

ZOLLA LAW FIRM

SECURE Act news!



Please read!

A few weeks ago I sent out a [newsletter](#) letting you know that Congress had stalled on the SECURE Act. Well, low and behold, two DAYS later, the Senate passed the Act and Trump signed it into law. The big surprise is that the law was made effective January 1, 2020, so most estate planning lawyers are scrambling to adjust documents and the advice we give to our clients. Thanks to the SECURE Act, you may want to modify some of the boilerplate in the back of your revocable trust.

This newsletter is specifically for those of you who (i) have a large tax-deferred retirement plan (such as an IRA or 401(k) plan, which I'll call an "IRA"), (ii) you intend to leave a significant portion of that IRA in trust and for your children (say \$500K for one child, or \$1 million for two children), and (iii) you have put provisions in your revocable trust that allow the trustee to control distributions until your children are older (say 30 or 35).

Example:

John has a \$1.2 million IRA, is unmarried, but has two college-aged children. In 2018, he executed a revocable trust and named the trust as the beneficiary of the IRA at his death. That way, if John died unexpectedly, John's sister Mary, the successor trustee of the trust, would be responsible for notifying the IRA custodian of John's death, splitting the IRA into two inherited IRAs -- one for each child, and

instructing the IRA custodian to take out only the required minimum distributions from the IRA each year, using the older child's age to figure out the RMD.

If John died in **2019**, and his older child is 20, Mary would divide the IRA into two \$600K IRAs, and withdraw 1/63 (1.6%) from the IRAs in the first year (63 is the life expectancy of a 20 year-old). 1.6% of \$600K is \$9,524 per child. The required withdrawals would increase as the children aged, and be subject to ordinary income taxes.

Under the SECURE Act, if John dies in **2020**, and his older child is now 21, Mary will divide the IRA into two \$600K IRAs, but is now required to withdraw all of the funds from John's two inherited IRAs within ten years of John's death. She cannot stretch the distributions out over the older child's life expectancy. Mary can decide to split the distributions equally (\$60K/year) or wait until the last year (\$600K at one time), but any withdrawals are subject to ordinary income taxes.

The previous law required that the RMD be distributed from the trustee *to the trust beneficiary* each year to ensure the lifetime stretch-out. So, in the back of your trust is a provision for the annual distribution, entitling the beneficiary to a little extra cash, equal to that year's RMD. But, when the annual RMD for a young person is in the \$10K range (before income taxes), it was worth it to distribute the RMD to minimize income taxes over the long term.

Thanks to the SECURE Act, if your IRA is quite large and if you want to control the distributions to your children until they are solidly adults, it is no longer advisable to require the trustee to distribute the IRA withdrawals from the trust to the beneficiary each year, because the distributions can be anywhere from 0% to 100% of the full value of the IRA! In that case, it would be better for the trustee to retain the IRA distributions, net of taxes, and distribute only what the child needs for her support, health care, maintenance, and education. The money is still held for the benefit of the child. It's just that the trustee will control it for a little bit longer.

I sure wish I had 2020 hindsight (you knew I would throw that in here), and had planned ahead for the passage of the SECURE Act. But, this all caught us off guard at the end of a long year. If you would like to discuss this issue further and possibly change the stretch-out provision in your trust, please contact me. We will likely need to schedule a telephone call or in-person meeting to discuss your particular situation.

I am ready to help you ensure that your estate planning reflects your wishes.

This Newsletter is for information and discussion purposes only. Before any action is taken, professional advice, based on your specific situation, should be obtained.

