

SMART PLANNER

Useful Tips for a Better Tomorrow

August 2012

BOOMER BULLETIN . . .

When should you take Social Security?



If you make the wrong choices about filing for Social Security, you may reduce your income for the rest of your life.

Did you think that at a certain age, you just automatically file and receive a certain amount? That's not always the case.

Social Security is pretty straightforward if you've never been married and you've accumulated at least 40 quarters working in jobs where federal employment tax (FICA) was deducted from your paycheck. When you reach your "full retirement age" (FRA) you will receive a benefit

based upon the amount you paid into the system. If you begin receiving benefits before your FRA, you will permanently reduce your benefit.

But, for every year (starting with your FRA year) that you postpone the start of Social Security, you will receive "delayed retirement credit." This means your annual benefit will increase 8% each year (in addition to the annual cost of living increase) until you reach age 70.

However, things get complicated very quickly if you are married – especially if both spouses have worked and qualify for Social Security. While most couples simply want to know how they can maximize their total Social Security income, this is easier said than done. For one thing, not only can you file based on your own work history, you can also file for a benefit based on what your spouse earned. If you're divorced, you may be eligible for a benefit based on your ex-spouse's record.

With Social Security, timing is everything. And mistakes are all too easy to make. Consider for example, the widow who was entitled to a widow's benefit but lost her claim because she remarried at age 59, instead of 60.

(Continued on page 2)

Critical Numbers...

A 65-year-old couple retiring in 2012 is estimated to need \$240,000 to cover medical expenses throughout retirement, according to Fidelity Investments' latest annual estimate. That's a 4% hike from last year's estimate of \$230,000.



Greetings . . .

Welcome to our exciting new look. We've updated our newsletter a bit and included lots of helpful information that you can immediately put to use. Enjoy!

WATCH OUT!

Don't let this happen to you.

A woman came to us because her husband had recently been killed in a car accident. He did not have a will and was survived by his wife and his mother. Because he had no will, 25% of his estate passed to his mother under Connecticut law. Is this something you'd want to have happen? Have a will drafted now.

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CZEPIGADALY LLC

ESTATE PLANNING, PROBATE & ELDER LAW
It's Time. Plan Today for Your Tomorrow.



10 Reasons to Create Your Estate Plan

Think you are too young to have an estate plan, or that you don't have enough money to reap the tax benefits of an estate plan? Not true! Read about the many consequences of not having one.

- 1. Loss of Capacity.** What if you become incapacitated and unable to manage your own affairs? Without a plan the courts will select the person to manage your affairs. How scary is that?
- 2. Minor children.** Who will raise your children if you die? You guessed it, without a plan, the probate court will make that decision.
- 3. Dying without a will.** Who will inherit your "stuff"? If you don't have a will, your assets pass to your heirs under Connecticut's intestacy laws. Your family members (and perhaps not the ones you would choose) will receive your assets without the benefit of your direction or of trust protection.
- 4. Blended families.** What if your family is the result of multiple marriages? Without a plan, children from different marriages may not be treated as you would wish.
- 5. Children with special needs.** Without proper planning, a child with special needs risks being disqualified from receiving Medicaid or SSI benefits, and may have to use his or her inheritance to pay for care.
- 6. Keeping assets in the family.** Would you prefer that your assets stay in your own family? You most likely won't want your child's spouse to wind up with your money if your child passes away prematurely. If your child divorces his or her current spouse, half of *your* assets could go to the spouse.
- 7. Financial security.** Will your spouse and children be able to survive financially? Without a plan and the income replacement provided by life insurance, your family may be unable to maintain its current living standard.

8. Retirement accounts. Your designated beneficiary for your IRA or retirement account funds may not be up-to-date and may result in ugly conflict and burdensome tax consequences for your heirs. You don't want your ex-spouse to get anything, do you?

9. Business ownership. Do you own a business? Not naming a successor presents the risk that your family could lose control of the business.

10. Avoiding probate. Without a plan, your estate may be subject to delays and excess fees, and your assets will be a matter of public record. It may benefit you to structure things so that probate can be avoided entirely.

On a final note, remember that things change. You may acquire new assets, receive an inheritance, lose relatives to death, disown relatives, take them back, and gain children or grandchildren. Any of these events could require changes in your estate plan. In addition, the federal estate tax rules have been wildly unpredictable in recent years, and that trend may continue. For all these reasons, be sure to review your estate plan at least annually and update it as needed. ☀

Social Security *(Continued from page 1)*

Should both members of a couple file for benefits in the same year, or would it make more sense for one spouse to start before the other? Which one? If one begins early, how does it affect the spouse's benefits?

And this is just scratching the surface.

Planning for Social Security is a bit like doing your own taxes: You might do just fine on your own, but if you make a mistake, you're headed for trouble. ☀

What's Up With Us

We're an interesting bunch and we want you to know us!

- **Paul Czepiga** and **Brendan Daly** have been voted as Super Lawyers by CT Magazine
- **Carol Frances**, our Marketing Director, is having a solo show in August of her newest paintings at the Simie Maryles Gallery in Provincetown
- **Judith Sampson, CPA**, is our new Chief Financial Officer – welcome Judith!



Paul Czepiga



Brendan Daly

LATEST NEWS . . .

CzepigaDaly partners with the Law Offices of Sharon L. Pope

We have some exciting news to share with you. To better serve your needs, we have decided to partner with another law firm very similar to ours. We are now affiliated with the Law Offices of Sharon L. Pope located in Hartford. Both law firms are complementary and will begin offering a broader array of services.

Like us, Attorney Pope and her two associate attorneys focus on elder law, estate planning and probate, and will bring further value to you as you face challenges in these areas. Additionally, they are recognized in the state of Connecticut as authorities on disability and special needs trusts, a fast-moving area of the laws that includes a daunting array of related services and government programs.

We decided to grow our practice with Attorney Pope because we believe that an expanded staff with additional expertise in disability planning and special needs trusts will allow us to provide you with even more personal and comprehensive services. This new alliance will strengthen our ability to empower parents and siblings to advocate for their loved ones with special needs and to help them secure the benefits that will improve their quality of life and stay at home.

Will this change the way we serve you? Not at all. Attorney Pope and her staff share the same values we do. They bring their deep expertise and are committed to continuing the tradition we have for excellent service in an environment our clients and associates want to be a part of.

We will remain in our offices; they will remain in theirs.

We are excited about this new relationship and are confident that it will serve you well. Feel free to contact us if you have any questions. ✨

Q & A

Q My parents have a considerable amount of debt. Will I one day inherit their money problems?

A Let us dispel the myth. You are not liable for debts under your parents' names, whether involving credit cards, mortgages, or collections. As long as no debt was acquired jointly, payments must come out of your parents' estate only, not yours.

Q Do I need a lawyer to apply for Medicaid?

A The general rule of thumb is that you should consult with a lawyer who has experience in this area so that you can get an educated start in the process, learn how recent state and federal rule changes can affect you, and not spend more money than you have to at the nursing home. As soon as you suspect that you may need to go to a nursing home or even if you are already in one, you should contact CzepigaDaly to investigate whether it is possible to protect assets for your spouse, children or other beneficiaries. The more assets you have, the more you have at risk, and the more likely it is that we can help you to protect some or all of your money.

BRAIN HEALTH: 10 Ways to Stay Sharp

1. Learn something new – anything!
2. Get moving every day – walk, run, climb stairs
3. Be social – spend time regularly with friends & family
4. Get plenty of sleep
5. Eat lots of fruit and veggies
6. Ditch your unhealthy habits – you know what they are
7. Keep working as long as you can and want to
8. Volunteer for a cause that's meaningful to you
9. Drink lots of water
10. Laugh lots!

HELPFUL TIPS

Hunting Down Benefits for Seniors

By taking a few minutes to fill out a free on-line survey, you can access a report of all the benefits available to you or your loved one. More than 2,000 federal, state, and private programs offer benefits to seniors for everything from health care and utility bills, to eye exams and house-keeping. Go to www.BenefitsCheckUp.org to see what programs you may be eligible for!

It's Time. Plan Today for Your Tomorrow.

Call us at (860) 594-7995

Special
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SMART PLANNER

For Legal, Financial and Healthcare Professionals

August 2012

Medicaid Figures Have Been Adjusted

Effective July 1, 2012 the following changes to the Medicaid regulations take effect:

- The penalty period divisor changes from \$10,586 per month to **\$11,183** per month. Example: a gift of \$50,000 results in a Medicaid disqualification period of 4.4 months. This figure changes each July 1st. Remember – penalty periods now begin not when the gift is made, but in the month that the maker of the gift is in a nursing home and has no other assets.
- The minimum monthly needs allowance for the healthy spouse changes from \$1,838.75 to **\$1,891.25**. In other words, in a married couple situation, the Community Spouse is allowed a monthly income of \$1,891.25, no questions asked. This is dependent, of course, on the ill and healthy spouses' own fixed incomes being sufficient to produce that amount. This figure changes each July 1st. There was no increase this year because there was no increase for social security benefits.
- The Personal Needs Allowance remains at **\$60.00/month**.

The following rules remain in place (these figures change each January 1st):

1. The minimum amount of assets protectable for the Community Spouse remains at **\$22,728**. In other words, if the couple's combined assets are \$25,000, the Community Spouse may minimally retain \$22,728 without any requirement to justify a need for that amount.
2. The maximum amount of assets protectable, without a Fair Hearing, for the Community Spouse is **\$113,641**. Additional assets may be protected above this amount if there is a demonstrated need.
3. The maximum monthly income available to the community spouse without exceptional circumstances remains at **\$2,841.00**.

Please call us if you would like additional information on any Medicaid or estate planning matter. ☀



Annuity Purchased Post-Initial Eligibility Determination is Not Available Resource

Reversing a district court, a U.S. court of appeals holds that an annuity is an unavailable resource even if it is purchased in addition to the community spouse resource allowance, and that there is no transfer penalty for the couple's purchase of the annuity prior to a determination of Medicaid eligibility. *Morris v. Oklahoma Dept. of Human Services* (10th Cir., No. 10-6241, July 9, 2012).

When Oklahoma resident Glenda Morris applied for Medicaid benefits, she and her husband, Leroy, had assets totaling \$107,812. The state determined that Mr. Morris' community spouse resource allowance (CSRA) would be \$53,906 and that the couple would have to spend down \$51,906 for Mrs. Morris to become eligible for Medicaid. The Morrises purchased burial plots as well as an irrevocable annuity for \$41,000 that would provide income to Mr. Morris over a three-year period.

The state denied benefits, finding that Mrs. Morris could not spend her share of the couple's resources on an annuity payable to Mr. Morris, or in the alternative, that Mrs. Morris was subject to a transfer penalty for transferring to Mr. Morris an amount above his CSRA. After a hearing officer upheld the denial, Mrs. Morris sued the state in federal court, arguing that the Centers for Medicare and Medicaid Services' Transmittal 64 provides that resources that are converted into income for the community spouse through the purchase of an annuity are no longer deemed available to the institutionalized spouse.

The U.S. District Court for the Western District of Oklahoma granted the state's motion for summary judgment, finding that federal law prohibits the community spouse from purchasing, after an initial determination of eligibility, an annuity above that spouse's CSRA. According to the court, Transmittal 64 refers

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Federal Court Rules that Gay Widow is Entitled to Estate Tax Refund

Finding that the Defense of Marriage Act's (DOMA's) denial of equal benefits to same-sex couples violates the Equal Protection Clause of the Fifth Amendment, a federal court judge has awarded the surviving spouse of a lesbian couple reimbursement for the tax bill she paid on her wife's estate.

Edith Windsor and Thea Spyer became engaged in 1967 and were married in Canada in 2007, although they lived in New York City. Ordinarily, spouses can leave any amount of property to their spouses free of federal estate tax. But when Ms. Spyer died in 2009, Ms. Windsor, now 82, had to pay Ms. Spyer's estate tax bill because of DOMA, a 1996 law that denies federal recognition of gay marriages.

Although New York State considered the couple married, the federal government did not and taxed Ms. Spyer's estate as though the two were not married. Ms. Windsor sued the U.S. government seeking to have DOMA declared unconstitutional and asking for a refund of the more than \$350,000 in estate taxes she was forced to pay.

Federal court judge Barbara Jones from the U.S. District Court for the Southern District of New York ruled that there was no rational basis for DOMA's prohibition on recognizing same-sex marriages. Jones stated that it was unclear how DOMA preserves traditional marriage, which is one of the stated purposes of the law. Last year, President Obama decided to stop defending DOMA, so members of Congress formed an advisory group to defend the law. This is the fifth case to strike down DOMA. ✨

What's New?

Brendan Daly is now the President of the Connecticut Chapter of the National Academy of Elder Law Attorneys (NAELA).



Prevent Your Clients from Financial Exploitation

We see it more and more in our practice, and we hear startling statistics on the prevalence and impact of elder financial abuse on the lives of seniors nationwide. Do you suspect that a client of yours may need protection from potential abuse in this area? It is not uncommon for a caregiver, family member or POA to take advantage of the responsibility that they hold. If you have a concern, call us. We know the process of following up with law enforcement and the Chief State's Attorney's office. And we also have experience with how financial exploitation might impact a clients' future application for Medicaid.

Annuity Purchased Post-Initial Eligibility Determination is Not Available Resource *(Continued from front page)*

only to transfers made before an eligibility determination. Mr. Morris appealed as personal representative of his wife's estate.

The U.S. Court of Appeals for the Tenth Circuit reverses, ruling that "the purchase of a qualifying annuity renders resources unavailable to the institutionalized spouse even if the annuity is purchased in addition to the community spouse's CSRA." The court holds that qualifying annuities and the CSRA are separate provisions [that] create two different mechanisms by which a Medicaid applicant can render resources unavailable. The statute does not require an applicant to pick one or the other. Distinguishing between an "initial determination of eligibility" and "after an individual has been found to be eligible for Medicaid," the court finds that no transfer penalty applies to qualifying annuities purchased prior to a determination that the institutionalized spouse is eligible for benefits. The court remands to the district court to resolve outstanding issues concerning the timing of the Morris's application relative to the annuity purchase. ✨



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