CCM ALERT

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Clingen Callow & McLean, LLC

2020 Law Changes That May Impact Your Estate Plan

With the start of 2020, two new laws took effect that will significantly impact estate planning in Illinois. The new Illinois Trust Code updates and substantially changes the older law that has governed trusts and trustees in Illinois since 1973; and a new federal tax law, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") makes significant changes to the rules concerning qualified retirement assets, including IRAs.

We are still reviewing both laws to determine how they will affect planning for our clients. In the meantime, we are sending this update to alert you to estate planning considerations in light of the new laws.

<u>The SECURE Act</u>

Among other things, the SECURE Act eliminates the age restriction for contributions to qualified retirement accounts (including IRAs, 401(k)s and similar accounts) and increases the required beginning date for required minimum distributions from your individual retirement accounts from 70 ½ to 72 years of age. However, the most significant change for estate planning purposes is the new requirement that most designated beneficiaries must withdraw the entire balance of an inherited retirement account within ten years of the account owner's death[1]. This change may result in negative income tax

[1] If a beneficiary is not considered a designated beneficiary, distributions must still be taken by the fifth year following the account owner's death. Common examples of beneficiaries that are not designated beneficiaries are charities and estates. See Treas. Reg. § 1.401(a)(9)-3, Q&A (4)(a)(2) and 1.401(a)(9)-5, Q&A (5)(b).

or asset protection consequences for the beneficiaries of your qualified retirement accounts.

Under the old law, most individual designated beneficiaries of inherited retirement accounts could stretch distributions over their individual life expectancies. If you designated your trust as a beneficiary of your retirement account, your trust likely includes a "conduit trust" provision, which requires payment of required minimum distributions each year (RMDs) to trust beneficiaries, but under the old law allowed the continued "stretch" of RMDs based upon their age and life expectancy. If your trust included limits on beneficiary withdrawals, any undistributed account balance was potentially protected from the beneficiary's poor financial decisions, creditors and divorcing spouses.

With the SECURE Act's passage, conduit trusts will now require that the trustee distribute the entire account balance to a beneficiary within ten years of your death, regardless of any limitations on withdrawals included in your trust document. This may result in an unintended acceleration of distributions to your beneficiaries. For many of you, this may still be the most desirable result for purposes of minimizing overall income taxes for your family. However, this ten-year distribution period may impact important planning objectives that go beyond tax considerations, such as protecting a beneficiary's inheritance from financial mismanagement, creditors, future lawsuits, or a divorcing spouse.

The SECURE Act does provide a few exceptions to the ten-year withdrawal rule (including spouses, disabled beneficiaries, and minor children until 10 years after age of majority), but many beneficiaries do not fall within these limited exceptions. We recommend that you review your estate planning goals and existing estate plan to determine whether your current trust provisions and beneficiary designations need to be modified. Specifically, you should consider:

- Whether to retain existing conduit trust provisions or convert to an "accumulation trust," an alternative trust structure through which the trustee can receive any required distributions and continue to hold them in a protected trust for your beneficiaries (with withdrawal rights as determined by you in the trust document).

- Whether you wish to modify your beneficiary designations for your qualified retirement accounts to ensure that they are consistent with your current wishes.

The Illinois Trust Code

The new Illinois Trust Code (the "Code") replaces the old Illinois Trusts and Trustees Act for trusts that become irrevocable after 2019 (with some provisions applying to all trusts). The Code retains many provisions from the old law but also makes substantial changes to the notice and accounting duties of trustees, the rights of trust beneficiaries, and other matters related to trusts. These changes will impact practical aspects of administering trusts that become irrevocable after January 1, 2020, and they warrant reviewing, and possibly revising, your revocable trust document. Among other things, most clients should consider:

- Whether to opt out of a new requirement that your successor trustee must provide annual trust accountings to remainder beneficiaries of the trust. In many instances, this would require a surviving spouse to provide information regarding trust assets (and how the spouse is spending those assets) to your descendants.

- Whether to name a "Designated Representative" (or give someone the power to name a Designated Representative) to represent remainder beneficiaries who are younger than 30 years of age to receive trust notices and accountings.

Additional Considerations

In addition, as of January 1, 2020, the exclusion for the federal estate, gift and generation-skipping transfer tax (the amount that you can gift during life or pass at death to your family members and other beneficiaries without incurring tax) is $11,580,000 per individual, or $23,160,000 for a married couple). This is the largest exemption in history! However, depending on the outcome of the presidential and Congressional races next November, there is no guarantee that Congress will not vote to substantially reduce that exemption. This presents an important opportunity for clients with significant assets to use the large exemption while it still exists by making gifts to the next generation, or to trusts for the benefit of those family members, and subsequent generations.

Please feel free to contact us to schedule a mutually convenient time to meet to discuss your trust documents and beneficiary designations in light of the SECURE Act and the new Illinois Trust Code, as well as other important planning opportunities.

Clingen Callow & McLean, LLC
2300 Cabot Drive, Suite 500
Lisle, Illinois 60532
www.ccmlawyer.com
(630) 871-2600

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