

PENDING CHANGES IN THE LAW WILL IMPACT MANY ESTATE PLANS

Due to impending estate and economic changes on the horizon, now is the time to review your estate plan to make sure it is in order. Several tax proposals have been introduced that if enacted will significantly increase income, gift, and estate taxes. Introduction of these proposals means that the window for making changes to your estate plan may be closing.

In addition, with the passing of the SECURE Act, the favorable laws that governed distributions from IRAs and other retirement accounts have changed. The SECURE Act, theoretically designed to make saving for retirement easier, actually severely reduced the benefits of inherited IRAs for your children.

Also of interest, for New York residents, is a new Power of Attorney statute that takes effect in New York on June 13, 2021. This law makes it necessary for all New York residents to review their Power of Attorney forms executed in the past to see if such forms comply with state law and practice, and to verify that they remain on file with their financial institutions as necessary. Residents of New Jersey and Connecticut should also review their Powers of Attorney every few years to ensure compliance and effectiveness.

WHAT IS CHANGING?

Increases to Income, Capital Gains, Gift, and Estate Taxes.

- Income tax rates may increase and there is discussion of treating long-term capital gains as ordinary income.
- Currently, a beneficiary inherits assets at the fair market value as of the decedent's date of death. This date of death valuation is a "step-up" in basis and it results in tremendous tax-savings for beneficiaries. If the step-up in basis were not available, as proposed, inherited assets would be subject to capital gains tax at death. In some cases, this would result in double taxation.
- The Federal estate tax exemption may drop to \$3.5 million, while the Federal gift tax exemption may drop to \$1 million (from the current \$11.7 million). The top estate tax rate could rise well above its current 40%. New York's top estate tax rate may also increase from 16% to 20%. Connecticut's estate tax exemption, currently \$7.1 million, is scheduled to match the Federal estate tax exemption by 2023 and would be affected by a Federal reduction. While New Jersey repealed its estate tax in 2018, an inheritance tax of up to 16% applies for certain classes of beneficiaries.
- There are also proposals to severely reduce the effectiveness, or even eliminate, popular tax saving devices such as family partnerships/LLCs, grantor retained annuity trusts (GRATs), \$15,000 annual exclusion gifts to trusts, and grantor trusts for income taxes.
- The passage and timing of new legislation is not certain. Some proposals have an effective date in 2022, while claw backs to 2021 are possible.

Changes to Planning with Retirement Assets

- The SECURE Act changed the rules to provide that only a surviving spouse, a minor child, or a disabled or chronically ill individual is eligible for a "stretch" IRA. Adult children and other individuals are limited to a ten-year payout period. This eliminates the time assets can continue to grow within the IRA income tax-free and accelerates the income taxes that come due on required distributions.
- Prior to SECURE, non-spouse beneficiaries that inherited IRAs took minimum required distributions over their own life expectancy. This gave younger beneficiaries more time to allow assets in the account to grow while deferring payment of income tax.

- Prior to SECURE, an IRA could be held in a trust for the spouse. IRA distributions to Trusts were able to qualify for distributions over the spouse’s life expectancy. This is no longer the case for the typical trusts used in estate planning (a “bypass” or “exemption” trust to escape estate tax at the spouse’s later death, or a “QTIP” Trust to control who inherits at the spouse’s death).
- There are very complicated rules concerning what constitutes a “minor” child (it may be up to age 26) and a disabled or chronically ill beneficiary.
- Sizeable retirement accounts have always presented challenges for estate planning. While it is always critical to periodically review all types of beneficiary designations (which can be just as important as the terms of a Will), SECURE makes it more critical. You should consult with your experienced trusts and estates advisor to salvage your estate plan from the effects of the SECURE Act.

New Power of Attorney Form for New Yorkers

- New York Powers of Attorney signed after June 13, 2021 must use a new form (forms executed before June 13, 2021 are still valid). The new form is intended to be a more “user friendly” form, and is expected to be more readily accepted by financial institutions as it must be accepted or rejected within a period of 10 days of submission (or the institution faces liability for improperly rejecting a validly executed Power of Attorney).
- A Power of Attorney is one of the most important and powerful documents in your estate planning toolbox. Without a legally enforceable Power of Attorney, situations may arise when court intervention is necessary to appoint a legal guardian for you. This process is costly, time consuming, and emotionally draining.
- Do not wait for a crisis to have your chosen agent try to implement your Power of Attorney. You should provide your Power of Attorney to the financial institutions you use now while you are able to present it yourself. You should also ask your financial institutions if they prefer that you use their in-house form of Power of Attorney.
- A Power of Attorney created by your trusts and estates lawyer should address your individual financial needs and will include the powers necessary for the agent of your choice to carry out your financial and estate plan as intended. The standard form without additional provisions and modifications crafted by your attorney will fall short in many cases, including in particular gift, estate and Medicaid planning.
- Keep in mind, Powers of Attorney expire when you die and are not valid after death. This underscores the importance of a complete and thorough estate plan.

* * * * *

ACT QUICKLY

We are available and ready to discuss these matters with you at your convenience, but do not delay or opportunities can be lost and circumstances may compromise your ability to act. Should you have any questions, please contact the [Garfunkel Wild attorney](#) with whom you regularly work, or contact us at info@garfunkelwild.com.

Contact Information:

111 Great Neck Road	411 Hackensack Avenue	350 Bedford Street	677 Broadway
Great Neck, NY 11021	Hackensack, NJ 07601	Stamford, CT 06901	Albany, NY 12207
516.393.2200	201.883.1030	203.316.0483	518.242.7582

If you would like to receive Legal Alert mailings from Garfunkel Wild, P.C. electronically in the future, or if you would like to be removed from the mailing list, please contact us at info@garfunkelwild.com. This material is intended as informational only and the content should not be construed as legal advice. Readers should not act upon information in this material without first seeking professional advice. This material may be considered Attorney Advertising under certain rules of professional conduct. © 2021 Garfunkel Wild, P.C.