

SOCIAL SECURITY, RETIREMENT AND FAMILY BENEFITS

By Bradley J. Frigon

You can get retirement benefits at age 62, but your Social Security benefits are reduced since you did not wait to receive benefits until "full retirement age".

Social Security says that your benefits are reduced approximately 30% if you retire at age 62 (the reduction is 20% if you retire at age 64). For people born before 1938, "full retirement age" is 65. For people born in 1938 or after, "full retirement age" will increase depending on when you are born. If you are born from 1943-1954 you will reach full retirement age at 66. If you are born between 1956 and 1959 you will reach full retirement age at age 66 and 4 months. If you are born from 1960 and later, you will reach full retirement age at 67.



You will automatically receive Medicare benefits, if you receive Social Security Retirement benefits at age 65. Starting Social Security at age 62 will not get you Medicare until you reach 65. However, even if your "full retirement age" is older than 65, you still get Medicare at age 65 even if you elect not to receive Social Security retirement benefits at that age.

Termination of Benefits

Your last benefits are payable in the month *before* the month in which you die. In other words, you must live to the last day of the month to be eligible for that month's benefits. For this reason, persons controlling your bank account will need to refund the benefit paid during the month of your death.

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PERSONAL NOTE FROM BRADLEY FRIGON

One day a woman's husband died, and on that clear, cold morning, in the warmth of their bedroom, the wife was struck with the pain of learning that sometimes there isn't "anymore." No more hugs, no more special moments to celebrate together, no more phone calls just to chat, no more "just one minute." Sometimes, what we care about the most gets all used up and goes away, never to return before we can say good-bye, say "I love you."

So while we have it, it's best we love it, care for it, fix it when it's broken and heal it when it's sick. This is true for marriage....And old cars... And children with bad report cards, and dogs with bad hips, and aging parents and grandparents. We keep them because they are worth it.

Life is important, like people we know who are special...And so, we keep them close!

Brad Frigon

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Amount of Benefits

Your benefits are based on an average of the 35 highest years of adjusted earnings. Years in which no earnings occurred can be counted towards the 35 year average, if needed. For higher paid workers, the amount of benefits is generally equal to 25 percent of pre-retirement earnings. For lower paid workers, the benefit is generally equal to 55 percent of pre-retirement earnings. The average individual gets 40% of pre-retirement earnings.¹

Each additional year you work beyond your full retirement age will impact your benefit eligibility level in two ways. First, if you have high earnings, you can increase your benefit amount because it will be added to your 35 year average. Second, if you work past "full retirement age", your benefit will increase automatically by a certain percentage, based on your year of birth for each year you work up to age 70 (assuming you work until age 70).

If you are employed while you are receiving retirement benefits, your earnings *after* you reach "full retirement age" do not change. However, if you are younger than "full retirement age" and receiving social security, the amount of your benefits can be reduced if you exceed the annual limit. The general rule is that once your earnings exceed an annual limit (which changes each year), your benefits are reduced by \$1 for every \$2 in earnings above that annual limit. For 2009, the annual limit is \$14,160. In the year you reach full retirement age, your benefits are reduced by \$1 for every \$3 you earn above a different limit. For 2009, that annual limit is \$37,680.

Are Your Social Security Benefits Taxable?

Your benefits can be taxed. If you file as a single individual, and your income exceeds \$25,000, 50% of your benefit will be added to your income. If your income exceeds \$34,000, 85% of your Social Security benefit will be subject to

income tax. For couples filing jointly, the combined income levels are \$32,000 to \$44,000 for one-half of your benefits to be taxed, with 85% of your benefits being taxed if your combined income exceeds \$44,000.

Spousal Retirement Benefits

There are two general rules with respect to spousal benefits. First, your spouse cannot receive benefits from your account until you are receiving benefits. Second, your spouse can receive one-half of your monthly benefit amount, if he or she retires at their "full retirement age". Your spouse can retire as early as age 62, but benefits will be reduced, depending on the spouse's "full retirement age". This could lower your spouse's benefit to as little as 32.5% of your benefit. Your spouse can qualify for Medicare at age 65 based on your eligibility for Social Security benefits.

Your spouse can retire at an age earlier than age 62 if he or she is taking care of a child eligible for benefits under your earnings record if the child is under the age of 16, or disabled. Your spouse will receive a full one-half benefit amount if these conditions are present.

If your spouse has worked and has 40 quarters of coverage, he or she may be eligible for benefits on their own earnings record. In this case, Social Security will give your spouse either the amount he or she is eligible for under their own earnings record, or the amount they are eligible under your earnings record, whichever is greater.

A divorced spouse can receive retirement benefits based on *your* earnings record beginning at age 62, if you were married for at least ten years, and if your divorced spouse remains unmarried. As with your married spouse, your divorced spouse will receive benefits based upon the greater of the amount they are eligible for under your earnings record, their own earnings record, or the earnings record of another

person. The benefits paid to your divorced spouse will not impact the amount of benefits you or your current spouse receives.

Widows' or Widowers' Benefits

Widows' or Widowers' benefits can begin at age 60. If you receive widows or widowers' benefits at age 60, your own benefits will be reduced. If you wait until "full retirement age" to retire, then you receive 100% of your deceased spouse's benefit level. As with all other spousal benefits, if you are entitled to benefits on your own earnings record, or that of another, you will receive the largest benefit.

If you remarry before reaching age 60, you cannot receive widowers' benefits as long as you remain married. If you remarry after age 60, you can receive benefits based on your new spouse's earnings record, or your deceased spouse's earnings record, but not both.

There is a special rule for newly married spouses when the wage earner dies prematurely. As long as you were married to the wage earner for at least nine months, there is no problem. However, if the wage earner died less than nine months after the marriage, you must show that the wage earner was reasonably expected to live nine months, and that the death was "accidental".

Children's Benefits

Children may receive Social Security benefits based on your earnings record if you are receiving retirement benefits, or you have died. Your children must be unmarried, under the age of 18, or 18-19 years old and a full time student at a level no higher than grade 12, or be 18 or older and disabled from a disability that began before they reached age 22. Adopted children and stepchildren are included in the category of individuals who can receive these benefits.

Each child can receive up to one-half your full retirement benefit. However, there is a limit to what your entire family can

¹ Should you wish to read how this process is accomplished in detail, go to www.ssa.gov and insert "calculation of retirement benefits" into the search option.

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WHEN YOU CAN CONTEST A WILL OR CONTEST INTERFERENCE WITH A WILL by W. Eric Kuhn, Esq.



You had a loving relationship with your mother and she always said she would leave everything to you and your siblings, but after she died, you discover she had recently written a new will, leaving everything to a housekeeper or one of your siblings. Is there anything you can do? If you believe a loved one's will is not valid, you may be able to contest it. But proving a will is invalid is difficult and this process should be undertaken after you consult with an experienced attorney.

Interested Party. Only certain people can contest a will. For example, you can't contest your friend's will just because you believe she shouldn't have left her estate to her niece. You must be an "interested party." This means you would have inherited from your loved one if there was no will, you are a beneficiary of the current will or if the share you were to receive was eliminated or reduced by the new will or codicil.

In addition, you cannot contest a will solely because you think the distribution is unfair. A will can be contested only in certain circumstances; there must be evidence that something is wrong with the will. The following are the situations in which a will may be contested:

Mental Incapacity. You may contest a will if you believe your loved one did not have the mental capacity to write the will. The best way to prove this is with a statement from a doctor who examined your loved one around the time he or she wrote the will. You may also use medical records and other witnesses who were around your loved one at the time.

Undue Influence. If you believe another person exerted undue influence over your loved one and induced your loved one to change the distribution under his or her will, you may contest the will based on undue influence. Generally, the person contesting the will is required to prove the person exerted undue influence. However, if the person had a fiduciary relationship with your loved one, that person may have to prove that there was no undue influence. People who might have a fiduciary relationship include a child, a spouse, or someone with a power of attorney.

Fraud. Arguing your loved one was fraudulently induced into signing his or her will is another way to contest a will. Fraud occurred if your loved one signed a will without realizing it was a will. It could also happen if someone gave your loved one misinformation that caused him or her to change the distribution in the will.

Not Executed Properly. A will may be invalid if it was not executed properly. Each state has laws dictating what makes a will valid. If the document was not witnessed properly, it may be invalid.

Tortious Interference with an Inheritance. When a person is deprived of his inheritance, or another gift that he otherwise would have received, by a third party through fraud, duress or other tortious means, that can expose the third party to liability. Different states have recognized interference with expectancies under a will or trust, with expected gifts, with the right to insurance proceeds and retirement plans, with title to property (like changing joint tenancy or payable on death designations), and with causing someone to make transfers while they were still alive. If a person can prevail with this kind of claim, she can seek as damages what she would have gotten without the interference and possible attorney fees and punitive damages as well.

Breach of Fiduciary Duty. A person has a fiduciary duty if he or she has an obligation to act in the best interest of another person. For example, the trustee of a trust,

the personal representative of an estate, and the agent under a power of attorney are all required by the law to act in the best interest of the person or entity they serve. The duty arises when the relationship between the fiduciary and the person he or she represents involves special trust, confidence and reliance. The fiduciary must actively accept this role. The requirements of a fiduciary are among the highest standards of conduct imposed by the law. If a person can show that there was a fiduciary relationship, and the fiduciary breached his or her duties, then the court will find that the benefit gained by the fiduciary should be returned to the principal. This can take several forms. The court can impose a constructive trust, which requires the fiduciary to hold the property safely until it can be returned. If the breach of duty was ongoing, or if the property is difficult to identify, the court may order that all of the money made by the fiduciary while he or she abused his position will be given to the principal. Finally, a court may simply award an appropriate amount of compensation.

There are, unfortunately, many ways for a person in a position of trust to abuse that trust. Sometimes it is intentional, sometimes it comes from a sense of entitlement, and sometimes it is accidental. Regardless of the cause, however, a fiduciary is required to act in the highest and best interest of the person or entity he or she serves. Similarly, when a person establishes his estate plan, both he and the beneficiaries of that plan have the right to expect the plan to move forward without interference.

If you are successful in contesting a will, the court may reinstate your loved one's prior will. If there is no earlier will, the estate may pass under the state's intestate succession laws. Another alternative is for the court to invalidate just the portion of the will that is invalid, leaving the rest intact.

If you want to contest a will, you should contact our office immediately because you will need to file a claim with the court within a short period of time.

NEWS AND ANNOUNCEMENTS

- Brad Frigon spoke at the National Alliance on Mental Illness (NAMI) National Convention in San Francisco, California on "Tax Planning and Planned Giving in a Special Needs Trust."
- Brad was interviewed for an article in the July 2009 issue of *Kiplinger's Retirement Report* on using special needs trusts in Medicaid planning for seniors.
- Brad and Eric's article "Which Special Needs Trust, When and Why?" was published in the NAELA Journal! (2009, volume 5, number 1)
- The TODAY Show recently featured special needs planning and promoted the Special Needs Alliance during Jean Chatzky's "Money 911" segment.
- Brad presented "Special Needs Trusts Part II" for the ALL-ABA Telephonic Conference in June.
- Brad and Eric updated APPENDIX L, to the West Publishing Colorado Practice Series on Colorado Personal Injury Practice.
- Brad Frigon was recently a featured presenter for a National Academy of Elder Law Attorneys (NAELA) Telephonic conference on Medicare's Interest in a Personal Injury Settlement.
- Brad was a faculty presenter at the Colorado Bar Association (CBA-CLE) Estate Planning Retreat in June.
- Brad Frigon was a featured presenter for the National Academy of Elder Law Attorneys (NAELA) Telephonic Training conference in May on "How to Designate Your Trust as the Beneficiary of a Retirement Account".
- Brad spoke on Special Needs Trusts, Qualified Retirement Accounts, and Tax Rules at the NAELA Summer Special Needs Program in Phoenix, AZ.
- Brad Frigon was appointed to the Special Needs Alliance board of directors. The Special Needs Alliance is a national, non-profit organization committed to helping individuals with disabilities, their families, and the professionals who represent them. For more information, go to www.specialneedsalliance.org
- Brad Frigon was elected to a third two year term to the National Academy of Elder Law Attorneys (NAELA) Board of Directors. For more information on NAELA go to www.NAELA.com.
- Brad Frigon recently attended the National Academy of Elder Law Attorneys (NAELA) Annual Board Retreat in Saratoga Springs, New York.
- Brad Frigon spoke to the Colorado Bar Association Elder Law Section on the new Program Operations Rules (POMS) for trusts issued by the Social Security Administration.
- Brad Frigon was recently named an Accredited Attorney for veterans benefits by the Department of Veterans Affairs (VA).
- The Law Offices of Bradley J. Frigon is a new member of the Better Business Bureau (BBB).

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receive based on your earnings record. The total amount payable to other family members is usually limited between 150% to 180% of your retirement benefits (divorced spouses are not included in this calculation). Thus, your spouse's benefits can be reduced because of the number of children eligible to receive benefits based on your record.

Help us update our records

If you have changed your name or address, or if you are receiving more than one copy of LEGALVIEW, please contact us by phone, fax or email so we may correct our records.

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