



From the Estate Planning & Settlement Group  
**PERSONAL PLANNING**

Your Guide to Estate Planning, Wills, Trusts, and Probate

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Featuring: Sean Fosmire

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Enjoy your edition of our Winter Personal Planning Newsletter. We strive to be a continuing source of education for our clients and remain at the forefront of any new developments in the law.

**Meet M. Sean Fosmire:**



M. Sean Fosmire is a shareholder in the firm's Marquette office, serving the entire Upper Peninsula of Michigan. His practice includes estate planning, personal planning, probate, and trust management. He has particular interest in the estate planning aspects of IRAs and retirement plans, and was the author of an article entitled "Retirement Plans

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For a list of Mr. Fosmire's publications please visit our website at [www.garanlucow.com](http://www.garanlucow.com). You can reach Mr. Fosmire at (906) 226-2524 or by email [sfosmire@garanlucow.com](mailto:sfosmire@garanlucow.com).

**Contributing to Charity from an IRA  
Made Easier**

*By: M. Sean Fosmire*

One provision of the Pension Protection Act of 2006 makes it easier for IRA owners to contribute funds from the account to charity. The new law allows the contribution to be made directly, without recognition of income and without having to declare a charitable contribution deduction.

At first glance, the response may be "So what?" An owner of an IRA could always take a distribution of, say, \$5,000 from the account, then contribute the cash to his preferred charity and take a deduction of \$5,000. In the end, the effect on tax liabilities is the same.

That is true for some owners. For others, though, the new rule will result in a significant savings. The person who will benefit most is the taxpayer who (if not for this contribution) would not have to itemize his deductions. Under previous law, he could not take full advantage of the \$5,000 deduction. At least a part of it would be neutralized by the offset between the standard deduction and the \$5,000 amount.

As an example, consider Joe Green, age 75, who will have \$45,000 in taxable income (on interest and dividends) in 2006. Joe is a single man, so his standard deduction for 2006 is \$5,000. Assuming that his other deductible items amount to only \$2,400, his tax preparer would use the standard deduction when calculating Joe's 2006 taxes. Joe's adjusted gross income would be \$40,000.

If Joe wanted to make a \$5,000 contribution from his IRA, under previous law, he would have to take a distribution in that amount, recognize it as income, and make the contribution. His total amount of deductions, including the IRA proceeds, would be \$7,400, making it better to itemize. He would list \$50,000 in income, including the \$5,000 IRA distribution. After itemized deductions in the amount of \$7,400, his adjusted gross income is \$42,600.

The net deduction value that he would derive from making the contribution would be only \$2,400, which is less than half of the \$5,000 contribution made. His generosity would cost him \$2,600 in additional income. Joe may reconsider and decide that the contribution is not worth making.

Under the PPA provisions, Joe would simply direct the custodian of his IRA to make the \$5,000 contribution directly from the account to the charity. He does not recognize any income, and does not use the contribution as part of the calculation of itemized deductions. He

would stay with his \$5,000 standard deduction for 2006, and his adjusted gross income is still \$40,000.

The charitable contribution will count as all or part of his Required Minimum Distribution required under law.

There are some limits on the use of this direct contribution option. It is available only to owners over the age of 70<sup>1</sup>/<sub>2</sub> at the time the gift is made. It is not available for inherited IRAs (unless the beneficiary himself is over age 70<sup>1</sup>/<sub>2</sub>). The total amount that can be contributed under this section is limited to \$100,000. Only IRAs will qualify; the same benefit will not be provided for distributions from 401(k) plans or other retirement vehicles. The option does not pertain to Roth IRAs, but distributions from Roth accounts are not taxed anyway. There are certain charities (private foundations, donor-advised funds and the like) which will not be qualified recipients. The distribution must be made directly by the IRA custodian to the charity. The recipient charity will have to provide a written acknowledgment of the gift.

Perhaps most importantly, the provisions apply only to outright distributions made during the owner's lifetime, not to any deferred gift such as funding a charitable trust.

The contribution option is set to expire on December 31, 2007, meaning that it will be available (under current law) only for the 2006 and 2007 tax years. Congress will no doubt revisit the issue late next year.

## New Law on Annuity Recommendations

By: TaraLynn T. Velting

On September 29 of this year, Public Act No. 299 became effective with significant implications for insurance producers and insurers. Whenever making a recommendation to purchase or exchange an annuity to a consumer, the insurance producer or insurer "shall have reasonable grounds for believing that the recommendation is suitable," 4155(1). The insurance producer or insurer now must make reasonable efforts to obtain the following information from the consumer prior to making a recommendation:

- Financial status
- Tax status
- Investment objectives
- Other reasonable information

Additionally, the insurance producer or insurer must have a system to supervise recommendations and compliance with this law. They can comply with this requirement in one of two ways. (1) They can establish their own system to supervise recommendations with written procedures and periodic reviews. Or (2) they can contract with a third party to establish and maintain a supervision system, 4157(1).

However, even if the insurance producer or insurer contracts with a third party, they are not off the hook. They still have a duty to make reasonable inquiry to assure that the third party is performing the required functions. On an annual basis, they must obtain a certification from a senior manager with the third party that the third party is performing the required functions. They also must periodically select third parties for a review to determine whether they are performing the required functions, 4157(3),(4).

4163(1) also adds the requirement that insurance producers and insurers maintain records of information used to make recommendations to the consumer for 5 years after the transaction is completed.

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We can take the mystery out of estate planning through an educational estate planning seminar. Our Estate Planning & Settlement Group director, Tom Doyle, presents free estate planning seminars throughout Michigan, and is available to present a seminar for your group or organization.

To schedule an estate planning seminar for your organization please call Tom at 800-910-0300 or email him at [tdoyle@garanlucow.com](mailto:tdoyle@garanlucow.com)