

# PACIFIC BUSINESS NEWS

## THE BUSINESS OF LAW

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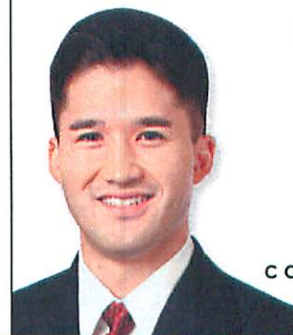
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#### TOPIC

##### **Retirement & Estate Planning**

When my mother passed, she had an IRA and a deferred compensation plan. Is it true that these escape probate? Can I just leave them where they are?

Yes and no. The retirement plan will escape probate, provided your mother named beneficiaries, such as yourself. Beneficiaries frequently "leave the IRA where it is", reasoning that if "mom" thought it was safe, no immediate action is needed. Big mistake!

All inherited retirement benefits are subject to required minimum distribution (RMD) rules. You must start withdrawing the minimum, or pay a 50% penalty.

If your mother was over 70½, be sure her year-of-death RMD was withdrawn. Next, make sure you take your first RMD by December 31 of the year after death.

You can spread your RMDs over your lifetime, provided you make a written election by the deadline for your first post-death RMD. If there are multiple beneficiaries, all must use the shortest life expectancy, unless you separate your benefits by September 30. If you fail to take your first post-death RMD, the whole IRA must be withdrawn within 5 years.

The deferred compensation plan is subject to these rules, plus more.

In short, you snooze, you pay a 50% penalty.

#### TOPIC

##### **Prepaid Health Care Act (PHCA)**

What happens to the Prepaid Health Care Act (PHCA) if Congress enacts health care reform? Under House Bill 3200, there is no exemption for any comparable State law. There is also a sunset provision in the PHCA that "terminates" the PHCA "upon the effective date of federal legislation that provides for mandatory prepaid health care for the people of Hawaii." Consequently, the PHCA will terminate on H.B. 3200's effective date unless the PHCA is exempted and the PHCA's sunset provision is removed – neither seems likely. But it will be some time before the federal law becomes effective. H.B. 3200's standards on the required benefits of health plans do not apply until 1/1/2013. Further, an "employment based health plan" in existence before 1/1/2013 is grandfathered through 12/31/2017 and for any grace period beyond that set by the new Health Choices Commissioner. Thus, while the PHCA may "terminate" by 1/1/2013, actual changes to most health plans could be limited through 2017. Nevertheless, this is by far the biggest change in social welfare since social security. It will take years to implement and coordination among all of Hawaii's public and private HR assets.

#### TOPIC

##### **Leasing of Commercial Space – Waiver of Subrogation**

All commercial tenants should request a "waiver of subrogation" in their lease. A waiver of subrogation prevents the landlord's insurance company from "stepping into landlord's shoes" and making a claim against the tenant. For example, assume the tenant's employee negligently burns down the landlord's building. Without a waiver of subrogation, the landlord's insurance company would pay the landlord for the value of the building, and then "step into the landlord's shoes" and sue the tenant to recover the amount. However, tenants customarily pay for the landlord's insurance policy though common area maintenance (aka CAM) fees, and therefore, should be covered under the same policy. The landlord will benefit from a tenant that is able to pay the rent rather than litigation costs. Also, most insurance premiums will not increase since insurers contemplate that the parties would include a waiver of subrogation in their lease, and as such, the insurance premiums include such a risk.

*Mr. Miyasato's legal practice includes representation of parties involved in real estate acquisition and disposition, real estate development, leasing of retail and office spaces, sales and financing transactions, and creation of condominiums and timeshares.*

 11/6/09