REID & RIEGE ATTORNEYS

Estate Planning & Settlement Newsletter

ESTATE PLANNING UPDATE | NOVEMBER 2022

COORDINATING BENEFICIARY DESIGNATIONS WITH YOUR ESTATE PLAN

Beneficiary designations are an important component of your overall estate plan. Assets that transfer by beneficiary designation often reach the hands of the beneficiary quickly after death, and bypass the probate process without regard to the terms of your Will or Trust Agreement. While there can be benefits to easing the transfer of assets, we encourage you to make designations thoughtfully, and to avoid the temptation to "set it and forget it."

The most common assets to pass by beneficiary designation are life insurance proceeds and retirement accounts. The account or policy owner instructs the financial institution to pay the proceeds to a designated individual, trust, or charitable organization upon receipt of proof that the account owner has died. Unless the named beneficiary is the account owner's estate, the executor's involvement will be limited to securing information about the account value for estate tax reporting purposes.

Traditionally, when the owner of a retirement account or life insurance policy failed to designate a beneficiary, the asset would pass by default to the owner's estate to be governed by the terms of the owner's Will or, in the absence of a Will, by the laws of intestacy in the state where the owner resided. If a named beneficiary does not survive the owner, the designation form may provide for payment to the beneficiary's "descendants per stirpes," to avoid default to the owner's estate. Some financial institutions are now defining their own default rules to control the transfer of an asset in the absence of a designation by the account owner. For example, one such rule might provide for payment or transfer directly to the surviving spouse or to the owner's children, thereby bypassing the owner's estate. In some cases, this provision could save the day; in others, the result could be inconsistent with the overall estate plan.

To avoid uncertainty and ensure that your assets pass to your intended beneficiaries, we recommend that you carefully complete beneficiary designation forms for your life insurance, retirement accounts, annuities, and health savings accounts. Read the small print to see what will happen with the account if your beneficiary does not survive you. Where permitted, you should name both a primary and contingent beneficiary. When you complete a new beneficiary designation online or by mailing in a form, request written confirmation of receipt and acceptance of the changes.

Similar to beneficiary designations for life insurance and retirement accounts, banks permit depositors to name a payable-on-death beneficiary on bank

NEW MEMBERS OF OUR TEAM

We are pleased to announce that Gina Geary joined the Estate Planning & Settlement practice as an Associate earlier this year. Gina received her J.D., *cum laude*, Phi Delta Phi, from Quinnipiac University School of Law and her B.A., *cum laude*, from Wheaton College.

We are also pleased to announce that Mary Shane recently joined the Trust & Wealth Management practice as a Trust Assistant.

CONGRATULATIONS

We congratulate John Paul ("JP") Callahan on his recent graduation from the New England Fellows Institute of The American College of Trust and Estate Counsel (ACTEC). The New England Fellows Institute is an educational program for future leaders in trust and estate law.

accounts, and investment firms permit investors to name a transfer-on-death beneficiary on individual brokerage accounts. These designations also require coordination with your overall estate plan. Arranging for all of your assets to pass outside the probate process can result in conflicts over who holds responsibility for paying final creditors, including unpaid taxes, funeral expenses, and the costs of settling your estate, in particular, the statutory probate court fee, which typically must be paid even if no formal probate proceeding is required to settle your estate.

We generally recommend that you review your estate plan, including any beneficiary and transfer or payable on death designations that are in effect, at least every five years. Your planning should also be evaluated after a major life event such as marriage, divorce, or the birth or adoption of a child. If you open a new retirement account or obtain new insurance, you should complete a new beneficiary designation. If you have specific questions regarding completing your beneficiary designations, please contact your attorney.

REQUIRED MINIMUM DISTRIBUTIONS FOR INHERITED RETIREMENT ACCOUNTS

The SECURE Act, which took effect on January 1, 2020, made significant changes to the distribution rules for inherited retirement accounts. A surviving spouse may still take required minimum distributions ("RMDs") based upon his or her remaining life expectancy, or roll over the retirement account and treat the account as his or her own retirement account. In contrast, most retirement accounts inherited by someone other than the surviving spouse on or after January 1, 2020, must be fully distributed within 10 years following the original owner's death.[1]

Original guidance from the IRS on the SECURE Act published in 2021 indicated that the 10-year rule permitted the beneficiary to postpone taking any distributions whatsoever until the tenth anniversary of the original owner's death, at which time the account had to be completely distributed (although, of course, the beneficiary always had the option to withdraw assets from the retirement account sooner). However, in February of this year, the IRS issued proposed regulations that differ from the 2021 guidance. If the original owner of the retirement account died after 2019 and was required to take RMDs, the proposed regulations direct that the beneficiary must take RMDs in each of the first nine years in addition to withdrawing the remaining balance by the tenth anniversary of the original owner's death. If the 10-year-rule beneficiary is an individual, he or she must take annual RMDs based on his or her own life expectancy. Generally speaking, if the 10-year-rule beneficiary is a trust, the RMDs are based on the life expectancy of the oldest trust beneficiary.

While these regulations have not been finalized, if you inherited a retirement account from someone who died on or after January 1, 2020, and you are required to take distributions under the 10-year rule, you should consult with your attorney, accountant, financial advisor, or the account custodian to determine the amount you must withdraw each year until the account is fully distributed. The IRS has not yet provided guidance for those who may have missed taking the RMD in 2021.

[1] There are exceptions for some inheritors, such as minor children and chronically ill or disabled persons, which may extend beyond 10 years.

If you would like to discuss how these topics impact you, or if it is time to have your documents reviewed, please contact us. We carefully customize estate plans to our clients' individual circumstances and personal objectives.

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**David is a Certified Trust and Financial Advisor; he is not an attorney.*

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