Acosta Law Firm, PLLC

Estate Planning & Elder Law

Welcome

DAY 2: Wednesday, April 14, 2021

2:00pm – 4:00PM

Elder Law Boot Camp for Health Care Professionals

Power of Attorney

Elder Law Boot Camp for Health Care Professionals

Power of Attorney: In-Depth

- Execution
  - Witnesses (2)
  - Notarized
- Notice
- Agent Acknowledgement

Power of Attorney: In-Depth
CONTINUED

- Presumed durable
- Special rules for gifts
- Specifying powers
- Revocation

Power of Attorney: In-Depth
CONTINUED

- Third party liability
- Third party immunity
- Compensation
- Out-of-state POAs

Guardianship Process

- Petition
- Hearing
- Medical testimony
- Attendance of alleged incapacitated

Guardianship Process
CONTINUED

- Contested, uncontested
- Bonding & annual reports
- Petitions
- Emergency Guardianship

Using a Trust

- Managing incapacity
- Trustee & successors

Civil Commitment

- Voluntary
- Involuntary

  “302”

Protecting against exploitation

- warning signs
- social
- financial
- legal

Advance Directives

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Definitions

Health Care Proxy or POA

PLUS

Living Will

EQUAL

Advance Health Care Directive

Definitions – "End Stage Medical Condition"

1. Incurable and irreversible medical condition
2. In an advanced state
3. Caused by injury, disease or physical illness
4. Physician's opinion (to a reasonable degree of medical certainty)
5. Will result in death
6. Despite the introduction or continuation of medical treatment

Definitions – "End Stage Medical Condition"

BUT

- Term *does not preclude treatment* (even if the disease/illness is incurable, regardless of its severity)

IF

- Patient will benefit from the medical treatment, including palliative care

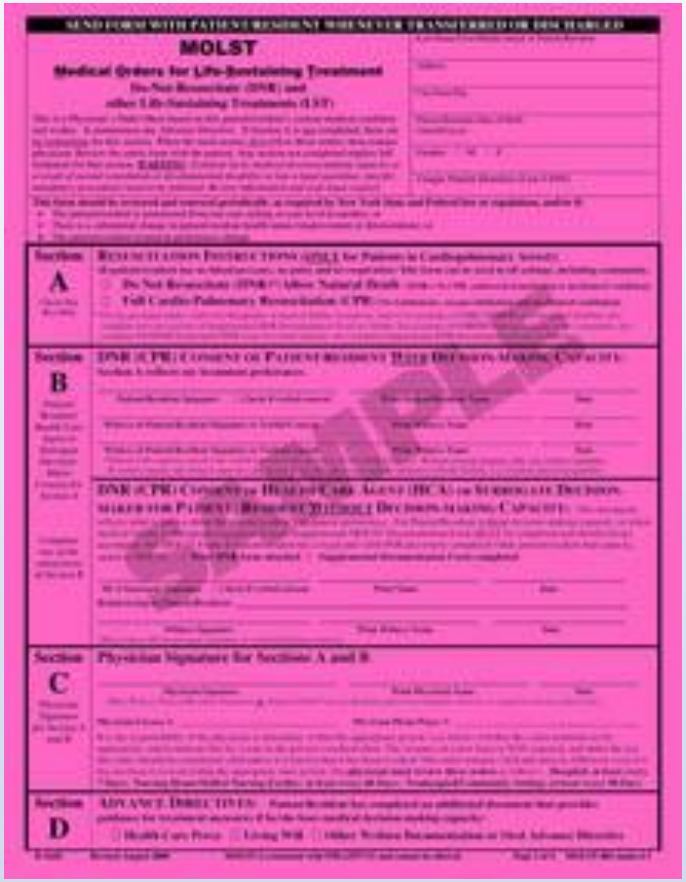
AND

- Treatment ***will not*** merely prolong the process of dying

UNLESS

- Patient directs otherwise in his Advance Health Care Directive

Advanced Directives


MOLST

Medical Orders for Life-Sustaining Treatment

Section A

Section B

Section C

Section D

- Bright pink in color, so you can't miss it in the chart!

- MOLST = Medical Orders for Life Sustaining Treatment
- Travels with patient
  - CPR (cardiopulmonary resuscitation)
  - Intubation and mechanical ventilation
  - Artificial hydration and nutrition
  - Future hospitalization and transfer
  - Antibiotics

Definitions – "Life Sustaining Treatment"

1. Any medical procedure or intervention
2. When administered to a patient or principal in an end-stage medical condition
3. Which will serve:
   - Only to prolong the process of dying
   - **OR** maintain the individual in a permanent state of unconsciousness

Types of Advance Directives

- Health Care Directive
  - Durable Health Care Power of Attorney **PLUS**
  - Living Will
- DNR/Out of Hospital DNR
- MOLST
- Informal Health Care Decision Making

	HCPOA	LW	DNR	MOLST
Who may create?	▪18+, emancipated minor, married or HS grad ▪Capacity	▪18+, emancipated minor, married or HS grad ▪Capacity	Individual with end stage medical condition *or* their HC representative	Individual with end stage medical condition *or* their HC representative
Who must sign?	Principal	Principal	Physician	Physician
Who may revoke?	Principal with capacity	Principal with or without capacity	Principal with or without capacity	Principal with or without capacity
When effective/ implicated?	Immediately **or** Upon Incapacity	End-stage medical condition only	When cardiac or respiratory arrest	End-stage medical condition ***and*** EMS are involved
Binding on medical personnel?	Yes* (provider may object)	Yes* (provider may object)	Yes	Yes
Binding on emergency personnel?	No	No	Yes (out of hospital DNR)	No

Who makes decisions?

	End Stage Medical Condition	Life threatening, but treatable	General HC Decisions
Patient	Yes	Yes	Yes
Health Care Agent	Yes	Yes	Yes
Guardian	Yes	Yes	Yes

Issues with Advance Directives

- Compliance
- Revocation
- Countermanding decisions of the agent

Medicaid for Long-term Care

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Medicaid

- Established in 1965 along with Medicare
- Federal Program
- Administered by states

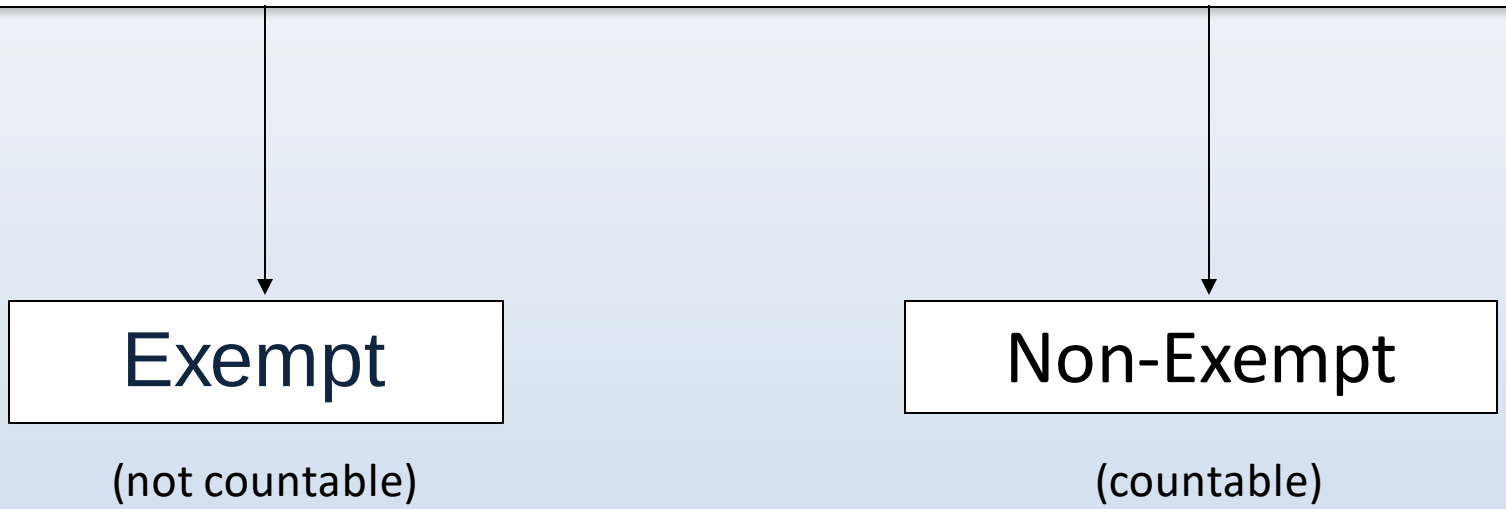
Medicaid Eligibility Criteria

- Citizen, PA resident
- 65+, blind or disabled
- Medically eligible
- Assets <$2,400 (or $8,000)

After Qualification

- Program pays for nursing facility care
- Recipient's income paid to nursing facility, except for:
  - $45/month, personal needs allowance
  - Health insurance premium
  - Income to spouse, if applicable
  - Other deductions may apply

ALL RESOURCES – APPLICANT (& SPOUSE)



Common Exempt Resources

- Residence
- Property – Trade or Business
  - Essential to Self Support
- Non-Business property
  - Essential to Self Support
- Household Goods/Personal Effects
- Motor Vehicle

Common Exempt Resources
(continued)

- Life Insurance Policies – face value up to $1,500
- Term Insurance
- Burial Spaces
- Irrevocable Burial Reserve
- Community Spouse Qualified Retirement Plan/IRA

Asset Transfers

- Exempt
- For value
- Gifts

Common Exempt Transfers

- To spouse, or to another for sole benefit of spouse
- To child if disabled, under 21 or blind
- House to caregiver child of applicant
- House to caregiver sibling of applicant with equity interest in residence

Transfers for Value

- If legitimate and not exorbitant, no period of ineligibility
- Examples: nursing care, living expenses prior to admission, legal fees
- Purchases of exempt resources

Gifts in General

Definition

- transfer of asset, by applicant or spouse, for less than fair market value
- Period of ineligibility may be imposed if made within look-back period

Gifts → Period of Ineligibility

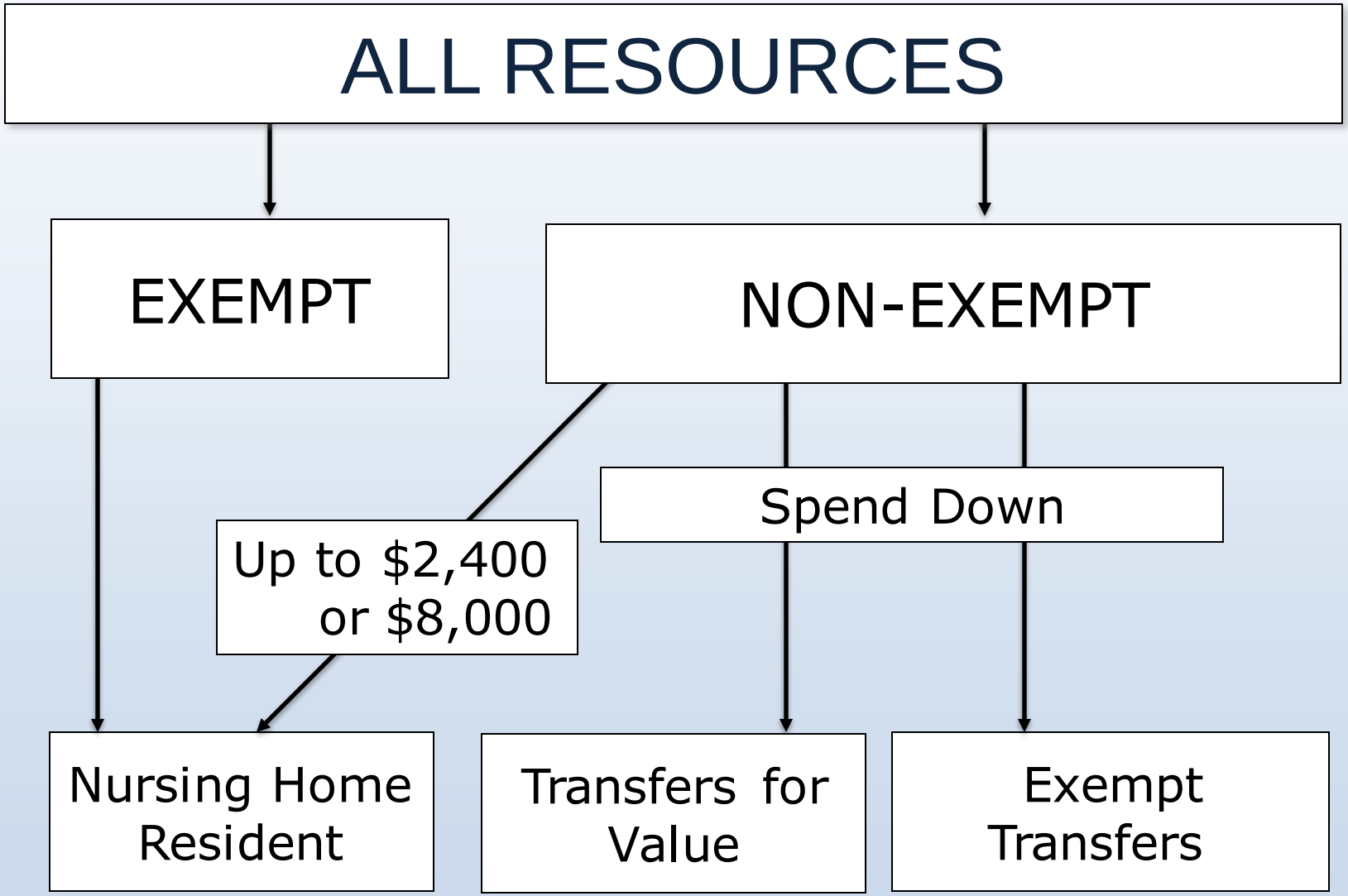
Calculation:

- Amount gifted ÷ penalty divisor = months and days of ineligibility

Look-Back Period

- Depends on date when application for benefits is filed
- 60 months
  - (1) transfers to trust or
  - (2) transfers to individual made on or after February 8, 2006

SINGLE PERSON



Community Spouse Resource Allowance (CSRA)

- An amount of resources allowed for CS use
- = ½ non-exempt resources
- Subject to:
  - Minimum $24,720
  - Maximum $123,600

Monthly Maintenance Needs Allowance (MMNA)

- An amount of income allowed for CS
- = 150% of federal poverty level for family of two + an excess shelter allowance
- Current numbers:
  - Minimum - $2,057.50 (rounded to $2,058.00) as of July 1, 2018
  - Maximum - $3,090.00 as of January 1, 2018

MMNA
(CONTINUED)

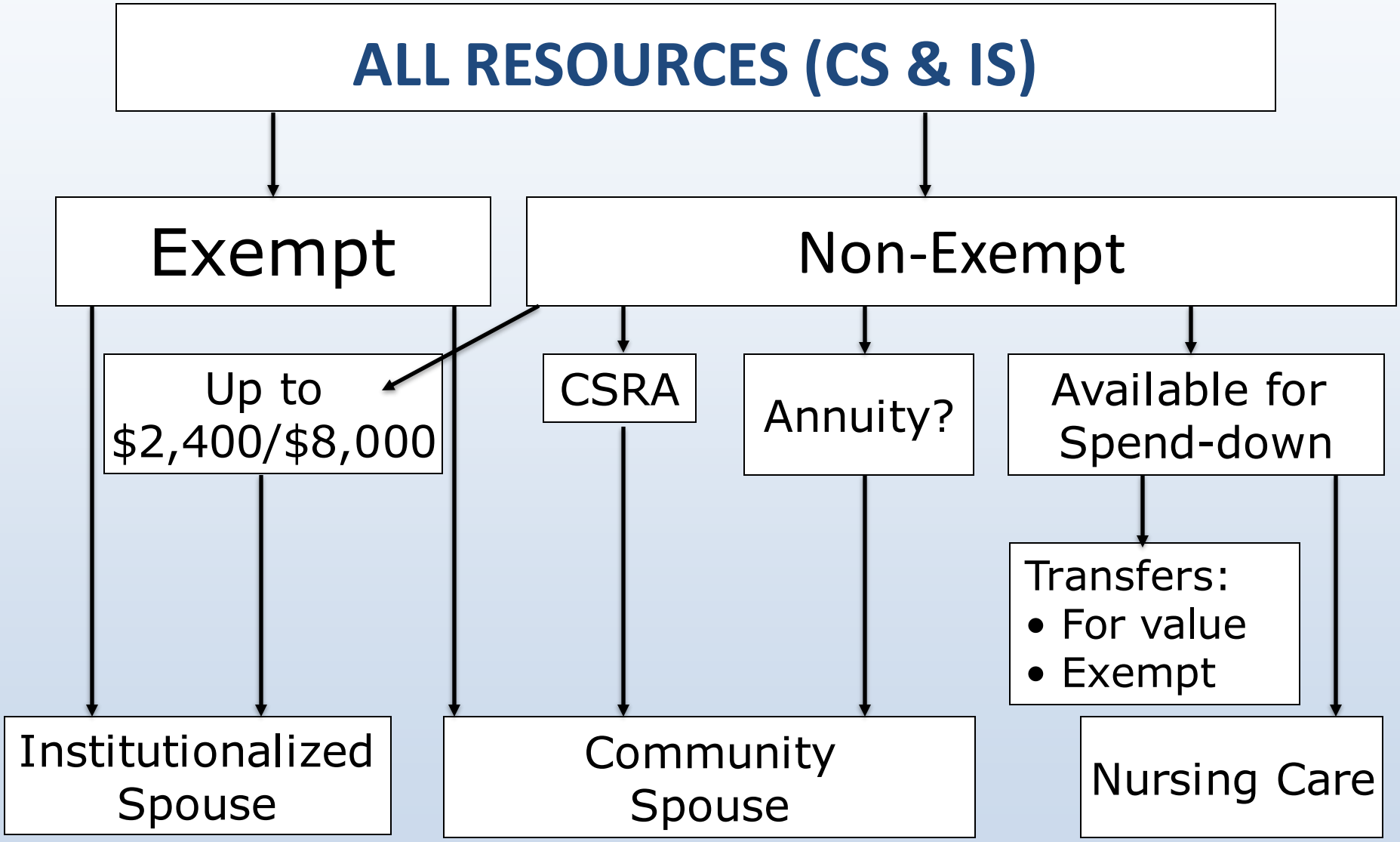
MMNA may exceed the maximum if CS has “exceptional circumstances resulting in significant financial duress.” Requires an appeal hearing.

55 Pa. Code § 181.452 (d)(ix)

DHS-Allowed Annuity

- DHS will approve purchase of annuity for community spouse if:
  - Meets requirements of DRA 2005
  - Case Law Supports Decision

Married Couple



Case Study Facts

1. Mary and Bob in assisted living.

   Monthly living expenses: $3,500

   Mary's income: $1,600/month
   Bob's income: $2,100/month

Case Study Facts
(CONTINUED)

2. Bob's Alzheimer's condition worsens, moved to nursing unit

   New monthly expenses:

   Mary: $3,120

   Bob: $8,000

   Total Expenses: $11,120

Case Study Facts
(CONTINUED)

3. Non-exempt resources: $190,000

4. Projected survivor income: $2,300/month
   (If Bob Dies)

Scenario #1 – No Planning or Appeal

Result:

1. CSRA $ 95,000
   MMNA $ 3,090.00

2. Denial due to excess resources

3. After excess is spent, Mary and Bob reapply.

Scenario #1 – No Planning or Appeal

(CONTINUED)

4. CS approved income:

- Mary's income $1,600.00
- Interest on CSRA $ 118.75

  ($95,000 @ 1.5% ÷ 12)
- Income from Bob <u>$1,122.25</u>

  $2,841.00

Scenario #1 – No Planning or Appeal (CONTINUED)

5. Mary's income if Bob dies

- Survivor income $2,300.00
- Interest on CSRA (diminishing) $ 118.75

$2,418.75

Scenario #2 – Help With Rules

- Assume DRA-compliant annuity paying $820/month would cost $68,000.
- The couple uses excess resources to purchase such annuity with $68,000, naming Mary as the owner.
- Remaining $24,600 spent down to Nursing Home.

Scenario #2 – Help With Rules
(CONTINUED)

Result:

1. CSRA $95,000
2. MMNA $ 3,090.00

MMNA appealed, approved for $3,120

Scenario #2 – Help With Rules
(CONTINUED)

3. CS approved income:

- Mary's income $1,600.00
- Interest on CSRA $ 118.75
  ($95,000 @ 1.5% ÷ 12)
- Annuity Income $ 820.00
- Income from Bob $ 581.25

$3,120.00

Scenario #2 – Help With Rules
(CONTINUED)

4. Mary's income if Bob dies

• Survivor income	$2,300.00
• Annuity income	$ 820.00
• Interest on CSRA	$ 118.75
	$3,238.75

Resources Subject to Estate Recovery

- Probate assets
- Life insurance payable to estate
- Statutory distributions

CLOSING REMARKS

Acosta Law Firm, PLLC

Estate Planning & Elder Law

Thanks for Attending our Virtual Workshop!

Next Virtual Workshop Date:

Day 3: Wednesday, April 21, 2021

2:00pm-4:00pm

This four-part virtual series is eligible for 7 continuing education credits. Attendees must attend all four sessions to receive their credits. (i.e.. Partial credit will not be given for attending less than all four sessions.).

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