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when should estate planning documents be reviewed?

by David G. Hardin, Esq.

As estate planning attorneys, we are frequently asked by clients how often they should review their estate planning documents. Should it be every three years… every five years… every ten years? Rather than consider the response in terms of time, we prefer to advise clients to think in terms of need or life stage. On occasion, reviewing estate planning documents after a specified period of time has passed will be prudent, but more often other factors will weigh more heavily. This article will provide guidance to individuals who might wonder whether their estate planning documents are due for review.

The first consideration should be whether there is a need to change a document. For example, after a move to a new state, the estate planning documents should be reviewed by an attorney licensed to practice in that state. Further, if the executor named in a will has died, moved out of state, or is no longer the appropriate person to serve, then the will should be updated to substitute another executor for the one who will no longer serve. Similarly, if a guardian for a minor child is no longer appropriate because he or she has relocated to another state, or because the guardian's personal circumstances have changed, it may be necessary to revise the will to name a new guardian. A change in the tax laws may also suggest a need for revision of a will or trust.

New life stages may also provide reasons to update estate planning documents. For example, when children are minors, it is oftentimes appropriate to establish a trust to hold a child's inheritance until a child reaches a specific age in order to safeguard the funds and minimize potential waste. As a child grows up, the need for a trust may be eliminated, or the terms of a trust might warrant a change to give a child different benefits or more control. Similarly, when a child becomes an adult, it may be appropriate to name the child to a position of responsibility, as perhaps appointing the child as an executor.

For people with a need for more concrete guidance, and who think in terms of time, we generally recommend that documents be reviewed at least every ten years. There are indeed some practical reasons for this recommendation. Estate planning documents encompass not only wills and trust agreements, but also lifetime planning documents such as a power of attorney or advance directive for health care/living will. Particularly in the case of a power of attorney, periodic updating is important because individuals or institutions presented with a power of attorney are more comfortable accepting a current document. Older powers of attorney, although perfectly legal, can raise concerns that the document may have been changed, revoked or suspended in the interim period. A power of attorney that is more current is less apt to raise a question.

The answer to the title question, then, is that estate planning documents should be reviewed when there is a need (i.e., to change a provision that no longer accords with one's wishes, or because of a relocation to another state), or a new life stage (i.e., to bring children into positions of responsibility, or to eliminate a provision that no longer serves its original purpose), or every ten years.

2020 annual exclusion & basic exclusion amounts

In 2020, the annual exclusion—that is, the amount a donor can give an individual without using any of the donor's basic exclusion amount to shelter the gift from the federal gift tax—remains at $15,000 per donee (or $30,000 per donee if a married couple agrees to split the gift). In addition, the basic exclusion amount (each taxpayer's large exemption against federal estate and gift tax) has increased to $11.58 million. This means a married couple is now able to pass $23.16 million to their heirs free of gift and estate tax. However, be aware that the basic exclusion amount is slated to return to prior law ($5 million indexed for inflation) effective January 1, 2026. Further, the 2020 elections could have an impact on the tax law and the basic exclusion and annual exclusion amounts. Hence for high net-worth clients, lifetime gifts should be considered in order to take advantage of present exemptions.

Check our firm website, lindabury.com, for further updates about tax legislation.

the SECURE act

significant changes to retirement account rules

by Anne Marie Robbins, Esq.

On December 20, 2019, President Trump signed into law the SECURE (Setting Every Community Up for Retirement Enhancement) Act (the "Act"), which significantly affects the law regarding taxable retirement accounts such as traditional IRAs and 401(k) plans.[1]

A. Benefits of the Act.

The following are among the pertinent beneficial provisions of the Act effective for calendar year 2020 and beyond:

- The age at which a plan participant[2] must take annual required minimum distributions (RMDs) has been raised to age 72 from 70 ½, in recognition of longer life expectancies. Note that the new rule applies only to persons who had not reached age 70 ½ in 2019.
- Plan participants may now make contributions to their 401(k) plans after age 70 ½ if they are still employed. Again, this is seen as a response to the fact that Americans are experiencing longer life expectancies and are retiring later.
- Parents may withdraw up to $5,000 each from their applicable eligible retirement accounts, free of penalties, following the birth or adoption of a child.
- 529 plans may now be used to pay costs of registered apprenticeship programs, to pay down certain student loan debt of up to $10,000, and to pay education costs for the siblings of the designated beneficiary.
- Long-term part-time workers will be able to join their company's 401(k) plans.

B. The End of the Stretch IRA.

The Act imposes a significant change to the law regarding inherited traditional and Roth retirement accounts. Under prior law, a non-spouse beneficiary who inherited an IRA could withdraw the funds over his or her own life expectancy. Sometimes referred to as a "stretch" IRA, this was a substantial benefit to families, because children or grandchildren named as IRA beneficiaries could use their own longer life expectancies to "stretch" the payments from the IRA, thereby deferring the income tax incurred on the RMDs.

To illustrate the benefit, an understanding of how RMDs are calculated may be helpful. The RMD from an IRA in a given year is based upon the account owner's age at the time. For example, an 80-year-old has a life expectancy of 10.2 years based on IRS tables. If an 80-year-old owner has an IRA worth $100,000, the RMD for the year is $9,804 ($100,000 ÷ 10.2). If the owner leaves his IRA to a 20-year-old grandchild, that grandchild has a life expectancy of 63 years over which to draw down the IRA, and the RMD in the first year would be $1,587 ($100,000 ÷ 63). The IRA would thus have a much longer period to be paid out while the grandchild is the beneficiary, and the growth on the assets within the IRA would be tax-free until withdrawn.

Under the Act, the stretch IRA is no more. Instead, with certain exceptions, beneficiaries of an inherited traditional or Roth IRA must withdraw the full balance by December 31 of the tenth calendar year following the year of the IRA owner's death.

A surviving spouse is still entitled to stretch the RMDs over his or her own life expectancy, or to continue to receive payments based on the account owner's life expectancy. However, except for surviving spouses, minors, disabled and chronically ill beneficiaries, and beneficiaries who are not less than 10 years younger than the IRA owner[3], beneficiaries may not use their own life expectancies to calculate the RMDs and must instead adhere to the new 10-year rule.

C. New Investment Allowed—Annuities.

The Act allows 401(k) plans to add annuities as retirement plan options, but beware—annuities often generate high commissions to the provider and may not be the best investment choice, depending on the terms.

D. Roth Conversions.

Since withdrawals from Roth IRAs are tax-free, converting a traditional IRA to a Roth IRA may make sense, especially if there are assets outside of the IRA to use for the tax payment on conversion. While the 10-year payout will still be required for an inherited Roth IRA, the funds will come out tax-free.

E. Trusts as Beneficiaries.

In the estate planning context, plan participants often designated testamentary trusts or *inter vivos* trusts[4] as the contingent beneficiaries of their IRAs if the spouse had predeceased the plan participant. Under prior law, such a trust could stand in the place of an individual beneficiary, and served as a method for account owners to keep control of the IRA in the hands of their trustees rather than allowing a child or grandchild to have control at too early an age. Such trusts could provide control over the IRA to the trustees well beyond the age of a beneficiary's majority.

Because the new 10-year timeframe for fully collecting the funds in an inherited IRA will affect most non-spouse beneficiaries, the Act significantly impacts planning for account owners who have named individuals or trusts as their primary or contingent retirement account beneficiaries. We urge you to reach out to your estate planning attorney to discuss how the SECURE Act may affect your retirement accounts.

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1. In this article, the terms "IRA," "401(k)" and "retirement account" may be used interchangeably to refer to retirement accounts, and shall be considered to include 403(b) plans.

2. "Plan participants" may also be referred to as "owners" of their IRAs or 401(k)s.

3. All of these beneficiaries are considered "eligible designated beneficiaries" under the Act. Minors can toll the running of the 10-year payment period until they reach majority, and disabled, chronically ill, and less than 10 years younger beneficiaries are not bound by the 10-year rule and may use their own life expectancies to calculate the RMDs.

4. Testamentary trusts are established under a last will and testament after death, whereas inter vivos trusts are created by a settlor or grantor during life by a trust agreement.

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