

The SECURE (“Setting Every Community Up for Retirement”) Act of 2019:

Why it May Not Impact Your Estate Plan

Many individuals have questions and concerns about the SECURE Act that was signed into law at the close of 2019. One section significantly changes the rules regarding required distributions from retirement plans (IRAs, 401(k)s, 403(b)s and the like) – not for the plan participant or owner, but for the beneficiary.

Spouses and a small category of other individuals are not affected by the law – they may continue to stretch the distributions over their life expectancy. However, for most non-spouse beneficiaries inheriting a retirement account, funds will need to be withdrawn in full no later than ten (10) years after the owner’s death, instead of the previous lifetime “stretch” of those distributions. Individuals who have been aggressively directing taxable income to retirement accounts, with the assumption that their children and grandchildren would be able to withdraw funds over many decades, are the most affected by the new law. The primary concern is that, for individuals with substantial retirement accounts, withdrawing funds in a shorter period of time will result in higher income taxes for the beneficiary [who has to pay income taxes on the withdrawal(s)]. Questions about which beneficiaries remain eligible to stretch distributions and how the new 10-year rule applies should be addressed to your personal tax advisor.

In the estate planning context, many of our clients are wondering whether they need to change their Will or Trust to reflect the SECURE Act. Although we encourage you to seek tax, financial, and/or legal advice about your specific situation, below is a list of classes of individuals for whom this Act will have NO significant impact on their existing (pre-SECURE Act) Will or Trust:

- 1) Clients who have no retirement accounts;
- 2) Clients who have modest balances in their retirement accounts (the accelerated withdrawal, whether stretched out over ten (10) years, or taken all at the end of the ten (10) years will not result in significantly-higher income taxes for the beneficiary);
- 3) Clients who have designated charities as beneficiaries of their retirement accounts (charities do not pay income taxes);
- 4) Clients who have designated a beneficiary with a life expectancy of ten (10) years or less (ex: an elderly friend or sibling);
- 5) Clients whose spouses (still permitted to stretch mandatory distributions over the surviving spouse’s life expectancy) will likely deplete the account over their lifetime; and
- 6) Clients who have NOT designated a trust (whether a revocable living trust or one found in a Will) as a beneficiary of their retirement accounts.

Below is a list of classes of individuals for whom this Act will have SOME impact, but there is NO urgent need to revise their Will or Trust:

- a) Clients who have designated a trust under a Will as beneficiary, BUT the Will contains language allowing an alternative distribution to another trust (which would allow an Executor or Trustee to alter the distribution to an affected beneficiary if appropriate in the future);
- b) Clients who have designated a Trust as primary or contingent beneficiary, BUT the Trust either:
 - i. Contains a provision allowing for post-death amendments to achieve tax-avoidance/reduction objectives, or result in better conformity between the trust and the applicable provisions of federal and state tax laws (which would include the SECURE Act);
 - ii. Has beneficiaries who will all immediately receive their share (their shares do not continue in any sub-trust);
 - iii. Has a beneficiary whose share will remain in trust, but there are sufficient non-retirement benefit assets to fund that share (retirement accounts can be distributed to other beneficiaries who are inheriting outright); and/or
 - iv. Has a beneficiary whose share will remain in trust, but that beneficiary is a spouse or disabled individual.

Below is a list of classes of individuals for whom this Act will have GREAT impact, and they should REVISE their Will or Trust in the near future:

- Clients who have designated a Trust as beneficiary of a retirement account of significant value, AND the Trust is intended to protect a child's share beyond the age of 28 years;
- Clients who have designated a Trust as beneficiary of a retirement account of significant value, AND the Trust is intended to protect a grandchild's share for more than 10 years; and
- Clients who have designated a Trust as beneficiary of retirement account of significant value, AND the Trust is intended to protect any other beneficiary's share for more than 10 years.

If you have any concerns about whether the SECURE Act affects your estate plan, please consult with an appropriate advisor. In addition to updating your estate planning documents with an attorney knowledgeable about the SECURE Act, you may want tax advice regarding Roth conversions and/or accelerated lifetime distributions, as a way of reducing imposition of higher income taxes incurred by account beneficiaries.

This article is for informational purposes only and is not intended to constitute comprehensive or specific legal advice.