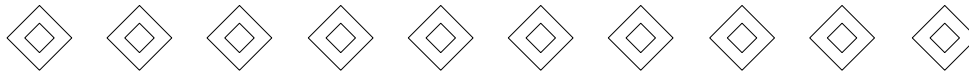




# Retirement Account Planning

Michael A. Simon, Esq.  
Law Offices of Michael A. Simon  
A Professional Law Corporation  
1300 Quail Street, Suite 101  
Newport Beach, California 92660  
(949) 954-6999  
msimon@simon-lawfirm.com



## Bio

With over twenty years of experience, Michael A. Simon has extensive experience in all aspects of estate planning, tax, probate and trust administration. Mr. Simon provides comprehensive, highly personalized estate planning, probate and trust administration services to clients throughout Orange County and the surrounding communities. Whether a large or small estate, Mr. Simon provides pragmatic, result-oriented estate planning, probate, and trust administration services. Mr. Simon is an active member of the California State Bar and holds membership in the Trusts and Estates Section of the Orange County Bar Association as well as the Real Property, Probates and Trust Section of the American Bar Association. Mr. Simon is licensed to practice before the United States District Court (Central District) and the United States Tax Court and he is also admitted and qualified to practice as an attorney and counselor before the United States Supreme Court. Mr. Simon is a frequent lecturer in the area of estate planning. His speaking engagements include presentations to fellow attorneys, professional advisors and industry trade groups as well as presentations to the general public and community groups.

**“Ask First!”** This form is to be filled out by any person who is offering legal, financial, retirement, insurance, accounting, estate, long-term care or similar planning services. Respond to ALL categories completely; sign and date at the bottom of the page.

① **MY EDUCATION-** I have achieved the following level of education (check HIGHEST level achieved):

<input type="checkbox"/> Some High School	<input type="checkbox"/> High School Diploma	<input type="checkbox"/> Bachelors Degree
<input type="checkbox"/> GED	<input type="checkbox"/> Some College	<input checked="" type="checkbox"/> Masters or other Advanced Degree

② **MY CREDENTIAL(S)-** I have the following specialized credential(s) and training (examples: CFP, ChFC, CLU, CPA, JD, MBA, years of relevant experience):

Juris Doctor Degree

③ **MY RELEVANT LICENSE(S)-** I have the following license(s) giving me the legal authority to provide the services I am offering to you (examples: bar license (attorney); securities license; insurance license):

License Type	Covers What Activities	Issued By	License No.
Attorney	Practice of law	California	210340

④ **LEGAL SERVICES-** (Check ONE):

I DO NOT practice law, and the services I am offering to you do not involve practicing law.

I DO practice law, and have an active license to practice law in California.

I DO practice law, but DO NOT have an active license to practice law in California. I am, however, under the supervision of the following attorney who has an active license to practice law in California:

Name of attorney:	Telephone:
Address:	

⑤ **OUR BUSINESS RELATIONSHIP-** Check TRUE or FALSE:

True /  False. In our business relationship, I will at all times serve as a fiduciary and put your interests before my interests and those of my employer.

⑥ **MY COMPENSATION-** I will be paid in the following way (commission, fee, salary, etc.), by the named person or company, in connection with the services I am offering to you:

Way(s) I'll Be Paid	Payment Will Be Made By (name each person or company)
Per written legal service agreement	Client

⑦ **FINANCIAL PRODUCTS / AFFILIATED ORGANIZATIONS-** Check TRUE or FALSE:

True /  False: I offer or sell annuities, insurance, mutual funds or other financial products; or I am, or my employer is, affiliated with a person or organization that offers or sells annuities, insurance, mutual funds or other financial products.

⑧ **I certify under penalty of perjury that the responses herein are true to the best of my knowledge.**

Date: 4/1/2024	Business Name: Law Offices of Michael A. Simon, APLC
Signature:	Address: 1300 Quail Street, Suite 101, Newport Beach, CA 92660
Print Name: Michael Simon	Telephone: 949-954-0999

Copyright © 2010 H.E.L.P. (Healthcare and Elder Law Programs Corporation)

## What You Will Learn

- ◆ **Learn the latest rules that affect retirement accounts**
  - SECURE Act-Enacted December 20, 2019
  - New IRS Regs (February 2022)
  - SECURE Act 2.0-Enacted December 29, 2022
  - Notice 2024-35 (April 16, 2024)
- ◆ **How to calculate your required minimum distributions**
- ◆ **Options for choosing beneficiaries for your retirement accounts**
- ◆ **Is the “stretch” dead?**
- ◆ **Information about Roth IRAs**

## What Are We Talking About

---

### ◆ Retirement accounts include:

- IRAs (SEP, SAR SEP, Simple, Etc.)
- 401(k)s
- 403(b)s
- 457s
- Keoghs
- Pension Plans (Defined Benefit Plans, Profit Sharing Pension Plans, ESOP, etc.)
- Roth IRAs (Different rules)

## Benefits

---

### ◆ Contributions reduce taxable income

- New Rule: SECURE Act-Age limitation on contributing to an IRA eliminated. Old Rule was age 70 1/2. Must have earned income.

### ◆ Contributions grow tax deferred while inside account-No income tax or capital gains tax

### ◆ Potential significant compounding effect

### ◆ Amount of money in retirement accounts?



## **What About Uncle Sam?**

---

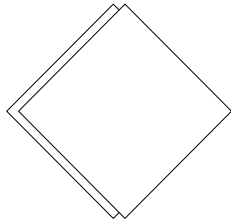
- ◆ **All money in these accounts are “pre tax dollars”**
  - **The contributions as well as the growth of these retirement accounts have not been taxed**
- ◆ **Do you think the IRS still wants their share? Even if you die?**
  - **SECURE Act**
- ◆ **Not tax free-Only a tax deferral**



## **Important Part of Estate Planning**

---

- ◆ **Sometimes retirement accounts can be the largest asset of a person’s estate**
- ◆ **Often missed or overlooked in estate planning**
- ◆ **Estate plan needs to address retirement accounts**



## **Rules During Life**

### **Rules During Life**

---

◆ **Unless an exception applies, withdrawals before age 59 ½ are subject to a 12.5% (10% Fed and 2.5% CA) early withdrawal penalty in addition to income tax**

- **No income tax has been paid on these assets**
- **Get a 1099-R for withdrawals**
- **SECURE Act 2.0-Added new exceptions from the early withdrawal penalty such as domestic violence victims, terminal illness and qualified long-term care expenses**



## **Rules During Life**

---

- ◆ **After age 59 ½ but before age 73 (not 70 ½ or 72), you may, but you are not required to, make withdrawals**
- ◆ **No penalty but withdrawals are still subject to income tax**
- ◆ **Get a 1099-R for withdrawals**



## **Lifetime Required Minimum Distributions**

---

- ◆ **Starting at age 73 (not 70 ½ or 72) the IRS requires you to withdraw or distribute part of the retirement account each year**
  - **New Rule: SECURE Act 2.0- Starting in 2023, required beginning date is the year you turn age 73 with an eventual increase to age 75 by 2033**
- ◆ **Referred to as RMD**
- ◆ **No penalty but withdrawals/ distributions are still subject to income tax**
- ◆ **IRS says you have deferred long enough**



## **Required Beginning Date**

---

- ◆ **With limited exceptions, RMD must start in the year you turn 73**
- ◆ **RMD required by 12/31 of each year**
- ◆ **First year rule: Can delay distribution until April 1 of year following the year you turn 73**
  - Watch out for two distributions in same year
  - May push you into higher income bracket/taxation of social security benefits



## **Required Minimum Distribution**

---

- ◆ **Can always take more**
  - Does not give you “credit” for future years
- ◆ **Penalty**
  - **SECURE Act 2.0-Decreases the penalty from 50% to 25% (10% if corrected in a timely manner for IRAs)**

## How to Calculate RMD

- ◆ Most banks and brokerage firms do the calculation for you and send you a letter
- ◆ You can do the calculation yourself using an IRS table
- ◆ Must recalculate each year

## Required Minimum Distribution (RMD)

PRIOR YEAR  
12/31  
ACCOUNT  
BALANCE

÷

LIFE  
EXPECTANCY  
DIVISOR  
FROM TABLE

=

RMD



### Uniform Table

Age	Divisor	Age	Divisor
<u>72</u>	<u>27.4</u>	<u>80</u>	<u>20.2</u>
<u>73</u>	<u>26.5</u>	<u>81</u>	<u>19.4</u>
<u>74</u>	<u>25.5</u>	<u>82</u>	<u>18.5</u>
<u>75</u>	<u>24.6</u>	<u>83</u>	<u>17.7</u>
<u>76</u>	<u>23.7</u>	<u>84</u>	<u>16.8</u>
<u>77</u>	<u>22.9</u>	<u>85</u>	<u>16.0</u>
<u>78</u>	<u>22.0</u>	<u>86</u>	<u>15.2</u>
<u>79</u>	<u>21.1</u>	<u>87</u>	<u>14.4</u>

### Required Minimum Distribution (RMD)

\$100,000

÷

26.5

=

\$3,773.58

Age	Divisor	Withdrawal Rate %	Age	Divisor	Withdrawal Rate %
72	27.4	3.65%	87	14.4	6.95%
73	26.5	3.78%	88	13.7	7.30%
74	25.5	3.93%	89	12.9	7.76%
75	24.6	4.07%	90	12.2	8.20%
76	23.7	4.22%	91	11.5	8.70%
77	22.9	4.37%	92	10.8	9.26%
78	22	4.55%	93	10.1	9.91%
79	21.1	4.74%	94	9.5	10.53%
80	20.2	4.96%	95	8.9	11.24%
81	19.4	5.16%	96	8.4	11.91%
82	18.5	5.41%	97	7.8	12.83%
83	17.7	5.65%	98	7.3	13.70%
84	16.8	5.96%	99	6.8	14.71%
85	16	6.25%	100	6.4	15.63%
86	15.2	6.58%	101	6	16.67%

## Lifetime Required Minimum Distributions

### ◆ Life Expectancy Divisor

- Uniform table (Unless spouse-beneficiary is more than 10 years younger)
- New tables-Effective for 1/1/22
  - Not a big change but must use the new table starting 2022
- IRS Publication 590-B (Updated)



## **More Than One IRA?**

---

- ◆ **If more than one IRA, RMD must be calculated separately for each IRA account but cumulative RMD can be taken out of one account**



## **Qualified Charitable Distribution**

---

- ◆ **The Qualified Charitable Distribution (QCD) rules allow a taxpayer to distribute money from their IRA and gift it directly to charity without including the IRA distribution in their income**
- ◆ **The Qualified Charitable Distribution is now permanent!**
- ◆ **More consideration needs to be given to this strategy under the new tax law**

## Qualified Charitable Distributions

- ◆ **Without the Qualified Charitable Distribution rules, a taxpayer who wanted to withdraw money from an IRA and give it to a charity would have to add the distribution to their income (AGI) and hopefully offset that income with the deduction for the gift to the charity**
- ◆ **Issues:**
  - **No deduction for taxpayers who do not itemize**
    - **This may be most of us under new tax law**
  - **Including the income can affect the taxability of Social Security benefits and increased Medicare premiums**
  - **Including the income can affect several other tax breaks related to AGI such as deductions, passive losses, etc.**

## Qualified Charitable Distributions

- ◆ **Benefits of the Qualified Charitable Distribution**
  - **The distribution is excluded from your income**
  - **The distributions will count towards your required minimum distribution**
- ◆ **Rules:**
  - **Limited to \$105,000 (indexed for inflation starting in 2024)**
  - **Must be age 70½ or older**
  - **Distribution must be made directly to the charity**
  - **Permits QCDs from an IRA to a split-interest entity (such as a charitable remainder trust or charitable gift annuity) up to a lifetime limit of \$50,000**



## **SECURE Act 2.0**

---

- ◆ **Lots of other provisions to provide incentives to promote retirement savings and to expand flexibility for retirement accounts**
- ◆ **What's Not in SECURE Act 2.0**
  - **SECURE 2.0 did not limit Backdoor Roth conversion**
    - **\$5 Billion Roth**
  - **The bill does not address the confusion surrounding inherited retirement accounts and whether RMDs would apply to a beneficiary each year but IRS Notice 2024-35**



## **Choosing Beneficiaries and Rules After Death**

## Concepts

---

- ◆ **Concept 1: During life, you get to pick the beneficiary for your retirement accounts by completing a beneficiary designation form with the institution that holds your retirement account**
  - Contact to pay at death/No probate
  - Change at any time
  - The beneficiary designation form controls
- ◆ **Concept 2: After death, a designated beneficiary can continue to defer income tax until money is distributed/withdrawn**
- ◆ **Concept 3: IRS still wants their share and requires your named beneficiary to withdraw money from the account so the IRS can collect the tax**

## Concepts

---

- ◆ **Concept 4: From a tax standpoint, it is likely preferred that your beneficiary avoid taking a lump sum distribution (Lose tax deferred growth and pay higher taxes)**
- ◆ **Concept 5: Generally, the strategy is to try to make the beneficiary's withdrawal period as long as possible**
  - Before the SECURE Act
    - We could often do a STRETCH and create decades of tax deferred growth

## **SECURE Act**

---

- ◆ **Eliminates the stretch for retirement accounts inherited after December 31, 2019**
- ◆ **Basically, the SECURE Act requires retirement accounts, including ROTH IRAs, to be distributed within 10 years of death of the account owner**
  - RMD's during the 10 years-
    - If owner started RMD before death
    - Notice 2024-35-Relief through 2024
- ◆ **Exceptions (EDB):**
  - Surviving spouse
  - A child of the taxpayer who has not reached the age of majority
  - A disabled or chronically ill individual
  - An individual who is not more than 10 years younger

## **Choosing Beneficiaries**

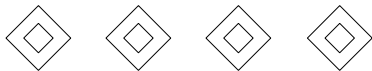
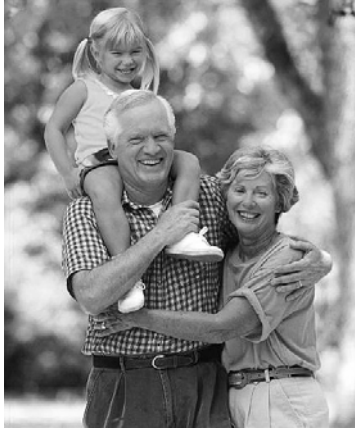
---

- ◆ **The rules/options for distribution of the retirement account will depend on who you designated as your beneficiary**
- ◆ **With this in mind, the selection of beneficiaries is very important**

## 5 Beneficiary Options

---

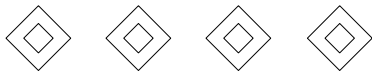
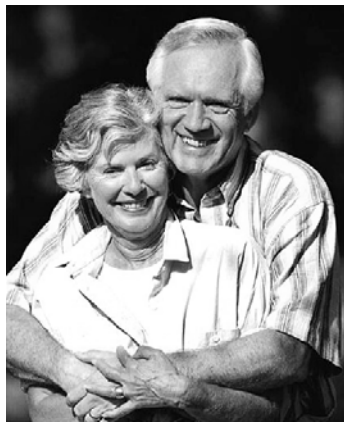
- ◆ Spouse
- ◆ Children, grandchildren, others adults
- ◆ Trust
- ◆ Charity
- ◆ Some or all of the above



## Option 1. Spouse as Beneficiary

---

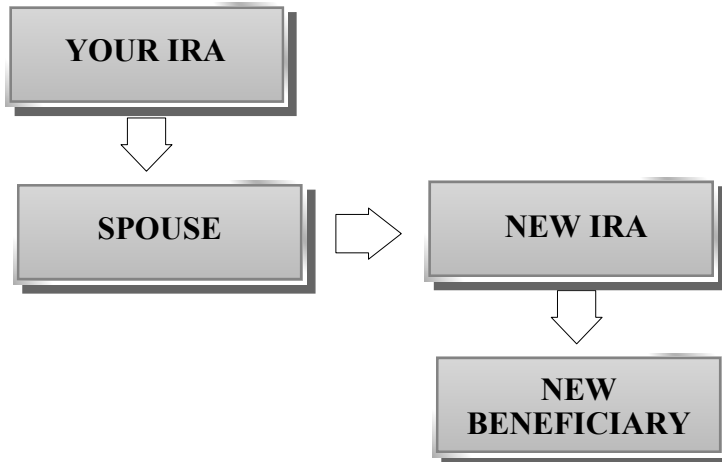
- ◆ Benefits
  - Money available to spouse
  - No 10 year limitation under the SECURE Act
  - Special Rule: Spousal rollover option





### **Option 1. Spouse as Beneficiary IRA Spousal Rollover Example**

---



### **Option 1. Spouse as Beneficiary**

---

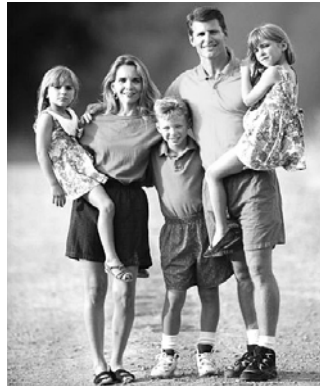
#### **◆ Disadvantages**

- **Spouse has control of money**
- **Possible issue with a blended family**

## Option 2. Children, Grandchildren, Others as Beneficiary (Adults)

### ◆ Benefits

- Minor children exempted from 10 year limit until they reach age of majority-then 10 years
  - Don't want to name minor children outright
- Adult children may have up to 10 years to distribute the account
  - Potentially many years of tax-deferred growth
  - Manage tax brackets



## Option 2. Children, Grandchildren, Others as Beneficiary (Adults)

### ◆ Disadvantages

- If child is named as outright beneficiary
  - Problematic to name a minor child
  - May do a lump sum distribution-Taxes
  - Irresponsible spending
  - Creditors



## **Option 3. Trust as Beneficiary**

---

- ◆ **Can name a trust as a beneficiary**
- ◆ **Trust must meet certain IRS requirements and include special provision regarding retirement accounts**
  - **New SECURE regulations**



## **Option 3. Trust as Beneficiary**

---

- ◆ **Benefits**
  - **Provides control**
  - **Can protect assets from courts, creditors and irresponsible spending**
  - **If done properly, can still take advantage of the SECURE Act exceptions:**
    - **Surviving spouse**
    - **A child of the taxpayer who has not reached the age of majority**
    - **A disabled or chronically ill individual**
    - **An individual who is not more than 10 years younger**



### **Option 3. Trust as Beneficiary**

---

◆ **Disadvantages (Have a compelling reason)**

- **No spousal rollover available**
- **Trust must be drafted with proper provisions to qualify for SECURE Act exceptions-Provisions in trusts need to be reviewed after SECURE Act**
- **Higher income tax rates if distributions stay in trust**
- **Administratively complex**
- **Expense**



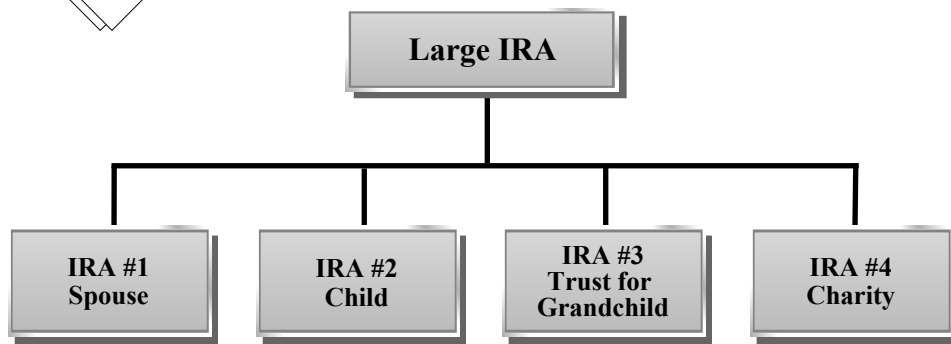
### **Option 4. Charity as Beneficiary**

---

◆ **Benefits**

- **No income taxes**
- **Reduces estate taxes**

## Option 5. Some or All as Beneficiary



## RESPONDING TO SECURE ACT

- ◆ Accept the taxes-Manage tax brackets
- ◆ Charitable Remainder Trust
- ◆ Insurance
- ◆ ROTH Conversions
- ◆ Charity as beneficiary
  - Lifetime QCDs including charitable gift annuities
- ◆ Spend it



## **Mistakes**

---

- ◆ **Not naming a beneficiary**
- ◆ **Naming “my estate”**
- ◆ **Naming a minor outright**
- ◆ **Not naming both primary and contingent beneficiaries**
- ◆ **Not keeping beneficiary designations up to date**
- ◆ **Not keeping records of beneficiary designations**
- ◆ **Not considering and/or planning for the income tax issues when selecting beneficiaries (Case by Case)**



## **Roth IRAs**



## **Benefits of Roth IRA**

---

- ◆ **No required distributions during your lifetime**
- ◆ **Can make contributions (if earned income)**
- ◆ **Tax-free growth**
- ◆ **Tax-free distributions to you and beneficiary(ies)**
- ◆ **10 year “stretch” and spousal rollover okay**



## **Roth IRA Conversion**

---

- ◆ **Convert traditional IRA and other retirement accounts to a Roth IRA**
- ◆ **Everyone is eligible-No more limitations**
- ◆ **Must pay income taxes on conversion**
- ◆ **Need to do careful analysis to see if it makes sense**
- ◆ **No more recharacterization**
  - **Under new law, conversions done after 1/1/2018 can not be recharacterized**



## **Roth IRA Conversion Factors**

---

- ◆ **You expect your tax rate to be higher in retirement**
- ◆ **You do not think you will need the money for living expenses-we want money to stay in the Roth IRA**
- ◆ **Your investment horizon is long enough to benefit from the tax-free growth of a Roth IRA**
- ◆ **You can afford to pay taxes on the conversion using separate funds**
- ◆ **Estate planning objectives**



## **Jump Start Your Children's (Grandchildren's) Retirement Fund**

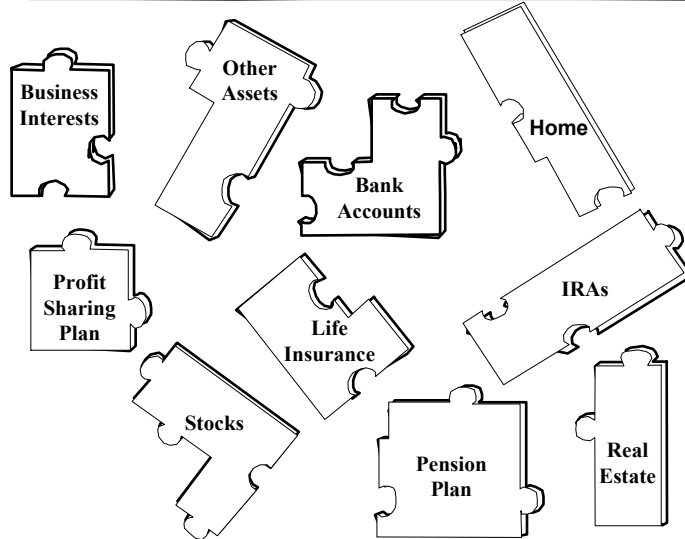
---

- ◆ **100% of child's earnings, up to \$6,000/year**
- ◆ **Over 59 1/2 : tax-free withdrawals**
- ◆ **Under 59 1/2 : no taxes or penalties until all contributions withdrawn**
- ◆ **Special breaks on early withdrawals for college, home**
- ◆ **SECURE Act 2.0-Permits unused funds remaining in 529 to be rolled into a Roth IRA for 529 beneficiary**
  - **Restrictions including a lifetime limit of \$35,000 and a 15-year minimum on account age)**
- ◆ **Child (Grandchild) has control**



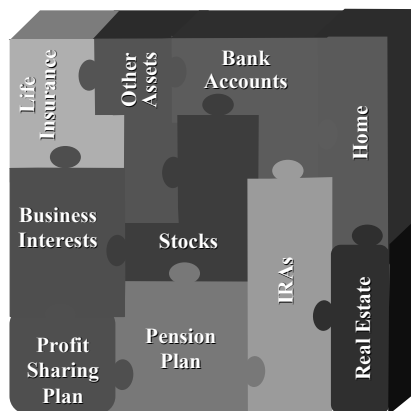
## Estate Plan Components

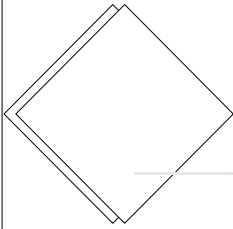
---



## Successful Estate Plan

---





---

**Michael A. Simon, Esq.**  
**Law Offices of Michael A. Simon**  
**A Professional Law Corporation**  
**1300 Quail Street, Suite 101**  
**Newport Beach, California 92660**  
**(949) 954-6999**  
**[msimon@simon-lawfirm.com](mailto:msimon@simon-lawfirm.com)**  
**[www.simon-lawfirm.com](http://www.simon-lawfirm.com)**