



# ESTATE PLANNING FOR RETIREMENT ASSETS

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**Estate planning is increasingly focused  
on the special challenges of passing  
qualified retirement assets at death.**

**Why?**



- **In 2019, retirement assets (RA) constituted 33% of all U.S. financial assets.**
- **\$29 Trillion in U.S. RA in 2019 as compared to \$400 Billion in 1975.**
- **Massive shift in the last 30 years away from traditional pension plans (defined benefit plans) and towards defined contribution plans.**

# Types of Qualified Retirement Plans



- **401k**
- **Traditional IRA**
- **403(b)**
- **457**
- **SEP IRA**
- **Simple IRA**
- **Keogh Plans**

**Each of the above are encumbered by three  
little letters....**

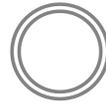


# **IRD:**

## **INCOME IN RESPECT OF DECEDENT**

*Amounts to which the decedent was entitled as gross income.  
The purpose behind IRD is to eliminate the consequences of  
death on income tax laws.*

# Example from the Not So Distant Past



## Typical Client in 1990

- **Age 60**
- **Assets:**
  - **Home: \$200,000**
  - **Non-qualified brokerage: \$300,000**
  - **CDs and Bonds: \$100,000**
  - **Cash: \$75,000**
  - **Life Insurance: \$250,000**
  - **401k - \$75,000.00**

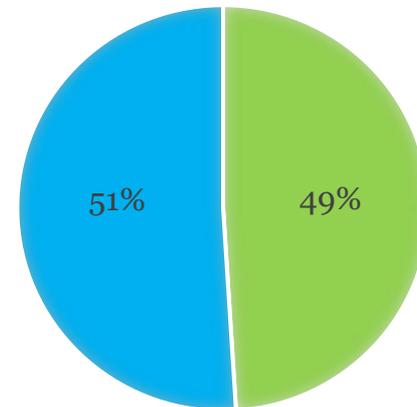




## Typical Client in 2020

- **Age 60**
- **Assets:**
  - **Home: \$350,000**
  - **Cash: \$40,000**
  - **Life Insurance: \$100,000**
  - **Roth IRA \$60,000**
  - **401k - \$250,000**
  - **Traditional IRA \$200,000**

■ Non Qualified ■ Qualified RA

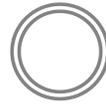


# The Basics



- **RA pass at death by beneficiary designation. Beneficiary designations trump dispositive provisions in a will or trust, so a client's coordination of RA with the rest of their estate plan is crucial.**
- **If no beneficiary is named or the named beneficiaries fail, each RA provider provides default rules as to whom the beneficiary will be (i.e. children of the failed beneficiaries, non-failing beneficiaries, or the estate of the owner).**

# Who's the Beneficiary



**For married couples, the Spouse will be the primary beneficiary in 99% of cases.**

**Spouses may elect a spousal rollover which creates a new IRA owned by Spouse with Required Minimum Distribution based on Spouse's age.**

**This provides the Spouse with an easy way to receive the benefit of these RA without incurring tax prior to Spouse's required minimum distribution starting age (now 72 under the SECURE ACT).**

# Who's the Beneficiary



**It gets more interesting for contingent beneficiaries (or primary if there is no Spouse).**

**Let's say client wishes to name Spouse as primary beneficiary, but if Spouse predeceases the client, the contingent beneficiaries are his two children. Both children are spendthrifts and as a result, under the client's revocable trust, he provides that assets passing to the children will be held in lifetime support trusts for their benefit.**

**In our 1990 example, planners were more likely to suggest that the children be named as outright beneficiaries of the RA due to its relatively small size in relation to overall estate size.**

**In 2020, not so much...Why wouldn't a client want the same dead hand control over his or her RA which now constitute a very large percentage of the client's overall estate?**

# How does the SECURE Act Factor In?



**In 2020, leaving RA proceeds to trust as contingent beneficiary rather than to children directly is the typical play when the client's estate plan creates an ongoing trust for one or more beneficiaries (i.e. spendthrifts, minor children, etc.)**

**Prior to SECURE Act, the Trust could be structured to allow the same inherited IRA stretch that an individual would have. No more! Trusts now must comply with the 10-year rule.**

**What to do if your estate plan creates for a trust for a beneficiary for a period of time more than 10 years? Trust doesn't have to pay out the distributions from the IRA to the beneficiary, but to the extent it doesn't, Trust will incur massive tax of 37% on the distribution from the IRA.**

# How does the SECURE Act factor in?



- **SECURE Act did away with the inherited IRA lifetime stretch (except for some very narrow groups called “eligible designated beneficiaries”).**
- **Non-spouse “designated beneficiaries” (i.e. people) now have 10 years to withdraw and incur the tax. No annual required minimum distributions apply. Designated beneficiary can take it all out at the last hour of the 10<sup>th</sup> year or over any schedule they deem best.**
- **However, failure to drain the RA in full by the end of the 10<sup>th</sup> year will result in a 50% penalty for the missed Required Minimum Distribution. At the end of the 10<sup>th</sup> year, the missed RMD is 100% of the value of the RA. Ouch!**

# More on SECURE



**If a non-spouse beneficiary is not a “designated beneficiary” (for example, an estate) 10-year rule doesn’t apply and 5-year rule applies instead.**

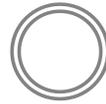
**Purpose of SECURE Act is to accelerate \$15.79 Billion in revenue for the IRS over the next 10 years to pay for the increase in the age of 72 as a required starting date for mandatory withdrawals for the original RA owner.**

# Charitable Giving Opportunities



- **Charitable Rollover remains in place with SECURE Act.**
- **Leaving Assets to a Charitable Remainder Trust can allow you to “stretch” distributions to beneficiaries for 20 years. But client must have desire to make significant charitable gift at the end of the 20-year period.**

# Benefits of a Corporate Fiduciary In the Age of SECURE



- **SECURE Act will greatly increase Trustee's exposure to liability for properly handling tax issues related to RAs. The layperson Trustee may be overmatched.**
- **Professional Asset Management**
- **Held to a higher standard than a layperson fiduciary**
- **Longevity**
- **Greater efficiency/expertise leads to reduced attorney and CPA expense**
- **Relieves burden that would otherwise be on children during an already difficult time**



**Thank You!**

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