

WLIB NEWSLETTER

WOMEN LAWYERS IN BERGEN

Volume 11

Summer 2020

Installation of WLIB Officers Remarks by WLIB President Victoria R. Pekerman, Esq. – 6/30/2020

Good evening everyone and thank you all so much for taking time out of your busy schedules to join us for the Zoom swearing in ceremony of WLIB. I don't think in the history of the organization have we ever had this kind of swearing in but here we are – adapting and adjusting to these strange and challenging times.

I am delighted to see our officers and members tonight who are all eager to advance women's issues in the legal profession. I would like to begin by thanking the Assignment Judge, Bonny Mizdol for continuing to support WLIB and serving the vicinage so admirably, especially during COVID-19. I would like to especially acknowledge and thank Judge Nina Remson, a former President of WLIB and long-time supporter of our organization. We appreciate your contributions to the organization over these many years and your dedication to public service in our community.

I want to take this opportunity to thank our amazing outgoing President, Helayne Weiss, who has made tremendous contributions of her time, effort, vision and leadership to this organization with her work at the Women's Rights Information Center, organizing countless WLIB events which we cannot wait to resume in person again soon, including the Judicial Reception, Annual Dinner, Meet and Mingle, Bring Your Children to Work, Court Care Center, law clerk receptions, various community outreach, supporting the organization's efforts to launch a new website, and overall leadership and mentorship over the past two years. She is a gifted family lawyer, public servant and dear



friend. On behalf of WLIB, we are all very grateful for all you have done for us during your tenure as President.

I also want to thank and acknowledge our wonderful and talented outgoing Secretary Toni Ann Mirabello for all her time, energy, effort and dedication to WLIB. She was instrumental in the development of our website project by researching and engaging the developers who helped us set it up. She brought fresh and creative ideas to the organization and we hope she will continue to remain a board member and hopefully an officer in the years to come.

I would also like to thank Diane Lucianna for all of her work as Treasurer of the organization and for her tireless efforts, energy, new ideas and professionalism. She has done a tremendous job as Treasurer and work with our advertisers and I congratulate her on her new position as Vice President. Diane is going to be organizing the Annual Dinner on November 9, 2020 at Seasons which we hope we will all be able to attend in good health.

I would also like to congratulate and welcome WLIB's newest officers: Tamra Katcher and Nancy Lucianna. Tamra is a highly accomplished and experienced criminal defense attorney, a partner at Rem and Katcher Law Group in Hackensack and a long-time member and contributor of WLIB. We are excited for all that she will bring to her new role and to our organization. In addition to being our Treasurer, Tamra will also be chairing our Legislation Committee.

continued on page 19

WLIB Membership

Name: _____ Full Address: _____

Work #: _____

Fax #: _____

E-mail: _____

MAIL FORM TO:
Cathe McAuliffe, Esq. • Membership Chair
210 River Street, Suite #32 • Hackensack, NJ 07601

OR FAX TO:
201-488-7029

INSIDE:

- The SECURE Act and its Impact on Your Retirement and Estate Planning - 3
- Summertime Eats - 5
- Tamara Katcher, Esq. - 9
- Book Review - 9
 - A Woman of No Importance
- Nancy E Lucianna, Esq. - 11
- Weekend Getaways - 12
- How to Return to Work in a COVID-19 World - 14
- Announcements - 17
- Young Lawyers Corner - 19
- WLIB Committees - 22-23
- Calendar of Events - 24

The SECURE Act and the Impact on your Retirement and Estate Planning.

By: Naomi Becker Collier, Esq.

The Setting Every Community Up for Retirement Enhancement Act (the “SECURE Act”), part of the Further Consolidated Appropriations Act, 2020, was signed into law on December 20, 2019. Effective as of January 1, 2020, the SECURE Act makes significant changes to the laws governing many qualified retirement plans and individual retirement accounts that can have substantial impact on your retirement planning, and estate planning and related documents. In order to fully appreciate how the SECURE Act changes the face of retirement and estate planning, it is important to understand the prior rules as they are still partially in effect. Therefore, this Article will focus its attention on some of the key changes brought about by the SECURE Act and the interplay with the prior law, with specific attention to the impact on retirement and estate planning, including changes to allowable contributions to Individual Retirement Accounts (“IRAs”) and Required Minimum Distributions (“RMDs”), the impact on “stretch” distributions from IRAs and qualified plans, and the impact on trust planning for retirement assets.

Contributions to Individual Retirement Accounts (IRAs)

As a general rule, any individual with “earned income” (as defined by the Internal Revenue Service), or a non-working spouse of an individual with “earned income,” can contribute annually to an IRA. Before the SECURE Act, an individual was prohibited from making an annual contribution to an IRA beginning in the tax year that he or she turned 70½. However, the SECURE Act removed this age restriction for contributions to IRAs beginning in 2020. Therefore, as long as an individual continues to have “earned income,” regardless of that person’s age, he or she can make annual contributions to an IRA.

For the year 2020, assuming an individual over the age of 50 has “earned income” that supports the maximum allowable contribution to an IRA, he or she is able to contribute a maximum of \$7,000, and a married couple can contribute a maximum of \$14,000. This ability to continue to maximize the funding of a tax-deferred retirement asset after the age of 70 ½ provides a valuable income tax and savings tool to individuals nearing retirement. This modification in the law is presumably intended to address increased life expectancy and extends the availability of this favorable income tax planning tool to the many individuals that have decided to retire at a later age.

Required Minimum Distributions (RMDs)

Federal law requires the owner of a tax-deferred retirement account (such as a traditional IRA) and the participant in an employer-sponsored retirement plan (such as a 401(k), 403(b) and 457), or a self-employed retirement plan (a SEP), to take annual RMDs. Generally, annual RMDs are calculated based upon the value of the tax-deferred retirement account(s) and the account holder or plan participant’s life expectancy pursuant to IRS published tables. If an individual has more than one tax-deferred retirement account or participates in more than one plan, the RMD is calculated on the aggregate value of such accounts, but the owner/participant can choose to take the RMD from one or all of those accounts, as long as the annual RMD is met.

Prior to the effective date of the SECURE Act, the owner of a tax-deferred retirement account and/or plan participant was required to begin taking annual RMDs during the year in which he or she turned 70½ (with the ability to delay the distribution of the first RMD until April 1st of the following year), and each subsequent year before December 31st. However, the SECURE Act changed the required age at which a tax-deferred account owner/plan participant must take annual RMDs to age 72. Despite this extended age requirement, the first year RMD may still be delayed until April 1st following the year that the individual attains 72 years of age, and each subsequent annual RMD must be taken by December 31st. If the account owner/plan participant reached 70½ in or before 2019, the prior rules relating to annual RMDs apply, and if he or she reaches 70½ in 2020 or later, the SECURE Act rules apply.

Annual RMDs are taxable income to the owner of the tax-deferred account(s) and/or plan participant. Therefore, this extended age requirement for required annual RMDs allows these assets to continue to grow in a tax-deferred manner for an extended period of time. Perhaps the above-discussed ability to continue to fund such accounts/plans after the age of 70½, coupled with the ability to wait longer to pull assets out, will help to increase assets available for retirement for those individuals that do not need to tap into these assets before the age of 72.

Furthermore, since individuals will not be required to start taking RMDs until the age of 72, this almost 2-year extension also provides owners of traditional IRAs additional time to convert these accounts to ROTH IRAs, which are not income taxable upon distribution and have no RMDs. A ROTH IRA conversion allows the holder of a traditional IRA to convert income taxable assets in the traditional IRA to a ROTH IRA, pay income taxes at ordinary federal and state rates at the time of the conversion, and move the assets into a vehicle where those assets can grow income-tax free. If the income taxes paid at the time of conversion to a Roth IRA are paid from other assets, the assets used to pay the tax are removed from the taxpayer’s potentially taxable estate. There are many considerations when deciding whether to convert a traditional IRA into a ROTH IRA, but, if it makes sense depending on the account owner’s circumstances, it may be easier to do before he or she is required to take RMDs.

Impact on “Stretch” Distributions from IRAs and Qualified Plans

One of the most significant changes relating to IRAs and qualified assets, particularly as it relates to estate planning, deals with the income tax treatment of those assets on the death of the account owner/plan participant. Generally, if the owner/plan participant is married, he or she will leave the retirement asset to his or her spouse. If the owner/plan participant is not married, it is common to leave such assets to your lineal descendants. In any event, however, most

continued on page 7

The SECURE Act

continued from page 3

people prefer to make these transfers as a result of the death of the account holder/plan participant in the most tax efficient manner through the utilization of a “stretch” for non-spousal beneficiaries.

A “stretch” as it related to an inherited IRA or qualified plan under pre-SECURE Act law allowed a designated beneficiary to take distributions over that beneficiary’s life expectancy, resulting in a favorable income tax deferral. Specifically, following the death of an IRA owner or a qualified plan participant, tax-deferred assets passing to a named qualified beneficiary (a “designated beneficiary”) would be payable over that designated beneficiary’s lifetime. Specifically, the designated beneficiary would receive RMDs based upon his or her life expectancy, which, in many cases, was much longer than the life expectancy of the account owner/plan participant, which allowed a small amount to be distributed each year while the remaining account balance could continue to grow income tax-free. Prior to the SECURE Act, this stretch was achievable through the use of an inherited IRA or a properly structured “see-through” trust (such as a “conduit trust” or an “accumulation trust”, both discussed further below). However, the SECURE Act’s introduction of the 10-year rule greatly impacts this planning opportunity for many beneficiaries.

For many individuals inheriting an IRA or qualified plan of an individual dying on or after January 1, 2020, the SECURE Act will now require that all tax-deferred assets be distributed by the end of the tenth year following the death of the account owner/plan participant, with some exceptions (eligible designated beneficiaries, discussed further below). It is important to note that distributions to non-individual beneficiaries of IRAs and qualified plans remain unchanged by the SECURE Act. The law before the SECURE Act accelerated the payout period to such non-qualified beneficiaries, such as an estate, trust (excluding conduit trusts), entity, or a charity, be distributed by the end of the fifth year following the death of the account owner/plan participant, which remains the same.

The exceptions to the 10-year rule include eligible designated beneficiaries as defined by the SECURE Act, which includes the account owner/plan participant’s surviving spouse, a minor child of the account owner/plan participant (not a grandchild), a disabled individual as defined in Internal Revenue Code Section 72(m)(7), a chronically ill individual as defined in Internal Revenue Code Section 7702B(c)(2), and an individual not more than 10 years younger than the account owner/plan participant. These eligible designated beneficiaries may withdraw IRAs and plan assets over their life expectancy, except for the minor child of the owner/participant to whom the 10-year rule applies upon such child reaching the age of majority (beginning with the year after that child reaches the age of majority). Therefore, adult children and more remote lineal descendants of an account owner/plan participant who do not fall under this list of exceptions must take distributions within this ten-year period.

Impact on Trust Planning for Retirement Assets

While no distributions of IRAs or qualified plan assets need to be made during the ten-year period to those individuals that do not fall within the above exceptions, the requirement that all such assets must be distributed by the end of the tenth year following the

owner/participant’s death may not align with the planning objectives and/or the owner/participant’s existing planning documents. Many individuals’ largest assets include their tax-deferred retirement funds, and, prior to the SECURE Act, it was quite common for an individual interested in protecting this large asset (with an eye on income tax deferral) to direct the asset to be held in a see-through trust upon his or her death. The most common type of such trust being a conduit trust.

A conduit trust is structured so that the beneficiary of the trust would annually receive the RMD, which was calculated on his or her life expectancy and would flow through the trust, while the principal of the asset remained protected in the trust. Since the goal in this planning was to protect the asset, potentially, for the beneficiary’s lifetime, and now all tax-deferred assets must be paid out by the end of the ten-year period (unless the trust is for the benefit of an eligible designated beneficiary), the conduit trust structure may no longer achieve its intended goal of protecting the asset or the intended beneficiary.

An alternative to the conduit trust is the accumulation trust. Unlike the conduit trust, the accumulation trust structure does not force out the payment of the RMD each year but, rather, protects both the income and principal of the tax-deferred asset within the trust giving the Trustee the discretion to decide whether to pay out annual RMDs to the trust beneficiary or retain them in the trust. While the accumulation trust will still be subject to the 10-year rule (unless the trust is for the benefit of an eligible designated beneficiary) and potentially less income tax efficient, if the primary objective is to protect the assets from a beneficiary’s creditors or the beneficiary’s own irresponsibility for a period of time that is longer than the 10 year required payout, then an accumulation trust with discretion that allows the trustee of such trust, depending on the circumstances, to make more tax-efficient distributions, will likely be a safer approach.

Regardless of how it is structured, if an individual has designated a trust as the beneficiary of an IRA and/or qualified assets, it is imperative that he or she review the trust’s structure and the implications of the SECURE Act on such trust with an estate planning attorney to ensure that the stated estate planning goals can still be realized in an efficient and flexible manner. It is also imperative that beneficiary designations on such assets be carefully reviewed to ensure coordination with the estate and related planning goals, particularly in light of the substantial changes brought about by the SECURE Act.

Conclusion

The SECURE Act includes many changes that will have a significant impact on your retirement and estate planning requiring a proactive approach to ensure that your goals are achieved. It is imperative that you review your estate planning to ensure that your goals align with the planning that is in place. Additionally, specifically as it relates to your IRAs and qualified assets, it is very important to review the beneficiary designations on such tax-deferred assets to make sure that they align with the new rules and your estate and related planning goals. 🐾

Naomi Becker Collier is a Partner in the Trusts and Estates & Elder Law practice at Pashman Stein Walder Hayden in Hackensack, New Jersey.