December 2020

BRENNAN & ROGERS PLLC

Informed and compassionate legal care

Elder law *focus*

ANNUAL CLIENT RELATIONSHIP SERVICE NEWSLETTER
QUESTIONS? CALL (207) 361-4680

In This Issue

- Office Operations During the Pandemic
- Business Developments
- Maine's Probate Code Gets a Major Overhaul
- Death with Dignity Act is Passed and Signed
- HIPAA Authorization and Release
- The Secure Act (Watch out for income bunching)
- Social Security
    - A Modest Increase for 2021
    - Husbands Need to Consider Their Wives Future
    - How Will the Coronavirus Pandemic Affect Social Security?
- Medicare
    - Open Enrollment 2021
    - Medicare Prescription Coverage (Part D)
- Estate Planning
    - When Inheriting Real Estate, Consider Your Options
    - The New Tax Law Means it is Time to Review Your Estate Plan
- Using Trusts in Medicaid Planning
- Prescription Safety
- Scams
- Socialize with Us!

Mary Kathryn Brennan, Esq. Licensed in Maine
Smilie G. Rogers, Esq. Licensed in Maine, New Hampshire and Massachusetts

Not intended as legal advice.

Office Operations During the Pandemic

We remain open and have throughout the pandemic. However, we have limited how, when, and where we work with clients to protect our clients and staff. Here is what you need to know:

1. Call us if you need assistance. Please do not drop in unannounced.

2. If you have an appointment, we will require that you wear a mask and respect social distancing guidelines.

3. We are still doing most meetings and document reviews by phone and Zoom. In-person document signings are brief.

Business Developments

- **Brennan & Rogers, PLLC Tenth Anniversary**
  Previously known as the Law Office of Smilie G. Rogers, Esq. established in 2010, where Mary Kathryn joined as a partner in 2011. Our firm name change occurred on January 1, 2017, and continues with the same focus.

- **Smilie was named Client Champion by Martindale-Hubbell**
  Client Champion is a designation given by Martindale-Hubbell, a world-renowned legal source, to attorneys who have received exceptional reviews from their clients.

- **Smilie's Twentieth Anniversary of his First Admission to the State Bar**

- **Smilie Contributes to the A Practice Guide to the Probate in Maine**
  Smilie wrote two chapters to the 1st edition of this new book, published by MCLE New England, and is intended to be used by lawyers statewide in their practices.

- **Redesigned Website**
  Our website has gone through a redesign as of September! Visit us at www.brennanrogers.com to check it out!

- **Zoom Virtual Meet and Greet Sessions**
  Mary Kathryn and Smilie have been offering virtual Meet and Greet sessions via Zoom in 2020. If you have any friends or family that are on the fence

regarding their estate planning or long term care planning, let them know that they can contact Kimberly Woods at kim@brennanrogers.com to schedule a virtual Meet and Greet session with Mary Kathryn or Smilie to determine if our practice would be a good fit for their estate planning needs.

- **Promotional Cards**
  Last year, we sent out promotional cards with our ACRS newsletter. Some people have asked if we are still honoring them. We are still honoring them and appreciate those of you that shared them with friends and family.

Maine's Probate Code Gets a Major Overhaul

Maine's Probate Code got its first significant overhaul since it was adopted in 1969. This update was adopted on September 1, 2018, but went into effect on September 1, 2019. The changes were significant, and we reviewed many of them in our newsletter last year. We wouldn't repeat the content of last year's newsletter except to say that there have been significant changes and if your plan is more than ten years old, it might be time for a fresh look even if we had reviewed it before the passage of the Probate Code update.

Death with Dignity Act is Passed and Signed

The Death with Dignity Act was signed into law by Governor Janet Mills on June 12, 2019. We reviewed this in our newsletter last year, but it's worth a second mention. Going forward, some people may, while there is no question that they are of sound mind, want to seek to revise their Advance Health Care Directives to include a provision that addresses a person's belief about making use of the Death with Dignity Act at an appropriate time.

Key points to keep in mind:

- You must be a Maine resident to be eligible.
- Suppose a physician believes a person is suffering from depression. In that case, they are obligated to refer the person to a state-licensed professional to ensure that the condition is not impairing that person's judgment.
- While the attending physician must recommend notifying next of kin, the patient is not obligated to do so.
- To qualify for physician-assisted death under the statute, an otherwise qualifying patient must sign a written request with two witnesses who swear that to the best of their knowledge and belief, the patient is competent, is acting voluntarily, and is not signing the request due to coercion. At least one of the two witnesses must be a person who is not (1) a relative of the patient by blood, marriage, or adoption; (2) a person who, at the time the request is signed, would be entitled to any portion of the patient's estate under a will or under the law; or (3) an owner, operator, or

employee of the healthcare facility where the patient is receiving medical treatment or is a resident. Then, two physicians must also determine that the patient is voluntarily making the request. The attending physician specifically must determine that the patient's request does not arise from coercion or undue influence after a one-on-one discussion with the patient.

HIPAA Authorization and Releases

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge. Enforcement has been increasing, with hefty fines imposed on violators, which serves to send a message. Hospitals, family medical practices, dentists, health plans, the Department of Health and Human Services (DHHS) are all subject to HIPAA. For many years, one could assume that an organization might look the other way in the case of family or that the HIPAA authorization provisions in our Advance Health Care Directives would suffice to cover contingent agents, but the times seem to be changing.

With the looming possibility that anyone might be admitted to a hospital at any time due to Covid-19 and that family might not be able to make in-person visits, we are recommending clients prepare for the worst and hope for the best. Having a separate HIPAA authorization and release, which does not prioritize the appointment of one family member over another, may be a wise choice. For example, a HIPAA authorization that allows all of a client's children to have concurrent access to health information, rather than just one child that is the current agent for actual healthcare decision making under the Advance Health Care Directive, might avoid situations where the children who are not serving as a current agent are shut off from necessary information. It would not be an understatement to say that now is the time to review your Advance Health Care Directive, your appointment of agents, and to ensure that their contact information is up to date.

The Secure Act

New Law Makes Big Changes to Retirement Plans

The Setting Every Community Up for Retirement Enhancement (SECURE) Act, which went into effect on January 1, 2020, made significant changes to retirement plans. The new law is designed to provide more incentives to save for retirement, but it may require workers to rethink some of their planning.

The SECURE Act changes the law surrounding retirement plans in several ways:

Stretch IRAS. The most significant change eliminates "stretch" IRAs. Under the

previous law, if you named anyone other than a spouse as the beneficiary of your IRA, the beneficiary could choose to take distributions over his or her lifetime and to pass what is left onto future generations (called the "stretch" option). The required minimum distributions were calculated based on the beneficiary's life expectancy. This allowed the money to grow tax-deferred over the beneficiary's life and be passed on to his or her own beneficiaries. The SECURE Act requires non-spouse beneficiaries (except as noted below) of an IRA to withdraw all the IRA money within ten years of the IRA holder's death. In many cases, these withdrawals would occur during the beneficiary's highest income tax years, meaning that the elimination of the stretch IRA is effectively a tax increase on many Americans. This provision will apply to those who inherit IRAs starting on January 1, 2020. For retired clients, who were not expecting to take an inherited retirement benefit over ten years, the bunching of income may be something that they did not factor into their financial plan before retirement and may want to do so now.

Special exceptions for the stretch were carved out in the law for disabled or chronically ill individuals, an individual who is not more than ten years younger than the IRA owner, or a child of the IRA owner who has not reached the age of majority. Parents with children that fall into these cases, or siblings who want to provide for a disabled sibling, should note these exceptions.

Required minimum distributions. Under prior law, you have to begin taking distributions from your IRAs beginning when you reach age 70 ½. Under the new law, individuals who are not 70 ½ at the end of 2019 can now wait until age 72 to begin taking distributions.

Contributions. The new law allows workers to continue contributing to an IRA after age 70 ½, which is the same as rules for 401(k)s and Roth IRAs.

Employers. The tax credit businesses get for starting a retirement plan is increased, and the new law makes it easier for small businesses to join multiple-employer plans.

Annuities. The newly enacted legislation removes roadblocks that made employers wary of including annuities in 401(k) plans by eliminating some of the fiduciary requirements used to vet companies and products before they can be included in a plan.

Withdrawals. The new law allows an early withdrawal of up to $5,000 from a retirement account without a penalty in the event of the birth of a child or an adoption. Currently, there is a 10 percent penalty for early withdrawals in most circumstances.

Given these changes, workers need to reevaluate their estate plans immediately. Some people have used stretch IRAs to pass assets to their children and grandchildren as an estate planning tool. One way of doing this has been to name a trust as the IRA's beneficiary, ***and these trusts may have to be reformed to conform to the new rules.***

Social Security

A Modest Social Security Increase for 2021

The Social Security Administration has announced a 1.3 percent increase in benefits in 2021, an increase even smaller than last year's increase.

Cost-of-living increases are tied to the consumer price index, and a modest upturn in inflation rates and gas prices means Social Security recipients will get only a slight boost in 2021. The 1.3 percent increase is similar to last year's 1.6 percent increase but much smaller than the 2.8 percent rise in 2019. The average monthly benefit of $1,523 in 2020 will go up by $20 a month to $1,543 a month for an individual beneficiary, or $240 yearly.

The cost-of-living change also affects the maximum amount of earnings subject to the Social Security tax, which will grow from $137,700 to $142,800.

For 2021, the monthly federal Supplemental Security Income (SSI) payment standard will be $794 for an individual and $1,191 for a couple.

Some years a small increase means that higher Medicare Part B premiums will entirely eat up additional income. But this year, that shouldn't be the case. The standard monthly premium for Medicare Part B enrollees is forecast to rise from $8.70 to $153.30 monthly. However, due to the coronavirus pandemic, under the terms of the short-term spending bill the increase for 2021 will be limited to 25 percent of what it would otherwise have been.

Most beneficiaries will find out their specific cost-of-living adjustment online by logging on to my Social Security in December 2020. While you can still receive your increase notice by mail, you have the option to choose whether to receive your notice online instead of on paper.

Why Husbands Need to Consider Their Wives Future

The amount of Social Security benefits a surviving spouse receives depends, in part, on when their deceased spouse began claiming benefits. However, husbands usually don't take survivor's benefits into account when claiming benefits,

according to a recent study, meaning that many widows will needlessly experience a significant drop in income.

Because women typically live longer than men and men are often the higher earners, most married women will be widowed. They will have their income drop below what they need to maintain their accustomed standard of living. Spouses of workers who have died are entitled to the worker's full retirement benefits once they reach their full retirement age. If the worker delayed retirement, the survivor's benefit would be higher. Husbands have the option of increasing their surviving spouse's income by delaying Social Security benefits. Still, according to a study by the Center for Retirement Research at Boston College, most husbands do not consider their wives' future needs.

The study looked at whether greater awareness of Social Security Survivor's benefits would affect claiming decisions. The study found that husbands tend to consider more immediate concerns, such as their health and whether they have another pension, rather than their wives' Survivor's Benefits. Giving husbands information about how they could improve their wives' financial well-being by claiming benefits later did not change their claiming decisions.

The study concludes that to protect widows, the government should consider providing Survivor's Benefits in a way that doesn't tie the surviving spouse's benefits to the decision of when to claim benefits. However, as things stand now, if you are the higher earner and are nearing retirement, you may want to consider how your decision on when to claim benefits will affect your spouse if he or she survives you.

How Will the Coronavirus Pandemic Affect Social Security?

The coronavirus pandemic is having a profound effect on the current U.S. economy, and it may have a detrimental impact on Social Security's long-term financial situation. High unemployment rates mean Social Security shortfalls could begin earlier than projected.

Social Security retirement benefits are financed primarily through dedicated payroll taxes paid by workers and their employers, with employees and employers splitting the tax equally. This money is put into a trust fund that is used to pay retiree benefits. The most recent report from the Social Security trust fund's trustees is that the fund's balance will reach zero in 2035. This is because more people are retiring than are working, so the program is paying out more in benefits than it is taking in. Additionally, seniors are living longer, so they receive benefits for a more extended time. Once the fund runs out of money, it does not mean that benefits stop altogether. Instead, retirees' benefits would be cut unless Congress

acts in the interim. According to the trustees' projections, the fund's income would be sufficient to pay retirees 77 percent of their total benefit.

With unemployment at record levels due to the pandemic, fewer employers and employees pay payroll taxes into the trust fund. Also, more workers may claim benefits early because they lost their jobs. President Trump issued an executive order deferring payroll taxes until the end of the year as a form of economic relief, negatively affecting Social Security and Medicare funds.

Some experts believe that the pandemic could move up the trust fund's depletion by two years, to 2033, if the COVID-19 economic collapse causes payroll taxes to drop by 20 percent for two years. Other experts argue that it could have a more significant effect and deplete the fund by 2029. However, as the Social Security Administration Chief Actuary morbidly noted to Congress, this pandemic different from most recessions: the increased applications for benefits will be partially offset by increased deaths among seniors who were receiving benefits.

It remains to be seen exactly how much the pandemic affects the Social Security trust fund, but the experts agree that as soon as the pandemic ends, Congress should take steps to shore up the fund.

Medicare

Medicare Open Enrollment

During which you can freely enroll in or switch plans, Medicare's Open Enrollment Period runs from October 15 to December 7. Now is the time to start shopping around to see whether your current choices are still the best ones for you.

During this period, you may enroll in a Medicare Part D (prescription drug) plan or, if you currently have a plan, you may change plans. During the seven weeks, you can return to traditional Medicare (Parts A and B) from a Medicare Advantage (Part C, managed care) plan, enroll in a Medicare Advantage plan, or change Advantage plans.

Beneficiaries can go to www.medicare.gov or call 1-800-MEDICARE (1-800-633-4227) to make changes in their Medicare prescription drug and health plan coverage.

According to the New York Times, few Medicare beneficiaries take advantage of Open Enrollment, but of those who do, nearly half cut their premiums by at least 5 percent. Even beneficiaries who have been satisfied with their plans in 2020 should review their choices for 2021, as both premiums and plan coverage can fluctuate from year to year. Are the doctors you use still part of your Medicare Advantage plan's provider network? Have any of the prescriptions you take been dropped

from your prescription plan's list of covered drugs (the "formulary")? Could you save money with the same coverage by switching to a different plan?

For answers to questions like these, carefully look over the plan's "Annual Notice of Change" letter to you. Prescription drug plans can change their premiums, deductibles, the list of drugs they cover, and their plan rules for covered drugs, exceptions, and appeals. Medicare Advantage plans can change their benefit packages, as well as their provider networks.

Remember that fraud perpetrators will inevitably use the Open Enrollment Period to gain access to individuals' personal financial information. Medicare beneficiaries should never give their personal information to anyone making unsolicited phone calls selling Medicare-related products or services or showing up on their doorstep uninvited. If you think you've been a victim of fraud or identity theft, contact Medicare.

Here are more resources for navigating the Open Enrollment Period:

Medicare Plan Finder, which helps you find a plan to match your needs: www.medicare.gov/find-a-plan
Medicare coverage options: https://www.medicare.gov/medicarecoverageoptions/
The 2020 Medicare & You handbook, which all Medicare beneficiaries should have received. The guide can also be downloaded online at medicare.gov/forms-help-resources/medicare-you-handbook/download-medicare-you-in-different-formats
The Medicare Rights Center: www.medicareinteractive.org
Your State Health Insurance Assistance Program, which offers independent counseling: https://www.shiptacenter.org

Medicare Prescription Coverage (Part D)

Medicare offers a federally subsidized drug program for seniors, in which private health insurers provide limited insurance coverage of prescription drugs to elderly and disabled Medicare recipients. The drug benefit is available only through insurers that contract with Medicare to market drug plans.

What does the drug benefit-cost, and what do you get? Medicare recipients who elect to be covered by the drug benefit will pay premiums averaging $47.59 a month in 2020. This is an average; some plans will charge more, some less.

After meeting a $435 (in 2020) deductible, you will pay 25 percent of drug costs up to $4,020 (in 2020) in a year, with Medicare footing the bill for the other 75 percent. The plan will pay $3,015, and you will pay $1,005. Previously coverage stopped entirely at this point until total out-of-pocket spending reached a certain

amount. (This coverage gap is sometimes called the "doughnut hole.") However, the Affordable Care Act is slowly eliminating the doughnut hole. In 2020, until your total out-of-pocket spending reaches $6,350, you'll pay 25 percent for brand-name drugs and 37 percent for generic drugs. Although you will be paying a discounted rate for drugs, the total cost of the drug will count toward your out-of-pocket costs. Once total spending for your covered drugs exceeds $6,350 (called "catastrophic coverage"), you are out of the coverage gap, and you will only pay a small co-payment or co-insurance amount. These discounts and Medicare coverage gradually increase until 2020, when the doughnut hole is fully closed. For more information, click here.

The amount of out-of-pocket costs you have to pay to reach catastrophic coverage will vary, depending on the type of drugs you take. You will only pay a certain percent of the price for brand name drugs, but the entire cost will count toward the amount you need to qualify for catastrophic coverage. Only the amount you pay will count toward getting you out of the doughnut hole with generic drugs. For more information about the coverage gap, click here.

One way to avoid the coverage gap is to pick a plan with low drug prices since it accumulates drug costs that bring you closer to the gap -- not low premiums, co-payments, or deductibles. (We are describing Medicare's basic prescription drug coverage, which all insurers must offer. Insurers may also provide more generous coverage and charge a higher premium for it.) AARP has created a calculator for beneficiaries to determine how to avoid the doughnut hole.

Bear in mind that only payments for drugs covered by your plan (see below) count towards the out-of-pocket threshold. Also, any help paying for Medicare Part D costs that you receive from an employer health plan or other insurance does not count toward this limit. Drugs purchased abroad (such as from Canada) will not be covered by the Medicare benefit and will not count toward the out-of-pocket limit.

Will the drugs you take be covered? All Part D enrollees should have at least two Medicare private drug plans to choose from. The insurers choose the medicines -- both brand-name and generic -- that they will include in a plan's "formulary," the plan covers and will pay for the roster of drugs. However, each plan formulary must consist of at least two drugs in each drug class and must cover most of the drugs in certain classes, such as antidepressants and anti-cancer agents.

Since each drug plan offers a different formulary, and the same drug may vary in price from plan to plan, the most critical job for a Medicare beneficiary signing up for Part D is to determine whether the prescription drugs they need or anticipate needing -- are covered under a particular plan and how much they cost.

Plans differ in the monthly premiums they charge, deductibles, the drugs they cover, the cost of those drugs, limitations on drug purchases, and the convenience of the plan's pharmacy network, among other factors. A comparison tool is available on Medicare's Web site that allows you to search for Medicare private drug plans in your region and compare their costs, covered drugs, and pharmacy networks. The information is also available by calling 1-800-MEDICARE. Also, the Medicare & You handbook provides information about the Medicare private drug plans in your area. You can also click here for a Drug Plan Comparison Worksheet that allows beneficiaries to note important information about each plan, compare the plans side by side, and identify the one that best meets their needs.

But it's possible that all your diligent research could come to nothing because after you have enrolled in what seems to be the best plan, the plan may discontinue coverage or increase the cost of any particular drug! Can you then switch plans? Only those eligible for both Medicare and Medicaid (see below) may change plans whenever they want. Other beneficiaries will be locked into their choice for a full year; however, you won't lose coverage for any drugs you are currently taking. If a company drops coverage for a drug, it must continue to cover participants currently taking that drug until the end of the year. There are some exceptions -- for example if the drug is determined to be unsafe or a lower-cost generic drug comes on the market.

Medicare Part D does not cover certain drugs, including barbiturates and benzodiazepines prescribed for older people to treat insomnia, seizure disorders, anxiety, panic attacks, and muscle spasms. States have the option of providing Medicaid coverage for the excluded drugs.

Each Medicare drug plan will likely give you a list of local pharmacies where you can obtain their covered drugs.

Who may enroll? Anyone who has either Medicare Part A or Medicare Part B (or both) can get Medicare Part D, Medicare's prescription drug coverage. Bear in mind, however, that Medicare Part D will not pay for drugs that could have been paid for under Medicare Part A or Medicare Part B. These drugs will not be covered even if the beneficiary does not have either Part A or Part B.

When should you enroll? To avoid a penalty, you need to enroll during your Initial Enrollment Period (IEP). Your IEP for Part D is the same as for Part B. It is a seven-month period that includes the three months before the month you become eligible, the month you are eligible, and three months after the month you become eligible.

How do you enroll? Once you have chosen the Medicare private drug plan you want to enroll in, you can contact the company offering the plan and ask for a

paper application, or complete an online application on the plan's Web site, if the plan allows online applications. The online application also may be available on Medicare's Web site.

If you cannot enroll yourself, a representative who is authorized under state law can enroll for you. This could include a health care proxy, an agent acting under a power of attorney, or another surrogate decision-maker as defined by state law.

If you are in a Medicare HMO or PPO, you can enroll in a plan offered by the company that sponsors your Medicare health plan.

Late enrollment penalties. Medicare beneficiaries may be subject to significant financial penalties for late enrollment. Every month you delay enrollment past the Initial Enrollment Period, the Medicare Part D premium will increase at least 1 percent. For example, if the premium is $40 a month, and you delay enrollment for 15 months, your premium penalty would be $6 (1 percent x 15 x $40 = $6), meaning that you would pay $46 a month, not $40, for coverage that year and an extra $6 a month each succeeding year.

Beneficiaries are exempt from these penalties if they did not enroll because they had drug coverage from a private insurer, such as through a retirement plan, at least as good as Medicare's. This is called "creditable coverage. Your insurer should have let you know if their coverage was considered creditable.

Restrictions on drug plan marketing. As noted, billions of dollars are at stake in convincing Medicare recipients to sign up for this benefit. The Centers for Medicare & Medicaid Services (CMS) has issued marketing guidelines for companies offering prescription drug plans. Approved drug plans are prohibited from making door-to-door sales calls or sending unsolicited emails. Plans also must comply with the National Do-Not-Call Registry rules, honor "do not call again" requests, and abide by federal and state calling hours and any other relevant requirements. (Federal laws do not allow telemarketers to call before 8 a.m. or after 9 p.m. State rules may differ.)

Plan marketing representatives cannot request personal information such as Social Security Numbers, bank account numbers, or credit card numbers.

Beware of scams. Con artists use the drug benefit as a wedge to convince unsuspecting Medicare recipients to part with personal information like bank account numbers. Residents of at least 13 states have reported a scam in which criminals attempt to sell fake Medicare prescription drug cards for the Part D benefit. Since plans can't market until October, any contacts before that time are suspect. Anyone unsure about a contact they receive should call Medicare at 1-800-MEDICARE.

Social Security will be contacting low-income Medicare recipients who have incomplete applications or who haven't sent one. Social Security representatives generally will not ask for Social Security numbers, bank account numbers, credit card numbers, or life insurance policy numbers. If beneficiaries are unsure a caller is really from Social Security, they can verify the call by contacting the agency at 1-800-772-1213.

Estate Planning

When Inheriting Real Estate, Consider Your Options

Inheriting real estate is either a blessing or a burden -- or a little bit of both. Figuring out what to do with the property can be overwhelming, so it is good to think through all of your choices carefully.

There are three main options when you inherit real estate: move in, sell, or rent. Which one you choose will depend on your current living situation, whether or not you have siblings, your finances, whether the house has a mortgage or liens, and the house's physical condition. The following are some things to consider:

Taxes. In most situations, you do not have to pay taxes on property you inherit, but you may be subject to capital gains tax if you sell the property. The good news is that inherited property receives a step-up in basis. If you inherit a house purchased years ago for $150,000 and it is now worth $350,000, you will receive a step-up from the original cost basis from $150,000 to $350,000. You should get an appraisal done as soon as possible to find out how much the house is currently worth. If you sell the property right away, you might not owe any capital gains taxes. If you hold on to the property and sell it for $400,000 in a few years, you will owe capital gains of $50,000 (the difference between the sale value and the stepped-up basis). On the other hand, if you use the property as your primary residence for at least two out of five years and then sell the property, you may be able to exclude up to $250,000 ($500,000 for a couple) of capital gains from your taxes.

Mortgage. Does the house have a mortgage on it – either a regular mortgage or a reverse mortgage? Sometimes it is specified in the estate plan that the estate will pay off the mortgage, though that is unusual. Likely you will take the property subject to the mortgage, but that doesn't mean that you have to assume the mortgage (but you will have to assume the monthly payments). The distinction between taking a piece of property "subject to" a mortgage and "assuming a mortgage" is subtle but important. When you *assume* a mortgage, you are liable for any deficiency if the property sells for less than the mortgage. When you are subject to a mortgage, you are not responsible for any deficiency. In these glorious

days of high real estate prices, it is hard to imagine that deficiencies can arise, but times can change. There are some mortgages, however, that require the heirs to pay off the mortgage immediately. With a reverse mortgage, you usually have a limited time to pay off the mortgage in full, or the property must be sold.

Repairs. It is a good idea to hire a home inspector to assess the condition of the house. If the property needs significant repairs, it may affect what you do with it. Renovations and repairs can be costly and time-consuming. You may want to consult with a realtor before taking on any big projects. It may not make sense to spend a lot of money on the house. If you need a referral, please just let us know.

Property Maintenance. Once you inherit the property, you will be responsible for maintaining it. The first thing you want to do if you inherit property is to make sure the utilities and homeowners' insurance are transferred to the new owners and continue to be paid on time. You will also need to pay all the property taxes and any other fees associated with the property.

Other Owners. If you inherited the property with siblings, you would all need to agree on what to do with the property. If one sibling wants the property, he or she can buy it from the other siblings. Otherwise, you can sell or rent the property and split the profits. If there is a dispute among siblings, you can try professional mediation. In mediation, the disputing parties engage a neutral third party's services to help them hammer out a legally binding agreement that all concerned can live with. The disputing parties can control the process, and they have a chance to explain their perspectives and feelings. If you go to court, the judge will likely order the house to be sold to split profits. Does this sound like fun? Of course not, so try to ask your parent to do something before they pass so that mediation can be avoided.

Ultimately, there are many decisions to make when you inherit real estate, and deciding what to do with it can be a very emotional decision. If possible, try not to rush into any decisions until you've had time to consider your options thoroughly.

The New Tax Law Means it is Time to Review Your Estate Plan

While the new tax law doubled the federal estate tax exemption, meaning the vast majority of estates will not have to pay any federal estate tax, it doesn't mean you should ignore its impact on your estate plan.

In December 2017, Republicans in Congress and President Trump increased the federal estate tax exemption to $11.18 million for individuals and $22.36 million for couples, indexed for inflation. (For 2020, the figures are $11.58 million and

$23.16 million, respectively.) The tax rate for those few estates subject to taxation is 40 percent.

While most estates won't be subject to the federal estate tax, you should review your estate plan to make sure the changes won't have other negative consequences or see if there is a better way to pass on your assets. When the estate tax exemption was smaller, one common estate planning technique was to leave everything that could pass free of the estate tax to the decedent's children and the rest to the spouse. If you still have that provision in your will, your kids could inherit your entire estate while your spouse would be disinherited.

For example, as recently as 2001, the federal estate tax exemption was a mere $675,000. Someone with, say, 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 gains taxes. When someone inherits property, such as a house or stocks, the property is usually worth more than when the original owner purchased it. If the beneficiary were to sell the property, there could be substantial capital gains taxes. Fortunately, when someone inherits property, the property's tax basis is "stepped up," which means the tax basis would be the property's current value. If the same property is gifted, there is no "step-up" in basis, so the gift recipient would have to pay capital gains taxes. Previously, to avoid the estate tax, you might have given property to your children or a trust, even though there would be capital gains consequences. Now, it might be better for your beneficiaries to inherit the property.

Many states have their own estate tax laws with much lower exemptions, so it is essential to consult with your attorney to make sure your estate plan still works for you. To find an attorney near you, click here.

Using Trusts in Medicaid Planning

With careful Medicaid planning, you may be able to preserve some of your estate for your children or other heirs while meeting Medicaid's low asset limit.

The problem with transferring assets is that you have given them away. You no longer control them, and even a trusted child or other relatives may lose them. A safer approach is to put them in an irrevocable trust. A trust is a legal entity under which one person -- the "trustee" -- holds legal title to the property for the benefit of others -- the "beneficiaries." The trustee must follow the rules provided in the trust instrument. Whether trust assets are counted against Medicaid's resource limits depends on the terms of the trust and who created it.

"Revocable" Trusts. A "revocable" trust is one that may be changed or rescinded by the person who created it. Medicaid considers the principal of such trusts (that is, the funds that make up the trust) to be assets that are countable in determining Medicaid eligibility. Thus, revocable trusts are of no use in Medicaid planning.

Income-only Trusts. An "irrevocable" trust is one that cannot be changed after it has been created. In most cases, this type of trust is drafted so that the income is payable to you (the person establishing the trust, called the "grantor") for life, and the principal cannot be applied to benefit your or your spouse. At your death, the principal is paid to your heirs. This way, the funds in the trust are protected, and you can use the income for your living expenses. For Medicaid purposes, the principal in such trusts is not counted as a resource, provided the trustee cannot pay it to you or your spouse for either of your benefits. However, if you move to a nursing home, the trust income will have to go to the nursing home.

You should be aware of the drawbacks to such an arrangement. It is very rigid, so you cannot gain access to the trust funds even if you need them for some other purpose. For this reason, you should always leave an ample cushion of ready funds outside the trust.

You may also choose to place the property in a trust from which even payments of income to you or your spouse cannot be made. Instead, the trust may be set up for the benefit of your children or others. At their discretion, these beneficiaries may return the favor by using the property for your benefit if necessary. However, there is no legal requirement that they do so.

One advantage of these trusts is that if they contain property that has increased in value, such as real estate or stock, you (the grantor) can retain a "special testamentary power of appointment" so that the beneficiaries receive the property with a step-up in basis at your death. This will also prevent the need to file a gift tax return upon the funding of the trust.

Remember, funding an irrevocable trust within the five years prior to applying for Medicaid (the "look-back period") may result in a period of ineligibility. The actual period of ineligibility depends on the amount transferred to the trust.

Testamentary Supplemental Needs Trusts. Testamentary trusts are trusts created under a will. The Medicaid rules provide a particular "safe harbor" for testamentary trusts created by a deceased spouse to benefit a surviving spouse. The assets of these trusts are treated as available to the Medicaid applicant only to the extent that the trustee has an obligation to pay for the applicant's support. If payments are solely at the trustee's discretion, they are considered unavailable.

Therefore, these testamentary trusts can provide an important mechanism for community spouses to leave funds for their surviving institutionalized husband or wife that can be used to pay for services that are not covered by Medicaid. These might include extra therapy, special equipment, evaluation by medical specialists or others, legal fees, visits by family members, or transfers to another nursing home if that became necessary. But remember that if you create a trust for yourself or your spouse during life (i.e., not a testamentary trust), the trust funds are considered available if the trustee has the ability to use them for you or your spouse.

Stand-Alone Supplemental Needs Trusts. The Medicaid rules also have certain exceptions for transfers for the sole benefit of disabled people under age 65. Even after moving to a nursing home, if you have a child, other relatives, or even a friend who is under age 65 and disabled, you can transfer assets into a trust for his or her benefit without incurring any period of ineligibility. If these trusts are properly structured, their funds will not be considered to belong to the beneficiary in determining their own Medicaid eligibility. The only drawback to "sole benefit" supplemental needs trusts (also called "special needs trusts") is that after the disabled individual dies, the state must be reimbursed for any Medicaid funds spent on behalf of the disabled person.

Prescription Safety

It probably isn't news to you that our country is experiencing a prescription drug crisis. If you take prescription drugs or care for someone that does, make an effort to ensure that access to them is restricted and that unused drugs are correctly destroyed.

Scams (Yes, it can happen to you!)

By mail, email, and phone, scams continue to plague us, and the elderly are a prime target. People calling asking for you to send money, that you have won a prize, that your computer is infected with a virus, and more, are all potential scammers. Review the Maine Attorney General's scam tips, and when in doubt, please call us to ask. https://www.maine.gov/ag/consumer/scams.shtml. If you think you have been a victim, ask for help quickly.

Stay Connected!

Follow us on social media!

- We manage an active Facebook presence at www.facebook.com/myestateplan. Its speed and cost-effectiveness allow us to pass on the savings to you!

- We recently created a Twitter account, which can be found by searching either @pllcrogers or https://twitter.com/PllcRogers.

- We also recently created an Instagram account, which can be found by searching either @brennanrogerspllc or https://www.instagram.com/brennanrogerspllc/.

- We are on LinkedIn at https://www.linkedin.com/company/law-office-of-smilie-g.-rogers-pllc/

- We also recently created a Pinterest account, which can be found by searching @brennanrogersme or https://www.pinterest.com/brennanrogersme/

Check out our Legal Blog!

We maintain an active blog titled **Planning for Life's Transitions** conveniently located on our newly redesigned website! It touches on a variety of topics that we come across every day. Please let us know if you have any questions.

Subscribe to our Monthly E-Newsletter!

Are you looking for information on a more frequent basis? Head over to our website, **www.brennanrogers.com**, and click on the "Archived Newsletters" button on the bottom right to subscribe to **The Brennan & Rogers, PLLC Journal** , and download past issues!

The information and/or materials appearing or contained in the newsletter of Brennan & Rogers, PLLC, has been prepared and made available for informational purposes only and do not constitute legal advice. The transmission and receipt of information contained on this newsletter, to clients or otherwise, does not constitute the giving of legal advice or other professional advice and/or services. No recipient of information or materials from this newsletter should act or refrain from acting on the basis of any information or materials contained therein without seeking legal advice.

Happy Holidays!