

SECURE Act – How It Affects Your Retirement and Estate Planning
By: Attorney Bryan C. Esch and Attorney Jordan D. Taylor
DeWitt LLP

On December 20, 2019, the SECURE Act (the “Act”) which contains important provisions significantly affecting the administration of retirement accounts (e.g., 401k, IRAs, SEP-IRAs and Roth IRAs) at the time of a death was signed into law. Importantly, the Act does not modify the ability of a surviving spouse to complete a tax-deferred rollover of his or her deceased spouse’s retirement account into his or her own retirement account (commonly known as a “spousal rollover”). The Act does, however, make significant changes to the administration of retirement accounts for non-spouse beneficiaries.

Prior to the Act being signed into law, non-spouse beneficiaries (including trusts) that received a portion of a decedent’s interest in a retirement account were permitted to transfer their interest to an “Inherited IRA” and take required distributions over the beneficiary’s remaining life expectancy. Inherited IRAs were also referred to as a “Stretch IRAs” because the beneficiary was able to stretch the distributions over his or her lifetime, which was typically much longer than the decedent’s life expectancy as determined under IRS rules. The growth in value of assets in an Inherited IRA remained tax-deferred until withdrawn. Thus, if the beneficiary was much younger than the decedent, he or she could benefit from the tax-deferred nature of the assets and only be required to take small required distributions each year for the remainder of his or her lifetime.

For deaths occurring after December 31, 2019, the Act eliminates the ability of non-spouse beneficiaries (except minors, individuals who are disabled or chronically ill, or beneficiaries who are less than ten (10) years younger than the account owner) to stretch distributions from an Inherited IRA over his or her lifetime. Instead, non-spouse beneficiaries must now distribute the entire Inherited IRA by December 31st of year in which the tenth (10th) anniversary of the death of the retirement account owner occurs. Distributions from the Inherited IRA need not be made in any particular installments (e.g., 1/10th per year for 10 years); rather, the entire amount must simply be distributed by the tenth (10th) anniversary of the death of the retirement account owner. The new ten-year rule also applies to Roth IRAs and Roth 401ks even though distributions from Roth accounts are not subject to income tax.

As with any change in the law, the Act creates potential estate planning opportunities. These include completing Roth conversions of retirement accounts so that the retirement account owner bears the burden of the tax on the retirement account assets and reduce or eliminate the need for beneficiaries to pay tax on Inherited IRA distributions. This can be especially effective if the account owner is in a lower tax bracket than the expected beneficiaries. Creating a Charitable Remainder Trust to be funded with retirement account assets may also be considered. Even if a charity is not part of a current estate plan, a Charitable Remainder Trust can be structured to mirror the annual distributions and tax impact as if the beneficiaries had Inherited IRAs under the law prior to the Act.

The Act also makes several other modifications to retirement accounts effective for tax years beginning after December 31, 2019:

- *Increase in Age for Required Minimum Distributions.* The age that minimum required distributions from retirement accounts must begin is increased from age 70½ to age 72.
- *Maximum Age for IRA Contributions.* The maximum age for traditional IRA contributions is repealed.
- *Qualified Charitable Deduction Exclusion.* The qualified charitable distribution exclusion of \$100,000 is reduced by the aggregate amount of deductions allowed for traditional IRA contributions made after age 70½.
- *Childbirth or Adoption Withdrawals.* A new exception to the 10% early withdrawal tax is created for qualified distributions up to \$5,000 from retirement accounts to cover costs for a birth or adoption.

For many veterinarians and others, retirement accounts continue to represent a significant portion of assets which may be transferred to succeeding generations. Because of the SECURE Act, you may want to review your estate plan, especially if your current plan uses a trust to pass retirement account assets to succeeding generations.