Estate Planning for Modern Times

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- **The SECURE Act**: Changes to Retirement Planning and Distribution
- **Your Facebook Afterlife**: Planning for Digital Assets

RETIREMENT PLAN CONTRIBUTION & DISTRIBUTION RULES*

- **<u>OLD RULES (prior to Jan. 1, 2020)</u>**

  - <u>TRADITIONAL IRA</u> (Individual Retirement Account) – provides tax advantage for setting aside money for retirement
    - Withdrawals / distributions are taxable
      - Required Minimum Distributions (RMDs) required at 70 ½
  - <u>ROTH IRA</u>
    - Contributions are not tax-deductible
    - Withdrawals / distributions are tax-free
      - No RMDs required

*Rules are for original account owner/contributor

RETIREMENT PLANS – Inherited

- **<u>OLD RULES (prior to Jan. 1, 2020)</u>**
  - What if you inherit an IRA?
    - **Distribution rules depend on whether the beneficiary is:**
      - Surviving spouse
        - **Rollover Option**
        - **Inherited Option**
        - **Full Withdrawal**
      - An individual other than a spouse
        - **No rollover option**
        - **Must begin RMDs**
        - **Full Withdrawal**
      - Not an individual (Trust, Estate, Charity)
  - "Stretch out"

The SECURE Act – Changes to Retirement Planning and Distribution

- **<u>NEW RULES (after Jan. 1, 2020)</u>**
- Setting Every Community Up for Retirement Act (SECURE)

- What has changed?
  - RMDs required at 72 for Traditional IRAs
  - Elimination of "stretch" IRA for non-spousal beneficiaries
  - Inherited IRA accounts would have to be fully distributed to non-spousal beneficiaries **within 10 years of IRA owner's death**
    - Elimination of stretch IRAs is predicted to raise $15.75 billion in federal revenues from 2020 through 2029 (Joint Committee on Taxation, "Estimated Budget Effects of the Further Consolidated Appropriations Act, 2020").

The Secure Act – 10 Year Distribution Rule

- Exceptions to 10 Year Distribution Requirement
  - Surviving spouse
  - A minor child (10-year rule applies once the minor reaches the age of majority)
  - A disabled individual
    - An individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration
    - Similar to the definition used by the Social Security Administration to determine whether or not a person is disabled for the purpose of receiving a disability benefit under social security rules (SSI or SSDI).
  - A chronically ill individual
    - Definition TBD – probably requires certification of a physician, a registered professional nurse, a social worker or some other person who may be defined in regulations
  - An individual who is not more than 10 years younger than the deceased participant or IRA owner

The Future – Secure Act 2.0 ?

- **Securing a Strong Retirement Act of 2021**
  - Nicknamed the SECURE Act 2.0
  - Aims to encourage Americans to save more for retirement
  - Strong indications the bill will pass either this year or in 2022
    - Extensive bipartisan support
    - Original SECURE Act passed with almost unanimous vote

The Future – **Securing a Strong Retirement Act of 2021**

- What could change if this law passes?
  - Most changes pertain to individuals currently saving for retirement
  - Increase in age at which RMDs must **begin**, to age 75
    - **1/1/2022 – Age 73**
    - **1/1/2029 – Age 74**
    - **1/1/2032 – Age 75**
  - Increase to "catch-up" contribution rules
    - Currently, workers who are at least 50 years old can make catch-up contributions to their retirement accounts.
      - 2021 - older workers can contribute an extra **$6,500** to 401(k)s & 403(b)s (above the $19,500 annual contribution limit) and extra **$3,000** to SIMPLE IRAs.
    - Proposal: Workers ages 62-64 would be able to contribute an extra **$10,000** to 401(k)s & 403(b)s, and extra **$5,000** to SIMPLE IRAs

Retirement Accounts & Estate Planning

- Changes to rules mean that this is a much more complex feature of estate, tax and financial planning
  - Estate Planning Attorney
    - Review / update beneficiary designations
    - Review / update Trust terms
  - Financial Advisor & Accountant
    - Review portfolio
    - How to minimize future income tax impacts on beneficiaries?
      - Roth Conversions
      - Charitable Intent

Conclusion

- You have spent your entire life building wealth in your retirement plan
- Proper planning is essential to ensure that this valuable assets is passed to **whom** you want, **how** you want, **when** you want, with minimized tax impact if possible

YOUR FACEBOOK AFTERLIFE: Planning for Digital Assets

- Traditional
  - Physical possessions
  - Paper records

- Modern - and Future
  - Digital "Possessions" / Accounts
  - Licenses
  - Electronic Records

Comprehensive Estate Planning

- Any comprehensive estate plan must plan for:
  - Physical, tangible assets*
    - Real estate
    - Personal property
    - *__Most__ people who have completed estate planning have a plan for these assets
  - Intangible Assets
    - Financial
    - Digital / Electronic**
    - ****FEW** people who have completed estate planning have a plan for this, or have kept it up to date

“Digital” Inheritance

- “In just the two-year period from 2012 to 2014, humans produced more data than in all of human civilization before that – and the pace is only accelerating.”*
- The need for proper planning for disposition of digital assets can no longer be ignored.
- Who should inherit, and how, and when? Without proper planning, these assets can be mismanaged, or disappear entirely.

*The Conversation: Estate Planning for Your Digital Assets, February 7, 2018. http://theconversation.com/estate-planning-for-your-digital-assets-90613

What Steps Should You Take to Plan for Digital Assets?

- Create a PRIVATE list of accounts for your Executor / Trustee or use Password Management Software
  - Give directions for specific accounts – ie., to delete, to access, applicable points / rewards
- DO NOT list usernames or passwords in a Will – a Will becomes a public record after death.
- Check with the companies whose online services you use to see if they provide their own method to transfer assets at death.
  - For example, Google allows users to choose what should happen to their account if they don't access it for several months.
  - Carefully review rules related to credit card rewards / airline mileage etc. and provide direction to your Executor / Trustee

Examples

Program	Policy
American Express Membership Rewards	Points may be reinstated to a new basic account or redeemed by the estate of the deceased account holder, but are **forfeited if the card is canceled**.
Chase Ultimate Rewards	Upon notification of account holder's death, Chase automatically redeems rewards for cash in the form of a **statement credit**.
American AAdvantage	Miles are not transferable through legal instruments, but: *"American Airlines, in its sole discretion, may credit accrued mileage to persons specifically identified in court approved divorce decrees and wills upon receipt of documentation satisfactory to American Airlines and upon payment of any applicable fees."*

- Source: https://www.fool.com/the-ascent/credit-cards/articles/what-happens-to-your-points-and-miles-when-you-die/

Digital Assets & Estate Planning

- On a regular basis, review your existing estate planning documents with an experienced estate planning attorney
- This comprehensive review should include review of asset titles, beneficiary designations, and plan for digital assets
- Keep lists of usernames / passwords current
- Ensure that an Executor / Trustee has access to essential records

Questions?

Disclaimer: *This presentation does not create an attorney-client relationship, nor is it intended to be construed as personal advice applicable to your situation. Personalized advice is given only within the context of an official attorney-client engagement.*

Please consult an estate planning attorney prior to acting on any information that may have been provided in this educational seminar.