

# LIFE BEGINS

Senior Lawyers Section Newsletter



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## LETTER from the EDITOR

To My Fellow Senior Lawyers,

As I write this, the year 2020 is now drawing to a close. A year ago, few of us could have imaged what kind of year 2020 would turn out to be. Although new vaccines for COVID-19 are offering us some hope, we do not yet know when they will bring real relief, and in the meantime, we continue to be in the most deadly phase of this pandemic so far. I certainly look forward to the time when we can come together again in person, but I also believe that the ways of how we meet, interact, socialize, and conduct business are likely changed forever. For our Section, which was originally founded on maintaining a strong tradition of in-person collegiality, this has been particularly challenging. Nonetheless we are adapting.

As many of you know, the Senior Lawyers Section annual conference had originally been planned to take place in May 2020 at the Seatac Marriott, our meeting place for a number of years. When the initial COVID-19 lockdown occurred in March, it required that we postpone the event, but we looked forward optimistically to October 2020, only to find ourselves still in the midst of the persistent pandemic at that time. The annual in-person conference is now on the schedule for May 2021, with an excellent slate of speakers already lined up, which we are very much looking forward to. Time will tell whether this plan can go forward, and we will keep you posted.

During this pandemic time, the Executive Committee has been working to increase our online presence and member resources. We produced a webinar on Oct. 30, 2020, with Kurt Bulmer, entitled “Emerging Expectations around Race, Sex, and Gender.” Section members could attend at no charge. Kurt, as many of you know, was the first counsel for the Washington State Bar Association and now has a private practice handling attorney discipline matters. His topic was timely as our profession grapples with issues of racial equity, diversity, and inclusion in the wake of the killing of George Floyd. The webinar was a great success, with 105 participants, approximately half of which were Section members. Our next webinar is

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scheduled for Jan. 22, 2021, presented by Yakima attorney Sara Wixson entitled “Got Food? How law and technology will impact what is on your plate.” She will speak about new developments in agriculture and agriculture law impacting Washington farmers and consumers. Section members will again be able to register for free, which more than makes up for the cost of Section membership.

We are also resurrecting this newsletter, ‘*Life Begins*,’ in electronic format, with this being our second edition. There has been a learning curve for us in transitioning from print to electronic format, but we are excited that we will be able to reach more senior lawyers than ever before. We recognize that communication with our membership is essential for our survival as a Section and that we are at a crossroads regarding our ongoing viability. We recognize that the founding generation of senior lawyers is passing on or often deciding to resign from the Bar in their retirement. Our challenge is to continue to address the concerns of this founding generation, while also making ourselves relevant to the incoming baby boomer generation, who are often approaching senior years as attorneys by looking for creative ways to adapt their practice, as opposed to opting

for traditional retirement. As a Section, if we can address ourselves and make ourselves relevant to both groups, we have the opportunity to be a much stronger voice for all senior lawyers in Washington.

To survive and move forward, we need your input and feedback. Let us know what suggestions you have for our future. What issues involving the Bar are most important to you as senior lawyers? You can discuss issues on our list serve, or you can email or call any member of our Executive Committee. Going forward, we face the possibility that our Section could fade away over time. However, with the growing number of attorneys age 55 and older who are members of the Washington Bar, it is also possible that the Section can become stronger advocates for all senior lawyers. We are working to adapt to changing needs and changing times, and ironically this pandemic may be pushing us to get there more quickly.

*I wish a safe and healthy  
holidays and new year to all!*

Eleanor Doermann  
Chair, Senior Lawyers Section Executive Committee

## READ ON...

During the pandemic more of us are spending time reading books. As a part of our *Life Begins* newsletter, we intend to have a regular section of your recommendations in each issue.

Initially, the list will come from various members of the Senior Lawyers Executive Committee. We are hoping that other readers of *Life Begins* will soon join in making recommendations.

ALBERT ARMSTRONG III:

### **The Spy and the Traitor**

**Author:** Ben MacIntyre

**Published:** 2018, Broadway Books

Recounts the tale of Oleg Gordievsky, a counterspy working on behalf of Britain's MI6. He was later promoted to the KGB Station Chief position in London. He played a key role in letting the Russians know (at MI6's urging) that the West wasn't about to launch a nuclear attack on the USSR, as the Russians had feared, thus avoiding the possibility of an accidental nuclear exchange. Mr. Gordievsky is exposed and called back to Moscow but is successfully extracted from the USSR by the British. Mr. Gordievsky had been exposed by the Russians' own mole, Aldrich Ames, in the U.S.

STEPHEN E. DeFOREST

### **One by One**

**Author:** Ruth Ware

**Published:** 2020, Scout Press

For a break from my normal diet of political and historical nonfiction, I read a wickedly good mystery. A review was in “The Mix” section of the Oct. 4 *Seattle Times*. The locale is in the French Alps, where a team from a London software company is staying in a luxury chalet for a retreat. There is a battle between those who want to sell the company for a fortune and those who want to stay independent, hoping for an even better reward later. An avalanche isolates the chalet, the pro-sell leader disappears in a snow storm, and the killings begin, one by one.

SCOTT OSBORNE

### **Concrete Economics: The Hamilton Approach to Economic Growth and Policy**

**Authors:** Stephan S. Cohen & J. Bradford DeLong

**Published:** 2016, Harvard Business Review Press

A quick read from two “progressive” economists emphasizing how the legal system and legislation have, and can, further economic progress. One of the more intriguing questions posed is what would the United States look like today had the government decided to sell lands in the western states to the highest bidder rather than allow widespread ownership through the Homestead Act.

Using the basic format from above, email your recommendations to the editorial committee in care of:

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or Morrie Shore | [mgs@stokeslaw.com](mailto:mgs@stokeslaw.com)

## PRACTICE TIP –

# Accessing Electronic Content from Service Providers

Wendy Janis Malkin & Sharon C. Rutberg – Salmon Bay Law Group, PLLC

**Probate** clients may want to gain access to electronic information left behind by their loved one. Obtaining this electronic information, or “content,” can require a trip to court.

This article originally appeared in the Spring 2020 issue of the Real Property, Probate & Trust Section newsletter and is reprinted here with permission of the RPPT Section of the Washington State Bar Association.

To streamline a personal representative’s access to digital information, a will should contain language explicitly authorizing the PR to access the contents of electronic communications and the contents of any other type of electronic account, including photos and documents. It is important for the will to refer to “content of an electronic communication,” because Washington’s Uniform Fiduciary Access to Digital Assets Act, RCW Ch. 11.120, distinguishes between content (which includes the substance of communications) and a catalogue of electronic communications. It is important to include a reference to the “contents of any other accounts” in case electronic photographs and documents are not considered “communications.” A catalogue is a list of sent and received emails with email addresses and dates, but without the content of the emails.

An electronic service provider, such as Google, may require a court order to release electronic content to a PR, even if the decedent included explicit consent in a will, but having the explicit consent will make success in obtaining the content easier and more certain. Having explicit consent to release of content paves the way for obtaining a court order finding sufficient consent under the Federal Stored Communications Act, 18 U.S.C. §§2701 *et seq.*, as well as RCW 11.120.

In a recent probate matter, the PR’s deceased husband had a Google account that included Gmail, Google photos, and Google drive. The decedent had stored family photos on Google photos, used his Gmail account

to track the family finances, and stored family documents on Google drive. Understandably, the spouse/PR wanted to retrieve all of this data.

The PR followed Google’s online directions to request post-mortem access to an account. In addition to answering basic questions, the online system required her to upload a copy of her driver’s license, a death certificate, and any other supporting documents. The PR uploaded her late husband’s will and her letters testamentary. Notably, the will did not provide consent for the PR to access digital assets. Before the PR could submit her request to Google, she had to click a box agreeing that she would have to obtain a court order to get the contents of the account.

The PR’s request for access was approved, on the condition that she get the court order. Google provided a sample court order and warned that the PR’s order must contain substantially the same language as the sample to have Google release the contents of the account. Google required the court to order that (1) no provision of state law or the Federal Stored Communications Act prohibited Google from disclosing to the PR the contents stored in decedent’s accounts, (2) there was sufficient consent pursuant to the Stored Communications Act to release the contents of the accounts, and (3) the PR had the legal right to obtain the contents of the accounts.

If the will does not explicitly authorize the PR to access the contents of electronic accounts, then language of the Stored Communications Act, 18 U.S.C. §2702, does not give a clear

answer as to whether there is sufficient consent under the statute to release the contents of an account to a PR. The Act prohibits electronic service providers from voluntarily disclosing the contents of users’ accounts unless certain exceptions apply. One such exception provides that voluntary disclosure may be made with the lawful consent of the originator, addressee, or intended recipient of the communication. A second exception provides that voluntary disclosure may be made to the agent of the intended recipient or addressee of a communication. However, at least one court has held that a PR is not an agent of the decedent.<sup>1</sup>

RCW 11.120.070 says that disclosure of the content of electronic communications of a deceased user shall be made if the user consented to such disclosure or if a court directs such disclosure based on certain items of evidence that the PR must produce. One such item is evidence of the decedent’s consent to disclose the content of electronic communications. Evidence of consent of a user may be shown, if not given through an online tool, through language in a will, trust, or power of attorney.

The Washington statute also says that the custodian must be provided with a court order if it requests one. The custodian can request a court order stating that, among other things, disclosure would not violate the Federal Stored Communications Act, the user consented to the disclosure, and disclosure of the

*Continued on page 4...*

content is reasonably necessary for the administration of the estate. In the probate matter described above, the PR was able to get a court order that used the language required by Google, which included a finding that disclosure would not violate any state or federal law and there was sufficient consent under the Federal Stored Communications Act, even though

there was no explicit consent in the will. Google released the contents of the decedent's Gmail, Google photos, and Google drive to his spouse, the PR. Careful drafting of will provisions to include explicit consent to disclosure of digital content may avoid the need for a PR to show that an exception exists under the applicable statutes and provide a more certain outcome. ■

<sup>1</sup> *Ajemian v. Yahoo!, Inc.*, 478 Mass. 169, 84 N.E. 3d 766 (2017), is the only case to address the issue of whether there is sufficient consent under the Stored Communications Act if there is no will authorizing the PR to access the content of the digital assets. The court held that although the PR is not an agent of the account holder, the PR could lawfully consent on the account holder's behalf, bringing the matter within an exception to the Act. At the time *Ajemian* was decided, however, Massachusetts did not have a uniform access to digital assets act.

This article originally appeared in the October 2020 issue of *Washington State Bar News* and is reprinted here with permission of the Washington State Bar Association.

## EMERITUS PRO BONO: Tapping the Potential

*Althea Paulson*

**At its** July meeting, the WSBA Board of Governors unanimously approved a set of recommendations aimed at increasing the number of lawyers who opt for emeritus pro bono membership status under the WSBA's Admission and Practice Rules (APRs).

After the vote, WSBA President Rajeev D. Majumdar hailed the action as "one of the most significant and structural things we have done during my time on the Board of Governors to affect the actual practice of law and members' ability to contribute to the well-being of society."

The recommendations were submitted by the WSBA's Pro Bono and Public Service Committee (PBPSC) after several years of study and analysis of barriers and disincentives encountered by members seeking emeritus pro bono status.

Emeritus pro bono members may only practice law with Qualified Legal Service Providers (QLSPs), which are Washington nonprofits dedicated to providing legal services to low-income clients.<sup>1</sup> These lawyers are not allowed to receive compensation for their work. They pay annual license fees equivalent to those of inactive members, currently \$200 for attorneys. Although this status has been available for over 20 years, there were just 116 members as of August. In contrast, there are over 5,500 Washington lawyers in inactive status.

Of particular significance to the PBPSC was the 2015 Civil Legal Needs Study, which showed that only 24 percent of Washington's low-income population who

face a civil legal issue are able to obtain assistance from an attorney.<sup>2</sup>

Providing more flexibility in the rules for emeritus pro bono admission is one way to meet the ever-growing need for pro bono legal services while also allowing practitioners to retain legal knowledge and skill within the profession. Additionally, it would support WSBA members' transitions across the life of their practices.

The PBPSC reviewed emeritus and pro bono programs in other jurisdictions and sought input from QLSPs throughout the state. Based on this research, the PBPSC recommended, and the Board approved, the following changes:

- Elimination of the requirement of active practice for five out of the last 10 years;
- Waiver of annual license fees for members with emeritus pro bono status who provided at least 30 hours of pro bono service in the previous calendar year;
- Clarification of the rules regarding the return to active status from emeritus pro bono status;
- Affirmation that the rules permit emeritus pro bono members to volunteer with multiple QLSPs;

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- Change of the name of the status to “pro bono” status and clarification that members do not need to be retired or close to retiring to qualify, and that inactive members are eligible to apply for the status.

The suggested changes must be submitted to the Washington Supreme Court under General Rule (GR) 9, which sets out a schedule for review. If approved, the changes would become effective on Sept. 1, 2021, unless the Supreme Court grants expedited consideration as allowed by GR 9. The Board has requested expedited consideration because of the ongoing unmet legal needs of people across the state, which have only increased and become more urgent due to the COVID-19 pandemic and resulting economic downturn.

For more information on emeritus pro bono status, see the article in the October 2019 issue of *Washington State*

### *Bar News* entitled “Untapped Potential.” ■

1 APR 3(g).

2 2015 Civil Legal Needs Study Update, available here: [ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf).



Althea Paulson practiced securities and corporate law in New York City and Seattle before she opted for inactive status while raising her family. She has been a small business owner and a freelance writer, and has served on multiple nonprofit and governmental boards. Since 2016, she has done pro bono work for clients of an immigrant rights nonprofit under a U.S. Department of Justice accreditation program. She currently serves on WSBA’s Pro Bono and Public Service Committee. She can be reached at [altheapaulson@gmail.com](mailto:altheapaulson@gmail.com).

## Perks and Privileges of Being a Senior

- No one expects you to run into a burning building
- Things you buy now won’t wear out
- You enjoy hearing about other people’s operations
- You have a party and the neighbors don’t even realize it
- You quit trying to hold in your stomach no matter who walks into the room
- Your joints are more accurate meteorological devices than the fancy instruments of the National Weather Service
- Your secrets are safe with your friends because they can’t remember them either
- There is no need to change bad habits because it won’t do any good
- Cab drivers and doormen offer to help you get into or leave a vehicle
- You don’t want to drive at night, and you welcome someone else doing the driving
- You always get offered the front seat
- People ask you to play golf during the week
- You can get rid of loud noises by turning down your hearing aid
- You write letters to the editor
- You put a chair in the shower
- The gate agent offers you pre-boarding
- People you think of as young are themselves grandparents
- You don’t try to use chopsticks in a Chinese restaurant
- You go into a room and can’t remember why you went there
- The expression “better late than never” takes on a new meaning
- You have special shopping hours at Costco
- For \$30 your Golden Age Passport to all National Parks is good for the rest of your life

## You know you are growing older when...

- You and your teeth no long sleep together
- Next to the Bible on your nightstand is the Merck Manual
- Your children are calling you twice a week to see how you are
- Your idea of a night out is sitting on your porch and watching the sun go down
- As you sit on the edge of your bed, you are not sure if you are going to bed or getting up
- You instinctively reach for the handrail when you go up or down stairs
- You are in a room full of people and you are the only one that knows what a Sears Roebuck catalogue is
- The time span between the end of the Civil War and the date of your birth is less than your current age
- They greet you at the emergency entrance of the hospital by your first name
- You meet someone on the street and say “I know your name; I just don’t remember it now.”
- You sit down to put on your pants
- More than half the time you are addressed by “sir” or “madam”
- More than 3 quarters of the phone numbers on your contact list are doctors and physical therapists
- You no longer buy green bananas
- On a crowded bus, a woman offers you her seat
- Your wife of many years says “let’s go upstairs and make love,” and you reply “I can’t do both”
- You attend a two act play and leave before the second act
- You finally accept that your golf score will never go down
- The pills you take each day can’t be counted on one hand
- You look in the mirror in the morning and wish you hadn’t

Introduction by Hon. Jim Riehl

As a member of the ABA for many years, I had the great fortune to be a member of the Executive Committee of the national Senior Lawyers Division.

*Experience Magazine*, as well as a monthly electronic newsletter called "Voice of Experience" dedicated to issues relevant to the practice of law as a senior lawyer. Lawyers from around the country contributed wonderful articles that highlighted such issues. We believe the membership of our local Senior Lawyer Section will appreciate links to some of these articles addressing important issues of the day.

As we have seen for many months now, COVID-19 has changed our lives in so many ways. Most of the changes have resulted in limiting activities we have become accustomed to and enjoyed. Unfortunately, one particular activity that has not been reduced is scams. In fact, we have seen a rise in certain type of scams during and specific to this pandemic. We have provided a link to an article, "Coronavirus Scams," written in May 2020 and published in the "Voice of Experience." We hope you find it interesting and useful.

Being scammed can make someone feel foolish. As attorneys, when a long-time client admits to us that they fell for a scam, they are usually embarrassed. They feel foolish that they were deceived and can have a hard time admitting it. Often, they have held this information to themselves for some time.

It's not just our senior clients who fall for scams. More than one law firm has fallen victim to scammers, including the email from the foreign client seeking assistance in the collection of settlement funds involving a dispute with a person or entity located in the firm's jurisdiction. The law firm receives a certified check as settlement funds and follows instructions to retain their fees and wire the remainder to the client. Sometime later, the firm learns that the certified settlement check is counterfeit. By this time, the remainder has already been sent on and is not recoverable.

How do scammers appeal to our senior clients? There are some tried and true appeals that have stood the test of time. Scammers seek to convince a mark that the scammer has a secret insider way to get rich quick. For a senior living on savings and a fixed income, whose expenses are rising as they age, this can be

a powerful appeal. Fear is another tool. The use of fear can range from manipulative high-pressure sales techniques to threats, like the grandparent scam. Scarcity is a common high-pressure technique in which the scammer insists that this opportunity will not last and the mark needs to buy now. Scammers often use affinity scam techniques to build rapport with a mark, such as military service or religious affiliation.

Scammers stay abreast of current events, in order to take advantage of new opportunities. So, it is not surprising that the COVID-19 pandemic has spurred a variety of new scams. Some of these scams exploit the current situation while some are recycled scams that take on familiar themes.

From the moment the stimulus funding was approved, scammers began to roll out a variety of scams designed to convince marks to give up their personal information. These range from phishing emails, allegedly from any one of a number of federal agencies, in which the sender instructs the recipient to provide certain verifying information in order to receive stimulus funds. The sender is usually looking for social security numbers and bank information including account numbers and sometimes even passwords. Scammers

During my time on the Committee I served as the chair of the publications committee which was responsible for publishing a quarterly, hard copy

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are using the same techniques via telemarketing as well.

## PPP and SNAP Scams

In addition to stimulus scams, there are also scams targeted at people applying for SNAP (food stamps) and to small business owners applying for the Paycheck Protection Program (PPP). Business owners have reported receiving telephone calls and emails from scammers claiming to be from the Treasury Department, requesting personal information in order to complete an application for PPP. The USDA reports that people applying for SNAP have been receiving emails and telephone calls requesting personal information to complete an application for SNAP benefits.

## Debt/Credit Scams

Because many people are out of work and concerned about how they are going to make ends meet, debt reduction scams are on the rise. The typical model involves obtaining a large fee up front for a promise to settle or reduce debts. The credit repair scam offers to remove information from the mark's report, even when the information is accurate. The promised service is never delivered.

## Student Loan Scams

The CARES Act provided some limited relief to certain borrowers on student loans. In order to be eligible, the borrower's loan must be owned by the Department of Education and not by a bank, credit union or other lender. For

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borrowers with eligible loans, the CARES Act provides forbearance, allowing the borrower to stop making payments through September 30, 2020. Scammers are emailing and calling people, offering to provide student loan debt relief. For borrowers already eligible under the CARES Act, scammers are claiming that there is a fee to enroll in the program. For borrowers not eligible, scammers are assuring the borrower that the scammer can enroll them in the program, also for a fee, despite the fact that the borrower is not eligible for forbearance.

### Mask and Hand Sanitizer Scams

A variety of vendors are selling products and services aimed at combating the COVID-19 pandemic. While there are many legitimate vendors selling products from N-95 masks to hand sanitizers, there are also a number of vendors offering products that when received are not what was advertised or that are never received. Take for example the advertised “N-99” mask, which turned out to be a cloth mask. Similar scams have been reported involving hand sanitizer and other hard to find products. Ebay and Amazon have taken steps to remove vendors offering counterfeit products. In one noteworthy scam, the Service Employees International Union (SEIU) announced on March 26, 2020 that it had located a stockpile of 39 million N-95 masks, advertised as manufactured by 3M. However, 3M reported that it manufactured only 20 million masks in 2019. After the SEIU made its announcement on March 26, the federal government began looking into whether the shipment should be intercepted for FEMA. Upon investigation, FBI agents learned there were no masks.

### Virus Test Kit Scams

Along with the hand sanitizer and mask scams are the test kit scams. These are often advertised as “home use” test kits, despite the fact that the FDA has not approved any home tests for COVID-19, to scammers going door to door offering home screening. The FBI has also investigated fraudulent drive-through testing sites in several states, where consumers are charged high fees paid in cash, or by providing their Medicare or Medicaid cards and social security numbers for billing purposes.

### Fraudulent Virus Cures

Of course, there are also the COVID-19 cures. These include homeopathic cures, essential oils, and colloidal silver as well “vaccines.” A

variety of manufacturers and marketers of homeopathic remedies have offered products promoted to be either taken prophylactically or as treatment for COVID-19. The FDA has been issuing warning letters to such parties regarding the unsubstantiated claims. Among the most well-known promoters of such products is the Jim Bakker Show which promoted a product called “Silver Sol Liquid”, claiming the product could diagnose or cure COVID-19, which received a warning letter from the FDA in response to those claims.

### HVAC and Carpet Cleaning

With stay at home orders in place in the early stages of the COVID-19 Pandemic, companies offering carpet cleaning and duct cleaning services began promoting their products. While it is entirely possible that spending time at home made a consumer realize that it might be time to schedule such cleaning, there is no evidence to support a claim that duct cleaning or carpet cleaning can prevent the transmission of COVID-19.

### Investment Scams

With the stock market reacting to the COVID-19 pandemic and with interest rates low, those clients reliant upon investment income can be susceptible to sales pitches offering alternatives to a volatile market with claims that the investment is both safer than the market and more profitable. These investments can range from annuities to real estate investments to outright Ponzi schemes. The consumer must exercise diligence before making an investment decision, including asking if the advisor is licensed, the investment registered; what are the risks/rewards and does the consumer understand the product well enough to make the investment.

### Fake Websites

As information changes rapidly during the COVID-19 pandemic, consumers search for reliable information online. Yet, not all consumers are capable of discerning when a website is or is not a reliable source. When searching online, if a consumer clicks on a website making claims that cannot be proven, at best the website simply contains opinions from individuals claiming to disagree with conventional experts. In the worst cases, some of these sites can introduce malware to infect your computer or worse yet, ransomware.

Scammers stay abreast of current events, in order to take advantage of new opportunities. So, it is not surprising that the COVID-19 pandemic has spurred a variety of new scams. Some of these scams exploit the current situation while some are recycled scams that take on familiar themes.

### Honorable Mentions

As is to be expected, charity scams are also on the rise. Before giving to a charity, the consumer should at least check with their state attorney general’s office or secretary of state to determine if the charity is legitimate.

The personal information extortion scams of 2019, where the scammer threatens to expose sensitive personal information of the consumer unless paid a certain sum in bitcoin has escalated to threats to expose family and friends to COVID-19 unless the consumer pays the scammer in bitcoin. In order to convince the mark that the scammer actually has information about the mark, the scammer usually provides passwords and account names harvested from various hacked websites, such as retail organizations, banks, and credit reporting agencies.

What do all of these scam techniques have in common? First of all, they work with some of the people, some of the time. They work just often enough that it is worthwhile for the scammer to devote time and energy into using them. Second, many of these scams are cloaked in enough truthful information to be plausible if not probable. Third, many people forget these simple rules:

If you contacted me, rather than me

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initiating the contact, you should not be asking me for personal information; if I search and find you, I should be careful to make certain my search has reached the authentic party I was attempting to reach; and if someone uses fear or threats, I should be

immediately cautious.

The old saying “buyer beware” still applies. While the economic fraud unit of your local district attorney’s office or state attorney general may be a good place to complain if your client has been scammed, it is still

better for the individual to be cautious before revealing personal financial and identifying information to anyone with whom the buyer is not already familiar. An ounce of skepticism is worth a pound of cure. ■

## THE SECURE ACT: What You Need to Know

Ellen S Jackson, (shareholder) Stokes Lawrence Velikanje Moore & Shore, Yakima Office | Reprinted with permission

For many older and relative higher-income professionals, such as lawyers, doctors, and engineers, retirement savings often form a large part of their overall net worth and play a starring role in their financial security during their retirement years.

The Setting Every Community Up for Retirement Enhancement Act, known as the SECURE Act, was passed by Congress and signed into law at the end of 2019. It brought some of the biggest changes to retirement accounts in decades. But with pandemic-related news dominating headlines, you may have missed hearing about this significant law and how it changes some important aspects of retirement accounts.

The SECURE Act’s most significant changes affect the beneficiaries of IRAs who stand to inherit retirement assets after the passing of their parents and older relatives. But there are other important changes retirement account owners (called “participants”), especially those who are in or nearing retirement, need to know.

### Delayed Required Minimum Distributions

In retirement, IRA participants (other than Roth IRAs) are required to begin taking distributions annually, the so-called Required Minimum Distributions (“RMDs”). Every dollar distributed counts as ordinary income of the participant. RMDs are usually calculated by your IRA custodian, and for decades, RMDs began in the year the IRA participant attained age 70 ½.

The SECURE Act changes this for many IRA participants who can now begin their RMDs later:

- For anyone born after July 1, 1949, RMDs now need to begin at age 72, not age 70 ½.
- For those born before July 1, 1949, the rules haven’t changed. You still have to withdraw your first RMD by December 31 of the year in which you reach age 70 ½.

### ‘Lifetime Expectancy’ Payout is Replaced with a 10-Year Rule

Under prior law, both spouses and non-spouse beneficiaries (such as children and grandchildren) who inherited an IRA were able to take advantage of the “stretch IRA”: their RMDs were distributed over a long period of time, generally over the beneficiary’s own estimated life expectancy. For adult children and grandchildren of a participant, that meant the option to spread out distributions over several decades. Beginning in 2020, non-spouse beneficiaries who inherit an IRA can no longer take advantage of the stretch IRA. Instead, these beneficiaries must generally distribute all IRA funds (and pay income tax on those distributions) within 10 years of the participant’s death. (The SECURE Act did not change the stretch IRA rule for spouses, who still calculate RMDs based on life expectancy.)

Now, non-spouse beneficiaries will generally be paying income taxes sooner than under the previous rules. This means there is a loss of deferral opportunity (the ability to delay taking the full distribution as long as possible) and

...with pandemic-related news dominating headlines, you may have missed hearing about this significant law and how it changes some important aspects of retirement accounts.

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distributions spread over only 10 years instead of several decades will naturally be larger each year than under prior rules. The additional income from an inherited IRA over a 10-year payout period could push a non-spouse beneficiary into a higher tax bracket in any given year.

There are a few narrow exceptions to the new 10-year rule: minor children and permanently disabled or chronically ill beneficiaries are still allowed to use the life expectancy-based stretch RMDs under prior law. Notably, however, the rules for minor children only apply to minor children—grandchildren of the IRA participant (even if under the age of 18) are not treated the same as minor children and don't qualify for the "stretch RMD" payout. Grandchildren beneficiaries, even those who are minors, must still use the 10-year rule. And, once a minor child reaches the age of 18, the payout period switches back to the 10-year rule (unless he or she is also permanently disabled or chronically ill). Similarly, at the death of a disabled or chronically ill beneficiary, the stretch RMD payout period ends and the next beneficiaries of the IRA must switch back to the 10-year payout.

### Many Elderly Participants May Continue Making IRA Contributions

Under prior law, no contributions were allowed to IRAs once the participant reached age 70 ½. The SECURE Act removed this age restriction. This means elderly IRA participants can continue supplementing their retirement accounts, as long as they are still working or otherwise have sufficient earned income to qualify. For 2020, the annual contribution limit is the lesser of the participant's earned income or \$6,000 (\$7,000 if you're age 50 or older).

### The CARES Act Suspends RMDs for 2020...

Finally, the Coronavirus Relief and Economic Security Act (CARES Act), which is best known for providing a myriad of pandemic-related financial assistance measures to individuals and businesses, also affected retirement accounts in 2020. The CARES Act waives the RMD requirement through year end. The waiver also covers 2019 RMDs, which were required to be taken by April 1, 2020 (i.e., first time RMDs that were not distributed in 2019), as well as all RMDs that would have been required for 2020.

The CARES Act suspends RMDs for the year 2020 only. Starting in 2021, RMDs will be calculated and must be distributed as normal. IRA participants will be a year older, and may have larger balances in their IRAs if they made no distributions at all during 2020. This means some IRA participants' RMDs for 2021 may be a bit larger than they would be if distributions had occurred in 2020.

### ...But the Charitable Rollover is Still Around

One aspect of RMDs that did not change with the new law

is the rule governing Qualified Charitable Distributions. Qualified Charitable Distributions became a permanent part of the tax law at the end of 2016. A Qualified Charitable Distribution counts toward a participant's RMD in a given year, and all of the funds pass to a charity without adding to the participant's ordinary income. Even though RMDs are suspended for 2020, IRA owners older than 70 ½ can still take a Qualified Charitable Distribution in 2020. Remember that a Qualified Charitable Distribution must be distributed directly from the IRA custodian to the charitable organization and is limited to \$100,000 per taxpayer (so a married couple filing jointly who each have IRAs may gift up to \$200,000 of their RMDs to qualified charities without recognizing income on the distribution).

As the timeline for waived RMDs is coming to a close, now may be the best time to consult with an advisor on options available for your circumstances. ■



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*Recollections of Phil DeTurk***Read this to see what took place then:**

President Eisenhower was reelected, and during his second term named Wm. Brennan Jr. to the United States Supreme Court (where the then-new jurist served for almost 34 years).

In that same year there were 16 judges on the King County Superior Court bench, all of them men. Maybe it wasn't such a great year?

In anti-trust law, a consent decree was entered concerning AT&T and its future division. Also, the largest judgment in King County concerning such breaking of the law was entered for a humble gas station owner, who took on the major suppliers when he couldn't get gas for his cut rate station. (It was later set aside on appeal.)

This writer finished GWU law school, hitchhiked to Washington from Virginia, attended a bar review program taught by such stalwarts as Ivey, Clark, McDonald, Voorhees, and Riddell, and then successfully passed the bar the first time. IT WAS A GREAT YEAR.

In Hungary, a country not visited by your correspondent until 2004, there was an uprising; many citizens died. One who didn't was Miro Slovak who moved to Washington and soon became a winning hydroplane driver for Bill Boeing's Miss Wahoo. It truly was a great year.

It was the year of *The Man with the Golden Arm* starring Frank Sinatra. 1956's Pulitzer for Literature went to MacKinlay Kantor's *Andersonville*, and *The Diary of Anne Frank* won a drama award. Sharon Ritchie was Miss America, while *Around the World in 80 Days* was the picture of the year.

Around Washington, lawyers who were paying \$75 a month for apartments, 15 cents for a glass of beer, and not much more for a gallon of gas, were being hired for an average of \$300 a month.

Carbon paper was the most-used method of producing copies for material being typed. Yet a new system was on the cusp: you could take your 3M machine and with skill, and the ability to withstand the odor, produce as many as five or six clear copies per minute. Yes, it was a great year.

Women did most of this work. They took shorthand, did typing, answered the dial telephones, and were elevator operators. Few were lawyers; it was still not such a great year.

Young men wrote down figures and then erased them as the stock quotes came in to the local markets from NYC. So we in Washington were belated with the action; our television shows were usually one week late and, of course, in black and white.

If you accepted a federal criminal appointment, your recompense was only the experience. Rates were better in the state system with \$25 per appointment as well as an additional \$25 for each day of trial. Thus, if you defended someone in a 10-day trial, you would earn \$275, or almost a month's salary. IT WAS A GREAT YEAR.

Sure there was no color TV to speak of, no computers, no cell

phones, no internet, and no \$5 cups of coffee. The best buy was a 99-cent sandwich at Moe Rose's on 2nd Avenue where the corned beef included a very large pickle. Beverages were 10 cents more. Yes, it was a great time to live in Seattle.

For nominal research one could go to the library at 4th and Madison, which preceded the one torn down in the '60s, which was the forerunner of the new one that has been architecturally acclaimed. There was no Moore statue across the street; there was no Seattle First Building. In fact, there were no new buildings constructed in downtown Seattle until the '60s. Some young lawyers parked at a large gas station lot where later the Bank of California building would appear.

There were no Mariners, Seahawks, or Sonics, although there was AAA baseball and a form of hockey that aspired to be in the NHL, as one of the expansion teams when that league went to nine and 10 entries. Now there are 32 and still no puck sport. Was this really a great year?

There were two newspapers, lots of movie theaters, plenty of taverns, and a few really great restaurants, most of which were run by two men. Boeing was the big industry; William Gates had just been born. Moses Lake still had an Air Force presence and Spokane had World Fair aspirations.

Alice Ralls ran the Bar office with one assistant. They operated out of a store-front building across from the County Courthouse, which was where you paid \$8.50 to file a complaint, where the sheriff's office was on the tenth floor and where you did research in the sixth floor law library. There was no legal advertising. Just lots of attorneys to get admitted to the Bar and watch over to make sure they didn't cross the line.

We did have our annual Bar meetings in such diverse places as Vancouver, B.C., Spokane, Portland, and even Seattle. Elias Wright was the necrologist, always ending his perennial eulogies with I HAVE SPOKEN.

But in 1956 we closed our bars at a few minutes before midnight on Saturday not to open again until Monday. We were a state governed by the Blue Laws, with little to do on Sunday besides pray or putt. Shopping was out. Was it truly a great year?

The Smith Tower, where they still had male elevator operators, was the tallest building west of the Mississippi River, or so they said, and we all had beautiful sunsets at least 40 percent of the time. IT WAS A GREAT YEAR.

But even GREAT things change, and all of us changed right with them. The state grew, buildings were constructed higher than the Smith Tower, and women became law students, lawyers, superior court judges, and more so.

That was 50 years ago. If we were to look back from 1956 50 years, it would be 1906 and one would hate to say what those citizens didn't have. So to all of us who became lawyers in 1956, IT WAS A MARVELOUSLY GREAT YEAR. ■

2020 - 2021

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