

2020

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Office hours M-TH 9:00 am to 5:00 pm. **We are closed noon to one, except by appointment only.**

Down Payments or Deposits

Many of our clients who have moved into an assisted living facility put down a deposit or “move-in fee” with the facility. The amount varies per institution and per situation. In some cases, it can be a large amount as it tends to reduce your monthly rent or expenses at the facility. Many of these deposits or down payments are partially refundable, depending on the number of years you live at their facility. The problem that we have encountered is that the refund is paid out at your death and in most cases it is paid to your “estate” not your heirs or your trust. If you are currently living in a care facility and have paid such a down payment, you need to immediately contact the administrative person and request that at your death the funds be paid to your trust and if you do not have a trust, then to specific beneficiaries... not to your estate. Depending on the amount, if the funds are earmarked payable to the “estate,” a probate estate may have to be opened just to cash the check.

Durable Powers of Attorney....How Old is Yours?

We have recently run into a situation where a bank would not accept a client’s Durable Power of Attorney because they said it was TOO OLD! The bank said they could not accept a Durable Power of Attorney that was more than five years old! Although we have not encountered this issue with every financial institution, we anticipate that it will potentially become the norm. All financial institutions (banks, credit unions, investment companies) are becoming more and more gun shy of accepting legal documents that they consider old or outdated. Many of them claim that because the documents are so old they are not sure if the document still represents the client’s wishes. Here is the dilemma: Many of our clients signed Durable Powers of Attorney that are well beyond five years old, and they have never been updated. The lack of updating could be for a variety of reasons: 1) the client is okay with the “agents” named and sees no reason to change it; 2) the client has completely forgotten to revisit their estate planning documents; 3) the client has not had a need for its use; or 4) the client is no longer competent and cannot amend it due to lack of capacity.

In an effort to assist our clients, I have attached to this email a simple statement that can be printed off, signed, and dated. It merely reconfirms the validity of your Durable Power of Attorney and provides a new date. I cannot guarantee that this “renewal” will be sufficient for all financial institutions, but I have run it by a few local banks and they agree that it is an acceptable update for Durable Powers of Attorney that were signed over five years ago or more. Once the “renewal” form is signed, attach it to the original Durable Power of Attorney and provide a copy to each of your named agents.

If you review your Durable Power of Attorney and determine that the order of the agents or the agents named are no longer right for the job, this form is not sufficient to modify the document. You will need to make an appointment with my office to come in and update the document. You may also want to think about presenting your current Power of Attorney to your financial institution now to make sure they are comfortable with the document.

SECURE: Setting Every Community Up for Retirement Enhancement

On December 22, 2019, President Trump signed into law the SECURE Act, which stands for “Setting Every Community Up for Retirement Enhancement.” The changes are significant and they affect your IRAs and tax qualified retirement plans (for purposes of this article, I will refer to IRAs and not all the different tax-deferred investments). It is not only important that you review the changes identified in this newsletter but that you also consult with your financial advisor and/or your CPA regarding the new laws. In fact, as a result of these changes many of you may have to consider modifications to your living trust.

Here are some of the changes:

1. The required minimum distribution date has changed from 70 ½ to 72;
2. The SECURE Act eliminates the stretch provision for IRAs that are inherited by most non-spouse beneficiaries. Under the prior rules, if a non-spouse (parents, child, grandchildren, friend, or sibling) inherited your IRA, that beneficiary could take distributions of your IRA over their life expectancy. For example, a 25-year-old grandchild who inherits your IRA would be allowed to stretch the distributions over 58.2 years. That is no longer the case. Under the new laws, the inherited IRA must be withdrawn by December 31 of the year that contains the 10th anniversary of your date of death.
3. There are truly no required minimum distributions for these beneficiaries (who do not meet the below exceptions). The IRA has to be drawn out entirely within that 10-year time frame.
4. Exceptions to the 10-year rule and use of the life-expectancy table applies to:
 - A. Your surviving spouse;
 - B. A disabled beneficiary;*
 - C. A chronically ill individual;* *
 - D. A minor child (only until that child attains the age of 18 and then the 10-year rule kicks in); or
 - E. A beneficiary that is not more than 10 years younger than the IRA owner.

*As defined by the Tax code and other regulations, the condition must be certified as of the date of the death of the account owner, and the disabled beneficiary must not be able to engage in substantial gainful employment for an indefinite period of time as certified by a physician.

**A “chronically ill” beneficiary is someone who would qualify to receive benefits under a long-term care insurance contract because he or she needs supervision to perform at least two of the six activities of daily living (ADLs) as defined in the tax code, or the beneficiary may also qualify if he or she suffers from severe cognitive problems and requires supervision for his or her safety. We are awaiting more information on these exceptions.

Your trust can still be designated as the beneficiary of your IRA, but for those of you who have provisions within your trust that allow the trustee to distribute required minimum distributions over a child’s or grandchild’s life expectancy, there is truly no longer a required minimum distribution table for these beneficiaries. If your beneficiary is 18 or older, the trustee will be required to withdraw the assets from the entire IRA within those 10 years. Here’s the thing, the Trustee can determine the best plan of withdrawal (all in year one, 1/10th a year for the next ten years, etc.) and the Trustee can continue to hold the withdrawn funds that have now been taxed in a “restricted trust account” or with restrictions on distribution. However the use of the language regarding distributions of RMD will be null and void if it is used as a way to measure out distributions to a beneficiary.

Special needs trusts can protect retirement benefits under the former life expectancy table, so long as the only beneficiary of the special needs trust is only the individual who can receive benefits of the retirement account payable to the special needs trust during his or her lifetime.

As you can see, these are major changes. The benefit of inherited IRAs are long gone, and the IRS wants their money once you die. For those of you who have put off taking distributions, or have taken the bare minimum, you may want to revisit your distribution schedule with your advisor or CPA.

It is hard to believe that 2020 marks the beginning of my 30th year of practicing law in Kalamazoo and Southwest Michigan. Once again, thank you for your business and for all of the referrals you send to my office. I look forward to serving you for many years to come! As always, don’t forget to keep listening to my radio shows on Tuesday mornings at 7:50 a.m. on AM 590 WKZO or Thursday evenings at 5:20 p.m. on the True Oldies Cool 101.

POWER OF ATTORNEY RECONFIRMATION PARAGRAPH TO BE ATTACHED TO EXISTING POA.

*** (Use this provision to renew this Durable Power of Attorney if no other changes are required and the date of your power of attorney is over five years old.)*

I, _____, reconfirm the validity of this Durable Power of Attorney on
_____.

Sign your name above