OAST & HOOK

# ELDER LAW NEWS

*Legal power for seniors.*

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## PENSION PROTECTION ACT OF 2006 BY LETHA SGRITTA

On August 17, 2006, President George Bush signed the Pension Protection Act of 2006 (the "Act"). The Act makes some sweeping changes in the law surrounding retirement plans as well as changing a few established tax laws. The Act was designed to assist in funding approximately 30,000 employer defined-benefit plans that are currently estimated to be unfunded by $450 billion. In addition to helping fund defined-benefit plans, the Act changes the way defined-contribution plans, such as 401(k) plans, are administered, and it also affects individual IRA contributions and rollovers.

Currently, 401(k) plans require an employee to affirmatively elect into the plan. Many employees fail to adequately address their retirement needs and fail to contribute to the plan, or they begin contributing late in their employment. The Act will allow employers to automatically enroll their employees in 401(k) plans, with default contribution levels, although employees can opt out within 90 days after enrollment. This should make it easier for those who have not otherwise saved for retirement to begin saving automatically. This provision will take effect in 2008.

The Act also makes it easier than before to roll a qualified retirement plan proceeds into a Roth IRA. Currently, if you leave an employer and take your 401(k) plan with you, you must roll your 401(k) retirement savings into a traditional IRA. Traditional IRAs and 401(k) plans are taxed in the same way, meaning that the initial contributions are made with before tax dollars, and the money is allowed to grow tax free, but any withdrawals are taxed as ordinary income. Under previous rules, after 401(k) contributions have been rolled into a traditional IRA, then the traditional IRA can be converted to a Roth IRA. Contributions to Roth IRAs are made with after-tax dollars, but any withdrawals are tax-free. The Act changes this two-step process; beginning in 2008, an individual will be allowed to directly roll 401(k) proceeds into a Roth IRA, as long as the basic Roth IRA requirements are still met and taxes on the rolled over funds are paid. The Act will also allow individuals to put their refunds into an IRA, or split the refund into as many as three accounts, using the new IRS Form 8888.

The Act also gradually increases the amount individuals can contribute to their IRAs. The contribution limit is \$4,000 this year, \$5,000 in 2007, and it will be indexed for inflation in subsequent years. Contribution limits for 401(k)s will also rise, and workers 50 and over will continue to be able to make annual catch-up contributions to both IRAs and 401(k)s, with the limits set at \$1,000 for IRAs, \$2,500 for SIMPLE IRAs and \$5,000 for 401(k)s. IRA catch-up contributions will not be adjusted for inflation, but catch-up contributions to SIMPLE IRAs and 401(k)s will increase in \$500 increments based on inflation.

The Act allows non-spouse beneficiaries to roll assets inherited from a qualified retirement plan into an IRA. The beneficiary will avoid tax on the rollover, and will be taxed only when the assets are withdrawn. This tax treatment was previously available only for people who inherited retirement assets from a deceased spouse. These changes will provide more flexible retirement and estate planning for non-spouse beneficiaries, such as domestic partners.

The Act also makes significant changes to tax laws affecting charitable donations and contributions. For individuals who are age 70½, or older, their IRA withdrawals may go directly to a qualified charitable organization. This will be beneficial to an individual with a traditional IRA, because the withdrawal will not be included in the individual's gross income, and thus it avoids ordinary income tax on the withdrawn amount. The individual may not take a charitable deduction for the contribution; however, because many elderly individuals do not itemize, it may be a better benefit to lose the deduction and not have the IRA withdrawal included as part of gross income. Additionally, the Act creates a new requirement for taxpayers to have more substantiation available for charitable gifts. The IRS may now deny a deduction for items that are of minimal monetary value; therefore, donated goods must be in at least "good condition." Taxpayers were previously required to substantiate cash gifts in excess of \$250. Now the IRS will require a "bank record or a written communication," for all cash donations; cancelled checks or bank statements should be sufficient proof.

The Pension Protection Act of 2006 may affect your retirement planning. Oast & Hook can assist clients with reviewing their retirement plans and advising them with respect to the new laws.

*Letha Sgritta is an attorney with Oast & Hook who concentrates her practice in the areas of elder law and disability law. Ms. Sgritta received her undergraduate degree from Purdue University, studied at Oxford (Oriel College) in England, and received her law degree from the University of Maine. Ms. Sgritta is licensed to practice law in North Carolina and Virginia.*

## One Quick Question

Oast & Hook receives many "quick questions" from clients. This new feature in the *Elder Law News* will periodically address these questions.

**Question**: My spouse has retired from the military, and I am enrolled in TRICARE for Life through my spouse. We are separated, and I've heard that if we divorce I will lose my TRICARE for Life benefits. Is this true?

**Answer**: It depends on a number of factors. Medical benefits through TRICARE and TRICARE for Life are extended to an unmarried former spouse if the marriage lasted for at least 20 years, the member had at least 20 years of service creditable for retired pay, and there was at least a 20 year overlap of service and marriage. If you lose your TRICARE for Life benefits you will still be covered under Medicare, and you may still qualify for other types of supplemental health insurance. You should consult an experienced elder law attorney to discuss other forms of insurance available to you.

## Ask the Expert

Mark your calendar to listen to the "Ask the Expert" show on WNIS radio (790 AM) from 8:00 a.m. to 9:00 a.m., Saturday, August 26th. Oast & Hook attorney Sandra Smith and Kevin Shea from CB&H Business Services will be the guest speakers, and they will discuss long-term care insurance.

## Oast & Hook

Oast & Hook is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, investment and insurance advice, estate and trust administration, powers of attorney, advance medical directives, titling of assets and designations of beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid, Medicare, Social Security, and SSI, disability planning, income tax planning and preparation, bill paying, account management and reporting, care management, and fiduciary services. We also handle litigation involving these issues, such as will contests and estate administration disputes. For more information about Oast & Hook, please visit our website at **www.oasthook.com**.

## Distribution of This Newsletter

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