



## **TRUST PLANNING UNDER THE “SECURE” ACT**

### *It's Time to Review Your Estate Plan*

The Setting Every Community Up for Retirement Enhancement (“SECURE”) Act significantly changed the way retirement benefits are treated after the death of the account owner. For those who have estate plans including qualified retirement accounts, such as IRAs or 401(k)s (referred to herein as “Accounts”), the SECURE Act effectively eliminated the “stretch” for non-spouse beneficiaries, with some exceptions. Owners of Accounts should carefully review their estate plans to ensure beneficiary designations remain coordinated with the Account owner’s overall estate plan, considering the changes introduced by the SECURE Act. Prior law will still apply to any Accounts where the owner died prior to January 1, 2020.

### **Prior Treatment of Qualified Retirement Accounts**

- A beneficiary of an Account could take distributions based on that beneficiary’s life expectancy. This allows a beneficiary to “stretch” the Account via tax-deferred growth over time, minimizing the tax impact of the distributions.
- Trusts containing properly drafted “see through” or “conduit” provisions allowed an Account owner to name a trust as a beneficiary and still allow the beneficiaries to enjoy stretch treatment over their individual life expectancies.
- The ability to name a trust as beneficiary and stretch the tax deferral for each beneficiary was an important estate planning tool to balance asset protection and income tax planning.

### **Overview of Relevant SECURE Act Changes**

- The SECURE Act eliminated the ability for most non-spouse beneficiaries to stretch the tax deferred status of Accounts over that beneficiary’s life expectancy.
- There are exceptions for disabled or chronically ill beneficiaries, minor children of the Account owner, and individuals who are not more than 10 years younger than the Account owner.
- For any beneficiaries to which the new rules under the SECURE Act apply, the entire Account balance must be drawn down by the end of the 10<sup>th</sup> year after the Account owner’s death.

### **Planning Considerations**

- Evaluation of trust provisions are necessary to determine how distributions from Accounts are to be made, and, if possible, what changes need to be made to comply with the SECURE Act.
- Some trusts only allow the required minimum distributions to be disbursed and fail to give the trustees discretion to withdraw additional assets. Such limitations may have adverse impacts under the new 10-year rule, as there are no required distributions until the end of the 10-year period. Thus, there would be no opportunity to disburse or withdraw assets during a year or years when the beneficiary may have a favorable tax situation.
- Account owners who are charitably inclined may wish to fund their charitable gifts from such Accounts, as the tax deduction for these gifts can allow the Account owner to transfer more wealth to their heirs from other sources.
- Account owners may also consider funding a Charitable Remainder Trust (“CRT”) with such Accounts to stretch out the distributions to the beneficiary of the CRT over that beneficiary’s lifetime according to the terms of the CRT.
- Converting to a Roth IRA can significantly reduce future tax bills for beneficiaries and provide for tax free growth and withdrawal. Account owners may wish to spread the conversion out over several years to take advantage of tax losses or deductions, thus reducing the overall tax liability.