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BULLETIN – THE SECURE ACT

As you may have heard, on December 20, 2019, Congress passed the SECURE Act. The SECURE Act introduced significant changes to federal retirement plan laws and took effect on January 1, 2020. While the SECURE Act (the "Act") was passed with little fanfare, the Act has an immediate and potentially significant impact on your retirement plan during your life, as well as on how benefits from your retirement plan will pass to your family members or loved ones after your death.

Changes Affecting Your Estate Plan

The biggest change brought about by the SECURE Act that may affect your estate plan is how your retirement plan assets are distributed and taxed after your death under the Act. Under the pre-Act law, it was possible to stretch the distribution of retirement plan assets over the life expectancy of a beneficiary who inherits the plan (often referred to as a "Stretch IRA"). This lifetime stretch period offered a number of potential advantages, including deferring income tax on retirement distributions and limiting the amount a beneficiary may receive in a given year. In certain situations, these benefits also applied to retirement plans left in trust.

The Act has eliminated the beloved "Stretch IRA" for all but a few select class of beneficiaries. Most beneficiaries will now be required to receive the full amount of an inherited retirement plan within 10 years of the death of the person who funded the plan (the "Participant"). This 10-year requirement could be substantially shorter than taking the distributions over the beneficiary's lifetime.

What this means is that while estate plans in place through the end of 2019 offered a sound approach to planning for retirement assets, under prior law that existed for decades, those same estate plans, or portions of them, may no longer provide the right solution and should be reevaluated along with your beneficiary designations. For example, many estate plans include "conduit trusts," which under the prior law, offered significant benefits by allowing the maximum "stretch" for beneficiaries of different ages, along with the security that the trustee could hold on to the "principal" of the account inside the trust. Based on the provisions of the Act, and existing regulations, conduit trusts may now be less desirable because the entire account must be paid out to the beneficiary within 10 years of the Participant's death. Additionally, if you have named separate trusts for your children to receive large retirement accounts in order to prevent accelerated withdrawal, this new result, as a result of the Act may now be contrary to your original goals and could be disastrous.

Under the Act, the following individuals, if designated as beneficiaries by the Participant, can still stretch-out the distributions of the retirement plan over their lifetime: (1) spouse of Participant, (2) minor child of Participant (only while child is a minor); (3) disabled individuals, (4) chronically ill individuals, and (5) individuals who are not more than 10

years younger than the Participant. With respect to minor children, life expectancy payouts occur while they are minors, and the 10-year rule begins to apply once they reach majority (which in some cases may be up to age 26). However, if the retirement assets are left to those beneficiaries in trust, they may not qualify for the lifetime stretch distribution, depending on the terms of the trust.

Other Relevant Changes

The Act also includes a number of other notable changes that affect your retirement plan. Under the Act:

- The age cap for funding traditional (non-Roth) IRAs was removed.
- The age at which individuals are required to take distributions from their retirement plans is increased from 70 ½ to 72.
- Individuals now have the ability to withdraw up to $5,000 penalty-free from a retirement plan for the birth or adoption of a child.
- The use of Section 529 Plans was expanded and now includes registered apprenticeship programs and limited student loan repayments.

Action You Need to Take

If you have assets in a retirement plan, and especially if you have named a trust as the beneficiary of the plan, we strongly recommend that you have your estate plan or trust reviewed to ensure that it disposes of those assets in a manner that is consistent with your goals. You should also revisit all of your beneficiary designations to make sure you understand how the designations will work under the SECURE Act so that you can determine if changes need to be made.

Note: The contents of this bulletin are for informational purposes only, and are not intended to constitute legal advice or form an attorney-client relationship. For information and advice particular to your situation, please contact our office at (847) 295-8800 and arrange a meeting with your attorney.