KEMPKLEIN LAW FIRM

Commentator

IN THIS ISSUE:

Vol. 32, Issue 1

The world is constantly evolving, and with this, so is the need to keep up with the changes that may affect your everyday life. Luckily, when it comes to changes in the law, our attorneys here at Kemp Klein enjoy staying up to date so you can stay focused on the warm weather that is (hopefully) just around the corner.

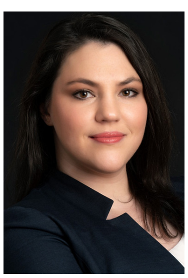
In this issue, two time-sensitive topics are covered. First, in an article written by George Gregory and Kate Ringler, the qualified retirement plan changes associated with the recently passed SECURE Act are addressed. Second, Chris Martella and Jason Seaver shed light on how a recent change to the Marketable Record Title Act has created significant confusion regarding prior interpretations.

Additionally, Kemp Klein employees enjoyed an afternoon of comradery – coming together to create no-sew blankets to donate to Common Ground, an organization we are happy to maintain an ongoing relationship with.

Best Wishes,

Feeling Secure with SECURE

GEORGE W. GREGORY & KATE L. RINGLER



In December 2019, Congress finally passed the SECURE Act impacting qualified retirement plans maintained by employers and individual retirement accounts. Some changes include:

1. “Stretch” payouts are not available for most beneficiaries. Prior planning for most non-spousal beneficiaries will not function in the same way it would have last year.

2. Taxpayers born after June 30, 1949 do not have to take their Required Minimum Distributions (RMDs) until they reach 72. Before SECURE, RMDs had to start in the year in which the taxpayer reached 70 ½.

3. Taxpayers may contribute to a deductible IRA regardless of age. Under the old regime, contributions after the taxpayer reached 70 ½ were prohibited.

4. Penalty-free withdrawals up to $5,000 are allowed for the birth or adoption of a child.

For many taxpayers, the beneficiary of an IRA or qualified retirement plan is a spouse. Under the new rules, a spouse may continue to receive payouts over their life expectancy. So too for a minor child of a taxpayer, disabled or chronically ill beneficiaries, or beneficiaries less than 10 years younger than the taxpayer (this group is referred to as the “eligible designated beneficiaries”).

The rights and abilities of a spouse inheriting an IRA are relatively unchanged by the SECURE Act. A spouse who inherits may: receive payouts over the life expectancy of their deceased spouse; elect to treat the inherited IRA as their own; use a conduit trust or a combination QTIP-conduit trust in which the surviving spouse receives the greater of the

RMD or the trust income.

While minor children are given favorable payouts, their preferred status won't last forever. Once the minor reaches the age of majority, the entire value of the account must be paid out within 10 years. Planning for minors therefore presents a difficult dilemma—acceleration of taxes or the acceleration control of the money in the hands of the minor.

There are specific tests built into the law for an individual to qualify as disabled or chronically ill. (Receiving Social Security Disability benefits is a good indicator of meeting the standard.) If an individual is disabled or chronically ill at the death of the plan participant, they are entitled to life expectancy payout. If an individual becomes disabled or chronically ill after the participant's death, this preferred status is not available. Be careful—leaving an IRA directly to a disabled beneficiary may seem like a great idea for tax purposes, but there are special considerations to be sure that the beneficiary doesn't lose public benefits as the result of their inheritance. It is possible to use one intended beneficiary's status as disabled to achieve life expectancy payout using a trust even if the trust has other remainder non-disabled beneficiaries.

What about everyone else? For those taxpayers who have designated anyone other than one of the five categories above as the beneficiary (such as their children or certain "see through" trusts), the inheritor is facing a 10-year payout. This means all the money in the inherited IRA must be paid out (and income taxes paid on that money) by December 31st of the year containing the 10th anniversary of the taxpayer's death. No payments are required to be made during that 10-year period. Either way, the beneficiary is taxed on the amount withdrawn, increasing the total amount of taxes payed compared to the old regime. This payout will cause an increase in the total amount taxed and could push an inheritor into a higher tax bracket due to the additional income. There may be other options available for those inheriting an account after the RMDs have started.

Under both the old rules and the new, qualified money left to an estate, charity, and certain "non see through trusts" must still be withdrawn five years after the death of the plan participant.

If your existing plan involves an IRA passing through a trust, it will continue to work, but not in the way you may have intended. Whether you're using a trust or not–and especially important to consider if your plan includes disabled or non-spousal beneficiaries–you should meet with your estate planning lawyer to discuss options for minimizing taxes and maximizing protections for any type of beneficiary.

Retirement plans are often an important part of estate planning. Even if your plan for retirement benefits consists of having everything go to your spouse, there is still the need to consider what would happen after the death of your spouse. More so, if this arrangement includes "stretching" benefits for children and/or grandchildren, with these new rules in place, revisiting your current plan is essential.

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Firm News

Martella and Seaver Co-Author Article for Michigan Real Property Law Review

Jason P. Seaver and Christopher R. Martella co-authored an article, "Potential Legislative Solutions to Issues with the Marketable Record Title Act After Public Act 572 of 2018," for the Fall/Winter 2019 issue of the Michigan Real Property Law Review. The article examines the proposed changes to the newly amended Marketable Record Title Act which affects recorded property restrictions (and other encumbrances) that are more than 40 years old. Find a summarized version of their work in this issue on page three!

Seminar

Detroit 2020 State of the Market

Christopher R. Martella recently moderated the *Back from the 'Burbs* panel at the Detroit 2020 State of the Market, hosted by Bisnow, on February 20. Panelists discussed economic growth, capital markets, major projects in the area and "what's driving businesses and people back into the city."

Property Rights Threatened by Recent Legislative Changes

CHRISTOPHER R. MARTELLA & JASON P. SEAVER

Does your subdivision have residential only deed restrictions that prevent a waste dump, slaughterhouse, or other businesses from moving in? Is your only lake access through a subdivision wide agreement? Are you located on a private road and have a written agreement amongst the co-owners for how the road is going to be maintained and paid for? For commercial property owners, did you sell off an outlot knowing that you restricted the property so that a direct competitor, an adult entertainment establishment, or other unwanted activities couldn't occur right in front of your building? Have those restrictions been around for 40 years or longer? If so, your rights may be terminated by a little-known provision of Michigan law called the Marketable Record Title Act if you do not take action.

The Marketable Record Title Act became law in Michigan in 1945 as an effort to make researching ownership of land easier. Previously, to make sure that an owner had clean title, an attorney or title company would have to review documents back to the original grant from the government to be sure there were no issues. At the time the act was passed, that already meant going back more than 100 years, making the costs of researching a piece of property extensive, unpredictable and in some cases, impossible. With that in mind, the Michigan Legislature created the Marketable Record Title Act as a solution.

The Marketable Record Title Act essentially said that if you could establish a clear chain of ownership for 40 years, any ownership or regulations on the property older than that would be wiped out. There were a few exceptions, including if the person who held an older claim recorded a document to extend the life of their claim. This could be accomplished either by recording a notice for the specific purpose of extending an older claim, or it could also be made by reference in another document recorded on the property (commonly called "recording by reference").

The recording by reference became a standard practice in the real estate industry. Property was often bought and sold with the language "subject to building and use restrictions, easements and other matters of record," or similar, in the deed transferring title. The general practice in the real estate industry was that the "subject to" language above was enough to extend the life of older claims.

A recent change to the Marketable Record Title Act shut down this interpretation. An extension beyond the 40 years would only be effective if it described the old claim specifically. So something like "Easement Agreement between John Smith and Mary Jones recorded in Liber 1234, on Page 456, Oakland County Records" would probably be effective, but the "subject to" language without identifying the parties creating the restriction and reference to the recorded instrument (by Liber and Page) would not.

This may seem like a minor change, but given that industry practice for at least the past several decades has been to rely on this "subject to" language, there are huge swathes of deed restrictions and other agreements that everyone thought were being regularly extended without any specific action on their part, but that is not the case any longer.

Unless specific action is taken to extend these rights, or a legislative fix can be passed in Lansing, any of these rights that date back to 1980 (and the early parts of 1981) are likely to be terminated on March 29, 2021. To make matters even more complicated, the process of extending the rights and who has the authority to do so under the Act is unclear.

For a more detailed discussion on the issue, we have recently published an article on this subject in the Michigan Real Property Review: https://kkue.com/wp-content/uploads/2020/01/fallwinter19.pdf

If you have these types of restrictions and are unsure if they fall within the Act, or have any other questions regarding this article, please contact either author.

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No-Sew Blankets Donated to Common Ground

The Kemp Klein Foundation held their third annual employee fundraiser to purchase fleece material for no-sew blankets donated to Common Ground. Kemp Klein attorneys and staff gathered for a lunch party to create 16 blankets. Common Ground distributes these as comfort blankets for children, victims of trauma, homeless and other families and individuals in need of assistance.