

# THE ESTATE PLANNER

May/June  
2020



## THE SECURE ACT

What it means for  
your retirement  
and estate plans

Sidestep the  
probate process  
to avoid the  
public eye

Estate planning  
in the FAST lane

Estate Planning Red Flag  
Your powers of  
attorney are stale

# SHUMAKER<sup>®</sup>

Shumaker, Loop & Kendrick, LLP

# The SECURE Act

## *What it means for your retirement and estate plans*

The Setting Every Community Up for Retirement Enhancement (SECURE) Act is one of the most significant pieces of retirement plan legislation in years. In addition to affecting your retirement planning strategies, the new law may also impact your estate plan, especially if your beneficiaries will inherit IRAs or employer-provided retirement accounts.

### Summary of key changes

Most of the SECURE Act's reforms are designed to make it easier for people to save for retirement and to improve the accessibility of tax-advantaged retirement savings vehicles, such as 401(k) plans and IRAs.

Here's a brief look at the most important changes for individuals:

**RMDs delayed.** Required minimum distributions (RMDs) from traditional IRAs and defined contribution qualified plans — such as 401(k) plans — now must begin by April 1 of the year after the participant reaches age 72 (up from age 70½).

This change applies only to people who turn 70½ on January 1, 2020, or later. If you reached that age earlier, you must continue to take RMDs under the old rules. If you'll turn 70½ this year and had planned to take an RMD for this year, talk to your advisor about adjusting your withdrawal schedule.

**No age limits on IRA contributions.** Previously, traditional IRA contributions were prohibited beyond age 70½. Recognizing that people are more likely to work beyond the customary retirement age, the new law eliminates this restriction for tax years

beginning after 2019. Now, so long as you otherwise meet the requirements, you can continue to contribute to your traditional IRA, regardless of your age. Depending on your retirement readiness, you may want to revisit your timeline and savings strategies considering this change.

**401(k) plans for part-time employees.** Previously, part-time employees who worked less than 1,000 hours per year generally were ineligible to participate in their employers' 401(k) plans. Now, except for certain collectively bargained plans, employers with 401(k) plans must allow certain long-term, part-time employees to participate. Eligible part-time employees are those who are at least age 21 and worked 500 hours or more in each of the previous three years. If you work part-time, find out whether you're eligible to enroll in your employer's 401(k) plan.

**No more stretch IRAs.** Not all of the SECURE Act's changes are good news. Previously, individuals who inherited IRAs or 401(k) accounts (rolled into an inherited IRA) from someone other than



## Benefits for small business owners

The Setting Every Community Up for Retirement Enhancement (SECURE) Act contains several provisions that may reduce the cost of sponsoring a qualified plan, making it easier for small business owners to provide retirement benefits for themselves and their employees. Key provisions include:

- Creation of pooled employer plans, starting next year, which enable unrelated employers to join multiple employer plans (MEPs) sponsored by financial institutions and other providers, taking advantage of economies of scale; the act also eliminates the “one bad apple” rule, which disqualified an MEP if one employer failed to qualify,
- An increase in the maximum tax credit for certain retirement plan start-up expenses, from \$500 to \$5,000 per year, for up to three years, and
- A \$500 credit per year, for up to three years, for employers that add automatic enrollment to their 401(k) or SIMPLE IRA plans.

their spouse (a parent or grandparent, for example) could “stretch” RMDs over their own life expectancies, maximizing the benefits of tax-deferred growth. Under the new law, those distributions must now be completed within 10 years. There are a few exceptions: For minor children who inherit IRAs or 401(k)s, the 10-year payout period doesn’t begin until they reach the age of majority. And stretch IRAs are still available to beneficiaries who are disabled or chronically ill, or who are less than 10 years younger than you. As before, spouses who inherit an IRA or 401(k) plan can elect to roll the funds over into their own IRAs and allow the funds to continue growing tax-deferred until they choose to begin withdrawing the funds in retirement or must take RMDs.

### Impact on estate planning

If you have an IRA or 401(k) account that you had planned to leave to nonspousal beneficiaries based on the previous rules, revisit your retirement and estate planning strategies with consideration of the new rules. Without the tax-deferring power of

a stretch IRA, you may want to look at other strategies for reducing the tax impact on your heirs, such as a Roth IRA conversion. Although you’ll owe taxes on the amount you convert (to the extent they’re attributable to earnings and deductible contributions), your heirs will be able to withdraw the funds tax-free. Note, however, that inherited Roth IRAs are also subject to the 10-year rule with respect to distributions.

You should also consider the use of certain trusts designed to hold inherited IRAs, such as “conduit” or “see-through” trusts. Previously, IRAs held in such trusts could be distributed over a beneficiary’s life expectancy, but now they must be distributed within 10 years.

### Review your plans

The changes made by the SECURE Act may have an impact on your retirement and estate plans. Your estate planning advisor can help you review your plans to ensure that they continue to meet your objectives. ■

# Sidestep the probate process to avoid the public eye

Probate can be time consuming and expensive, and perhaps its biggest downside is that it's public. In fact, anyone who's interested can find out what assets you owned and how they're being distributed after your death.

In addition, because of its public nature, the probate process can draw unwanted attention from disgruntled family members who may challenge the disposition of your assets, as well as from other unscrupulous parties. Let's take a closer look at the details of the probate process and strategies available to keep much or even all of your estate out of probate.

## Probate primer

For starters, be aware that probate is predicated on state law, so the exact process varies from state to state. This has led to numerous misconceptions about the length of probate. On average, the process takes no more than six to nine months, but it can run longer for complex situations in certain states. Also, some states exempt small estates or provide a simplified process for surviving spouses.

*For some estate plans, a will provides for the creation of a testamentary trust to benefit heirs.*

In basic terms, probate is the process of settling an estate and passing legal title of ownership of assets to heirs. If the deceased person has a valid

will, probate begins when the executor named in the will presents the document in the county courthouse. If there's no will — the deceased has died "intestate" in legal parlance — the court will appoint someone to administer the estate. Thereafter, this person becomes the estate's legal representative.

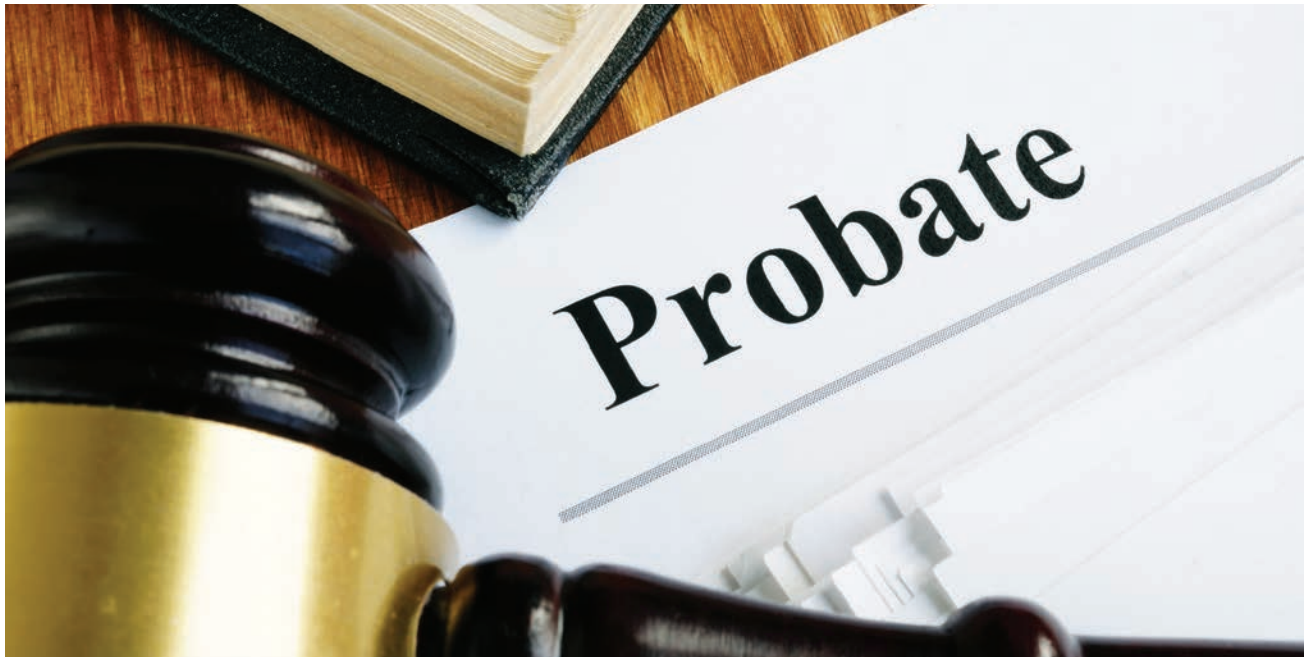
With that in mind, here's how the process generally works, covering four basic steps.

First, a petition is filed with the probate court, providing notice to the beneficiaries of the deceased under the will. Typically, such notice is published in a local newspaper for the general public's benefit. If someone wants to object to the petition, they can do so in court.

Second, the executor takes an inventory of the deceased's property, including securities, real estate and business interests. In some states, an appraisal of value may be required. Then the executor must provide notice to all known creditors. Generally, a creditor must stake a claim within a limited time specified under state law.

Third, the executor determines which creditor claims are legitimate and then meets those obligations. He or she also pays any taxes and other debts that are owed by the estate. In some instances, state law may require the executor to sell assets to provide proceeds sufficient to settle the estate.

Fourth, ownership of assets is transferred to beneficiaries named in the will, following the waiting period allowed for creditors to file claims. If the deceased died intestate, state law governs the disposition of those assets. However, before any



transfers take place, the executor must petition the court to distribute the assets as provided by will or state intestacy law.

For some estate plans, the will provides for the creation of a testamentary trust to benefit heirs. For instance, a trust may be established to benefit minor children who aren't yet capable of managing funds. In this case, control over the trust assets is transferred to the named trustee. Finally, the petition should include an accounting of the inventory of assets, unless this is properly waived under state law.

### Strategies to avoid probate

Certain assets, such as an account held jointly or an IRA for which you've designated a beneficiary, are exempt from probate. But you also may be able to avoid the process with additional planning. The easiest way to do this is through the initial form of ownership or use of a living trust.

In the case of joint ownership with rights of survivorship, you acquire the property with another party, such as your spouse. The property then automatically passes to the surviving joint tenant upon the

death of the deceased joint tenant. This form of ownership typically is used when a married couple buys a home or other real estate. Similarly, with a tenancy by entirety, which is limited to married couples, the property goes to the surviving spouse without being probated.

A revocable living trust may be used to avoid probate and protect privacy. The assets are typically transferred to the trust during your lifetime, and managed by a trustee that you designate. You may even choose to act as trustee during your lifetime. Upon your death, the assets will continue to be managed by a trustee or, should you prefer, you may decide to have the assets distributed to your designated beneficiaries, outright, on your death.

### Protect your privacy

The public nature of probate is a primary reason many wish to avoid the process to the extent possible. Implementing the proper strategies in your estate plan can protect your privacy and save your family time and money. Discuss your options with your estate planning advisor. ■

# Estate planning in the FAST lane

Traditionally, estate planning has focused on more technical objectives, such as minimizing estate and gift taxes and protecting assets against creditors' claims or frivolous lawsuits. These goals are still important, but affluent families are increasingly turning their attention to “softer,” yet equally critical, aspirations, such as educating the younger generation and preparing them to manage wealth responsibly, promoting shared family values, and encouraging charitable giving. To achieve these goals, many are turning to a “family advancement sustainability trust” (FAST).

## Filling the gap

It's not unusual for the death of the older generation to create a leadership gap. A FAST can help fill this gap by establishing a leadership structure and providing resources to fund educational and personal development activities for younger family members. For example, a FAST might finance family retreats and educational opportunities, outline certain best practices, and establish a governance structure for managing the trust responsibly and effectively.

## Decision making process

Typically, FASTs are created in states that 1) allow perpetual, or “dynasty,” trusts that benefit many



generations to come, and 2) have directed trust statutes, which make it possible to appoint an advisor or committee to direct the trustee with regard to certain matters. A directed trust statute makes it possible for both family members and trusted advisors with specialized skills to participate in governance and management of the trust.

A common governance structure for a FAST includes four decision-making entities:

1. An administrative trustee, often a corporate trustee, that deals with administrative matters but doesn't handle investment or distribution decisions,
2. An investment committee — consisting of family members and an independent, professional investment advisor — to manage investment of the trust assets,
3. A distribution committee — consisting of family members and an outside advisor — which helps ensure that trust funds are spent in a manner that benefits the family and promotes the trust's objectives, and
4. A trust protector committee — typically composed of one or more trusted advisors — which stands in the shoes of the grantor after his or her death and makes decisions on matters such as appointment or removal of trustees or committee members and amendment of the trust document for tax planning or other purposes.

## Funding options

It's a good idea to establish a FAST during your lifetime. Doing so helps ensure that the trust achieves your objectives and allows you to educate your advisors and family members on the trust's purpose and guiding principles.

FASTs generally require little funding when created, with the bulk of the funding provided upon the death of the older generation. Although funding can come from the estate, a better approach is to fund a FAST with life insurance or a properly structured irrevocable life insurance trust (ILIT). Using life insurance allows you to achieve the FAST's objectives without depleting the assets otherwise available for the benefit of your family.

### A flexible tool

A FAST is a flexible tool that can be designed to achieve a variety of goals. How you use one depends on your family's needs and characteristics. Properly designed and implemented, a FAST can help prepare your heirs to receive wealth, educate them about important family values and financial responsibility, and maximize the chances that they will reach their potential. Contact your estate planning advisor for additional details. ■

## ESTATE PLANNING RED FLAG

### Your powers of attorney are stale

Although much of estate planning deals with what happens after you die, it's equally important to have a plan for making critical financial or medical decisions if you're unable to make them for yourself.

Carefully designed financial and health care powers of attorney allow you to designate a trusted person to make financial and medical decisions on your behalf in the event an illness or injury renders you unconscious or otherwise incapacitated. They also allow you to provide your designee with guidance on making these decisions, including your preferences regarding the use of life-sustaining medical procedures.

Powers of attorney can provide peace of mind that your wishes will be carried out, but it's important not to get lulled into a false sense of security. You should revisit these documents periodically in light of changing circumstances and consider executing new ones.



Possible reasons you may need a new power of attorney include the following:

- Your wishes have changed.
- The person you designated to act on your behalf has died or otherwise become unavailable.
- You're no longer comfortable with the person you designated. (For example, perhaps you designated your spouse, but have since divorced.)

Even if your circumstances haven't changed, it's a good idea to execute new powers of attorney every few years. Why? Because a power of attorney is effective only if it's honored, and — because of liability concerns — some financial institutions and health care providers may be reluctant to honor documents that are more than a few years old.

# EXPERIENCE. RESPONSIVENESS. VALUE.

At Shumaker, we understand that when selecting a law firm for estate planning and related services, most clients are looking for:

- A high level of quality, sophistication, and experience.
- A creative and imaginative approach that focuses on finding solutions, not problems.
- Accessible attorneys who give clients priority treatment and extraordinary service.
- Effectiveness at a fair price.

Since 1925, Shumaker has met the expectations of clients that require this level of service. Our firm offers a comprehensive package of quality, experience, value and responsiveness with an uncompromising commitment to servicing the legal needs of every client. That's been our tradition and remains our constant goal. This is what sets us apart.

Estate planning is a complex task that often involves related areas of law, as well as various types of financial services. Our clients frequently face complicated real estate, tax, corporate and pension planning issues that significantly impact their estate plans. So our attorneys work with accountants, financial planners and other advisors to develop and implement strategies that help achieve our clients' diverse goals.

Shumaker has extensive experience in estate planning and related areas, such as business succession, insurance, asset protection and charitable giving planning. The skills of our estate planners and their ability to draw upon the expertise of specialists in other departments — as well as other professionals — ensure that each of our clients has a comprehensive, effective estate plan tailored to his or her particular needs and wishes.

## SHUMAKER®

Shumaker, Loop & Kendrick, LLP

*We welcome the opportunity to discuss your situation and provide the services required to help you achieve your estate planning goals. Please call us today and let us know how we can be of assistance.*

[www.shumaker.com](http://www.shumaker.com)

*The Chair of the Trusts and Estates Department is responsible for the content of The Estate Planner. The material is intended for educational purposes only and is not legal advice. You should consult with an attorney for advice concerning your particular situation. While the material in The Estate Planner is based on information believed to be reliable, no warranty is given as to its accuracy or completeness. Concepts are current as of the publication date and are subject to change without notice.*

*IRS Circular 230 Notice: We are required to advise you no person or entity may use any tax advice in this communication or any attachment to (i) avoid any penalty under federal tax law or (ii) promote, market or recommend any purchase, investment or other action.*