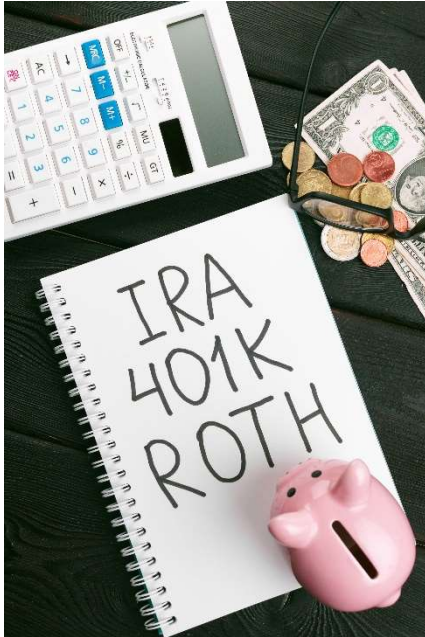


*guiding you through life's **must crucial** legal decisions*

Fall 2019

(507) 288-5567



SECURE Act Could Bring Big Changes for Retirement Accounts

The SECURE Act, which passed with nearly unanimous support in the House, is now stalled in the Senate. Congressional leadership is still lobbying hard to have this bill passed in 2019. If it passes, this bill will have a big impact on retirement accounts and savers in this country - including how retirement accounts impact your estate plan!

Among other sweeping provisions in the proposed legislation, one of the key components is changing required distributions under IRAs, 401ks, and other retirement plans. Under current law, required minimum distributions (RMDs) for traditional retirement accounts must begin no later than age 70 1/2. Distributions are based on the beneficiary's life expectancy on the beginning date. Many savers choose to wait until the required beginning date to allow their account to grow tax-deferred as much as possible. The SECURE Act would **increase the required**

beginning date to age 72. This is a good thing for anyone wanting to get a little more benefit from their retirement account.

Now here's the catch - your children are going to pay the tax. Under current law, non-spouse beneficiaries (aka children) of retirement accounts and IRAs are allowed to continue the tax benefits of the retirement account by "stretching" them over their own lifetimes. The distributions to the beneficiaries are taxable, but the account can continue to grow tax free in the meantime and the distribution amounts are usually lower (keeping the income in a lower tax bracket potentially as well). This is a great benefit for non-spouse beneficiaries and one we often incorporate into estate plans. However, under the SECURE Act, the **non-spouse beneficiaries must withdraw the entire account within 10 years of your death** (including Roth IRA accounts). Once that money is withdrawn, it all goes to the beneficiary, and they can do with it whatever they want. Any reinvestment will no longer be tax deferred.

This is a significant change in how inherited retirement accounts are treated if this law passes. Many times, people assume that children will continue the retirement account and be tax-smart. In situations where we are not so confident the children will allow the account to grow, we may look at establishing an **IRA Trust** or a **"conduit trust"** as the beneficiary of a retirement account instead, which allows the stretch out to occur when structured properly but gives the trustee more control over the distribution of assets to the beneficiary. If this proposed legislation becomes law, many families will want to consider the impact of distributing the account to their children over 10 years. In many cases, this may not be in line with the intent for leaving the account to the beneficiary. As an alternative, more people may choose to use the IRA Trust as a way to defer the inheritance even if they can't defer the tax.

Elderly Waiver:

Long-Term Care Planning for Assisted Living and Community-Based Services

Elderly Waiver (“EW”) is a federal Medicaid waiver program that funds home and community-based services. EW is the only medical assistance program that pays for assisted living. However, what most people do not know is that EW only covers the service portion of the assisted living contract and not the room-and-board charges.

EW eligibility requirements:

1. Must be 65 or older
2. Require a nursing facility level of care as determined by a Long-Term Care Consultation;
3. \$3,000.00 or less in available assets for a single person
4. If married, the community spouse can retain \$126,420.00 in assets, their primary residence, one vehicle, a pre-funded burial plan and personal property
5. Income requirements – EW has three different income limits. These limits are based on the individual’s current income and whether they are residing at home or in an assisted living facility



Applying for EW can be very complex, especially if you are planning to reside in an assisted living facility opposed to receiving in-home services.

Assisted living facility contracts are what are known as housing with service contracts. Housing with service contracts are two distinct contracts. One portion of the contract is for housing and the other is for services. EW only covers the service portion of the contract. However, room-and-board is usually a substantial part of the cost in living in an assisted living facility.

There is only one program that pays for room-and-board in an assisted living facility. The income limit to qualify for this program is \$922.00 per month. Due to the high cost of room-and-board in assisted living facilities it is often not cost effective or financially feasible for an individual to reside in an assisted living facility.

Further, when looking at assisted living facilities it is important to determine whether the facility accepts EW and whether they have a private pay requirement. Many assisted living facilities require a two- or three-year private pay requirement prior to accepting EW.

It is extremely important to consult with an elder law attorney prior to applying for EW or signing an assisted living contract. There are many things the facility will not tell.

Staff Corner: Welcome Megan!

Megan Glasrud joined our law firm in 2019. She brings 13 years of legal experience working in law firms and teaching paralegal courses. Megan grew up visiting her grandparents' farm in Fremont, Minnesota, which had been in the family for multiple generations. She graduated from St. Charles High School and later Winona State University and Augsburg University.



Megan lives in Byron with her husband, Mike, and their one-year old daughter, Riley. They enjoy gardening, fishing, and traveling. Megan helps with phone/reception duties, appointment coordination, document preparation, billing, and overall office administration—we think you will find her to be a friendly voice and face and a great addition to the Ward & Oehler team!

Again, welcome, Megan!

Buyer Beware: Don't Fall for Deceptive Real Estate Solicitation Scams

There has been an upswing in recent years in the number of companies who are sending letters to Minnesota property owners that, at first glance, look like a bill from a government agency. These letters often look very official and attempt to get property owners to pay upwards of \$90 to obtain a copy of their real estate deed or property profile. These letters may contain buzzwords like "U.S. Government," "official," and "certified copy" in order to coerce property owners into paying the fee. The fine print may disclose that a deed is not required, but many of us fail to read or notice the fine print disclaimer.



The companies sending these letters rely on the fact that many homeowners don't know how, where, or when to obtain the deed to their property. In the event that you are buying, selling, or otherwise transferring title to your property, or perhaps refinancing your mortgage, you – or the person or entity handling your closing – can always obtain a copy of your deed from the county recorder or registrar of titles. There is no need to pay a private company to obtain the deed on your behalf.

Selling on a Contract for Deed: Pros and Cons

Thinking of buying or selling on a contract for deed? Contracts for deed are a common way to buy and sell farm land and investment properties. Here are a few things to think about.

Pros:

- Buyer does not bank financing
- Faster closing
- Spread out gains and taxes for seller
- Seller can maintain more control
- Less expensive than with bank financing

Cons:

- Seller is the lender
- Title remains with seller until contract is paid off
- Less protection for buyer in the event of default
- Risk of title issues unless a title examination is done at the beginning

Office Hours and Locations

Rochester: 1765 Greenview Drive SW

Monday – Thursday 8:30 – 4:30

Friday 8:30 – 3:30

St. Charles: 819 Whitewater Ave

Tuesday 12:30 – 4:30


Thursday 9:00 – 12:00

By appointment

To schedule an appointment in either office, call (507) 288-5567. You can also book appointments online at www.wardoehler.com/book-online for appointments in Rochester.



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