The SECURE Act

What development officers need to know to help their supporters

Podcast transcript. Podcast recording can be accessed [here](#).

The SECURE Act, that is, the **S**etting **E**very **C**ommunity **U**p for **R**etirement **E**nhancement became effective January 1, 2020. It is perhaps the most impactful retirement legislation of the past decade. As development officers at nonprofit organizations, what do we need to know about it?

Hi, I'm Cayce Powell, President of Thompson & Associates. I am joined today by our two planning attorneys here at Thompson & Associates. Bill Gustoff, in Des Moines, Iowa as President of the Legal Division. And Jason Meredith from the Dallas/Ft. Worth metroplex, our Executive Vice President for Charitable Estate Planning. Thanks for joining me on this conversation!

Bill, I'll start with you. I think most people listening have probably heard of the SECURE Act and have read about it. For those of us who work in charitable estate planning, or in fundraising, what are the main things we need to know about the SECURE Act?

Bill: As you said, there's a lot of information out there, and some of it fear mongering. But I think the key things that affect the work we do, the things we need to note for our clients and donors that we work with are that:

1. It increases the age of the required minimum distribution from 70½, which it has been for a long time, to age 72.
2. It also eliminates the age restriction on a traditional IRA account. You'll recall that was at 70½, as well. Now, as long as you have earned income you can set up an IRA up to the extent that it maxes out the limit or even beyond since there's no age limit.
3. Then, the biggest thing we hear about is that the stretch IRA is gone. They've limited the stretch IRA, instead of being able to leave something to someone over their lifetimes, the maximum payout term is now 10 years.

Cayce: Jason, I will turn to you. Why is limiting the stretch of an IRA to 10 years such a big deal? Why are we hearing so much about that?

Jason: Let's look at what the law had in place prior to the SECURE Act first, then we'll talk about what happened after the SECURE Act.

For years prior to the SECURE Act, if we have an individual who had a retirement account (again, we're talking about some type of qualified account such as an IRA, 401k or some type of tax-deferred account), that individual upon their death could leave their qualified account to a younger beneficiary, usually going to children. The person who inherited the account had the ability to stretch out the distributions of that account over their life expectancy.

For example, let's say a parent has an IRA and they leave that IRA to their 40-year old child. Let's say the child has a 30- or 40-year life expectancy. The child could take out that IRA distribution over a 30- or 40-year period of time – now, it all depends on how old the beneficiary (or, the child in this case) is at the time mom and dad died. But, stretching that IRA out over a longer period of time would allow the child to take a little bit of income each year, keeping that child (1) in a lower income tax bracket each year and (2) allowing any of the money not taken out of the IRA to continue to grow inside of a tax-deferred account.

In an ideal situation, that's what most beneficiaries would want to do. That's why we've always heard about the stretch IRA.

Now, what happened when the SECURE Act was passed, the child who I've just described who inherited the IRA now cannot stretch that out over their life expectancy. They are, in most situations, required to take that out over a 10-year period of time, shortening that stretch period from potentially 30 or 40 years down to 10 years. Of course, the drawback is the child is losing all the tax-deferred growth over all those years, and by having to take the income out of the IRA faster, it potentially could force that child into a higher tax bracket. So, not only paying taxes at a faster rate, but at a higher bracket. That is definitely the concern that the SECURE Act has now placed on taxpayers.

Cayce: Ok, that makes sense. So, let's say, if I pass away and I want to stretch that out – I don't want to give everything outright to my kids, that's where the issue comes in.

But, Bill, let me turn to you, what if I don't care about stretching? What if I want to give all of my retirement accounts outright when I pass away to my kids, my heirs, or even charity as well, and I want to do that immediately – how does the SECURE Act affect me in that situation?

Bill: In that situation, it really doesn't affect you. A charity is not subject to this stretch rule either way. You can give outright to a charity, which is something we often recommend.

To your heirs, your beneficiaries or your children, if you're okay with your beneficiaries taking out all of the retirement assets in 10 years, the SECURE Act isn't a problem. In fact, one kind of change buried in the Act is that instead of requiring immediate payouts you can delay payments. The new law says that the proceeds have to be taken out of the account when they are left to an individual *within* 10 years. You could take out $0, $0, $0 up to your 10-year mark, and then draw it out. So, there's a little different stretch upfront, but nonetheless it generally compresses it.

If your goal is not to stretch it out beyond 10-years for your heirs, or make them delay it longer than that, it really doesn't affect you much. There are a few exceptions:

1. There's still a spousal exception that remains unchanged where a spouse can rollover to his or her own IRA.

2. For children, there's a tolling of the statute. So, if I have a child who inherits my IRA who's 10-years old, that 10-year clock doesn't start until the age of majority in that state (typically 18).
3. If you have a beneficiary that is chronically ill or disabled, they can get a lifetime stretch still.
4. There's an exception for beneficiaries who are not more than 10 years younger than the plan owner, in which case the 10 years is actually longer than life expectancy in some of those cases anyway.

So, there's exceptions. But, again, if your goal is to leave it to your heirs and you're not concerned about how they're going to handle it, the SECURE Act doesn't really impact your planning.

Cayce: That makes sense. The SECURE Act doesn't affect an outright gift, only if we're trying to stretch it.

Looking back on what we've already talked about, this is a really big opportunity for nonprofits to talk to their donors about a qualified charitable distribution, for example, at age 70½. At 70½, you can give up to $100,000 to charity from your retirement account. It doesn't count as income, you don't get a charitable deduction, but it comes out of your retirement account. There's a gap there now because, as you mentioned before, Bill, the SECURE Act has increased the age to 72 when people have to start taking that required minimum distribution.

People are hearing a lot about the SECURE Act and how it can really mess up their estate plans. But, with the loss of the stretch and the higher standard deduction, fewer people are itemizing for that charitable deduction anyway. There are a lot of people who are going to find this qualified charitable distribution option very attractive. As nonprofits, we just need to explain it to them.

Russell James has written a really good article on the topic. He talks about how it's more expensive now to leave your retirement accounts to your kids, so it's more attractive to give outright to charity. This is a really good opportunity for nonprofits, specifically in that area on the SECURE Act.

So, Jason, let me turn to you. We've talked about how the SECURE Act really only changes things when you don't want to leave the retirement accounts outright at your death. What are some reasons that people don't want to leave everything outright at death? Perhaps, they're kind of afraid of that. What are some drawbacks? Why don't people want to leave a large inheritance outright? What are some things they can do to protect it?

Jason: Good question. That's a two-part answer here. First, to describe why someone would not want to leave an IRA outright to a beneficiary, and then let's talk about how the SECURE Act affects currently established plans.

First, I think of five categories of client situations where a client may not want to leave an IRA directly to a beneficiary:

1. The client has minors as the beneficiaries of their estate, basically individuals under the age of majority (usually that's 18 in most states).
2. Someone who says, I have young adult children. Maybe they're technically 18, but the client doesn't want to leave a large amount of money to an 18, 19, 20-year-old, who might not be financially mature enough to inherit those assets.
3. The client has a beneficiary in their estate who the client considers to be a spendthrift. Someone who's not going to manage money well and blow through money, mismanage it, and they don't want to leave that IRA outright to a spendthrift beneficiary.
4. They have a beneficiary of their estate who they want to protect these assets in case that beneficiary was to get a divorce. This is very common where you see parents who want to leave assets to adult children are concerned their adult child will get a divorce eventually someday down the road and they want those assets protected in the event their child was to get divorced.
5. Lastly, we have what we call creditor protection. Again, maybe we have a parent leave an asset possibly to a child and they want to make sure if that child is ever sued, or deal with lawsuits, creditors, judgments, they want to make sure that the IRA, and possibly other assets, are left to the child with a level of asset or creditor protection.

So, if we were to leave assets outright to a minor, a young adult, a spendthrift, or just to an adult beneficiary that could lose these assets in a divorce or spendthrift, these could be concerns for a lot of individuals. This is where we may find an individual who has one of these five concerns in their estate would rather leave their IRA to a trust for the benefit of a child, grandchild or whoever they're leaving things to – the beneficiary who's in one of these categories.

If we leave an IRA to a trust, we can do better planning. We can leave assets in trusts for minor children until they're adults. We can leave assets in trusts for young adult beneficiaries who may mismanage it. We can leave assets in trusts for someone who doesn't manage assets well. By leaving assets in trusts we can give a beneficiary asset protection, creditor protection, and divorce protection. These are situations where we might want an IRA to go to a trust.

Now we have to analyze what happened prior to the SECURE Act when an IRA went to a trust. And, what happens after the SECURE Act when an IRA goes to a trust? This gets a little bit complicated, but I think it's important to understand.

Prior to the SECURE Act, if an IRA was going to be transferred or left into a trust upon someone's death, the IRA had to have very special language inside of it in order to qualify that IRA for this stretch-out distribution that we've been talking about.

If we didn't have the right language inside of that trust, then that trust would not be allowed to stretch out the IRA over the beneficiary's life expectancy, thus losing all the tax deferral, paying taxes sooner at higher rates. For almost 30 years attorneys have been putting very, very special language inside of estate plans in order to qualify these trusts for the IRA stretch-out.

Then comes the SECURE Act. The SECURE Act says that the entire IRA must be paid out of the IRA to either a person, a trust, or whoever it goes to, the IRA must be paid out in 10 years. That very same language that we had in the trust to qualify it for a longer stretch-out prior to the SECURE Act is going to force the money out of the trust to the beneficiary. So, essentially, the very same language we had in there before, oftentimes this was called conduit language, this conduit language will force the money out of the protective trust directly to our minor, our young adult, our spendthrift or our beneficiaries who we were trying to give divorce and creditor protection to.

So, if we have a client who was really concerned about one of these five categories, it's very likely, not guaranteed, but it's very likely they have language in their plan that will force the assets out of the trust, losing the very protections they were trying to get in the beginning.

The takeaway is this, you'll hear a lot of hype out there that says, "Oh my gosh, the SECURE Act is devastating estate plans. The SECURE Act has trashed all these plans, and everybody out there has to redo their plan." I don't think that's necessarily true.

If we have a client who knows they have trust planning in their plan and they have directed their IRAs or qualified accounts to these trusts, then they really need to have their plan reviewed by their estate planning attorney to see if there needs to be any changes.

The SECURE Act does not affect every estate plan out there. It may affect a lot of them, but not every plan. That client just needs to be aware that they should probably have their plan reviewed to see if any changes are recommended by their estate planning attorney.

Cayce: That's a great summary, Jason, I appreciate that. This is another really big opportunity for nonprofits to talk to supporters. We're here to help our supporters. We want them to do well, and we don't want anything bad to happen to them in their estate plan. Those who already have an estate plan, they're going to most certainly want to make sure that these new laws haven't disrupted their plan. So, encourage them to review their plan. Nonprofits, if you're a Thompson client, this is an excellent opportunity to invite them into our free confidential planning process to make sure their plan does exactly what they think it does. Those who have already gone through our planning process, they may want to meet again with us just to review their plan under the new laws to make sure everything's OK and tweak it if it needs it.

Again, this is a really good opportunity for us to reach out to our supporters to let them know about the new law, and as Jason mentioned, if they have this type of planning in their plan or if they think they do it's a really, really good opportunity to review it.

So, Bill, let me let me turn back to you for one last question. If someone really likes the idea of using their retirement accounts to provide an income stream, as Jason mentioned, where it will stretch out for a long time – a lot of people have that stretch to get that income stream – and, they want to do something for charity as well. In addition to the income stream from their retirement accounts, they probably have other assets that they're leaving to heirs. What are their options? What else can they do besides just retirement account planning?

Bill: I'll piggyback on to Jason's great summary there – he hit on the creditor issues. So, if you have somebody who wants to leave an income stream and they don't have the creditor issues, then the conduit trusts still might work. You just need to know that it's limited to 10 years. But, there's really nothing you can do about that. You can leave it to them outright and they can take it out immediately. Or, leave it in a trust for a trustee to dictate how fast they can take it out up to 10 years, and they can distribute it through and still get the same tax treatment.

If there are creditor issues, there's a twist on this that Jason was hinting at – instead of just a conduit trust, there's something called an accumulation trust in which the retirement accounts have to be paid and not necessarily distributed straight through. Now, that's going to trigger some different tax consequences. That's going to have income tax inside a trust, which we typically don't want. But, I tell clients all the time if you're dealing with a beneficiary who has drug issues, creditor issues, divorce issues, and it's a choice between distributing this money to a child who's going to lose all or a bigger chunk of it to some sort of creditor or other issue versus holding in a trust protecting it for them, then yes, you'll pay more taxes. We'd rather pay more taxes and preserve the principle.

But, an idea we still love is if you want to leave a beneficiary an income stream of up to 20 years – you can use 20 years or depending on their age at the death of the account holders, it could still be over their lifetimes if they qualify. We like the Charitable Remainder Trust (CRT) still as a potential vehicle. That's a trust that you create at your death typically, in this case, and you direct your retirement accounts to it. That's going to be a tax-free transfer because the charitable remainder trust will qualify for charitable treatment. Now, as the income gets paid out of there to your heirs over the term of 20 years or life, if they qualify, it's going to be income taxable to them at that point. But, that would have been the case anyway. So, the charitable remainder trust has kind of become a charitable stretch remainder trust as an alternative to what we've lost on the conduit trust in the past.

Cayce: That's great. It really depends on what the person wants. There are options with some give and take. It may not be the stretch or the income stream for a long time, or the accumulation trust tax-wise.

But again, it goes back to what they want. Here's what the new laws are, what are you wanting to do here? Here's the consequences so individuals can make an informed decision. There are a lot of options out there for them, they just need to know it.

Jason, do you have any final thoughts?

Jason: Bill did a great job summarizing another option with the charitable remainder trust. I think the biggest takeaway is that there's a lot of hype out there, a lot of information, a little bit of misinformation, but I think for the most part, individuals need to be educated.

Like Cayce said, this is a great opportunity for nonprofits to educate individuals on the new law, what's going on. The takeaway is the stretch IRA is not dead. You'll hear people say the stretch IRA is dead. It's not dead. It is limited, but it is not dead. And, and to be honest with you, if we utilize techniques like a charitable remainder trust, we can really mimic a lifetime stretch-out very similar to what we had before the SECURE Act was in place.

What I find a little bit discouraging is I know some advisors who are touting things like converting all IRAs to Roth, replacing the lost tax deferral with life insurance. Those are great techniques, and I'm not discounting those techniques. But, I also want everyone to understand the charitable remainder trust is a really good opportunity. It's an additional technique, in addition to Roth conversions and life insurance and things like that, they may be hearing out there. So, just to realize there's two or three good alternative strategies here to address the limited stretch that we have now.

The last takeaway is if you believe you currently have IRAs directed to a trust in your estate plan, it's really a good idea to have that plan reviewed and make sure your plan is still doing what you think it’s doing to see if you need a revision for the plan.

Cayce: That's great, Jason. I want to re-iterate, too, not only charitable remainder trusts, stretch to a certain extent as well, but just remember outright gifts for retirement accounts from your supporters. Just the tax advantages of that, of leaving your organization as a beneficiary of the retirement accounts. It's a great time to even just talk about that very, very simple plan, as well!

Jason, Bill, thank you so much for doing this. It's been a great 15-20 minutes or so, and I appreciate you doing this.

We hope that everyone has enjoyed this brief overview of the SECURE Act. We really urge you to take advantage of this time to build stronger relationships with your donors by educating them on how the SECURE Act might affect their plans.

Again, if you are a client at Thompson & Associates, we are here to help you navigate through the new law and how it might affect your supporters.