

SECURE ACT — Notable Changes to Retirement Plan Benefits

On December 20, 2019, the president signed into law the Secure Act. The Secure Act, among other things, changes certain rules regarding retirement plans. These changes may have an impact on your estate plan, which could require further action.

But first, here is a brief review of the prior law (which is still applicable to retirement accounts of individuals who died on or prior to December 31, 2019)

When Distributions Must Start (the “Required Beginning Date”). Prior law required an account holder to start taking distributions from his or her retirement account by April 1 of the calendar year after the year in which the account holder attained age 70 ½.

Required Distributions From Retirement Account. Upon the death of the account holder, the balance of his or her retirement account had to be distributed in the following manner:

- a. Over the life expectancy of the “designated beneficiary” (i.e., an individual or a “qualified trust”); or
- b. If the retirement account was not left to a designated beneficiary (i.e., the individual’s estate, a charity, or a trust that is not a qualified trust) the retirement account had to be withdrawn:
 - i. if the account holder died before the Required Beginning Date, within five years of death or,
 - ii. if the account holder died after the Required Beginning Date, over the life expectancy of the original account holder as if he or she had not passed away.

Notwithstanding the foregoing, the surviving spouse had the ability to “roll over” the retirement account to his or her own retirement account.

The Secure Act changes these rules for individuals dying after December 31, 2019, in the following manner

The Required Beginning Date. Now, an account holder is not required to take distributions from his or her retirement account until April 1 of the calendar year following the year in which the account holder attained age 72.

Required Distributions From Retirement Account. Upon an account holder’s death, the balance of the account must be distributed in the following manner:

- a. If the retirement account was left to a spouse, he or she still has the ability to “roll over” the retirement account to his or her own retirement account. This is unchanged.
- b. If the retirement account was **not** left to a designated beneficiary the only change is that the Required Beginning Date was delayed to age 72. All of the other provisions described above remain the same.
- c. The most significant change concerns retirement benefits that have been left to a “designated beneficiary.” Now any such benefits must be withdrawn within 10 years after December 31 of the year the account holder dies (the “10-year rule”), unless one of the following exceptions applies:
 - i. A surviving spouse who does not “roll over” the account (or a trust that qualifies for the marital deduction) may still use his or her life expectancy to determine the payout of the retirement benefits. The 10-year rule will begin upon the surviving spouse’s death.
 - ii. Minor children of the account holder (but not grandchildren), or a trust where a minor child is the sole beneficiary, may receive distributions based on the life expectancy of



Daniel R. Levine

Member

dlevine@cozen.com
Phone: (215) 864-8047
Fax: (215) 372-2385



Michael A. Corgan

Member

mcorgan@cozen.com
Phone: (215) 665-6930
Fax: (215) 665-2013

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- the minor child. The 10-year rule will begin upon the child attaining the age of majority.
- iii. A disabled beneficiary (as defined in the Internal Revenue Code), or trusts for one or more disabled beneficiaries, may receive distributions based on a disabled beneficiary's life expectancy. The 10-year rule will begin upon the death of the disabled beneficiary.
 - iv. A beneficiary who is less than 10 years younger than the original account holder, or a trust where such an individual is the sole beneficiary, may receive distributions based on his or her life expectancy. The 10-year rule will begin upon the death of the beneficiary.

This alert only provides a brief overview of the Secure Act. It is important to review your estate plan to determine how the Secure Act impacts your plan and to discuss any planning opportunities.
