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The SECURE Act and Your Retirement Accounts

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Before the SECURE Act went into effect on January 1, estate planning for clients with retirement accounts included the possibility to set up the retirement account to be paid over the lifetime of the beneficiary or beneficiaries (stretch IRA). Spouses still have the ability to roll over their spouse's retirement account upon the spouse's death, such that the surviving spouse can treat the retirement account as his or her own.

After the SECURE Act, however, most retirement accounts and IRAs that name an individual as the beneficiary need to be distributed before December 31 of the year in which the 10th anniversary of the account owner's death occurs. No distributions need to be made during those 10 years. This is true whether the account names the individual directly as a beneficiary or names a trust for which the individual is a beneficiary.

There are special rules for children of the account owner under the age of 26, which alters and extends the "10-year rule." To protect a young child of the account owner from cashing in the account prematurely, the account should be paid to a properly set up trust.

Additionally, if a beneficiary is disabled and chronically ill, as defined in the act, the retirement account can be paid out annually or monthly over the statutory life expectancy of the beneficiary. Since it is likely that such a beneficiary is receiving need-based government assistance such as SSI and/or Medicaid, it is important for the retirement account to be paid into a properly set up Special Needs Trust that will protect the beneficiary from being disqualified from receiving state aid.

There are several other exceptions to the "10-year rule" and certain situations may still require the account to be distributed within five years of the account holder's death.

If you have a retirement account, it is very important to work with an experienced attorney who specializes in estate planning and is educated in the SECURE Act. They can help you create an estate plan and determine how your beneficiary designations should be set up that properly coordinates the retirement accounts, the SECURE Act, and your desires and needs of your family. Although children are often named as direct beneficiaries on retirement accounts, I believe that in most situations your trust or estate should be named after your spouse. Doing so allows for distributions, trusts, and/or planning should one of your children predecease you. Naming the trust or estate as the beneficiary also ensures that there are sufficient assets to pay the debts and expenses after your death. How your beneficiary designations should be set up can be determined with your attorney in light of “the big picture.”

If you already have an estate plan set up, it is important to have your estate plan and beneficiary designations reviewed by an attorney up-to-date on the SECURE Act.