

# SECURE Act Upends Estate Planning

An Important new law will provoke difficult decisions for many.  
Review your options now.



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**Call me to discuss  
your options.**

**With the Setting Every Community Up for Retirement Enhancement (the “SECURE Act”) of 2019, the government is doing anything but making investors and retirees feel secure. In short, the SECURE Act, passed in the waning days of 2019, turns estate planning as it’s been practiced up to now on its ear.**

The policy underpinning the new law, though painful, possesses unusual clarity. Specifically, the SECURE Act codifies the idea that IRAs and other tax-favored accounts are designed for funding retirement and not for passing wealth onto heirs. Also, with a level of efficiency not generally associated with new tax laws, the SECURE Act ruthlessly executes on this thesis.

There’s a lot to the SECURE Act, but the central feature for estate planning is the elimination of the “stretch” IRA, so named for its ability to confer tax deferral benefits across generations.

With the stretch gone, almost without exception, all trust plans require immediate review with a view toward overhaul.

Prior to the SECURE Act taking effect for tax year 2020, beneficiaries who inherited an IRA could stretch their required minimum distributions or RMDs to a time frame that suited their unique circumstances. Further, so-called “see through” trusts could utilize a stretch IRA structure for the benefit of a grandchild, with RMDs calculated over 50 years or more, depending on IRS life expectancy tables.

The SECURE Act eliminates these deferments, save for some exceptions. In fact, the SECURE Act eliminates RMDs altogether for beneficiaries. Now, the entire balance of the IRA must be emptied by the tenth anniversary of the death of the IRA owner. With this stroke of the pen, Congress eviscerated the stretch IRA as an estate planning tool.

Under the old rules, using the figures above, over a 50-year period, a beneficiary would take a 2% RMD per year. Under the new regime, the new distribution — not technically an RMD, because they’ve been eliminated —



would need to average no less than 10% per year.

Another area of concern is that the 10-year payout feature undermines “conduit and see-through trusts” that are frequently designated as IRA beneficiaries. This is unfortunate, because these two IRA trusts are frequently used by the IRA owner to exert control over the distribution of funds post death and, of course, to avoid taxes.

For instance, with a so-called “conduit trust,” without RMDs, there are no payouts until the end of 10 years whereupon they are distributed to beneficiaries ensuring the exact opposite occurs of what the IRA was designed to achieve in the first place. A “discretionary trust” fares somewhat better. Distributed funds will remain in the trust but are subject to taxes at the trust’s or the beneficiaries’ rate.

In general, establishing a trust as the beneficiary of an IRA will deliver undesirable results. Here are some options to explore:

Consider changing the beneficiaries from heirs to your spouse. Spouses are exempt from the 10-year rule. By doing so, IRA

owners can extend the period of time before an inherited IRA will have to be distributed and taxed.

Take advantage of lower personal tax rates and draw down IRA funds and channel them into a Roth IRA. The beneficiary of the Roth IRA can still take advantage of the 10-year payout. By doing so, the proceeds will grow tax free and be distributed free of taxes.

Utilize life insurance to exert control over the proceeds and reduce the tax burden. Here, IRA funds are withdrawn to fund a cash value life insurance policy. While taxes are paid to fund the insurance policy, the distribution of the proceeds is tax free for an overall favorable outcome.

Finally, you can make larger charitable distributions. Qualified charitable distribution (QCD) can be maximized for annual giving. By doing so, IRA owners will reduce the taxable balance of the IRA that’s left to beneficiaries. Further, since a QCD is excluded from income, the

reduction of the balance and the allocation of funds to the charity are accomplished tax free.

There are no easy answers in the SECURE Act for IRA owners. But not addressing them will make things worse. Contact your advisor immediately for consultation on what kind of plan going forward makes sense for your unique circumstances.

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