# Considerations for Clients Nearing 65

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## I. Introduction

Attorneys who practice in the areas of estate planning, guardianship and elder law many times are called upon by their clients to advise on collateral matters that may only be tangentially connected to the legal matter that the lawyer was hired to handle. In dealing with the population that most often will pursue advice and legal services on these matters, many times the clients will be approaching what is commonly perceived as "retirement age." The term "retirement age" is typically used when referring to the age cohort that is approaching age 65. This age is widely regarded as the age when most in the working population seek to retire from their lifelong professions. There is no specific age when most of the population is required to retire. In the past, 65 was full retirement age for Social Security purposes and it is the age when most individuals planned to leave their primary careers even if they plan to continue to work in some form in the future.

Because 65 years of age was the traditional retirement age, there are a host of decisions that an individual may be required to make upon approaching this life milestone. There is very little–if any–education or training that a person might have had during her lifetime to prepare for these terribly important decisions. There are financial planners to advise about investment of assets. There are some very specialized insurance agents who deal with health insurance for retirees. But just like most of our clients, there is very little training for the majority of attorneys who will be asked to give advice on the multitude of decisions that face the soon to be retiree. Most attorneys will not feel comfortable with discussing these issues with their clients and instead refer them to financial planners or insurance agents. This requires the client to seek advice from unfamiliar sources and that are often commissioned agents. It is incumbent upon attorneys who deal with this particular population to at least have a familiarity with some of the important areas and issues that confront this specific age group. This paper is intended to provide a basic understanding of several important areas that concern those approaching retirement.

We don't often realize how great of an impact decisions made at this time in our life can have. The reason for this surprise is the lack of knowledge about how long we are expected to live. The life span of individuals is particularly important to the federal government when it is attempting to ascertain how various government benefits will be utilized by its citizens. The Social Security Administration and the Trustees of the Social Security Trust fund make annual predictions based on life expectancies of beneficiaries. According to the Social Security Administration, many of us will live much longer than the "average" retiree. A man reaching age 65 today can expect to live, on average, until age 84.3. A woman turning age 65 today can expect to live, on average, until age 86.6. And those are just averages. About one out of every three 65-year-olds today will live past age 90, and one out of 7 will live past age 95. Married couples at age 65 today typically have at least a 50/50 chance that one member of the couple will live beyond age 90.

## II. Ad Valorem Tax

Perhaps the most important issue facing people of retirement age is transitioning to a fixed income. During a person's working years, disposable income could change depending on how many hours worked and based on things like overtime or possibly working a second job. Once retired, a person is generally living off of a fixed income. It may consist of regular withdrawals of savings, monthly Social Security checks, retirement benefits from previous employers, or withdrawals from qualified retirement plans such as regular IRAs or Roth IRAs.

Some in this age group will have paid off their mortgage and no longer have a monthly note for housing expenses. However, one expense related to housing that can cause a lot of concern is the taxes on a homestead.

Property taxes in Texas are locally assessed and locally administered. There is no state property tax. State law provides for a variety of exemptions from property taxes.

Most efforts to protect homeowners from the slow increase in property taxes is related to exempting either a partial or total (absolute) value of a property's appraised value from being used to determine the taxes. A partial exemption removes a percentage or a fixed dollar amount of a property's value from taxation. A total (absolute) exemption excludes the entire property from taxation. The State requires local taxing authorities to offer certain (mandatory) exemptions and allows the taxing authorities to have the option to decide locally on whether or not to offer other exemptions.

In urban environments, residential neighborhoods that may have once been on the outskirts of town–or even out of town at one time–may now be highly sought-after neighborhoods and the values of the homes in those neighborhoods may have increased tremendously from when the homes were originally built and purchased. In many families, the most valuable asset is a home. As the homes increase in value over time, there is a corresponding increase in the ad valorem taxes paid each year to the city, the county, or to a local school district. Retirees may fear that taxes will continue to go up in the future due to tax increases or through increases in value such that they will no longer be able to afford to pay the taxes. Although taxes and the value of the home continue to go up every year, a family's fixed income may not increase at all. Therefore, the bite that these taxes take out of their fixed income continues to increase every year to the point where it will leave very little income to be spent on other living expenses. This problem has not escaped the purview of many of the elected representatives of the State of Texas and other local governments. Tax reform is an issue in campaigns to elect government representatives. To protect families living on fixed incomes, the State of Texas has mandated that all taxing authorities follow certain rules allowing homeowners to have exemptions from the payment of certain taxes and other methodologies to prevent gradual increases in the taxes on a homestead that would make it impossible to continue to live in their homes and have any disposable income after the payment of taxes.

Most homeowners will be aware that there is a exemption for the payment of some taxes that are levied on their homesteads. This general knowledge abounds in the community as this type of exemption is allowable to any homeowner regardless of their age. This general knowledge and understanding of exemptions on your homestead does not extend to special exemptions and other methodologies to lessen the burden on homeowners who have reached 65 years of age. When clients approaching their 65th birthday set up meetings with their attorneys to discuss estate planning issues it would be very helpful to most of this age group if their attorney would bring up the issue of the potential savings that they may be able to attain from exemptions and other ways to reduce the tax burden from home ownership during their retirement years.

### A. Filing for an Exemption

To obtain an exemption, a homeowner is required to apply to the local taxing authority.[1] Most counties have a website that provides the necessary forms to request an exemption. In Harris county, the Harris County Appraisal District has forms available on its website.[2] The general deadline for filing an exemption application for most exemptions is the first day in May.[3] An application for any homestead exemption may be filed up to two years after the delinquency date.[4] A property owner may be allowed to file a lifetime application for some exemptions and others require the property owner to file an application annually. Even if the law specifies a one-time application for the exemption, the chief appraiser of the district is allowed to request a new application to verify that a property is eligible for the exemption. Appendix A attached herein is a chart outlining the most common Tax Code exemptions that require a one-time application, unless the chief appraiser of the district requests another application.

### B. Residence Homestead

Texas law requires that taxing entities exempt some of the value of a homestead from taxation.[5] A homestead can be a separate structure, condominium or a manufactured home located on owned or leased land, as long as the individual living in the home owns it.[6] A homestead can include up to twenty acres, if the land is owned by the homeowner and used for a purpose related to the residential use of the homestead. It must be

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[1] Tex. Tax Code §11.43(a).

[2] http://hcad.org/.

[3] Tex. Tax Code §11.43(d).

[4] Id. at §11.431.

[5] Id. at §11.13 (a) (b) (c).

[6] Id. at §11.13(j)(1)(2)(3).

designed or adapted for human residence. It must be occupied as the individual's principal residence by an owner, by an owner's surviving spouse who has a life estate in the property or, for property owned through a beneficial interest in a qualifying trust, by a trustor or beneficiary of the trust who qualifies for the exemption The home's owner must be an individual (for example: not a corporation or other business entity) and must use the home as her principal residence on January 1 of the tax year. Failure to occupy the residence does not cause a qualified homeowner to lose a homestead exemption if the homeowner does not establish a different principal residence, intends to return and occupy the residence, and is temporarily absent for a period of less than two years.[7] There are two exceptions to the two year rule. The first exception is granted to persons serving in the military inside or outside of the United States as a member of the armed forces of the United States or of this state.[8]

The second provision in the Tax Code concerning the right to maintain the homestead exemption even if the owner is away from the home for an extended time is of particular interest to elderly clients and to elder law attorneys. This provision specifies that an owner's absence while a resident in a facility that provides services related to health, infirmity, or aging is not subject to the two year rule or any time limit. **This means that any resident of a long term care facility (nursing home) is allowed to keep a homestead exemption no matter how long their stay in the facility might last and without regard to any objective standard based on a medical condition as long as she intends to return home**.[9]

A home owner qualifies for the homestead exemption even if she is not the sole owner of the property. The exemption is based on the ownership interest of the individual. For example, if the person owns a 50 percent interest in a homestead, she will receive only one-half of the exemption amount. A person may not receive an exemption for more than one residence homestead in the same year.[10]

C. Amount of Exemption

A homeowner is entitled to exemption from taxation by a school district of $25,000 of the appraised value of the primary residence homestead.[11] This exemption is mandated by state law. For example, a home appraised at $100,000, would qualify for a $25,000

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[7] Id. at §11.13(l).

[8] Id. at §11.13(l) (2) (A).

[9] Id. at §11.13(l) (2) (B).

[10] Id. at §11.13(j).

[11] Id. at §11.13(b).

exemption (this is the amount mandated for school districts), the school district would tax the home as if it was worth only $75,000.

All taxing units have the option to offer a separate exemption of up to 20 percent of the total value.[12] This is referred to as the "local option exemption." The additional exemption must be passed by the governing body of the taxing unit before July 1st in the manner provided by law for official action by the body. If the percentage set by the taxing unit produces an exemption in a tax year of less than $5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of $5,000 of the appraised value. This percentage exemption is added to any other home exemption for which an owner qualifies.

A family or single adult is entitled to a mandatory exemption from taxation for county purposes of $3,000 of the assessed value of a residential homestead.[13]

Most jurisdictions provide more generous exemptions for homeowners under the aforementioned local option exemption provision. Harris County and the City of Houston currently exempt 20% of the value of a homestead. Attached as Appendix B is a Chart showing the available homestead exemptions for Texas Residents.

D. Age 65 or Older or Disabled Exemption

In addition to the homestead exemption, an adult who is disabled or is 65 or older is entitled to an exemption from taxation by a school district of $10,000 of the appraised value of their residence homestead.[14] This exemption is mandatory under state law.

If the owner qualifies for both the $10,000 exemption for age 65 or older homeowners and the $10,000 exemption for disabled homeowners, the owner must choose one or the other for school taxes. The owner cannot receive both exemptions.[15] As set forth above, there is both a mandatory exemption and a local option exemption. The local option exemption cannot exceed 20 percent of the total value of the home and like the mandatory exemption, it is in addition to any homestead exemption.

To qualify for the mandatory or local option exemption for persons age 65 or older, the owner must be age 65 or older and live in the house. There is no requirement of

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[12] Id. at §11.13(n).

[13] Id. at §11.13(a).

[14] Id. at §11.13(c).

[15] Id. at §11.13(h).

January 1st ownership or residency for the age 65 or disabled homestead exemption.[16] The exemption is immediate and available as if the owner was age 65 or disabled prior to Jan 1 of the current year. The owner can apply to the appraisal district up to one year after the date they became age 65 or qualify for disability or up to two years after the taxes are due. If the application is approved, the exemption will be granted for the entire year in which the owner became age 65 or became disabled and for subsequent years as long as they own a qualified homestead. If the homeowner's date of birth was on the original homestead application or other written correspondence to the appraisal district about the homestead, then the owner will automatically receive the age 65 or older exemption without applying if they are entitled to the general homestead exemption.

The surviving spouse of an individual who qualifies for an exemption under Tax Code Subsection 11.13(d) (the local option exemption) for the residence homestead of a person 65 or older is entitled to an exemption for the same property from the same taxing unit in an amount equal to that of the exemption for which the deceased spouse qualified if: [17]

(1) the deceased spouse died in a year in which the deceased spouse qualified for the exemption;
(2) the surviving spouse was 55 or older when the deceased spouse died; and
(3) the property was the residence homestead of the surviving spouse when the deceased spouse died and remains the residence homestead of the surviving spouse.

To qualify for the disability exemption a person must be meet the definition of disabled for the purpose of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance.[18]

E. Homestead Tax Ceiling

As discussed in the introduction, many retirees are very concerned that increases in the value of their home and increases in ad valorem tax rates will eventually force them to sell their home because they can no longer afford to pay property taxes on fixed incomes. The taxes continue to go higher but their income remains the same. **At least for school taxes, over 65 or disabled homeowners do not have to worry about increases in taxes forcing them out of their home.**

Section 11.26 of the Texas Tax Code mandates a ceiling on the amount of taxes that a

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[16] Id. at §11.42(c).

[17] Id. at §11.13(q).

[18] Id. at §11.13(m)(1).

homeowner over age 65 or a disabled homeowner will ever be required to pay to the school district. This limit is commonly referred to as the "homestead tax ceiling." To benefit from the ceiling, the residence must be a qualified residence homestead. [19]

The owner must be age 65 or older or a disabled person. If the homeowner meets these requirements, the school district cannot increase taxes for as long as the over 65 or disabled person–and in some cases–their spouse continue to live in that home. The tax ceiling is the amount of taxes due in the year that the owner qualified for the age 65 or older or disabled person exemption. The school district taxes may go down on the homestead but they may not increase above the ceiling amount. Taxes may increase if improvements are made to the home such as increasing the square footage by adding on a room addition. Regular maintenance and repair or replacement of items such as HVAC system will not cause an increase in the taxable value.

A surviving spouse is entitled to the benefit of the school district tax ceiling if:

1. The surviving spouse is 55 or older when the qualifying spouse dies; and

2. The home was the homestead of the deceased individual; and

3. The home remains the homestead of the surviving spouse.[20]

The percentage of the taxes paid on the value of a previous homestead is transferable to a new homestead.[21] The ceiling on the new homestead would be calculated so as to give the same percentage of tax paid as the ceiling on the original homestead. For example, if the current homestead has a tax ceiling of $100, but the taxes owed without the ceiling would be $400.00 the percentage of tax paid is 25 percent of the true taxes owed on the property. If the homeowner were to move to another home and the taxes on the new homestead would normally be $1,000 in the first year, the new tax ceiling would be $250, or 25 percent of $1,000. To transfer the school district tax ceiling, the homeowner must request a certificate from the chief appraiser in the last appraisal district in which the tax ceiling was granted. The transfer certificate must be presented to the chief appraiser in the appraisal district where the new homestead is located when the application for the homestead exemption is filed on the new home.[22]

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[19] Id. at §11.13(j)(1).

[20] Id. at §11.261(i).

[21] Id. at §11.13(g).

[22] Id. at §11.13(h).

In certain jurisdictions, the tax ceiling will apply to county, city or junior college taxes. [23] However, this local option does not apply to other special districts such as water, hospital, or navigation districts.

F. Deferred Collection of Taxes on Residence Homestead of Elderly or Disabled Person or Disabled Veteran.

If elderly or disabled Texans own a home free of any mortgage, they can avoid being forced out of their home because of failure to pay any property taxes owing to any jurisdiction even if they are being sued by the taxing authorities. The program that allows elderly or disabled homeowners to stay in their home even if they do not pay the taxes is called "tax deferral."[24] This protection against foreclosure of a homestead for unpaid taxes is not available in most cases to a homeowner that has an outstanding mortgage on the property. Failure to pay taxes as they become due is a violation of the terms of the deed of trust that secures the lien against most homes. The standard practice of mortgage companies is to require escrow of tax payments as part of the monthly note. If the tax payments are not being collected as part of the regular monthly payment, then any deferral of taxes may cause the mortgage company to seek foreclosure of the lien.

If the homeowner is 65 or older or a disabled person, she can defer payment of current property taxes on her residence homestead until she no longer owns it or occupies it as a residence homestead.

A person is considered disabled if she is under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance.[25]

Property taxes continue to accrue during the deferral period, and are assessed interest at the rate of 5% per year. Once an over-65 or disability deferral has been granted, additional charges cannot be levied for delinquent penalty and interest. This is not the same thing as an over 65 or disabled exemption because the taxes are still owed. The deferral does not eliminate the taxes, it only postpones when the taxes must be paid.

If the homeowner moves out of the home or if it no longer qualifies as the residence homestead of the person, the taxes become due 181 days later. [26]

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[23] Id. at §11.261.

[24] Id. at §33.06.

[25] Id. at §33.06(a)(1)(B).

[26] Id. at §33.06 (b).

A surviving spouse over age 55 may continue the deferral if the deceased spouse qualified for the deferral and the surviving spouse owns the home and was living in the home at the time of the qualified spouse's death.[27]

## III. When Should I Sign Up for My Social Security?

One question that most all of our clients will be asking at some point is "When should I retire?" Retirement does not necessarily mean "when do I stop working?" The question about retirement most often resolves around "when do I decide to start drawing my social security benefits?" Social Security's position is that without regard to whether you start receiving your retirement benefits at the earliest possible age or start drawing you Social Security benefits later in life, you should receive about the same total Social Security benefits over your lifetime. If you retire early, the monthly benefit amounts will be smaller to take into account the longer period you will receive them. If you retire later, you will get benefits for a shorter period of time but the monthly amounts will be larger to make up for the months when you did not receive anything. The amount of Social Security retirement benefit is based on the earnings that a worker earned during her working career. Higher lifetime earnings result in higher benefits. If there are periods of time when a worker did not have earnings or earned low amounts of income, the amount of the benefit may be lower than it would have been had she worked at a higher wage job and had no gaps in employment.

A fully insured person is eligible to start drawing social security benefits once she reaches age 62.[28] A worker can start drawing retirement benefits at any point from age 62 until age 70,[29] and benefits will be higher with each year payments are delayed. This adjustment is usually permanent and it sets the base for the benefits a person will receive for the rest of her life. After age 70, there is no increase in benefits. **Therefore, everyone should start drawing Social Security retirement benefit at age 70–working or not–because there is no increase in benefits after that age and no penalty for working and drawing the benefit at the same time.** Social Security replaces a percentage of a worker's pre-retirement income based on lifetime earnings. The amount of a worker's average wages that Social Security retirement benefits replaces varies depending on the earnings of the worker and when benefits start. The system is downloaded to replace a higher percentage for a low wage earner's income than for a high wage earner. If a worker starts benefits at age 67, this percentage ranges from as much as 75 percent for very low earners, to about 40 percent for medium earners, and about 27 percent for high earners. If you start benefits earlier than age 67, these percentages would be lower. In 2018, the maximum social security benefit for a

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[27] Id. at §33.06(f).

[28] 42 U.S.C. §402.

[29] Id. at §402(w)(2)(A).

worker retiring at full retirement age is $2,788.00 and the average Social Security benefit for all retired workers is $1,404.00.

If a worker is receiving early retirement from an employer, she needs to pay close attention to the provisions of her retirement plan. Some company pensions include a Social Security-equivalent supplement that stops automatically at age 62. The supplement stops because the pension plan assumes that the worker will apply for Social Security benefits at age 62.

A. Early Retirement vs. Full Retirement.

Many clients may ask, "What is the impact of taking my Social Security as soon as I can or waiting to draw Social Security at a later date?" Full retirement age is the age at which a person can start drawing her Social Security benefits and receive 100% of her retirement benefit. If a worker delays claiming benefits beyond full retirement age, she earns additional credits that increase her monthly benefit by about eight percent for each year she delays claiming the benefit, up to age 70, referred to as a Delayed Retirement Credit. If a worker starts collecting Social Security benefits before reaching full retirement age, her benefits will be reduced by up to 30 percent if benefits start at age 62. Attached as Appendix C is a chart showing the percentage of reduction in benefits for early retirement. Social Security full retirement age depends on the year in which a person was born. If a worker was born in 1938 or earlier, she reaches full retirement age of 65. This was the full retirement age for many years.[30] For workers born between 1943 and 1954, full retirement age is 66. For workers born between 1955 and 1959, full retirement age increases gradually until it reaches age 67 for those born in 1960 or later. Beginning with the birth year of 1955, two months are added for every birth year until the full retirement age reaches 67 for people born in 1960 or later. Attached as Appendix D - is a chart showing the ages for full retirement.

B. Delayed Retirement.

Clients may seek advice from you about what the impact will be on their Social Security benefits if they wait and take Social Security benefits after full retirement age. If a worker continues to work beyond her full retirement age, it can result in increases of future Social Security benefits in two ways. The formula that Social Security uses to calculate benefits is based on average indexed monthly earnings during the 35 years in which the worker earned her highest wages. This basic benefit is called a "primary insurance amount." If a person earns her highest wages at the end of her working career, then her higher lifetime earnings can result in higher benefits when she retires. In most instances, a worker is earning a higher wage today than 35 years ago, so every year added to an earnings record will raise the average wage.

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[30] H.R. 1900, 98th Cong. (1983).

If a worker continues to work past full retirement age, then she will also receive an increase in benefit referred to as a "delayed retirement benefit" for every year until she reaches age 70. The percentage varies depending on the worker's year of birth. For example, workers born in 1943 or later will receive an additional 8 percent for each full year they delay receiving Social Security benefits beyond full retirement age. Attached as Appendix E is a chart that shows the increase in benefit amount based on delaying application for benefits until age 70. Additionally, Social Security will add cost-of-living increases to the benefit amount beginning with the year the worker reaches age 62 and up to the year she starts receiving benefits.

### C. Working While Receiving Social Security Benefits.

It is perfectly legal to work while receiving Social Security benefits. Because Social Security benefits are intended to replace, in part, earnings lost to a beneficiary or family because of the beneficiary's retirement, if a worker continues to work while drawing Social Security retirement benefits, she may receive a reduction in the amount of benefits based on how much she earns prior to full retirement age. The first thing to understand about this issue is that once the worker obtains full retirement age benefits will not be reduced no matter how much the worker earns. **There is no negative impact upon Social Security benefits from working after full retirement age.**[31] If a person elects to take Social Security before reaching full retirement age, she may receive a reduction in benefits based on how much she earns. Social Security will only count wages from the worker's employment or the net profits self-employed individual's work. Any bonuses, commissions and vacation pay will also be included. Social Security will ignore any pensions, annuities, investment income, interest, veterans or other government or military retirement benefits in calculations of earnings.[32] If a worker, while drawing benefits, is under her full retirement age and earnings exceed certain dollar amounts, some of her benefit payments during the year will be withheld. This is a result of what is called the "retirement earnings test" or the "annual earnings test."[33] If a worker earns more than the exempt amount, it won't, on average, decrease the total value of lifetime benefits. It can, in fact, increase them, in the long run. Each year Social Security will review the records for all working Social Security recipients. If the worker's earnings for the latest year are higher than one of the years used to compute her retirement benefit, then Social Security will recalculate her benefit amount. The increase in benefits will be paid in December of the following year but will be retroactive to January first of the previous year. In other words, the worker will get a check in December of 2018 for the increased benefits due from higher wages she received in 2017. Remember, benefits amounts are calculated on the 35 highest years of earnings.

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[31] 42 U.S.C. §403(f)(1).

[32] 20 C.F.R. 404.429, s*ee also* POMS § RS 02505.240 *available at* https://secure.ssa.gov/apps10/poms.nsf/lnx/0302501021.

[33] 20 C.F.R. 404.415.

Additionally, when the worker reaches full retirement age, she will get the "lost or withheld" benefits back. Once the worker reaches full retirement age, her monthly benefit will be increased permanently to account for the months in which benefits were withheld.

The limits of the amounts of the retirement earnings or annual earnings test depend upon the age of the worker.

If the worker is under full retirement age for the entire year, Social Security will deduct $1 from benefit payments for every $2 earned above the annual limit. For 2018, that limit is $17,040. In the year the worker reaches full retirement age, Social Security will deduct $1 in benefits for every $3 earned above a different limit. In 2018, the limit on earnings is $45,360 but Social Security will only count earnings before the month that the worker reaches full retirement age.[34]

Here are some examples:

> If a worker is receiving Social Security retirement benefits every month in 2018 and she is under full retirement age all year, she is entitled to $800 per month. ($9,600 for the year). She works the entire year and earns $27,040 ($10,000 over the $17,040 limit) during the year. Social Security would reduce her benefits by $5,000 ($1 for every $2 she earned over the limit), but the worker would still receive $4,600 of her $9,600 in benefits for the year. ($9,600 - $5,000 = $4,600).
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> The worker reaches full retirement age in August 2018. As in the prior example, she is entitled to $800 per month in benefits. ($9,600 for the year).
>
> She works and earns $63,000 during the entire year, with $47,480 of it being earned between January and July. ($2,120 over the $45,360 limit). Her Social Security benefits are reduced through July by $706 ($1 for every $3 earned over the limit). She still receives $4,894 out of her $5,600 benefits for the first 7 months ($800 per month, January through July). ($5,600 - $706 = $4,894).
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> Beginning in August 2018, when she reaches full retirement age, she receives her full benefit ($800 per month), no matter how much she earns during the remainder of the year.

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[34] POMS §RS 02501.080, *available at* https://secure.ssa.gov/apps10/poms.nsf/lnx/0302501080.

## IV. When Should I Sign Up for Part B Medicare?

Should I sign up for Part B of the Medicare program (formally know as Supplementary Medical Insurance (SMI) Benefits for the Aged and Disabled) as soon as I or my spouse turn 65?[35] This is a very common question because there are many individuals or spouses of retired persons who are working past the age of 65. If a person is over the age of 65 and still working, she may be covered by a group insurance policy. If the person has the required quarters of coverage, meaning she has worked at least 10 years (or 40 quarters) and paid Medicare taxes during those time periods, she will automatically be eligible for Part A when she turns age 65. Because there are no additional premiums that are required to start Part A, everyone who is eligible should elect to take Part A. But because Part B requires payment of a premium, there is a decision to be made as to whether to sign up for Part B or to delay the program and save the cost of the premiums. The same issue may also arise when a retired person has coverage through a spouse's Group Health Plan (GHP) when the spouse is still working.

To obtain coverage under Part B, a beneficiary must pay a monthly premium. The standard Part B premium amount in 2018 is $134.00 (or higher, depending on income). However, some people who get Social Security benefits pay less than this amount ($130.00 on average). If a couple's modified adjusted gross income is above a certain amount, they may pay an Income Related Monthly Adjustment Amount (IRMAA). Medicare uses the modified adjusted gross income reported on a person's IRS tax return from two years prior (that is the most recent tax return information provided to Social Security by the IRS) to determine premium amounts. If a couple's yearly income in 2016 was between $170,000 and $214,000, their Part B premium payments each month in 2018 would be $187.50.

It is possible that the retired spouse of a currently working person may be covered by a Group Health Plan (GHP) through the working spouse's company. The GHP coverage may be free or cost less than Part B premiums. The client may want to know if there is any reason he or she should take Part B and pay monthly premiums even when they have coverage under a GHP. The monthly cost of the benefit is not the only reason that potential beneficiaries might be concerned about this question. If a client does not sign up for Part B when first eligible, he or she may have to pay a late enrollment penalty.[36] That penalty comes as increased premiums for as long as the person is enrolled in Part B. The monthly premium for Part B may go up 10% for each full 12-month period that a person could have had Part B, but did not sign up for it.[37] Also, if a person does not enroll at initial enrollment, he or she may have to wait until the General Enrollment

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[35] 42 U.S.C. §1395j.

[36] *Id.* at §408.22.

[37] *Id.*

Period (from January 1 to March 31) to enroll in Part B and coverage starts July 1 of that same year.

Example: A client's Initial Enrollment Period ended September 30, 2009. She waited to sign up for Part B until the General Enrollment Period in March 2012. Her Part B premium penalty is 20%. (While she waited a total of 30 months to sign up, this included only two full 12-month periods.) She'll have to pay this penalty for as long as she has Part B.

Spouses and workers over age 65 who are covered by a GHP are protected from the increase in Part B premiums based on failure to enroll in Part B during their Initial Enrollment Period because they are allowed a Special Enrollment Period (SEP).[38] The SEP allows a beneficiary to enroll anytime during an eight month period that begins when he or she leaves the GHP.

There may be a more important reason for a retired spouse or currently working individual over age 65 to enroll in Part B other than to save the monthly premium. If the GHP has fewer than twenty employees the GHP is secondary to Medicare.[39] In cases where the employer has fewer than twenty employees the beneficiary should contact the Human Resources Department of the employer and determine if Medicare has primary responsibility for coverage. If Medicare is primary, then the Beneficiary should sign up for Part B. If the GHP has more than nineteen employees, then it is likely the best decision is to delay enrollment for Part B.

An additional reason to sign up for Part B upon turning age 65: federal law grants a "guarantee issue" period for Medicare Supplement Insurance Policies (Medigap) coverage for six months upon a beneficiary reaching age 65.[40] Delay in seeking Medigap coverage after that time could subject a beneficiary to exclusion for preexisting conditions.

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[38] 42 C.F.R. §407.20(b).

[39] 42 C.F.R. §411.100.

[40] 42 U.S.C. §1395SS(s).

## V. CONCLUSION

There are so many issues that are peripheral to an elder law practice. While attorneys may not be able to build an entire practice around those peripheral issues, it is important to have a basic understanding of the concepts so that we can adequately meet the needs of our clients. Clients approaching retirement age have many concerns. If we are able to answer their questions about Social Security, Medicare, and taxes, they will be free to focus on the benefits of retirement and we will have added significant value to our services.

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Appendix A

One-Time Application Required, Unless Requested by Chief Appraiser

**One-Time Application Required, Unless Requested by Chief Appraiser**

| Tax Code Section | Exemption |
|---|---|
| 11.13 | Residence Homestead |
| 11.131 | Residence Homestead of 100 Percent or Totally Disabled Veteran |
| 11.132 | Donated Residence Homestead of Partially Disabled Veteran |
| 11.133 | Residence Homestead of Surviving Spouse of Member of Armed Forces Killed in Action |
| 11.134 | Residence Homestead of Surviving Spouse of First Responder Killed in Line of Duty |
| 11.22 | Disabled Veterans |

Appendix B

Residential Exemptions

## Residence Homestead Exemptions

| Exemption | Tax Code Section | Taxing Unit | Total or Partial | Mandatory or Local Option | Amount |
|---|---|---|---|---|---|
| General Residence Homestead | 11.13(b) | School Districts | Partial | Mandatory | $25,000 |
| General Residence Homestead | 11.13(n) | Cities, Counties, School Districts or Special Districts | Partial | Local Option | An amount up to 20 percent of the property's value, but not less than $5,000 |
| Farm-to-Market Roads or Flood Control (if collected) | 11.13(a) | Counties | Partial | Mandatory (if collected) | $3,000 |
| Age 65 or Older or Disabled | 11.13(c) | School Districts | Partial | Mandatory | $10,000 |
| Age 65 or Older or Disabled | 11.13(d) | Cities, Counties, School Districts or Special Districts | Partial | Local Option | An amount adopted by the taxing unit, but no less than $3,000 |
| Disabled Veterans | 11.22 | Cities, Counties, School Districts and Special Districts | Partial | Mandatory | An amount determined by the percentage of service-connected disability |
| Disabled Veterans with Homes Donated by Charitable Organizations | 11.132 | Cities, Counties, School Districts and Special Districts | Partial | Mandatory | An amount determined by the percentage of service-connected disability |
| 100 Percent Disabled Veterans | 11.131 | Cities, Counties, School Districts and Special Districts | Total | Mandatory | 100 percent of the property's value |
| Surviving Spouse of U.S. Armed Services Member Killed in Action | 11.133 | Cities, Counties, School Districts and Special Districts | Total | Mandatory | 100 percent of the property's value |
| Surviving Spouse of First Responder Killed or Fatally Injured in the Line of Duty | 11.134 | Cities, Counties, School Districts and Special Districts | Total | Mandatory | 100 percent of the property's value |

## Appendix C

## Reduction in Benefits Upon Early Retirement

If you start your retirement benefits at age 62, and you full retirement age is 67 your monthly benefit amount is reduced by about 30 percent. The reduction for starting benefits at age

- 63 is about 25 percent;
- 64 is about 20 percent;
- 65 is about 13.3 percent; and
- 66 is about 6.7 percent.

If you start receiving spouse's benefits at age 62, your monthly benefit amount is reduced to about 32.5 percent of the amount your spouse would receive if their benefits started at full retirement age. (The reduction is about 67.5 percent.) The reduction for starting benefits as a spouse at age

- 63 is about 65 percent;
- 64 is about 62.5 percent;
- 65 is about 58.3 percent;
- 66 is about 54.2 percent; and
- 67 is 50 percent (the maximum benefit amount).

Appendix D

Full Retirement Age

**Age To Receive Full Social Security Benefits**

(Called "full retirement age" or "normal retirement age.")

| Year of Birth * | Full Retirement Age |
|---|---|
| 1937 or earlier | 65 |
| 1938 | 65 and 2 months |
| 1939 | 65 and 4 months |
| 1940 | 65 and 6 months |
| 1941 | 65 and 8 months |
| 1942 | 65 and 10 months |
| 1943 - 1954 | 66 |
| 1955 | 66 and 2 months |
| 1956 | 66 and 4 months |
| 1957 | 66 and 6 months |
| 1958 | 66 and 8 months |
| 1959 | 66 and 10 months |
| 1960 and later | 67 |

**If you were born on January 1st of any year you should refer to the previous year. (If you were born on the 1st of the month, we figure your benefit (and your full retirement age) as if your birthday was in the previous month.)*

Appendix E

Benefits Based on Age