

COVID-19



CORONAVIRUS: EVALUATING YOUR ESTATE PLANNING STRATEGIES

April 9, 2020

By: Jeremy L. Graber and Matthew W. Bish

Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

As the COVID-19 restrictions have both limited much of your daily routine and caused economic changes, a review of estate planning strategies is a good use of any newfound downtime. In addition, the CARES Act may provide some benefits and opportunities, and the recent, but now somewhat-forgotten, SECURE Act made significant changes to long-standing IRA rules requiring attention.

PERFORM AN ESTATE PLAN CHECKUP

While you are isolating, this may be a good opportunity to review your current estate planning documents to ensure they still carry out your intent. Perhaps circumstances have changed since you last updated your documents (e.g., birth of a child, children are now adults, guardian succession changes, marriage, divorce, etc.). Are your executors and other fiduciaries still the right people to serve? For plans created several years ago, they may not be the right people now, or perhaps may not even be able to serve.

For those who have never implemented an estate plan, this is an opportunity to consider the value of putting a plan in place. For example, couples with minor children should consider naming guardians and creating trusts to hold assets for the benefit of minor children. For those with adult children, you may want to consider leaving assets in trust for the benefit of your children to create further asset protection. Are there tax-planning opportunities?

This checkup includes reviewing your beneficiary designations. Many beneficiary designations can be reviewed or changed at home via the IRA or retirement plan custodian's website.

ADVANCED STRATEGIES

Individuals with large estates or closely held business owners may want to consider more comprehensive planning, which may include business succession planning or estate and gift tax planning. While the current economic

FOULSTON

ATTORNEYS AT LAW

climate is imposing, the potentially depressed value of assets could present an opportunity for those with large estates to make gifts of the depressed assets to remove the future appreciation from their taxable estates. This is especially important with the scheduled reduction of the increased gift and estate tax exemption in January of 2026. Additionally, the historically low Applicable Federal Rates can be utilized for many gift and estate tax planning strategies to remove additional value from your taxable estate.

CARES ACT PROVIDES STIMULUS CHECKS AND RMD WAIVER

To help small businesses and individuals, the CARES Act provides a number of benefits, some of which may require action or at least consideration:

- Stimulus checks: Americans earning less than \$99,000 (or \$198,000 for married couples) can receive a \$1,200 stimulus per adult. Generally, individuals have to have filed a tax return, but checks are being sent automatically to Social Security Beneficiaries even if they don't file a return. The IRS is still working through the actual procedure and timing for stimulus checks.
- RMD waiver: No required minimum distribution (or RMDs) in 2020 from IRAs or other qualified plans (like 401(k) plans). This includes inherited IRAs. Given the depressed asset values, perhaps taking a taxable withdrawal (or doing a back-door Roth conversion) may provide long-term tax benefits.
- Plan hardship withdrawals and loans: Individuals adversely affected by the pandemic may make hardship withdrawals of up to \$100,000 from their retirement plans this year without paying the 10% penalty that is typically required. In addition, affected individuals can borrow up to \$100,000 of their account balance and pay it back within five years. Both options are dependent on the plan terms, so check with your employer/plan sponsor.

SECURE ACT UPENDS LONG-STANDING IRA RULES

Although it now seems forever ago, Congress passed the SECURE Act late last year and it went into effect Jan. 1, 2020. Among its many provisions, it modified long-standing IRA requirements.

- RMDs start at 72: The long-standing 70½ age to start required minimum distributions has been pushed back to 72. So unless you turned 70½ in 2019, your RMDs are not required to start until you turn 72.
- Goodbye stretch IRAs: Previously IRAs paid to individuals could be "stretched" over that individual's lifetime. This provided a significant tax deferral for IRAs left to children or grandchildren. Now, except for spouses and a narrow class of beneficiaries, all IRAs must be paid out within 10 years of death. Individuals with significant retirement benefits should carefully consider these effects, particularly if a trust is the IRA beneficiary.
- Indefinite contributions: Contributions to IRAs can now be made regardless of age. Previously, contributions could not be made after 70½.
- Qualified Charitable Distributions: A qualified charitable distribution (QCD) is a direct transfer to charity from an IRA, avoiding the IRA income from being included on your tax return. (QCDs avoid income tax altogether). With contributions regardless of age now permitted, the SECURE Act made a slight change to the QCD rules to avoid game-playing. An individual cannot make an IRA contribution and an income-excludable QCD with the same dollars. The Act requires careful tracking rules for this purpose.

Although these are challenging times, some extra time may be an opportunity to work on the to-do list that always seems to take a back seat to more immediate needs. Plan now to update or create an estate plan to ensure your wishes are carried out and also to take advantage of the planning and tax opportunities that are now available.

FOR MORE INFORMATION

If you have questions or want more information, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. For more information, contact **Jeremy Graber** at 785.354.9412 or jgraber@foulston.com or **Matthew Bish** at 316.291.9729 or mbish@foulston.com. For more information on the firm, please visit our website at

FOULSTON

ATTORNEYS AT LAW

www.foulston.com.

Established in 1919, Foulston Siefkin is the largest law firm in Kansas. With offices in Wichita, Kansas City, and Topeka, Foulston provides a full range of legal services to clients in the areas of administrative & regulatory; antitrust & trade regulation; appellate law; banking & financial services; business & corporate; construction; creditors' rights & bankruptcy; e-commerce; education & public entity; elder law; emerging small business; employee benefits & ERISA; employment & labor; energy; environmental; ERISA litigation; estate planning & probate; family business enterprise; franchise & distribution; government investigations & white collar defense; governmental liability; government relations & public policy; healthcare; immigration; insurance regulatory; intellectual property; litigation & disputes; long-term care; mediation/dispute resolution; mergers & acquisitions; Native American law; oil, gas & minerals; OSHA; privacy & data security; private equity & venture capital; product liability; professional malpractice; real estate; securities & corporate finance; supply chain management; tax exempt organizations; taxation; trade secret & noncompete litigation; water rights; and wind & solar energy.

RESOURCES

Sign up to receive these issue alerts straight to your inbox here.

This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.

PRACTICE AREAS

- Estate Planning & Probate
- Business & Corporate Law
- Taxation
- Trust & Estate Litigation