THE ESTATE PLANNER

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SECURE 2.0 provides a boost to your retirement and estate plans

The SECURE 2.0 Act of 2022 (SECURE 2.0) expands on the changes made by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). Enacted in late 2022, SECURE 2.0 can help you save more for retirement, which, in turn, can provide more wealth to share with your loved ones. Let's take a closer look at the new law's highlights.

RMD reprieve

The SECURE Act increased the age at which you must begin taking required minimum distributions (RMDs) from IRAs and employer-sponsored retirement plans — from 70½ to 72 — for taxpayers who reach age 70½ in 2020 or later. SECURE 2.0 delays RMDs even further, first to age 73 and later to age 75. Here's how it works:

- If you turned age 72 in 2022 or earlier, then the previous rules apply and you should continue taking RMDs as scheduled.
- If you turn age 72 after 2022 but before 2033, then you must begin taking RMDs at age 73. If you turn age 72 in 2023, that means your first RMD is due next year, and you'll have the flexibility to defer until April 1, 2025. Bear in mind that your RMD for 2025 is due by the end of 2025, and there's no option to defer. Should you decide to hold off on taking the 2024 RMD until the beginning of 2025, be aware that for 2025 you'll have two RMDs.
- If you turn age 73 after 2032, then you must begin taking RMDs at age 75. So, if you turn age 73 in 2033, your first RMD will be for 2035, with the option to defer until April 1, 2036, and having to take two distributions — the one that you deferred from 2035 and the one for 2036 — in 2036. (Be aware that an apparent drafting error creates some ambiguity over the timing of the increase to age 75, but Congress has time to make a technical correction to fix the problem.)

Starting RMDs later allows savings to grow tax-free longer, giving your retirement nest egg a welcome boost. Know that having the ability to defer RMDs simply provides an additional amount of flexibility in your retirement. Depending on the circumstances, from a tax perspective, it may be more prudent to withdraw some funds in advance of the time that you're required to do so. If you turn age 72 in 2023, and you've already planned an RMD for this year (previously due by April 1, 2024), consider putting off the distribution for a year.

SECURE 2.0 also reduces the penalty for failure to take an RMD when due, from 50% to 25% of the amount you should've withdrawn. And the penalty is reduced further, to 10%, for taxpayers who correct a missed RMD on a timely basis. Finally, the law conforms the treatment of employer-sponsored Roth accounts to that of Roth IRAs, eliminating RMDs from those accounts beginning in 2024.

Tax relief for overfunded 529 plans

Section 529 college savings plans are a remarkable tool for funding college tuition and other educational expenses in a tax-advantaged manner. But there is an element of risk: If you overfund your plan, withdrawals for purposes other than qualified educational expenses are subject to income tax and penalties. Fortunately, the SECURE 2.0 Act provides some relief. It allows you to roll over up to $35,000 (lifetime per beneficiary) from a 529 plan to a Roth IRA for the same beneficiary, tax- and penalty-free.

There are a few limitations: The 529 plan must be at least 15 years old, and any contributions made to the plan within the previous five years (including earnings on those contributions) are ineligible for rollover. Also, you can't roll over the full $35,000 all at once. Rollovers each year are subject to the usual annual limits on IRA contributions.

Catching up and matching up

SECURE 2.0 makes several improvements to catch-up and matching contributions. Currently, if you're age 50 or older, you can make up for lost time with additional contributions of $1,000 per year to IRAs and $7,500 per year to most employer-sponsored plans (different limits apply to SIMPLE plans). Beginning in 2024, the catch-up amount for IRAs, which has been stuck at $1,000 for years, will be adjusted for inflation.

Employer-plan participants who are nearing retirement age will be able to turbocharge their catch-up contributions. Beginning in 2025, participants age 60 through 63 will be able to increase their contributions by the greater of $10,000 (adjusted for inflation) or 150% of the regular catch-up amount. Note, however, that highly compensated participants (those who earned more than an inflation-adjusted $145,000 in the previous year), will no longer be permitted to make catch-up contributions on a pretax basis. Starting in 2024, these contributions must be made to a Roth account.

Employer-matching contributions also get some improvements. Starting this year, plans may allow employees to receive matching contributions as after-tax Roth contributions. Also, plans can treat certain student loan payments as contributions for matching purposes.

Qualified charitable distributions expanded

A qualified charitable distribution (QCD) can be one of the most tax-efficient tools for satisfying your philanthropic goals. If you're age 70½ or older, a QCD allows you to transfer up to $100,000 per year — tax-free — directly from an IRA to a qualified public charity. There's no need to itemize, and QCDs bypass the usual income limitations on charitable deductions. What's more, QCDs count toward your RMDs, generating additional tax savings.

Under SECURE 2.0, you now have an opportunity to make a one-time QCD of up to $50,000 to a charitable gift annuity or charitable remainder trust. You receive the tax benefits of a QCD while, at the same time, creating an income stream for life for yourself or your spouse. The act also provides for the $100,000 and $50,000 limits to be adjusted for inflation in future years.

Consult with your advisor

At more than 300 pages long, SECURE 2.0 is a substantial new law. Many of its provisions will likely affect your retirement and estate plans, so be sure to contact your advisor to determine whether any revisions are required. ∎

Update your will with a codicil

On the completion of your will, you knew there would come the day when you'd need to make a change. Perhaps you recently welcomed a new grandchild to the family or maybe recently went through a divorce. Whatever the case, after a major life change, your will may need a quick fix.

Will a simple "codicil" suffice?

If you need to make a change to your will does that mean you have to completely rewrite it? Not exactly. A simple "codicil" may suffice for minor changes. A codicil is a legal document that's treated as a supplement to an existing will. When your will is subjected to probate, so is the codicil.

Bear in mind that codicils were more prevalent in "days of yore" before personal computers. It was more time consuming and costly than it is today to replace a will. With a codicil, you only had to address one or two points — not the entire last will and testament. This is no longer a significant factor.

Furthermore, adding a codicil could create confusion relating to other parts of the will. And it's often more convenient for everyone in the family to rely on a single document. As a result, you may redo a will instead of adding a codicil. Nevertheless, using a codicil remains the preferred approach for some people, especially for relatively small changes.

To be legally binding, a codicil must be handled with the same legal formalities as a will. Therefore, it's best to have it prepared by a qualified attorney.

What can trigger a will revision?

There are many situations that may require the need for an update of a will through a codicil or rewrite. Common examples include a:

Birth or death in the family. Maybe you didn't have any children or grandchildren when your will was initially drafted. Now that you do, you may want the newest members of the family to share in your estate.

Change in executor. In some cases, you may have to select a new executor (or guardian or trustee).

This may occur if the one you named in your will has died or become incapacitated and you haven't made adequate contingency plans.

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Tax law change. A new or revised tax law may require you to modify certain provisions to take maximum advantage of the latest rules. In addition, there's significant uncertainty concerning the federal gift and estate tax exemption, which is scheduled to revert to its pre-2018 level of $5 million (plus inflation indexing) after 2025.

Other estate tax law changes are being contemplated by some members of Congress. When possible, revise your will to provide maximum flexibility.

What should a codicil address?

For starters, a codicil must have identifying information, including your full legal name, address, the date of the codicil, and a statement indicating that you're of sound mind and not being coerced by someone else. Explain what parts of the will are affected. Use full legal names when referring to beneficiaries, specify dollar amounts or percentages, and describe any property in detail.

Furthermore, the codicil should state that its provisions supersede what you've written in your will and that all parts of the will not affected by the codicil remain in effect. Sign the codicil and have it witnessed according to state law.

Update as needed

Much can happen during the subsequent years after your will is drafted. For your estate planning wishes to be properly carried out after your death, it's critical to have your estate planning attorney update your will. He or she can help determine if a codicil is the right tool for the job. ▮

Providing for your children

Should you use one trust or separate trusts?

One of the most effective ways to provide for your children in your estate plan is to set up trusts for them. Trusts offer many benefits, including, among other things, the flexibility over when and how to make distributions, protection of assets from beneficiaries' creditors and protection of assets from being divided as part of a beneficiary's divorce. They can also help protect the funds from depletion by a beneficiary with a substance abuse problem, a gambling addiction or bad spending habits.

Many parents' estate plans call for their assets to be split into equal shares and used to fund a separate trust for each child. But, depending on your circumstances, it may be preferable to pool your assets into a single "pot" trust.

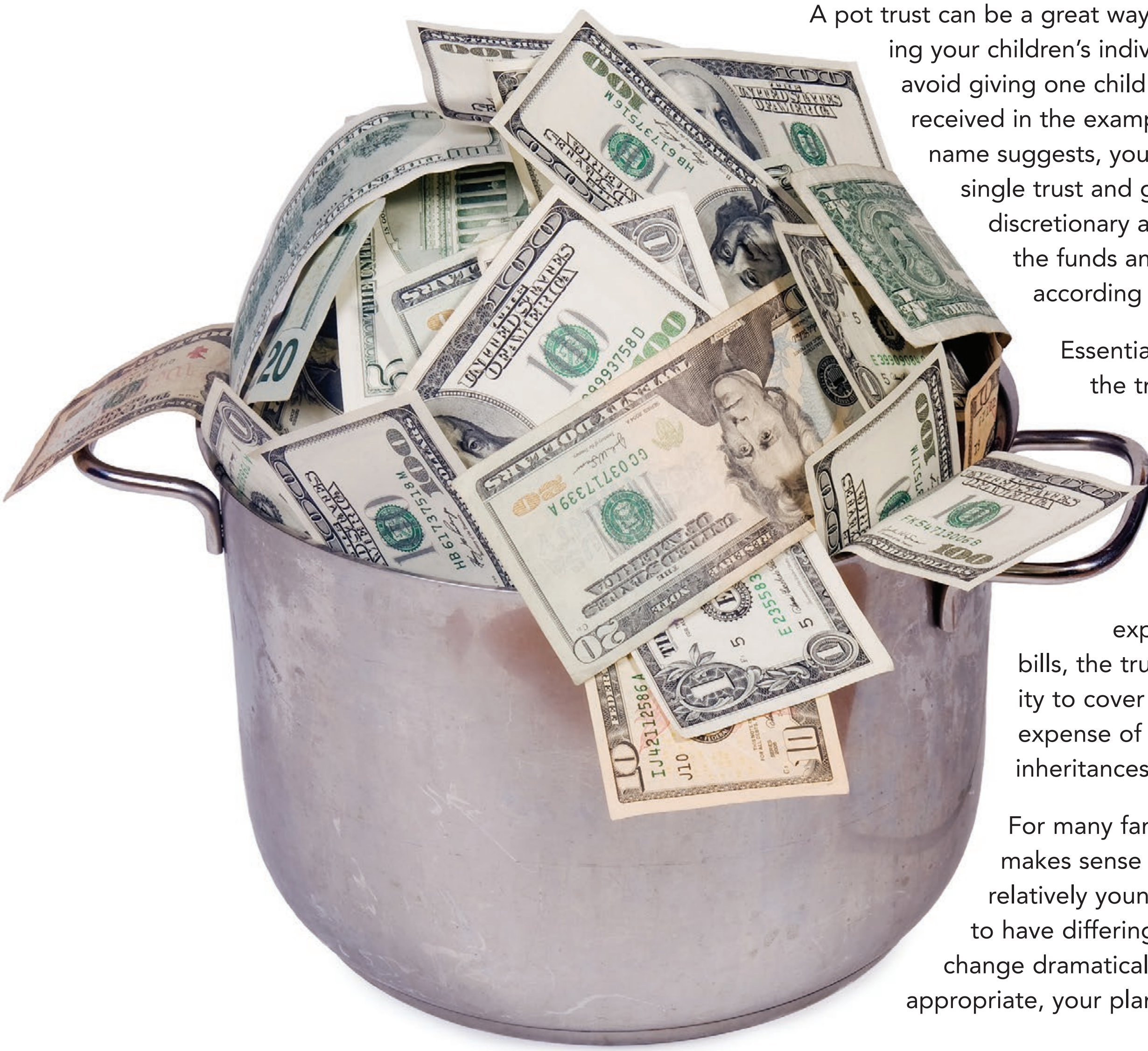
Equal isn't necessarily fair

Most parents want to avoid "playing favorites," so separate trusts appeal to their sense of fairness. But "equal" and "fair" aren't necessarily the same thing. Think about how you use your funds now. If one of your children has a specific need — whether it's college tuition, medical care or something else — it's likely that you'll pay for it without feeling any pressure to spend the same amount on your other children.

View your estate plan in the same light: Fairness means providing for your children's needs, regardless of whether you distribute your assets equally.

For example, suppose you have two children, Stella and Lucy, age 23 and 18, respectively. Stella recently graduated from college and Lucy is about to start. You've already spent more than $200,000 on Stella's tuition and other college expenses. If you were to die tomorrow, and your estate plan divides your wealth equally between Stella and Lucy, Stella will come out ahead. That's because she already received the benefit of $200,000 in college expenses. Lucy, on the other hand, will need to tap her trust fund to pay for college.

A pot trust can be a great way to continue meeting your children's individual needs and avoid giving one child a windfall.



A pot trust to the rescue

A pot trust can be a great way to continue meeting your children's individual needs and avoid giving one child a windfall, like Stella received in the example above. As the name suggests, you pool assets into a single trust and give the trustee full discretionary authority to distribute the funds among your children according to their needs.

Essentially, a pot trust allows the trustee to spend your money the way you would if you were alive. If one of your children has substantial educational expenses or medical bills, the trustee has the authority to cover them, even at the expense of your other children's inheritances.

For many families, a pot trust makes sense when children are relatively young and are likely to have differing needs that can change dramatically over time. If appropriate, your plan can call for the pot trust to be divided into separate trusts for each child at some point in the future — for example, when the youngest child reaches 21, 25 or some other milestone.

Choose your trustee carefully

For a pot trust to be effective, it's critical to choose your trustee — as well as a backup trustee — carefully. As with any type of trust, your trustee should be trustworthy and impartial and have the skills necessary to manage the trust assets. But for a pot trust, it's particularly important for the trustee to have the ability to communicate effectively with the beneficiaries.

Because distributions depend on each beneficiary's unique needs, the trustee must understand those needs, as well as your objectives for the trust, and be able to explain the reasoning behind his or her decisions to all the beneficiaries.

ESTATE PLANNING RED FLAG

You revised your will by hand

The laws regarding the execution of a valid will vary from state to state, but typically they require certain formalities. These may include signing the will in the presence of witnesses and a notary public. But what happens if, after your will and other estate planning documents are fully executed, you need to make a change? Perhaps you've welcomed a new grandchild to the family or need to change the way your assets are distributed.

To avoid the time and expense associated with formally updating your plan, it may be tempting to simply make the change by hand on your will and initial it. But this is almost always a bad idea. For one thing, handwritten changes are highly susceptible to challenge, which can result in a protracted probate court battle. So much for saving time and money.

Even worse, depending on the law in your state, handwritten changes may not be binding. Many states permit so-called "holographic wills." These handwritten wills are valid if they meet certain requirements.

Typically, the maker of the will must write the will by hand and sign and date it. Some states permit handwritten changes to a typewritten will if the changes meet all the requirements of a holographic will. That means each change must be handwritten, signed and dated. In other states, handwritten changes must satisfy the same formalities (such as witnesses and notarization) as for typewritten wills.

To ensure that your estate planning goals are carried out, discuss your needs with your estate planning advisor and avoid the temptation to make handwritten changes.

Congratulations Are in Order!

2023 Super Lawyer

Jonathan W. Michael: One Banner Year Launches Another

Our firm's founder has been named a 2023 Super Lawyer, contributed a key chapter to a major professional resource, and has been invited to lecture at a prestigious professional conference.

Super Lawyers are selected by a rigorous process that identifies outstanding attorneys nominated by their peers. Candidates are then evaluated through independent research and a team of experts, finally being selected by a separate independent panel. Just 5 percent of the nominees make the list each year.

Jonathan has co-authored a 127-page chapter entitled "Income Taxation of Trusts" for the comprehensive legal resource IICLE *Trust Administration 2023 Edition*. The chapter provides the most current guidance on all aspects of the legal management of private and charitable trusts, from creation to termination. This handbook replaces the 2019 edition.

Jonathan will co-present a seminar entitled "Planning for the Disposition of Professional Practices: The Ins and Outs of Holding and Selling Professional Practices" at the 66th Annual Estate Planning Short Course, which provides continuing legal education credits. Jonathan's seminar will be presented in May in person and then in June as a live webcast and a simulcast.

Jonathan has been practicing estate and trust law for nearly 30 years, is licensed to practice in Illinois and Florida, and is a Fellow of the American College of Trust and Estate Counsel. He received his B.A. from Miami University, his J.D. with honors from the University of Miami, and his LL.M. (Taxation) from New York University.

Welcome Ryan S. Smith: New Partner for a New Year

We're extremely pleased to launch this New Year by welcoming Ryan S. Smith as our newest partner. Ryan offers our clients more than a decade of experience in estate and trust planning and administration, especially working with individuals and families planning for future generations. He is supremely motivated to guide his clients through life's transitions and the planning necessary to navigate them, especially those with estate tax concerns, family-owned businesses, and loved ones with special needs. Ryan focuses on building relationships with his clients, ensuring he understands their values and goals—personal, professional, and financial—and then developing and improving plans to support those goals.

Ryan graduated from the Pennsylvania State University with honors in journalism and finance and the University of Pittsburgh School of Law. He is licensed to practice law in Illinois and has been admitted to practice before the U.S. District Court, Northern District of Illinois. He is a member of the Northwest Suburban Estate Planning Council, National Academy of Elder Law Attorneys, and the Chicago Bar Association.

Among his favorite personal pastimes are coaching his seven-year-old son's baseball team, exploring Chicago's many museums and restaurants, and playing the local competitive amateur golf circuit.