



PHILLIPS LYTLE LLP CLIENT ALERT

FAMILY WEALTH PLANNING

AUGUST 2022



Beneficiary Designations and Updates to the SECURE Act and Estate/Gift/GST Tax Exemptions

BENEFICIARY DESIGNATIONS: OVERVIEW, EXAMPLES AND BLUNDERS

Beneficiary designations on bank accounts, investment accounts, retirement accounts and life insurance policies are an important part of an estate plan that are often overlooked in the planning process. Inaccurate and outdated beneficiary designations can frustrate your carefully considered estate plan and cause your assets to pass in unintended ways, and may have tax consequences. You should always consult an attorney when completing a beneficiary designation to make sure that it is coordinated with your overall estate plan.

Beneficiary Designations

- Beneficiary designations are form documents completed by an account owner (“Owner”) that are submitted to the entity holding or managing the account. The forms provide how the Owner would like the account assets to pass upon the Owner’s death.
- Where a valid beneficiary designation is in place, such designation supersedes any provision of the Owner’s Will that purports to dispose of the asset, and the assets pass directly to the beneficiary.
- There may be advantages to using beneficiary designations to create a class of non-probate assets in an Owner’s estate, including probate avoidance, the ease and speed of collecting assets by a beneficiary and, in some cases, avoiding attachment by creditors.

- Nonetheless, depending on your estate plan, it may be more advantageous or necessary to have the assets pass to the Owner’s estate or to a trustee of a trust created under a Will (a testamentary trust).

Examples of Beneficiary Designations

- Bank Deposit Accounts and Investment Accounts:
Bank deposit accounts (checking accounts, savings accounts and certificates of deposit (CDs)) can be transferred to a named beneficiary upon the Owner’s death by a Payable on Death (POD) designation. Investment accounts (brokerage accounts, stocks and bonds) can be transferred by a Transfer on Death (TOD) designation or can be held as an “In Trust For” (ITF) account managed by a trustee for the benefit of the Owner’s nominated beneficiary.
- Life Insurance and Retirement Accounts:
An Owner of a life insurance policy or retirement account (Individual Retirement Account (IRA), 401(k), 403(b), etc.) may name one or more beneficiaries to receive the death benefit proceeds from the policy or the retirement account balance.

Beneficiary Designation Blunders

- Owners commonly fail to update beneficiary designations after the occurrence of a significant life event, such as marriage, the birth of a child, the death of a family member or a divorce.



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- A common estate plan for a married Owner is to leave all assets to the spouse outright, or if the spouse doesn't survive, all assets then fund testamentary trusts for the Owner's children. However, it is often the case that the beneficiary designation reflects the spouse as primary beneficiary with children named as contingent beneficiaries. Without changing the beneficiary designation, if the spouse predeceased the Owner, the children would be the direct beneficiaries of the asset rather than the testamentary trust, which can be especially troublesome if a child is a minor. The Owner has now subjected his beneficiaries to a guardianship proceeding, allowed the assets to be held in a guardianship account subject to court oversight, and has thwarted the terms of the testamentary trust since guardianship accounts must be distributed when the minor reaches the age of 18.
- Because retirement accounts comprise a large share of the value of most estates, the beneficiary designations for such accounts must be seriously considered, especially in light of the passage of the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) of 2019 ("Act") (see below). Under current law, most non-spouse beneficiaries are required to receive the entire account balance within 10 years of the Owner's death.
- Finally, if an Owner seeks estate tax minimization or deferral provisions through the use of testamentary trusts, designating individuals as beneficiaries (versus trustees of the trusts) may result in significant estate tax ramifications and defeat the purpose of the Owner's carefully drafted Will.

SECURE ACT UPDATE

The Act was signed into law on December 20, 2019, and went into effect on January 1, 2020. The Act changes the required minimum distribution ("RMD") rules for IRAs and qualified retirement accounts ("Accounts") and increases the age at which Owners are required to begin taking RMDs (required beginning date or "RBD") from age 70 ½ to age 72. This change applies to individuals who will attain the age of 70 ½ on or after January 1, 2020.

For most non-spouse beneficiaries, the Act eliminates the so-called "stretch IRA" (from which RMDs can be taken over the beneficiary's remaining life expectancy) and provides that the entire balance of an inherited Account must be withdrawn by the beneficiary by the end of the tenth year following the death of the Owner ("Ten-Year Rule"). Initial guidance from the Internal Revenue Service (IRS) suggested that no RMDs were required under the Ten-Year Rule as long as the entire Account balance was withdrawn by the end of the tenth year. However, much to the surprise of practitioners, the IRS reversed its position and recently issued proposed regulations providing that where the Owner dies after his or her RBD and the Ten-Year Rule applies, the beneficiary is required to take RMDs (based on the longer of the beneficiary's remaining life expectancy or the Owner's life expectancy) in years one through nine following the death of the Owner, with the remaining Account balance to be distributed by the end of the tenth year.



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ESTATE, GIFT AND GENERATION-SKIPPING TRANSFER (GST) TAX EXEMPTION UPDATE (AND REMINDER!)

When Date of Death Occurs in 2022	Federal	New York
Unified Exemption Amount/ NY Basic Exclusion Amount Applicable to Estates	\$12,060,000*	\$6,110,000
Generation-Skipping Transfer Tax Exemption	\$12,060,000*	N/A
Annual Exclusion for Gifts	\$16,000 per donee	N/A

*The Unified Exemption Amount and Generation-Skipping Transfer Tax Exemption are scheduled to expire after December 31, 2025, and revert to a \$5,000,000 basic exemption, indexed for inflation.

Additional Assistance

If your current estate plan is affected by any of the foregoing, or if you would like us to review and assist you in updating your plan, please contact a member of our [Family Wealth Planning Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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