiary. The beneficiaries who inherit those assets at the owner's death will have to pay the income tax consequences of receiving distributions, thus eliminating the strategy to stretch the retirement account assets over time and defer taxes while the principal is invested.

What Happens Under the SECURE Act When a Trust Is the Designated Beneficiary?

The SECURE Act was intended to expand options for saving for retirement, but in the process, it completely changed IRA trust planning. The Act ends the use of the Stretch IRA, which introduces different routes for tax planning rather than naming a trust as the beneficiary of an IRA. Prior to the Act becoming law, this method of using a trust to pass IRA distributions through to the beneficiary was an advantageous form of tax planning because it was designed to take advantage of the stretch rules.

This allowed the retirement account to be woven into the trust and the stretched-out distributions would merge into the decedent's trust over time. With the elimination of the Stretch IRA, having a trust as a beneficiary of a retirement plan can raise tax issues and become problematic. Under the new rules, most non-spouse beneficiaries must take the account proceeds (and pay the corresponding taxes) within 10 years of inheriting the account. This can be done with any number of distributions. Spouse beneficiaries, non-spouse beneficiaries who are no more than 10 years younger than the IRA owner and nonspouse beneficiaries who are disabled or chronically ill will continue to be able to stretch their IRAs over their lifetime. If a minor child inherits the IRA, the 10-year period begins when the beneficiary reaches the age of majority (the age at which a minor child legally becomes an adult, generally between 18 – 21 years old).

What Age Changes Were a Result of the SECURE Act?

For living IRA and 401(k) owners, the SECURE Act increased the Required Beginning Date ("RBD") for Required Minimum Distributions ("RMD") from 70 ½ to 72 years of age. This means there is an eighteen-month delay in taking mandatory withdrawals, which will allow individuals to keep money in those accounts for a longer amount of time. Additionally, the SECURE Act eliminates the age restriction for contributions to qualified retirement accounts, allowing more time to contribute past the age of 70 ½, as long as you have earned income.

What Actions Should Individuals Take as a Result of the SECURE Act?

Those with retirement plans as part of their estate should speak with an estate planning attorney to understand how the SECURE Act affects their strategy and for options to adjust their beneficiary designations appropriately. Lowenhaupt & Chasnoff can help determine the best utilization for your situation. To establish a plan moving forward please contact our team of attorneys for a detailed evaluation of your current estate plan.

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