

Estate Planning After the SECURE Act

By, Michael P. Panebianco

In the final weeks of 2019, the federal budget bill was passed by Congress and signed by President Trump. The budget bill included changes to the federal tax code that were originally included in the SECURE Act (H.R. 1994) and which went into effect January 1, 2020. The changes affect retirement plans, such as IRAs and qualified retirement plans, e.g., a 401(k), both during lifetime and the way assets in those plans ("retirement assets") may be distributed to beneficiaries after death. Accordingly, estate planning with retirement assets going forward will require an understanding of these changes and knowledge of available options in light of the new legal landscape.

Under prior law, most people were required to begin taking Required Minimum Distributions ("RMDs") from their qualified plans or traditional (non-Roth) IRAs once they reached age 70½. Under the SECURE Act, the age was increased to 72 for those who were not yet required to take distributions under the old law. This means if you turned 70½ in 2019, the prior law applies and you must begin taking RMDs by April 1, 2020. Otherwise you can, but are not required, to take distributions once you are age 59½ without penalty, but must begin taking RMDs once you are 72. Although RMDs do not begin until age 72 under the new law, you can still cause distributions of up to \$100,000 a year to pass directly to charity once you have reached age 70½. In



addition, the new law removes the age cap for funding traditional (non-Roth) IRAs and deductible plans, so individuals over age 70½ are now permitted to make contributions to a traditional IRA, provided they have earned income, and there is a new exception to the 10% excise tax on withdrawals prior to age 59½: up to \$5,000 for child birth or adoption expenses may be withdrawn.

Some non-retirement plan changes include the ability to use 529 Plans to pay for student loan repayments of up to \$10,000, and also certain apprenticeship programs, including fees, books, supplies, and equipment. In addition, the "Kiddie Tax" reverts

back to prior law so that the parent's tax rate will apply to the child's unearned income, rather than applying trust and estate tax brackets.

With respect to estate planning, arguably the most significant changes brought about by the SECURE Act relate to how retirement assets are distributed and taxed after death to avoid penalties.

Under prior law, it was possible to stretch the distribution of retirement plan assets over the life expectancy of a beneficiary, if that beneficiary met the requirements of a "designated beneficiary" under the law. This ability to stretch out the distributions offered

potential advantages in terms of income tax free growth of the retirement assets during the beneficiary's life, the cumulative amount of income tax paid on distributions from the retirement account, and protection of the retirement assets from the beneficiary's creditors, or even from a beneficiary who might not have the ability to handle significant amounts of money at one time. The law also permitted these advantages for retirement assets left in a trust, as long as the trust was structured to meet certain requirements.

The SECURE Act changed these rules so that most designated beneficiaries of retirement plans will be required to receive the full amount of an inherited qualified plan or IRA within 10 years after the death of the person who funded the plan or IRA. The exceptions to this general rule include the retirement plan owner's surviving spouse, minor children of the owner (but not their grandchildren or someone else's children), beneficiaries who are disabled or chronically ill, and individuals who are not more than 10 years younger than the plan owner. The excepted classes of beneficiaries are still permitted to take distributions over their expected lifetimes, as under prior law, though children who are minors at the time of the owner's death must now take the full distribution within 10 years after reaching the legal age of adulthood, which is age 18 in New Hampshire and most other states. It is important to note that the beneficiary can

ESTATE continued on page 32

Trust our experienced team to help plan for tomorrow



Wills & Trusts • Probate & Trust Administration • Charitable Planning • Family Business Succession Planning

**DEVINE
MILLIMET**
ATTORNEYS AT LAW

603-669-1000
DevineMillimet.com

Agreements from page 28

approach to drafting these documents will yield better results, as the goal is to have two clients who still want to get married, or stay married, at the end of representation.

In a perfect world, the drafter of a prenuptial or postnuptial agreement would practice in both estate planning and family law. The trend in New Hampshire is for family law practitioners to draft these contracts, but there is great potential for estate planning attorneys to enter this arena. Although these contracts almost always contain provisions regarding the property rights of a spouse in the event of

divorce, they are also considered an estate planning tool, as the inheritance rights of the spouse are also determined in these contracts. Given the collegial atmosphere that surrounds the New Hampshire Bar, it would be an easy task for an estate planning attorney to reach out to a family law practitioner and gain the knowledge needed to become competent in drafting these documents. In the end, family law and estate planning attorneys are equally poised to handle the drafting of prenuptial and postnuptial agreements.

Sarah Paris is an attorney practicing at Morneau Law in Nashua, NH where she focuses on estate planning.

Estate from page 27

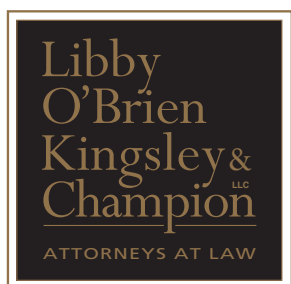
wait until just before the expiration of the 10 year period and take it all out at once. There is no requirement that distributions occur annually throughout the 10 year period. As under prior law, if the surviving spouse is the beneficiary of the retirement plan, he or she can withdraw over their life expectancy, but, upon the spouse's death, the next beneficiary, if not in a qualified group, must take the payout within ten years of the surviving spouse's death.

The SECURE Act does not change the method of designating a beneficiary or beneficiaries to receive inherited retirement assets. Accordingly, if you have existing beneficiary designations in place, those designations are still valid. However, the desired result for your client may no longer be achieved unless the estate plan is revised. For example, the current estate plan may be structured so that, after death, the client's retirement assets are given to a trust commonly referred to as a "conduit trust." The basic idea of this plan is that the conduit trust, not the individual who is the beneficiary of the trust, is the owner of the retirement plan and the retirement assets paid to the conduit trust will pass immediately from the trustee to the beneficiary. This has been a commonly used technique because the distributions would be stretched over the expected lifetime of the trust beneficiary while ensuring the beneficiary would not prematurely withdraw all the assets from the retirement plan. However, under the SECURE Act, that same conduit trust may now require distribution of the retirement assets to the beneficiary within 10

years after the death of the plan participant or plan owner, or when the minor child reaches adulthood – which may be contrary to your client's desire. One alternative is what is known as an "accumulation trust." Like a conduit trust, an accumulation trust would be the owner of the retirement plan after the plan owner's death, except retirement assets paid to the accumulation trust do not have to pass immediately from the trustee to the beneficiary as it would with a conduit trust. This allows the retirement plan assets to be protected by the terms of the trust rather than going outright to the beneficiary, which may be the client's primary objective. Another potential option, in the right situation, is having a charitable remainder unitrust receive the retirement assets upon death, where payments would be made to the beneficiary over the course of their lifetime with the remainder distributed to charity upon the beneficiary's death.

The specific changes brought about by the SECURE Act, and potential planning strategies related to the changes, are too extensive to cover in depth here, but all lawyers that do estate planning should familiarize themselves with the changes, and various planning options in light of the changes, some of which may present new opportunities for current clients.

Michael Panebianco is an attorney at Sheehan and Phinney in Manchester. He advises and represents individuals and families on their estate planning, probate, and trust administration needs. He can be reached at (603) 627-8239 or mpanebianco@sheehan.com.



Litigation • Criminal Law
Family Law • Wills, Trusts & Estates
Probate • Employment Law
Personal Injury • Sports Law

Offices in
Maine • Massachusetts • New Hampshire

Dedication Experience Results

207.985.1815 | www.lokllc.com | 62 PORTLAND RD, SUITE 17, KENNEBUNK, ME 04043



Elder Law: The emerging need

Preserving the economic integrity of the elderly client and providing guidance in a complex regulatory environment.

Estate Planning
Medicaid Eligibility and Appeals
Asset Protection
Nursing Home Discharges
Probate Litigation
Guardianships
Trust and Probate Administration

Laboe & Tasker, PLLC is known for its experience and achievement in the area of Medicaid eligibility and difficult probate administration.

Assistance is available for attorneys and their clients.

6 Loudon Road, Suite 502
Concord, NH 03301-5321



Laboelaw.com

Phone: 603.224.8700
Fax: 603.225.5223



At Ambrogi Law Office, we strive to provide our clients with personalized and compassionate service. We offer assistance in areas including:

- Estate Planning
- Elder Law & Medicaid Consultation
- Probate & Trust Administration
- Small Business & Real Estate Consultation

For more information, please contact us at
603-782-3021 or www.ambrogilawoffice.com.
Located at 722 Pine Street, Manchester, NH 03104



ProbateTrial.com

A Resource Site for NH Probate Attorneys

45+ Court Orders • 65+ Sample Pleadings • Law Summaries • Commentary

Ralph Holmes Adam Hamel Christopher Paul
Alexandra Cote Caitlin McCurdy AJ Schweitzer Graham Steadman

Please forward your court orders of potential interest to the bar.
We will link any posting to your website and give you credit.

MCLANE
MIDDLETON
McLane.com

New Hampshire:
Manchester | Concord | Portsmouth
Massachusetts:
Woburn | Boston