Legal Matters®

Elder Law
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The new tax law means it's now time to review your estate plan

The tax law signed in 2017 doubled the federal estate tax exemption, meaning the vast majority of estates won't have to pay federal estate tax. But that doesn't mean you should ignore its impact on your estate plan.

The law doubled the federal estate tax exemption to $11.18 million for individuals and $22.36 million for couples. (These figures are indexed for inflation, so in 2019 they are $11.4 million and $22.8 million, respectively.) The tax rate for the few estates still subject to taxation is 40 percent.

Although most estates won't pay any federal estate tax, you should review your estate plan to make sure the changes won't have other negative consequences and to see if there is a better way to pass on your assets.

For example, one common estate planning technique when the exemption was smaller was to leave everything that could pass free of the tax to the decedent's children and the rest to the spouse. If you still have that provision in your will, your kids now could inherit your entire estate while your spouse would be disinherited.

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As recently as 2001 the federal exemption was a mere $675,000. Someone with an $800,000 estate who hasn't changed their estate plan since then could see the entire estate go to their children and none to their spouse.

Another consideration is how the new tax law might affect capital

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It's now harder for veterans to qualify for long-term care benefits

The Department of Veterans Affairs (VA) has put in place new rules that make it more difficult to qualify for long-term care benefits. The rules, similar to those already in force for Medicaid, establish an asset limit, a look-back period, and asset transfer penalties for claimants applying for pension benefits that require a showing of financial need.


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The main VA benefit for those needing long-term care is Aid and Attendance, which offers money to low-income veterans (or their spouses) who are in nursing homes or need help at home with everyday tasks.

Currently, to be eligible for Aid and Attendance, a veteran (or surviving spouse) must meet certain income and asset limits. The asset limits aren't specified, but $80,000 is the amount usually used. However, unlike with the Medicaid program, you previously could transfer any assets over the VA's limit before applying and the transfers would not affect eligibility.

That's not so anymore. The new regulations set a net worth limit of $123,600, the current maximum amount of assets (in 2018) that a Medicaid applicant's spouse is allowed to retain. But for the VA, this number will include both the applicant's assets and income. It will be indexed to inflation in the same way that Social Security increases.

An applicant's house (up to a two-acre lot) will not count as an asset even if the applicant is living in a nursing home. Applicants also will be able to deduct medical expenses — including payments to assisted living facilities — from their income.

The regulations establish a three-year look-back provision. Applicants will have to disclose all financial transactions they were involved in for three years before the application. Applicants who transferred assets to put themselves below the limit within three years of applying will be subject to a penalty period that can last as long as five years, during which they're ineligible for VA benefits.

Under the new rules, the VA will determine a penalty period in months by dividing the amount transferred that would have put the applicant over the net worth limit by the maximum annual pension rate (MAPR) for a veteran with one dependent in need of Aid and Attendance.

The new rules took effect Oct. 18, 2018, and the VA will disregard asset transfers made before that date.

Finding the best retirement calculators

Figuring out how much to save for retirement and when you can safely stop working can be difficult. A growing number of online retirement calculators, many of them free, are available to help. Although these calculators can yield vastly different results, they can be useful tools.

Based on information about you and your finances, calculators try to predict how much you need to save to achieve your retirement goals. Some calculators are web-based, and others require you to download a program or an app.

Retirement calculators can be useful, but you need to keep in mind that results can diverge significantly and they are not always accurate. It may be a good idea to use several different calculators to obtain a range of predictions.

Before getting started with any retirement calculator, you will need to gather information about your finances. Even the most basic calculator will want to know how much you currently have saved and how much you're saving each month. More advanced calculators might require more detailed investment information.

Here are three sites that evaluate these financial tools:

• The website "Can I Retire Yet?" has a list of calculators with details about cost, platform and accuracy. See https://www.caniretireyet.com/the-best-retirement-calculators/

• The Balance provides its own assessment of what it considers to be the best retirement calculators. See https://www.thebalance.com/web-s-best-retirement-income-calculators-2388842

• Forbes shares information on five free retirement calculators, ranging from simple to the more complicated. See https://www.forbes.com/sites/robertberger/2015/07/12/5-excellent-retirement-calculators-and-all-are-free/#17a904dd4d1c

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gains taxes. When someone inherits property, the property is usually worth more than it was when the original owner purchased it. If the beneficiary later sold the property, huge capital gains taxes could apply.

Fortunately, when someone inherits property, the property's tax basis is "stepped up," which means the tax basis would be the current value of the property. If the same property is gifted, there is no "step up" in basis, so the gift recipient is subject to capital gains taxes. Previously, in order to avoid the estate tax you might have given property to your children or to a trust, even though there would be capital gains consequences. Now, it might be better for your beneficiaries to inherit the property.

However, many states have their own estate tax laws with much lower exemptions, so it is important to consult with your attorney to make sure your estate plan still works for you.

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When can you delay taking Medicare?

Although you're eligible for Medicare at 65, there are circumstances in which you might not want to apply, particularly if you're working for a larger employer or contributing to a health savings account (HSA). However, you may face penalties if you don't sign up at the right time, so it's important to know when you can delay signing up without a penalty.

You can first sign up for Medicare during your Initial Enrollment Period, which is the seven-month period that includes the three months before the month you become eligible (usually age 65), the month you are eligible and the following three months. If you don't sign up for Medicare Part B during this period, your Part B premium may go up 10 percent for each 12-month period that you were eligible but declined to have Part B. Your Medicare Part D premium will increase at least 1 percent for every month you wait. Some people who are still working may be exempt from these penalties.

If you work for an employer with 20 or more employees, you usually can delay signing up for Medicare Part B without penalty because your employer's insurance will be considered the primary insurer. However, if your employer has fewer than 20 employees, you will probably need to sign up for Medicare Part B when you're first eligible. Check with your employer to make sure your insurer will expect Medicare to be your primary insurer.

Note that COBRA coverage, insurance plans you purchase privately, retiree coverage and VA benefits don't count as health insurance plans for Medicare purposes.

In other words, just that you have some type of health insurance doesn't mean you don't have to sign up for Part B when first eligible. To be able to delay taking Part B without penalty, your insurance must be from an employer where you actively work, subject to the 20-employee rule noted above. Before making a decision about Part B, you should contact Social Security by dialing 800-772-1213 or visiting your local office.

If you're working or have private insurance, you may be able to delay Medicare Part D without a penalty. Beneficiaries are exempt from the penalties if their insurance is at least as good as Medicare's. This is called "creditable coverage." Your insurer should let you know if their coverage will be considered creditable. You may also be able to avoid or delay getting Part D if you enroll in a Medicare Advantage plan that offers prescription drug coverage.

If you're working, you generally can enroll in Medicare Part A, which is free for most people, without consequences. However, if you are contributing to a health savings account at work, you cannot sign up for Medicare.

Part A covers institutional care in hospitals and skilled nursing facilities, as well as certain care given by home health agencies and hospice care, so you should analyze whether the HSA is worth losing out on the Part A coverage. If you're already receiving Social Security, you will automatically be enrolled in Part A and will have to stop contributing to the HSA.

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New brokerage account safeguards aim to protect seniors

As the population ages, elder financial abuse is a mounting problem, and vulnerable seniors can become victims of scammers who convince them to empty their investment accounts. Now, new rules have been put in place to protect seniors with brokerage accounts from financial scams.

According to the Financial Industry Regulatory Authority (FINRA), the organization that regulates sales of securities, its Securities Helpline for Seniors has received more than 12,000 calls and recovered more than $5.3 million for seniors whose investment funds were illegally or inappropriately distributed since the helpline opened in April 2015.

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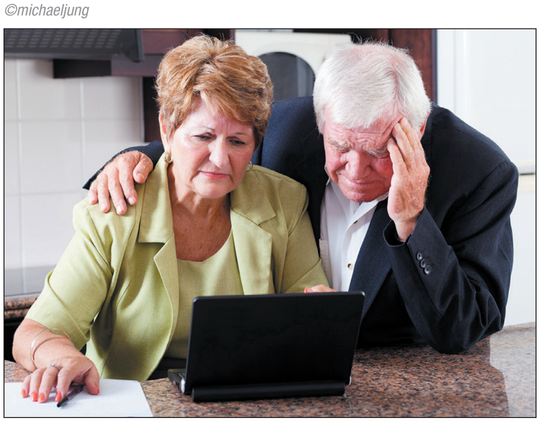

Now, FINRA has issued two new rules designed to help investment brokers and advisors better protect accounts from exploitation. The rules apply when opening a brokerage account or updating information for an existing account.

First, the broker or investment advisor must ask the investor for the name of a trusted contact person. This is someone the broker can contact if there are questions about the account. The trusted contact is intended to be a resource for the broker to address possible financial exploitation and to obtain the customer's current contact information and health status or learn about any legal guardian, executor, trustee or holder of a power of attorney.

The second rule allows a broker to place a temporary hold on disbursements from an account if those disbursements seem suspicious. This rule applies to accounts of investors age 65 and older or investors with mental or physical impairments that the broker believes make it difficult for the investor to protect his or her own financial interests. Before disbursing the funds, the brokerage firm will be able to investigate the disbursement by reaching out to the investor, the trusted contact or law enforcement.