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What is the SECURE Act?

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The SECURE Act ("Act") was included in a spending bill approved by the Senate on December 19, 2019, and signed into law by the President on the next day. Standing for "Setting Every Community Up for Retirement Enhancement," here are a few things to understand about the Act:

The Act aims to address a pressing issue, which is the lack of sufficient retirement savings among a significant number of Americans. With the decline of traditional pensions, most Americans are now responsible for saving for their own retirement. The Act seeks to redress this problem by incentivizing employers who offer retirement plans to their employees through tax credits and allowing people still working in their 70s to continue contributing to their retirement plan(s). Likewise, distributions from those plans do not have to be taken now until age 72 (rather than age 70.5) allowing retirement savings to be tax-deferred for an additional 1-2 years lasting longer in retirement.

In an effort to generate tax revenue and offset the cost of the Act, the current rule that allows non-spouse retirement plan beneficiaries to "stretch" required minimum distributions (RMDs) from an inherited account over their own lifetime has been eliminated. This tax generating provision of the Act will accelerate the depletion of inherited retirement plans. Now, all funds from an inherited retirement plan must be distributed to non-spouse beneficiaries within 10 years of the original account owner's death. A few exceptions do exist, including distributions to a beneficiary who is a spouse, minor, disabled or chronically ill person, and those who are less than 10 years younger than the original account owner.

If your estate plan provides for outright distributions to individual non-spouse beneficiaries, those assets will still avoid probate, but your beneficiaries will be required to take distributions from the account within a 10-year period, paying the taxes as distributions are made and ending the account's tax-deferred status after 10 years. For most families, this is sufficient planning.

However, if you are worried about protecting the assets from your beneficiary's creditors, marital influence/divorce, poor money management, or public disability benefits, then you may have reason to refrain from naming the beneficiary directly and instead establish a protective trust that will benefit him/her after your death. Retirement Account Trusts and/or a Supplemental Needs Trusts still offer solutions that can afford both the protection for the beneficiary and ensure that the tax-deferred status is maintained for at least 10 years (or longer in some cases when the beneficiary is disabled or chronically ill).

If you own tax-deferred retirement plans, such as IRAs or 401(k)s, that hold a significant amount of assets, the new law may impact you and your beneficiaries. Consulting with your attorney, financial advisor, and tax-preparer is paramount to ensuring that you have considered all possible planning strategies available to you.