

EX-SPOUSES SHOULD TAKE ADVANTAGE OF THEIR RIGHTS TO SOCIAL SECURITY SPOUSAL RETIREMENT OR WIDOW/WIDOWER BENEFITS

As you reach retirement age, you may be worrying about how to augment your income either at the time you stop working or when alimony ceases. Social Security Retirement (SSR) spousal benefits are often overlooked or not given enough attention when discussing financial matters in divorce actions. Even if you are not receiving or paying alimony, this benefit

AS A FORMER HUSBAND OR WIFE, IF YOU WERE MARRIED AT LEAST TEN YEARS AND HAVE REACHED AGE 62, YOU MAY BE ELIGIBLE TO CLAIM SPOUSAL SOCIAL SECURITY RETIREMENT BENEFITS OR EVEN WIDOW/WIDOWER BENEFITS. YOU DO NOT HAVE TO BE RECEIVING ALIMONY OR BE A "DEPENDENT" FORMER SPOUSE TO DO SO.

may be available to you. The spousal benefit is the equivalent of half of what the other spouse would be entitled to receive at the time you as the spouse or ex-spouse file for the spousal benefit. That benefit has no impact on your former spouse's or your own ability to collect your own full benefits on your own records.

If you are receiving alimony, there is no reason why you cannot file a claim for spousal SSR, if you qualify, as an additional source of income. You may want to discuss the decision with your attorney because the additional income may trigger an application to reduce or terminate alimony. Depending upon the amount of the SSR benefit that you will be receiving and the circumstances such as if your former spouse is, now, retired, alimony payments could be affected.

The "simple" definition of who can qualify to claim spousal SSR benefits on a former spouse's SSR

record is as follows: 1) the parties were married for at least ten years; 2) the person claiming the spousal benefits is at least 62 years old; 3) the person claiming spousal benefits is not remarried (in most cases); and 4) the person claiming spousal benefits is not entitled to apply for a higher benefit on his or her own record **at the same time as the application for spousal benefits is made.** There are, however, some very important financial pitfalls that can happen if you do not pay close attention to all the exceptions and the long term impact of making the claim.

While either party can apply for spousal SSR benefits, it is important to examine your own earning record to determine if you are going to qualify at a higher rate on your own at the same time since you cannot claim two benefits at the same time. In other words, once you apply for your own benefits, you lose the chance to claim the spousal benefit. On the other hand, if your own benefits would be lower at the time you apply for spousal benefits, you may want to take advantage of only seeking the spousal benefit, either permanently or temporarily until your own record allows for a higher benefit at which point you can terminate the spousal benefit and **then** apply on your own record. Or, if you want to hold off to file until your own benefits have reached their maximum value, you might want to file as a spouse and, at least receive some benefit in the interim.

Unlike the cut-off date for equitable distribution which is the date of the Complaint for Divorce, the ten years of marriage does not end until the date of the divorce so those who were married for less than ten years when the Complaint was filed may still be eligible to collect SSR spousal benefits if the date

of the divorce is on or after your ten year wedding anniversary.

Even if you or your former spouse have had serial marriages each lasting ten years or more, every former and current spouse is eligible to claim the spousal SSR benefit at the same rate. You will not be entitled to collect the spousal benefit if you were divorced at age 62 or older unless your claim has been filed at least two years after the divorce. If your spouse is 62 at the time of the divorce and you are younger, you will still have to wait for two years before you can file a claim even if your former spouse is already collecting on his or her record.

Depending on your employment status at age 62, it may not be beneficial to file a spousal SSR claim. There is an “income cap” that may make it unprofitable to file the claim. For example, if you are earning over a certain income and have not reached full retirement age (age 66 at present), then for every \$2 you earn in excess of the cap, the SSR benefit is reduced by \$1 until you reach the year in which you turn 66 but before your birthday, at which time the reduction is going to be \$1 for every \$3 you earn over a slightly higher cap. Only after reaching your Full Retirement Age (FRA) birthday, will you be able to earn your full salary and receive your full spousal benefit. If you earn less than or even slightly more than the cap, it may be beneficial to augment your income at that point with the spousal SSR, at least on a temporary basis. Once you reach your own FRA, you can determine if dropping the spousal benefit and claiming on your own record is more advantageous **or** you might want to continue receiving the spousal benefit for a few more years while your own benefit increases annually until you reach age 70 when you become eligible for the maximum benefit.

Every year after you reach FRA and defer filing a claim on your own record, the amount that you will receive increases by 8% each year until age 70, when the amount has increased by 32%, from the amount you would have received at FRA. Thus, receiving a smaller amount based on a spousal claim for a few years and still working full-time could provide you with a larger SSR benefit in the long run when you can, also,

continue to work and be eligible to receive your full, increased benefit. This type of calculation should be made with the help of a financial advisor. If you decide to file a spousal claim even though you may be eligible to receive benefits on your own record at an age younger than 70, be extremely careful to make it clear to the Social Security Administration (SSA) that you are not filing on your record or you can risk losing the benefit from the deferral of your own claim.

A former spouse who has remarried and divorced, again, has the right to choose to claim spousal SSR benefits on the record of whichever former spouse has the higher earnings record as long as both marriages have lasted at least ten years.

Keep in mind that both former spouses have the right to claim against the other’s earning record. You don’t have to be a dependent spouse currently collecting or previously collecting alimony to be eligible. In fact, even if you never paid or received alimony, it is worthwhile to investigate the option and benefits of the spousal claim.

While it is easy for people to file spousal SSR claims when they are still married since the other person is going to cooperate, it may be more difficult to do so after a divorce. In order to file a spousal claim on a former spouse’s record, you will need to provide the SSA with your former spouse’s Social Security number, current address and date of birth. If you are unable to provide the information, SSA is supposed to take steps to locate and contact your former spouse but if he or she does not wish to cooperate by providing the needed personal information, there is no automatic enforcement method. Therefore, at the time of the divorce, both parties should be willing to include a provision in your settlement agreement to exchange Social Security numbers and keep each other informed when they move on an ongoing basis so the claiming party can provide the information to the SSA. In the alternative, it is important not to dispose of joint income tax returns, Case Information Statements and any other documents that, at the very least, will show a Social Security number. If there is no alternative and no cooperation, you may need to seek legal advice to

determine if it is worthwhile or feasible to file a motion to compel cooperation. It is always better to maintain as much of your divorce file as possible to avoid this process. Your attorney does not have to maintain files for more than seven years so this may be a good time to check your own records and, if you were divorced less than seven years ago, contact your attorney and ask for additional records before it is too late.

Another option is to make sure that you include a provision in any Marital Settlement Agreement that compels both of you to exchange Social Security numbers and keep each other informed of your addresses after the divorce so that at the very least, you will be able to rely on the Agreement if you need to seek court relief. A Marital Settlement Agreement incorporated into a Judgment of Divorce might even be sufficient to present to the SSA so they would be willing to release information although there is no assurance that such will be the result which is why you need to make sure to have all of the other person's necessary information on file at the time of the divorce and on an ongoing basis.

Former spouses can also be eligible to receive Widow/Widower Social Security benefits. As long as the claimant is 60 years old and has not remarried, the benefits may be available in the event of the former spouse's death. In certain circumstance, such as if you have remarried after age 62, the widow/widower benefits may still be available to you.

Children who are under 18 years old are, always, entitled to Social Security benefits from a deceased parent. However, in certain circumstances, the children's custodial parent has the right to receive widow/widower benefits even if the parent is under age 62, but is caring for the parties' children who are under age 16.

Now that the alimony statute permits termination of alimony when the paying spouse reaches retirement age and/or there is no more "permanent" alimony, supported spouses, in particular, but also those former spouses who never received or paid alimony need to be aware of alternative sources of income so

you should become familiar with the most obvious one – spousal benefits from SSR payments. It is important for former spouses to speak to a financial advisor to determine the most reasonable and beneficial means of receiving SSR benefits and to speak to an attorney to determine if you are eligible for the benefits.

This article is not a comprehensive explanation of how to go about seeking a spousal claim or whether it is in your particular best interest to do so at the earliest point in time, or at all. Rather, it is intended as an overview and reminder for you to consider and take into account all your options including Social Security Retirement benefits in order to improve your financial situation as you get older.

Just be sure that you are very careful in making the initial decision about when and how to file for spousal benefits after checking out the Social Security Administration website, and/or speaking with a financial advisor or attorney. Any choice will have long term consequences so make sure that you make the best choice for your particular situation. Social Security Spousal Retirement benefits can prove to be an available and worthwhile source of additional income.

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