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Legal Matters®

Estate Planning
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House passes Secure Act 2.0

The House of Representatives overwhelmingly approved a bill designed to improve retirement savings. The Securing Strong Retirement Act of 2022, also called Secure Act 2.0, was approved with a bipartisan vote of 414-5.

Next, the legislation heads to the Senate. However lawmakers there have a retirement reform package of their own. Analysts say there's about a one-third overlap between the House and Senate bills. Both seek to raise the age for required minimum distributions, increase catch-up contributions, and assist employees in saving while paying student loans.

The House bill builds on the first Secure Act, which was passed in 2019. Some key provisions of the current enhancement:

Mandatory automatic enrollment. If enacted, the bill would require employers to auto-enroll eligible employees in a 401(k) plan at 3% of their salary. Enrollment would increase annually until it reached 10%, unless the employee opted out or changed the contribution amount.

Student loan help. The bill would allow employers to match student loan payments as contributions to an employee's 401(k), 403(b), or SIMPLE IRA.

Raising the age for RMDs. Currently, if you're 72 or older, you must take required minimum distributions (RMDs) from your retirement accounts or be subject to a penalty. The bill would increase the starting age for required minimum distributions over the next decade, reaching 75 in 2032. It also cuts the current penalty rate by at least half.

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New catch-up limit. The bill increases catch-up contribution limits for some individuals nearing retirement. The current limit is $6,500 for those age 50 and above. The bill would allow people in the limited age window of 62-64 to make contributions up to $10,000.

Increasing QCDs. The bill would enhance the annual limit on qualified charitable distributions (QCDs) from $100,000 by adding an index for inflation. It also allows a one-time QCD transfer of up to $50,000 through a charitable gift annuity or charitable remainder trust.

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Including life settlements in your estate plan

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If you have a life insurance policy you no longer need, you may be able to sell it for significantly more than its cash surrender value (CSV).

A life settlement is the sale of a life insurance policy to a third party. The sale can provide the policy holder with more than the CSV and even more than the premiums paid over the life of the policy.

Life insurance settlement companies buy policies and then continue paying the premium with the expectation that they'll collect the death benefit. That means these companies typically purchase policies from people who have life expectancies of up to 15 years and death benefits of at least $100,000.

A life settlement may be an option when someone no longer needs the coverage for their intended plan. For example:

- The policy was meant to provide death benefits to someone who predeceased the policy holder.
- It was intended to pay estate taxes, but the policy holder's estate plans have changed.
- Coverage was meant to fund a business owner's buy-sell agreement, and now the business has been sold.
- The premiums are no longer affordable.
- The individual has immediate financial needs.

These settlement arrangements are available in all states, and any policy type may qualify. However, buyers generally prefer universal life, guaranteed universal life, and those with return of premium riders. There's greater value in policies that won't increase in cost.

The least attractive are whole life policies. These high cash value policies typically have higher maintenance costs and lower death benefits.

Buyers will also be looking at the insurance company issuer rating. Established, active firms with a rating of "A" or better are preferred.

Getting started. Find a broker or request a policy appraisal from a life settlement company. You'll need to provide policy details and access to your medical records. Appraisals are free but you incur expenses for the medical records. Seek out multiple offers, as bids can vary widely from one company to the next.

Seek professional advice. If you do receive an offer to purchase, you are under no obligation to accept. However, you should consult with an estate planning attorney before you move forward. Typically, you will not owe taxes on the amount you receive, but it's best to review your plans with a specialized advisor in your state.

If you're selling a policy for reasons of financial need, consider the alternatives and weigh the best option for you and your survivors. Depending on the type of policy, you may be able to accelerate the terms and collect while you're still alive.

House passes Secure Act 2.0

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A QCD is a direct transfer of funds from your IRA to a qualified nonprofit. QCDs count toward RMDs, so if you don't need that money, you can avoid paying taxes on it by giving it to charity.

Here are some other changes in the House-passed measure:

- Creates a "lost and found" database to help employees keep track of their retirement savings accounts when they switch jobs.
- Allows workers to elect that their employer match be applied to a Roth 401(k), a move that provides tax advantages when an employee reaches retirement.
- Reduces the service requirement for part-time workers to participate in their employer retirement plan to two years, down from three.
- Enhances a startup tax credit for small businesses launching a retirement plan.
- Lessens penalties for early retirement withdrawals for victims of domestic abuse.
- Removes the 25% cap on how much of your retirement savings you can put in a qualified longevity annuity contract, or QLAC.

Making the most of restricted stock and RSUs

Restricted stock and restricted stock units (RSUs) are two alternative forms of employee compensation. They're a way for a company to incentivize employees with equity in the company.

Restricted stock is typically granted as a type of bonus or added compensation, using a vesting schedule. You receive partial ownership of the shares and may be entitled to voting rights and dividends before they vest. Until the stock is vested, however, you can't sell it. If you leave the company before you vest, you lose your shares.

RSUs on the other hand, give you stock once you meet vesting requirements. You don't own partial shares and will typically not receive voting rights or dividends.

Not options. Restricted stock and RSUs are different from stock options which only give an employee the option to *purchase* shares in the future.

Vesting. Be sure you understand how vesting works. Some stock vests after a specific length of time, but some shares require a secondary vesting trigger, such as an IPO or acquisition event.

Thinking about a job change? Pay attention to your vesting date and consider whether you want to stick around until your shares are vested.

Taxes. Once your shares vest, they become part of your compensation and are reported on your W-2. At this point, your standard tax withholding probably won't cover your tax bill, so know your vesting years and be prepared.

An estate planner can help you model your tax scenarios. You may want to defer other income or increase deductions (e.g. retirement contributions, charitable giving) to manage the spike in your income.

Note, the value of your stock on the day it vests will also be used to calculate capital gains taxes. For example, if your shares vest at $20/ share and you sell five years later for $60/ share, you'll pay capital gains on the $40 of appreciation.

83(b) election. You may be able to reduce taxes on restricted stock through an 83(b) election. That allows you to pay income tax on the shares when you receive them, not when they vest. (This strategy does not apply to RSUs because you hold no ownership prior to vesting.)

If the value is substantially lower at time of granting, you can recognize significant tax savings. Be aware, however, that you must make an 83(b) election within 30 days after receiving a restricted stock grant. If you leave the company before your stock vests, your tax payment will not be refunded.

Diversification. Watch your portfolio risk and pay attention to an overconcentration in company stock. Think about balancing your account and consider a sell schedule to manage your vested stock holdings.

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RMDs now required for death beneficiaries

If you inherited an IRA after January 1, 2020, you might be in for a surprise. Under proposed rules issued in February 2022, you might have to start withdrawing that money now.

The shift comes as a shock for many. When the Secure Act passed in 2019, it required most death beneficiaries to fully withdraw retirement plan assets within a 10-year window. The expected interpretation was that someone could let that money grow for nine years and then withdraw the total sum in year 10.

But it seems the IRS has interpreted that differently. Its proposed regulations create required minimum distributions (RMDs). That means if you inherited your mother's IRA in 2020, you need to start taking RMDs now, increasing your income and your tax bill.

Exceptions to the RMD rule include a surviving spouse, minor child, or a chronically ill or disabled beneficiary.

Some background. Before the Secure Act, beneficiaries who inherited an IRA could keep it for their lifetime. They had to take RMDs as set by the IRS, but depending on their age, those

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RMDs now required for death beneficiaries

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withdrawals could stretch for decades. It was known as a "stretch IRA."

That stretch strategy was great for the owner who could let the assets grow and grow. But distributions from non-Roth retirement plans (even inherited ones) are taxed as ordinary income. So, stretching an IRA deprived the government of tax revenue.

With the Secure Act, Congress set a 10-year time limit on distributions, allowing taxes to be collected sooner.

What to do now. For a non-spousal beneficiary who inherited an IRA in 2020, under the proposed rules, if you didn't take a distribution in 2021, you should double up in 2022 and file a Form 5329 to waive the penalty.

Alternately, you can wait and see if the final regulation provides any kind of safe harbor or blanket reprieve for those who didn't take their RMDs, because the initial IRS regulations said they didn't have to.

Some critics say the IRS interpretation is inaccurate and goes against the Secure Act's intent, suggesting a possibility the regulations will be reversed. But no matter how that decision goes, it's a good idea to strategize a plan of action.

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