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LEGAL GUIDE FOR SENIOR CITIZENS

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Age Discrimination

What is age discrimination?

Age discrimination refers to the treatment of an individual in a manner different from others based solely or primarily upon the age of that individual. Generally, when the phrase age discrimination is used, it refers to the deprivation of some right or privilege to an older person.

Is it legal to discriminate against a person because of his or her age?

Of course not. In most, but not all circumstances, federal or state law prohibits discrimination on the basis of age. There are differences, however, between the federal and state laws.

What is the status of federal law on age discrimination?

The federal law, known as the Age Discrimination in Employment Act (ADEA), is limited to making discrimination unlawful in the employment context. The ADEA makes it unlawful for an employer to refuse to hire an individual or to discharge an individual or discriminate against a person with respect to his or her compensation or other terms and conditions of employment because of that individual's age.

Additionally, an employer may not classify or segregate employees in any way that would deprive an individual of employment opportunities or would otherwise adversely affect a person's status as an employee based upon that person's age. The prohibitions of the federal statute are limited to individuals over 40 years of age, with no age maximum.

In some cases, however, age may be a Bona Fide Occupational Qualification (BFOQ) or mandatory retirement may be permissible. The statute includes additional prohibitions

against discrimination on the basis of age by employment agencies and labor organizations. The federal statute is further limited because it applies only to employers who engage in interstate commerce and who employ at least 20 persons. There are various other exceptions to the protection provided by the ADEA.

How does New Jersey law prohibit age discrimination different from the ADEA?

The New Jersey Anti-Discrimination law is much broader than the ADEA. The state law prohibits discrimination in employment opportunities and in access to any place of public accommodation, publicly assisted housing accommodation and other real property because of race, creed, color, national origin, ancestry, age, marital status or sex. Therefore, under the New Jersey law, the failure to treat an individual equally because of his or her age is unlawful not only in the employment context, but in housing, real estate and various other public accommodations. In addition, the state law does not limit its protection to any particular age group.

How am I protected by the laws that prohibits against age discrimination?

Both the federal and state laws provide the procedures to be followed in reporting and seeking redress for discrimination based upon age. While it is not required that an individual be represented by an attorney, the procedures to be followed can get very complicated, especially with regard to deadlines for filing required documents.

The ADEA requires that before an individual can sue an employer in federal court for discrimination in employment, the employee must give prompt notice to the Equal Opportunity Commission (EEOC). The EEOC then has 60 days to investigate the incident and to determine whether there has been actionable age discrimination. If the EEOC does not find that unlawful age discrimination has occurred, the individual may nonetheless pursue the matter and institute a lawsuit.

The New Jersey law provides for a somewhat different procedure. An individual complaining of age discrimination has a choice of pursuing the complaint in the courts or through the New Jersey Division of Civil Rights. In the latter situation, if the division finds that there are adequate grounds to suggest age discrimination, it will bring an action in the state administrative court. If the former option is chosen by the individual, the matter may be pursued through the law courts.

How do I know if I have been discriminated against?

It is almost impossible to identify all of the signs of discrimination. Under federal law, an employer cannot reduce your salary or wages or fire you simply because you reach a certain age, and cannot refuse to provide you with the same group health plan benefits offered to other, younger employees. On the other hand, it is not unlawful for an employer to take action with regard to any employee for good cause, where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the grounds for taking any action are based on reasonable factors other than age, and such factors are not a subterfuge to avoid the law against age discrimination.

If you think you have been discriminated against, then you might wish to contact the New Jersey Division on Civil Rights or your attorney for further information.

Dealing with Creditors

What is a creditor?

A creditor is a person, corporation or business to whom you owe money for goods or services that have been supplied. There are two types of creditors: secured and unsecured.

A secured creditor has a lien or security interest in your real estate or an item of personal property. For example, most car loans are secured; the bank or credit company holds the title to your car until the loan is paid off. When you buy a major appliance or piece of furniture on credit, the store may have a purchase money security interest in the item because the store lent you the money needed to make the purchase. Sometimes, in order to get a loan from a bank, credit union or finance company, you are required to provide some property as collateral for the loan. This collateral is usually a second mortgage on your home or the title of your car. If you fail to make your loan payments, a secured creditor is entitled to satisfy the debt by repossessing the item you purchased or promised as collateral if it is personal property, and to file a foreclosure action in court if it is real estate.

In contrast, an unsecured creditor has no right to take any of your property to satisfy a debt without first bringing a lawsuit and obtaining a judgment against you. Only after a judgment has been obtained can the unsecured creditor send a sheriff or constable to levy on your property. For example, most credit card companies are unsecured creditors.

What can I do about a mistake on my bill?

The Federal laws (such as the Fair Credit Reporting Act and the Fair Credit Billing Act) and state laws (such as the New Jersey Consumer Credit Transaction Act) contain procedures for resolving disputes with merchants. Within 60 days after the mailing of the bill, you must notify the creditor, in writing, of your name and account number, the suspected error, why you believe the bill is wrong, and the suspected amount of the error or the item you want explained. The creditor must acknowledge receipt of your letter within 30 days and explain the bill or correct the mistake within 90 days. During this period of inquiry, the creditor is prohibited from threatening your credit rating.

You have the right to inspect your credit history at any time. If you find something unfavorable in your history that you do not agree with, you are entitled to submit an explanation, which must be made a part of your credit history.

Other federal laws prohibit discrimination on the basis of age, sex, marital status and race when you apply for credit.

What can I do about harassment from a debt collector?

The federal Fair Debt Collection Practices Act offers some protection against harassment by debt collectors. Under this law the term debt collector does not include your original creditor, who is exempt from the laws provisions. You may notify a debt collector, in writing, that you refuse to pay the debt or that you wish the debt collector to cease further communication with you. The debt collector must then stop telephoning you and cease all other communications, except to notify you that he or she is taking other action, such as filing a lawsuit. A debt collector cannot contact you directly if he or she knows that you

are represented by an attorney. Debt collectors ordinarily cannot call you before 8 a.m. or after 9 p.m. They are prohibited from using threats of violence, obscene or profane language, or other criminal means to collect debts. Further, a debt collector may not cause your telephone to ring repeatedly or continuously with the intent to annoy, abuse or harass any person at the called number.

The federal and state governments impose severe penalties on debt collectors or creditors who violate applicable provisions of the consumer protection statutes. If you believe that a creditor is acting improperly with respect to billing, or that a debt collector is acting improperly with respect to collection practices, then you should document the facts as thoroughly as possible and call legal counsel.

What happens when someone obtains a judgment against me?

The sheriff or constable may attempt to levy on your property and sell the items at public sale. State law allows you to designate \$1,000 worth of your property as exempt from the sheriff's levy. Your bank accounts may be frozen and the creditor can apply to the court for an order directing the bank to turn over your money to the creditor. A judgment may impair your real estate until you sell your property; at that time, the judgment plus interest will have to be paid or a title company will not insure that the title to your real estate is good. Under other circumstances your real estate may be sold at a sheriff's sale to satisfy the judgment. If you are employed, the creditor may obtain a court order requiring that your employer turn over a portion of your paycheck to satisfy the judgment.

Can a creditor garnish or seize my Social Security benefits?

No, federal and state law prevents creditors from attaching Social Security benefits and state old-age payments. Many types of government pensions are also exempt. If a creditor, after obtaining a judgment following a lawsuit, sends the sheriff or constable to levy on your bank account containing these funds, you may go before the judge and prove that the money in the account is from Social Security checks or an exempt pension. A creditor can levy on IRA or KEOGH accounts.

What should I do if I am sued?

Do not ignore legal papers. Most legal complaints have to be answered within 20 days of receipt in order for you to protect your rights to be heard in court and to assert any defenses you may have. If you admit owing a debt but cannot pay it all at one time, contact the creditor or the lawyer acting in his or her behalf and attempt to arrange payments over time. Most creditors will cooperate because it is usually quicker than going through the court process. Always put such agreements in writing.

What is bankruptcy?

Bankruptcy is a legal procedure which allows you to eliminate most of your debts. Several options are available in bankruptcy, and it is very important to review all the facts of your situation and all the choices very carefully. If you believe your financial situation may make bankruptcy advantageous, you should consult an attorney for information and advice.

Can you please give me some legal advice as to how to deal with my creditors?

You should never ignore any legal papers that you receive. The problems will not simply vanish. If you blow off a summons and a complaint, then ad default judgments will be entered against you. You should try to make a deal with your creditor or his. In many instances you will be able to work out a reasonable payment plan with your creditor outside of the courtroom. Whenever you communicate with your creditor or their attorney, you should always send letters and keep a copy so that you are clear on what was discussed and agreed upon.

Tenant's Rights

Is my landlord obligated to supply heat to my apartment?

Yes, if heat is included in your rent, and if you live in a building occupied by more than two families, then your landlord is legally obliged from October 1 to May 1 to provide enough heat to keep the apartment at 68 degrees between the hours of 6 a.m. and 11 p.m. and 65 degrees at night under state law. Your city or borough may have additional heating laws.

What should I do if my landlord fails to supply heat?

You should first notify the landlord of the problem. If the landlord fails to take action, you should then call your local board of health. The board of health is empowered to authorize repairs when your landlord refuses to do so.

Even if you get a shut-off notice, you may ask the utility company to keep your heat on between November 15 and March 15 if you get SSI, PAAD, HEAP, Lifeline Credit Program, or welfare or if you cannot pay your bills because of circumstances beyond your control, such as the recent death of your spouse, high medical bills, or unemployment.

Can I be evicted?

Under certain circumstances, a tenant may be evicted. Some of the more common grounds for eviction are the following:

- Failure to pay rent (no written notice to tenant required; action may be started immediately)
- Continued disorderly conduct after written notice to cease (legal action may be started three days after a second written notice)
- Destruction, damage or injury to premises willfully or through gross negligence (legal action may begin three days after written notice)
- Substantial violation of rules and regulations in lease (legal action may be started one month after the second written notice)
- Repeated late rent (legal action may be started one month after a second written notice)
- The landlord of a building with three apartments or less wants to personally move into your apartment or sell the building to a buyer who wants to live in your apartment and the contract for sale calls for your apartment to be vacant at the time of closing (legal action may be started after a second legal notice)

Should I give my landlord oral or written notice of problems?

It is best to first call your landlord and then send a letter confirming the details of your conversation. Retain a copy of the letter for yourself so that, if necessary, you will later have proof of notice having been given.

What if my apartment building is being converted to a condominium or co-op?

The Senior Citizen and Disabled Protected Tenancy Act of 1981 as amended protects senior citizens and the disabled from eviction because of a conversion of property to condominiums or co-ops when the household income is no higher than three times the per capita income in the county in which they live or \$50,000, whichever is greater; and when the individual is more than 62 years old or is the surviving spouse of a senior citizen who has used the unit as a principal residence for one year and who is at least 50 years of age. The protection is good for a period of 40 years. The law also protects a disabled person who is totally and permanently unable to work because of a physical or mental impairment or blindness when that person also meets the income standards and has lived in the building for at least one year.

Am I required to pay my landlord a security deposit?

Landlords are entitled to require payment of a security deposit. The amount of that deposit may not exceed 11.2 months rent. (If you are on Section 8, the landlord may not collect more security than your share of the rent, or \$50, whichever is more.) In addition, the deposit must be kept in an interest-bearing account and the tenant is entitled to the interest annually or on the anniversary of the lease. Within 30 days of receipt of the deposit, written notice must be provided to you by the landlord identifying the bank where the deposit is being held. If such notice is not provided, you may apply the deposit against your rent and the landlord is not permitted to require that further security be posted.

When you terminate your tenancy at the end of the lease period, your landlord must refund the security deposit to you with interest within 30 days. Any deductions from the deposit must be itemized. Deductions are permitted only for damage to the apartment beyond ordinary wear and tear. If the landlord fails to comply with those obligations, he or she may be liable to double damages, court costs and attorney fees.

Is the landlord obligated to make repairs to my apartment?

Yes. If the repairs are required to maintain vital facilities in the apartment and the damage results from ordinary wear and tear, the landlord is obligated to make the repairs.

What if the landlord refuses to make necessary repairs?

You should notify the landlord of the need for repairs and allow him or her reasonable time to act upon your request. If the landlord refuses to make the necessary replacement or repair, you may have the repairs made yourself and deduct the cost from your rent, or you may temporarily set aside the rent. If you choose to authorize the repairs yourself or set aside the rent, you should first consult an attorney to be sure the repairs are serious enough to stand up in court.

Home Equity Conversions

What is a home equity conversion?

Home equity conversions are methods that allow homeowners access to the equity tied up in their homes without being forced to move or repay a loan from limited income.

While there are several forms of home equity conversions, the most common are sale-leaseback and reverse mortgage.

What is a sale/leaseback?

Under a sale/leaseback, an investor purchases the homeowner's home and grants the seller a life tenancy. The seller may receive a lump sum payment from which a life annuity is purchased, or may receive monthly mortgage payments from which rent is deducted. The specific arrangement is often dictated by tax considerations. An advantage of this approach is that the seller's income is protected against the buyer's default by the mortgage and the annuity purchased at the time of sale.

What is a reverse mortgage?

A reverse mortgage is a loan made by a lender to a homeowner that provides either a lump sum, a line of credit or monthly payments to the homeowner. Typically, the loan does not have to be repaid until the homeowner moves, sells, or dies. The money received from the lender is not counted as income for purposes of eligibility for public benefits, such as Medicaid, food stamps or SSI.

The U.S. Department of Housing and Urban Development (HUD) sponsors a program called the Home Equity Conversion Mortgage (HECM), a reverse mortgage program that is insured by the federal government. Theoretically, this mortgage can be made through any bank or mortgage company that is a Federal Housing Administration (FHA) lender. Some FHA lenders do not participate, but you can call local FHA lenders or the housing specialist at the New Jersey Division on Aging in Trenton to find a participating lender.

Some of the features and requirements of HECM are:

- Flexible payment options
- Adjustable-rate mortgages
- Loan repayment cannot exceed the sale proceeds of the house even if the loan and interest exceed this amount
- HECMs are available only for single-family homes
- All owners of the home must be at least 62 years of age
- Applicants must receive counseling from a HUD certified counseling agency that is separate from the lender

What are the other programs that are available?

Some local lenders have their own reverse mortgage programs, which vary in terms and features from those listed previously.

Should I obtain legal advice if I want to pursue a home equity conversion?

Yes, Since a home equity conversion involves what is often one of the most valuable asset, it is vital to consult with an attorney and a financial advisor before undertaking such an arrangement. Like all loans and contracts, home equity conversions involve fees, penalties and obligations as well as the benefits. All of these must be fully understood by the consumer before he or she decides whether or not the particular arrangement is appropriate under the circumstances.

Getting Control Over Financial and Personal Decisions

What can I do now, while I'm healthy, to protect myself in the event of a future disability?

The United States Department of Health and Human Services estimates that while the vast majority of the 40 million Social Security beneficiaries are capable of maintaining independent lifestyles, approximately 20 percent of that number will suffer from some incapacity that will require them to delegate decision making to someone else. There are several legal actions that you can take now to make your own choice and to avoid court imposed decision-making.

Some of these actions (such as direct deposit of Social Security benefits and third-party payment accounts) can be taken directly by you. It is most advisable, however, to consult an attorney when considering joint ownership of property, the *inter vivos* trust, the durable power of attorney, and the other legal choices listed in this booklet.

Can I have a direct deposit of my social security check?

Yes, more than 75 percent of eligible New Jersey-ites have their Social Security checks deposited directly into their bank accounts. If you are a beneficiary interested in direct deposit, you should go to your financial institution and sign an authorization, Form 1199, which will be sent to the Treasury Department. Thereafter, Social Security benefits will be electronically transferred to your bank on the third day of each month. The funds will be in the bank despite rain, sleet or snow; you won't have to stand in line each month to cash or deposit your check; if you are hospitalized or away from home for an extended period of time, your checks won't pile up in the mailbox; and you don't have to worry about your checks being lost or stolen. Many banks offer free checking to older adults who sign up for direct deposit. You might want to shop around for one that does.

When opening your direct deposit account, it would also be prudent to execute a power of attorney at the same time at the bank. This power of attorney gives a person that you choose the power to handle your bank account if you are unavailable (perhaps on vacation or incapacitated). It is imperative that the person you appoint be trustworthy.

What are the legal implications of the joint ownership of bank accounts and other property?

Many older Americans treat the joint bank account as an inexpensive and convenient device among family members so that when one is incapacitated, the other can still have access to property. If you open up a joint bank account larger than a small household account, you should be aware that the account may be depleted by an untrustworthy joint owner, or that the entire account may be seized by a creditor of the co-owner.

When it comes to ownership of the home, joint ownership between husband and wife may be desirable because upon death of a spouse, the home is transferred to the surviving spouse, even if the spouse died without a will.

What is a durable power of attorney?

All persons interested in choosing someone to manage their financial and personal affairs in the event they become incapacitated should consider executing a durable power of attorney. Maybe you need it; maybe you won't. But if you have one and you become incapacitated, it will avoid the necessity of having someone go into court to seek conservatorship or guardianship over you.

Even though it is called a power of attorney, the person carrying out your wishes does not have to be an attorney. That person can be anyone you choose. You are called the principal in this document; the person you choose is called the agent.

In executing a durable power of attorney, you can decide when you want it to take effect. You can have it take effect immediately and continue in effect even if you become disabled; or you can decide that you want one that will become effective only if you become disabled. The latter is called a springing power of attorney.

Even though you execute a power of attorney, the person you name may have problems convincing other people to recognize it. To help solve these problems (even if you make it a general power of attorney which says your agent can do everything you would do if you were able to) your lawyer should list specific duties of your agent. You should also execute several original documents at the same time, as some people or companies may not accept copies.

It would be prudent to name a substitute agent in the document to carry out your wishes in the event the agent named is unable to do so.

You should be aware of an important aspect of the use of power of attorney. There is no court review of your agent's actions unless you go to court for an accounting, so it is imperative that the agent be trustworthy.

A durable power of attorney ends at your death unless you revoke it during your lifetime. Upon your death, any power of attorney you have signed terminates, and your will becomes operative. The person you have named as executor then has a duty to carry out your intentions.

A durable power of attorney becomes effective immediately upon executing the instrument and remains in force despite your incapacity. A springing power of attorney will only take effect upon your incapacity. Remember, all power of attorney instruments can be revoked only in writing by you, or when they terminate under their own terms. Thus, it is particularly important to trust whomever you ask to be your power of attorney.

What is an *inter vivos* trust?

You may want to consider creating a revocable living trust in addition to a durable power of attorney. An *inter vivos* trust is also commonly known as a living trust. You are named as a beneficiary and a relative, your lawyer, or a financial institution is named as trustee. The trustee or fiduciary must adhere to high standards of responsibility so that the danger that your funds may be misappropriated is minimized.

What is a representative payee for Social Security?

If you should become incapacitated without having made any of the choices listed above, there are still other alternatives available to you to permit other people to handle your affairs. If your source of income is Social Security, the law permits a person designated by the Social Security Administration to receive and use your benefits for your necessities. A third party (a guardian or spouse, a friend, a public or non-profit agency, or a private institution licensed under State law) may apply to become a representative payee. Usually determination is made on the basis of a doctor's note.

No hearing is required. The only notice is a letter to you that if you do not object within 10 days, the third party will be named as your representative payee. Your future checks will be made out in the name of your representative payee for your benefit, e.g., Mary Smith for John Smith. The device can be a two-edged sword: it can be helpful in providing quick access to your funds, but it can also be used by vindictive family members or dishonest persons since Social Security requires little proof of incapacity. However, a law effective as of 1991 requires that the Social Security Administration conduct a face-to-face interview, if practicable, and obtain the prospective representative payee's Social Security number to determine if that person has ever previously misused funds as a payee.

What is a conservatorship?

If you have not made arrangements described earlier in this booklet and you should become incapacitated, New Jersey permits you or a third party to ask a court to appoint a conservator to handle your financial affairs. That person must be bonded so that if your assets are misappropriated, you would have recourse against the bonding company. Furthermore, you would not have to be judged incapacitated and lose your civil liberties; the court would have to determine only that because of advanced age, physical infirmity or illness, you are unable to handle your affairs. The law provides for payment to your conservator from your estate.

What is a guardianship?

If two doctors state that you are mentally incapacitated (i.e., unable to handle your affairs), a family member or friend can commence guardianship proceedings. In these proceedings, in which you will be represented by a court-appointed attorney, a judge can declare you mentally incapacitated and appoint the family member or friend as your guardian if he or she agrees with the doctors and finds the proposed guardian ready, willing, and able to act on your behalf. The two physicians, the court-appointed attorney (who advocates the position of the alleged incapacitated), the attorney who represents the petitioner in the guardianship action, and possibly a lawyer, known as a guardian ad litem (who represents the alleged incapacitated in a neutral, investigative capacity), will have their services paid by the incapacitated person's estate. If you are found to be incapacitated, you lose all rights, the right to vote, to make wills, to contract, to marry, to move. Of course, if at a later date you regain your capacity to make decisions, you can commence a court proceeding to terminate the guardianship. But because of these severe consequences, it is prudent to plan now, while you are in good mental and physical health, for possible incapacity. Unless a person makes good use of the tools for control

over financial and personal decisions, he or she will be vulnerable to having someone else make the final decisions regarding the last years of life.

Social Security Retirement Benefits

NOTE: The information in this section is subject to change. For the most up-to-date information check the Social Security website at www.ssa.gov or call your local Social Security office.

What factors should I consider when deciding when to retire?

There will be several factors involved in your decision about retiring. A company pension, for instance, may influence your decision. Your ability to keep on working and your own financial situation will also influence your decision. Finally, the rules of the Social Security program may affect your decision regarding when you should retire.

How will retirement affect my benefits?

The normal retirement age had been 65. However, to cope with the demographics of an aging population and the longer life span of the individual worker, the normal retirement age was increased gradually beginning in 1999. When the change is fully phased in 2022, the normal retirement age will be 67, as is evidenced by the table on the following page.

Even if you don't plan to retire at your full retirement age, it is important for you to contact Social Security two or three months before you or your spouse reach your full retirement age to arrange for your Medicare health insurance protection. If you wait until the month you reach full retirement age or later, you will lose one or more months of Medicare medical insurance protection.

This is important because many private and non profit health insurance plans adjust their coverage when a person reaches retirement age to take account of Medicare coverage. You may want to get in touch with your insurance agent or the office where you pay health insurance premiums to discuss your health insurance needs in relation to Medicare protection.

What effect will early retirement have on the benefits I receive?

A person who starts retirement benefits before full retirement age will receive a permanently reduced benefit. If a non-disabled worker retires after age 62 but before normal retirement age, the Social Security check is reduced by 5/9th of one percent for each month between the age of actual retirement and the then prevailing normal retirement age.

Benefits can be paid only for months you are eligible throughout the entire month. This means that unless your birthday is the first or second day of a month, you cannot receive a check for the month you reach 62. In general, if you apply for early retirement benefits, your checks can start no earlier than the month you apply. If you wait until full retirement age to apply, you generally get back payments up to six months, but not before the month you reach full retirement age.

How will work affect my retirement benefits?

You can work after you become eligible for Social Security checks. The real question is: How much can you earn and still get retirement checks? The answer depends on your age.

In 2003, if you have reached full retirement age (currently 65 years and 6 months), you are entitled to receive all of your Social Security benefits regardless of the amount of your earnings. If you have not reached retirement age, you can receive all of your expected Social Security benefits as long as your annual earnings do not exceed \$12,000. If you are under age 65 and you earn more than \$12,000, your Social Security benefits will be reduced by \$1 for every \$2 of earnings over the limit. If you are under age 65 and receiving Social Security retirement benefits, you must report your earnings annually before April 15 on special forms that can be obtained from your local Social Security office.

NOTE: It is important to notify Social Security promptly about changes that could affect your checks. Failure to report changes can result in Social Security making an overpayment to you. If you are overpaid, Social Security will take action to recover any benefits not due you. Also, if you fail to report changes or you make a false statement, you can be penalized with a fine or imprisonment.

What if I delay my retirement?

If you choose to defer retirement, each month of delay after attainment of full retirement age leads to an increase in the eventual benefit. If retirement is delayed until 70, you will receive increases.

After you start receiving full retirement benefits, you are permitted to continue working without jeopardizing benefits. In many cases, working longer will result in a higher salary and will cause your Social Security check to increase because of the higher earnings. This is really apparent with some private pension plans, where benefit amounts are based on the income earned in the three or five years just prior to retirement rather than on average compensation throughout a career.

Eligibility for Medicare is dependent on your having attained age 65 or having been disabled for two years, not on employment status. Delaying your retirement does not impair your eligibility for Medicare, although you will have to make an application for a Medicare card, unlike retirees who are automatically enrolled in Medicare Part A. In many situations the employer's group health insurance plan (EGHP) will have primary responsibility for insuring the over-65 worker (and the spouse of the older worker), with Medicare taking only a secondary role.

How do I apply for Social Security?

When you apply for retirement benefits, Social Security will check your Social Security record, which shows all of your earnings covered by Social Security. Social Security will then figure your exact benefit rate. Your rate will depend on your age and the amount of earnings reported for you. Wage credits are available for World War II and post-World War II service, unless you are eligible for another federal benefit based on such service. If you are eligible for certain Railroad Retirement benefits, you may be barred from receiving Social Security. If you were employed in a foreign country, which has a totalization

agreement with the United States, you may receive wage credits for Social Security benefits. Once you are on the Social Security benefit rolls, your checks will increase automatically to keep up with increases in the cost of living.

When do my checks start?

If you apply two or three months before your retirement month, your checks start for the month you retire. If you apply closer to the month in which you are retiring, your checks will usually start six to eight weeks after you apply and have submitted to Social Security all the required evidence.

Historically, payments are made on the third of each month for the previous month, and may be directly deposited into your bank account. In order to stagger the workload, Social Security has developed a new system. If your birthday falls between the first and the 10th of the month, payments are made on the second Wednesday of the month, between the 11th and the 20th, payments are made on the third Wednesday of the month and between the 21st and the 31st, payments are made on the fourth Wednesday of the month. The benefits are not prorated for the month you die. Even if you die on the last day of the month, the check received the next month must be returned to the Social Security Administration.

Why do I need to notify Social Security of any changes that may affect my benefits?

It is important to notify Social Security promptly about changes that could affect your checks. Failure to report changes can result in Social Security making an overpayment to you. If you are overpaid, Social Security will take action to recover any benefits not due you. Also, if you fail to report changes or you make a false statement, you can be penalized with a fine or imprisonment.

What can be done if Social Security benefits are stopped?

You do not get a hearing before benefits are stopped, but you do have the right to appeal the matter. To appeal, go to your local office and the staff will assist you in filling out the correct forms. Your termination letter will set out the time limits for appeal.

Are Social Security benefits taxed?

Beginning in 1984, a part of your Social Security benefit can be included in your taxable income depending on your adjusted gross income, and the amount of your benefits.

What can be done if I am turned down for Social Security?

An attorney can be extremely helpful in assisting with Social Security appeals. If you are virtually without funds, you may be eligible for free legal assistance from your local Legal Services office. If you are not eligible for free help from the Legal Services office, you should seek guidance from your county office on aging or from a private attorney. If the attorney wins the case for you, his or her fee will be taken from the Social Security award. The lawyer's fee will be set by the Social Security Administration and will be paid directly from the amount awarded.

The first step in the appeals process is a request for reconsideration, which must be filed within 60 days of receiving the notice of the denial. During the reconsideration stage, the applicant has the right to present new evidence.

If the application is again denied, the applicant has 60 days in which to request a hearing before an administrative law judge. At the hearing, the person appealing can have an

attorney represent him or her. Evidence can be presented, witnesses can testify (the judge can order witnesses to appear and testify), and Social Security Administration experts can be challenged by means of cross-examination.

The third stage involves a review by the appeals council that must be filed within 60 days of the decision by the administrative law judge. The last step in the appeals process involves a lawsuit in federal court.

Missing any of the time limits (without good cause) for filing an appeal means that the right to appeal may be lost. However, a new application for benefits can often be made and the whole process will start over again.

What happens if the Social Security Administration says I received more benefits than I was entitled to?

As soon as the notice of the over-payment is received, write to the Social Security Administration, filing a petition for reconsideration and a waiver.

Ask for a detailed month-by-month accounting of how and why the over-payment was figured. Keep asking questions until the matter is understood. At the reconsideration stage, you can contest the claim that you were overpaid. For example, if the Social Security Administration thinks veteran's benefits were received in January, February and March, and they actually didn't come until April, the matter can be resolved at this stage.

If the overpayment was figured correctly, then only file a petition for waiver, in which you ask the government not to collect the money. A person qualifies for a waiver if he or she was not at fault in causing the overpayment and repayment would cause a hardship.

If the waiver is denied, ask for a reconsideration of waiver. Asking for this reconsideration within 10 days of receiving notice of the waiver denial will prevent a check from being cut off. If this reconsideration is denied, the Social Security Administration will withhold money or cut off the check, but you still will have all your rights to a hearing and to use the rest of the appeals process. You can also ask the Social Security Administration to withhold a smaller amount from each check rather than to have an entire check stopped. An attorney can be extremely helpful in appealing overpayment cases.

Supplemental Security Income

NOTE: The information in this section is subject to change. For the most up-to-date information check the Social Security website at www.ssa.gov or call your local Social Security office.

What is Supplemental Security Income?

Supplemental Security Income (SSI) is a federal program under the Social Security Act. The federal government runs the program and pays most of the benefits. The state adds a supplemental benefit, and both are included in the monthly SSI check that recipients receive. The purpose of SSI is to provide a minimum income to low-income people who are 65 or older, blind or disabled.

What is the difference between SSI payments and Social Security benefits?

Although SSI payments and Social Security benefits are both made by the same Social Security offices, the two programs are different. SSI provides income maintenance for low-income people who are 65 or over, or who are disabled and cannot work. Social Security is an insurance program.

Social Security benefits are available only to those who pay for the insurance protection it provides. Unlike Social Security, SSI is based on need. SSI does not require anyone to pay into the program in order to be eligible for benefits.

Who is eligible for SSI?

To qualify for SSI, you must be at least 65 years old, blind, or disabled. You must also be a U.S. citizen living in the United States, or a legally admitted permanent resident of the United States, or a permanent resident living in this country under a special status such as a refugee.

SSI is intended to assist persons in financial need. If your income is more than the limit allowed, you will not be eligible for SSI. The Social Security office or your County Office on Aging can explain limits on income and other resources.

What are the benefits?

The basic SSI benefits are monthly cash benefits. Some factors reduce benefits, e.g., living arrangements or monetary assistance from friends or family. Income is measured in three-month periods, or quarters. These quarters end March 31, June 30, September 30, and December 31. All income obtained in a quarter is divided among the three months affecting benefits for each month equally.

How can I apply?

Any person has the right to apply for SSI. Although Social Security office workers may claim you are ineligible, they may not prevent you from filing an application. You may file an application at any Social Security office.

What if my eligibility changes?

Report any change in your situation to the Social Security office. If an overpayment results from your knowing failure to report a change, a penalty may be assessed. Prompt reporting of changes may avoid overpayment problems. In some cases, prompt reporting may result in benefit increases being received sooner.

What if I am overpaid?

An overpayment occurs when a person receives payments for which he or she is ineligible, or which are larger than they should be. Overpayments generally occur when a change in status has been reported, but the next check is sent before the benefit amount can be adjusted. Status changes include hospitalization, death of spouse, change in living arrangements, and additions to resources or income.

The law requires Social Security to try to recover overpayments. To regain payments, Social Security may get the person who was overpaid to agree to an immediate repayment or a repayment schedule; or deduct the amount of the overpayment from future payments; or go to court to recover the amount of the overpayment, plus court costs and fees.

Recovery of overpayment affects only future SSI payments. It does not affect payment of regular Social Security disability payments.

Note: Where a person remains SSI eligible, recovery of overpayments will generally be made by deducting the amount from future SSI payments; up to 10 percent of the monthly check may be withheld to recoup the overpayment.

The law allows Social Security, in certain cases, to give up its right to collect an overpayment. If you are overpaid, you have the right to waiver if you were without fault, and if certain conditions apply.

If you offer to repay an overpayment, Social Security must explain your waiver rights. It must do this before it allows you to make any repayment. In fact, Social Security cannot take any action to collect an overpayment until it has first notified you in writing of the total amount owed, the action being taken by Social Security, and the time allowed for bringing an appeal.

Can I challenge an overpayment determination?

If Social Security tells you that overpayment has been made and must be repaid, there are two ways you can fight it. You can ask for a reconsideration and waiver. A reconsideration request alleges that a Social Security overpayment claim is incorrect and asks for a review of the finding. A waiver request asks that you not be made to pay the money back even if the finding of overpayment is correct. The reconsideration and/or waiver must be requested within 60 days of the notice of overpayment.

What if I receive less than I should?

A change in circumstances could entitle you to more benefits. If this happens and Social Security does not increase the amount of your check as soon as it occurs, it would owe you all benefits that should have been paid. The amount due is called an underpayment.

When you receive less than you should, bring the fact to the attention of a claims representative. Proper documentation of the status change must be shown in order to raise benefit levels. There is no time limit on the retroactivity of benefits when an underpayment is discovered.

What if I get duplicate checks?

Each SSI check has the words Supplemental Security Income on its face and has the month for which it is intended written plainly on it. If two checks for the same month arrive, do not cash both. Contact the Social Security office immediately and return the extra check.

Can I question the decision made on my SSI claim?

A written notice is sent to you when Social Security makes a decision that you are not eligible for SSI checks, that your SSI checks will stop, or that there will be a change in the amount you get. Be sure to read both sides of the notice for important information. If you don't agree with the decision, you have a right to appeal.

You have a right to be represented by a qualified person of your choice when you appeal a decision. An attorney's advice and representation can be very helpful. All appeals must be filed within 60 days of the date of the decision that you are appealing unless you have a good cause for filing late.

NOTE: The information in this section is subject to change. For the most up-to-date information check the Social Security website at www.ssa.gov or call your local Social Security office.

Medical Expenses

What is Medicare?

Medicare is a federal program of health insurance. To be eligible for Medicare, one must have paid into the Social Security system while he or she was employed for at least 40 quarters and be 65 years of age or must have been receiving Social Security Disability Insurance for 24 months. Medicare insurance helps pay for acute illness situations and not for long-term or custodial care. Part A Medicare is primarily hospital insurance. When a hospitalization occurs, the patient is required to pay a deductible of \$912. After that, Medicare will pay for most of the patient's expenses up until the 60th day of the hospitalization. After 60 days in the hospital, the patient is required to pay \$228 per day toward expenses. Part A Medicare will also help pay for stays in skilled nursing facilities, home health care, and hospice care if the patient qualifies. There is no premium for Part A.

Part B Medicare is physician services insurance. It will help pay for medical services, durable medical equipment, diagnostic tests, X-rays, and physical and speech therapies that are considered medically necessary. After the patient pays the first \$110 for Medicare-approved services, Medicare will pay 80 percent of the amount approved by Medicare for the service. The patient is responsible for the 20 percent that Medicare does not pay.

Also, the patient may have to pay the difference between what the doctor billed and Medicare approved unless the doctor accepts assignments. If assignment is accepted, the physician agrees to accept as the full fee the amount Medicare approves for the service. If you enroll for Part B, you must pay a monthly premium of \$78.20 for 2005.

In 2003, Medicare started paying for 80 percent of the cost of a mammogram once every year and a Pap smear test once every two years.

Many private health insurance companies sell Medicare supplemental insurance that will help cover a number of the gaps in Medicare insurance. The United States Congress has regulated this field so that now all companies must offer policies with 10 levels of coverage. It is important to understand what each level of coverage does and does not include.

Read each explanation of Medicare benefits that you receive regarding every claim that is submitted. If Medicare refuses to pay for something, you have the right to appeal the decision. The first step is to go to your local Social Security office and request an appeal. Medicare will then review your appeal and send you its decision. For a Part A appeal, if the amount at issue is \$100 or more, you have the right to a hearing before a United

States administrative law judge. At that hearing you can be represented by an attorney and may present evidence, including sworn testimony to support your case. If the amount at issue is \$1,000 or more, you will also have the right to take your case to federal court.

For a Part B appeal, if the amount at issue is \$100 or more, you have the right to a hearing before a Medicare hearing examiner. If the amount at issue is \$500 or more, you have a right to a hearing before a United States administrative law judge and if the amount at issue is \$1,000 or more, you have the right to take your case to federal court.

What is Medicaid?

There are currently a number of Medicaid programs in New Jersey, each with its own eligibility guidelines and covered services. These programs are designed to provide healthcare coverage to the poor, the disabled and the elderly. If, for example, you are unable to afford healthcare, you may be eligible for New Jersey Care that is a special Medicaid program. If you are approved for

Supplemental Security Income (SSI), you are automatically entitled to receive Medicaid. There are also a number of other programs that are similar to Medicaid in that they assist in affording you access to medical care or services.

What is the NJ EASE (New Jersey Easy Access, Single Entry)?

This program is a New Jersey Department of Health and Senior Services initiative, in partnership with county governments, to provide a new and easy way for senior citizens and their families to learn about and obtain needed services. Through NJ EASE access points, consumers can learn about community programs providing information and assistance, outreach, care management, transportation, senior centers, volunteer opportunities, health promotion, nutrition programs, education, health insurance counseling, adult protective services, and senior employment. Seniors and their families can also obtain information about in-home services such as friendly visiting, telephone reassurance, chore services, home health care and home-delivered meals.

What is PAAD (Pharmaceutical Assistance to the Aged and Disabled)?

This program helps eligible New Jersey residents pay for most prescription drugs, testing materials and supplies. Eligibility requirements for PAAD are based on the resident's income, covering insurances and marital status.

What is the Senior Gold Prescription Plan?

This plan provides pharmaceutical assistance to New Jersey residents whose income is too high for PAAD, but is not enough to adequately cover their prescription expenses each year.

What is the HAAAD program (Hearing Aid Assistance to the Aged and Disabled)?

This program provides a \$100 reimbursement to eligible persons who purchase a hearing aid.

What is the ECO program (Enhanced Community Options)?

This program offers several care alternatives to individuals who would otherwise qualify for placement in a nursing facility. The decisions involved in providing care to an elderly loved one can be confusing and overwhelming. Through ECO, the Caregiver Assistance Program (CAP) provides in-home services to an eligible New Jersey resident that supplement the services provided by the resident's family and friends.

What is the CCPED program (Community Care Program for the Elderly and Disabled)?

This program is a statewide program designed to help individuals remain in, or return to, their communities by providing a variety of support services. Eight services are available under CCPED. The services include case management, home health, homemaker, medical day care, non-emergency medical transportation, respite care, social day care and prescribed drugs.

What is the Lifeline (Utility Assistance Program)?

This program offers \$225 to persons who meet the PAAD eligibility requirements. This includes utility customers as well as tenants whose utility bills are included in their rent. Only one tenant in a household is entitled to this assistance. You are eligible for the Lifeline benefit if you are a recipient of PAAD.

What is the JACC program (Jersey Assistance for Community Caregiving)?

This program provides a broad array of in-home services and supports that enable an individual who would otherwise qualify for placement in a nursing facility to remain in his or her community home. By providing a uniquely designed package of supports for the individual, JACC is intended to supplement and strengthen the capacity of caregivers, as well as to delay or prevent placement in a nursing facility. JACC serves individuals who are not eligible for Medicaid or Medicaid waiver services, and participants will share in the cost of their services.

You should contact your county board of social services to determine whether or not you are eligible for any of the Medicaid programs.

An important Medicaid program is Medicaid Only. If you or a spouse have to enter a nursing home to receive custodial type care, your assets (other than your residence and various personal items which may be exempt under certain circumstances) are worth less than \$2,000, and the income of the person entering the home (including Social Security) is no more than \$1,737 per month for 2005, then you may be eligible for this government program, which can pay for substantially all of the cost of the nursing home. Moreover, it is possible for a married spouse who remains at home to preserve a significant portion of the assets of the couple if the other spouse is institutionalized. In 2003, the law permitted a minimum of \$18,132 of such assets to be protected. And, depending upon the amount of such assets, a maximum of one-half (but not exceeding \$90,660) may be preserved. In addition, in the case of married persons, it may be possible to have some of the income of the spouse in the nursing home paid to the at-home spouse, without affecting eligibility for Medicaid only.

Effective July 1, 1995, New Jersey instituted a Medically Needy Program for nursing home care. Persons who have income in excess of \$1,737 per month for 2005, must be covered by the Medically Needy Program. Persons who have income of less than \$1,737 per month have a choice between Medicaid Only and Medically Needy. Medically Needy does not have all of the coverage available through Medicaid Only. Medically Needy does not cover Medicare

Part B premiums, chiropractic visits, in-patient hospital services and out-of-nursing-home pharmaceuticals.

When considering an application for Medicaid, one should bear in mind that the rules are fairly complicated, and that transfers of assets to third parties (such as gifts to children) in order to become eligible for the program can result in a penalty period being imposed during which payments by the state will not be made for nursing home care.

OBRA-93 (Omnibus Budget Reconciliation Act of 1993), which is federal legislation effective October 1, 1993, made significant changes to Medicaid. Transfer of assets made within 36 months of application for Medicaid are penalized. The penalty is a period of ineligibility for Medicaid, determined by dividing the value of the assets transferred by the average cost of a nursing home in New Jersey. States must apportion the period of ineligibility between spouses so that only one penalty applies. In the case of joint assets, a withdrawal by one party is considered a transfer. The new law subjects transfers of income to a period of ineligibility. Transfer penalties can be avoided by returning all of the assets that were transferred. The law made significant changes in the area of trusts. However, certain types of trusts are still permitted. The secretary of health and human services was directed to promulgate regulations concerning annuities. As of this writing, those regulations have not yet been promulgated. States are now mandated to recover payments from the estates of Medicaid recipients.

If your application for Medicaid benefits is denied, if your Medicaid eligibility is terminated, or if Medicaid refuses to pay a claim, you have a right to a fair hearing before a New Jersey administrative law judge. At that hearing you have a right to be represented by counsel and to present evidence, including testimony, to support your case. The judge makes a recommendation to Medicaid regarding your case. Then, if Medicaid still denies your claim, you have a right to appeal to the Appellate Division of the Superior Court of New Jersey. In a situation where Medicaid has advised you that it intends to discontinue the payment of benefits, you may have a right to have benefits continued until your appeal has been decided.

At the time of this printing, the federal and state governments are considering substantial changes in both Medicare and Medicaid.

Nursing Homes, Assisted Living & Other Residential Facilities

What are the rights of nursing home residents?

Nursing homes provide nursing, rehabilitative and health-related care and services that cannot be provided outside an institutional setting.

Residents of a nursing home have the same rights as they had when they lived in an apartment or their home.

They pay the nursing home monthly for room, board and medical services. The nursing home is, on the one hand, the landlord of the resident for room and board, and on the other hand, the employee of the resident for medical services.

Ordinarily, upon entry into the nursing home, the resident or a family member signs a contract setting out the terms of payment, price for each service, and so forth. The resident and the family also get a copy of the nursing home residents rights, which include such things as the right to privacy; to manage one's own finances; to unrestricted personal visitation; to present complaints without fear of reprisal; to equal access to quality care without regard to source of payment; to a written plan of care and services; and to free choice of one's physician.

If the resident does not have enough money to pay for nursing home care, or runs out of money after paying privately, there are governmental programs that may pay for the care, including veterans if benefits, Medicaid and General Assistance. If a nursing home is Medicaid-certified, the facility cannot evict a resident because he or she becomes eligible for Medicaid. However, not all facilities accept Medicaid, and those that do not are permitted to discharge residents for failure to pay for their care. There are waiting lists for nursing home beds in many parts of the state, and those lists are longer for applicants who will enter as Medicaid or General Assistance eligibles than for those with substantial private resources.

The only way to be evicted from a nursing home is for non-payment, or if you are endangering yourself or others. Even then, there are notice requirements and the nursing home must find an appropriate facility to which you can go before the eviction can proceed. (A resident can always leave the facility for overnight visits or discharge him or herself).

If a resident needs to be hospitalized, the nursing home will hold the bed open for the resident's return as long as the bed is being paid for. Medicaid pays bedhold fees for 10 days. If the resident is in the hospital longer than 10 days, the resident gets the next available bed in the same nursing home upon discharge from the hospital. (Usually the hospital will keep the resident until the next bed opens).

If a nursing home resident has a complaint about the nursing home, he or she can complain to the administrator or to the New Jersey Office of the Ombudsman for the Institutionalized Elderly at 1-877-582-6995. The complaint to the ombudsman can be made anonymously or, if you give your name, it can be kept confidential if you so request. The ombudsman can go to the nursing home unannounced in order to investigate.

What are the rights of assisted living and other residential facility residents?

Assisted living means a coordinated array of supportive personal and health services, available 24 hours per day, which promote resident self-direction and participation in decisions that emphasize independence, individuality, privacy, dignity and homelike surroundings to residents who have been assessed to need these services, including residents who require formal long-term care. An assisted living residence is a facility that provides apartment-style housing and congregate dining while assuring that assisted living services are available when needed. Other residential facilities can include a variety of settings, such as personal care homes, adult day care, and adult medical day care services.

The rights to be expected at an assisted living or other type of facility are similar to those proscribed by law to nursing homes. Residences are to provide services that are consistent with the following principles of assisted living:

- To provide personalized services and care to meet each resident's needs
- To foster the independence and individuality of each resident
- To treat each resident with respect, courtesy, consideration, and dignity
- To assure each resident the right to make choices with respect to services and lifestyle
- To assure each resident's right to privacy
- To nurture the spirit and uniqueness of each resident
- To encourage families and friends to participate in resident service planning and implementation
- To provide opportunities for the assisted living facilities and programs to become a valuable community resource

What are the rights of boarding home residents?

Every resident of a boarding home shall have the right:

- To manage his or her own financial affairs
- To wear his or her own clothing and in the style he or she prefers
- To style his or her hair according to his or her preference
- To keep and use personal property in his or her room, except where the boarding house can show that this would be unsafe, impractical or interfere with the rights of others
- To receive and send unopened mail
- To unaccompanied use of a telephone at a reasonable hour and to a private phone at the resident's expense
- To privacy
- To hire his or her own personal doctor at his or her expense
- To privacy concerning his or her medical condition or treatment
- To unrestricted personal visitation with any person of his or her choice, at any reasonable hour
- To make contacts with the community and to achieve the highest level of independence and interaction with the community of which he or she is capable

- To present complaints on behalf of him or herself or others to government agencies or other persons without threat of reprisal in any form or manner whatsoever
- To a safe and decent living environment and care that recognizes the dignity and individuality of the resident
- To refuse to work for the boarding facility, except as contracted for by the resident and the operator
- To practice his or her religion or to abstain from religious practice
- To not be deprived of any legal right solely by reason of residence in a boarding house

Are owners allowed to retaliate against tenants who seek enforcement of their rights?

No owner, operator or employee shall serve an eviction notice upon a resident or take any other action in retaliation for:

- The efforts of the resident or a person acting on his or her behalf to enforce any rights under a contract or any law; or
- The good faith complaint of a resident or a person acting on his or her behalf to a government agency concerning the owner, operator or employee's alleged violation of any health or safety law, or other law regulating rooming houses or boarding houses.

Can I be evicted?

Residents of rooming and boarding facilities licensed by the New Jersey Department of Community Affairs may not ordinarily be evicted from such premises except for good cause as defined in New Jersey's Just Cause for Eviction Act. Unless otherwise directed or authorized by the Department of Community Affairs, an operator who wishes to evict a resident must follow the same procedures and substantive laws that govern the eviction of other tenants under the Just Cause for Eviction Act. Residents may not, therefore, be evicted unless an operator can prove one of 16 specific grounds for eviction. These grounds include: (1) non-payment of rent; (2) disorderly conduct; (3) destroying or damaging property; (4) violating a reasonable agreement in the lease or residency agreement; (5) violating the operator's rules and regulations; and (6) failure to pay a valid rent increase. The operator may only evict a resident by taking him or her to court and obtaining a court order called a judgment for possession.

Residents of residential health care facilities (RHCFs) licensed by the New Jersey Department of Health are not protected by the Just Cause for Eviction Act. However, such residents are entitled to at least 30 days advance written notice of a transfer or discharge from the facility. Additionally, except in an emergency, residents of RHCF's may only be removed from the premises (1) for medical reasons; (2) for their welfare or the welfare of other residents; (3) for non-payment of rent; or (4) for repeated violations of the facility's written rules and regulations. Residents may also be transferred or discharged if required by the department of health.

Elderly residents of nursing homes, residential healthcare facilities, boarding homes or any other such state-regulated facility offering health or health-related services to the institutionalized elderly, who experience abuse or exploitation from care providers, family members or strangers, should report these incidents to the Office of the Ombudsman for the Institutionalized Elderly at 1-877-582-6995.

How can I protect my rights?

The operator of a boarding house must make sure that a written notice of the rights of boarding home residents is given to every resident upon admittance to the boarding home and to each tenant already living there. The operator must also post the notice in a conspicuous public place in the boarding facility. The notice shall include the name, address and telephone numbers of the Office of the Ombudsman for the Institutionalized Elderly, county welfare agency and county office on aging.

Where their rights have been violated, residents can sue for damages, costs and attorney's fees. Any boarding or rooming house resident whose rights are violated has the right to bring a lawsuit against any person committing such a violation. The action may be brought to enforce such rights and to recover actual and punitive damages for their violation. A tenant who wins any such lawsuit is also entitled to recover reasonable attorney's fees and costs of the action.

Grandparents' Rights

What is a summary of grandparent's rights in New Jersey?

The relationship between a grandparent and a minor grandchild can be adversely affected under the following circumstances:

- The death of the grandparent's child where custody of the grandchild is with the surviving parent (the daughter-in-law or son-in-law, as the case may be)
- The divorce or separation of the parents of the grandchild
- The death of both parents of the grandchild
- Neglect in care by the parents or parental unfitness

In 1993, N.J.S.A. 9:2-7.1 was enacted. Under this law, a grandparent of a child residing in New Jersey may make application in superior court for an order of visitation. The court will consider the following factors:

- The relationship between the child and the grandparent
- The relationship between each of the child's parents, or the persons with whom the child is residing and the grandparent
- The time that has elapsed since the child last had contact with the grandparent
- The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing
- If the parents are divorced or separated, the timesharing arrangement that exists between the parents with regard to the child
- The good faith of the grandparent in filing the application
- Any history of physical, emotional or sexual abuse or neglect by the grandparent
- Any other factor relative to the best interest of the child

In June 2000, the U.S. Supreme Court restricted the ability of grandparents to gain visitation rights to a grandchild. The above New Jersey law is still valid. Nonetheless, the above law must be interpreted in conjunction with recent federal and state case law.

Wills

What is a will?

A will is a document, executed in accordance with state law, which directs how some or all of your property is distributed at your death. An executor is designated under your will who assembles the assets of your estate and pays debts and taxes. If you have a child who is a minor, a guardian should be appointed under the will who would serve if you and your spouse die before the child reaches the age of majority.

When must a trustee be designated under my will?

A trust is a separate entity that may be established under your will when appropriate. If a trust arrangement is part of your will, a trustee is to be designated to manage and distribute the trust funds. The trustee is directed to distribute the funds held by the trust to or on behalf of the beneficiary of a trust.

Do all of my assets pass under my will?

Property in your name alone passes under your will. Such assets are known as probate property. Typical examples are bank accounts, stock certificates and personal property, such as jewelry and motor vehicles. Assets that are not governed by your will are known as non-probate property. Assets held jointly, IRA accounts, of non-probate property. Joint property passes to the survivor and IRA accounts, retirement benefits and life insurance are distributed in accordance with the beneficiary designation.

What is the role of non-probate assets in planning my estate?

The goal in estate planning is to coordinate the disposition of non-probate assets with the plan for probate assets. For example, if you desire a trust for your spouse under your will, consideration should be given to designating the trustee of this trust as beneficiary of your insurance policies. In this manner, a non-probate asset such as insurance will pass as part of the overall estate plan.

How is my estate distributed if I die without a will?

The disposition of your assets if you do not have a will is governed by state intestacy law, which may not be in accordance with your intent. Administration of an intestate estate generally requires additional time and expense. Non-probate assets such as joint property, IRA accounts, retirement benefits and life insurance are not governed by the intestacy laws.

Must my spouse receive any part of my estate?

In New Jersey, if one dies while married, a spouse generally cannot be disinherited. The surviving spouse is entitled to receive a share of your estate equal to approximately one-third of your probate assets with certain adjustments. With the advice of an attorney, you can limit the amount your spouse inherits and also restrict such inheritance to certain assets.

When should I consider a new will?

Separation or divorce are situations that give rise to consideration of a new will. Other such situations are death of one or more major beneficiaries, a change in your financial situation or a change in probate or death tax law. In addition, special will provisions are required in the event a beneficiary under your will is disabled, such as a physical disability or a mental illness.

Must an attorney be consulted to prepare my will?

The need for a will or the appropriate time to change a will involves legal questions that should be resolved after discussing the situation with your attorney. Moreover, the requirements for the validity of a will and the terms of your will are matters that require the advice of an attorney. While you can prepare your own will, this may be imprudent, as an improperly prepared will can give rise to many problems, such as invalidity of the will and court costs for your estate.

How can I make sure my wishes for my funeral are carried out?

Making arrangements ahead of time for your own funeral can assure you that your wishes will be carried out. These arrangements should be made with your family and local funeral director, and not put in your will. In most cases, wills are not read until the deceased has already been buried, so making plans with the funeral director and letting your family know which funeral home has your instructions is advisable.

In New Jersey, you can set up a burial fund to help pay for your funeral. The arrangements are made with a funeral director, but this money is kept by the state of New Jersey in an interest-bearing account. This means that if you decide to change funeral directors, you can do so without any problems. You can also withdraw the money if you change your mind or need it for something else.

People preparing for Medicaid or SSI eligibility can also set up a funeral fund. The money deposited and the interest it accumulates will not be counted as an asset by either Medicaid or SSI. However, the fund for those on Medicaid or SSI is irrevocable, that is, once you go on Medicaid or SSI, you can change funeral homes, but you cannot withdraw the money from the fund. It can only be withdrawn at the time of your funeral.

Living Wills

Do I have the right to refuse medical treatment?

Each individual has the right to refuse medical treatment if that individual has the information necessary to make that decision. This means that a medical provider cannot treat a person (except in an emergency) without the person's consent after that person has been told of the advantages and disadvantages of the proposed treatment.

What if I become incapacitated?

What happens, however, if a person does not have the capacity to make a decision or give informed consent to medical treatment because he or she is incompetent or comatose? With regard to the refusal of life-sustaining treatment, New Jersey law provides that if a

person has expressed his or her wishes in an advance directive for medical care, those wishes will be respected by the doctor or other medical provider.

If you wish to make your medical preferences known now, when you are competent, so that your wishes will be known should you be unable to express them yourself, you should consider putting them in writing through an advance directive for healthcare. An advance directive may be either a living will or a durable power of attorney for medical care or a combination of both.

What is a living will?

A living will is a statement of the medical treatment you want or do not want if you should become incompetent and unable to communicate those preferences yourself. A durable power of attorney for medical care, also called a proxy directive, is a document in which you designate someone trustworthy to make those health decisions for you should you become unable to make them yourself. You should discuss your medical care preferences at length with any person or persons you choose as your proxy decision maker.

You may wish to have a document combining both your living will and proxy directive. In that document, you may state your medical preferences but provide that a proxy decision maker should be consulted if there is any confusion over your wishes or you have not considered a medical technology that was unavailable when your medical directive was written.

You must give your advance directive to your attending physician or the medical institution caring for you. Your advance directive will be used when your attending physician determines you lack the capacity to make a medical decision and a second doctor confirms that opinion.

If you have provided so in your advance directive, life sustaining treatment will be withdrawn only if you are permanently unconscious and your condition is terminal.

It may also be withdrawn if you have a serious irreversible illness. Your physician may also issue a do not resuscitate order based on your advance directive.

If you have an advance directive but change your mind, perhaps at a hospital, you may revoke your directive orally or by creating a new advance directive encompassing your most recent wishes.

Although the law does not require that advance directives be drawn and executed by attorneys, as does New Jersey law regarding wills, it is, nevertheless, prudent to consult an attorney for those important decisions so that there will be no question or doubt about your document when it is needed. Advance directives must be signed in the presence of two witnesses or in the presence of a notary.

For free copies of advance directive forms, contact the New Jersey Division on Aging, CN 807, Trenton, NJ 08625 or call the New Jersey Division of Senior Affairs Information, Referral and Assistance Service at 1-877-222-3737.

Elder Abuse

How is elder abuse a problem in the United States?

Approximately one million elderly Americans are victims of abuse, mostly women over the age of 75, often by their own caretakers. Elders who depend on relatives or neighbors find it hard to protect themselves against this abuse. Often, abused elders feel they should put up with the abuse because the abuser also provides necessary care. In 1993, the Legislature passed the Adult Protective Services Act, N.J.S.A. 52:27D-407. Below are a few terms covered in the act.

What constitutes elder abuse?

Under the act, abuse is defined as any willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation of services that are necessary to maintain a person's physical and mental health.

What constitutes elder neglect?

Neglect is defined as an act or failure to act that results in inadequate provision of care or services, which may result in serious injury or is life-threatening.

What constitutes the exploitation of a senior?

Exploitation means the act or process of illegally or improperly using a person or his or her resources for another person's profit or advantage. An example would be the misuse of a person's money or possessions.

Who is defined as a vulnerable adult?

A vulnerable adult is defined as a person 18 years of age or older who resides in a community setting and who, because of physical or mental illness, disability or deficiency, lacks sufficient understanding or capacity to make, communicate, or carry out decisions concerning his or her well-being, and is the subject of abuse, neglect or exploitation.

What are the legal reporting implications of reporting elder abuse?

A person who has reasonable cause to believe that a vulnerable adult is subject to abuse, neglect or exploitation may report the information to the county adult protective services provider or the local police. The person making such a report is immune from civil and criminal liability arising from the report. An employer or other person may not take discriminatory or retaliatory action against an individual who makes such a report.

Who makes the evaluation, determination and referral whether protective services are required?

The county adult protective services provider makes an evaluation and a determination regarding whether or not protective services are required. A referral is then made to the appropriate agency, hospital or organization.

How can a court order be obtained?

A court order can be obtained to provide such services. The county adult protective services provider is authorized to initiate guardianship, conservatorship or civil commitment actions if a permanent change in living situation is required. Criminal activity by a caretaker would be reported.

When will a criminal report be issued?

The county director of adult protective services is authorized to report criminal activity on the part of a caretaker to local law enforcement officials.