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 **Recent Developments in Estate Planning and Administration**

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By Rebecca Rosenberger Smolen and Amy Neifeld Shkedy | August 31, 2023 at 10:08 AM

 











Like in all practice areas, we need to be mindful of various developments in legal and practical issues affecting our work. Some are sudden, like changes in the law through a court decision or statutory update. Others are more gradual, like the impact of technological advances as they are adopted in our office and in the courthouses, as well as by our clients. Whether at a glacial pace or not, we need to take stock of the changes and adjust our provision of legal services accordingly.

Most recently, there has been a new development related to a topic we covered last year, in our article published in The Legal on Oct. 28, 2022, (“[Revisiting Estate Planning with IRAs and Qualified Retirement Benefits](#)”), where we addressed the changed landscape for planning for inherited IRAs due to the impact of the Secure Act which went into effect back in December 2019. In that article we noted that there was continuing uncertainty regarding the implementation of the new 10-year payout rule (part of the required minimum distribution rules for IRAs and qualified retirement benefits) and that distributions would generally not be required until Dec. 31, 2023, at the earliest, for deaths occurring after Dec. 31, 2019. The IRS has recently further extended that earliest start date until Dec. 31, 2024, under Notice 2023-54.

Focusing on payouts for these retirement accounts also brings to mind how essential it is to update beneficiaries to properly coordinate with estate plans as part of the estate planning process. It can be very tedious to do so but if it’s not addressed properly a client’s entire estate plan can be thwarted since such a large portion of a client’s assets in current times is often governed by beneficiary designation forms and not by a will. Moreover, in recent times it has become notable that many beneficiary updates can be handled online by clients out of the purview of the estate planning attorney. As a result, rather than helping them complete and submit paper forms properly these days, it has become more typical to seek a copy of the electronic record confirming the desired beneficiary update to help a client address that key part of the process. At this point in time there is no universal tool for Pennsylvania or New Jersey residents that an attorney can use to ensure the beneficiary forms are updated properly in the attorney’s office, but perhaps one day that will be possible to avoid the many significant oversights that we see without such a tool.

Beneficiaries must be updated not only for the retirement accounts, but also for life insurance and annuities. Further, it's very important to urge clients to review their records to consider how their accounts are titled. If an account has a "TOD" (transfer on death) designation, or is titled jointly with someone else, that must be reviewed and often updated so that it is properly integrated with an estate plan.

Another recent change, from last year, is a further extension to the deadline for filing "portability" returns for a surviving spouse to claim any unused federal estate tax exemption of the first spouse to die. The federal estate tax exemption is now at the record high of \$12.92 million per person (a base of \$10 million that is indexed for inflation), but it remains scheduled to be reduced by 50% in 2026 under current law (to \$5 million, as indexed for inflation).

Historically, the federal estate tax return has been due 9 months after death, so, that was the timeline for a surviving spouse to file a federal estate tax return for this purpose. Because a lot of taxpayers were seeking, and receiving, administrative relief for missing that deadline, the IRS saw fit to extend the deadline for this purpose by 15 months, to two years after death, under Revenue Procedure 2017-34. More recently, in July of 2022, the deadline was extended to five years after death under Revenue Procedure 2022-32.

The portability election should be carefully considered by a surviving spouse whose asset base remains below the nearly \$13 million exemption amount (and, without question, is advisable for any surviving spouse with an asset base exceeding that exemption amount). This is because his or her asset base could grow to exceed that amount, or that exemption amount could be significantly reduced in the future. As noted above, it is already scheduled to be reduced by 50% in 2026, and it is always possible that there will be new legislation to reduce it even further. For example, Bernie Sanders has introduced a bill to reduce it to \$3 million.

Not much else has been changing in our practice area in recent years, other than the very positive development of virtual probates at our local Register of Wills during the pandemic, which seems to be here to stay. That process hugely simplifies the steps a client must take to be formally appointed as an executor or administrator for a decedent's estate. A client used to need to appear in person at the Register of Wills for the county of death, or at a remote court clerk's office in another county or state, to be sworn in. Now, the client only needs to appear virtually in a process that saves travel time and in person waiting time. It's rare that the virtual probate process takes more than 15 minutes and it is often held at the attorney's office when it is possible to combine the probate with a productive meeting to discuss next steps in the administration process.

We still do not have the ability to have basic estate planning documents signed virtually for Pennsylvania or New Jersey residents. Perhaps one day. If beneficiaries which go into effect at death can be updated online for such a significant portion of a client's assets it seems nearly certain that one day, hopefully before much longer, all of the basic estate planning documents will be able to be effectively executed online.

Another current development we have observed, with our modern computer and internet super-efficiencies, it seems we more frequently encounter prospective clients who seek unrealistically quick turnarounds on estate planning projects. While technology may create opportunities to hasten the delivery of a draft or final documents once they are completed by a day or two, the estate planning process, overall, remains a collaborative process that typically takes at least two or three months, from start to finish, to get it right. For many folks it is a once in a lifetime endeavor, with permanent and critical impact on the objects of their bounty. We are ever mindful that once clients sign off an estate plan, a significant number of them will not take the time to revisit it again. It's impossible for us to predict who will and who won't. So, it is important that decisions are not made in haste without proper consideration of the pertinent options and issues, and that future uncertainties and foreseeable contingencies are addressed as well possible. It is simply not a process that should be rushed through with a few clicks of a button, as has become so feasible in other realms, such as online shopping through Amazon.

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