THE ESTATE PLANNER

July/August 2026

A refresher course
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Estate Planning Red Flag

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THE AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL

A refresher course

The rules and planning strategies for taking RMDs

If you have substantial savings in a traditional IRA or an employer-sponsored retirement plan, you likely know that you must begin taking required minimum distributions (RMDs) at a certain age. These are taxable and may push you into a higher tax bracket depending on your account balances. These withdrawals also reduce the amount of wealth that can continue growing on a tax-deferred basis, thus leaving less for your family after your death. For these reasons, it's important to consider strategies to delay or minimize RMDs.

When must you begin taking RMDs?

Generally, you must take RMDs from tax-deferred retirement accounts, such as traditional IRAs and 401(k) plans, SEP IRAs, SIMPLE IRAs, 457 plans and 403(b) plans. If you were born between 1951 and 1959, your first RMD is due by April 1 of the calendar year following the year you turn 73.

If you were born in 1960 or later, your first RMD is due by April 1 of the calendar year following the year you turn 75. Subsequent withdrawals are due by December 31 of each year. Missing a deadline or taking a smaller distribution than required can be costly. The penalty is 25% of the amount you were required to withdraw, reduced to 10% if you complete the withdrawal within two years.

Generally, to maximize the benefits of tax-deferred earnings, it's best to keep funds in your IRA or other retirement accounts as long as possible.

How do you calculate RMDs?

Start with your tax-deferred retirement account balance as of December 31 of the previous year. Divide by your IRS life expectancy factor to get your yearly RMD for each account.

For example, let's say that Gladys, age 73, is taking her first RMD. She has a balance of $800,000 in a 401(k) plan and $200,000 in an IRA at the end of the previous year. She's unmarried, so her IRS-prescribed life expectancy factor is 26.5. Her RMD for the 401(k) plan is $800,000/26.5 = $30,188.68, and her RMD for the IRA is $200,000/26.5 = $7,547.17.

Generally, RMDs must be calculated for each account and

Should you take your first RMD early?

As a general rule, it's preferable to defer required minimum distributions (RMDs), with one exception: It may be advantageous to take your first RMD early. As noted in the main article, when you reach the RMD starting age (73 or 75), you have until April 1 of the following year to take your first RMD.

For example, if you turn 73 in 2026, you'll have until April 1, 2027, to make your first withdrawal. But evaluate how that will affect your 2027 tax bill. Because your second RMD will be due by the end of the year, taking the first one in April means doubling up on RMDs in 2027, potentially pushing you into a higher tax bracket. If that's the case, you may be able to reduce the tax bite by taking your first RMD in 2026.

withdrawn separately from each account. However, if you have multiple IRAs or multiple 403(b) accounts, you can aggregate your RMDs for accounts of the same type and withdraw the total from one or any combination of those accounts.

Strategies to consider

To maximize tax-deferred growth, keep funds in your IRAs or retirement accounts as long as possible. Strategies for delaying or reducing RMDs include:

Continue working. By staying employed and participating in your current employer's retirement plan (and if you don't own more than 5% of the company), you can postpone RMDs from that plan until you stop working. This allows funds in that account to remain tax-deferred and potentially continue to grow.

Start withdrawing funds earlier. Consider beginning withdrawals once you reach age 59½ and are no longer subject to penalties. Although doing so accelerates some of your tax liability, it enables you to spread distributions over a longer period, minimizing the tax impact. Plus, it reduces your account balance, lowering your RMDs once you reach age 73 or 75.

Make a qualified charitable distribution (QCD). If you're 70½ or older and plan to donate to charity, consider doing so through a QCD. This is a direct transfer of up to $111,000 (for 2026) from a traditional IRA to a qualified charity. The charitable gift isn't deductible, but the tax benefits are better than a deduction because the amount is excluded from your income regardless of whether you itemize and isn't subject to charitable deduction limits. Plus, it applies toward your RMDs for the year without increasing your taxable income.

Do a Roth IRA conversion. It may be advantageous to convert some or all of a traditional IRA to a Roth IRA, which isn't subject to RMDs. You'll have to pay taxes on the amount converted, but you'll avoid taxes on all future withdrawals. (Note that you generally won't be assessed any penalties so long as you're 59½ or older at the time of the conversion and follow the proper conversion process. Consult with your advisor before taking action.)

To determine the effectiveness of this strategy, weigh the immediate tax impact against the potential tax savings down the road. It can be a good choice if you do the conversion in a year when you're in a lower tax bracket, for example, during the "gap years" after you retire but before you start Social Security.

Make informed decisions

RMD rules are complicated, and the tax stakes are high. Work with a knowledgeable advisor to consider strategies, minimize taxes and align decisions with your retirement and estate planning goals.

Is an e-will right for you and your family?

Electronic wills — often called "e-wills" — are an emerging alternative to traditional paper-based estate planning documents. As more aspects of daily life move online, states are gradually adapting their laws to recognize wills that are created, signed and stored in digital form. This shift raises important questions about legality, security and whether an e-will is the right choice for you and your family.

Traditional will vs. e-will

Historically, strict formalities have governed wills: they must be in writing, signed by the testator (the person making the will), and witnessed — typically in person — by at least two individuals. These requirements were designed to prevent fraud and ensure the testator's intent is clear. E-wills challenge these conventions by allowing some or all of these steps to occur digitally.

An e-will generally refers to a will that's created and maintained in an electronic record rather than on paper. Depending on state law, it may be signed electronically and witnessed remotely, often via an online conferencing platform.

E-wills and the UEWA

Because estate law is largely governed at the state level, the validity of e-wills can vary widely across the United States. Some states have enacted their own statutes authorizing e-wills, while others still require traditional paper documents. To bring more consistency to this landscape, the Uniform Law Commission introduced the Uniform Electronic Wills Act (UEWA) in 2019.

The UEWA is a model law designed to help states adopt clear and consistent rules for e-wills. While not automatically binding, it serves as a template that state legislatures can enact, in whole or with modifications. Its goal is to modernize will-making

while preserving safeguards against fraud and undue influence.

The act allows electronic signatures by both the testator and the witnesses. This can include typing a name, using a stylus or applying a secure digital signature, depending on the platform used.

One of the most notable features of the UEWA is its flexibility around witnessing. The act permits "remote witnessing," allowing witnesses to observe the signing of the will through real-time audio-visual communication, such as a video conference.

To address concerns about authenticity and coercion, the UEWA includes optional provisions that states can adopt. For example, it allows the use of a "qualified custodian" — a person or entity responsible for securely storing the electronic will and maintaining its integrity. The custodian must follow specific requirements to ensure the document isn't altered and can be reliably retrieved when needed.

The UEWA also provides a "harmless error" rule, which gives courts some flexibility to validate a will that doesn't strictly meet all formal requirements, as long as there's clear evidence of the testator's intent. This mirrors a trend in estate law toward prioritizing intent over technical compliance, though it still requires careful documentation.

Pros and cons

E-wills offer several significant advantages, including:

Convenience. People who live in rural areas or otherwise lack easy physical access to lawyers, notaries and witnesses can execute these documents in a matter of minutes rather than hours or days.

Encouragement of estate planning. Young people are accustomed to the speed and convenience of online transactions, so the availability of e-wills may encourage them to plan their estates earlier than they'd otherwise.

Security. Certain e-will platforms use tools such as identity verification and video recordings to help safeguard against fraud. The security of an e-will depends on the specific features offered by the provider and on the laws of the state.

Potential disadvantages include:

Uncertainty. Not all states recognize e-wills. If you create an e-will in a state that allows it but move to a state that doesn't, there's a risk your e-will may not be recognized.

Cybersecurity issues. As with any online document, e-wills may be vulnerable to hacking or identity theft if not adequately protected. Strong security features are essential from e-will providers.

An e-will generally refers to a will that's created and maintained in an electronic record rather than on paper.

Susceptibility to fraud and undue influence. E-wills may be more vulnerable to fraud or undue influence if not executed with professional help, strong identity verification or necessary safeguards. These risks may be heightened when the process is carried out remotely without legal oversight.

Seek professional help

For many individuals, a traditional will remains the most straightforward option. However, e-wills offer convenience and accessibility that align with modern lifestyles. The key is ensuring that any will — electronic or paper — complies with the laws of the relevant state and is executed with proper legal guidance.

Business owners: Ensure your estate plan and asset protection plan work in tandem

When it comes to assets, your business is likely your most valuable. That's why it's important for your estate plan and your asset protection plan to complement each other. Each serves a distinct purpose. When coordinated properly, they can help ensure that your wealth is preserved, liabilities are minimized, and the business can transition smoothly to family members or other successors.

Two plans at odds with each other

Your estate plan outlines how your assets will be distributed if you die or become incapacitated. Your asset protection plan shields your wealth from creditors, lawsuits, and other risks during your life. As a business owner, you face greater liability risk, so asset protection is critical.

However, challenges arise if these two plans are developed independently. An estate plan that overlooks asset protection risks could leave inherited wealth vulnerable to creditors, legal disputes or divorce. Conversely, an aggressive asset protection strategy without regard to estate planning goals may create unintended tax consequences or complicate asset transfers to heirs. Aligning both plans ensures that asset protection strategies support, rather than undermine, your legacy goals.

Ownership structure makes a difference

One key element connecting estate planning and asset protection is ownership structure. How a business is legally organized — whether as a sole proprietorship, partnership, limited liability company (LLC) or corporation — significantly influences both liability exposure and transferability.

For example, many business owners operate as LLCs or corporations to create a legal separation

between personal and business assets. This structure can help limit personal liability in the event of business debts or lawsuits. However, ownership interests in these entities must still be addressed in the estate plan. Without proper planning, those interests could pass through probate, be subject to disputes among heirs or end up in the hands of individuals unprepared to manage the business.

Integrating ownership structure into your estate plan allows you to control how and when ownership transfers occur. Tools such as revocable living trusts, family limited partnerships (FLPs) or buy-sell agreements can provide a framework for succession while maintaining asset protection benefits. For instance, placing business interests into a trust may help avoid probate. It can also ensure continuity of management while preserving the liability protections offered by the underlying entity structure.

Ownership structure also affects valuation and tax considerations. Certain entities and planning techniques may allow for valuation discounts when transferring ownership interests to heirs, reducing potential gift or estate tax exposure. However, these strategies must be carefully coordinated with asset protection goals. Improper structuring could weaken liability protections or trigger IRS scrutiny.

Another important link between estate planning and asset protection is the role of trusts. Trusts can facilitate asset transfers, maintain privacy, and protect beneficiaries from creditors or poor financial decisions. For business owners, irrevocable trusts may remove assets from the taxable estate while shielding them from claims. Properly drafted trust provisions also help ensure that business interests remain under capable management, even if beneficiaries have limited experience.

Work with your advisors

Don't treat estate planning and asset protection as separate tasks. A disconnected approach can create gaps, higher taxes and more risk. Use an integrated strategy to protect your assets throughout your life and ensure a smooth transfer after death. Work closely with advisors to create and regularly review both plans.

ESTATE PLANNING RED FLAG

Your trust fails to provide a mechanism to remove the trustee

A trustee plays a central role in the administration of a trust, serving as the legal steward of the trust's assets on behalf of beneficiaries. This responsibility carries both authority and accountability. Trustees are charged with managing investments, distributing income or principal in accordance with the trust document, maintaining accurate records, and acting in the best interests of the beneficiaries, consistent with the trust's terms.

Selecting the right trustee is critical. Even effective trustees may become unsuitable over time due to illness, relocation, conflicts of interest or lack of needed expertise. Disputes with beneficiaries can also harm administration.

For these reasons, a well-drafted trust should include clear provisions for the removal and replacement of a trustee. This isn't a sign of mistrust; rather, it's a practical safeguard that protects the trust's long-term success. Without a removal mechanism, beneficiaries may be forced to pursue costly and time-consuming legal action to address problems — often requiring court intervention and substantial proof of misconduct or incapacity.

Including removal provisions offers flexibility and efficiency and can reduce the likelihood of court involvement. These clauses should outline specific triggers for removal, such as failure to perform duties, breach of fiduciary responsibility or prolonged incapacity. They may also allow for removal without cause, provided certain conditions are met, as defined in the trust, such as beneficiary consent or approval by a designated trust protector. This added layer of oversight helps ensure that the trustee remains aligned with the trust's objectives.

Additionally, removal provisions can help preserve family harmony. Trust disputes can quickly become personal and contentious, particularly when a trustee is also a family member. A predefined, objective process reduces ambiguity and emotional escalation, offering a structured way to resolve concerns.

Talking about Estate Planning with Your Parents

When it comes to estate planning, conversations with your parents about their future can be uncomfortable. They don't have to be.

Photo Credit: iStock

What do you need to consider when talking with your parents about their estate planning?

Lead with their interests in mind. Ask your parents: What are your plans when you have the time and resources to step away from your careers and other responsibilities? Travel? What about hobbies or other passions, maybe even starting another career? Of course, you might already know what those are, but not necessarily. There might be others they haven't expressed. Be sincere. Be sure they know that your interest really is in their well-being and satisfaction as they get older. You want them to know you're sincerely interested about how they plan to make the most of that stage of their lives, including securing their legacy.

Don't be in too much of a hurry. Allow time. It's unlikely that this topic will be covered in one conversation. Depending on your age and the ages of your parents, getting started sooner rather than later is the best course. Some of the discussions can be informal when you see your parents at family gatherings. Those conversations might lead more organized "sit downs" with a family attorney or other professional. They could be ongoing for some time. Are they worth your time and that of your parents? Absolutely. Ideally, you and your parents will all become more secure in how the future can unfold, learning more about each other and becoming closer than ever. You'll also gain insight into how to think about your legacy.

Include your siblings, if you have any. It's critical that everyone who will be directly involved in any inheritance have the opportunity to be heard. At some point, everyone might participate in the discussions together, including spouses and partners. Group phone calls or Zoom sessions can summarize other discussions, clarify possible outcomes, and answer questions. Those talks also allow individuals to clarify their interests. Maybe your sister doesn't want a specific property or piece of artwork, even if she was enthusiastic about them in the past. It wouldn't be surprising if your parents have hung onto that thought as something special to her, even worrying about how their other children or relatives might react. Or maybe two siblings want the same thing. Use this process to identify and work out any such issues.

Be prepared. Talk to your friends and your own financial and family advisors. Research key issues and identify unique aspects of your family's particular goals, needs, and concerns. Don't wing it. Write down your questions, concerns, things you don't understand, or financial topics that people might understand *in general* but not down to the nitty gritty of specific situations. For example, what are the various powers of attorney and how are they used? What are advance directives and when are they most important? What role do taxes play? And, if your parents bring up their estate planning before you do, you'll be ready to talk about the topic in a productive way. If your parents resist, try to find out why, back off for a time with compassion and understanding, but don't give up. Your interest might well spark or intensify theirs so that they begin thinking about retirement more seriously, even if they haven't done so before.

We can help you prepare for talking with your parents about their estate planning, including tax challenges and opportunities. It's important to identify and understand the issues in general and specific to your situation.

Sometimes seen as "difficult" or even distasteful, conversations about estate planning and taxes are important to have and can benefit everyone. Clearly, the advantages of advance discussions without the urgency a health emergency might bring are obvious. But they can also open up new possibilities about continuing to build the lives of everyone in the family. Compassion, honesty, knowledge, and plenty of time are keys.

Your parents have always had your best interests at heart. Return the favor!

Remember that we're here to help and that we know how to help. Working with families, family offices, and successive generations is a special part of our practice and expertise. Please get in touch for more information or just to talk about specific challenges and opportunities your family might be facing. Please call 312-900-0150 to speak directly with one of our attorneys.

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