CHESAPEAKE
LEGAL COUNSEL LLC
Estate, Trust & Medicaid Planning

2661 Riva Road, Suite 410A
Annapolis, MD 21401
410.266.1625

29H Atlantic Avenue
Ocean View, DE 19970
302.537.4559

www.ChesapeakeLegalCounsel.com
info@robbertlaw.com

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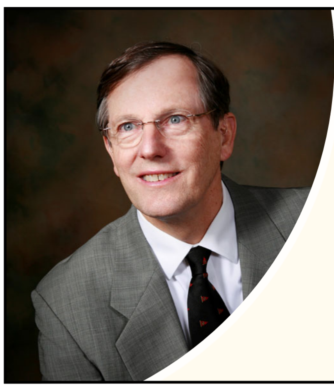

The SECURE Act: Estate Planning for Your Retirement Accounts

Presented by
John F. Robbert
Chesapeake Legal Counsel

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History of the SECURE Act

- Originally, the Setting Every Community Up for Retirement Enhancement (SECURE) Act passed the House of Representatives on May 23, 2019 by a vote of 417 to 3.
- The Senate passed the Act on December 19, 2019.
- On December 20, 2019, President Trump signed it into law.
- The SECURE Act goes into effect on January 1, 2020.

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Some Provisions of the SECURE Act

- Increased the required beginning date (RBD) for required minimum distributions (RMDs) from 70 ½ to 72
- Repealed the maximum age for contributions to traditional IRAs
- Allows penalty-free withdrawals of $5,000 by each parent in the year of birth or adoption of a child

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A Key Provision of the SECURE Act

- **Requires most non-spouse beneficiaries to withdraw inherited account balances within 10 years of the account owner's death**
  - **Exceptions for beneficiaries who are either**
    - **a minor child of the account owner (until the child reaches the "age of majority");**
    - **a disabled individual;**
    - **a chronically ill individual; or**
    - **an individual who is not more than 10 years younger than the account owner**

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The SECURE Act – What is the Problem?

Under the old law, the RMD was determined using the beneficiary's life expectancy. Therefore, a 25-year-old had a life expectancy factor of 58.2 years to distribute the account, thereby making the RMD each year very small. This is referred to as a "stretch" payout. A beneficiary paid taxes on an RMD each year – but the tax payments were stretched out over many years.

Under the new law, that same beneficiary, unless otherwise exempt, only has ten years to withdraw the entire balance, making the RMD each year much larger (and the tax payments due much sooner).

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New Law has 3 Broad Classes of Beneficiaries

- Non-designated beneficiaries
  - Still need to withdraw within 5 years
  - Estates and charities are non-designated beneficiaries
- Designated beneficiaries
  - Need to withdraw within the 10 year period beginning in the year following the year of the owner's death
  - No requirement to distribute 1/10 of the IRA/plan each year; can wait until the very end of the 10th year to distribute entire IRA/plan
- Eligible designated beneficiaries
  - Stretch payout permitted

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Eligible Designated Beneficiaries

The stretch rules still apply to the following eligible designated beneficiaries:

1. Surviving spouse
2. Minor children of participant (but not grandchildren) until child reaches the age of majority and then he/she becomes subject to 10 year rule
3. Disabled/chronically ill beneficiary (think SNT)
4. Beneficiaiires who are not more than 10 years younger than the decedent (such as a slightly younger sibling)

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Who is Disabled?

The individual must be "…unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can *be expected to result in death or to be of long-continued and indefinite duration*."

The definition is similar to the definition of "disabled" for purposes of qualifying for SSI or SSDI.

"Indefinite is used in the sense that it cannot reasonably be anticipated that the impairment will, in the foreseeable future, be so diminished as no longer to prevent substantial gainful activity."

The beneficiary's disability must be certified as of the date of the account owner's death.

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Who is Chronically Ill?

The chronically ill beneficiary is:

a) Unable to perform (without substantial assistance from another individual) at least 2 of 5 activities of daily living
b) Has a level of disability similar to the level of disability already described; and
c) Requires substantial supervision to protect the beneficiary from threats to health and safety due to severe cognitive impairment.

The chronic illness must be certified to be "indefinite" and "is reasonably expected to be lengthy in nature."

The certification must be by a "licensed health care practitioner."

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Primarily 2 Types of Trusts Qualify as Designated Beneficiaries

To qualify for the long-term payout under the old law, the Trusts had to be (1) Conduit or (2) Certain Accumulation "See-Through" Trusts:

- In certain situations, Conduit and Accumulation Trusts still qualify for the stretch payout under the new law
- Typically these are the "sub-trusts" for children created within a revocable trust
- Requires identification of both primary and contingent beneficiaries

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What is a Conduit Trust

A "conduit trust" is a trust that requires the trustee to immediately distribute funds withdrawn from the retirement account to the individual trust beneficiary or beneficiaries whether the withdrawal is the required minimum distribution or a withdrawal for another purpose.

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Accumulation Trusts

The Accumulation Trust provisions give the Trustee discretion to accumulate or retain IRA/plan withdrawals made to the Trust instead of requiring immediate distribution of such withdrawals to the beneficiary.

Bear in mind that this approach, if anything, could increase the overall income tax bill on IRA/plan withdrawals because Trusts are subject to compressed tax brackets.

But, it does ensure that a financially immature beneficiary does not control his/her inherited IRA/plan or receive all of the funds within 10 years and it preserves non-marital property treatment in the case of a child's marital split-up.

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Tax Rates

Individual Tax Payer	37%	$518,000
Trust	37%	$12,950

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The Big Decision

Most non-spouse beneficiaries must withdraw the entire balance of the retirement account within 10 years, and

- The income tax due will be accelerated
- A trust pays income taxes at a greater rate than an individual; if the entire IRA is distributed to the trust in the tenth year and accumulated, the consequence is a huge tax bill

So the client is faced with a difficult decision; do you save on taxes by distributing the IRA to the individual beneficiary or do you protect the retirement account from the beneficiary's misuse as well as from the beneficiary's creditors and predators?

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Consider Additional Trust Options

- Standalone Retirement Trust (with accumulation provision)
  - Specifically for retirement account(s)
  - Ensures that any specific instructions pertaining to the retirement account are not muddled together with those for other assets
  - Allows a trustee to accumulate required distributions in a trust, rather than distributing them outright to a beneficiary
- Irrevocable Life Insurance Trust (ILIT)
  - Life insurance can add some additional cash to the gross estate to offset the accelerated income tax liability
  - The ILIT can protect the proceeds from a beneficiary's creditors and give the trustee discretion on how and when to make distributions.
  - Can be structured to remove the proceeds from your gross estate if there is concern about an estate tax being due.
- Charitable Remainder Trust
  - Great for those who are charitably inclined, beneficiaries may not get as much
  - Stream of income to beneficiaries, remainder to charity

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Check Your Beneficiary Designations

- This is a great time to review your account information
- Are your beneficiary designations correct?
  - Do they follow your estate plan?
  - Is your trust properly named (if appropriate)?
  - Should the beneficiary by the revocable trust or the sub-trust for each child?
  - Has there been a change in your life or circumstances? (Have you gotten married or divorced?)

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What should I do next?

Who you gonna call?

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