Trusts & Estates Law Alert: SECURE Act – Retirement Planning Opportunities and Pitfalls

On December 20, 2019, Congress passed the SECURE Act (Setting Every Community Up for Retirement Enhancement Act of 2019). Buried in the appropriations bill Congress needed to pass to keep the government running, the SECURE Act follows through on a threat looming for years. In a nutshell, the SECURE Act eliminates the ability to stretch IRA and other retirement account payments over the life expectancy of non-spousal beneficiaries, with a few exceptions.

The SECURE Act provides that the proceeds of the account of any person who passes away on or after January 1, 2020 must be completely paid out within ten years. The only persons not bound by this 10-year rule are those who are considered to be "Eligible Designated Beneficiaries." Eligible Designated Beneficiaries include:

1. A spousal beneficiary;
2. A beneficiary who is Disabled, as defined in Internal Revenue Code ("IRC") Section 72(m)(7);
3. A beneficiary deemed to be chronically ill, as defined in IRC Section 7702B(c)(2) (with exceptions);
4. A beneficiary who is not more than ten years younger than the deceased account owner; and
5. Minor children of the deceased account owner until the child attains the age of majority, at which point the 10-year rule kicks in.

While the 10-year rule requires the account to be emptied by the completion of the ten year period, it does not require payments to be made in equal installments over those years. This feature of the Act provides an opportunity to plan the timing of account payments. For example, if an IRA beneficiary expects to see a reduction in his or her income at a later point during the ten-year period, he or she may choose to defer taking payments from the inherited IRA until that later time in order to assure a level income.

The new rules under the SECURE Act necessitate careful consideration of how and when trusts should be designated as beneficiaries of retirement accounts. In addition, existing plans that include trusts as designated beneficiaries must be reviewed. Revisions may be needed to accomplish optimum results under these new and significantly different laws.

The SECURE Act contains other provisions, however, that are favorable to account owners. Previously, an account owner was required to begin taking distributions upon attaining the age of 70 ½. That age has now been raised to 72.

Also, under the old law, contributions to an IRA were disallowed once the account owner attained the age of 70 ½. Under the SECURE Act, an account owner may continue to make contributions to an IRA beyond the age of 70 ½, provided the owner still has earned income to contribute.

For clients taking advantage of the Qualified Charitable Distributions ("QCDs") rule, which allows a taxpayer over 70 ½ to pay his or her required minimum distribution directly to charity while still satisfying the required minimum distribution rules, the new law brings both changes and opportunities. For example, while the SECURE Act has extended the start date for required minimum distributions by a year and a half, from 70 ½ to 72, it did not change the eligibility date of 70 ½ for making QCDs. This creates new planning opportunities for charitable donations during that year and a half.

The changes outlined above provide new planning advantages as well as potential pitfalls. We are available to review your current plans, help you navigate these new rules, and make any revisions that are advisable.