SECURE ACT

The "Setting Every Community Up for Retirement Enhancement" Act (the "SECURE Act") was signed into law recently as part of the Further Consolidated Appropriations Act, 2020. The SECURE Act made significant changes for owners/participants of qualified retirement plans (such as 401(k), 403(b), 457(b), IRA, Roth IRA, and profit-sharing plans), including changing the age for which required distributions must begin and options available to beneficiaries. Key provisions of the SECURE Act for an owner/participant of a qualified retirement plan are as follows:

1. Increase in age triggering required minimum distributions.

Prior law required minimum distributions from a qualified retirement plan to begin in the year the owner/participant attained the age of 70½. Under the SECURE Act, required minimum distributions must begin in the year the owner/participant attains age 72.

2. Repeal of the maximum age for traditional IRA contributions.

The prior law prohibited contributions to traditional IRAs once the owner attained age 70½. Under the SECURE Act, anyone may make contributions to a traditional IRA, regardless of age, as long as the individual has earned income for the applicable year.

3. Many "stretch IRA" options previously available to beneficiaries will no longer be available.

The prior law permitted individuals and certain trusts to qualify as a "designated beneficiary" to withdraw required minimum distributions over the remaining life expectancy of an individual. Under the SECURE Act, the life expectancy method is only available to "Eligible Designated Beneficiaries", and all other designated beneficiaries are limited to a 10-year rule. Under the 10-year rule, no distributions are required at any specific time, however the entire plan assets must be distributed out of the plan (resulting in income taxation of those distributions) within 10 years of December 31st of the year of the owner/participant's death. The SECURE Act defines Eligible Designated Beneficiaries to include only:

a. ***The surviving spouse.*** The owner/participant's surviving spouse may still use the life expectancy method.

b. ***The participant's minor child.*** The participant's minor children, not minor grandchildren or any other minor children, may use the life expectancy method which applies during the time the child is under the age of majority.

c. ***Disabled beneficiary.*** A designated beneficiary who is disabled (as defined in the Internal Revenue Code) may use the life expectancy method.

d. ***Chronically ill individual.*** A designated beneficiary who is chronically ill (as defined in the Internal Revenue Code) may use the life expectancy method.

e. ***Beneficiary less than 10 years younger***. A designated beneficiary who is not more than 10 years younger than the participant may use the life expectancy method.

Following the death (or majority of a minor child) of the Eligible Designated Beneficiary, the 10-year rule applies for the contingent or remainder beneficiaries. Further, while original designated beneficiaries who established an inherited IRA prior to December 31, 2019 continue to be eligible to use the life expectancy method, upon the death of an original designated beneficiary prior to the entire inherited IRA being distributed, under the SECURE Act, the 10-year payout will apply for any remaining inherited IRA assets (prior law permitted the contingent/successor beneficiaries to continue the remaining life expectancy of the original designated beneficiary).

4. Trust as beneficiary.

For many years, designating a Trust as the beneficiary of a qualified retirement account provided flexibility in allowing for the benefit to be stretched over the life expectancy of the beneficiary (delaying recognition of income) while providing protections for the beneficiary or for the integrity of the planning of the Settlor. Such planning will need to be reviewed to determine the effect of the SECURE Act. For example, under the SECURE Act, Trusts which use "conduit provisions", meaning distributions withdrawn from the inherited IRA by the Trustee must be distributed outright to the beneficiaries, will now require the entire inherited IRA to be withdrawn and distributed outright to the Trust beneficiaries who are not Eligible Designated Beneficiaries within 10 years. An "accumulation trust" which does not require the complete distribution of the IRA may be more appropriate.

This summary is intended only as a general overview of certain provisions of the SECURE Act. If you have any questions or wish to review how the SECURE Act may impact your estate planning or qualified retirement plans, please contact a Couzens Lansky attorney at 248-489-8600.