From the Editor: All in the Name

Welcome to Seasoning, the quarterly e-newsletter of the Louisiana State Bar Association’s Senior Lawyers Division.

As a soon-to-be 67-year-old, Social Security-receiving, Medicare-eligible, fully-practicing lawyer, my “older-than-me” friend, LSBA Past President Mike Patterson, volunteered me to be the first editor of this e-newsletter.

Why Seasoning? Well, as The Byrds said, “To everything — turn, turn, turn. There is a season — turn, turn, turn.” It didn’t mean that much in 1965, did it, but now you are in a new season, and many of you have been seasoned by some 30 years of law practice.

So you have special insights . . . and special needs.

We named it Seasoning, not Seasoned, because you’re still practicing law and still being seasoned. This dish is not done yet.

We also chose a name that would reflect one of the most important aspects of living in Louisiana — the food.

In every issue, we plan to offer articles addressing matters for us that are sweet, sour, bitter, salty, spicy, may have an aftertaste . . . and a little lagniappe.

Our purpose is to be the voice of the Senior Lawyers Division of the LSBA, but also to be YOUR voice.

Our mission is to present to you a quarterly gumbo of articles and resources of value to you.

We will provide input from experts in the areas of interest to us, including Medicare, health care issues, private supplemental insurance, disability issues, retirement issues, wills, trusts, probate, veterans benefits, long-term care, age discrimination, elder abuse and consumer fraud.

We will follow legislation and court decisions with impact on your lives.

We will also present interviews with and articles from some of our more seasoned lawyers and judges.

Each issue will end with a joke that LSBA Secretary Barry Grodsky thinks is funny.

Feel free to send me your ideas for future content.

—Edward J. Walters, Jr.
Editor, Seasoning
Former LSBA Secretary
Should You Stay in the Game?
By Roger A. Stetter

So here you are, a little confused. Did you think the road to retirement would be an expressway? Come on, this isn’t some random road trip. Your dreams are out there somewhere. You can’t start this journey without knowin’ where you’re goin’. You, my friend, you need a plan.
—Dennis Hopper, Ameriprise TV Ad for Boomers, 2008

Good advice from Easy Rider star, Dennis Hopper. Problem is we lawyers are great at planning for our clients but terrible at doing it for ourselves. So I thought a list of pros and cons might be a good place to begin.

Retirement Decision List of Pros and Cons

Yes, I should retire:
No more stupid judges
No more office rent and O/H
Home-cooked meals
Joys of being idle
Live in Tuscany
Dress casual
Same old, same old
No more email

No, I should not retire:
No more money
No privacy
Do it yourself!
Daytime TV
No Medicare
Closet full of business wear
A wealth of experience
Social media

Okay, that won’t work. Anyway, how do you plan for the future when no one, not even the Fortune Teller Lady in Jackson Square, really knows what lies down the road?

Think I’ll stay on my motorcycle, keep riding, but slow down. Go to a four-day work week, come in late, leave early. Do what I want to when I’m in the office. Only take the interesting cases and the clients most in need of help. Check the email once daily. Write the family saga? Start a poker game? Learn to play the banjo?

Even with all of its hassles and headaches, law practice beats daytime TV by a mile. So keep up the good work and ease into full-time retirement if indeed that day ever comes for you. Otherwise, retire in a box!

This is probably lousy advice or you don’t need it.
Roger A. Stetter, a graduate of Cornell and UVA Law School, is a trial lawyer in New Orleans and former member of the Louisiana State University Paul M. Hebert Law Center faculty. His books include Louisiana Civil Appellate Procedure: In Our Own Words: Reflections on Professionalism in the Law; and Louisiana Environmental Compliance.
Digital Asset Planning: Will Your Family Be Able to Access Your Digital Data Should Something Happen to You?

By David H. Ogwyn

One of the many lessons learned from Hurricane Katrina was the vulnerability of personal and business records and documents. The lesson underscored by catastrophic loss in Katrina served to reinforce a trend which is now mainstream — the digital storage of everything from recipes and photos to financial statements and tax documents. Service providers, including banks, insurance companies and various utility agencies, encourage their customers to switch to paperless statements and online account management. Money is transferred, bills are paid, and loans are obtained all online. While at first glance this may seem convenient and environmentally friendly, what are the ramifications as they relate to estate planning or the incapacity of an account holder?

Sharon Nelson, noted electronic evidence blogger at Ride the Lightning and co-host of the American Bar Association’s podcast series called The Digital Edge: Lawyers and Technology, shared a specific example. In this case, a husband, who had handled all of the family finances and paid bills online monthly, died without providing for anyone else to have access to the usernames or passwords for the various accounts. His widow, in addition to dealing with the loss of her spouse, was now unable to determine what bills were due or keep accounts current; as a result, her credit was wrecked.

Most traditional wills provide for an executor who is charged with marshaling the assets and taking care of the business of the estate. It used to be that important documents were stored in file cabinets or safety deposit boxes. If an individual died and failed to leave a list of important accounts and documents, such information could largely be compiled by rifling through a desk and reviewing incoming mail for account information. Now, much of this information is stored and communicated electronically.

What happens to the digital assets of individuals when they become incapacitated or die? In an increasingly paperless world, failure to provide for the transfer of account access and other online records could leave family members and business associates unable to keep finances current or continue a business.

Ogwyn’s article was first published in the Louisiana Bar Journal, October/November 2012, Vol. 60, No. 3. To read the full article, go to: http://www.lsha.org/GoTo/OgwynJournal.

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Super Size Your Social Security

By Peter J. Losavio, Jr.

Planning can maximize your and your spouse’s Social Security benefits. Most people aren’t aware of the myriad of options, and, if they are, they don’t realize the impact their Social Security choices can have on their future income. This article may help you increase your Social Security check along with your financial security in retirement. Underestimating the value of Social Security retirement won’t just limit benefits paid out to you, but also to your spouse and survivor. In addition, it’s the only lifelong income stream for the majority of attorneys.

Failing to review all of your options is the costliest mistake you can make. Selecting the right option can substantially increase your benefits, but the options are complex. There are 81 different combinations for a married couple.

When to retire is the first of many difficult, complex decisions, and the practice of law is hard to give up. There are many non-financial factors that affect this decision, such as health, family and personal desires.

The old rule was that the total lifetime benefits for someone with an average lifetime expectancy would be the same whether the beneficiary took a smaller benefit at age 62 or the higher benefit at age 70. The current thinking is that it may be better to delay even for people with shorter life expectancies.

Your life expectancy is a big factor in the decision of when to start receiving Social Security. Although you can look at actuarial tables to determine life expectancy, they are not really relevant when you are considering yourself or any one individual. It is more relevant to look at your health and your parents’, grandparents’ and siblings’ longevity. If you expect to live to 80, then waiting to receive benefits until the full retirement age of 70 is the best choice. However, no one usually lives as long as they expect to live.

Moreover, there are several benefits to postponing retirement. First, working longer shortens the retirement period. If an individual has a life expectancy of 80 and retires at 62, that person will have to fund an 18-year retirement period. However if that person postpones retirement to age 67, he/she will only have to fund 13 years, increasing the Social Security benefit.

In addition, you can replace lower wage years after age 62. The primary insurance amount (PIA), which is the basis for benefits, is calculated on an individual’s highest 35 years of indexed earnings. By working past age 62, an individual can replace lower wage years with higher wage years, therefore, increasing the benefits.

Furthermore, the inflation adjustment will be on a higher amount. For example, if Pierre retires at age 62 and his PIA is $2,000, he will receive only $1,500, plus the inflation adjustment will be on $1,500 rather than $2,000. Therefore, the inflation adjustment will be calculated on $500 less. If Pierre can retire with $2,000 per month at full retirement at age 66, then his early retirement monthly check at age 62 would be $1,500 and $2,640 without COLA at age 70. The cost of living adjustment would only increase the difference. By postponing retirement to age 70, the monthly check is 32 percent more than age 66 and 76 percent more than age 62.

As mentioned, married couples have several strategies to increase their benefits, but planning is essential to get the maximum benefit. A married individual who has reached full retirement age can switch from spousal benefit to his/her own benefit, but cannot switch from his/her own to spousal.
For example, Jolie and Pierre are 66, which is their full retirement age. Pierre retires and starts receiving his check of $2,000 per month. Jolie’s benefit is $900 per month. However, she has the option to choose the spousal benefit, which in this case would be $1,000 (50 percent of Pierre’s). When she reaches age 70, she chooses to start receiving her benefit because it has been earning delayed retirement credit and her benefit is now $1,188 per month, which is $900 + delayed credit of $288).

Another goal for married couples is to increase the surviving spouse’s benefit. This is especially important if one spouse is a low wage earner and has a longer life expectancy. This allows the surviving spouse to increase her benefit from either her benefit or spousal benefit to the higher survivor benefit. Generally, if one spouse is expected to live beyond age 80, the cumulative lifetime benefit will probably be higher if the high earner spouse delays benefits to age 70. The bigger the age difference, the greater the benefit, because the younger spouse usually will have a higher survivor benefit if the higher-earning, older spouse dies early.

A little-used strategy that may benefit a married couple is “file and suspend.” In order to use this strategy, your spouse must be 62 or older and you must be at full retirement age. The way it works is, you file for your benefit and your spouse applies for spousal benefit. You ask to suspend your benefit. Your spouse receives the spousal benefit, and you continue to accrue delayed retirement benefits to age 70. Besides increasing your benefit, it also increases the survivor benefit if you die first.

Nevertheless, there is a caveat to the “file and suspend” method. For example, if the husband is below age 66 when the husband files and his wife suspends, the husband will forever have a lower benefit because of taking the benefit before age 66 — at least until his wife dies, at which point the husband can then get 100 percent of the survivor benefit.

In summary, think and plan before you start collecting Social Security retirement. Remember that for a married couple, there are 81 different combinations which can result in hundreds of thousands of dollars in difference of cumulative lifetime benefits. Do not underestimate the value of Social Security. Plan to get the maximum benefit and protection for you and your spouse.

Peter J. Losavio, Jr., with the Baton Rouge law firm of Losavio & DeJean, L.L.C., graduated from Louisiana State University Law School in 1975 and received a master’s of law in taxation from the University of Florida in 1976. He is certified by the National Academy of Elder Law Attorneys, one of only 300 attorneys in the United States with this certification. He is also a certified public accountant, a certified financial planner, a board-certified Tax Law Specialist and a board-certified Estate Planning and Administration Specialist, both through the Louisiana Board of Legal Specialization.