

Changes to Retirement Plans Implemented

With the intent to create greater participation in retirement plans, the Setting Every Community Up for Retirement Enhancement (SECURE) Act became federal law in December 2019. The SECURE Act changes the laws dealing with retirement plans. Examples include incentivizing business owners to adopt qualified retirement plans by expanding safe harbors and credits for plan sponsors. The SECURE Act also affects how and when individuals must begin making withdrawals from certain retirement accounts. Although the SECURE Act made many changes, this article highlights only a few of them.

Changes to Participant's Required Minimum Distributions

For traditional IRAs, the SECURE Act provides that if you reach age 70½ after December 31, 2019, you do not have to begin

taking required minimum distributions until April 1 of the year following the year you turn age 72.



by the plan).

However, for both traditional IRAs and qualified defined contribution plans, if you turned 70½ before January 1, 2020, then you must follow the prior law and begin taking required minimum distributions by April 1 of the year following the year you turned 70½.

The SECURE Act has several requirements for qualified defined distribution plans subject to certain exemptions (such as the 5% owner rule). For these plans like 401(k) and 403(b) plans, the SECURE Act provides that if you turn age 70½ after December 31, 2019, you must begin taking required minimum distributions by April 1 of the year following the later of the year you turn 72 or the year you retire (if allowed

SEE **RETIREMENT** INSIDE

Refrain Means Refrain What Arizona's Conflict of Interest Laws Require

At Gust Rosenfeld, we have the privilege of representing councils, boards, commissions, and public bodies on which citizens serve by volunteering their time and effort. Often many are not trained correctly in Arizona's conflict of interest laws as to what they may or may not do when they or a family member has a direct or indirect interest in a transaction or a decision by the public entity. Improper actions taken by these citizens can lead to unfortunate consequences when discovered.

The Arizona conflict of interest statutes state that any public officer who has, or whose relative has, a substantial interest in any decision or transaction of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision (A.R.S. § 38-504). A "substantial interest" means "any pecuniary or proprietary interest, either direct or indirect," which is not defined by statute as a "remote interest." It does not include speculative interests.

Some public officers assume that the term "refrain from participating in any manner" merely means that they may not vote on a matter. However, the meaning is much broader than that. The public officer must not participate in the discussion leading up to the vote on the matter in which he or she has a substantial interest, instruct staff, make recommendations, or otherwise communicate in any manner with anyone involved in the decision-making process.

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COVID-19 UPDATES

Visit the news section on the Gust Rosenfeld website at gustlaw.com/news.tpl for current updates and resources about ongoing coronavirus information for individuals, organizations and businesses.

Gust Rosenfeld Joins Mackrell International

It's a small world, after all. Gust Rosenfeld recently accepted an invitation to join a premier network of approximately 100 independent law firms throughout the United States and in 60 other countries, known as Mackrell International (www.mackrell.net). Gust Rosenfeld is the exclusive member for Arizona.

Our membership enables us to enhance client services through our relationships with these high caliber, full-service law firms across the globe. When your needs require it, we can refer you to a network firm with local expertise and insight. Membership also provides our attorneys with a broad, collaborative network of peers and will help



keep us on the cutting edge of legal thought and trends.

Gust Rosenfeld Executive Committee member Tom Chauncey said, "We are very pleased to add this network to our suite of client services. Our clients trust us with their interests, which are increasingly international. Membership in Mackrell International is a very powerful addition to how we can better serve our clients now and in the future."

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Rob concentrates his practice on employment law and education law.

Dating Advice in 2020

When dating legal documents, checks and the like, it's convenient to abbreviate the year, for instance, 2/14/20 (this past Valentine's Day). But the habit of shortening the four-digit year to just two digits could give rise to mischief, particularly in this year of 2020. For instance, 2/14/20 could easily be altered by a two-digit insert at the end to become an earlier date of 2/14/2019 or a later date of 2/14/2021. While that same concern exists for other years, an attempted fraudulent switch this year may not be as readily spotted. To be safe: write out 2020 as much as you can because every little bit helps in keeping things on the up and up.

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Chris focuses his practice on general commercial transactions and litigation, with an emphasis on real property matters.

Arizona Notarization Goes Digital

The Arizona legislature adopted Senate Bill 1030, establishing remote online notarization for notaries in Arizona. The new bill authorizes notaries and signers' use of audio-visual technology and digital documents to facilitate notarization of documents from anywhere and at any time. The Arizona Secretary of State has adopted rules regulating the remote online notarizations, which are located in the Arizona Administrative Code, Title 2, Chapter 12. Senate Bill 1030 goes into effect on June 30, 2020.

Mina C. O'Boyle | 602.257.7450 | moboyle@gustlaw.com

Mina practices in the areas of real estate litigation, real estate transactions, commercial litigation and commercial transactions.

GR Attorneys Recognized by Super Lawyers 2020

The 2020 Southwest Super Lawyers publication selected nine of Gust Rosenfeld's attorneys for inclusion, including four as Rising Stars. Super Lawyers is a national rating agency that evaluates lawyers from more than 70 practice areas.

Kent E. Cammack (Business Litigation)

Peter Collins, Jr. (Insurance Coverage)

Shelby M. Exposito (Government Finance, Schools & Education; Rising Stars)

Craig A. McCarthy (Personal Injury General: Defense)

Mina C. O'Boyle (Real Estate; Rising Stars)

Sean P. O'Brien (Bankruptcy: Business)

Robert Williams (Bankruptcy; Rising Stars)

Samantha Winter McAlpin (Estate Planning & Probate; Rising Stars)

Charles W. Wirken (Appellate)



Gust Rosenfeld's Super Lawyers 2020 (standing, l. to r.): Wirken, O'Brien, Cammack, Williams, Collins; (seated, l. to r.) O'Boyle, Winter McAlpin, Exposito. Not Pictured: McCarthy.

Awards



Samantha Winter McAlpin



Charles W. Wirken

Samantha Winter McAlpin was selected as the **Florence Immigrant & Refugee Rights Project's ("FIRRP") Children's Program Pro Bono Attorney of the Year**. The FIRRP Children's Program Pro Bono Attorney of the Year award is given to an attorney who has provided significant time, legal representation, and effort to assisting children and teens who are seeking a safe future in the United States. The award was presented to Samantha in November at FIRRP's annual Pro Bono Appreciation Event.

Charles (Chas) W. Wirken was named as the **Maricopa County Bar Association Robert R. Mills Member of the Year**. The Robert R. Mills Member of the Year award recognizes a MCBA member who significantly contributes to the programs and activities of the MCBA, dedicates himself or herself to furthering the goals of the legal profession and promoting the ideal of professionalism, and shows an outstanding commitment to public service, including charitable, cultural, humanitarian and educational service to the community at large. The award was presented to Chas at the MCBA's annual Hall of Fame Dinner in November.



Robert D. Haws



Barbara Rodriguez-Pashkowski

Robert D. Haws and Barbara U. Rodriguez-Pashkowski were recognized in **Az Business magazine's 2020 Top 100 Lawyers in Arizona**. Robert and Barbara were selected from a pool of more than 2,000 of the state's most talented and successful attorneys. Selections are based on each lawyer's professional success and ratings, impact on his or her law firm, impact on the communities she/he serves and impact on the legal profession.

Gust in the Community

GR attorneys and staff turn out to help. Clockwise: Gust team members supporting the Arizona Animal Welfare League's Walk to Save Animals; Cancer Bake Sale – GR team members supporting the American Cancer Society in October 2019; and, Gust team members volunteering at the Ryan House 2019 Fall Festival.



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Distributions after Participant's Death

The SECURE Act significantly changed the rules regarding when a traditional IRA or a qualified defined contribution plan must be fully distributed upon a participant's death. The law did not affect how to treat a surviving spouse. Under the SECURE Act, a surviving spouse is not required to begin receiving required minimum distributions until the participant would have attained age 70½ or 72, depending on the new rules for the age requirement.

Generally, the SECURE Act now requires the entire amount of a traditional IRA or qualified defined contribution plan to be distributed to the designated beneficiaries within ten years after the year in which the participant dies. This rule applies whether the participant had begun receiving distributions or not. Exceptions include when the designated beneficiary is the participant's surviving spouse (discussed above), the participant's minor child, a disabled or chronically ill person, or an individual who is not more than ten years younger than the participant.

Once a designated beneficiary who is a minor child attains the age of majority, the clock begins on the requirement to distribute the entire balance of the account within ten years. This requirement could significantly impact a parent's estate planning if the parent has a large retirement account.

Deductibility of Contributions

Before the SECURE Act, contributions to traditional IRAs were not deductible beginning in the year the individual turns 70½. The SECURE Act repeals that prohibition. However, any contributions made after 70½ reduce the qualified charitable distribution exclusion by the excess of the allowed IRA deduction. In other words, individuals should weigh the benefits of taking such deductions after 70½.

Expansion of 529 Plans

The SECURE Act expands the coverage of allowable expenses under a 529 plan to include repayments of qualified education loans up to \$10,000 and certain expenses of registered apprenticeship programs.

As with all tax considerations, check with your tax advisor to determine the course of action best suited to your circumstances.

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Kyle's estate planning practice includes wills, trusts, and probate and trust administration.

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If there is any question as to whether an interest is a substantial interest, the public officer should seek guidance. Even negligence in failing to obey the law may result in civil and criminal penalties. Besides penalties, public entities may find that their auditors declare an "audit exception." Most importantly, failure to comply with the law may not only be embarrassing but also undermine public confidence in the public entity and its leadership.

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Susan focuses her practice on public law and employment law.

ET·Y·MOL·O·GY COR·NER

Springtime

After our long winter, Spring (from the Old Saxon or Old High German "springen" meaning to burst forth) is here. It is a time when some, particularly in Northern Europe, dance around a pole (from the Latin "polus" meaning the end of an "axis," from the Latin to pivot around a body) known as a Maypole, holding strings of ribbons to celebrate the Vernal Equinox (from the Latin "ver" for "spring" and Medieval Latin "equinoxium" meaning equal day and night). Whether or not you dance, Spring has always represented a time for hope. Happy Spring!

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Rick, our etymologist, practices in the areas of commercial law and litigation.



Gust in the Community (cont'd.) – (l. to r.) Big Brother Chris McNichol with his Little Brother at the Waste Management Phoenix Open; Gust Team serving at American Cancer Society's Cancer Walk.



Kyle Bate was elected as the Chair of the Friendly House Board of Directors.

Christina Noyes co-authored the chapter “FTC Rule” in the *Franchise Deskbook* (3rd Ed.) published by the American Bar Association, Forum on Franchising. Christina also presented Franchising 101 in an Intellectual Property course at the ASU School of Law.

Frank Tomkins authored the section “Title and Due Diligence” and served as an editor for the *Arizona Commercial Real Property Forms Manual* published by the Arizona Bar Association.

James Kaucher was the lawyer presenter at Optimizing Wound Care Across the Continuum of Care Symposium.

Jennifer MacLennan presented at the AZ Trust Risk Management Seminar for community colleges on the topic of Title IX. She also presented at the Arizona School Personnel Administrators Association (ASPAA) on the topic of teacher evaluations.

Jay Graif spoke at the Perrin National Construction Defect Conference.

Chris McNichol co-presented at the Arizona State Bar’s Real Estate Section luncheon and at the Southern Arizona Real Property Section of the Arizona State Bar luncheon on the new Uniform Commercial Real Estate Receivership Act.

Susan Segal presented at the Arizona School Boards Association (ASBA)/Arizona Association of School Business Officials (AASBO)/The School Superintendents Association (AASA) Legislative Workshop. Susan spoke at the AASBO Vendor Buyer Conference on the topic of “When Personal Interest Gets Public Officers and Employees in Trouble.” Also, Susan presented “Trolls, Tweets and Posts: Addressing Inappropriate Conduct on Social Media” at the Arizona City/County Management Association Winter Conference.

Jennifer Kalvestran was on a panel discussing coverage issues, risk transfers, and conflicts of interest with WRAP/OCIP policies at the Southern California Defense Counsel’s 2019 Construction Defect Seminar.

Rob Williams presented on the regulations dealing with the 120-day prohibition against foreclosure and full periodic payment acceptance at the Arizona Trustee’s Association January lunch.

Tim Stratton spoke at the Bond Attorneys Winter Workshop on climate change-related disclosures in municipal bond offering documents and the impacts of weather-related events on the security and credit worthiness of underlying financial obligations.

James Giel presented on school election law at the Stifel Nicolaus election seminar.

Gust Rosenfeld Adds Attorneys to Partnership

Shelby M. Exposito (Phoenix; Public Finance) was elected as a capital member of the firm. **Heather L. Bohnke** (Tucson; Insurance and Health Care Litigation), **Jennifer C. Kalvestran** (Los Angeles; Insurance Coverage and Bad Faith), **Samantha Winter McAlpin** (Phoenix; Trusts, Estates and Probate Litigation), and **Carrie L. O’Brien** (Phoenix; Education) were elected to the firm’s partnership.



Gust Rosenfeld’s newest partners (l. to r.): Carrie O’Brien, Jennifer Kalvestran, Heather Bohnke, Shelby Exposito and Samantha Winter McAlpin.

NEW FACES



Brandon A. Caywood (Phoenix Office)

Brandon’s practice focuses primarily on public finance and tax. He works on all types of financing for Arizona cities, counties, school districts and special districts. He negotiates and drafts contracts, ordinances, resolutions and offering documents. Brandon also serves as underwriters’ counsel, disclosure counsel and bank counsel on municipal financings and loans. He also advises businesses and governmental entities on various tax issues.

Brandon received his LL.M. in Taxation from the University of Florida Levin College of Law. He earned his J.D. from the ASU Sandra Day O’Connor College of Law where he was named the State Bar of Arizona Tax Law Section Outstanding Student in 2017 and was awarded the Pro Bono Graduate Award with highest distinction. He earned his B.S. in Accounting from Brigham Young University-Idaho.

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Gust Rosenfeld Ranked #1 in Construction Litigation

Gust Rosenfeld was ranked #1 among law firms for construction litigation and in the Top Ten in 12 other law firm categories in the 2020 Ranking Arizona lists.

Gust Rosenfeld is ranked in these categories:

- Law Firms (41 Attorneys or More)
- Law Firms: Alternative Dispute Resolution
- Law Firms: Banking
- Law Firms: Business/Corporate
- Law Firms: Commercial Litigation
- Law Firms: Construction Litigation
- Law Firms: Employment/Labor
- Law Firms: Healthcare
- Law Firms: Intellectual Property
- Law Firms: Mergers/Acquisitions
- Law Firms: Real Estate
- Law Firms: Securities/Corporate Finance
- Law Firms: Tax

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