Estate Planning
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Legal Matters®

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Passage of SECURE Act anticipated by year-end

Estate planners have been watching Congress closely, waiting to see what will happen with the Setting Every Community Up for Retirement Enhancement (SECURE) Act. The legislation, designed to boost Americans' retirement savings, has implications for individual savers and for those planning to pass an inheritance to the next generation.

The SECURE Act passed the House of Representatives in May with a nearly unanimous margin of 417-3. The bill is considered to have strong bipartisan support and advocates are optimistic it will pass by year-end. If it doesn't pass via a unanimous consent vote in the fall, pundits suggest it will be attached to a year-end spending bill.

Eliminating the stretch

The bill eliminates the stretch provision for inherited IRAs, which means beneficiaries will no longer be able to stretch out over their lifetimes distributions from inherited IRAs.

If enacted, the SECURE Act would require inherited IRAs to be dispersed within 10 years following the original owner's death. The change eliminates the ability to shelter cross-generation inheritance income for decades, making taxes due much sooner on inherited IRAs.

A few exceptions remain. Spouses will still be able to use the stretch provision, as will beneficiaries who are disabled, chronically ill or minor children. However, once a minor child reaches the age of majority, the 10-year clock would kick in.

This change would have a detrimental impact on high-net-worth individuals who had intended to pass sizable IRAs to children or grandchildren. The SECURE Act would significantly reduce the long-term benefits of such gifts.

Setting up a medical ID on your cellphone

You may already be familiar with the idea of setting an "in case of emergency" contact that displays on the lock screen of your phone to let emergency personnel know whom to call if you're found alone unconscious or unable to speak.

Smartphone providers now offer enhanced options that let you provide even more emergency information, such as medical conditions and allergies.

Newer iPhones make it easy with their integrated Health app, but there are ways Android users can provide similar information.

Medical ID on an iPhone

On an iPhone running iOS 8 or later, launch the built-in Health app and tap the Medical ID icon at the bottom right of the screen. There are fields for listing medical conditions and current medications, fields for emergency contacts, and a blank field where you can add additional notes, such as your preferred hospital or religious requests. There's also a field where you can stipulate organ donor preference.

Even if your iPhone is locked, emergency personnel will be able to access your medical ID info by tapping on "Emergency" on the home screen and then "Medical ID."

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Emergency info on Android

Android users can get similar functionality by downloading a third-party app, such as Medical ID. (As always, be careful about the information you provide to third-party app providers, as it can be hard to vet their security standards.)

Alternately, your phone may have an emergency contacts feature built in another way. Search under settings, or Google your phone brand and "emergency contact lock screen" to find specific instructions for your phone.

Be aware that anyone with access to your smartphone can also see your emergency contact and/or health information, so be judicious about what you choose to share. Decide how much you want medical personnel

Life insurance trusts: fund or collapse?

An Irrevocable Life Insurance Trust (ILIT) has long been a fundamental tool for managing federal estate tax liabilities. But with a sizable increase in the federal estate tax exclusion, some families are wondering if their ILIT is even relevant anymore.

An ILIT owns your life insurance policy for you, essentially removing it from your estate.

An ILIT owns your life insurance policy for you, essentially removing it from your estate. ILITs were popular for their ability to shelter life insurance proceeds from estate taxes. They also give the grantor the ability to direct who benefits from the trust and how the proceeds are to be used.

But the Tax Cuts and Job Act doubled the estate tax exemption. In 2019, the exemption is $11.4 million per individual, indexed to inflation. That means many ILITs that were created to offset estate taxes are no longer needed.

Unwinding an irrevocable trust

As the name indicates, an ILIT is irrevocable, so once you place a life insurance policy inside it, you generally can't take it back out. However, grantors do have options to shut down the trust or alter it in ways that still protect the interests of the beneficiaries.

Some strategies:

- buy the policy back by funding the ILIT with the equivalent cash value
- surrender the policy for cash value and distribute the cash to the beneficiaries
- investigate a life settlement and distribute the value to the beneficiaries

Critics say such retroactive changes amount to a breach of promise to savers who stored money in IRAs intending to create lifelong benefits for their heirs. Some critics suggest that such a move also opens the door for Congress to make other retroactive changes, such as taxing certain Roth IRAs in the future or eliminating the stretch for spousal IRAs.

Benefits for younger and older workers

The SECURE Act includes provisions designed to make it easier for small businesses to offer retirement plans. Under the bill, tax credit incentives are available for businesses that set up new retirement plans and for those that switch to automatic enrollment.

For older workers, the SECURE Act would push the required minimum distribution age to 72 (up from 70 ½) and eliminate age restrictions on IRA contributions.

For younger workers, the bill would allow penalty-free withdrawals of up to $5,000 in the year following a birth or adoption.

Naming a guardian for your children

Resist the urge to avoid naming a guardian as part of your estate plan simply because it's not easy to imagine someone else raising your children. If you don't, you leave the guardianship of your children up to the courts if you pass away. Think about who, starting with your family members, would be the best choice.

Remember that the guardian you choose doesn't also have to handle money for your children. Assuming you have life insurance and other assets set up to take care of your children, the trustee will be in charge of managing those assets on behalf of your children. The person or people you choose to take care of the child can coordinate with the trustee on matters of money.

If you want to name a couple, think ahead about your intentions should either person die, or if they separate or divorce. You can open up the field of options if you provide more than one possible guardian. That way, if the first person on your list cannot serve, you have approved of other possible options. That also makes it less likely that someone who you don't want to serve as the guardian will be able to do so.

If the guardian you are naming doesn't live in your state, include the name of someone who can take care of your children until that guardian can take over. Some states have an emergency guardianship proxy, or you can include it in your will.

Consult an estate planning lawyer to help you make this decision and to ensure the documents are in place to match with your wishes.

to know in an emergency, and weigh the pros and cons of having this information readily accessible on your phone.

Avoid these mistakes when setting up a trust

When setting up a revocable trust, you need to be diligent about asset transfers, beneficiary designations and funding formulas. Failure to complete certain steps can prevent the trust from acting as you intended, creating additional cost and unintended consequences for your estate.

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Common issues include the following:

Failure to transfer assets

Setting up a trust is just the first step. You must accurately transfer assets into the trust in order for its proper function to take effect.

If assets are not transferred into a trust, they will still be subject to public probate court on your death.

Failure to update beneficiary designation

A trust will commonly include accounts with beneficiary designations, such as retirement accounts and life insurance policies.

Failing to transfer beneficiary designations to the trust could have unintended consequences; for example, someone might get more or less than you intended, or get access to funds sooner, and with less control by you, than you wanted.

Failure to adjust for current tax law

If you executed your trust documents a while ago, when the estate tax exemption was significantly lower, you need to review your plan to ensure you're still getting the intended results.

Older estate plans commonly use a formula funding clause to divide assets between a credit shelter trust and the surviving spouse.

However, because the Tax Cuts and Jobs Act doubled the estate tax exemption, trusts using these old formulas may have the unintended consequence of disinheriting the spouse.

Be aware that the current federal tax exemption is set to expire in 2025; without new federal action it will revert to $5 million.

Talk to your estate planner about updating your current trust documents and make plans to review them regularly.

- stop funding the policy but use the cash value to extend the benefit until the cash value runs out
- stop funding the policy, but maintain it at a reduced benefit amount
- stop funding the policy and borrow the premium payments from the beneficiaries, assuming the beneficiaries wish to keep the policy.

The trustee must honor the terms of the trust, and certain trusts may be more restrictive in terms of their rescue options. The terms of the trust cannot change, but the involved parties (grantor, beneficiaries, trustee) do have options to eliminate an ILIT that is no longer needed.

Before you unwind

Remember that the current exemption rules expire after 2025. Without further legislation, the exemption will return to an inflation-adjusted $5 million in 2026.

Protecting your death benefits

Depending on your situation, an ILIT may still make sense. Consider how your life insurance strategy could impact your estate if:

- you believe your estate will exceed the federal estate tax exclusion when you die
- your estate will exceed any applicable state estate taxes (typically lower than federal exemptions)
- your life insurance proceeds will tip your estate over the tax exclusion limit
- creditors may make claims on your estate when you die.

The danger of waiting too long

You can gift an existing life insurance policy into an ILIT. However, if the insured dies within three years of making the gift, the policy will still be included in the estate for tax purposes.

Alternately, the ILIT can be funded with a new policy and the three-year "lookback" period would no longer apply. Of course, the costs of purchasing a new policy tend to increase as you age, which might make that strategy impractical.

Talk to an estate planner who will help you review your life insurance and estate plans and determine if changes are needed.

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