

YOU AND THE LAW

Aging With Dignity

Program

- 12:00 p.m.** **Registration and Exhibitors**
- 1:00 p.m.** **Introductions**
Thomas H. Miller, Esq.,
Chairman, Roanoke Law Foundation
- 1:05 p.m.** **Long Term Care - Continuum of Care**
(Home, ILF, Day Care, SNF, ALF, CBC, PACE,
LTC-NH, Hospice)
Rhona S. Levine, Esq.
Sponsored by Medical Facilities of America, Inc.
- 1:25 p.m.** **Paying for Long Term Care**
Ann McGee Green, Esq.
Sponsored by Anderson, Desimone & Green, PC
- 2:00 p.m.** **Employing Caregivers**
Mark W. Dellinger, Esq.
Sponsored by SunTrust
- 2:30 p.m.** **Break**

YOU AND THE LAW

Aging With Dignity

- 2:40 p.m.** **Gifts: Friend or Foe**
Rhona S. Levine, Esq.
Sponsored by Valley Wealth Management Services, Inc.
- 2:50 p.m.** **Free Ways to Safeguard Resources from
Exploitation**
Christopher A. Desimone, Esq.
Sponsored by Carl M. Grove, Financial Advisor
Edward Jones
- 3:20 p.m.** **Medicare: Has Anything Changed?**
V. Anne Edenfield, Esq.
Sponsored by V. Anne Edenfield,
Attorney and Counsellor at Law
- 4:00 p.m.** **Panel and Wrap Up**

Today's *You and the Law: Aging With Dignity* video and the handouts can be found at www.roanokelawfoundation.com.

YOU AND THE LAW

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YOU AND THE LAW

Aging With Dignity

Salem Civic Center

April 9, 2014



10 Standard Medigap Plans

Plans										
Basic Benefits	A	B	C	D	F	G	K	L	M	N
Part A Hospital (Days 61-90)	X	X	X	X	X	X	X	X	X	X
Lifetime Reserve Days (91-150)	X	X	X	X	X	X	X	X	X	X
365 Life Hosp. Days-100%	X	X	X	X	X	X	X	X	X	X
Parts A and B Blood	X	X	X	X	X	X	50%	75%	X	X
Part A Hospice Care Coinsurance or Co-Pay	X	X	X	X	X	X	50%	75%	X	X
Part B Coinsurance-20%	X	X	X	X	X	X	50%	75%	X	X
Additional Benefits	A	B	C	D	F	G	K	L	M	N
Skilled Nursing Facility Coinsurance (Days 21-100)			X	X	X	X	50%	75%	X	X
Part A Deductible		X	X	X	X	X	50%	75%	50%	X
Part B Deductible			X		X				X	
Part B Excess Charges					100%	100%				
Foreign Travel Emergency			X	X	X	X			X	X
Annual Out-of-Pocket Limit							\$4,640	\$2,320		

Senior Citizens HANDBOOK

Laws & Programs Affecting Senior Citizens in Virginia

A project of the Senior Lawyers Conference of the Virginia State Bar

2013 Edition

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PREFACE

The Senior Lawyers Conference of the Virginia State Bar was established in June of 2001, having previously been a VSB section. Its membership of VSB members who are fifty-five years of age or older is more than 16,000. The conference website is <http://www.vsb.org/site/conferences/slc/>.

The conference strives to apply the knowledge and experience of the profession to the public good and to promote the welfare of senior citizens.

With the encouragement and support of the bar and the judiciary, the distribution of this handbook throughout the commonwealth is provided as a benefit to Virginia's senior citizens. It is our hope that the handbook will continue to serve as a valuable resource to senior citizens in addressing their needs and concerns. Because of the fact that certain areas of the law are in almost constant change, in those particular areas, the information which is provided is an overview of those areas, with references and contact information being provided to enable the users of this handbook to gain access to ongoing telephone and online sources of updated information.

The Senior Citizens Handbook is also available online as a pdf document at <http://www.vsb.org/docs/conferences/senior-lawyers/SCHandbook.pdf>. In addition, from time to time, addenda or supplements to the Senior Citizens Handbook may be provided at <http://www.vsb.org/site/publications/senior-citizens-handbook>.

If you do not have your own computer to do research, you may be able to use a computer at your local public library, or at a resource center located in the apartment, assisted living center, or continuing care retirement community where you reside.

CAUTION: If you use a public or shared computer, do not provide any of your confidential personal information or data; otherwise, you may become the victim of identity theft.

Virginia State Bar

ACKNOWLEDGEMENTS

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FINANCIAL ASSISTANCE

Some important notes:

The United States Treasury announced that those who began receiving Social Security checks before May of 2011 had until March 1, 2013, to sign up for electronic payments. Those who did not sign up to have their Social Security checks direct-deposited by that date will receive their benefits through the Direct Express card program. Most recipients already receive their monthly benefits by direct deposit into their bank accounts.

Who is impacted by the end of paper checks? The change applies to Social Security, Supplemental Security Income, Veterans Affairs benefits, and anyone who receives benefits from the Railroad Retirement Board, Office of Personnel Management and Department of Labor (Black Lung).

Monthly Social Security and Supplemental Security Income (SSI) benefits for nearly 62 million Americans increased 1.7 percent in 2013.

The 1.7 percent cost-of-living adjustment (COLA) began with benefits that more than 56 million Social Security beneficiaries receive in January 2013. Increased payments to more than 8 million SSI beneficiaries began on December 31, 2012.

SOCIAL SECURITY

Social Security is a system enacted by Congress designed to supplement your retirement income. It is not intended to provide your sole source of income—it merely adds to the pension benefits, savings plans, and other investments that you will rely on during retirement.

Introduction

Different types of benefits are payable under various provisions of the Social Security Act, but when the average person uses the phrase “Social Security benefits,” he or she usually means the Retirement, Survivors, Disability and Health Insurance Program (RSDHI). These are monthly cash benefits paid to you as a retired or disabled worker; to qualified spouses, children, and parents of retired or disabled workers; and to qualified widows, widowers, and divorced spouses of workers.

The RSDHI Program is financed largely out of taxes paid by employers and employees. It is an insurance program. Benefits received by you and your dependents have been earned by you through your employment and the taxes collected regularly from your wages. These tax deductions are shown on your paycheck next to the initials “FICA.” The letters “FICA” stand for “Federal Insurance Contributions Act,” which is the official name for the federal laws that established the Social Security program in 1935. These deductions rise periodically. The money collected from this tax goes into trust funds, and current benefits are paid out of these funds.

Social Security and your retirement plans

Social Security is part of the retirement plan of almost every American worker. If you are among the 90+ percent of workers who are covered under Social Security, you should know how the system works and what you should receive from Social Security when you retire.

How do you qualify for retirement benefits?

When you work and pay Social Security taxes, you earn “credits” toward Social Security benefits. The number of credits you need to get retirement benefits depends on when you were born. If you were born in 1929 or later, you need 40 credits (10 years of work).

If you stop working before you have enough credits to qualify for benefits, the credits will remain on your Social Security record. If you return to work later on, you can add more credits so that you qualify. No retirement benefits can be paid until you have the required number of credits.

How much will your retirement benefit be?

Your benefit payment is based on how much you earned during your working career. Higher lifetime earnings result in higher benefits. If there were some years when you did not work or had low earnings, your benefit amount may be lower than if you had worked steadily.

Your benefit payment also is affected by the age at which you decide to retire. If you retire at age sixty-two (the earliest possible retirement age for Social Security), your benefit will be lower than if you wait until later to retire. This is explained in more detail below.

Note: *Each year, about three months before your birthday, you receive a Social Security Statement. It can be a valuable tool to help you plan a secure financial future. It provides you with a record of your earnings and gives estimates of what your Social Security benefits would be at different retirement ages. It also gives an estimate of the disability benefits you could receive if you become severely disabled before retirement, as well as estimates of the survivors' benefits Social Security would provide your spouse and eligible family members when you die.*

Full retirement age

The “full retirement age” is sixty-five for people who were born before 1938. But because of longer life expectancies, the Social Security law was changed to gradually increase the full retirement age until it reaches age 67. This change affects people born in 1938 and later. Check the following table to find your full retirement age.

Age to receive full Social Security benefits

<i>Year of birth</i>	<i>Full retirement age</i>
1937 or earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943–1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67

NOTE: *People who were born on January 1 of any year should refer to the previous year.*

Early retirement

You can get Social Security retirement benefits as early as age sixty-two, but if you retire before your full retirement age, your benefits will be permanently reduced, based on your age. For example, if you retire at age sixty-two, your benefit would be about twenty-five percent lower than what it would be if you waited until you reach full retirement age.

Some people stop working before age sixty-two. If they do, the years with no earnings will probably mean a lower Social Security benefit when they retire.

Note: Sometimes health problems force people to retire early. If you cannot work because of health problems, you should consider applying for Social Security disability benefits. The amount of the disability benefit is the same as a full, unreduced retirement benefit. If you are receiving Social Security disability benefits when you reach full retirement age, those benefits will be converted to retirement benefits. For more information, ask for Disability Benefits (Publication No. 05-10029). You can access this publication online at <http://www.ssa.gov/pubs/10029.html>.

Delayed retirement

You may choose to keep working even beyond your full retirement age. If you do, you can increase your future Social Security benefits in two ways.

First, each additional year you work adds another year of earnings to your Social Security record. Higher lifetime earnings may mean higher benefits when you retire.

Second, your benefit will increase automatically by a certain percentage from the time you reach your full retirement age until you start receiving your benefits or until you reach age 70. The percentage varies depending on your year of birth. For example, if you were born in 1943 or later, 8 percent per year will be added to your benefit for each year that you delay signing up for Social Security beyond your full retirement age.

Note: If you decide to delay your retirement, **be sure to sign up for Medicare at age 65**. In some circumstances, medical insurance costs more if you delay applying for it. Other information about Medicare is in SSA Publication 05-10043, which can be accessed online at <http://www.socialsecurity.gov/pubs/10043.html>.

Deciding when to retire

Choosing when to retire is an important personal decision. Regardless of the age you choose to retire, it is a good idea to contact Social Security in advance to see which month is best to claim benefits. In some cases, your choice of a retirement month could mean higher benefit payments for you and your family.

In deciding when to retire, it is important to remember that financial experts say you will need seventy to eighty percent of your preretirement income to have a comfortable retirement. Since Social Security replaces only about forty percent of preretirement income for the average worker, it is important to have pensions, savings, and investments.

It may be to your advantage to have your Social Security benefits start in January, even if you do not plan to retire until later in the year. Depending on your earnings and your benefit amount, it may be possible for you to start collecting benefits even though you continue to work. Under current rules, many people can receive the most benefits possible with an application that is effective in January.

You should apply for benefits about three months before the date you want your benefits to start. If you are not quite ready to retire, but are thinking about doing so in the near future, you may want to visit Social Security's website to use their convenient and informative retirement planner at <http://www.socialsecurity.gov/retire2/>.

Retirement benefits for widows and widowers

Widows and widowers can begin receiving Social Security benefits at age sixty, or at age fifty if they are disabled. And they can take a reduced benefit on one record and later switch to a full benefit on the other record. For example, a woman could take a reduced widow's benefit at age sixty or sixty-two and then switch to her full (100 percent) retirement benefit when she reaches full retirement age. The rules vary depending on the situation, so you should talk with a Social Security representative about the options available to you.

Benefits for family members

If you are getting Social Security retirement benefits, some members of your family also can receive benefits. Those who can include:

- Spouses who are age sixty-two or older;
- Spouses who are younger than sixty-two, if they are taking care of a child entitled on your record who is under age sixteen or disabled;
- Former spouses, if they are age sixty-two or older (see Benefits for a divorced spouse);
- Children up to age eighteen, or up to nineteen if they are full-time students who have not yet graduated from high school; and
- Disabled children, even if they are age eighteen or older.

If you become the parent of a child (including an adopted child) after you begin receiving benefits, you must inform the Social Security office about the child so they can decide if the child is eligible for benefits.

Note: *Children's benefits are available only to unmarried children. However, in certain situations, benefits are payable to a disabled child who marries someone who is also eligible as a disabled child.*

Spouse's benefits

A spouse who has not worked or who has low earnings can be entitled to as much as one-half of the retired worker's full benefit. If you are eligible for both your own retirement benefits and for benefits as a spouse, Social Security always pays your own benefits first. If your benefits as a spouse are higher than your retirement benefits, you will get a combination of benefits equaling the higher spouse benefit.

If you have reached your full retirement age, and are eligible for a spouse's or ex-spouse's benefit and your own retirement benefit, you may choose to receive only spouse's benefits and continue accruing delayed retirement credits on your own Social Security record. You may then file for benefits at a later date and receive a higher monthly benefit based on the effect of delayed retirement credits.

If you are receiving a pension based on work where you did not pay Social Security taxes, your spouse's benefit may be reduced. Additional information on pensions from work not covered by Social Security can be found in *the Detailed Calculator provided by Social Security regarding pensions from work not covered by Social Security, which can be accessed online at <http://www.ssa.gov/OACT/anypia/anypia.html>.*

If spouses want to get Social Security retirement benefits before they reach full retirement age, the amount of the benefit is reduced **permanently**. The amount of reduction depends on when the person reaches full retirement age. The Social Security Quick Calculator for determining the amount of your spousal benefit, based upon your date of birth and the effective date that you wish to begin receiving benefits can be accessed online at <http://www.ssa.gov/oact/quickcalc/spouse.html>.

Examples for illustrative purposes only are:

- If full retirement age is sixty-five, a spouse can get 37.5 percent of the worker's unreduced benefit at age sixty-two;
- If full retirement age is sixty-six, a spouse can get thirty-five percent of the worker's unreduced benefit at age sixty-two;
- If full retirement age is sixty-seven, a spouse can get 32.5 percent of the worker's unreduced benefit at age sixty-two.

The amount of the benefit increases at later ages up to the maximum of fifty percent at full retirement age. If full retirement age is other than those shown here the amount of the benefit will fall between 32.5 percent and 37.5 percent at age sixty-two.

However, if your spouse is taking care of a child who is under age 16 or disabled and gets Social Security benefits on your record, your spouse gets full benefits, regardless of age.

Note: *Your current spouse cannot receive spouse's benefits until you (the worker) file for retirement benefits.*

Maximum family benefits

If you have children eligible for Social Security, each will receive up to one-half of your full benefit. But there is a limit to the amount of money that can be paid to you and your family—usually 150–180 percent of your own benefit payment. If the total benefits due to your spouse and children are more than this limit, their benefits will be reduced. Your benefit will not be affected.

Social Security Benefits and Divorce

There are specific rules governing the impact of divorce on the receipt of Social Security benefits. Even though you are divorced, you may be entitled to collect Social Security retirement benefits on your former spouse's Social Security earnings record if you satisfy the following requirements: (1) you must have been married to that former spouse for at least ten years prior to your divorce, (2) you are at least sixty-two years old, (3) you are currently unmarried, and (4) you are not eligible for an equal or higher benefit on your own Social Security earnings record or on someone else's Social Security earnings record. If you receive retirement benefits on your former spouse's Social Security earnings record, the amount of benefits you get will have no effect on the amount of benefits your former spouse and/or his or her current spouse receive.

Remarriage before the age of sixty generally precludes you from collecting retirement benefits based on your former spouse's Social Security earnings record unless your subsequent marriage ends as a result of divorce, annulment, or death. You may be entitled to collect retirement benefits on your former spouse's Social Security earnings record if your remarriage occurred after your sixtieth birthday.

Divorce does not necessarily preclude you from receiving survivor's benefits if your former spouse dies. You may be entitled to receive such benefits if the marriage lasted ten years or more. If you are at least sixty years old, the survivor's benefits you receive will not affect the amount of benefits to which other survivors may be entitled. In the event that you receive survivor's benefits, you are entitled to receive retirement benefits as early as age sixty-two if you are eligible for such benefits and the amount of retirement benefits you are eligible for is in excess of the survivor's benefits you are currently collecting.

This is a brief summary of the rules pertaining to the impact of divorce on your ability to collect Social Security benefits on your former spouse's earnings record and is in no way a complete explanation of this topic. For more information and for the specific rules pertaining to your situation, please contact the Social Security Administration at (800) 772-1213 or online at <http://www.ssa.gov/retire2/yourdivspouse.htm>.

How do you sign up for Social Security?

You can apply for retirement benefits online at <http://www.socialsecurity.gov> or you can call 1 (800) 772-121. Or you can make an appointment to visit any Social Security office to apply in person.

Depending on your circumstances, you will need some or all of the documents listed below. But do not delay applying for benefits because you do not have all the information.

Information needed:

- Your Social Security number;
- Your birth certificate;
- Your W-2 forms or self-employment tax return for last year;
- Your military discharge papers if you had military service;
- Your spouse's birth certificate and Social Security number if he or she is applying for benefits;

-
- Children's birth certificates and Social Security numbers, if you are applying for children's benefits;
 - Proof of U.S. citizenship or lawful alien status if you (or a spouse or child applying for benefits) were not born in the United States; and
 - The name of your bank and your account number so your benefits can be deposited directly into your account.

You will need to submit original documents or copies certified by the issuing office.

Right to appeal

If you disagree with a decision made on your claim, you can appeal it. For an explanation of the steps you can take, you can access *The Appeals Process* (Publication No. 05-10041) online at <http://www.ssa.gov/pubs/10041.html>.

You have the right to be represented by an attorney or other qualified person of your choice. For more information, you can access *Your Right To Representation* (Publication No. 05-10075) online at <http://www.ssa.gov/pubs/10075.html>.

If you work and get benefits at the same time

You can continue to work and still receive retirement benefits. Your earnings in (or after) the month you reach your full retirement age will not reduce your Social Security benefits. However, your benefits will be reduced if your earnings exceed certain limits for the months before you reach your full retirement age. (See *Age to Receive Full Social Security Benefits*, to find your full retirement age.)

Here is how it works:

If you are younger than full retirement age, \$1 in benefits will be deducted for each \$2 in earnings that you have above the annual limit.

In the year you reach your full retirement age, your benefits will be reduced \$1 for every \$3 that you earn over an annual limit until the month you reach full retirement age.

Once you reach full retirement age, you can keep working, and your Social Security benefit will not be reduced no matter how much you earn.

If during the year your earnings are higher or lower than you estimated, let the Social Security office know as soon as possible so that they can adjust your benefits.

If you want more information on how earnings affect your retirement benefit, ask for *How Work Affects Your Benefits* (Publication No. 05-10069), which has current annual and monthly earnings limits.

A special monthly rule

A special rule applies to your earnings for one year, usually your first year of retirement. Under this rule, you can receive a full Social Security check for any month you earn under a certain limit, regardless of your yearly earnings. If you are self-employed, the work you do in your business is taken into consideration as well.

If you want more information on how earnings affect your retirement benefit, ask for *How Work Affects Your Benefits* (Publication No. 05-10069), which has current annual and monthly earnings limits. It is available on <http://www.ssa.gov/pubs/>.

Your benefits may be income taxable

Many people who get Social Security (Retirement, Survivor & Disability) benefits have to pay income taxes on their benefits. Supplemental Security Income (SSI) benefits are not taxable.

- If you file a federal income tax return as single, head of household, qualifying widow(er) or married filing separately living apart from your spouse, and your combined income* is \$25,000 and above, you may have to pay taxes on part of your Social Security benefits.

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- If you file a joint return with your spouse, you may have to pay taxes on part of your benefits if you and your spouse have a combined income* that is \$32,000 and above.
 - If you are married filing separately and living with your spouse, you probably will pay taxes on your benefits.

At the end of each year, Social Security will mail you a *Social Security Benefit Statement* (Form SSA-1099) showing the amount of benefits you received. You can use this statement when you complete your federal income tax return to find out if you have to pay taxes on your benefits.

Although you are not required to have federal taxes withheld, you may find it easier than paying quarterly estimated tax payments.

For more information, call the Internal Revenue Service's toll-free telephone number, (800) 829-3676, to ask for Publication 554, *Tax Information For Older Americans*, and Publication 915, *Social Security Benefits And Equivalent Railroad Retirement Benefits*. Both of these publications may also be found at <http://www.irs.gov/Forms-&-Pubs>.

*On the 1040 tax return, your "combined income" is the sum of your adjusted gross income without regard to your Social Security Benefits and certain other adjustments plus nontaxable interest plus one-half of your Social Security benefits.

Pensions from work not covered by Social Security

If you get a pension from work where you paid Social Security taxes, that pension will not affect your Social Security benefits. However, if you get a pension from work that was not covered by Social Security, for example, the federal civil service, some state or local government employment or work in a foreign country—your Social Security benefit may be reduced.

For more information, ask for *Government Pension Offset* (Publication No. 05-10007), for government workers who may be eligible for Social Security benefits on the earnings record of a spouse; and *Windfall Elimination Provision* (Publication No. 05-10045), for people who worked in another country or government workers who also are eligible for their own Social Security benefits. These publications are both available at <http://www.ssa.gov/pubs/>.

Leaving the United States

If you are a U.S. citizen, you can travel to or live in most foreign countries without affecting your Social Security benefits. There are, however, a few countries where Social Security payments cannot be sent. These countries are Cambodia, Cuba, North Korea, Vietnam, and areas that were in the former Soviet Union (other than Armenia, Estonia, Latvia, Lithuania, and Russia). However, exceptions can be made for certain eligible beneficiaries in countries other than Cuba and North Korea. For more information about these exceptions, please contact your local Social Security office.

If you work outside the United States, different rules apply in determining if you can get benefits.

For more information, contact The Department of Social Security to ask for a copy of the publication, *Your Payments While You Are Outside The United States* (Publication No. 05-10137) This publication may be found at <http://www.socialsecurity.gov/pubs/>.

Supplemental Security Income

Supplemental Security Income (SSI) is a federal program administered by the Social Security Administration which provides income assistance to aged, blind, and disabled persons who do not own much property or have a lot of income. SSI is a federal income supplement program funded by general tax revenues and not by Social Security taxes. The SSI program provides monthly cash payments to those individuals who meet income and eligibility criteria. Essentially, the program guarantees a certain income to an individual or couple. SSI will provide supplemental payments so that the total income for an individual or couple will equal the guaranteed amount. The SSI program is administered by the Social

Security Administration, but it differs from Social Security retirement or disability benefits because you can get SSI even if you have never paid into the Social Security system.

Eligibility

You may qualify for SSI on either the basis of age (sixty-five or older) or physical impairment (blindness or disability). You must be a U.S. citizen or national, or in one of certain categories of aliens. In general, an alien who is subject to an active warrant for deportation or removal does not meet the citizenship/alien requirement.

Under the SSI program, “blindness” is defined as having central visual acuity of 20/200 or less in the better eye with the use of a corrective lens, or visual field restriction to twenty degrees or less.

“Disabled” is defined as inability to engage in any substantial gainful employment due to a physical or mental impairment, which has lasted or is expected to last for at least twelve months or is expected to result in death. An applicant’s monthly income will affect the determination of whether the applicant is able to engage in substantial gainful employment. In some cases, however, a blind applicant who can work may still qualify for benefits.

An individual or couple must satisfy the following asset and income requirements for eligibility: An applicant’s assets must total not more than \$2,000 for an individual or \$3,000 for a couple, after certain deductions and exclusions are made. See the SSI website at <http://www.socialsecurity.gov/ssi/>. An applicant’s income also must fall below specific limits after certain exclusions and deductions. (Income limitations vary within states. Call (800) 772-1213 to obtain information on income limits.) If your resources are over the eligibility limit, you may spend them down to the resource level required for eligibility. In order to prove you no longer own the resources, you should keep receipts and other records of the ways you spend down your resources

The following assets are NOT counted for SSI eligibility:

- Your home and the land it is on;
- Household goods and personal property that do not exceed \$2,000 in value (\$3,000 for a couple);
- The full value of your car if it is needed for employment or medical reasons; otherwise, up to \$4,500 in value;
- Life insurance if the face value is \$1,500 or less;
- Money set aside for burial expenses up to \$1,500 (\$3,000 for a couple);
- Burial space for you and immediate family;
- Property that cannot be sold.

In some cases, SSI recipients are eligible for other low-income assistance programs, such as food stamps. In some states, SSI recipients automatically are eligible for health benefits under the Medicaid program.

Income

Your “countable” income cannot exceed the current federal benefit rate in order to qualify for SSI. In 2009, the rates are \$674 per month for individuals and \$1011 for couples. All of these rates will increase in later years. If you qualify, the amount of your monthly SSI benefit will depend on your countable income. Generally, the more income you receive, the less your SSI benefit.

“Income” is money you receive from any source, such as wages, Social Security, pension, and money from friends and relatives. Income also includes free food, clothing, or housing. Some of your spouse’s income may also be counted. Certain types of income, however, are not counted for SSI eligibility:

- The first twenty dollars of most income;
- The first sixty-five dollars a month of earnings from employment;
- One-half of earnings from employment over sixty-five dollars per month;
- Food stamps;

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- Shelter you receive from private nonprofit organizations;
 - Most home energy assistance.

You can receive SSI and Social Security retirement benefits at the same time. For example, if you were receiving \$300 per month in Social Security retirement benefits, you could receive \$190 per month in SSI benefits (if you had no other income, lived in a one-person household and owned little countable property). This totals \$490 per month because the first twenty dollars of the Social Security retirement income is not counted. For more particular information (based on where you live), call the Social Security Administration at (800) 722-1213.

Penalties

Your SSI benefits may be reduced under the following conditions:

- You have unearned income of over twenty dollars a month; this income includes Social Security payments, pension, gifts, and other unearned money;
- You are living in the home of a friend or relative;
- You live in a nursing home.

Additionally, an unmarried couple living together may be listed by the Social Security Administration as “holding out as husband and wife.” When this happens, and both persons are receiving SSI, their checks will be reduced, if necessary, so that the two checks together will equal the amount that a couple would receive.

There no longer is any SSI eligibility penalty for giving away property. There is, however, still a Medicaid eligibility penalty in effect.

Applying for Benefits

You can call the Social Security Administration’s toll-free number, (800) 772-1213, and complete an application over the phone, or go to your local Social Security office. If you file an application at a Social Security office, a Social Security representative will assist you with your application. Other agencies, such as your Area Agency on Aging, may be able to assist you in applying for SSI. Do not delay filing an application if you think you are eligible, because SSI may only be paid from the date of the application. See what you need to know when you get Supplemental Security Income (SSI) Publication Number SSA 05-11011.

Appeals Process for SSI

You should receive a decision from Social Security within sixty days of your application. If you are denied SSI, you may appeal, and you may be represented by a person of your choice at any step in the appeals process. Your representative does not necessarily have to be an attorney. You and your representative will receive notices of all decisions on your claim.

The first step in the appeals process is called the reconsideration. You must ask for the reconsideration within sixty days of the date you receive notice of the initial decision. Do not delay appealing because the process takes a long time. If you have been receiving benefits and you receive notice that your benefits are being reduced or terminated, you must make the request within 10 days so your benefits will continue during the appeal. A Social Security representative will help you with your request. If you are not satisfied with the result of the reconsideration, you may appeal again and ask for a hearing before an administrative law judge. Many decisions are reversed after the hearing. You must request the hearing within sixty days of the date you receive notice of the reconsideration decision. Again, you should appeal immediately. Further appeals of the administrative law judge’s decision are to the Appeals Council and to federal district court. You may want to contact the area Agency on Aging or Legal Aid office for assistance with your appeal or questions about SSI.

Overpayments

It is not uncommon for SSI recipients to receive a notice from the Social Security Administration that they have been overpaid. Do not panic if you receive such a notice. You may not have to repay the money or you may be able to repay as little as \$10 a month. You have the right to appeal if you do not believe you were overpaid. If you appeal within thirty days of the date on your overpayment notice, your benefits will continue during the appeal. Even if you did receive the overpayment, you may not have to pay it back if you were without fault in causing the overpayment and you are financially unable to pay it back. You must file a request for waiver of the overpayment with Social Security if you feel the overpayment was not your fault. Your local Legal Aid office may be able to help you get a waiver. Social Security may withhold as little as \$10 per month from your checks, even if you were not at fault. You must talk to a Social Security representative about this.

PENSIONS

Introduction

For many individuals, pension plans provide an important supplement to savings and Social Security benefits and thus serve as a vital part of retirement income. Consequently, learning about pension plans and how they operate may prove to be a valuable safeguard before and at retirement.

A pension plan allows certain workers to defer compensation in order to earn benefits that are received upon retirement. While law does not require employers to provide pensions, approximately half of all private employers and most government agencies offer some type of pension plan that pays benefits to those retired persons who meet certain eligibility requirements.

Pension Eligibility

A worker must meet eligibility requirements before he or she may participate in a pension plan. Under the Employee Retirement Income Security Act of 1974 (ERISA), an employee must (with some exceptions) be allowed to begin participation in his employer's pension plan if he or she is twenty-one years old or older and has worked for that employer for one year or more. ERISA defines a "year" as a twelve-month period in which the worker has worked at least 1,000 hours. See 29 U.S.C. §1052(a)(3)(Supp. I 2000).

Once an employee becomes eligible to participate in the pension plan, the worker begins earning pension credits which serve as the basis upon which pension benefits are awarded. The rules of the pension plan will specify how many years of work are required for an employee to become vested. To be "vested" means that you have a legal right to collect the pension when you retire. See *id.* §1053. Usually, it takes between five and seven years of service with your employer to become fully vested. A vested employee does not lose the right to receive pension benefits even if he or she switches jobs, is fired for misconduct, or has a break in service.

Types of Pension Plans

Generally, there are two types of pension plans: (1) defined benefit plans and (2) defined contribution plans.

A defined benefit plan specifies how much in benefits the plan will "pay out" to a retiree. It is the most common type of plan for larger employers and gives a retired worker a fixed monthly amount as described in the plan.

A defined contribution plan specifies how much money the employer, employee, or both will "pay in" to the plan each year for the employee. With this plan, your contributions are fixed but your benefits may vary according to your contributions and what those contributions have earned over the years. There are several types of defined contribution plans including the following:

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- Profit-sharing plans: employer contributes an amount up to twenty-five percent of participant's compensation;
 - Employee stock ownership plans: employer's contribution is made in the form of company stock;
 - 401(k) plans:

An employee may elect to defer a portion of his or her income and place the money in an individual profit-sharing plan account. The employer may also contribute to the employee's individual account.

Pension Rights

In 1974, the Employees Retirement Income Security Act (ERISA) was enacted to increase protection for workers' pension plans. ERISA sets minimum standards for pension plans, and guarantees that pension rights cannot be unfairly denied or taken from the worker. If you work for a private employer that offers a retirement plan, ERISA requires that pension plan rules be in writing in the Summary Plan Description (SPD). The summary should include the following:

- Who is eligible to participate;
- How benefits are determined;
- The age at which you can start receiving benefits;
- Who administers the plan;
- Claims procedures.

You have the right to receive this information from the plan office within thirty days of your request for it.

In addition to your right to the SPD, you are entitled to receive a statement of your "personal benefit account," which explains how many benefits you have and what benefits you have vested. To be "vested" means that you have a legal right to collect the pension when you retire. Usually, it takes between five and seven years of service with your employer to become fully vested. So, if you leave your place of employment after you are fully vested, all of your benefits are still yours. If, however, you leave before becoming fully vested, you lose the unvested portion of your pension benefits.

Under ERISA, employers are prohibited from discharging an employee for the purpose of preventing the employee from receiving a pension. If this happens to you, you have the right to file suit in federal court. You will have to prove that the motivating factor for the discharge was the employer's intention to prevent payment of your pension benefits. You could potentially recover lost wages and benefits, plus attorneys' fees.

Breaks in Service

A break in service (time away from work) may have the effect of canceling pension credits earned prior to the "break." Therefore, it is important that you learn and understand the break-in-service rule of your pension plan. Under ERISA, an interruption in employment cannot count as a break in service unless the worker has worked less than 500 hours during the year. If a break in service occurs, the worker loses previously earned credits only if the number of consecutive years of break equals or exceeds the greater of five or the number of years of credited work prior to the break. Fully vested benefits are not lost by any break in service.

Benefits for Workers' Spouses

For workers who retire after January 1, 1976, most pension plans must provide for a "joint and survivor annuity." This means that the employee may select to have higher benefits that stop at his or her death or a lesser benefit that continues for as long as either the worker or his/her spouse is alive. The amount paid to the surviving spouse can be as low as one-half of the amount the couple received while both were living.

The Retirement Equity Act of 1984 (REA) contains several provisions affecting the rights of homemakers, widows, divorced women, and working wives to receive private pension benefits after their spouse's death. (Note: REA is sex neutral and can help men as well.) The REA requires that both spouses give written consent in a notarized form before survivor's benefits may be waived.

Protection of Pension Funds

Under ERISA, a worker is protected from loss of benefits due to the employer's going out of business, acquisition of the worker's company by a new employer, or amendment or termination of the pension plan. Additionally, ERISA requires the trustees of the pension plan to do the following:

- Discharge their duties solely in the interest of the pension plan beneficiaries (employees);
- Act carefully, skillfully, prudently, and diligently in administering the pension plan;
- Diversify the pension trust fund investments to avoid large losses;
- Operate the pension plan in accordance with the plan rules.

The Federal Pension Benefit Guaranty Corporation (PBGC) guarantees payment of vested retirement benefits under most defined benefits plans in certain situations, such as a company's bankruptcy. Benefits above a set level are not insured. (Note: Defined contribution plans do not receive this protection.)

Appeals

If your pension application is denied, you have the right to be notified, in writing, of the specific reasons for the denial. You also have the right to a full review of the denial by the trustees. If you feel you have been wrongfully denied pension benefits, you should promptly seek legal assistance to determine whether an appeal is in order.

In the event of an appeal, documentation of communications with your pension plan administrator will be very helpful. Therefore, it is very important that all your communications with your pension plan administrator be put in writing and sent via certified mail, return receipt requested.

Veterans' Benefits

Numerous benefits are offered by the Department of Veterans Affairs (VA) to honorably discharged and qualified veterans. Information about veterans benefits may be found at <https://www.dvs.virginia.gov>, by calling (800) 827-1000, or by writing the Department of Veterans Affairs, Roanoke Regional Office, 210 Franklin Road, NW, Roanoke, VA 24011. These benefits include, but are not limited to, medical, domiciliary, nursing home, and limited dental care, compensation for service-connected disabilities, non-service-connected (NSC) disability pension benefits for eligible wartime veterans, treatment programs for alcohol and drug addiction, home loan guaranties, education benefits, life insurance if retained upon discharge from active duty, and limited burial benefits. Medical care and medications are available on a priority basis (priority groups 1 through 8) to veterans with service-connected disabilities and NSC disabilities. In addition, an important possible benefit for veterans and their spouses is the Aid and Attendance Allowance.

AID AND ATTENDANCE ALLOWANCE Eligibility

What are Aid and Attendance benefits? Aid and Attendance benefits may be available to an eligible war-time veteran and/or the spouse of a deceased eligible war-time veteran. There are income and asset eligibility limitations.

Aid and Attendance (A&A) is an enhanced or special monthly pension benefit paid in addition to basic pension. You may not receive enhanced or special monthly pension without first establishing eligibility for basic VA pension. However, because enhanced pension is based upon a higher income limit, a

claimant ineligible for basic pension due to excessive income may be eligible for enhanced pension benefits. A Veteran may be eligible for A&A when:

- The Veteran requires the aid of another person in order to perform his or her activities of daily living, such as bathing, feeding, dressing, attending to the wants of nature, adjusting prosthetic devices, or protecting himself/herself from the hazards of his/her daily environment, OR,
- The Veteran is bedridden, in that his/her disability or disabilities requires that he/she remain in bed apart from any prescribed course of convalescence or treatment, OR,
- The Veteran is a patient in a nursing home due to mental or physical incapacity, OR,
- The Veteran has corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to five degrees or less.

How to Apply for Aid and Attendance:

You may apply for Aid and Attendance benefits by writing to the VA regional office having jurisdiction of the claim. That would be the office where you filed a claim for pension benefits. If the regional office of jurisdiction is not known, you may file the request with any VA regional office. You should include copies of any evidence, preferably a report from an attending physician validating the need for Aid and Attendance. The report should be in sufficient detail to determine whether there is disease or injury producing physical or mental impairment, loss of coordination, or conditions affecting the ability to dress and undress, to feed oneself, to attend to sanitary needs, and to keep oneself ordinarily clean and presentable. In addition, it is necessary to determine whether the claimant is confined to the home or immediate premises.

The report should indicate how well the individual gets around, where the individual goes, and what he or she is able to do during a typical day.

Most veterans must apply for enrollment for VA medical care. Exceptions are (1) veterans with a service-connected disability evaluated as fifty percent or greater, (2) veterans requesting treatment for disabilities held by the military to have been incurred in or aggravated by service but not yet evaluated by the VA within twelve months of service separation, and (3) veterans seeking treatment for a service-connected disability only.

Eligibility

To be eligible for service-connected compensation benefits, the veteran must have been disabled by an injury or disease that was incurred in or aggravated by active service while in the line of duty. In limited instances, an additional disability resulting from carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault by VA during treatment may warrant compensation payments as if it was a service-connected disability. The amount of monthly disability compensation payments is based on the severity of the service-connected disability that could range from 10 percent to 100 percent. If a service-connected disability is not serious enough to merit a compensable rating, a non-compensable (0 percent) evaluation is assigned.

A veteran may be eligible for NSC disability pension benefits if:

- The veteran is permanently and totally disabled so that substantially gainful employment is not possible, and
- The veteran has served ninety continuous days or more on active duty and served at least one of those days during a period of war, and
- The veteran meets the prescribed income and net worth limitations.

Eligible dependents of a living or deceased veteran may be entitled to an array of VA benefits, to include education, NSC death pension, or dependency and indemnity compensation benefits. Medical care may be provided to the children of in-country Vietnam veterans diagnosed with spina bifida. Eligible dependents qualifying for the Civilian Health and Medical Program of VA (CHAMPVA) can receive

reimbursement for most medical expenses. In addition, those dependents who are not covered by Medicare may receive treatment at many VA facilities on a space available basis, after the needs of veterans are met under the CHAMPVA In-House Treatment Initiative (CITI) program. Not all VA facilities participate in the CITI program.

Relationship of VA Income to Social Security Administration (SSA) Benefits

Social Security Disability Insurance (SSDI) or retirement benefits will not be reduced if you receive service-connected compensation benefits. However, if you receive Supplemental Security Income (SSI), your VA benefits will be considered income. Therefore, in order to avoid an overpayment, be sure to report all VA income to the SSA if you are in receipt of SSI.

If you are receiving NSC disability pension benefits, you must report all family income, changes in family income, and changes in number of dependents to the VA. VA NSC disability pension benefits are reduced dollar for dollar for family income, to include SSDI or Social Security. One of the few exceptions to such a reduction is if you are in receipt of SSI benefits.

Applying for VA Benefits and Information

To apply for VA benefits, contact your local VA Regional Office (VARO) by telephoning (800) 827-1000, or online at <http://www.va.gov>. All claims for VA benefits may be initiated at any local veterans' state or service organization office serving veterans, but must be filed at the VARO for processing of the claim. In Virginia, the VARO is located at 210 Franklin Road, SW, Roanoke, VA 24011.

A good general source of information is the VA's annual publication, *Federal Benefits for Veterans and Dependents*. The most recent copy of the publication can be found on the VA's website at http://www.va.gov/opa/publications/benefits_book.asp.

Right to Appeal

Should a veteran or other claimant disagree with a determination made on a claim by the VARO, the decision may be appealed to the Board of Veterans' Appeals (BVA or Board) in Washington, DC. A timely notice of disagreement (NOD) must be filed at the VARO to begin the appellate process. After the VARO issues a statement of the case, a timely substantive appeal must be filed to perfect the appeal to the BVA. Disagreement with a final unfavorable Board decision may be appealed to the United States Court of Appeals for Veterans Claims (Court) with the filing of a timely Notice of Appeal. (See <http://www.vetapp.gov>). In most instances, an unfavorable Court decision may be appealed to the United States Court of Appeals for the Federal Circuit and the United States Supreme Court.

Representation

Most major service organizations, such as The American Legion, Disabled American Veterans, Veterans of Foreign Wars, and Vietnam Veterans of America, have offices co-located at the VARO. In addition, some service organizations have service representatives located throughout the state to assist veterans and their dependents. The State of Virginia provides service to veterans through the Virginia Department of Veterans Services, (804) 786-0286 or <http://www.dvs.virginia.gov/>. Finally, attorneys may be of assistance, and an attorney is now permitted to charge a fee to assist a claimant with his or her VA appeal, if the claimant's NOD was filed with the VARO on or after June 22, 2007.

RAILROAD RETIREMENT ACT BENEFITS

The Federal Railroad Retirement Act offers retirement and disability annuities for qualified railroad employees, spousal annuities for their wives and husbands, and survivor benefits for the families of deceased employees who were insured under the Act. These programs are administered by the United

States Railroad Retirement Board and are very similar to Social Security benefits; eligibility is determined in much the same manner. If both railroad and Social Security benefits are payable, however, the railroad benefits may be reduced.

For more information, contact or visit the following:

U.S. Railroad Retirement Board
Roanoke, Virginia, District Office
210 First Street, Room 260
P.O. Box 270
Roanoke, VA 24002
Telephone: (540) 857-2335

U.S. Railroad Retirement Board
Richmond, Virginia, Branch Office
400 North 8th Street, Room 470
Richmond, VA 23219-4819
Telephone: (804) 771-2997

Railroad Retirement Helpline
(800) 808-0772

Also available upon request from the United States Railroad Retirement Board offices is an information pamphlet titled Railroad Retirement and Survivor Benefits. This pamphlet describes the retirement and disability annuities provided for employees under the Railroad Retirement Act and the benefits available to their spouses and survivors. Medicare, unemployment and sickness insurance payments, and other benefits paid by the Railroad Retirement Board are described in separate pamphlets.

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP—FOOD STAMPS)

Millions of older Americans on fixed incomes have difficulty obtaining food “basics” necessary for a proper diet. If you meet the income guidelines, the SNAP program may be able to help you stretch your food budget. Although it is a federal government program, it is run by state or local agencies. It provides funding for food, as well as plants and seeds to grow food. The program explicitly excludes by regulation such nonfood items as alcoholic beverages, pet food, vitamins, medicines, tobacco, and cigarettes. In Virginia, as of July 2012, about 920,000 people receive SNAP allotments.

In the following description, whenever “food stamps” are referred to, that term refers to a SNAP allotment.

The Myth

Many think that the program is only designed to help the desperately poor. This is not true. Anyone can apply for SNAP (not all may be eligible), but you and other people in your household must meet certain conditions. Everyone who is applying in your household must have or apply for a Social Security Number and be either a U.S. citizen, U.S. national, or have status as a qualified alien. As of September 30, 2012, through September 30, 2013, a single person is allowed up to \$1,211 gross income monthly. A couple may make as much as \$1,640 gross income per month, and a family of four may earn up to \$2,498 gross income per month, and still qualify for SNAP allotments. SNAP allotments can be used like cash to buy eligible food items from authorized retailers. Authorized retailers will display either the Quest logo or a picture of a Virginia EDT card. A SNAP account is established for eligible households and automatic

deposits are made into the account each month. In order to enable access to the account, an EBT card is issued, which will debit the account each time that eligible food items are purchased. Recipients of SNAP allotments also may own a car, a home of any value, as well as income-producing property, subject to some restrictions.

Households may own up to \$2,000 in liquid resources, and households with at least one member who is sixty years or older or is disabled may have liquid resources valued to \$3,250 or less. The Food Stamp Program evaluates only liquid assets. Personal belongings, household goods, furniture, motor vehicles, clothing, life insurance, and burial sites are excludable resources. Households that receive Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or other General Relief (GR) are eligible for SNAP allotments without other limitations applying. There may be limitations for those individuals who receive TANF or SSI but live with other members of the household who do not receive such assistance.

Applying for SNAP (Food Stamps)

There are many ways to apply for SNAP allotments. You can visit your local department of social services (LDSS), request an application by phone, or ask someone to get an application for you. You can also access the online application at <http://www.vafood.org/vnan/index.html> or <http://www.dss.virginia.gov>. Either way that you complete the application, make sure to fill in the form completely. Each county and city in Virginia has its own social service agency. The phone numbers and addresses are in your telephone book. The Virginia Department of Social Services (DSS) has links to addresses and phone numbers for all local social service agencies in Virginia; this directory may be found at <http://www.dss.virginia.gov/localagency/>. If your household has little or no money and needs help right away, let the agency office know. You may be eligible under the “expedited service” rules to receive SNAP benefits within seven days of the application date if you are classified as homeless or are a member of a low-income family.

Because benefits for a month are prorated based on the day of the month the application is filed, it is important to get a signed and dated application to your local agency, even if you can’t come in or stay for an interview that day. If you are unable to visit the office because of age, disability, work hours, or transportation difficulties, you may ask an authorized representative to apply for you, or you may request a telephone interview. You may visit the DSS website to determine if you are eligible by using the prescreening tool available there.

After you have turned in your application, a worker will hold a confidential interview with you or another member of your household at the DSS office. If no one in your household can go, an adult friend or relative who knows your circumstances may go for you. If you are sixty-five or older, disabled, or suffer other hardships and cannot go to the office, let the office know. A worker will arrange to interview you at home or by telephone. If the worker refuses to interview you at home or by telephone, contact your local legal aid office for assistance at (866) LEGLAID.

When you visit the agency, be sure to have verification of the following with you:

- Identification;
- Income, both earned and unearned;
- Shelter expenses—rent or mortgage, taxes, utility bills;
- Medical expenses for any elderly or disabled persons in your household;
- Dependent care expenses;
- Court-ordered child support.

Having the verifications with you will facilitate the process.

Eligibility

You must reside in the area and be a U.S. citizen or lawfully admitted alien and register for work unless you are over 60 or meet other exemptions. Bring proof of countable assets to the interview to expedite your case. In most cases, your house and surrounding lot, one car, household goods and personal belongings, and life insurance policies will not be counted as resources. You must provide proof of your Social Security number.

A “household” (See 7 U.S.C. § 2012 (n)(1)) is defined as:

- An individual who lives alone, or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others; or
- A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

Only households with net monthly incomes below the allowable limits may qualify for food stamps. These limits go up with increases in the size of the family and are adjusted twice yearly to reflect changes in the cost of living. Persons who are caretakers of minor children may apply for and receive food stamps as separate households and share the same residence. Persons with earned income must file monthly report forms with the local Food Stamp office. All persons, except for those who are disabled or elderly, will have their allotted food stamps determined retrospectively. For example, a person’s income and expenses for March will determine the allotment for May. You may prove your income by recent pay stubs, information given by your employer, pension information, and benefit letters from the Social Security or Veterans’ Administration. Check with your local Food Stamp office to determine current allowable income for your household.

After adding income of all members of the household, the worker can subtract certain deductions such as the standard deductions for every household (\$134 for a household of 1-3, \$143 for a household of four, \$167 for a household of five and \$191 for a six or more household), a twenty percent deduction for earned income, dependent care (including care for disabled adults), and high-housing costs. Proof of these expenses may include bills or records of payment of rent or mortgage, house insurance, property taxes, electricity, gas, oil, sewerage, telephone, and water.

If you are eligible for food stamps, you should receive your stamps no later than thirty days from the date you first applied. If you do not qualify, a written notice will explain why. If your local office requires you to pick up your stamps but you cannot, arrange to have someone that you have named pick them up for you.

Be sure to report any changes in your household’s circumstances by calling your caseworker or sending in the form provided by the Food Stamp office. If you receive extra food stamps because you have not reported a change, you will owe the Food Stamp Program the value of these stamps.

What to Do if Refused

If you think that your application has been wrongly denied, or that you have not received the right amount of food stamps, you should tell the Food Stamp office right away. If they disagree with you, you have the right to request a review by a hearing officer. You have ninety days from the date you receive the notice regarding your food stamps to request a review by a hearing officer.

You may have a friend or relative attend the hearing with you, or you may wish to obtain the services of a legal aid or private attorney. The statewide legal aid number is (866) LEG-LAID.

In some cases, you can continue to receive your regular allotment of food stamps while you await the hearing officer’s decision. If the hearing officer decides in your favor, you will receive the correct amount of food stamps. If the decision is in favor of the Food Stamp office, you will be asked to repay the value of any stamps you were not entitled to receive.

FEDERAL TAX RELIEF

Federal Income Taxes

As a caution to the users of this handbook, the federal tax laws are a continuing source of political friction in the united state congress and administration, and are subject to change, so it is important to be sure that you check for current advice and instructions in making your income, estate, gift and other tax-related decisions.

Certain types of income are taxed, while others are not. For example, gifts to you and interest earned on certain municipal bonds are not reportable as taxable income. Salary and wages, payments from a pension plan, and investment income are forms of taxable income. If your income exceeds a certain level, your Social Security payments may be taxable for federal income tax purposes. Included in both IRS Publication 554 and the IRS Form 1040 Instructions is a worksheet that will help you figure whether any part of your Social Security payment is taxable.

When you file an income tax return, you are allowed a personal exemption, unless you are eligible to be claimed as a dependent by someone else. In some instances, you are allowed additional exemptions if you provide primary support for a dependent (such as a parent, child, or grandchild).

Several publications which may be of assistance to you and which are available online are: Publication 524 (Credit for the Elderly or the Disabled) at <http://www.irs.gov/pub/irs-pdf/p524.pdf>; Publication 554 (Tax Guide for Seniors) at <http://www.irs.gov/pub/irs-pdf/p554.pdf>; Publication 17 (Your Federal Income Tax) at <http://www.irs.gov/pub/irs-pdf/p17.pdf>.

Federal Income Tax Credit for the Elderly and the Permanently and Totally Disabled

An individual who (a) is 65 or older, or (b) who is under 65 and who retired with a permanent and total disability and receives taxable disability income (a “qualified individual”), is allowed a credit equal to fifteen percent of that individual’s “Section 22 amount.” An individual’s Section 22 amount equals an initial (or base) amount—generally \$3,750, \$5,000, or \$7,500, depending on age and filing status—reduced by nontaxable social security benefits and certain other nontaxable payments received. The base amount must also be reduced by half of adjusted gross income in excess of certain minimum levels. The maximum credit is \$1,125 on a joint return where both spouses qualify and no reductions apply.

This credit will reduce the tax you owe, but it will not result in a refund. Contact your tax advisor or local IRS office if you think you may be eligible for the federal tax credit, or see the IRS publications referenced above.

Earned Income Credit

You may be eligible for the Earned Income Credit if you are working and you have a child or grandchild who lives with you. The tax credit is available to anyone who maintains a home for himself and a child who is under the age of nineteen, a student, or permanently and totally disabled. The credit is available only if you have less than the specified level of income. Earned income for this tax credit includes salaries, tips, and earnings from self-employment. Pension and annuity payments are not included. This tax credit may reduce the tax you have to pay and may even result in a refund.

For tax year 2012, certain income tax benefits increased because of inflation adjustments. The value of each personal and dependent exemption is \$3,800. The standard deduction for married couples filing a joint return is \$11,900, for singles and married individuals filing separately is \$5,950, for heads of household is \$8,700. For tax year 2012, the maximum earned income tax credit (ETIC) is \$5,891 for low and moderate income workers and working families, and the maximum income limit for the ETIC is \$50,270. The credit varies by family size, filing status, and other factors.

Taxpayers Who Are Blind or Older than Sixty-Five Years

For taxpayers who elect not to itemize their deductions, an additional standard deduction is available for individuals who are blind or over the age of sixty-five. The additional standard deduction is available in addition to the basic standard deduction available to all non-itemizing taxpayers. Individuals who are both blind and over the age of sixty-five may claim two additional standard deductions.

The additional standard deduction for blindness may be claimed if:

- Your central visual acuity does not exceed 20/200 in your better eye with glasses or contact lenses; or
- Your field of vision is limited such that your visual field extends no more than a twenty-degree angle, and you submit a statement from your eye doctor or optometrist certifying the above. Consult your tax preparer for further information about qualifying for the additional standard deduction for blindness.

Medical Expenses

If you itemize your deductions on your tax return, you should consider your medical and dental expenses. Unreimbursed medical expenses are deductible if they account for more than 7.5 percent of your adjusted gross income. Deductible medical expenses may include, but are not limited to the following:

- Payments of fees to doctors, dentists, surgeons, chiropractors, psychiatrists, psychologists, and nontraditional medical practitioners
- Payments for in-patient hospital care or nursing home services, including the cost of meals and lodging charged by the hospital or nursing home
- Payments for acupuncture treatments or inpatient treatment at a center for alcohol or drug addiction, for participation in a smoking-cessation program and for drugs to alleviate nicotine withdrawal that require a prescription
- Payments to participate in a weight-loss program for a specific disease or diseases, including obesity, diagnosed by a physician but not ordinarily, payments for diet food items or the payment of health club dues
- Payments for insulin and payments for drugs that require a prescription
- Payments for admission and transportation to a medical conference relating to a chronic disease that you, your spouse, or your dependents have (if the costs are primarily for and essential to medical care necessitated medical care). However, you may not deduct the costs for meals and lodging while attending the medical conference
- Payments for false teeth, reading or prescription eyeglasses or contact lenses, hearing aids, crutches, wheelchairs, and for guide dogs for the blind or deaf
- Payments for transportation primarily for and essential to medical care that qualify as medical expenses, such as, payments of the actual fare for a taxi, bus, train, or ambulance or for medical transportation by personal car, the amount of your actual out-of-pocket expenses such as for gas and oil, or the amount of the standard mileage rate for medical expenses, plus the cost of tolls and parking fees
- Payment for health insurance costs (Note: Medicare Part B premiums are deductible; the basic cost of Medicare Part A is not deductible unless voluntarily paid by the taxpayer for coverage).
- A portion of long-term care and nursing home expenses, if the home is necessary for medical care.

For more information, contact your local IRS office or your tax advisor, or see Publication 502 (Medical and Dental Expenses), available at <http://www.irs.gov/publications/p502/index.html>.

Sale of Principal Residence

Regardless of age, there is an exclusion of up to \$250,000 (or \$500,000, in the case of married taxpayers filing a joint return) of income realized on the sale or exchange of a principal residence by a taxpayer. To be eligible for the exclusion, a taxpayer must have owned the residence and occupied it as a principal residence for at least two years during the five years before the date of sale. The exclusion is not a one-time exclusion, but generally is available no more frequently than once every two years.

Medical Savings Account (MSA)

Individuals eligible for Medicare can choose either the traditional Medicare program or a Medicare Advantage MSA. See additional information under Medicare elsewhere in this handbook.

Long-Term Capital Gains and Dividends

A favorable tax rate on long-term capital gains applies to gains on most property disposed of after May 5, 2003. The rates changed on January 1, 2013, and are now as follows for long-term capital gains and qualified dividends:

- Twenty percent for singles with taxable income above \$400,000 and couples above \$450,000;
- Fifteen percent for all other taxpayers, except those in the ten percent or fifteen percent tax brackets;
- Zero percent for taxpayers in the ten percent or fifteen percent tax brackets.

Estate and Gift Tax Exemption

The Federal Estate and Gift Tax exemption has been made permanent at \$5,000,000 for individuals. With adjustments for inflation, this is increased to \$5,120,000, and for 2013 will probably be adjusted to \$5,250,000.

Unlimited Marital Deduction

There is an unlimited deduction for Estate and Gift Tax purposes for transfers between spouses; however, if the spouse receiving the transfer is not a United States citizen, there are special restrictions for both Estate and Gift Tax purposes.

Gift Tax Annual Exclusion

Effective January 1, 2013, a donor (someone giving a gift) may give up to \$14,000 per year to as many recipients as he or she wishes without incurring gift tax.

In addition, a person may make what are called “qualified transfers” for the benefit of another individual, which do not count as gifts, without dollar limit, as provided in Section 2503 (e) of the Internal Revenue Code: (a) by making payment as tuition to an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code for the education or training of such individual, or (b) by making payment to any person (provider) who provides medical care (as defined in Section 213(d) of the Internal Revenue Code) with respect to such individual as payment for such medical care.

Charitable Contributions and the Income Tax Charitable Deduction

Contribute to Qualified Charities. If you plan to take an itemized charitable deduction on your income tax return, your donation must go to a qualified charity by Dec. 31. Ask the charity about its tax-exempt status. You can also visit <http://www.irs.gov> and use the Exempt Organizations Select Check tool to check if your favorite charity is a qualified charity. Donations charged to a credit card by Dec. 31 are deductible for the year in which the charge is made to the credit card, even if you pay the bill in the following year. A donation made by check also counts for the year in which the envelope is postmarked. Gifts given to individuals, whether to friends, family or strangers, are not income tax deductible.

What You Can Deduct. You generally can deduct your cash contributions and the fair market value of most property you donate to a qualified charity. Special rules apply to certain types of donated property, including clothing or household items, cars and boats, works of art, etc. See the IRS publication referenced below.

Keep Records of All Donations. You need to keep a record of any donations you deduct, regardless of the amount. You must have a written record of all cash contributions to claim a deduction. This may include a cancelled check, bank or credit card statement or payroll deduction record. You can also ask the charity for a written statement that shows the charity's name, contribution date and amount.

Gather Records in a Safe Place. As long as you're gathering those records for your charitable contributions, it's a good time to start rounding up documents you will need to file your income tax returns. This includes receipts, canceled checks and other documents that support income or deductions you will claim on your tax return. Be sure to store them in a safe place so you can easily access them later when you file your tax return.

For more information about contributions, check out Publication 526 (Charitable Contributions), available at <http://www.irs.gov/pub/irs-pdf/p526.pdf>. The booklet is available on IRS.gov or order by mail at (800) TAX-FORM (829-3676).

Other important changes in the federal tax structure occur frequently and affect individuals, families, businesses, and investors. Tax advisors are often needed to analyze many of the changes.

Real Estate Tax Reductions for the Elderly

Many local political subdivisions (counties and cities) offer elderly property owners a reduction in their real estate taxes. The rate of reduction and qualifications vary from place to place, so call your local finance department, commissioner of revenue, or real estate tax assessor's office to obtain an application which must be filed annually.

HEALTH CARE

MEDICAID

Introduction

Medicaid is a cooperative federal-state program that provides health care services to the poor of all ages. The program is administered by state agencies, and thus the regulations governing Medicaid vary within the states. In Virginia, the program is administered by the Department of Medical Assistance Services (DMAS). At the federal level, Medicaid is administered by the Centers for Medicare and Medicaid Services (CMS).

Medicare and Medicaid frequently are mistaken for one another, but the programs serve two different populations. Note the following differences between Medicaid and Medicare:

Medicaid is a joint state and federal program for public assistance recipients and other medically indigent adults and children. Medicaid was designed to meet the medical needs of low-income, uninsured individuals, and therefore, the elderly often must spend down a major part of their assets before they are eligible for Medicaid benefits.

Medicare is a federal medical benefits program that is financed through the Social Security system and is primarily for the elderly, but also covers some or certain disabled persons.

Eligibility

Among those people eligible for full Medicaid benefits are Supplemental Security Income (SSI) recipients and other persons who are age sixty-five or greater, are blind or disabled (according to Social Security disability standards) and who meet certain income and asset limitations. Medicaid benefits include:

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- Medicare Part B premiums, deductibles, and coinsurance;
 - Inpatient hospital services with limitations and deductibles;
 - Outpatient hospital and rural health clinic services;
 - Nursing home care;
 - Physician services;
 - Transportation;
 - Long-term care alternatives, such as personal care services;
 - X-ray and laboratory services;
 - Home health care services;
 - Clinic services;
 - Prescription drugs;
 - Medical supplies and equipment in limited circumstances;
 - Physical therapy and related services; and
 - Emergency hospital services.

Among those people eligible for limited Medicaid benefits are:

- Qualified Medicare Beneficiaries (QMBs)—certain elderly and disabled persons entitled to Medicare Part A whose annual income is at or below the national poverty level and whose resources are very limited. Medicaid will pay the Medicare Part A deductibles and coinsurance and the Part B premiums, deductibles, and coinsurance for QMBs.
- Specified Low-Income Medicare Beneficiaries (SLMBs)—certain elderly or disabled persons entitled to Medicare Part A whose annual income is no greater than 120 percent of the national poverty level and whose resources are very limited. Medicaid will pay the Medicare Part B premium for SLMBs.
- Qualifying Individuals (QIs)—certain elderly or disabled persons entitled to Medicare Part A whose annual income is greater than 120 percent but no more than 135 percent of the national poverty level and who are not otherwise eligible for Medicaid benefits. Medicaid will pay the Medicare Part B premium for QIs. This benefit is not an entitlement but is available on a first-come, first-served basis, as funds permit.

Applying for Medicaid

Applications for Medicaid are accepted by the local department of social services. The Department of Social Services requires personal information about the applicant, as well as information about property owned, bank account balances, stocks and bonds, income, and medical bills.

Resource Limitations

In determining Medicaid eligibility, resources are categorized as either countable or noncountable. Countable assets are used to determine Medicaid eligibility and include those assets for which there is a meaningful possibility that they could be sold or otherwise converted into cash. Among countable assets are bank accounts, stocks, Individual Retirement Accounts, deeds of trust, or real property other than the home. Noncountable assets are those assets which are not counted in determining the resources available to a person for purposes of qualifying for Medicaid treatment. Noncountable assets include the following:

- Your home;
- Personal effects, including clothing, jewelry, and photographs;
- Household furnishings, such as furniture, paintings, appliances, and electronics that are exempt only while being used in the applicant's home;
- One automobile;
- Property essential to the institutionalized person's self-support;
- Some life insurance policies;
- Some burial funds and cemetery plots;
- Some irrevocable trusts and purchases.

Transfer of Assets

When an individual applies for Medicaid, he or she will be asked to disclose any property transfers made within the last sixty months prior to application.

Intentional reduction of assets in order to qualify for Medicaid—by putting assets into a trust, giving them away, or otherwise disposing of them without receiving compensation of a like value—can cause ineligibility for Medicaid coverage of long-term care services. The penalty period depends on the value of the asset transferred, how long ago the transfer occurred, whether compensation was received, plus other factors. Therefore, before any transfer of assets is made, consultation with an attorney knowledgeable about Medicaid matters is suggested.

Medicaid and Long-Term Care

Medicaid is the largest single payer for long-term care services. Many individuals of substantial means eventually spend their money and then seek coverage through the Medicaid program. Medicaid covers care in nursing facilities and in community alternatives allowed by waivers to federal rules. It is important to advise a nursing home or home for adults when planning for admission if you expect to apply for Medicaid within six months of entering, because preadmission screening must be conducted in order to verify that the intended care is medically appropriate.

If you are single and require long-term care, you most likely will be expected to pay a portion of your income toward your cost of care, retaining an amount for personal needs, with Medicaid making up the difference each month. For married people, if a spouse is institutionalized, income assets are treated differently in order to prevent the spouse living at home from becoming impoverished.

You may request a Medicaid resource assessment before you file an application for Medicaid, if you have not done so previously. At the time you file a Medicaid application, a resource assessment will be performed. Although the income of your spouse is not deemed to be yours, married persons are considered to have available to them all resources held by their spouses. For Medicaid to assess your resources, you must list all your assets, which will be categorized as either countable or noncountable.

Noncountable assets are assets that you may retain. Some noncountable assets are your home, automobile, personal furnishings, cemetery plots, some funds set aside for burial, and some life insurance policies. Countable assets are assets that are legally available to you. You must spend all but \$2,000 of your countable assets before you will be eligible for Medicaid under current law. If you are married and require institutional care, you will be referred to as the “institutionalized spouse,” and your well spouse will be referred to as the “community spouse.” The community spouse will receive a notice of Medicaid resource assessment that will state the protected resource amount for the community spouse. The protected resource amount is the minimum value of assets that the community spouse may retain and protect from the necessary resource reduction before the institutionalized spouse achieves eligibility. This amount may be raised by a court order.

There is no strict income limit for individuals receiving nursing home care, if the individual’s income is less than the average monthly private pay rate for care in a nursing home. If you are a Medicaid applicant to whom an income limit applies and your income is above the Medicaid limit, you may be placed on a spend-down. Once eligible for Medicaid, you will be entitled to maintain a small amount of income for personal needs. If you are married, your spouse will be entitled to keep all of his or her income and may be entitled to keep a portion of your income as well.

The scope of Medicaid services depends on the type of eligibility that a person meets. For SLMBs, coverage is limited to payment of the Medicare Part B premium amount. For QMBs, coverage includes the Medicare coinsurance, and deductibles for Part A, in addition to Part B premium, coinsurance and deductible amounts. For full coverage, Medicaid includes doctor visits, hospital inpatient and outpatient care, drugs, X-rays, lab tests, transportation to medical services, and prescription drugs. Long-term care

can be offered in rehabilitation hospitals, nursing facilities, or community alternatives including adult day care or in-home aides as needed.

Appeals

If you feel you have been unfairly denied Medicaid eligibility, you have the right to appeal the denial within thirty days. To file an appeal, write to the Appeals Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8488. In making the choice to appeal, you may wish to obtain the advice of legal counsel.

Conclusion

Medicaid rules are very complex, and detailed rules exist for such items as what constitutes countable income and assets, when property transfer is a potential bar to receipt of services, and whose income and resources will be used against what financial standards. For specific guidance, particularly regarding estate planning and long-term care, you may wish to contact an attorney who practices in the area of elder law.

For more information about Medicaid, visit <http://www.medicare.gov> on the web, or call Virginia's Department of Medical Assistance Services on (804) 786-7933. Information on Virginia's Medicaid Program At A Glance may be found at <http://www.dmas.virginia.gov/>. To apply for Medicaid, call your local department of Social Services, the addresses and other contact information may be found at <http://www.dss.virginia.gov/localagency/>.

MEDICARE

What Is Medicare?

Medicare is health insurance for people age sixty-five or older, under age sixty-five with certain disabilities, and any age with End-Stage Renal Disease (ESRD) (permanent kidney failure requiring dialysis or a kidney transplant). Medicare publishes an annual handbook, titled "Medicare & You." It is comprehensive, and is available in print and on-line. To download a digital copy, go to <https://www.medicare.gov/publications>; this new download option is available for your personal computer and for the iPad, Nook, Sony e-reader, Kindle, and all other e-Reader devices. Additional information may be obtained by calling (800) 633-4227 and following the prompt questions. In addition, the U.S. Department of Health & Human Services is beginning to provide data and comparisons regarding hospitals, nursing homes, physicians, home health care providers, dialysis facilities, and Medicare Plans; these may be found at <http://www.hospitalcompare.hhs.gov>, under Hospital Compare, Nursing Home Compare, Physician Compare, Home Health Compare, Dialysis Facility Compare, and Medicare Plan Finder.

- As part of the 2010 Affordable Care Act, in 2013, Medicare now newly covers the following services:
- Alcohol misuse counseling: One alcohol misuse screening per year for adults with Medicare who use alcohol, but don't meet the medical criteria for alcohol dependency; if your primary care doctor* or other primary care practitioner* determines that you're misusing alcohol, you can receive up to four brief face-to-face counseling sessions per year.
- Cardiovascular disease behavioral therapy: One visit per year with your primary care doctor in a primary care setting, such as a doctor's office, to help lower your risk for cardiovascular disease.
- Depression screening: One depression screening per year in a primary care setting, such as a doctor's office.
- Obesity screening and counseling: If you have a body mass index of thirty or higher, coverage is provided for intensive counseling to help you lose weight. This counseling must take place in a primary care setting, such as a doctor's office.

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- Sexually transmitted infections screening and counseling: Screenings are covered for chlamydia, gonorrhea, syphilis, and/or Hepatitis B, when the tests are ordered by a primary care doctor or other primary care practitioner.

If you are covered by a Medicare Prescription Drug Plan, once you are in the coverage gap, you will pay 47.5 percent of the plan's cost for your covered brand-name prescription drugs and 79 percent of the plan's cost for generic drugs. There will be increasing coverage each year in the coverage gap (that is, the percent that you pay will go down), until the coverage gap is closed in 2020.

- * Primary care doctor—Your primary care doctor is the doctor you see first for most health problems. He or she makes sure you get the care you need to keep you healthy. He or she also may talk with other doctors and health care providers about your care and refer you to them. In many Medicare Advantage Plans, you must see your primary care doctor before you see any other health care provider.
- * Primary care practitioner—A doctor who has a primary specialty in family medicine, internal medicine, geriatric medicine, or pediatric medicine; or a nurse practitioner, clinical nurse specialist, or physician assistant.

THE DIFFERENT PARTS OF MEDICARE

The different parts of Medicare help cover specific services if you meet certain conditions. Medicare has the following parts:

Medicare Part A (Hospital Insurance)

You usually do not pay a premium for Medicare Part A coverage if you or your spouse paid Medicare taxes while working. This is sometimes called “premium-free Part A.”

- Helps cover inpatient care in hospitals.
- Helps cover skilled nursing facility, hospice, and home health care.

Medicare Part B (Medical Insurance)

If you elect to have Medicare Part B, you pay a premium each month. Most people pay the standard premium amount (which for 2012 is \$99.90, and for 2013 is \$104.90). However, if your modified adjusted gross income is above a certain amount, you may pay more.

- Helps cover doctors' services and outpatient care.
- Helps cover some preventive services to help maintain your health and to keep certain illnesses from getting worse.

Medicare Part C (Medicare Health Plans) Medicare Health Plans include all Medicare Advantage Plans, Medicare Savings Accounts, and other Medicare health plans

Your out-of-pocket costs in a Medicare health plan depend upon many factors, some of which are: whether the plan charges a monthly premium; whether the plan pays any of your monthly Medicare Part B premium; whether the plan has a yearly deductible or deductibles; how much you pay for each visit or service (copays); the type of health care services which you require and how often; and others.

- A health coverage choice run by private companies approved by Medicare.
- Includes Part A, Part B, and usually other coverage including prescription drugs.

Medicare Part D (Prescription Drug Coverage)

Most Medicare Prescription Drug Plans charge a monthly premium, which varies from plan to plan.

- Helps cover the cost of prescription drugs.
- May help lower your prescription drug costs and help protect against higher costs in the future.

Your Medicare Coverage Choices

With Medicare, you can choose how you get your health and prescription drug coverage. Below are brief descriptions of your coverage choices.

Original Medicare

- Run by the Federal government.
- Provides your Part A and Part B coverage.
- You can join a Medicare Prescription Drug Plan to add drug coverage.
- You can buy a Medigap (Medicare Supplement Insurance) policy (sold by private insurance companies) to help fill the gaps in Part A and Part B coverage.

Medicare Advantage Plans (like an HMO or PPO)

- Run by private companies approved by Medicare.
- Provides your Part A and Part B coverage but can charge different amounts for certain services. May offer extra coverage and prescription drug coverage for an extra cost. Costs for items and services vary by plan.
- If you want drug coverage, you must get it through your plan (in most cases).
- You do not need a Medigap policy.

Other Medicare Health Plans

- Plans that are not Medicare Advantage Plans, but are still part of Medicare.
- Include Medicare Cost Plans, Demonstration/Pilot Programs, and Programs of All-Inclusive Care for the Elderly (PACE).
- Some plans provide Part A and Part B coverage, and some also provide prescription drug coverage (Part D).

Note: You might also have health and/or prescription drug coverage from a former or current employer or union.

To get general Medicare information:

(800) 633-4227

TTY (877) 486-2048

<http://www.medicare.gov>

State Insurance Counseling Assistance Program (VICAP)

To get free personalized health insurance counseling, including help making health care decisions, information on programs for people with limited income and resources, and help with claims, billing, and appeals.

Call Virginia Department for the Aging and Rehabilitative Services, (800) 552-3402, and follow the prompts to be referred to the office for your area code.

Social Security

To get a replacement Medicare card, change your address or name, get information about Part A and/or Part B eligibility, entitlement, and enrollment, apply for “extra help” with Medicare prescription drug costs, and report a death.

(800) 772-1213

TTY (800) 325-0778

Coordination of Benefits Call Center

To get information on whether Medicare or your other insurance pays first.

(800) 999-1118

TTY (800) 318-8782

Department of Defense

To get information about TRICARE. To get information about TRICARE for Life.

(866) 773-0404

TTY (866) 773-0405

Department of Health and Human Services

Office of Inspector General

If you suspect fraud.

(800) 447-8477

TTY (800) 377-4950

Office for Civil Rights

If you think you have been discriminated against by a health care entity or regarding HIPAA.

(800) 368-1019

TTY (800) 537-7697

Department of Veterans Affairs

If you are a veteran or have served in the U.S. military.

(800) 827-1000

TTY (800) 829-4833

Office of Personnel Management

To get information about the Federal Employee Health Benefits Program for current and retired Federal employees.

(888) 767-6738

TTY (800) 878-5707

Railroad Retirement Board (RRB)

If you have benefits from the RRB, call them to change your address or name, enroll in Medicare, replace your Medicare card, and report a death.

(877) 772-5772.

Quality Improvement Organization (QIO)

To ask questions or report complaints about the quality of care for a Medicare-covered service, call (800) MEDICARE to get the telephone number for your QIO.

ALZHEIMER'S DISEASE

Introduction

Alzheimer's Disease (Alzheimer's) is a type of dementia. "Dementia" is the term used to describe a serious decline in intellectual function, including memory, the ability to think, and behavior. The primary organ affected by this disease is the brain, specifically the areas involving cognitive function and memory function. Mild memory problems, including difficulty recalling names or retrieving information, are seen with normal aging. Memory may be affected by multiple small strokes, Parkinson's Disease and a variety of medical illnesses and medications. In 2012, estimates put the number of Americans suffering from Alzheimer's at 5.4 million. The prevalence of this disease rises with age, with approximately 12.5 percent of older Americans (age sixty-five and older) having the disease, and with nearly fifty percent of people aged eighty-five and older having the disease. Alzheimer's disease is the sixth leading cause of death in the United States. In Virginia in 2010, more than 130,000 people had Alzheimer's disease.

Alzheimer's and related dementia have a tremendous impact on the spouse and on the family caregivers (who are often referred to as the "hidden victims" of the disease). Alzheimer's indeed affects the entire family. It is important that caregivers get support because the stress of caring for someone with Alzheimer's often is mentally and physically draining for caregivers. When the caregivers become ill, they no longer are able to care for the patient, resulting in institutionalization of Alzheimer's patients.

Symptoms

The onset of Alzheimer's usually is gradual, beginning with minor memory problems and progressing to significant memory loss. Alzheimer's also may cause visio-spatial difficulties, poor judgment, personality changes or other evidence of impaired brain function. In turn, this decline in mental function leads to behavioral and emotional changes, loss of ability to care for oneself, and ultimately death due to physical deterioration. Alzheimer's affects each individual differently. Therefore, the number and degree of symptoms, as well as the course of the disease, may vary from person to person. Eventually, Alzheimer's leaves its victims totally unable to care for themselves. Symptoms you may notice in an individual with Alzheimer's include problems remembering recent events; difficulty in performing familiar tasks; confusion; personality and behavioral changes; impaired judgment; and difficulty in finding words, in finishing thoughts or in following directions. Be particularly alert for depression, which often occurs early and is hidden or "masked" in Alzheimer's patients. If it is suspected, seek professional help.

Services Available

Caregivers for the Alzheimer's patient will need support and assistance in giving that care. There are many people who can help—family and friends, health care professionals, the Alzheimer's Association Chapter, and others. Specialized programs and services can make life easier and more enjoyable for the caregiver and the person with Alzheimer's. For example, individuals with Alzheimer's may forget or refuse to eat. Meals on Wheels is a helpful program, but someone may have to be at home to accept delivery and supervise the eating. It is important that an individual with Alzheimer's receives help from people who are trained to help those with Alzheimer's.

Health Care Services

If you suspect that someone you know has Alzheimer's, it is important to contact your family physician or nearby teaching hospital for a physician referral. A comprehensive evaluation involving physicians, nurses, neurologists, and social workers can assist families in developing comprehensive plans of care for patient and family. Medical professionals also can evaluate the patient for other medical problems that may be causing or contributing to the dementia. It is important to have one primary care

physician. That physician can provide continuing care for the person with Alzheimer's, and in providing that care, treat other illnesses that arise, prescribe medications, answer questions, and provide caregiver support. When needed, the caregiver may seek a second opinion from a physician specially trained in managing Alzheimer's disease. A physician may also suggest that you consult a geriatric psychiatrist to help manage the behavior, depression and personality changes that often accompany the disease. Nurses involved with Alzheimer's patients or Alzheimer's support group members can teach family members the ongoing practical care of a person with Alzheimer's.

A family may also want to consult an attorney experienced in medical assistance law or the local Department of Social Services to advise them on their rights to government financial support through Medicare, Medicaid, Social Security, disability, or veterans benefits.

Rest for the Caregiver

The job of caring for a person with Alzheimer's can be overwhelming. It is important that the caregiver take an occasional break from hands-on caregiving. Remember that asking for help will allow you to care for your loved one longer. There are several options for the caregiver to have some time away from caregiving. These options provide for care for the Alzheimer's patient for a few hours, a few days, or even on a permanent basis.

Day-to-Day Assistance for the Caregiver in the Home

If you would like the Alzheimer's patient to remain in the home, you may contact visiting nurses, home health aides, and paid companions to provide service in the home. These individuals provide services that may include health care, personal care, shopping, cooking, or housework. Make sure that the person providing the home care is familiar with Alzheimer's so that they can provide special care.

Day-to-Day Assistance Outside the Home

Adult day care programs provide people with Alzheimer's several hours a day of structured recreation and mental stimulation. In an adult day care program, people with Alzheimer's can interact with others, exercise, listen to music, and engage in other activities. These activities can give them an opportunity to enjoy life and can be extremely beneficial to the patient and the family.

Short-Term Assistance for the Caregiver

Certain hospitals, nursing homes and residential facilities offer short-term stays for the Alzheimer's patient. This service, often called "respite care," provides full-time care of the Alzheimer's patient within the facility for a period of days or weeks. When the Alzheimer's patient is in respite care, the caregiver has a chance to take a vacation or just get some relief from the stress of caregiving.

Long-Term Assistance

As Alzheimer's disease advances and symptoms worsen, the family of the Alzheimer's patient may have to decide to make other living arrangements for the patient. Placing a family member in a nursing home or other long-term facility for any reason is a difficult decision, and yet, at some point, it may be the most responsible decision that can be made. Some nursing homes specialize in the care of persons with Alzheimer's, offering so-called Alzheimer's or Special Care Units. A word of caution: be certain the program that you choose is in fact one of substance with high-quality personnel. It may be beneficial for you to actually visit the program and observe it in action. If a person with Alzheimer's is terminally ill, he or she may be accepted in a hospice program.

Resources for Families

Alzheimer's affects families physically, emotionally, financially, and socially. Many families find that other problems become magnified under the stress of caregiving and that they need help, support, or advice in areas not directly related to the illness. Although you may receive support from families, neighbors and clergy, it may be advisable to seek outside assistance. The Alzheimer's Association often receives phone calls from families of Alzheimer's patients who have questions about protecting the future security of the patient and/or his family. The Alzheimer's Association has chapters and peer support groups in cities across the country and provides the support families need. In addition to providing support and guidance, chapters offer educational literature, consumer information and workshops for caregivers and professionals. There also is a MedicAlert and Safe Return program that creates a file with photographs of the Alzheimer's patient, which can be of assistance if the patient becomes lost. If you or someone that you know has Alzheimer's disease or a related dementia, please call the Alzheimer's Association for more information about education and support groups and other programs, (800) 272-3900, or go to the Alzheimer's Association website at <http://www.alz.org>. Also, go to the National Institutes of Health National Institute on Aging Alzheimer's Disease Education and Referral Center at <http://www.nia.nih.gov/alzheimers>.

The United States government now has a website, primarily for caregivers, at <http://www.alzheimers.gov>.

Legal Considerations for Alzheimer's Patients

As soon as Alzheimer's is suspected, the family and the patient should meet with a knowledgeable attorney to plan for legal and financial complications. This is important because during the early stages of the disease, the Alzheimer's patient may be capable of participating in legal and financial planning to protect the future management of his or her life and assets. When meeting for a legal consultation, it may be helpful to have the following documents: executed wills and trusts, prior tax returns, health and life insurance policies, pension information, deeds, mortgages, bank accounts, and information about other financial investments.

LONG-TERM CARE

Long-term care, which may be needed at any age, encompasses a broad spectrum of medical and support services for people who have lost some capacity to function on their own as a result of a medical condition, chronic illness or disability. Long-term care can be provided in a variety of settings, including nursing homes, assisted living facilities, adult day health care centers and at home.

Choosing long term care is an important decision and determining how to pay for it will require planning. Some of the best resources for learning what one needs to know are available on the web. The official federal Medicare website provides comprehensive information in a user friendly format at <http://www.medicare.gov>. The Virginia Health Care Association is a member-driven organization which is dedicated to representing the interests of its 250+ Virginia nursing and assisted living facilities; its website provides basic information about its member nursing homes and assisted living facilities as well as a useful list of links to other relevant resources. See <http://www.vhca.org>.

NURSING HOMES

Introduction

A nursing home is a facility designed for people who are not in an acute phase of illness. Nursing home residents do not need the level of care that a hospital provides, but they do require continuous nursing and other health-related services on an inpatient basis. Such care might be needed as a result of aging or because of prolonged illness or injury. Nursing homes provide care on a 24-hour basis, 365 days per year. The scope of their services include nursing care, custodial care and rehabilitative care (including physical, occupational and speech therapy) as well as specialized care, such as care for people suffering from Alzheimer's disease. In addition, nursing homes provide their residents with social, recreational and spiritual activities.

As of 2010, there are 287 licensed nursing facilities in Virginia containing 32,090 beds. Many nursing homes are proprietary (for-profit) facilities; however, a number of nonprofit homes operate in Virginia and are usually community- or church-affiliated.

All licensed nursing homes in Virginia are under the supervision of an administrator licensed by the Board of Long Term Care Administrators. Many people are involved in providing services to the residents of nursing homes. They include:

Administrative Staff

The Administrator, Director of Admissions, Director of Personnel and Finance Director

Medical Director

Physician responsible for overseeing the delivery of medical care to all residents in the nursing home

Nursing Staff

The Director of Nursing (who is a registered nurse), the Assistant Director of Nursing, Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and Certified Nurses Aides (CNAs)

Generally, the Director of Nursing and Assistant Director of Nursing supervise the work of the nursing staff. The RNs and LPNs provide medical treatments, administer medications, and document the medical care that is provided. The CNAs provide custodial care to patients (e.g., bathing, feeding and toileting.)

Therapists

Physical, occupational, recreational and speech therapists who help residents maintain their physical and functional status

Social Services Staff

Social workers who help residents cope with emotional and psychological issues and who assist with discharge planning

Activities Director

Staff member who provides therapeutic recreational programs that are designed to meet the assessed needs of the nursing home residents

Dietary Staff

Food service director and dietary assistants: the food service director is responsible for managing the meals program and seeing to it that the dietary needs of the residents are met. Dietary assistants are involved in the preparation and delivery of meals.

SELECTING A NURSING HOME

Multiple factors come to bear when choosing a nursing home. Do the facility services and capabilities meet the individual's needs? Does the facility participate in Medicare and Medicaid? Are the residents well cared for? Is the facility clean? Are residents' rooms comfortable with adequate light and ventilation? Are meals appetizing? Is there an activities program that is stimulating and varied? Are the buildings and grounds well maintained? Are there any problems? The list of questions can be long, and finding answers is not easy.

All nursing homes in Virginia are required to be licensed. The Virginia Department of Health, through its Office of Licensure and Certification, licenses nursing facilities in the Commonwealth and enforces state licensing standards. The Virginia Department of Health also serves as the State Survey Agency for the U.S. Department of Health and Human Services, the federal agency that oversees the Medicare and Medicaid programs. As the State Survey Agency, the Virginia Department of Health, also through its Office of Licensure and Certification, conducts annual surveys and complaint inspections to verify that Virginia nursing homes meet the conditions for participation in the Medicare and Medicaid programs. See <http://www.vdh.state.va.us/olc> (Virginia Department of Health, Office of Licensure and Certification) for information about licensure and monitoring of Inpatient and Outpatient Hospitals, Abortion Facilities, Home Care Organizations, and Hospice Programs.

Approximately ninety-five percent of nursing homes in Virginia participate in the Medicare or Medicaid programs or both. Those that do must meet federal standards, which include requirements relating to quality of care, quality of life and residents' rights. The Medicare *Guide to Choosing a Nursing Home with Nursing Home Checklist contained in it*, which can be accessed at <http://www.medicare.gov/pubs/pdf/02174.pdf> or may be obtained by calling (800) 633-4227, is among the best resources the Federal Government has provided with regard to how to find and compare nursing homes, how to pay for nursing home care, how to identify alternatives to nursing home care and where to go for help.

The Medicare Program has also instituted a Five-Star Quality Rating System, which ranks Medicare-participating nursing homes on a scale of one to five stars, with one star being the lowest ranking ("much below average") and five stars being the highest ranking ("much above average"). There is one overall rating for each nursing home and a separate rating for each of the following sources of information: health inspection results, quality measures and staffing levels. There has been controversy regarding the limitations, design and methodology of the Five-Star Quality Rating System (e.g. data may not be accurate or up-to-date). Medicare suggests that one can make an informed decision about selecting a nursing home by using the Five-Star Quality Rating System, together with other information such as talking to one's doctor, visiting the nursing home and talking to its staff, and contacting the state Long-Term Care Ombudsman or State Survey Agency.

Paying for Nursing Home Care

The cost of nursing home care depends on a number of factors: the kind of care that an individual needs, the level of services provided and where one lives. Sources of payment for nursing home care include Medicare, Medicaid, long term care insurance and personal resources.

Medicare

Medicare is a federal program of insurance that provides for medical insurance and skilled medical care for people who are sixty-five and older, some disabled persons and individuals with end-stage renal disease. Generally, Medicare does not pay for nursing home care. The Medicare benefit for nursing home care is very limited: Medicare will only pay for a certain number of days of care in a skilled nursing facility per period of illness if you qualify for Medicare benefits. This limited benefit is provided under

Medicare Part A. There are deductibles and coinsurance amounts that must be paid, and there may be conditions for qualification.

Some Medicare Advantage Plans offer limited skilled nursing facility care if the care is medically necessary. You may have to pay some of the costs.

The official Medicare website contains useful information about paying for nursing home care. See <http://www.medicare.gov>, or call (800) MEDICARE ((800) 633-4227); TTY/TTD (877) 486-2048.

Medicaid

Medicaid is a program jointly administered by the Federal Government and the state that pays for certain health services and nursing home care for people who meet the financial need criteria. Generally, eligibility for Medicaid is based on a person's income and available assets.

Not all nursing homes will accept Medicaid although many do. An individual should confirm that the nursing home he or she selects will continue to serve a resident whose funding source may switch from private or Medicare funds to Medicaid funds.

Information about the Medicaid program in Virginia can be found at <http://www.dmas.virginia.gov> or your local department of social services. You may also want to consult an attorney who practices in Elderlaw/Medicaid.

Veterans Benefits

The Veterans Administration (VA) may provide assistance for nursing home expenses for some veterans. Assistance also may be available to some children and surviving spouses of veterans. In order to receive these benefits, however, one must choose a nursing home that is under contract with the Veterans Administration. Contact the local VA office for more information. The Veterans Administration operates two Veterans Care Centers (nursing homes) in Virginia; they are located in Roanoke and Richmond.

Private Health and Long-Term Care Insurance

Some private health insurance plans provide for limited nursing home coverage. If an individual is covered by private insurance policies, talk with the carrier or insurance agent to find out whether the policy covers nursing home care. Most private insurance policy coverage is contingent upon the physician's documentation of the need for skilled nursing care.

Long-term care insurance policies can help pay for many types of long-term care, including nursing home care. The coverage and the cost vary widely across policies. The Medicare program website contains useful information about long-term care insurance (<http://www.medicare.gov>). Contact the Virginia Bureau of Insurance at (804) 371-9741 for helpful information about buying long-term care insurance. Ask for *A Shopper's Guide to Long Term Care Insurance*. As of September 1, 2007, Virginians are able to purchase a new type of long-term care insurance policy, an LTC Partnership policy, that can help them afford long-term care without depleting all their assets to pay for the care; *to see the brochure regarding this, go to* http://www.scc.virginia.gov/boi/pubs/ltcpart_broch.pdf.

Personal Resources

Personal resources are, of course, a source of funding for nursing home care. Any agreement between a nursing home and a prospective resident (or the resident's family) for the provision of care in return for payment of some kind is a contract, and all written agreements should be read and understood before being signed. Guarantors, responsible parties or cosigners for these contracts are bound to make good the debts of the nursing home resident should he or she be unable to pay. A person, such as a son or a daughter, who is considering becoming a guarantor or responsible party should take special care to understand exactly what obligations he or she may have to assume.

Resident Rights

When a person enters a nursing home, he or she must comply with reasonable rules of the facility and respect the rights of staff and other residents. A person does not, however, surrender his basic civil rights upon being admitted to a nursing home. While institutional care may place limitations on a nursing home resident's privacy and lifestyle, the resident should expect care that is compassionate, dignified and of high quality.

Virginia law requires a nursing facility to develop and implement policies and procedures that ensure residents' rights as those are defined in §§ 32.1-138 through 32.1-138.5 of the Code of Virginia, which can be accessed at <http://virginiageneralassembly.gov> under Code of Virginia.

Specifically, Virginia nursing homes are required to ensure that each patient admitted to such facility:

1. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during his stay, of his rights and of all rules and regulations governing patient conduct and responsibilities;
2. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during his stay, of services available in the facility, the terms of such services, and related charges, including any charges for services not covered under Titles XVIII or XIX of the United States Social Security Act or not covered by the facility's basic per diem rate;
3. Is fully informed in summary form of the findings concerning the facility in federal Centers for Medicare & Medicaid Services surveys and investigations, if any;
4. Is fully informed by a physician, physician assistant, or nurse practitioner of his medical condition unless medically contraindicated as documented by a physician, physician assistant, or nurse practitioner in his medical record and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;
5. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act, and is given reasonable advance notice as provided in § 32.1-138.1 to ensure orderly transfer or discharge, and such actions are documented in his medical record;
6. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;
7. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with state law;
8. Is free from mental and physical abuse and free from chemical and, except in emergencies, physical restraints except as authorized in writing by a physician for a specified and limited period of time or when necessary to protect the patient from injury to himself or to others;
9. Is assured confidential treatment of his personal and medical records and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution or as required by law or third-party payment contract;
10. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;
11. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;
12. May associate and communicate privately with persons of his choice and send and receive his personal mail unopened, unless medically contraindicated as documented by his physician in his medical record;

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13. May meet with and participate in activities of social, religious and community groups at his discretion, unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record;
 14. May retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other patients and unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record;
 15. If married, is assured privacy for visits by his or her spouse and if both are inpatients in the facility, is permitted to share a room with such spouse unless medically contraindicated as documented by the attending physician, physician assistant, or nurse practitioner in the medical record; and
 16. Is fully informed, as evidenced by the written acknowledgment of the resident or his legal representative, prior to or at the time of admission and during his stay, that he should exercise whatever due diligence he deems necessary with respect to information on any sexual offenders registered pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including how to obtain such information. Upon request, the nursing home facility shall assist the resident, prospective resident, or the legal representative of the resident or prospective resident in accessing this information and provide the resident, prospective resident, or the legal representative of the resident or prospective resident with printed copies of the requested information.

See Va. Code § 32.1-138(A).

All established policies and procedures regarding the rights and responsibilities of residents must be printed in at least 12-point type and posted conspicuously in a public place in all Virginia licensed nursing home facilities. These policies and procedures must include the name and telephone number of the complaint coordinator in the Office of Licensure and Certification of the Virginia Department of Health, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any ombudsman program serving the area. Copies of such policies and procedures must be given to residents upon admittance to the facility and made available to individuals currently in residence, to any guardians, next of kin, or sponsoring agency or agencies, and to the public. See Va. Code § 32.1-138(B).

Financial Controls and Resident Funds

Virginia places strict financial controls on nursing homes. Nursing facilities must keep their financial records according to generally accepted accounting principles (GAAP). In addition, nursing facilities that choose to handle resident funds must comply with § 32.1-138(A)(7) of the Code of Virginia regarding resident funds and must purchase a surety bond or otherwise provide assurance for the security of all personal funds deposited with the facility.

Importantly, Virginia prohibits nursing homes from offering or entering into any agreement with a resident or prospective resident that would restrict or limit the ability of a resident to apply for and receive Medicaid, or which would require a specific period of residency prior to applying for Medicaid. A resident may be required to notify the facility when an application for Medicaid has been made. See Va. Code § 32.1-138.2.

In addition, no Medicare or Medicaid participating nursing home may require a third party guarantee of payment to the facility as a condition of admission or of expedited admission to, or continued stay in the facility. A nursing home may, however, require an individual who has legal access to a resident's income or resources, which are available to pay for care in the facility, to sign a contract without incurring personal liability (except for breach of the duty) to provide payment from the resident's income or resources for such care. See Va. Code § 32.1-138.3.

Resources

There are many excellent sources of information for residents and their families who have questions about nursing homes, paying for nursing home care and what to do if a problem arises.

- <http://www.medicare.gov>: the official Medicare website (which includes links to the Medicare Guide to Choosing a Nursing Home, the “Nursing Home Checklist,” as well as recent surveys and inspection reports)
- <http://www.ahcancal.org>: the American Health Care Association and National Center for Assisted Living
- <http://www.ahcancal.org/ncal/Pages/default.aspx>: the National Center for Assisted Living
- <http://www.vhca.org>: the Virginia Health Care Association
- <http://www.vdh.state.va.us/olc/>: The Virginia Department of Health Office of Licensure and Certification administers the licensing programs for nursing facilities, hospitals, outpatient surgical hospitals, home care organizations and hospice programs.

If a problem with a nursing home cannot be resolved through regular grievance procedures and/or if you need information, contact:

Complaint Intake

Office of Licensure and Certification

Virginia Department of Health

9960 Mayland Drive, Suite 401

Richmond, VA 23233-1463

A complaint may be filed by telephone or sent by fax to (804) 527-4503. The toll free number for reporting a complaint is (800) 955-1819 or for the metro Richmond (804) 367-2106. Callers may remain anonymous.

If a resident is being transferred or discharged involuntarily from a nursing home (this applies even if the resident is self-pay and is not a Medicaid recipient—as long as the facility accepts Medicare/Medicaid) the resident may appeal the transfer/discharge, but it must be done in writing to: Department of Medical Assistance Services

Division of Client Appeals

600 East Broad Street, Suite 1300

Richmond, VA 23219

A facility’s complaint history may be found by contacting the Long-Term Care Ombudsman for your area.

Long-Term Care Ombudsman Program

The Long-Term Care Ombudsman Program was established in 1979 as a requirement of the Federal Older Americans Act to improve the quality of care in America’s long-term care facilities. The program serves as a focal point whereby complaints, made by or on behalf of older persons in long-term facilities or those receiving long-term care services in the community, can be received, investigated and resolved. Additionally, the Long-Term Care Ombudsman Program identifies problems and concerns of older persons receiving long-term services and recommends changes in the long-term care system that will benefit these individual consumers.

A major component of the program includes educating consumers of long-term care services about their rights and how to advocate on their own behalf when they have a problem or concern. The program is also a resource for information and counseling regarding long-term care services and aging-related issues. The ombudsman program disseminates information about long-term care services, including options for paying for services, how to choose a long-term care provider and consumer rights.

The Long-Term Care Ombudsman Program works closely with other consumer advocacy programs, regulatory agencies and providers to promote the empowerment and autonomy of older persons and the

resolution of complaints. The goal of this coordination is to help people understand their rights, exercise choices and ensure quality long-term care services.

The Office of the State Long-Term Care Ombudsman is operated by the Virginia Association of Area Agencies on Aging. Its mission is to serve as an advocate for older persons who receive long-term care services.

Originally established in 1979, the Virginia program was expanded in 1983 by the General Assembly to include community-based long-term care services, as well. Currently, there are twenty local ombudsman programs in Area Agencies on the Aging throughout the Commonwealth. These local ombudsman programs provide an advocacy presence in their communities which can efficiently respond to consumers' requests for information and concerns about quality of care. See "Helpful Contacts" section for listing.

The Office of the State Long-Term Care Ombudsman is located at 24 East Cary Street, 1st Floor, Richmond, VA 23219-3796; telephone: (804) 565-1600 or (800) 552-3402.

ASSISTED LIVING FACILITIES

Introduction

An "assisted living facility" is a group residential program for four or more persons who provide personal care and support services to people who need help with daily living activities as a result of physical or cognitive disability. Assisted living facilities are not licensed as a nursing home. Support services provided may include general oversight and assistance with activities of daily living and instrumental activities of daily living.

Generally, assisted living combines housing, personal services and light medical care. The facilities provide support to those individuals too frail to live alone, but too healthy to utilize most of the medical services provided in a nursing facility.

Design

Assisted living facilities come in different forms. They may be freestanding, located near or integrated with nursing homes, established as components of continuing care retirement communities, or at independent housing complexes. Assisted living options may range from one-bedroom apartment units to freestanding two-story homes.

Regulation

Regulation of assisted living facilities has increased in recent years. The federal government does not regulate assisted living facilities; therefore, services and levels of care at these facilities vary according to state laws. The Virginia Department of Social Services Division of Licensing is the regulatory agency for assisted child day centers, family day homes, assisted living facilities, adult day care centers, children's residential programs, and private adoption and foster care agencies, and is located at 7 North 8th Street, Richmond, VA 23219. To file a complaint or to obtain more information, dial (800) 543-7545. Regulations can be found in the Code of Virginia (§§ 63.2-1800 through 63.2-1808).

Paying for Assisted Living

Most residents living in assisted living facilities pay for services from private sources. Medicare does not cover assisted living expenses under any circumstances. Local departments of social services offer auxiliary grants to help eligible individuals pay for some assisted living services. For more information about auxiliary grants, visit the Department of Social Services website at <http://www.dss.virginia.gov/family/auxgrant.html>, or call (800) 726-7252.

Choosing an Assisted Living Facility

Choosing an assisted living facility can be a difficult decision. It is important to visit several communities and to talk with residents and staff. An unannounced visit may be very helpful. A careful comparison should be made of fees and services offered by different facilities. AARP created “Assisted Living: Weighing the Options,” a useful checklist of the questions to ask when considering an assisted living facility. The checklist is available at <http://www.aarp.org> in its Caregiving Resource Center.

Long-Term Care: A Consumer's Guide may also be helpful and is available on the Virginia Department for the Aging website at <http://www.vda.virginia.gov/pubsubjectlist.asp>. An individual can search for licensed assisted living facilities on the Department of Social Services Web site at <http://www.dss.virginia.gov/facility/search/alf.cgi>.

ADULT DAY CARE

Introduction

Adult day care programs are a popular non-residential option for older adults who need supervision during the day. Adult day care centers work to assist the older adult to remain living in a community at the highest level of independence possible. Many participants and their family caregivers may delay or avoid use of more costly in-home and nursing home care by using adult day care.

These programs provide a variety of health and social services for older adults who may be physically or cognitively-impaired but who do not need twenty-four-hour supervision. Individuals who participate in adult day care programs typically attend on a regular, planned basis on weekdays, but some centers offer weekend services as well. Admission requirements and procedures vary somewhat across centers, but all centers require that the applicant have a personal physician or clinic with which care can be coordinated.

Regulation of Adult Day Care

Adult day care centers are licensed by the Virginia Department of Social Services (VDSS) and must meet standards related to ratio of staff to participants, staff and volunteer qualifications, staff training and continuing education standards. Health, fire and licensing officials monitor the physical environment and safety issues. In addition, many adult day care funding sources conduct periodic inspections of various aspects of the facility, staff and care provided. Complaints about care can be directed to the Long-Term Care Ombudsman for your area of Virginia, whose contact information can be obtained at (800) 552-3402.

Services Provided

Adult day care services are designed to assist both the participant and the family. Adult day care centers provide health maintenance services, therapeutic activities, personal care, and emotional support to participants. Older persons may benefit from the special care if they are:

- Physically impaired
- Socially isolated
- In need of personal care help
- Mentally confused
- Limited in their ability to function independently in the community
- In need of supervision

Family caregivers benefit from adult day care as well. Adult day care services allow family caregivers freedom to go to work, take care of personal business, or just relax while their relative attends the adult day care program.

Paying for Adult Day Care

Costs for adult day care range from twenty-five dollars a day to over one hundred dollars per day depending on the services offered and type of reimbursement. Although many adult day care participants pay for care out-of-pocket, almost all centers have provisions, such as sliding fee scales or scholarships, to serve those who need financial assistance. Medicare and insurance do not generally cover the costs of adult day care; however, Medicaid may pay for adult day care and transportation if the person meets financial and nursing home preadmission screening criteria. Additional funding may also be available through federal or state government programs like Older Americans Act or the Veterans Administration.

HOME CARE

Introduction

Home care refers to a variety of services performed at a person's home by an outside agency. It enables elderly persons requiring part-time medical or personal care to remain in their homes and thereby avoid higher priced nursing home care. This section discusses both "home health care" and "home care." "Home health care" is the term used by Medicare to describe specific medical services rendered in the patient's home that are reimbursed by Medicare; however, there are many additional services available to homebound elderly that are not covered by Medicare. The term "home care" refers to that broader range of services.

Types of Services Available

There are two categories of home care services available: skilled services and home support services.

Skilled Services

Skilled services include part-time nursing care, physical therapy, speech and occupational therapy, and medical supplies and equipment. For example, a nurse may come to the house periodically to change the dressing on a wound, adjust a catheter or give an injection. The physical therapist may come to review exercises with a patient recovering from a hip fracture. The cost varies depending on the length of the visit and the type of care. Medicare, Medicaid, or health insurance may cover some of the expense.

Home Support Services

There is a wide range of available home support services. A homebound senior citizen may receive maintenance services such as shopping, meal preparation and light housekeeping and assistance with personal needs (e.g., walking, bathing and dressing). These programs offer assistance with daily activities and home support services, such as homemaker services, companion services, and home chore services. A homemaker or home health aide will help the patient with bathing, grooming, and dressing. The aide may also assist with meal preparation, grocery shopping, and light housekeeping. Home chore service involves house cleaning, household repairs, and yard work. Medicare and Medicaid usually do not cover these services.

Area Agencies on Aging can provide useful information regarding other home care and support services provided by programs in a specific community. Typical community-based services include the following: transportation, case management, information and referral, legal services, adult day care, congregate meal sites, home-delivered meals, senior centers, respite care and telephone outreach. For example, sometimes religious or civic organizations may offer limited services, free of charge. Also, nutritious home-delivered meals are available to homebound senior citizens through programs like "Meals on Wheels" for a modest cost that is often based on a sliding scale fee that depends on a person's ability to pay. Meals are delivered once or twice daily, five-to-seven days a week, and most programs can accommodate special diets. This program varies from place-to-place and local information can be

obtained by contacting your Area Agency on Aging. To find more information about an Area Agency on Aging, see the resource list at the end of this handbook, or go to the Virginia Division for the Aging website: <http://www.vda.virginia.gov/findservicesintro.asp>.

Arranging for Home Care

Home care is available through hospitals, public health departments, Area Agencies on Aging, local departments of social services and private agencies. Frequently, if the home care follows hospitalization, the hospital discharge planner or social worker will assist you in coordinating the services you need. The family doctor is also able to develop a plan for home health care and recommend agencies to contact. If a person anticipates reimbursement from Medicare, Medicaid, or insurance, a doctor's certification of medical need is essential. Other sources of information include adult day care centers and local religious organizations, such as Jewish or Catholic Family Services. Contact the Virginia Division for the Aging for further assistance at (804) 662-9333.

Choosing a Home Care Provider

Determine the caliber of a Medicare-certified home care provider by reviewing its Medicare Survey Report. Contact the state's insurance counseling program for assistance in obtaining this document at (804) 662-9333. Many states require home care providers to earn a license to operate. In order to obtain a license, facilities must meet basic legal and operating standards imposed by the state department of health. Visit the Virginia Department of Health website for information on its licensed providers: <http://www.vdh.virginia.gov>. Additionally, inquire about the accreditation of the home care provider. Several professional organizations have established standards to define quality in home care services, and many home care providers voluntarily seek accreditation from these organizations to signify that they have met national standards for quality care.

Questions to Ask

Ask the following questions in choosing a home care provider:

- How long has the provider been serving the community?
- Does the provider supply literature explaining its services, eligibility requirement, fees, and funding sources?
- How does the provider select and train its employees? Does it protect its workers with written personnel policies, benefits packages, and malpractice insurance?
- Are nurses or therapists required to evaluate the patient's home care needs? If so, what does this entail? Do they consult the patient's physicians and family members?
- Does the provider include the patient and family members in developing the plan of care?
- Is the patient's course of treatment documented, detailing the specific tasks to be carried out by each professional caregiver? Do the patient and family receive a copy of this plan, and do the caregivers update it as changes occur? Does this provider take time to educate family members on the care being administered to the patient?
- Does the provider assign supervisors to oversee the quality of care patients are receiving in their homes? If so, how often do these individuals make visits? How can the patient and his or her family members call with questions or complaints? How does the agency follow up on and resolve problems?
- What are the financial procedures of this provider? Does the provider furnish written statements explaining all of the costs and payment plan options associated with home care?
- What procedures does the provider have in place to handle emergencies? Are its caregivers available twenty-four hours a day, seven days a week?
- How does the provider ensure patient confidentiality?

Paying for Home Care

Medicare will pay the reasonable costs for covered home health visits if an individual meets the following conditions:

- A doctor certifies the individual's need and sets up a plan of treatment;
- The individual needs intermittent (part-time) skilled nursing care, physical therapy, or speech therapy;
- The individual is homebound; and
- The services are provided by a Medicare-certified agency.

One must pay for the costs that Medicare does not cover, including the difference, if any, between what Medicare considers reasonable and the actual cost. Medicare does not cover the cost of full-time nursing care at home, meals delivered to your house, or homemaker services. In some circumstances, however, Medicare will pay for intermittent use of a home health aide, occupational therapist, medical social services and medical supplies and equipment. Medicaid-eligible patients may qualify for some of these benefits. The standardized Medicare supplement policies (Medigap) have very limited at-home recovery programs. Not every company offers these plans, and all applicants do not qualify. It is also important to remember that not all agencies are Medicare-certified.

Home care may be an optional extra in a long-term care insurance policy as well. Many private insurance companies have begun to offer the coverage for home health care. Check the coverage under one's policy and also check with the home health agency to confirm that it accepts private insurance. Those individuals eligible for Veterans Administration benefits or a TRICARE military health plan should look into coverage under these programs as well.

While reimbursement usually is available for skilled services received in the home, this is seldom the case for home support services such as a homemaker or an aide. Some agencies have received federal, state, or local government funds to provide these services to senior citizens meeting specified eligibility requirements. Check with Area Agencies on Aging, the local department of social services, or the individual home health agency regarding qualifications.

CONTINUING CARE RETIREMENT COMMUNITIES

Introduction

Also known as life care retirement communities, these facilities have been in existence for many decades; however, the industry has greatly expanded in the last two decades. Although many continuing care retirement communities (CCRCs) are run by nonprofit organizations, major corporations have entered the market.

A CCRC is a financially self-sufficient residential community for senior citizens that offers medical care and nursing services in addition to independent living. CCRCs vary in the image they wish to project. Some are closely aligned with a particular religious denomination. Some seek to cover the basics in a simple community setting, while others attempt to create a country club or resort atmosphere.

Type A Facility: Extensive Plan

CCRCs differ in the amount of health care they offer their residents. A "Type A" or "extensive" or life-care facility will provide food, housing, medical services and nursing care, and assisted living care for the remainder of the resident's life. Frequently, a Type A facility will provide the services even after the person has exhausted his financial resources. It can be thought of as a form of self-insurance, spreading the risk of catastrophic health care costs among all residents in the CCRC, so no one will face financial ruin. Because of the guaranteed health care, Type A facilities are the most expensive.

Type B Facility: Modified Plan

“Type B” or “modified” retirement communities offer lower entrance and monthly fees. Typically, they offer the same services as the Type A facilities but without the health care guarantee. For example, a Type B facility may provide fifteen days of nursing care per year. After a resident uses the fifteen days, that resident must pay a daily charge for the nursing care. In the event that an individual runs out of money, the facility is not contractually obligated to provide for care.

Type C Facility: Fee-for-Service Plan

In the “Type C” or “fee-for-service” community, residents have priority access to the nursing unit, but they must pay at market rates for the services received, on an as-needed basis. Moreover, Type C facilities generally offer the lowest entrance and monthly fees, but the risk of large long-term care expenses remain with the resident—the risk is not shifted to the facility.

CCRC Fees

A CCRC usually charges two fees—a one-time entry fee followed by a monthly maintenance fee. The entry fee may range considerably, depending on whether it is a Type A, B or C facility, the size of the living unit, and the amenities associated with the community (such as swimming pool or golf course). The monthly maintenance fee may be increased from year-to-year as inflation dictates. Residents may meet the monthly fee with Social Security, pension, and investment, while the funds for the entrance fee often are obtained from the sale of the retiree’s home or from savings. An alternative used by some CCRCs is to offer a reduced entry fee that is accompanied by proportionally higher monthly fees.

Pros and Cons

Security and flexibility are two reasons for joining a CCRC. With increased life expectancies brought about by modern medicine, many elderly persons experience two stages in their retirement years. The younger elderly are capable of independent living and community involvement. For this age group, the social and recreational features of CCRCs are attractive. Dependency and declining health characterize the second stage of retirement. The CCRC is equipped to keep residents in their apartments as long as possible. Housekeeping and dietary services (offered by the Type A and B facilities) handle the day-to-day living activities residents no longer may be able to perform. CCRCs often provide transportation to shopping areas. Most importantly, a nursing facility is located on the premises if and when skilled or custodial care becomes necessary. The support systems of a CCRC enable various gradations of living along the independent/dependent continuum tailored to the individual’s needs. In addition, some life care contracts (Type A) promise to care for residents even after they exhaust financial resources.

There are some drawbacks to living in a CCRC. The most obvious is the cost. The entry fees can be so expensive that should someone join a CCRC and later dislike it, the bulk of that individual’s life savings is gone and he cannot afford to move elsewhere. Some senior citizens do not desire a community as homogeneous as CCRCs can be. Finally, there have been a few instances where, due to fraud or mismanagement, CCRCs have gone bankrupt. Virginia is one of approximately thirty-five states that attempt to reduce this risk by regulating the industry. CCRCs must register with the Virginia State Corporation Commission and must provide detailed annual disclosure statements to the Commission, and to current and prospective residents. A list of all Virginia registered CCRC’s may be accessed at <http://www.scc.virginia.gov/boi/>, under Consumer Home, then Company Lookup, then Company, then selecting Continuing Care Retirement Community under Company Type. Selecting the name of the CCRC will provide basic information regarding the CCRC and in many cases will provide access to the CCRC’s website to obtain additional information. The annual disclosure statements may also be viewed at the State Corporation Commission Bureau of Insurance office at 1300 East Main Street, Richmond, VA 23219,

by calling ahead to (804) 371-9546, to make arrangements. In addition, the Commission is authorized to intervene when a CCRC shows signs of financial instability.

Residents' Rights and the Possibility of Dismissal

Once a person invests a large sum of money in a life care contract, he does not want to be evicted or dismissed on the whim of management. Virginia law permits cancellation of any continuing care contract of any resident only after a showing of good cause. In §38.2-4905, "good cause" is defined as: (i) proof that the resident is a danger to himself or others; (ii) nonpayment by the resident of a monthly or periodic fee; (iii) repeated conduct by the resident that interferes with other residents' quiet enjoyment of the facility; (iv) persistent refusal to comply with reasonable written rules and regulations of the facility; (v) a material misrepresentation made intentionally or recklessly by the resident in his application for residency, or related materials, regarding information which, if accurately provided, would have resulted in either a failure of the resident to qualify for residency or a material increase in the cost of providing to the resident the care and services provided under the contract; or (vi) material breach by the resident of the terms and conditions of the continuing care contract. If a provider seeks to cancel a contract and terminate a resident's occupancy, the provider shall give the resident written notice of, and a reasonable opportunity to cure within a reasonable period, whatever conduct is alleged to warrant the cancellation of the agreement.

Virginia law also gives CCRC residents the right to form a residents' association and requires quarterly meetings between residents and management.

Choosing a Specific CCRC

Initially, you must determine whether or not communal living is for you. Once the decision is made to pursue this form of housing, visit each CCRC under consideration and determine what the entrance requirements are for each. Also inquire about rules and policies. A visit ought to include a night in the guesthouse, as well as a couple of meals in the dining room. Ask questions about the services available. How many meals are included in the contracts? Is service available to the resident's apartment if it is needed? Is the kitchen willing to prepare meals to fit a prescribed diet?

Tour the grounds and buildings, paying close attention to the layout, appearance, upkeep and security. Within the apartment, look for the usual features that concern prospective renters or homeowners, along with looking for an emergency call system. Engage the residents and staff in conversation. Are the people friendly? How do they interact? Are there many social activities? Is there a library? Are there recreational facilities?

Also, insist upon visiting the nursing unit. This is essential for the Type A facilities, as health care constitutes a significant portion of the services a resident will be purchasing. Does the health care facility provide a full range of services, such as annual or routine physical exams, dental care, physical/occupational/speech therapy, prescription drugs and/or eye care? What is the limit to the health and medical care coverage that is included in the regular fees? What is the community's policy for transferring residents from apartment and independent living units to nursing home facilities? What is the policy for returning residents to their apartments or independent living units? You should observe the manner of the staff. Are they calm or frantic? Inquire about the rate of turnover on staff. If there is considerable turnover, it may indicate management or low-pay problems. What about the patients? Are they groomed and dressed? Are the halls clean and free of odor? Finally, the visit should include a trip into town to see the nearby churches, stores, and recreational opportunities.

Seek Professional Advice

The insurance services package that will be purchased is more important than the physical layout of a retirement community. Remember that in some cases you are buying a contract and not real estate. To this

end, carefully read the contract and have a lawyer read it. You should have, in writing, all fees and the corresponding services to be rendered by the provider. Clarify whether services such as housekeeping, linens and personal laundry, telephones, parking and transportation are included. Ask the facility for its fee-hike history. Also, see what the refund policy is in the event a resident dies prematurely or chooses to leave the community. Nonrefundable entry fees tend to be lower. Retirees wishing to leave an estate for their heirs, however, may want to look for a CCRC offering a refundable (or partially refundable) entry fee.

You and your lawyer should also scrutinize several annual reports and balance sheets of the CCRC. You should ask if an actuarial study has been done and request a copy of the report. Even more so than a financial disclosure statement, an actuarial study will reveal whether the facility will be able to meet its obligations several years down the road. In addition, you might inquire if the CCRC has entered into the LeadingAge Quality First Covenant with the American Association of Homes and Services for the Aging (now called LeadingAge), <http://www.leadingage.org>. This covenant is intended to reinforce the commitment that all types of not-for-profit services providers have to maximize quality of care and quality of life for older adults.

Careful planning, coupled with wise shopping, can make this form of housing and health care a successful alternative for many senior citizens.

Virginia Long-Term Care Ombudsman Program

Ombudsmen advocate for older persons receiving long term care services, whether the care is provided in a nursing home or assisted living facility, or through community-based services to assist persons still living at home. The program provides older Virginians, their families and the public with information, advocacy, and assistance to help resolve care problems.

The program works to resolve problems of individual residents and groups of residents to bring about changes at the local, state and national levels to improve care and quality of life. The cornerstone of this work is Residents' Rights. While many people receive good long-term care services, others encounter problems and neglect.

Ombudsmen, both paid staff and volunteers, provide help and a voice for those that are not heard or unable to speak for themselves. To locate your ombudsman, call (800) 552-3402 or access online at <http://www.elderrightsva.org>

HOUSING

LANDLORD-TENANT ISSUES

As you make the transition into senior citizen status (and assuming you will not desire or need long-term care facilities), the housing accommodations that once met your needs may no longer serve your best interest. Some people prefer to avoid the physical and financial requirements of home ownership and instead rent a residence or apartment. There are several rights and duties of both a landlord and a tenant in Virginia. Here are some guidelines.

Obtain Necessary Information About Rental Property

After deciding the amount of rent you can afford and the type of house or apartment you want, you should shop around thoroughly. Carefully inspect the rental property you are considering, and note any problem areas or damage. It may be helpful to ask other tenants about the property and landlord relations. You should also consider the housing's insulation, heating and cooling systems, security, parking, quality of construction, and proximity to public transportation and shopping. Other important factors to be considered include the cost and availability of utilities, the demographic of your neighbors (seniors, families, students, transients, etc.), and handicapped accessibility.

Understand Your Lease

A “lease” is an agreement between the owner of property, the “landlord,” and a person who wants to use the property for a period of time, the “tenant.” The lease may be oral or written; however, a written lease is much better and safer. Oral leases are not preferred because they are only as good as the recollection of the parties who enter into them. If either a landlord or a tenant fails to remember any term of an oral lease or disagrees with the other party’s recollection of the terms of the lease, there is nothing in writing to consult in which to resolve such a matter.

An example of an oral lease is a tenant telling a landlord that he or she will pay \$500 a month for the apartment and the landlord saying, “Fine, it’s yours,” and accepting the first rent payment and delivering the keys to the property. Generally, the term of an oral lease is the same as the period of time for which the tenant pays the rent, up to one year. For example, if the tenant pays rent each month under an oral agreement, the term of the lease is only one month. This is called a month-to-month tenancy. If the tenant pays rent once every three months, the term of the lease is three months.

A written lease is a contract signed by both the landlord and the tenant that spells out the rights and responsibilities of both the landlord and the tenant. Although there are no special terms needed to create a lease, a standard lease should include the names of the parties, a description of the premises, the length of the lease, the amount of rent and security deposits due, if any, and the signatures of the landlord and tenant. Any oral promises and agreements must be written into the lease, or they will not be binding. Any subsequent change to the written lease must also be in writing and signed or initialed by both the landlord and the tenant. Although the landlord must provide the tenant a copy of the written lease within one month, it is best to insist on a copy signed by the landlord prior to paying rent and before moving in. Before signing a lease, you should read it carefully, fully understand the contents, and agree with the contents. If you are not satisfied with the terms of your lease, it may be wise to consult an attorney.

Virginia Residential Landlord and Tenant Act (§§ 55-248.2 to -55-248.40 of the Code of Virginia)

The Virginia Residential Landlord and Tenant Act (VRLTA) governs most landlord and tenant affairs. VRLTA, however, does *not* apply to all landlord and tenants affairs, some specific exceptions are:

- Public housing, if applicable HUD regulations are inconsistent with the VRLTA;
- Transient housing for less than thirty days;
- Landlords who, as individuals (natural persons), own or lease no more than ten single family residences subject to rental agreements, or no more than four condominium units or single-family residences located in any city or in any county having either the urban county executive form or county manager plan of government.

Even if your leasing situation is among those not generally covered by the VRLTA, you and the landlord can agree to have the VRLTA govern your lease. If the landlord specifically provides in the rental agreement for VRLTA to govern your lease, then it will apply. Simply ask your landlord to include such a provision in your lease.

Security Deposits (§ 55-248.15:1)

The landlord can, and probably will, request a security deposit before renting property to you. The purpose of the deposit is to guarantee that you will take good care of the property while you are renting. If the VRLTA applies, the security deposit may not exceed the total of two months rent, and if the landlord holds the security deposit for more than thirteen months from the date of the lease, interest must be paid on the amount of the deposit from the date of the lease until the security deposit is returned to you. The interest will accrue at an annual rate equal to four percentage points below the Federal Reserve Board discount rate as of January 1 each year.

When you move out, the security deposit can be used to pay for rent due and for damages to the unit caused by other than normal wear and tear. Note, however, that the landlord has thirty days in which to notify a tenant in writing of any deductions. Thus, a tenant does not normally have a right to use the security deposit as the last month's rent.

If the VRLTA applies, the landlord must give you a written list of any claimed damage to the property, the dollar amount claimed for the damage, and any rent due, and he or she must return the remainder of your security deposit within forty-five days after the lease ends and you have moved out.

If you desire to be present when the landlord inspects the apartment at the termination of the lease, you may so do so by written request. The landlord must then notify you of the date and time of the inspection. Inspection must be made during business hours and normally within seventy-two hours of your moving out.

To ensure the return of your full security deposit when you move out, you should take certain steps to protect yourself when you first move in. If the VRLTA applies, the landlord is required, within five days of the beginning of your tenancy, to submit to you an itemized list of damages to the unit already existing at the time you moved in. The list is deemed correct, unless you object to it in writing within five days. If the landlord does not submit such a list to you, then you should thoroughly inspect the apartment and submit an itemized list of your own to the landlord. The list is deemed correct, unless the landlord objects within five days of receipt of this list. Both the landlord and tenant may agree to a joint inspection and prepare an itemized list. Remember to keep a copy for yourself.

Rental Application (§ 55-248.6:1)

When you want to lease property, the landlord may require that you first file an application and pay a fee. If you decide not to rent the property, or if the landlord rejects your application, then, under VRLTA, the landlord may keep all sums in excess of the landlord's actual expenses and damages together with an itemized list of said expenses and damages. Generally, the refund must be made within twenty days (ten days if this fee was paid by cash, certified check, cashier's check, or money order).

It is against the law, and it is a discriminatory housing practice, for any person to refuse to rent or to represent to a person that an otherwise available dwelling is not available due to an individual's age. If you believe you have been discriminated against on the basis of your age, you should file a complaint with the Real Estate Board, in writing, within one year after the alleged discriminatory housing practice occurred.

Duties of the Tenant (§ 55-248.16)

- You must comply with all of the provisions of the rental agreement, and you must:
 1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
 2. Keep that part of the dwelling unit and the part of the premises which you occupy and use as clean and safe as the condition of the premises permit;
 3. Keep that part of the dwelling unit and the part of the premises that you occupy free from insects and pests, as those terms are defined in § 3.2-3900, and to promptly notify the landlord of the existence of any insects or pests;
 4. Remove from your dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord pursuant to § 55-248.13, if such disposal is on the premises;
 5. Keep all plumbing fixtures in the dwelling unit or used by you as clean as their condition permits;
 6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the

premises, and keep all utility services paid for by you to the utility service provider or its agent on at all times during the term of the rental agreement;

7. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by you or not;
 8. Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);
 9. Not remove or tamper with a properly functioning carbon monoxide detector installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative;
 10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that you occupy in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by you;
 11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;
 12. Be responsible for your conduct and the conduct of other persons on the premises with your consent whether known by the you or not, to ensure that your neighbors' peaceful enjoyment of the premises will not be disturbed; and
 13. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § 55-248.17.
- You must permit the landlord to enter the property at a reasonable time and after reasonable notice (§ 55-248.18) so that the landlord may inspect the property, make necessary repairs or improvements, supply necessary or agreed-upon services, or show the property to prospective tenants or purchasers, except in emergency situations.
 - You must give the landlord duplicate keys to all burglary and fire protection devices you install, and you should get the landlord's permission before installing these devices.
 - You should never withhold rent without first consulting a lawyer. If you cannot afford one, check with your local legal aid office.
 - You must give proper written notice before moving out. Look to the terms of your lease for the proper notice requirements. If you have a month-to-month tenancy, thirty days' advance written notice is required from the beginning of the next tenancy period.
 - You must follow the rules and regulations established for the property. This includes controlling the conduct of yourself, others authorized to live with you, and your guests.

Duties of the Landlord (§ 55-248.13)

A. The landlord must:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;
2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
3. Keep all common areas shared by two or more dwelling units of the premises in a clean and structurally safe condition;

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4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;
 5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any notices from a tenant as provided in subdivision A 10 of § 55-248.16;
 6. Provide and maintain appropriate receptacles and conveniences, in common areas, for the collection, storage, and removal of ashes, garbage, rubbish and other waste incidental to the occupancy of two or more dwelling units and arrange for the removal of same; and
 7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection.
- B. The landlord must perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.
- C. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision 1 of subsection A.
- D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions 3, 6, and 7 of subsection A above and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.
- The landlord may not demand payment from a provider of cable, satellite, and other television services in return for granting tenants access to such services or for granting service providers access to tenants. The landlord, however, may require payment from tenants if the landlord is the provider of such services.
 - Any county, city, or town may require, by ordinance, that landlords who rent five or more units in one building shall install:
 - Deadbolt locks and peepholes in any exterior swinging door not made of glass;
 - Manufacturer's locks and removable pins or Charlie bars on exterior sliding glass doors; and
 - Locks on all exterior windows.

Tenant Remedies/Defenses (§ 55-248.25)

You can defend a lawsuit brought against you by your landlord for possession of the unit for unpaid rent by asserting that the landlord failed to comply with the lease or his/her duties under the VRLTA, based upon the landlord's noncompliance as defense to action for possession for nonpayment of rent as follows:

- A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises, a condition which constitutes or will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof, including but not limited to a lack of heat or running water or of light or of electricity or adequate sewage disposal facilities or an infestation of rodents, or a condition which constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:

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1. Prior to the commencement of the action for rent or possession, the landlord or his agent was served a written notice of the aforesaid condition or conditions by the tenant or was notified by a violation or condemnation notice from an appropriate state or municipal agency, but that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable; and
 2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.
- B. It shall be a sufficient answer to such a defense provided for in this section if the landlord establishes the conditions alleged in the defense do not in fact exist; or such conditions have been removed or remedied; or such conditions have been caused by the tenant or members of the family of such tenant or of his or their guests; or the tenant has unreasonably refused entry to the landlord to the premises for the purposes of correcting such conditions.
- C. The court shall make findings of fact upon any defense raised under this section or the answer to any defense and, thereafter, shall pass such order as may be required including any one or more of the following:
1. An order to set-off to the tenant as determined by the court in such amount as may be equitable to represent the existence of any condition set forth in subsection A which is found by the court to exist;
 2. Terminate the rental agreement or order surrender of the premises to the landlord; or
 3. Refer any matter before the court to the proper state or municipal agency for investigation and report and grant a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court any rents which will become due during the period of continuance, to be held by the court pending its further order or in its discretion the court may use such funds to pay a mortgage on the property in order to stay a foreclosure, to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or to remedy any condition set forth in subsection A which is found by the court to exist.
- D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the violation or has unreasonably refused entry to the landlord for the purpose of correcting the condition giving rise to the violation, the court, in its discretion, may impose upon the tenant the reasonable costs of the landlord, including court costs, the costs of repair where the court finds the tenant has caused the violation, and reasonable attorney's fees.

You may sue the landlord in general district court for the city or county where the rental unit is located if the landlord violates either the terms of the lease, or the provisions of VRLTA (§55-248.27)

- A. The tenant may assert that there exists upon the leased premises, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water, except if the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or of light, electricity or adequate sewage disposal facilities; or an infestation of rodents, except if the property is a one-family dwelling; or of the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court wherein the premises are located by a

declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection C.

- B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:
1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such conditions by a violation or condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable;
 2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter; and
 3. It shall be sufficient answer or rejoinder to such a declaration if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.
- C. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:
1. Terminating the rental agreement or ordering the premises surrendered to the landlord;
 2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;
 3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;
 4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;
 5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;
 6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rents within five days of date due under the rental agreement, subject to any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;
 7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure;
 8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event,

the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.

- D. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within fifteen calendar days from the date of service of process on the landlord as authorized by § 55-248.12, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

Important Things to Remember

- You can never successfully use the remedies/defenses listed above if you, your authorized agent, or your guest caused the damages.
- You can never properly withhold rent money on your own; you must always pay the money to the court or to the landlord.
- You should always make written and dated complaints to the landlord and be sure to keep a copy.
- Keep receipts/cancelled checks of rent payments, copies of lease agreements, records of damages, and any correspondence between yourself and the landlord.
- The landlord may keep a security deposit only in the amount of rent owed or for the costs of repairs or cleaning after you move.
- If you suspect or find that the rental unit is substandard, you should:
 - a. Call the landlord and ask that the repairs be made;
 - b. Give written notice of the problems to the landlord by certified mail;
 - c. Call the health department or local housing inspector if the landlord refuses to make the repairs;
 - d. Contact a lawyer if the problem still exists.

Landlord Remedies/Eviction (§ 55-248.31)

- A. Except as provided in the Virginia Code, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55-248.16 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in twenty-one days, and that the rental agreement shall terminate as provided in the notice.
- B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.
- C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For

purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees, shall constitute an immediate non-remediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within fifteen calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises, which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than thirty days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.

- D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55-248.31:01 based upon information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1, 16.1-279.1, or subsection B of § 20-103, the lease shall not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than twenty-one days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails promptly to notify the landlord within twenty-four hours thereafter that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within twenty-four hours, in which case the tenant shall promptly notify the landlord, but in no event more than seven days thereafter. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants or guests or invitees pursuant to § 55-248.16, and is subject to termination of the tenancy pursuant to the lease and this chapter.
- E. If the tenant has been served with a prior written notice which required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice.
- F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice (Notice to Pay or Quit) is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day

period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. If a check for rent is delivered to the landlord drawn on an account with insufficient funds and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check or certified check within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorneys' fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided the landlord has given notice in accordance with § 55-248.6, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as provided in the Virginia Residential Landlord and Tenant Act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55-248.16. The landlord shall be entitled to recover reasonable attorneys' fees unless the tenant proves by a preponderance of the evidence that the failure of the tenant to pay rent or vacate the premises was reasonable. If the rental agreement provides for the payment of reasonable attorneys' fees in the event of a breach of the agreement or noncompliance by the tenant, the landlord shall be entitled to recover and the court shall award reasonable attorneys' fees in any action based upon the tenancy in which the landlord prevails, including but not limited to actions for damages to the dwelling unit or premises, or additional rent, regardless of any previous action to obtain possession or rent, unless in any such action, the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable.

If you are on a month-to-month lease, your landlord needs no reason to evict you. All your landlord has to do is give you thirty days' written notice, beginning on the day your usual rent is due. As mentioned before, however, the landlord may not evict you solely on the basis of your age.

If the court orders you to move out, and you still refuse to move, the landlord can have you evicted, usually by the sheriff. Both you and your possessions will be removed from the premises.

Under the VRLTA, a landlord may not act on his own to remove you or your possessions physically from the premises, to lock you out, or to cut off your utilities in order to force you out. The landlord must use only the proper court procedures to evict you (§ 55-248.36).

Retaliatory Action by Landlord

If you complain to the landlord, the health department, or some other government agency about the condition of the building, bring a lawsuit against the landlord, or join a tenant organization, the landlord may not, because of such action, raise the rent, reduce services, terminate your lease, or threaten to terminate your lease.

Rental Assistance Program

Housing Choice Voucher (Section 8) is a rental subsidy program funded by the federal government. The program is designed to supplement the rent payments of low-income families and individuals who qualify. An advantage of the program is that an elderly tenant can live in the apartment or house of his or her choice and may even be able to get help paying for the place where he or she already lives. The program is not available in every Virginia locality. To find out if Section 8 assistance is available in your area and, if so, how to apply, contact your local social services department, redevelopment or housing authority, or Area Agency on Aging. You will be referred to the Public Housing Agency (PHA) for your locality.

Eligibility

To qualify for assistance, your income must be within the specific limit for your locality. The limit differs for each city and county in Virginia. The limit also depends on household size. Eligibility for a housing voucher is determined by the PHA based on the total annual gross income and family size and is limited to US citizens and specified categories of non-citizens who have eligible immigration status. In general, the family's income may not exceed fifty percent of the median income for the county or metropolitan area in which the family chooses to live. By law, a PHA must provide seventy-five percent of its voucher to applicants whose incomes do not exceed thirty percent of the area median income. Median income levels are published by HUD and vary by location. The PHA serving your community can provide you with the income limits for your area and family size.

During the application process, the PHA will collect information on family income, assets, and family composition. The PHA will verify this information with other local agencies, your employer and bank, and will use the information to determine program eligibility and the amount of the housing assistance payment.

If the PHA determines that your family is eligible, the PHA will put your name on a waiting list, unless it is able to assist you immediately. Once your name is reached on the waiting list, the PHA will contact you and issue to you a housing voucher.

How Does the Program Work?

Your eligibility is determined during an intake interview. Your local social services department can help you schedule one. If you are eligible and are considering moving or currently have no adequate housing, you will be told how to look for reasonably priced housing to meet your needs.

After certification to participate in the program, you have approximately sixty days to find suitable housing and an owner who agrees to lease to you. Any housing approved under the program must meet minimum housing standards for decent, safe, and sanitary housing as established by the U.S. Department of Housing and Urban Development (HUD). Additional local minimum housing codes also must be met. Your present residence may qualify if it meets these required standards. Once in the program, tenants must certify their incomes once a year with their employer or the Department of Social Services.

Once your lease is signed with the landlord, the local agency reviews it and often inspects the dwelling to make sure it meets program standards. Next, the local agency and the landlord sign a contract authorizing payment of rent on your behalf. You pay a monthly amount for rent, which is determined by your income, family size, etc., and the local agency pays the difference between the family contributions and total amount of rent due. Both the family and the agency make the payments monthly, directly to the landlord.

Virginia Low Income Energy Assistance Program (LIHEAP)

The Virginia Low Income Energy Assistance Program is a federally funded program that helps eligible households with the cost of heating their homes. It has four components: Fuel Assistance; Crisis Assistance; Cooling Assistance; and Weatherization. To be eligible for assistance, a household must meet certain income and resource requirements, and these requirements change yearly. If you receive Supplemental Security Income, your household is probably eligible. For more information, contact your local Area Agency on Aging (go to <http://www.dss.virginia.gov/localagency/> to locate your local Area Agency on Aging).

Other Energy Assistance Programs

Both investor-owned utilities and rural electric cooperatives provide energy assistance to low-income households. Programs include fuel assistance, cooling assistance, and budget billing. For more information, contact your local electric utility.

Telephone Assistance Programs

If you do not have a telephone or cannot afford the one you have, the local telephone company in your area may waive or reduce many of the service connection charges through the “Link-Up America” program, if you are in a low-income household. Go to <http://www.fcc.gov/guides/lifeline-and-link-affordable-telephone-service-income-eligible-consumers>, or call the Federal Communications Commission at (888) 225-5322, or your local telephone company.

REVERSE MORTGAGES

What Is a Reverse Mortgage?

A “reverse mortgage” is a special type of mortgage that allows a homeowner to convert a portion of the equity in the homeowner’s home into cash. There are various types of reverse mortgages available today, including the United States Department of Housing and Urban Development (HUD) Federal Housing Administration (FHA) Home Equity Conversion Mortgage (HECM), and other products offered by private lenders. Unlike a traditional home equity loan or second mortgage, no repayment is required until the borrowers no longer use the home as their principal residence. The remainder of the information provided here is about the HUD Reverse Mortgage (HECM) which is a federally insured private loan. You can receive free information about reverse mortgages by calling AARP at (800) 209-8085, or go to <http://www.aarp.org/revmort>. In addition, there are listed at the end of this section, numerous web sites and toll-free telephone numbers to obtain information about reverse mortgages in general. Also, to access HUD’s frequently asked questions about HUD’s Reverse Mortgages, go to: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm/rmtopten

Who can qualify for a HUD HECM?

HUD’s Federal Housing Administration requires that the borrower be a homeowner: (a) who is sixty-two years of age or older; (b) who owns his or her home outright (or who has an existing mortgage balance which is low enough that it can be paid off at closing with the proceeds from the reverse mortgage); and (c) who resides in the home. Before obtaining an HECM, you are required to obtain consumer information from a HUD-approved counseling source. You can contact the Housing Counseling Clearinghouse on (800) 569-4287 to obtain the name and telephone number of a HUD-approved counseling agency and a list of FHA-approved lenders within your area. With a traditional second mortgage or home equity loan, you must have sufficient income versus debt ratio to qualify for the loan, and you are required to make monthly mortgage payments. The HECM is different, in that it pays you and is available regardless of your current income. The amount that you can borrow depends upon your age, the current interest rate, and the current appraised value for your home (or FHA’s mortgage limit for your area, whichever is less). Generally, the more valuable your home is, the older you are, and the lower the interest rate, the more that you can borrow.

What types of homes are eligible for HECM loans?

The borrower’s home must be a single-family dwelling or a two-to-four unit property that the borrower owns and occupies. Townhouses, detached homes, units in condominiums and some manufactured housing are eligible.

How are the proceeds of the HECM loan paid to the homeowner?

There are five options available to the homeowner:

1. Tenure—equal monthly payments as long as one borrower continues to live in and occupies the property as a principal residence;
2. Term—equal monthly payments for a fixed period of months selected by borrower;
3. Line of credit—unscheduled payments or in installments, at times and amounts of borrower's choosing, until the line of credit is exhausted;
4. Modified tenure—combination of line of credit with monthly payments as long as borrower remains in the home;
5. Modified term—combination of line of credit with monthly payments for a fixed period of months selected by the borrower.

Must the proceeds of the HECM loan be used by the homeowner only for certain specified things?

No, the homeowner may use the proceeds of the HECM for any legitimate purpose, such as to supplement Social Security or retirement benefits, maintenance of the property, payment of real estate taxes and insurance, medical bills, living expenses, etc.

Is the homeowner personally liable to repay the HECM loan?

HECM loans are non-recourse loans, that is, the homeowner is not personally liable to repay the HECM loan; liability is limited to the net sales proceeds from the property. No deficiency judgment may be taken against the homeowner or the homeowner's estate.

Does the homeowner have obligations under the HECM loan?

The borrower has continuing obligations, such as maintaining the property in good repair, keeping the property properly insured, paying real estate taxes when they are due, and not using the property for any illegal purposes.

When must the HECM be repaid?

The due date for repayment of the HECM is when one of the following occurs:

- (a) When the last borrower dies;
- (b) All borrowers have conveyed their title to the property;
- (c) The property is no longer any borrower's principal residence;
- (d) Because of physical or mental illness, a borrower fails to occupy the property as his or her principal residence for a period of more than twelve consecutive months, and the property is not the principal residence of another borrower;
- (e) An HECM loan obligation of the borrower is not performed (for example, real estate taxes are not paid, the property is not maintained in good repair, etc.)

Does the homeowner need to pay a fee to a planner or loan finder in order to obtain an HECM loan?

No, it is not necessary to pay such a fee. There have been abusive instances reported in this area, in which "loan finders" or "estate planners" have contacted homeowners and have offered to find a reverse mortgage for the homeowners for a percentage fee (such as five percent to ten percent of the loan amount). This is not necessary and should not be done.

Is an HECM loan expensive?

There are significant costs associated with an HECM. They include FHA mortgage insurance, closing costs, interest, and loan service costs. The longer a homeowner keeps an HECM, the lower the total annual loan costs (TALC) will be, because they will be spread over a greater number of years. On the other hand, the longer an HECM is held, the higher the amount of interest will be, because the amount of principal advanced will usually be higher.

Should the homeowner obtain counseling before obtaining an HECM?

As mentioned above, HUD requires that a homeowner obtain consumer information from a HUD-approved counseling source. In addition, because of the complexity of reverse mortgages, a homeowner should consult with an experienced attorney before obtaining a reverse mortgage

Are there web sites or toll free telephone numbers from which homeowners can obtain information about HECM loans or other reverse mortgage loans?

If you do not have access to a computer at home or work, access can be obtained at your local public library, and the library staff will gladly assist you in accessing the Internet.

- HUD's web site: <http://www.hud.gov/groups/seniors.cfm>
- National Reverse Mortgage Lender's Association web site: <http://www.reversemortgage.org/>
- National Reverse Mortgage Lenders Association consumer information: (866) 264-4466
- AARP consumer information: (800) 209-8085
- AARP Reverse Mortgage web page: <http://www.aarp.org/revmort/>
- HUD Housing Counseling Clearinghouse: (800) 569-4287

Reverse mortgage documents are complex and can be confusing. Consequently, anyone contemplating a reverse mortgage should consult and be counseled by an experienced attorney who is completely independent of the mortgage lender. It is essential that the homeowner or mortgagor understands the contract and its disadvantages, as well as its advantages, before signing.

PLANNING FOR THE FUTURE

DIVORCE AND THE ELDERLY

When an older client divorces, all of the issues set forth in this handbook must be considered, as well as other factors unique to the marital relationship. The first step is to obtain a lawyer. A domestic relations or divorce lawyer should be selected, using the criteria provided elsewhere in this handbook for selecting a lawyer. When you meet with your lawyer, if you are overwrought or upset, it is also advisable to have a relative or friend accompany you to the lawyer's office, but to preserve attorney-client privilege, you alone should meet with the lawyer in private. You should first discuss the fee arrangement to assure that you will be able to afford that particular lawyer. If you cannot afford the fee, you should contact your local legal aid office.

You must be completely honest with your lawyer. You will need to know your monthly living expenses, the family income, all assets and how titled, whether there are any agreements between you and your spouse, existing medical insurance, whether there are social security or other retirement benefits and whether or not they are in pay status, and the names and status of all credit accounts, including utilities. If you do not have this information, your lawyer will help you obtain it.

If you are interested in learning more about divorce, you may go to the Virginia State Bar website at <http://www.vsb.org/site/publications/divorce-in-virginia/>.

REAL ESTATE TRANSFERS

Many senior citizens who own real estate, especially those who are retired, attempt to sell or give away their property for various reasons. Some persons want the additional income. Other persons want to help their families avoid paying heavy estate taxes on the property after they die. These people are usually people with sufficient assets to be subject to federal estate taxes. For 2013, the exemption amount is \$5.12 million for each person (which adjusted for inflation will probably be \$5.25 million. The exemption amount is now permanent and is not scheduled to change in the future, except as adjusted upward for inflation;; however, senior citizens who wish to transfer their property for any reason, or change a title in any way (for example, by adding a name to a deed), should consider several things before doing so:

- If you deed your property to a child or someone else as a gift, you may not be eligible for Medicaid coverage for long-term nursing home care for some period of time, depending on the value of the property, and the terms of the transfer.
- If you deed your house to a child or someone else and do not keep your name on the deed, that person can force you to move out of your house.
- If you want to add another name to your deed so that each of you has an equal share and the right of survivorship, the deed must be explicit. For example, the deed must say, “As joint tenants with right of survivorship,” or if the other person named in the deed is your spouse, the deed must say, “As tenants by the entirety with the right of survivorship.”
- If you add another name to your deed so that each of you becomes a joint tenant with right of survivorship, or you are tenants by the entirety with the right of survivorship, remember that you cannot sell the property later without the other person’s permission. Also, upon your death, the property automatically will belong to the other person if that person has survived you, regardless of what you may provide in your will.
- If you want to give your property to another, but keep the right to live in it for the rest of your life, your deed to the other person must specifically reserve a “life estate” to you or the right to live on and use the property for your lifetime.
- Depending on the value of the property transferred, you may be making a gift which will require you to pay gift taxes or to use up part of your lifetime gift tax exemption.
- If you have equity value in your property because its value exceeds the unpaid mortgage and any other liens against the property, you may borrow against the equity by obtaining a “home equity loan.” You will be required to put a mortgage on your property. Many of these programs allow you to borrow and repay the loan as your needs permit, as long as the loan balance never exceeds a certain limit. A less common way to borrow against your equity is the “reverse mortgage” (*See Housing, Reverse Mortgages*). If you have equity value in your property, you can borrow against this equity and receive monthly income. You will have to put a mortgage on your home. The loan fees, interest rates, restrictions, and fees paid to professionals (e.g., attorneys, appraisers, and surveyors) can vary widely. Before entering either a home equity loan or a reverse mortgage, make sure you have a complete understanding of all the costs and rules.
- If you cosign or guarantee a note for a relative or friend, the lender may enforce the note against you. If the note is not paid, the lender may attempt to take your house. This is especially true if you have, by means of a deed of trust or mortgage, put up your house as security for the other person’s loan.
- If you have lived in your home for two of the last five years, up to \$250,000 (\$500,000 for couples) of the profit from the sale of the house may be excluded from the calculation of your income for federal income tax purposes. Because the rules and calculations are technical, you should check with your tax advisor before selling your house.
- You should consult an attorney knowledgeable in real estate before you do anything that may affect your interest in your home or other real property.

PROBATE AND ESTATE ADMINISTRATION

Probate

The term “probate” is often used to generally refer to the process of administering an estate. By definition, probate is the legal process of proving before the proper court that a document offered as the last will and testament of a deceased person is authentic. The original will must be presented to the clerk, who reviews the document to confirm that it meets the requirements under Virginia law for a valid executed and properly proven will, and, if valid, the will is approved for recordation by the clerk. During probate, assets are gathered and applied to pay debts, taxes, and the expenses of estate administration. The remaining assets are distributed to the deceased person’s beneficiaries under the will. A personal representative (an executor or an administrator) qualifies before the circuit court or the circuit court clerk to handle the administration of decedent’s estate.

Only “probate” assets will pass under the decedent’s probate estate. Probate assets generally include those assets that are owned solely in the decedent’s name or jointly with another and which are not transferred to another at death by contract or operation of law. Non-probate assets include such assets as life insurance payable to another, pensions and other retirement accounts payable to another, accounts payable on death to a named beneficiary, and any property owned with another who has survivorship rights. Real estate located outside of Virginia is not a Virginia probate asset. It is important to note that a decedent’s ownership of real property in another state may require the necessity of probate proceedings in multiple states.

If an estate is worth more than \$15,000, the clerk of the court will assess a tax based on the estimated value of the decedent’s real estate in Virginia and personal property owned by the decedent, such as cash, bank accounts, furniture, stocks and bonds etc. (excluding certain assets such as life insurance, IRAs and retirement accounts and benefits which pass to a named beneficiary other than the estate), this amount is called a “probate tax” and is different from the “estate tax” discussed below. The probate tax is a small tax that must be paid at the time of probate.

The Virginia Small Estates Act provides procedures for a decedent’s assets to be transferred without the necessity of qualifying a personal representative when the decedent’s entire personal probate estate is \$50,000 or less.

You should consult a qualified attorney if you have questions about probate costs and whether probate should be avoided or used in your estate plan.

Estate Planning

The term “estate planning” refers to the organizing and ordering of an individual’s property, called an “estate,” so that it is transferred at death to the beneficiaries of an individual’s choice in the most efficient manner. Estate planning also may involve planning for an individual’s possible disability. It involves a coordinated effort by you and your professional advisors (attorney, accountant, insurance agent, financial advisor, certified financial planner, and others) to minimize death taxes and expenses of death or disability, and to provide for your beneficiaries in the way that you intend. An effective estate plan is accomplished through the preparation of certain legal documents and devices such as wills, trusts, powers of attorney, and advance medical directives.

Wills

A will is a written signed document in which an individual (known as a testator) states directions for the distribution of assets at death. A valid will can avoid Virginia’s intestacy laws, which may be contrary to one’s intentions. The will appoints an executor who is responsible for the estate administration. Further, a will can reduce estate administration costs by relieving the executor of needing to obtain a

costly surety bond, and may provide for the appointment of guardians for minor children and trust(s) for the protection of beneficiaries and/or to minimize estate taxes.

The provisions of a will only affect the disposition of the individual's probate estate. Many assets are transferred at death outside of the probate estate and without regard to the terms of the will. Assets owned jointly, with right of survivorship by two or more individuals, are automatically owned by the surviving individual(s) at the death of one owner. Bank accounts and certificates of deposit may be designated "POD" (payable on death) to a specified named beneficiary. Similarly, investment accounts may include a "TOD" (transfer on death) direction naming an owner at death. Life insurance and annuity policies provide for named beneficiaries, as do most retirement accounts (pension, profit-sharing accounts, 401(k)s, and IRAs).

Preparation of Your Will

With some minimal advance planning, a will can be relatively simple to have prepared. If you are at least 18 years old, and if you are not of unsound mind, you may make a will. You must possess what is called "testamentary capacity," that is, you must be capable of recollecting your property, the natural objects of your bounty and their claims upon you, know the business about which you are engaged and how you wish to dispose of your property. In Virginia, the signing of a will generally must be witnessed by two competent persons, who must sign the will in front of the testator. Virginia law allows you to prepare your own handwritten will, known as a "holographic" will, however, there are requirements to make this type of document valid. It is recommended that you consult an attorney to help you prepare your will because improper will planning can cause needless expense and may result in your will being invalid.

The following steps will help you in the preparation of your will, prior to meeting with an attorney:

1. List the family, friends and/or organizations to which you wish to leave property. The list should include the full names and, preferably, addresses of each recipient.
2. List all the properties you own and how they are titled. Make the list according to categories of property:
 - a. Real property, such as land or home;
 - b. Tangible personal property—for example, cars, household furniture, jewelry, art, etc.;
 - c. Intangible personal property, such as bank accounts, stocks, and bonds;
 - d. All other assets that you own, such as life insurance, jointly titled property, IRAs, annuities, pension plans, etc., so that your attorney can advise you how to have a coordinated estate plan.
3. Decide how your property will be divided among your chosen recipients. For example, you may want to have your property split equally among your children.
4. Think about whom you would like to serve as executor and/or trustee to administer your estate and distribute your assets. You may choose your surviving spouse, or in the event that your spouse is not alive or able, another family member or friend; or perhaps a bank or other corporate fiduciary, such as a trust company.

Changing Your Will

Just as important as completing a will and estate plan is making sure you review your will and estate planning documents on a regular basis. This is especially true if and when your circumstances change significantly. For example, you may need to change your will if you move to a new state, or marry, remarry, or divorce, or if there is any other major change in your personal or financial situation.

You can change your will by making a new will or signing an amendment, known as a "codicil," to your existing will. If you wish to revoke your previous will, you should destroy it after execution of the new one in order to avoid the confusion produced by the existence of more than one will. You should be careful not to write on a current or existing will. Erasing or marking through parts of a will may

invalidate the entire will or have other undesirable consequences. If you need to amend the will, use a codicil or have a new will drafted.

There are restrictions in changing or preparing your will. You cannot disinherit your surviving spouse unless you have a valid marital agreement allowing you to do so. When a will exists, the surviving spouse can “elect” a share of the estate, which results in the spouse receiving a share of the estate in an amount determined by Virginia law. This is called the Augmented Estate Election.

Dying Without a Will

If you die without a will, you are said to have died “intestate.” If you have not left a *valid* will or trust, or have not transferred your property in some other way, state law will determine how your property will be distributed. An administrator will be appointed to collect your assets, pay expenses, debts, and taxes collectible against you and your estate, pay your funeral and burial expenses, and then distribute the remainder of your possessions to persons specified under state law. If the decedent is survived by both a spouse and one or more descendants who are not descendants of the surviving spouse, then the surviving spouse is entitled to one-third of the estate, and the descendants, as provided by law, are entitled to the balance. If the decedent is survived by the surviving spouse only, or by both the surviving spouse and descendants who are also descendants of the surviving spouse, then the surviving spouse is entitled to the whole estate.

There is a common misconception that married couples do not need to create wills. When one spouse dies, the property he or she owns jointly, with the right of survivorship, will pass to that person, outside of probate. However, there may be unintended consequences due to unknown heirs or circumstances. Also, when the surviving spouse dies, problems arise because there is no longer a joint owner of the property.

Wills and Life Insurance

Life insurance policies in no way take the place of creating a will. As previously discussed, life insurance is a nonprobate asset; however, if your policy is payable to your estate after death, the proceeds will be a probate asset and will be distributed according to your will, or the laws of intestacy, if you have no will. If the policy benefits are payable to a beneficiary other than your estate, such as a spouse or other relative, your will has no effect on the distribution.

Joint Tenancy Ownership as a Will Replacement

Joint tenancy ownership is where two or more people hold title to an asset together. However, unlike other forms of joint ownership, upon the death of one of the owners the entire interest passes automatically to the surviving joint tenants. Actually, the full name for joint tenancy is Joint Tenancy with Right of Survivorship (JTWROS). Right of survivorship means that whoever dies last owns the whole property; in Virginia, the instrument creating the joint tenancy must clearly state that it is with right of survivorship. Because property in joint ownership with survivorship does not pass through probate, some people may be tempted to use joint ownership with survivorship to distribute their estates with the idea of sparing their families the expense and delay of probate proceedings. Joint ownership can complicate your affairs while you are still living, however, since control over jointly held property is limited. Joint ownership gives another person equal control over your property. Adding names to a title or deed may negatively affect your eligibility for tax credits and government benefits. Also, it may contradict your plan for division at death. Before considering joint ownership in your estate plan, you should consult your attorney for advice and assistance.

Revocable Living Trusts

A revocable trust is a document created by an individual (the “grantor” or “trustor”) for the purpose of managing the grantor’s assets. The trust agreement appoints a trustee who holds title to the trust property and performs the management of the trust. The grantor, alone or with the grantor’s spouse, typically serves as trustee of the trust as long as he or she is competent to do so. Since the trust is revocable, the grantor can change any of the trust terms or revoke the trust during his or her lifetime.

At the grantor’s death, or in the event of the grantor’s incapacity, the trust becomes irrevocable. If the grantor was serving alone as trustee, a successor trustee is appointed according to the terms of the trust agreement. The successor trustee then is responsible for distributing the trust assets, or retaining the assets in trust, as directed by the trust agreement. The assets that are held or received by the trust can remain in trust indefinitely, subject to certain tax and other limitations. Therefore, the grantor can keep a trust in place for a spouse, children, grandchildren, or great-grandchildren.

Many people prefer living trusts because the terms of the trust do not become public at the grantor’s death, and the assets held in the living trust do not pass through probate. If you are interested in using a living trust in your estate plan you should seek the advice of an attorney to draft a trust instrument that suits your particular needs and circumstances.

Estate Taxes

On January 2, 2013, the President signed the American Taxpayer Relief Act of 2012 (ATRA2012), which makes the following significant changes regarding the United States Estate and Gift Tax and the Generation-skipping Transfer Tax laws: (1) The exemption (“basic exclusion amount”) for Estate and Gift Taxes was made permanent at \$5,000,000, adjusted for inflation to \$5,120,000, and although the 2013 inflation adjustment has not yet taken place, it is anticipated that the 2013 inflation adjustment will bring the exemption to \$5,250,000; (2) The portability provision between spouses, which allows a surviving spouse to use the predeceased spouse’s unused exclusion amount, was also made permanent. Bear in mind that the portability election must be made by the predeceased spouse’s executor in the manner prescribed by law; (3) The maximum Estate and Gift Tax rate is 40 percent; (4) The exemption for the Generation-skipping Transfer Tax remains at \$5,000,000, as adjusted for inflation. Under current law, each person in the United States has a credit or exemption (basic exclusion amount) that can be used to offset federal estate tax at death, meaning that, if your estate at the time of your death is less than the exemption, no federal estate taxes will be due. In deciding whether your estate is greater than or less than the exemption, the government includes everything you own, even the face value of your life insurance policies.

Also, as discussed previously, there is an unlimited amount that can be left to a person’s spouse free of estate tax (there are special considerations and requirements if the surviving spouse is not a United States citizen). However, if a person simply leaves all the assets to his or her spouse, the benefits of estate tax planning may be lost. The estate tax planning objective for a married couple is to make sure that they receive the benefit of two exemption amounts, the exemptions of each spouse. Often, this is accomplished by creating a Family Trust (also referred to as a credit shelter trust, exemption trust, or bypass trust), which becomes effective at the death of the first spouse. Implementation of the plan requires that the couple’s financial and investment assets are appropriately titled in order to fund the Family Trust. The ATRA2012’s making each person’s basic exclusion amount \$5,000,000, as adjusted for inflation, and with portability between spouses having also been made permanent by ATRA2012, estate tax planning has been made less complicated for most taxpayers.

Concerning the Virginia Estate Tax, legislation enacted by the 2006 General Assembly repealed the Virginia estate tax for the estates of decedents whose date of death occurred on or after July 1, 2007. It appears that the provisions of ATRA2012 will result in the Virginia Estate Tax not returning, unless the

Virginia General Assembly and the Governor decide otherwise. If you are concerned about estate tax planning you should consult an attorney for advice and assistance.

SETTLING AN ESTATE/ADMINISTERING A TRUST

Settling an Estate

When you qualify as an executor on a testate estate, or as an administrator on an intestate estate, the clerk of the circuit court will provide you with a set of instructions and forms regarding your duties as executor or administrator. As a public service, the Virginia Bar Association has prepared *A Guide to the Administration of Decedents' Estates in Virginia*, which is somewhat dated, but which, as a public service, is available at http://www.hooklawcenter.com/legal_information/admin_guide.pdf. Many commissioners of accounts provide informational websites as a public service; for example, the website of the commissioner of accounts of the Henrico County Circuit Court may be found at <http://www.henricocommissionerofaccounts.com>. You can search online to determine whether your local commissioner of accounts has a website for the public. The following is a short list of the typical duties of an executor (some may not apply to every estate, and the duties of an administrator of an intestate estate will differ somewhat, but the instructions and forms provided by the clerk will guide you; be very careful in administering an intestate estate to identify correctly the persons who are the intestate decedent's heirs who are entitled to the intestate estate).

1. Make an appointment with the probate clerk at the circuit court. Determine from the clerk whether witnesses to the will must attend the probate, and whether surety is required on your bond as executor. Probate the will in the circuit court and qualify as executor. Obtain certificates of qualification, which evidence your authority as executor.
2. Gather and safeguard all assets of the estate and insure that the assets are properly accounted for, and that estate funds are prudently invested during the period of estate administration. Also, you should review all fire and casualty insurance policies on any real estate in the probate estate to determine whether the limits of coverage are adequate and to determine that the policies are in force.
3. Provide notice of probate to all heirs listed on the list of heirs that was filed at the court, and to all beneficiaries under the will. This must be done within thirty days after probate.
4. Prepare and file an accurate estate inventory with the commissioner of accounts regarding the probate estate. The due date of this inventory is four months after the date of probate and qualification in the circuit court.
5. Apply to the Internal Revenue Service for a taxpayer identification number (EIN) for the estate and use it on all estate accounts and on the estate's United States and Virginia Fiduciary Income Tax Returns. Go to the IRS website at <http://www.irs.gov> for instructions regarding obtaining the EIN.
6. Before paying bills, be sure to determine that the estate is not insolvent (an insolvent estate is one in which the obligations exceed the value of the assets); if the estate is insolvent, consult with an experienced estate attorney). Maintain a continuous account on all receipts and disbursements of the probate estate, and identify and satisfy the creditors, insuring that for each disbursement there are a canceled check and a sub-voucher (for example, an invoice or bill). The due date for the first accounting is sixteen months from the date of probate and qualification.
7. File United States and Virginia individual income tax returns for the decedent.
8. File the estate's United States and Virginia Fiduciary income tax returns for each year that the estate is under administration. You may elect for the estate to be on a fiscal year basis; otherwise, it will be on a calendar year basis.

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9. File the estate's United States estate tax return if the gross estate for estate tax purposes exceeds the exemption amount for the year of death. This return, if due, will be required to be filed and the taxes, if any, paid within nine months after the date of death.
 10. Have the commissioner of accounts take debts and demands against the estate. This may be done after you have prepared and submitted an interim account to the commissioner of accounts; this is a first step toward protecting yourself against unknown claims against the estate and against personal liability.
 11. Have a show cause against distribution entered in the circuit court where the will was probated. This may be done after the commissioner of accounts has taken debts and demands against the estate and after six months have elapsed since the date of qualification. This is another step in protecting yourself against unknown claims against the estate and against personal liability.
 12. Have an order of distribution entered in the circuit court; this may be done approximately thirty days after the show cause is entered and when you are prepared to make final distribution. This is the final step in protecting yourself against claims against the estate and against personal liability.
 13. Make complete distribution of the estate to the beneficiaries, and obtain proper notarized receipts for all distributions.
 14. File your final account with the commissioner of accounts.

It is important that you, as executor, follow the terms of the will, that you not engage in any self dealing, that you keep assets which you hold in a fiduciary capacity separate from your personal assets, and that you properly maintain your fiduciary records.

Administering a Trust

The trust of which you are trustee may be a testamentary trust (that is a trust under will), in which case you must qualify before the clerk of the circuit court and follow the forms and instructions provided to you by the clerk), or it may be an intervivos living trust under a written agreement, in which case you need not qualify before the clerk of the circuit court. Often, a person may have a will, which is coordinated with a living trust, as part of an overall estate plan. Part of the purpose of the living trust may be to avoid probate and to accomplish estate tax savings. If you are serving as trustee of a living trust, you should consult with an experienced attorney regarding your duties and responsibilities.

It is important that you, as trustee (testamentary trust or living trust), follow the terms of the will or trust agreement, that you not engage in any self-dealing, that you keep assets which you hold in a fiduciary capacity separate from your personal assets, and that you properly maintain your fiduciary records.

Special Needs Trust

A special needs trust is created by a family member or other person for the benefit of a disabled beneficiary using the beneficiary's own money. In order to receive distribution from the trust and also continue the beneficiary's eligibility for government benefits such as Medicaid, a special needs trust is used to hold the beneficiary's money. Upon the death of the beneficiary, the trust must reimburse Medicaid expenditures made on behalf of the disabled beneficiary before the trust can be disbursed to any other surviving beneficiaries of that trust or any heirs of the disabled decedent. When a special needs trust is established for a disabled individual using the disabled individual's own funds, it is frequently the result of a lawsuit recovery or settlement, or the disabled individual is the beneficiary of an estate or an insurance policy. Based on the federal law that permits the use of special needs trusts, special needs trusts are also called "(d)(4)(A) trusts."

Supplemental Needs Trusts

A supplemental needs trust is a trust arrangement established to protect the beneficiary's eligibility to receive government benefits. These trusts are established by people who have no need for government benefits themselves, but wish to set up a trust for the supplemental needs of a person who does receive such government benefits.

The supplemental needs trust has been developed in answer to the challenge that many families face in not being able to afford to provide for all of the needs of a disabled child. When faced with these expenses, parents or grandparents will often utilize the services and benefits available from federal, state, and local government programs. This allows the families to maintain family resources in case government programs would no longer be available for the child. Since many government benefits are paid only to needy recipients, a benefit of the supplemental needs trust is that it provides funds to supplement (but not to supplant) the care provided by government benefits for the disabled child, and yet does not hinder the ability of the child to receive government benefits.

A supplemental needs trust can be established in a will or in a revocable living trust. Because special elements are required to establish a supplemental needs trust, it is critical to consult with an estate planning attorney experienced in this very unique area of the law.

ADVANCE DIRECTIVES

Introduction

It is important to think about the care and treatment you would or would not like to have.

Advance directive forms are available as both official state law forms and unofficial forms, to be signed in advance of your becoming unable to speak for yourself or terminally ill. It is equally important to discuss these thoughts with your family, loved ones, and health care providers. Many people do not want life-sustaining treatment, such as a respirator, while others prefer all available treatments. Discussing your ideas and documenting them in an advance directive will help you clarify them and ensure that your family and loved ones understand your preferences and can communicate them to your doctor if you are unable to do so.

The Patient Self-Determination Act is a federal law that requires hospitals, nursing homes, home health agencies, and HMOs to provide information on advance directives at the time of admission, but you should not wait until you are in need of health care to make your choices known.

An advance directive is a way to communicate your wishes about health care before you cannot speak for yourself. It may be used to designate another person to make medical decisions for you as well as to authorize or refuse certain treatments. Written advance directives may be made at any time, but oral advance directives may only be made if a person has been diagnosed with a terminal condition. Oral advance directives generally are reserved for people who are physically incapacitated and unable to make a written document.

Advance directives may be revoked at any time. Advance directives only apply when you cannot speak for yourself as determined by your doctors, because as long as you can speak for yourself, your doctor will speak directly to you about your health care choices.

The Commonwealth of Virginia has established an Advance Health Care Directive Registry on which Virginians can store in a secure way, copies of their advance health care directives and certain other documents. Go to <http://www.vdh.state.va.us/administration/ahcdr/index.htm>.

Types of Advance Directives

There are two types of advance directives: a health care power of attorney and a living will. In Virginia, a written advance directive may contain either type or both.

Health Care Power of Attorney

The health care power of attorney, or health care proxy, tells your physicians that you have designated someone else to express your medical care wishes when you are unable to do so. The person you designate should be someone you can trust to convey your wishes to the doctor. In other states, the health care power of attorney may be referred to as a health care proxy, a health care surrogate, or “health care agent.” In Virginia, both your health care power of attorney and your living will provisions may be included in your advance medical directive—your documents should be properly notarized.

Many advance directive forms are available for your use, but you may choose to personalize the form to effectively communicate your wishes. Your advance directive may express your wishes regarding the following:

- State or levels of functioning in which you would or would not want life-sustaining treatment;
- Types of life-sustaining treatment you may or may not want and under what conditions;
- The use of artificially administered nutrition and hydration;
- Instructions about any other specific medical procedure that may be expected, in light of your personal and family medical history;
- Organ donation wishes;
- Preferences regarding pain control and comfort care; and
- Preferences regarding other aspects of end-of-life care, such as your place of care and environmental wishes.

The Patient Self-Determination Act is a federal law that requires most hospitals, nursing homes, home health agencies, and HMOs to provide information on advance directives at the time of admission. Advance directive forms are available in both official state law forms and in unofficial forms created by state medical and bar associations and national organizations such as the AARP, American Bar Association, and the American Medical Association.

POWERS OF ATTORNEY

At some point you may find it difficult or inconvenient to conduct some personal business that may easily be handled by a trusted friend or relative. For example, you may be temporarily ill and confined at home or in the hospital, or you may be without good transportation, or you may become incapable of handling your own affairs. Bank withdrawals and deposits, signing of deeds for the sale of real estate, and other business affairs may be handled for you by another if you make a limited or general power of attorney conferring the powers on them.

Both a limited power of attorney and a general power of attorney are written documents that allow one person (the maker) to give another (the holder) certain rights to handle the money, real estate, and personal property of the maker. In Virginia, a power of attorney that does not state to the contrary will remain effective even if you become disabled or incapacitated.

A limited or general power of attorney is especially useful to save you, your family, and loved ones from court proceedings to appoint a guardian or conservator for you if you become incapacitated. *See* Guardianship. As a practical matter, most attorneys recommend the use of a general power of attorney over a limited power of attorney, unless there are good reasons to limit the power of attorney to specific uses or for a specified time period.

Both the limited power of attorney and general power of attorney are created using specific language, and the advice of an attorney should be sought in preparing them. Care should be taken to ensure you make these documents as specific as possible in order to protect your rights and property. You should be sure that the person granted your power of attorney is an individual whom you trust completely to use the power as you would direct, if you were capable of doing so. The same is true for any you name as cosignator in a bank account. Under Virginia law, family members and others who are concerned about your welfare may demand an accounting and petition the court to force your attorney, holder, or

cosignator to disclose information and records regarding actions taken on your behalf. Your documents should be properly notarized.

GUARDIANSHIP AND CONSERVATORSHIP

Introduction

Guardianship or conservatorship involves the court appointment of a person to have care and custody of another person (the incapacitated person) who is incapacitated and unable to provide for his own personal needs or to manage his financial affairs. The guardian and conservator may or may not be the same person. The guardian decides where the incapacitated person will live, how his personal care, transportation, and recreation will be provided, and makes health care decisions. The conservator takes control of the person's assets, manages and invests the person's property, and reports to the court. The guardian and conservator consider the incapacitated person's express wishes and personal values when making decisions. The person's personal autonomy should be preserved as much as possible. Neither a guardian nor a conservator may be needed if the person has an adequate durable power of attorney.

Under Virginia law, any adult person may petition the city or county circuit court to obtain guardianship or conservatorship of another person. The person filing the petition is not necessarily the person who will be appointed the guardian or conservator. The individual for whom guardianship is sought (the respondent) has the right to a notice of the proceeding and the right to a hearing or a jury trial on the question of his or her capacity. The court will appoint a guardian ad litem to represent the interests of the alleged incapacitated person in the proceeding. The guardian ad litem must visit the respondent, advise him or her on specific legal rights, and recommend whether the respondent should have independent counsel. Also, the report of a physician will be a part of the evidence. If the court finds the person to be incapacitated based on the evidence of functional disability, it will appoint a guardian or conservator. The respondent has the right to appeal this decision to a higher court. In some cases, the court may appoint a limited guardian or limited conservator for a person who suffers only from partial incapacity. This appointment can preserve many of the person's legal rights.

Who Needs a Guardian?

Guardianship deprives the incapacitated person of many civil rights. Thus, before you begin guardianship proceedings, you should be certain such steps are absolutely necessary. You should carefully consider whether the individual is able to make decisions concerning his or her personal or business affairs.

Under Virginia law, someone may need a guardian when he or she is:

- Incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian. Virginia Code Sections 64.2-2000 and following, or,

Under Virginia law, someone may need a conservator when he or she cannot:

- Manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator.

Virginia Code Sections 64.2-2000 and following.

Remember that the fact that a person displays poor judgment alone shall not be considered sufficient evidence that the person is incapacitated.

For more information on guardianship or conservatorship contact the Center for Elder Rights at the Virginia Division for the Aging Department for Aging and Rehabilitative Services, by dialing (800) 552-3402 or by accessing online at <http://www.vda.virginia.gov>, or your local Area Agency on Aging, which may be found in the back of this handbook, or at <http://www.vda.virginia.gov/aaalist.asp>, or local legal aid office listed in the back of this handbook.

FUNERAL SERVICES

By statute and regulations, the federal government and State of Virginia have created procedures to be followed by providers of funeral services. For example, itemized price information must be given over the telephone and confirmed in writing if requested. The required written confirmation is quite detailed and should be requested. The legal requirements governing cemeteries and crematoriums vary, and the funeral director is obligated by law to give you the correct information about your particular case. For example, because embalming is not required by law, the funeral director can require that the casket be kept closed. If cremation is desired, a casket is not required. You do not have to purchase any goods or services you do not want. You may direct questions to the membership organization for funeral directors (the Virginia Funeral Directors Association), P.O. Box 395, Hanover, VA 23069, (804) 264-0505, or to file a complain to the Virginia Board of Funeral Directors & Embalmers, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463, (800) 533-1560, website at <http://www.dhp.virginia.gov/funeral/>.

Planning Ahead

Planning before the time of need or before the funeral has many advantages. Your wishes concerning your funeral can be specified to eliminate confusion and differences of opinion among survivors. The funeral expenses can be paid in advance, either in full or in installments, to eliminate financial burden at the time of need. Many funeral homes will agree to furnish goods and services at a set price, no matter when you die. These arrangements can be funded through a trust or by specially designed insurance policies. Cemetery property can be purchased in advance and an appropriate monument can be secured. Any directions regarding the use of your body for medical research or for organ donations can be given to the funeral establishment of your choice. Individuals who will be responsible for arrangements should be made aware that you have completed these details. If arrangements have been made with a particular funeral home, they can be transferred to another upon request. You can always change or cancel the arrangements.

Funeral Service Consumer Guidance

Be aware of prearranged funeral plans that do not specify exactly what you will receive. The Federal Trade Commission funeral rules and laws in some states enable you to get the information you need to make decisions. You have the right to information regarding the costs of individual items and services, and if you inquire in person, the funeral home must provide a written price list of goods and services. Be sure to shop around and note whether or not the various plans guarantee a fixed price.

Be aware of claims delivered by dishonest salespersons. Especially be aware of salespersons who claim that the decedent ordered additional goods or items that you must now pay for. Always insist on proof that the decedent did order the goods.

Planning at Time of Need

When making funeral arrangements at the time of need, your funeral director will need certain information, such as the following:

- Full name
- Date and place of birth
- Social security number
- Occupation
- Father's name and mother's maiden name
- Marital status
- Education level
- Attending physician

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- Newspapers for obituary insert
 - Place service is to be held
 - Minister's name and church affiliation
 - Cemetery plot information
 - Military discharge information and service number
 - Pallbearers
 - Services and merchandise to be furnished

Be sure that this information is also given to those people who will make the arrangements and/or the funeral home of your choice.

Veterans

Anyone who was a member of the military at the time of death or honorably discharged from the military is eligible for benefits. You should inquire about the following items:

- Pension to widow or minor children
- Burial in National Cemetery
- Burial flag to drape casket
- Grave marker to mark grave of a veteran. (After 1980, a veteran must have served at least twenty-four months of active service or have been a Persian Gulf War veteran to be eligible for a marker.)

Other benefits, such as retirement and life insurance, will vary. Information on such items should be obtained directly from the source paying the retirement or insurance benefits. Be sure to check with the decedent's employer for any death benefits that may be available.

BENEFITS

Social Security

Claims by your executor or heirs should be filed as soon as possible with your nearest Social Security office. You should inquire about the following items:

- Lump-sum benefit death payment for surviving spouse
- Life pension to widow over sixty years of age
- Pension to widow with dependent children
- Widows, widowers, divorced wives, and divorced husbands age fifty and older, if they are disabled
- Pension to decedent's minor children
- Medicare

Social Security payments cease at death, so checks should be returned to your local office or to the return address on the envelope in which the check is sent explaining the situation. Be sure to keep a copy of the check and forwarding letter. If direct deposit is being used, the bank will, upon notification, remedy the problem.

PROTECTION OF LEGAL RIGHTS

WHEN DO YOU NEED A LAWYER?

Older persons may have needs regarding many legal issues, including Social Security, SSI, Medicare, Medicaid, pensions, housing, consumer issues, guardianship, age discrimination, wills, trusts and probate, and long-term care. They also may need assistance with planning through advance directives and durable powers of attorney. An attorney may be most valuable in providing help with such problems. Because early consultation with an attorney can prevent serious problems later on, you should consider consulting a lawyer for the following situations:

- Before signing a contract to buy, sell, or rent a home or other real estate;

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- When making a will;
 - When signing written contracts with major financial consequences;
 - When planning your estate;
 - When you are sued or want to sue someone;
 - When accidents occur involving personal injury, death or property damage;
 - When you have to access government benefits such as Medicaid or SSI;
 - When you are under investigation or are charged with a criminal or traffic offense.

An attorney can also provide valuable help with problems involving landlord-tenant disputes, divorce, and child custody, and can assist when you are serving as an agent, trustee, executor, guardian, conservator, or attorney in fact.

HOW TO FIND A LAWYER

If you do not have a lawyer, you may wish to consult friends and relatives for recommendations. The lists in the Helpful Contents section at the back of this handbook may be useful in your area. Otherwise, you can also check with the following local agencies, support groups, and professional organizations:

- Area Agency on Aging
- Local bar association
- National Academy of Elder Law Attorneys
- American College of Trust and Estate Counsel
- Membership organizations such as the American Association of Retired Persons
- Alzheimer's Association

If you cannot afford an attorney, the Virginia State Bar and local bar associations often have information about pro bono programs, which operate for the good of the public and do not charge lawyers' fees. Legal Aid Societies provide such services (See "Legal Assistance" in the Helpful Contacts section for a partial listing). The Virginia Lawyer Referral Service maintains a list of attorneys who have agreed to provide an initial office consultation for a nominal fee. The toll-free number is (800) 552-7977 (in Richmond (804) 775-0808).

SELECTING AND WORKING WITH A LAWYER

Why do you need a lawyer?

Do you need a lawyer to help plan your estate and write a will, or do you need a lawyer to represent you in court on a driving-under-the-influence charge or on a criminal charge. Knowing what type of legal assistance you need will make the process of finding a lawyer easier.

Finding a lawyer with the background and experience your legal matter requires is critical. The "right lawyer" is the person who has experience handling matters similar to yours, and who is prepared to take action at once. An experienced lawyer knows how to act immediately, effectively and efficiently. Hiring a lawyer based on price alone may result in wasted expense and time.

What kind of lawyer do you need?

Do you need ongoing, regular legal advice from someone who has experience advising people in your line of work? Or do you need a lawyer to appear in court with you one time on one matter? Lawyers have different focuses in their practice. Some, for example, have more experience drafting contracts or wills, representing estates or handling personal injury cases, such as car accidents. Many lawyers practice law for an entire career and never set foot in a courtroom because their work is primarily giving advice. Other lawyers focus on trial work and therefore are comfortable and experienced in appearing before judges and juries.

How do I find a lawyer?

Finding the right lawyer will require research. But be aware that your legal issue might call for prompt action. Some legal claims have a statute of limitations—the time within which a lawsuit must be filed—or other deadlines that may be critical. In these cases you may only have a limited time to take legal action, so don't delay.

You might start by consulting the telephone directory or various online legal directories; talking with friends, neighbors and coworkers who may have used a lawyer for a legal matter similar to yours; or contacting a lawyer referral service. If you already know and trust a lawyer, you can ask that lawyer to assist you or to refer you to another lawyer who has the background and experience you need.

Remember that phone book listings are paid advertising, and even though there are restrictions on the claims and statements lawyers can make in their ads, advertising in general involves hype and self-promotion. Helpful ads will tell you what types of services the lawyer provides and where the lawyer is located.

The Internet is another source of information about lawyers. Many law firms have Web sites that advertise their services and fees. However, Web searches may turn up too many choices. Narrow your search to lawyers licensed in your state. In most cases, you will want to choose a lawyer who is familiar with the courts and legal community in your geographic area. To access Martindale Hubbell ratings of lawyers, go to <http://www.martindale.com/Find-Lawyers-and-Law-Firms.aspx>. Martindale Hubbell's ratings are for ethics and legal ability.

A lawyer referral service can be helpful. The Virginia Lawyer Referral Service—operated by the Virginia State Bar—can be reached at (800) 552-7977 toll-free, or 775-0808 in Richmond. A referral specialist will give you the names and numbers of one or more lawyers in your geographical area who have reported that they perform the type of services that you are seeking. A consultation costs thirty-five dollars for up to one half hour. If you need more time and want to continue with that lawyer, you then would negotiate further fees. Lawyers who participate in the Virginia Lawyer Referral Service are licensed and in good standing with the bar, and they carry malpractice insurance.

How to choose the right lawyer

Once you've made a list of lawyers who may be suitable for your legal issue, contact the Virginia State Bar Clerk's Office at (804) 775-0539 (between 8:15 AM and 4:45 PM) or the Virginia State Bar Web site at <http://www.vsb.org>, to check each lawyer's public disciplinary record. If you call the clerk's office, ask if the lawyer has ever had any public disciplinary action taken, when and why. Also, ask if the lawyer has reported that he or she has malpractice insurance. A search on the bar's Web site will provide the same information.

Select from your list one lawyer with whom you want to meet. Call the lawyer's office and ask for an initial consultation. At the outset, before disclosing any confidential information, be sure to determine that the lawyer does not have a conflict-of-interest regarding your particular case. If this is not a VLRS referral, find out if there is an initial consultation fee involved. Some lawyers offer a free initial consultation; others do not. If your initial consultation does not meet your needs, you can schedule another meeting with a different lawyer.

Prepare for the meeting

Prepare for your first meeting with the lawyer. If a lawyer asks to see the papers involved in your case before meeting with you, send or fax the papers as quickly as possible so the lawyer has time to review them before your meeting. Write a short summary of your case, including facts and dates and a list of questions you want answered. During the consultation, ask if the lawyer has handled matters similar to yours before. Is he or she willing to take your case, what services will be provided, and what will the fee

and other costs be? Will the lawyer personally handle your case or will other members of the firm be involved? A lawyer should be able to explain the strengths and weaknesses of your case, but be wary of any lawyer who guarantees results. If you don't understand everything the lawyer tells you, ask for an explanation in simpler terms. Find out how long the lawyer expects your case to take and what may be involved (for example is there trial preparation?). Lastly, do you feel comfortable working with this lawyer?

Fees

Lawyers consider several factors in setting their fees. Lawyers who are highly-experienced in a particular area of law might charge more than lawyers who are not. A higher fee might be preferable if you feel the lawyer's special skills and experience will yield better and faster results. Lawyers also consider how complicated a case is and the amount of time it will take. A trial may take only a half day, but background research, interviewing witnesses and other trial preparation can take many days. Sometimes unexpected things occur that complicate the case further and end up resulting in higher legal fees.

There are several different kinds of legal fees:

- **Hourly fee**—The lawyer charges a dollar amount for each hour worked. Hourly fees may vary significantly from lawyer to lawyer, and are not always indicative of the experience a lawyer has in an area of law. A lawyer with more experience who charges a higher fee might save you money in the long run, because the lawyer can produce the same result in a shorter amount of time.
- **Fixed or Flat fee**—This is usually charged for routine, legal matters such as real estate closings or uncontested divorces. If you agree to a fixed-fee service, make sure you find out if there are extra costs for additional services such as clerical assistance or copying.
- **Contingency fee**—This is commonly charged in personal injury, medical malpractice, workers' compensation and other cases involving a lawsuit for money damages. A contingent fee means that you will pay the lawyer a certain percentage of the money you receive if you win the case or if you settle out of court. If you lose, the lawyer does not receive a contingency fee. However, win or lose, you likely will be required to pay costs of preparing and trying the case, which can be quite high. Sometimes the lawyer may pay those additional costs out of your portion of any settlement or award. Therefore, you need to get an estimate of what the lawyer thinks the court costs and other expenses may be and establish whether the lawyer's share is paid before or after the other expenses are deducted. Make sure all these obligations are set out in a written fee agreement.

Fee Agreements

Regardless of the type of fee charged, the fee agreement, or "employment agreement," is a contract between you and the lawyer, and it should be in writing. The agreement should specify exactly what legal services the lawyer is providing for you, as well as the fees and expenses you will be expected to pay. The agreement should also spell out your obligations as a client (for example, you agree to be truthful and cooperative, to abide by the agreement, and to pay your bills on time). The agreement also should explain the lawyer's billing practices and state whether the lawyer is going to add interest or other charges to unpaid amounts.

Even if your case is unsuccessful and you do not recover any money in a contingent fee case, some lawyers might require you to pay miscellaneous costs, such as a court reporter's charges for recording testimony at depositions and trial, word processing charges, copying and facsimile charges, expert or consultant fees, filing fees and other court costs, investigator's fees, postage and courier fees, service of process fees, travel expenses for the lawyer while traveling on your behalf, and witness fees and mileage charges for witnesses who appear at trial or depositions. These are just some examples. You need to find out clearly what expenses the lawyer anticipates will be associated with your legal matter and whether

the lawyer expects you to pay these costs directly in advance or if the lawyer will be willing to deduct them from any settlement or verdict in the case. You should ask for an itemized receipt of all fees you pay your lawyer. You can tell your lawyer that all costs over a certain amount you must approve in advance. Also, make sure your lawyer agrees to consult with you before committing to any large expenses or costs, such as hiring an expert witness or consultant.

The agreement should also spell out how the fees are going to be paid. Most clients choose to be billed monthly. Your lawyer may ask you to post a certain amount of money in his or her trust account to start work on your case. Funds held in trust remain your property until the lawyer works on the case and can draw against these funds. The lawyer should provide you monthly statements that itemize time spent on your case and money withdrawn from your account. The lawyer may require you to advance more fees, to be held in trust, as the case progresses.

If you have a billing dispute with your lawyer or you cannot afford to pay your legal bill, contact your lawyer to discuss the problem and try to resolve the issues. Hopefully you can reach agreement or set up an alternative payment arrangement. However, in the event that you cannot resolve the fee dispute with the lawyer, you and the lawyer may submit the dispute to the Fee Dispute Resolution Program of the Virginia State Bar (804) 775-9423).

Fee Dispute Resolution Program: A public service of the Virginia State Bar and local bar associations

What is the Fee Dispute Resolution Program (FDRP)?

The FDRP was created as a voluntary program to help attorneys and clients resolve disputes over fees and costs paid, charged, or claimed for legal services provided by a member of the Virginia State Bar. The program achieves this goal by providing two options—mediation and binding arbitration. Parties who choose the mediation process but who do not reach a satisfactory conclusion may still utilize the binding arbitration process. However, you may not move from binding arbitration to mediation.

What is mediation?

Mediation is a voluntary, confidential process in which a neutral third party facilitates communication between the parties to help them understand and resolve their dispute. Mediators do not decide the issues in the dispute or impose solutions. If the parties choose to resolve their dispute with a written agreement, that agreement is enforceable in the same manner as any other written contract.

What is binding arbitration?

When you agree to arbitration, you are consenting to submit your case to a neutral third party who will hear all sides of your dispute and then issue a binding award. Unlike a court hearing, arbitration is informal and is conducted without strict observance of rules of civil procedure or evidence. The award of the arbitrators is enforceable by the circuit court and cannot be revised or revoked except under certain circumstances, such as the fraud, corruption, or evident partiality of an arbitrator.

How do you participate in the program?

The first step is to call the Virginia State Bar's Fee Dispute Hotline at (804) 775-9423. You will need to leave your name, address, phone number, locality where the dispute took place and the name of the person(s) with whom you have a dispute. If you wish to receive the information via e-mail, please leave your e-mail address as well. The VSB Coordinator will provide you with the Agreement To Participate that you must fill out and sign to get your case started, as well as the program rules and guidelines. If you choose to mediate, this form becomes the Agreement To Mediate. If you choose to arbitrate, this form

becomes the Agreement To Arbitrate. Please note that the VSB cannot advise you as to whether you have a valid fee dispute.

How much does it cost to participate in the FDRP?

The Petitioner—the party who contacts the program first—pays a one-time non-refundable fee of twenty dollars. This is the only administrative fee charged, whether you choose to mediate your case, arbitrate your case, or mediate first then arbitrate. Both parties are expected to cover their own costs, including copies of documents and correspondence, legal representation, or stenography.

What if an attorney has already filed a lawsuit to collect the fee?

The CCRFD (Circuit Committee for the Resolution of Fee Disputes) cannot handle a fee dispute that has already been decided by a court. Also, the CCRFD cannot handle a dispute that is pending before a court. Therefore, if both parties sign an agreement to participate in the program, either by mediation or arbitration, and nonsuit the case or ask the court for a stay in the proceedings, the FDRP can handle your case. You should continue to prepare for the court case unless and until there is a mutual understanding to participate in the FDRP in writing.

Do I have to hire an attorney to represent me in a fee dispute resolution proceeding?

No. You do not need to hire an attorney to participate in mediation or arbitration, but you have the right to bring an attorney with you, should you decide to do so.

What if either the client or attorney refuses to participate?

This is a voluntary program. If there is no mutual agreement to mediate or arbitrate through the FDRP, the CCRFD cannot resolve the dispute. The CCRFD chair will usually give each party about two weeks to decide. The Virginia State Bar strongly encourages all attorneys and clients involved in a fee dispute to consider using the FDRP instead of resorting to court.

What if I think my attorney has been unethical in representing me?

The CCRFDs are not part of the disciplinary system of the Virginia State Bar (VSB). Therefore, allegations of unethical conduct must first be reported to the VSB through the complaint process. (You may call (804) 775-0570 for information about filing a misconduct inquiry.) If the VSB determines that no disciplinary rule has been violated, the matter may be referred back to the CCRFD for resolution of the fee dispute. However, in general the VSB disciplinary process does not address complaints about a lawyer's fee.

Who are the mediators?

Cases are mediated by volunteer lawyers and nonlawyers who are certified by the Supreme Court of Virginia, and have participated in a training program for resolving fee disputes. This program uses a co-mediation process; however, you may request a single mediator.

How do you start the mediation process?

If you wish to mediate your dispute you must sign an Agreement To Mediate. On that form you will state the amount of the fee in controversy and provide a summary of your views about the dispute. Once the other party has agreed to participate, and also signed the Agreement to Mediate, the CCRFD chair will help you identify the mediators, who will schedule the mediation session. The Agreement to Mediate form may be obtained from a CCRFD chair.

When will a mediation session be scheduled?

Once the Agreement To Mediate has been signed by all parties to the dispute, the parties choose their mediators from a list provided by the CCRFD chair. The mediators will then work with the parties to schedule the mediation at a mutually agreeable time, within thirty days of the mediators' appointment.

How are the mediators chosen?

Each party must, within five days of being notified of the Agreement To Mediate, choose three mediators from the list of certified mediators on the Circuit Committee's panel, and rank such party's first, second and third choices. The CCRFD chair will contact the identified mediators, beginning with the first choice of each party, to determine if each mediator is available and to ensure that there are not conflicts of interest with either of the parties. The CCRFD chair will appoint a mediator in the event that all three choices of a party are unable to provide mediation services.

Do I have to attend the mediation hearing in person?

The process is most likely to be successful when the parties meet face to face. If, however, both parties cannot physically be present, they may be able to arrange to mediate by telephone.

Who are the arbitrators?

The arbitrators are lawyers and nonlawyers who volunteer their time to hear and decide these disputes. All volunteers have participated in a training program focused on resolving fee disputes.

How do you start the arbitration process?

If you want to arbitrate your fee dispute, you must sign an Agreement To Arbitrate. On that form you will state the amount of the fee in controversy and give an explanation of your position in the dispute. The Agreement To Arbitrate form may be obtained from the Virginia State Bar.

When will an arbitration hearing be scheduled?

Once the Agreement To Arbitrate has been signed by all parties to the dispute, the CCRFD chair will assign the case to one arbitrator, or to an arbitration panel. The arbitrators will then schedule a hearing within forty-five days of their appointment.

How many arbitrators will handle your case?

In arbitration, if the amount in controversy is \$5,000 or less, the case is usually assigned to a single arbitrator who is usually a lawyer-arbitrator. You may request a panel of three arbitrators, but that decision is within the discretion of the CCRFD chair. For matters in excess of \$5,000, the CCRFD chair will assemble a three-arbitrator panel consisting of at least one lawyer and at least one nonlawyer.

Can you object to the appointment of a certain arbitrator?

Yes, if you question the arbitrator's impartiality. However, once a hearing begins, such objections are waived. Removal of an arbitrator, for good cause shown, is within the discretion of the CCRFD chair.

Do you have to attend the arbitration hearing in person?

If you are unable to attend the arbitration hearing in person, the hearing may be held by teleconference, or you may waive the evidentiary hearing. If you do not appear at the hearing, and do not give a reasonable explanation for your absence, the arbitration will proceed without you. Once a hearing date has been agreed upon, it is unlikely that the hearing will be rescheduled unless there are extraordinary circumstances.

What if you decide not to arbitrate after you have signed the Agreement to Arbitrate?

Once you sign the Agreement To Arbitrate form, your consent to arbitration is irrevocable, and the arbitration award may be enforced against you in court.

How do the arbitrators decide?

All arbitrators have been trained and sworn to conduct the arbitration hearing in an impartial and neutral manner. When resolving a fee dispute, the arbitrators may consider all pertinent factors, including the intention and understanding of the parties at the time the representation was undertaken. Expert testimony supporting the reasonableness or unreasonableness of the fee is not necessary but is permitted. The factors to be considered are:

- The time and labor required, the novelty, complexity and difficulty of the questions involved, and the skill required for proper legal representation;
- The likelihood that the acceptance of the engagement would preclude other employment by the lawyer;
- The customary fee or rate charged in the community;
- The monetary or other stakes involved in the matter;
- The time constraints of the representation;
- The nature and length of the professional relationship with the client;
- The experience, reputation, diligence, and ability of the lawyer, as well as the skill, expertise, or efficiency of effort reflected in the actual services rendered;
- Whether the fee agreement was fixed or contingent;
- Whether the lawyer provided an adequate explanation to the client of the fee arrangement at the outset of the representation;
- Whether the fee arrangement was in writing;
- The promptness of the billing;
- The experience of the client in obtaining legal services;
- The extent to which estimates of the total fee were given, and if an estimate was given, how closely the final bill related to the estimate;
- The results obtained by the lawyer.

When will you know the decision?

Arbitrators will deliberate in private after the formal closing of the arbitration hearing. They will issue an award within ten days after the hearing.

How do you decide whether to use mediation or arbitration?

Mediation is often appropriate when parties hope to continue a business relationship or to end that relationship without hard feelings. Mediators help the parties work together to reach a resolution that both find acceptable. If the parties do not resolve their case in mediation, they can still pursue resolution through arbitration.

Arbitration is appropriate when the parties are willing to accept the decision of a neutral third party, the arbitrator. This means that even if one of the parties objects to the decision, they are still required to implement its terms. However, arbitration does guarantee a final decision.

Best Strategy for Choosing a Lawyer to Represent You

- Choose a lawyer you are comfortable with, and make sure you agree on goals, since you will be working closely together throughout your case.
- Establish approximately how long your case will take and how often the lawyer intends to contact you with updates on your case.

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- Provide the lawyer in a timely fashion all the information and documents the lawyer needs or requests.
 - Have a written agreement that sets out the fees you will pay, the anticipated costs and a schedule for payment, as well as what services the lawyer will provide.
 - Contact your lawyer promptly with questions about your legal matter or any change in circumstances that occurs during the case.
 - Be sure that your lawyer communicates with you, keeps you reasonably informed about the status of your matter, and responds to your questions.

CONSUMER GUIDE

Introduction

Consumers of all ages, particularly senior citizens, are vulnerable to the fast pitch and hard sell of the professional salesperson. Today, we also face the impersonal, but no less effective, pitch of the television or radio advertiser. With such pressures being exerted against us, it is very difficult to make intelligent buying decisions.

Even though consumer protection legislation and court decisions in favor of consumer rights are on the increase, your best protection is for you to be a well-informed, careful buyer. Smart consumers know their legal rights, are cautious of product exaggerations, and are unafraid to demand satisfaction for the price of their purchase. This section is designed to help you be an alert consumer who is less likely to be taken advantage of by fast-talking salespeople or misleading advertising.

Contracts and Credit Buying

Almost every purchase you make as a consumer involves entering into a contract between you, the buyer, and a merchant, the seller. If you have ever bought a car, hired a workman to do repairs, or purchased a pair of shoes using a credit card, you have entered into a contract.

Contracts most often come into the picture for consumers when the seller extends credit for purchase of an item or service, with payment delayed or spread out over a period of time. This arrangement is commonly known as “buying on time” or “buying on credit.” In effect, the store, dealer, or company from which you are buying extends a loan in the amount needed to purchase the item or service. You, in turn, agree to pay back that money, plus a finance charge of some kind.

Whenever you buy on credit, make sure you know how much your total cost will be. Know how long you will have to make payments and be sure you can meet them. The Federal Truth-in-Lending Act requires persons and businesses who extend credit to tell consumers what that credit will cost in the long run. When you buy on credit, the seller must tell you the actual finance charge (the price you pay for the privilege of paying over time in installments, which is added to the cash price) and the annual percentage rate of interest on the purchase you wish to make. Lenders who fail to disclose this information may be sued by their customers for twice the amount of the finance charge—from a minimum of \$100 to a maximum of \$1,000—plus court costs and attorney’s fees. If lenders are convicted of willfully or knowingly disobeying the law, they can be fined up to \$5,000 or be imprisoned for one year, or both.

Federal truth-in-lending laws also grant the right to cancel any contract in writing within three days, if the contract requires that the consumer’s home be used as collateral or if a lien on the home could result from the contract, as in a home improvement or home repair agreement. Consult with an attorney before signing such a contract.

Before signing any sales contract, ask yourself these questions:

- Do I know what I’m buying?
- Do I understand to my satisfaction what the contract says and what my obligations will be under it?
- Can I get just about the same item elsewhere at a better price?

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- If the purchase is for credit, am I satisfied with the price I am paying for the loan?
 - What kind of protection do I have in the way of guarantees and warranties? (Buying something “as is” means no warranty or guarantee about the product at all.)
 - Should I have the contract reviewed by an attorney?

Basic Contract Dos and Don'ts

- DO insist that the salesperson let you take home a copy of the contract before you sign it.
- DO show the contract to a lawyer if you have any questions about any provision of the contract.
- DO insist that all promises (guarantees and warranties) be put in writing; otherwise, they may not be enforceable.
- DO keep copies of all contracts, payment records, and complaint letters in a safe place.
- DO ask your agent or the seller to include the following provision in the document if you have any questions about contract terms:
“This contract is contingent upon the approval of my attorney, and the contingency shall continue in effect until (DATE) .”
- DON'T deal with any salesperson who refuses to let you take home a filled-in contract before you sign it.
- DON'T sign anything unless you have had time to read it carefully or have it read to you, and you fully understand what it says.
- DON'T ever sign a contract with blank spaces that are to be filled in later by the salesperson.

Credit Card Finance Charges

If you have a credit card from a department store, bank, oil company, or financial institution, you are normally required to pay a monthly finance charge based on the unpaid balance of your account. The effective annual percentage rate for credit card transactions is not limited by Virginia law and may be imposed at the rate set by the issuer of the card and agreed to by you. All issuers of credit cards give a period of time within which, if they receive payment in full, no finance charge will apply (unless used for a cash advance). If charges are not paid in full before the due date, interest charges may be assessed on new purchases as well as the last balance-due amount.

Unsolicited Credit Cards

It is illegal for a card issuer to send you a credit card unless you ask or apply for one. A card issuer, however, may send you an application for a card or a new card to replace an expired one without your request.

Lost or Stolen Credit Cards

The most you will have to pay for unauthorized charges is fifty dollars on each card, even if someone runs up several hundred dollars' worth of charges before you report a card missing. In any event, your risk on lost or stolen credit cards is limited. You do not have to pay for any unauthorized charges made after you notify the card company of loss or theft of your card, so keep a list of your credit card numbers and notify card issuers immediately if a card is lost or stolen.

Bad Credit Ratings

If you learn that your credit has been damaged, you are authorized under the Fair Credit Reporting Act to request from the credit reporting agency an accurate report showing any information transmitted about your credit standing. If you challenge the information, the agency must reinvestigate, and if it still is not

resolved, you may file a protest that will remain in the report. You are entitled to sue for damages, attorney's fees, and investigation costs if the agency does not comply.

You are entitled to receive one free credit report every twelve months from each of the nationwide consumer credit reporting companies: Equifax, Experian, and TransUnion. This free credit report can be requested through <http://www.annualcreditreport.com> or by calling (877) 322-8228. It is good planning to request a free annual credit report from a different one of these agencies each four months throughout the year. Be wary of Internet or telemarketing programs that purport to provide a "free" credit report but require a fee.

Error in Billing

If you think your bill is wrong or you want more information about it, notify the creditor, in writing, within sixty days after the bill was mailed and keep a copy of your letter. Be sure to include:

- Your name and account number,
- A statement that you believe the bill contains an error and an explanation of why you believe there is an error, and
- The suspected amount of the error.

While you are waiting for an answer, you do not have to pay the disputed amount or any minimum payments or finance charges that apply to it. You are still obligated to pay all parts of the bill that are not in dispute.

The creditor must acknowledge your letter within thirty days unless your bill is corrected before then. Within two billing periods, but in no case more than ninety days, the creditor must correct your account or explain why the bill is correct.

If the creditor made a mistake, you do not have to pay any finance charges on the disputed amount. The creditor must credit your account for the full amount in dispute or partially correct your account and explain what you still owe. You then have the time usually allowed on the account to pay any balance. If no error is found, the creditor must promptly send you a statement of what you owe. In this situation, the creditor may include any accumulated finance charges and any minimum payments you missed while you were questioning the bill.

If you still are not satisfied, you should notify the creditor within the time you have to pay your bill (and keep a copy of your letter); however, the creditor's obligations have now been fulfilled, except for requirements regarding your credit rating.

Once you have written about a possible error, the creditor may not give out information to other creditors or credit bureaus or threaten to damage your credit rating. Before answering your letter, the creditor may not take any collection action on the disputed amount or restrict your account because of the dispute. A creditor can, however, apply the disputed amount against your credit limit.

After your bill has been explained and you do not pay within the time allowed for payment, and even if you still disagree and have expressed your disagreement in writing, the creditor can report your account as delinquent and begin collection proceedings. (Keep copies of all correspondence with your creditor.) If this is done, the creditor also must report that you have challenged your bill and provide you, in writing, the name and address of each person and/or organization to whom your credit information has been given. When the matter is settled, the creditor must advise each person or organization given credit information of the outcome.

The federal law applies to personal, family, and household debts, such as money owed for the purchase of a car, for medical care, or for charge accounts.

Collection Agencies

When you are paying for a product or service on time and get behind on your payments, the loan company or bank may refer your debt to a collection agency.

Federal law prohibits abusive, deceptive, and unfair debt collection practices, and its purpose is to ensure fairness. The law does not, however, cancel legitimate debts.

The Federal Trade Commission (FTC), the nation's consumer protection agency, enforces the Fair Debt Collection Practices Act (FDCPA), which prohibits debt collectors from using abusive, unfair, or deceptive practices to collect from you.

Under the FDCPA, a debt collector is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy delinquent debts and then try to collect them.

Here are some questions and answers about your rights under the Act.

What types of debts are covered?

The Act covers personal, family, and household debts, including money you owe on a personal credit card account, an auto loan, a medical bill, and your mortgage. The FDCPA doesn't cover debts you incurred to run a business.

Can a debt collector contact you any time or any place?

No. A debt collector may not contact you at inconvenient times or places, such as before 8 AM or after 9 PM, unless you agree to it. And collectors may not contact you at work if they're told (orally or in writing) that you're not allowed to get calls there.

How can you stop a debt collector from contacting you?

If a collector contacts you about a debt, you may want to talk to them at least once to see if you can resolve the matter—even if you don't think you owe the debt, can't repay it immediately, or think that the collector is contacting you by mistake. If you decide after contacting the debt collector that you don't want the collector to contact you again, tell the collector—in writing—to stop contacting you. Here's how to do that:

Make a copy of your letter. Send the original by certified mail, and pay for a "return receipt" so you'll be able to document what the collector received. Once the collector receives your letter, they may not contact you again, with two exceptions: a collector can contact you to tell you there will be no further contact or to let you know that they or the creditor intend to take a specific action, like filing a lawsuit. Sending such a letter to a debt collector you owe money to does not get rid of the debt, but it should stop the contact. The creditor or the debt collector still can sue you to collect the debt.

Can a debt collector contact anyone else about my debt?

If an attorney is representing you about the debt, the debt collector must contact the attorney, rather than you. If you don't have an attorney, a collector may contact other people—but only to find out your address, your home phone number, and where you work. Collectors usually are prohibited from contacting third parties more than once. Other than to obtain this location information about you, a debt collector generally is not permitted to discuss your debt with anyone other than you, your spouse, or your attorney.

What does the debt collector have to tell me about the debt?

Every collector must send you a written "validation notice" telling you how much money you owe within five days after they first contact you. This notice also must include the name of the creditor to whom you owe the money, and how to proceed if you don't think you owe the money.

Can a debt collector keep contacting me if I don't think I owe any money?

If you send the debt collector a letter stating that you don't owe any or all of the money, or asking for verification of the debt, that collector must stop contacting you. You have to send that letter within thirty days after you receive the validation notice. But a collector can begin contacting you again if it sends you written verification of the debt, like a copy of a bill for the amount you owe.

What practices are off limits for debt collectors?

Harassment. Debt collectors may not harass, oppress, or abuse you or any third parties they contact. For example, **debt collectors may not:**

- Use threats of violence or harm;
- Publish a list of names of people who refuse to pay their debts (but they can give this information to the credit reporting companies);
- Use obscene or profane language; or repeatedly use the telephone to annoy someone.
- Make false statements. Debt collectors may not lie when they are trying to collect a debt. For example, they may not:
 - Falsely claim that they are attorneys or government representatives;
 - Falsely claim that you have committed a crime;
 - Falsely represent that they operate or work for a credit reporting company;
 - Misrepresent the amount you owe;
 - Indicate that papers they send you are legal forms if they aren't; or
 - Indicate that papers they send to you aren't legal forms if they are.

Debt collectors also are prohibited from saying that:

- You will be arrested if you don't pay your debt;
- They will seize, garnish, attach, or sell your property or wages unless they are permitted by law to take the action and intend to do so; or
- Legal action will be taken against you, if doing so would be illegal or if they don't intend to take the action.

Debt collectors may not:

- Give false credit information about you to anyone, including a credit reporting company;
- Send you anything that looks like an official document from a court or government agency if it isn't; or
- Use a false company name.

Unfair practices. Debt collectors may not engage in unfair practices when they try to collect a debt. For example, they may not:

- Try to collect any interest, fee, or other charge on top of the amount you owe unless the contract that created your debt—or your state law—allows the charge;
- Deposit a post-dated check early;
- Take or threaten to take your property unless it can be done legally; or
- Contact you by postcard.

Can you control which debts your payments apply to?

Yes. If a debt collector is trying to collect more than one debt from you, the collector must apply any payment you make to the debt you select. Equally important, a debt collector may not apply a payment to a debt you don't think you owe.

Can a debt collector garnish your bank account or your wages?

If you don't pay a debt, a creditor or its debt collector generally can sue you to collect. If they win, the court will enter a judgment against you. The judgment states the amount of money you owe, and allows

the creditor or collector to get a garnishment order against you, directing a third party, like your bank, to turn over funds from your account to pay the debt.

Wage garnishment happens when your employer withholds part of your compensation to pay your debts. Your wages usually can be garnished only as the result of a court order. Don't ignore a lawsuit summons. If you do, you lose the opportunity to fight a wage garnishment.

Can federal benefits be garnished?

Many federal benefits are exempt from garnishment, including:

- Social Security Benefits
- Supplemental Security Income (SSI) Benefits
- Veterans' Benefits
- Civil Service and Federal Retirement and Disability Benefits
- Service Members' Pay
- Military Annuities and Survivors' Benefits
- Student Assistance
- Railroad Retirement Benefits
- Merchant Seamen Wages
- Longshoremen's and Harbor Workers' Death and Disability Benefits
- Foreign Service Retirement and Disability Benefits
- Compensation for Injury, Death, or Detention of Employees of U.S. Contractors Outside the U.S.
- Federal Emergency Management Agency Federal Disaster Assistance

But federal benefits may be garnished under certain circumstances, including payment of delinquent taxes, alimony, child support, or student loans.

Do you have any recourse if you think a debt collector has violated the law?

You have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, the judge can require the collector to pay you for any damages you can prove you suffered because of the illegal collection practices, like lost wages and medical bills. The judge can require the debt collector to pay you up to \$1,000, even if you can't prove that you suffered actual damages. You also can be reimbursed for your attorney's fees and court costs. Even if a debt collector violates the FDCPA in trying to collect a debt, the debt does not go away if you owe it.

What should you do if a debt collector sues you?

If a debt collector files a lawsuit against you to collect a debt, respond to the lawsuit, either personally or through your lawyer, by the date specified in the court papers to preserve your rights.

Where do you report a debt collector for an alleged violation?

Report any problems you have with a debt collector to your state Attorney General's office (<http://www.naag.org>) and the Federal Trade Commission (<http://www.ftc.gov> or call (877) 382-4357). Your Attorney General's office can help you determine your rights under your state's law.

For More Information

To learn more about credit-related issues, go to <http://www.mymoney.gov>, the U.S. government's portal to financial education.

DOOR-TO-DOOR SALES

Even the most strong-willed customer occasionally falls prey to an enterprising door-to-door salesperson. But if the “magic spell” cast by the salesperson wears off as soon as he is away from your door with your money or a sales contract, there is something you can do about it.

Virginia law and Federal Trade Commission (FTC) rules allow you a three-day cooling-off period to decide whether to cancel your purchase of goods or services. If you do decide to cancel the sale or to rescind the contract, you must send or deliver a written notice to the company or business before midnight of the third business day after the date of the transaction. Virginia law does not require you to follow any particular format in sending your notice to cancel your purchase of goods or services. The FTC rules require you to sign and date one copy of a notice of cancellation form, which you should receive from the salesperson, along with copies of the sales contract or receipt of sale. You should consider sending the notice of cancellation or written letter of cancellation by certified mail, return receipt requested. Keep a copy of the notice for your records and as proof that you sent it.

Once the merchant receives the notice letter of cancellation, he or she has ten days to refund any money received, return any documents that you have signed, return any goods or property that you have traded in, and inform you whether he or she will pick up or let you keep any items that were left with you. Products left with you must be available to the seller in the same condition as you received them. It is not your responsibility, though, to ship the items back to the dealer or pay postage expenses for such shipping. The seller must either pick up items left with you, or if you agree to ship them, the seller must pay the return postage expenses. If the seller fails to demand possession of the items within twenty days after cancellation or revocation, the goods become the property of the buyer without any obligation to pay for them.

Virginia law and the FTC rules do not cover cash purchases under twenty-five dollars.

MAIL-ORDER MERCHANDISE

If you order merchandise by mail, federal regulations require the seller to ship the merchandise to you within the time limits stated in its ad or brochure, or within thirty days if the seller has not specified a delivery period. If the merchandise is not so shipped, e.g., because it is temporarily out of stock, you have the right to cancel your order and have your money refunded within seven days of your cancellation. In a credit transaction, the seller has one billing cycle to adjust your account. If the seller notifies you that he or she cannot ship the merchandise in the stated time or within thirty days, you may cancel the order and get your money back, agree to the new shipping date, or not answer, in which case the seller can assume you agree to the shipping delay. If you do not give your express consent to a shipping delay of more than thirty days, the seller must return your money at the end of the first thirty days of the delay. These regulations do not apply to magazine subscriptions, serial deliveries (except for the initial shipment), mail-order seeds and growing plants, cash on delivery, or credit orders for which your account is not charged prior to shipment.

UNORDERED MERCHANDISE

You do not have to pay for merchandise that you have not ordered or otherwise requested, and it is illegal for the sender to pressure you to return it or to send you a bill. It is illegal for a merchant to send unordered merchandise other than free samples and merchandise mailed by charitable organizations requesting contributions.

Any problems relating to mail order dealers or unordered merchandise should be referred in writing to your Postmaster (or local Postal Inspector) and to: Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (or <http://www.ftc.gov/bcp/index.shtml>).

TELEMARKETING SALES

Just about everyone who owns a telephone has received calls promoting products, services, investment opportunities, or contests. Although most telephone offers are legitimate, telemarketing fraud costs consumers billions of dollars a year. Federal rules and common sense can protect you from telephone scams and overly intrusive sales calls.

Under FTC rules, telemarketers may call only between 8 AM and 9 PM. They must tell you immediately who they are and what they are selling—before they make their pitch. You can stop unwanted calls from telemarketers by telling them not to call back. If they do, they are breaking the law.

Before you pay anything, a telemarketer must tell you the total cost of the products or services offered and any restrictions on getting or using them, and whether a sale is final or nonrefundable. A telemarketer may never withdraw money from your checking account without your express, verifiable authorization. It is also illegal for telemarketers to misrepresent information about whatever they are selling, including prize-promotion schemes.

Telephone scam artists may cold-call individuals listed in a directory or on a mailing list. In more elaborate schemes, advertisements or direct mail pieces invite you to call a certain phone number to claim a prize or to make a purchase. Be skeptical of any deal that sounds too good to be true, and make sure sellers are trustworthy before you hand them your money.

Here are some ways to avoid being victimized by telephone fraud:

- Resist high-pressure sales tactics. Legitimate businesses respect the fact that you are not interested.
- Do not send money—cash, check, or money order—to anyone who insists on immediate payment.
- Keep information about your bank accounts and credit cards to yourself unless you know with whom you are dealing.
- Hang up if you are asked to pay for a prize. Free is free.
- Take your time. Ask for written information about the product, services, investment opportunity, or charity that is the subject of the call.
- Before you respond to a phone solicitation, talk to a friend, family member, or financial advisor.

Your financial investments may have unexpected consequences for people you care about.

You can fight telephone fraud by reporting scam artists to the Virginia Office of Consumer Affairs at (804) 786-2042 for the Richmond area, or (800) 552-9963. You can also register your phone number with The National Do Not Call Registry (<http://www.donotcall.gov> or (888) 382-1222). Once you register your phone number, telemarketers covered by the National Do Not Call Registry have up to thirty-one days from the date you register to stop calling you.

For more information about consumer protection under the Telemarketing Sales Rule, write:

Bureau of Consumer Protection

Federal Trade Commission

Public Reference, Room 130

Washington, DC 20580, or go to <http://www.ftc.gov/bcp/index.shtml>

UNSCRUPULOUS PRACTICES

Unscrupulous dealers and businesses have many ways of getting you to part with your hard-earned cash. If not careful, you could find yourself paying unreasonably high interest rates for a credit purchase, or you may be stuck with a piece of shoddy merchandise that you were told was “a steal” at the price you paid for it. Unfortunately, bargains and deals that sound too good to be true usually are, and unwary buyers can end up paying for a costly lesson in consumer education.

Scam artists use dozens of cons to fleece unsuspecting individuals. Some of these schemes involve products and services that are commonly purchased by senior citizens. The following are a couple of the more common schemes that you should guard against.

Bait and Switch

The store or business employing the bait-and-switch technique usually advertises some attractive bargain that is “available in limited quantities” to get you into the store. Once you are there, the sales people try to get you to buy a more expensive item in the same line of merchandise, often by downgrading the bargain model that drew you to the store in the first place. Frequently, the more expensive item is overpriced.

Pigeon Drop

The pigeon drop is a technique used to rob people—particularly elderly persons—of their savings. Usually a pleasant person introduces him or herself and says that he or she has recently found a large amount of money. The person offers to share the found money with you if you will put up some of your own money to show good faith. After you deliver the agreed-upon amount in an envelope, the “nice” person then distracts you and switches the envelope containing your money with one containing paper, or takes the envelope and promises to deliver your windfall “later” or “tomorrow.” Tomorrow never comes. These cons sometimes sound believable, but they never are. When in doubt, call your local police or sheriff's department to see whether they know of a scheme that is being used to victimize others in the community.

Home Repairs

Whenever you need to hire someone to work on your home, use caution and shop around. You do not have to hire the first contractor that you find. Get two or three written estimates to see who is offering the best bargain. Also, check references before you hire. Inquire about past complaints or potential problems with a business by contacting the Better Business Bureau in your locality.

After you decide on a contractor, insist that your agreement be put in writing. If you do not get all the important things in writing, you are asking for trouble later on. Items such as price and guarantees of the work to be done should be on paper and signed so that you can avoid arguments after the work is completed. Agree in advance that full payment is not due until the work is completed.

If you plan to pay for the work in installments and the contractor or loan company requires a deed of trust (mortgage) on your home as collateral, remember: you have three business days after you make the agreement in which to cancel it, if the work has not begun during that time; and if you get behind on your payments, the contractor or loan company can foreclose on the deed of trust, which may result in the loss of your home.

If the contractor is not paid after completion of his work, he can file a document known as a “mechanic’s lien.” If you receive notice that a lien has been filed against your property, consult an attorney.

If you have a dispute with your contractor regarding payment for his work, be certain to obtain a release of all liens placed on your property before you make the final payment. If the contractor refuses, consult an attorney before making any further payments. If you do not have an attorney, the state and local bars can help through lawyer referral services or by directing you to the nearest Legal Aid office.

Health Quackery

If you have ever been tempted to spend money on products advertised as miracle cures, do not feel embarrassed. Each year, Americans spend billions of dollars on bogus health products and treatments. Tragically, some people are persuaded to buy the useless products rather than to seek effective, proven medical treatment. In order to avoid being a victim of “health quackery,” beware of the following:

- Promises of a “quick and painless” cure;
- Extraordinary promises such as a claim that a single remedy will cure all diseases;

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- Testimonials of “satisfied users” which lack any substantive medical support;
 - Products which are described as “alternatives” (some alternative therapists and healers do not follow accepted scientific protocol);
 - “Scientific breakthroughs” which the promoter claims have been overlooked by the medical community.

If medical science has not found a cure for an ailment, then you should not buy a product advertised to cure it. Remember, if it sounds too good to be true, it probably is.

CONSUMER REMEDIES

When something goes wrong with a product you have bought, or a repair job is poorly done (on a house, car, or anything else), you may seek satisfaction in several ways. A thoughtfully prepared complaint made either in person or in writing (keep a copy) can be an extremely effective way of solving a consumer problem—especially when that complaint is made to the proper authority. You can successfully resolve many problems by this method alone.

Complaints are most effective when accompanied by receipts and other documents that help explain your case. If you are contacting the store or business by mail, send your complaint letter by certified or registered mail, return receipt requested, and keep a copy for your records. Never send originals of any receipt, contract, or documentation. If you are making your complaint in person, try to remain calm, but be firm and make sure what you are told makes sense to you.

If taking your complaint directly to the store or business does not produce the satisfaction you are seeking, bring the matter to the attention of the Better Business Bureau in your community or contact the Office of Consumer Affairs (800) 552-9963.

In some areas, law schools and radio and television stations handle consumer complaints at no charge to you as a public service to the community. These services can be extremely helpful.

Consumer protection laws may give you additional remedies, such as the ability to cancel certain types of contracts on your own. In Virginia, general district courts are also available to consumers who believe they have been treated unfairly and when the amount in controversy is \$25,000 or less. All general district courts also have small claims courts when the amount does not exceed \$5,000. (Attorneys are not permitted in small claims courts.)

The Department of Social Services Adult Protective Services also investigates suspected financial exploitation of seniors. For information, call the toll-free hotline (888) 832-3858.

SUITS IN GENERAL DISTRICT COURTS

If you feel that court action is necessary, you may wish to obtain the services of an attorney, although it is not required. One major reason to consult an attorney at this stage is that you may be subject to a countersuit brought by the person you are suing. If you cannot afford an attorney, contact your local Legal Aid office for assistance. To file a suit in the general district court, where a judge will decide your case without a jury, your claim must be for \$25,000 or less. To initiate the suit, go to the general district court clerk in the city or county where you believe the suit should be brought. If you have any doubts, a local clerk of the court will assist you.

The clerk will provide you with a fairly simple filing form to complete and will help you should you need assistance. You (the plaintiff) should have with you the exact name and address of the person or business whom you are suing (the defendant), along with the amount of the claim, the basis of the claim, and a stamped envelope addressed to the defendant. The clerk will answer questions you may have about court procedures or the filing form, but it is not the clerk’s duty to help you determine the amount for which you are going to sue.

When you fill out the form to file your case, the clerk will ask you to pay a filing fee, and may require an additional service fee per defendant. The clerk will then deliver your pleading to the sheriff for service on the defendant.

When you leave the courthouse, be certain you know the return date for your case. The return date is the day you are to appear in court. **It is not necessarily the date your case will be decided.** If the defendant is represented by an attorney, he or she will be entitled to a period of time to prepare the case. Do not be disturbed if the trial date is set for several months after the return date. Court calendars are full, and a delay is not unusual.

If you know that your complaint will be contested, try to talk with the defendant or the defendant's attorney prior to the return date. You may be able to agree upon a trial date and save yourself at least one trip to the courthouse.

Here are some important points to remember when preparing a suit:

- Organize relevant materials (bills, receipts, letters, etc.) so that you can make a complete and orderly presentation of your case at the hearing;
- Think over and make some notes on what you want to say so that you can make a full, but brief, statement of the facts in your case;
- Determine what witnesses, if any, you need to testify for you at the trial. Witnesses important to the case may be subpoenaed (compelled) if they are reluctant to appear voluntarily; and
- Check with the court before the hearing to find out whether the defendant has been served successfully with the summons. If no successful service has been made, the clerk can advise you of your options. For example, you may want to change the date of your hearing. You may seek one continuance (postponement) of the court date for this or a similar good reason.

If you appear in court by yourself, do not be disturbed if the business or person you are suing is represented by an attorney. The judge has a responsibility to make sure the proceedings remain informal, so your lack of legal knowledge will not work against you.

If you receive an unfavorable ruling by the court, you may either petition (ask) the court for a rehearing in general district court or appeal the ruling to the circuit court. A rehearing must occur within thirty days of the court's ruling and may be granted if you have discovered new evidence that would change the result. An appeal to the circuit court must be granted if the amount involved in the dispute is more than fifty dollars and the appeal is made within ten days of the court's ruling. If you want to pursue a dispute beyond the general district court because you are dissatisfied with the decision, you will likely need the aid of an attorney.

If you win the amount that you are seeking, the next task is getting the defendant to pay you. If the defendant voluntarily agrees to pay you in a certain way—all at once or in installments—you are home free. Occasionally, a defendant who has lost in court will not pay the judgment that you received. Legal proceedings may be instituted to collect the judgment; however, you should seek the services of an attorney before proceeding further.

If you have a chance to settle the suit before the court hearing, try to do so by either receiving full payment or entering into a written agreement about payment. Inform the court if this occurs and be ready to have the case heard just in case your settlement offer falls through.

The general district court may also provide opportunities for your case to be mediated by an independent party (not a judge), with the possibility of an agreed settlement outside of the judicial system (i.e., a contractual compromise by the disputants).

As an alternative to the foregoing, Va. Code Ann. §16.1-122.1 requires each general district court to have a small claims division, called a small claims court. The small claims court has concurrent jurisdiction with the general district court over civil actions in which the amount of the claim does not exceed \$5,000. Actions in the small claims court must be commenced by the plaintiff filing a small claims civil warrant. All parties in small claims court represent themselves, and are not represented by

attorneys. The judge in small claims court conducts the trial in an informal manner and the rules of evidence may be relaxed. The object of the small claims court trial is to determine the rights of the litigants on the merits and to dispense expeditious justice between the parties. Appeals from the small claims court are handled in the same manner as in other cases from the general district court.

DISCRIMINATION

Age Discrimination

There are federal laws prohibiting discrimination against anyone because of his or her age. The age discrimination laws cover employment, federal programs, and obtaining credit.

Employment

The Age Discrimination in Employment Act prohibits workplace age discrimination against individuals who are at least 40 years old. While there is generally no upper age limit, employers may set mandatory retirement policies for executives sixty-five and older who are entitled to pensions of \$44,000 or more.

Discrimination in employment can take many forms, for example, in job advertisements, recruitment, application and hiring, termination, demotion, or denial of employment. If you believe you are being discriminated against because of your age, within 180 calendar days of the alleged discrimination, you should file a charge with the Equal Employment Opportunity Commission (EEOC). The Richmond office is located at 830 East Main Street, Sixth Floor, Richmond, VA 23219, (800) 669-4000. To assist you in determining whether or not the EEOC is the correct agency to assist you, you may use its EEOC Assessment System at <http://www.eeoc.gov/employees/howtofile.cfm>. If you file a complaint, the matter will be investigated, then discussed and settled, or, if necessary, a lawsuit may be filed. Federal employees should file complaints with the Office of Personnel Management.

Federal Programs

If you believe you are being discriminated against because of your age in any program receiving financial assistance from the United States government, you must contact in person or complain in writing to the federal agency that is financing the program. This is an administrative proceeding, and the agency must reply in 180 days. If the agency does not reply within 180 days, you may bring suit in federal court to stop the prohibited action once you have given thirty days' advance notice to the Secretary of Health and Human Services, the U.S. Attorney General, and the person or party you are taking action against. It probably will be necessary to obtain assistance in making the complaint. These matters can be complicated, and thus, you may wish to consult a person skilled in the field of age discrimination or an attorney who handles this type of case.

Credit

The Equal Credit Opportunity Act forbids discrimination against an applicant for credit, not only on the basis of age, but also on the basis of sex, marital status, receipt of public assistance benefits, race, color, national origin, or religion.

A creditor wants to make sure that you are both willing and able to repay your debt. Normal items of inquiry include your personal income, your expenses, outstanding debts, and credit history. A creditor may also ask your age, but the use of this information is controlled under the Equal Credit Opportunity Act. Your age may not be used as the basis for a decision to deny or decrease credit if you otherwise qualify. A creditor may ask you about your income, but continually denying credit to applicants without good cause or arbitrarily discounting income is forbidden.

You have a right to know whether an application is accepted or rejected within thirty days of filing. If you have suffered adverse credit actions, such as a denial or revocation of credit, a change in terms of an existing credit arrangement, or a refusal to grant credit in substantially the terms requested, you have sixty days from the time the creditor notifies you of adverse action to request the reason in writing. The creditor must give you a statement of reason within thirty days of the receipt of your request.

If credit has been denied either wholly or partly because of information contained in a consumer credit report, you may request a free copy in writing within sixty days of the initial action. Try to renegotiate the terms or otherwise solve the problem. If the problem has not been resolved to your satisfaction, and you believe the adverse action was taken for a non-permissible reason, you may bring suit to recover actual damages, attorneys' fees, court costs, and punitive damages in an amount not greater than \$10,000.

If you believe you are being discriminated against on the basis of your age by denial of an application for credit in a loan or a purchase, or for more detailed information or help, you should contact the Federal Trade Commission, Division of Credit Practices, Consumer Response Center, Suite 240, 6th and Pennsylvania Avenue, NW, Washington, DC 20580. Their toll free numbers is (877) 382-4357.

Discrimination Based on Disability

There are federal and state laws that prohibit discrimination against individuals based on disability. Generally speaking, federal law defines an "individual with a disability" in three ways:

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.
- A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:
 - Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
 - Job restructuring, modifying work schedules, reassignment to a vacant position;
 - Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities. Accommodations vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:

- A deaf applicant may need a sign language interpreter during the job interview.
- An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels.
- A blind employee may need someone to read information posted on a bulletin board.
- An employee with cancer may need leave to have radiation or chemotherapy treatments.

An employer does not have to provide a reasonable accommodation if it imposes an "undue hardship." Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. If an employer believes that a medical condition is causing a performance or conduct problem, it may ask the employee how to solve the problem and if the employee needs a reasonable accommodation. Once a reasonable accommodation is requested, the employer and the individual should discuss the individual's needs and identify the appropriate reasonable accommodation. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Title I of the ADA also covers:

Medical Examinations and Inquiries

Employers may not ask job applicants about the existence, nature, or severity of a disability.

Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Medical records are confidential. The basic rule is that with limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

Drug and Alcohol Abuse

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

If you believe you have been discriminated against because of a disability, you should contact the Equal Employment Opportunity Commission (EEOC), 1801 L Street, NW, Washington, DC 20507, (202) 663-4900 (voice) or (202) 663-4494 (TDD) or contact your local EEOC office. The Richmond local office is at 830 East Main Street, Suite 600, Richmond, VA 23219, (800) 669-4000.

There is an information kit issued by the EEOC that describes the rights of an individual with a disability. Contact the Publication Distribution Center at (800) 669-3362 (voice) to request the kit, or go to <http://www.eeoc.gov>.

The Virginians with Disabilities Act (VDA) has many similar provisions to the ADA. Rights under the VDA are enforceable in a Virginia circuit court.

Further information regarding any of the above laws or other laws protecting individuals with disabilities may be obtained from the Virginia Board for People with Disabilities at 202 North 9th Street, Richmond, VA 23219, (804) 786-0016; or you may contact the Virginia Office for Protection and Advocacy (VOPA), a state agency that provides protection and advocacy services for individuals with disabilities, toll-free at (800) 552-3962 (in-state calls only), at (804) 786-0016 in the Richmond area.

GRANDPARENT RIGHTS

Grandparent Rights to Visitation and Custody

Virginia law authorizes any party having a legitimate interest in a minor (including grandparents specifically) to file a petition in juvenile and domestic relations district court seeking visitation or custody of the minor. The juvenile court has broad discretion as to whether to grant visitation or custody.

In a custody or visitation contest between a birth parent and a non-birth parent (such as a grandparent), the burden of proof for the non-birth parent is “clear and convincing evidence,” not merely “preponderance of the evidence.” In a contest between grandparents’ seeking visitation and parents who disagree over whether the visitation should be ordered, the court may order the visitation on the basis of the “best interests” standard. However, if the parents are united in their objection to the grandparents’ visitation, in order to order the visitation, a court must find actual harm to the child’s health or welfare if such grandparents’ visitation does not occur. As a practical matter, it also becomes somewhat problematic when a court tries to allocate a child’s time among one parent with primary physical custody, the other parent who seeks visitation time and grandparents who also seek visitation time.

Your area agency on aging or your local legal aid office may give you further assistance or referral on visitation a custody issues.

A Primer on Legal Custody and Guardianship of Grandchildren

The first Sunday after Labor Day is National Grandparents Day.

According to the U.S. 2010 Census, in Virginia about 180,000 children under age eighteen live in homes where the householders are grandparents or other relatives besides the child’s parents. This is about ten percent of the children in Virginia. 62,155 children under age eighteen live in homes with grandparent householders, where the grandparents are solely responsible for the grandchildren; there are 60,675 grandparents who are the householders solely responsible for the grandchildren.

Legal Custody

The two fundamental concepts included in legal custody are the right to have physical charge of the child and to generally direct the day-to-day activities of the child’s life. Day-to-day activities include the following responsibilities: to protect, discipline, feed, clothe, shelter, educate and provide ordinary medical care to the child.

Although the parents are the natural custodians of the child, courts have the power to shift all or a portion of the custodial rights and responsibilities from the parents to the grandparents, aunts and uncles and other individuals having a legitimate interest in the child as defined below. The court’s power includes the ability to require the parents to share these custodial rights and responsibilities with grandparents etc. Before the judge can exercise this power, he must determine whether the parental presumption as described below applies. In any event, when these family matters come before the court, it is not a forgone conclusion that a contentious dispute will occur in court. The majority of these custody matters will be referred to a mediator, an independent professional who will assist the family in reaching an agreed upon order.

If the parents and grandparents are in agreement to sharing legal custody of the child, court proceedings may be avoided all together. To accomplish this goal, the parents may sign a power of attorney authorizing the grandparents to act in the in place of the parent (*in loco parentis*). Because of confidentiality and other types of policies, school and medical providers should be contacted to determine whether any additional forms need to be executed.

Guardianship

Guardianship, or “custody,” not only includes the custodial rights and responsibilities, but also includes the right to take possession of the child’s property (estate), and manage the estate, so as to provide for the child’s maintenance and education. As with custody, the father and mother are deemed the joint natural guardians of the child. In the event that a parent dies or abandons the family, the other parent becomes the sole natural guardian of the child.

A parent may nominate, in his last will and testament, a testamentary guardian of the child’s person and/or property upon the parent’s death. If the other parent is living, two issues arise. First, the testamentary guardian is not entitled to legal custody of the child without court approval. Second, the

guardian of the child's estate must request the court's permission to draw from the child's assets unless the will, trust or other legal document provides otherwise. The policies underlying this rule address the other parent's legal duty to provide support for the child as well as to provide oversight of the estate to prevent waste.

Additionally, a parent may set forth a standby guardian who would step in as a temporary guardian of the child if the parent incurs a triggering medical event that leaves the parent unable to care for the child. The standby guardian is appointed by the Juvenile & Domestic Relations District Court.

Parental Presumption

In determining custody or guardianship of a child between a parent and a grandparent, or a non-parent, the law requires that the court grant custody/guardianship to the parent unless the non-parent proves by strong evidence that the parent is unfit, that the court previously removed custody of the child from the parent, that the parent had abandoned the child, that the parent voluntarily relinquished custody of the child to a non-parent, or that the court found special circumstances occurred which constitute extraordinary reasons for taking a child from a parent. Even if the non-parent overcomes the parental presumption, the court must determine custody on what is in the best interest of the child. The factors of best interest are set forth in the Virginia Code.

Person with a legitimate interest

A "Person with a legitimate interest" includes grandparents, stepparents, former stepparents, blood relatives and family members. The term is broadly defined to accommodate the best interest of the child. However, if a court has terminated the parental rights—either voluntarily or involuntarily, then that parent no longer has a legitimate interest in the child. Under those circumstances, a blood relative of that parent continues to have a legitimate interest in the child until such time as the child is adopted. Upon the child's adoption, the blood relative no longer has a legitimate interest. Like most rules, exceptions exist such as where the child is adopted by a stepparent and then the blood relative continues to have a legitimate interest in the child.

Based on the above, if the court finds that the grandparents or other blood relatives no longer have a legitimate interest in the child, the court automatically disqualifies them from pursuing custody or visitation.

Visitation Determination

Similar to custody determinations, the court places a heavy burden on the non-parent to obtain visitation rights over the child. By statute, courts must give due regard to the primacy of the parent-child relationship. The non-parent must prove to the court by strong evidence that an actual harm to the child's health or welfare will occur without such visitation. Once the non-parent meets this stringent burden, the court may grant visitation based on the best interest of the child. The one exception to this rule is where the parents are in disagreement over the grandparent's right to visitation; and then, the court, no longer bound by this stringent rule, can enter a visitation order based on what is in the best interest of the child. As with custody matters, courts are obliged to refer the parties to mediation as an alternative to a trial where appropriate.

Foster Care and Grandparents

When a child is placed in foster care, time is of the essence. The foster care system operates on strict timelines that require the court to implement a permanent plan for the child's custody within approximately one year—although sometimes sooner depending on the circumstances. At all stages of the court process, the judges are obligated to consider placing the child with relatives. Additionally, it is possible for a relative to become a certified foster parent (kinship foster care) and receive the same

services from the Commonwealth as any other foster parent would receive in caring for the child. If the child is placed with a foster parent, the court has the authority to grant grandparents, or other blood relatives, visitation rights upon a showing that they had an ongoing relationship with the child prior to entering foster care and that it is in the child's best interest for the relationship to continue.

In most instances, the foster care laws mandate that the local social services provide reasonable efforts to the parents in an attempt to reunite them with their children. If reasonable efforts fail for reunifying the parent and child within the mandated time period, the court will then determine an alternative permanent placement for the child. Again, under those circumstances, the local department of social services has a duty to investigate placing the foster child with blood relatives as a permanent placement. To be eligible for custody of the child, the relatives must demonstrate that they are willing and qualified to receive and care for the child; that they are willing to have a positive, continuous relationship with the child; that they are committed to providing a permanent, suitable home for the child; and that they are willing and have the ability to protect the child from abuse and neglect. In many instances, the last factor is the most difficult for the grandparents or other relatives to demonstrate because of their relationship to the parent.

The grandparents may wish to retain their own counsel to assist them through the foster care system and the court proceedings. The child will be appointed an attorney, known as guardian ad litem to advocate for the child's best interests. Generally, relatives should waste no time expressing their intentions to assist the child to the social worker, the guardian ad litem and to the court. In addition, the grandparents/relatives are entitled to file a custody petition for the child while the foster care case is pending before the court.

State Benefit Programs

The Commonwealth of Virginia has several assistance programs that are administered through the local departments of social services that can assist a grandparent in raising a grandchild. These programs include a cash assistance program (Temporary Assistance for Needy Families) and medical assistance program that is referred to Medicaid (Virginia's Medicaid program for children is specifically referred to as FAMIS Plus). With both TANF and FAMIS Plus, the grandparents' income is not considered in determining the child's eligibility. If the child qualifies for TANF benefits, it is likely he will also qualify for day care assistance. To obtain more information on these and other programs as well as eligibility requirements and the application process, contact your local department of social services or go to <http://www.dss.state.va.us/benefit>.

Internet Resources:

- Virginia Department of Aging: <http://www.vda.virginia.gov/grandparents.asp>
- VA State Bar Lawyer's Referral Service: <http://www.vsb.org/site/public/lawyer-referral-service/>
- American Bar Association Kinship Care: <http://www.abanet.org/child/kinshipcare.shtml>
- Generations United: <http://www.gu.org/>
- AARP: <http://www.aarp.org/family/grandparenting/>
- Grandparent Organization: <http://www.grandparentsrights.org/>
- Legal Advocates for Permanent Parenting: <http://www.lapponline.org/AboutUs/>
- Child Information Gateway: <http://www.childwelfare.gov/>

YOUR PERSONAL SAFETY AND SECURITY

Very often, senior citizens may be especially vulnerable to crimes against their person and/or their property. This means that you should be especially alert and take steps to protect yourself and your property. A good starting point in locating resources to help you in protecting yourself against crime is by

contacting the community resource department of your local police or sheriffs department, or the local TRIAD organization. Your local police or sheriffs department will be able to tell you about TRIAD and/or to tell you of their own crime prevention programs for seniors. TRIAD is a crime prevention program for seniors. It is a cooperative effort of law enforcement agencies (police/fire/sheriff), senior citizens, and senior organizations, focused on reducing crimes against our most vulnerable citizens: our seniors. The goal of TRIAD is to reduce the fear of crime and victimization among seniors by increasing awareness of scams and frauds targeting them, strengthening communication between the law enforcement and senior communities, and educating seniors on local and state resources that are available in their community. There are currently 226 counties, cities, and towns that participate in TRIAD. For more information, go to: http://www.oag.state.va.us/Programs and Resources/TRIAD/TRIAD_Handbook.pdf.

Crime prevention is everyone's responsibility, not just a job for law enforcement. Seniors can learn how to protect themselves from crime by following these simple, common sense suggestions. Share these tips with your neighbors and friends, to make it tough for criminals to work in your neighborhood:

At Home

- Never open your door automatically. Install and use a peephole.
- Lock your doors and windows. (Three quarters of the burglaries involving older persons involved unlocked doors and windows; and, less than one half of these robberies are reported.) Keep your garage doors locked.
- Vary your daily routine.
- Use "Neighbor Watch" to keep an eye on your neighborhood. A concerned neighbor is often the best protection against crime because suspicious persons and activities are noticed and reported to police promptly.
- Do not leave notes on the door when going out.
- Leave lights on when going out at night; use a timer to turn lights on and off when you are away for an extended period.
- Notify trusted neighbors and the police when going away on a trip.
- Cancel deliveries such as newspapers and arrange for someone to mow the lawn if need be.
- Arrange for your mail to be held by the Post Office, or ask a trusted neighbor to collect it for you.
- Be wary of unsolicited offers to make repairs to your home. Deal only with reputable businesses.
- Keep an inventory with serial numbers and photographs of resaleable appliances, antiques and furniture. Leave copies in a safe place.
- Do not hesitate to report crime or suspicious activities to your local police or sheriffs department.
- Install deadbolt locks on all your doors.
- Keep your home well lit at night, inside and out; keep curtains closed.
- Ask for proper identification from delivery persons or strangers. Do not be afraid to ask. If they are legitimate, they will not mind.
- If a stranger asks to use your telephone, do not allow that person to come inside your home. If you believe that there is an actual emergency, offer to place the call for him or her yourself.
- Never let a stranger into your home.
- Do not leave notes on your door when you are gone, and do not hide your keys under the doormat, under a potted plant, or in other conspicuous places.
- Never give out information over the phone indicating you are alone or that you will not be home at a certain time.
- When you are gone for more than a day, make sure your home looks and sounds occupied. Use an automatic timer to turn on lights, radio, or TV.
- If you arrive at home and suspect a stranger may be inside, do not go in. Leave quietly and call 911 to report the crime.

Walking

- If you are attacked on the street, make as much noise as possible by calling for help or blowing a whistle. Do not pursue your attacker. Call 911 and report the crime as soon as possible.
- Avoid walking alone at night. Try to have a friend accompany you in high-risk areas, even during the daytime.
- Always plan your route and stay alert to your surroundings. Walk confidently.
- Have a companion accompany you.
- Stay away from buildings and doorways; walk in well-lighted areas.
- Have your key ready when approaching your front door.
- Do not dangle your purse away from your body. (Many crimes against the elderly are purse snatchings and street robberies.)
- Do not carry large, bulky shoulder bags; carry only what you need. Better yet, sew a small pocket inside your jacket or coat. If you do not have a purse, no one will try to snatch it.

While Shopping

- Carry your purse very close to you—do not dangle it from your arm. Never leave your purse in a shopping cart. Never leave your purse unattended.
- Do not carry any more cash than is necessary. Many grocery stores now accept checks and automatic teller cards instead of cash.
- Do not display large sums of cash.
- Use checks where possible.

In Your Car

- Always keep your car doors locked, whether you are in or out of your car. Keep your gas tank full and your engine properly maintained to avoid breakdowns.
- If your car breaks down, pull over to the right as far as possible, call 911, raise the hood, and wait **INSIDE** the locked car for help. Avoid getting out of the car and making yourself a target before police arrive.
- At stop signs and traffic lights, keep the car in gear.
- Travel well-lit and busy streets. Plan your route.
- Don't leave your purse on the seat beside you; put it on the floor, where it is more difficult for someone to grab it, or keep it locked in the trunk.
- Lock bundles or bags in the trunk. If interesting packages are out of sight, a thief will be less tempted to break in to steal them.
- When returning to your car, look around the car, and check the front and back seats before entering.
- Never pick up hitchhikers.

Banking

- Many criminals know exactly when government checks arrive each month, and may pick that day to attack. Avoid this by using Direct Deposit, which sends your money directly from the government to the bank of your choice. And, at many banks, free checking accounts are available to senior citizens. Your bank has all the information.
- Never withdraw money from your bank accounts for anyone except yourself. Be wary of con artists and get-rich-quick schemes.
- You should store valuables in a bank safe deposit box.
- Never give your money to someone who calls on you identifying himself as a bank official. A bank will never ask you to remove your money.

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- When someone approaches you with a get-rich-quick-scheme involving some or all of your savings, it is his get-rich-quick-scheme.
 - If you have been swindled or conned, or if someone has attempted to swindle or con you, report the crime to your local police or sheriffs department or Commonwealth Attorney's office. Con artists count on their victims' reluctance to admit they have been duped, but if you delay, you help them get away. Remember, if you never report the crime, criminals are free to cheat others again and again, and you have no chance of ever getting your money back.

ELDER ABUSE

Elderly persons are reluctant to report abuse. The problem is complicated because elder abuse, neglect, and exploitation are sometimes hidden problems that are difficult to address.

What Is Elder Abuse?

The term "abuse" is used to describe the act of intentionally hurting someone. Elder abuse, which includes "adult abuse," "adult exploitation" and "adult neglect," can take many forms. It may be sexual abuse, financial exploitation, emotional abuse, or confinement. Elder abuse may involve physical violence against an older person. It may also involve the deliberate neglect by a caregiver of the medical, health, and nutritional needs of a vulnerable older person.

Signs of Elder Abuse

Elder abuse is often made evident by the following signs:

- Unusual or unexplained bruises and injuries;
- Signs of confinement;
- Poor hygiene;
- Dehydration;
- Fear;
- Withdrawal;
- Anxiety;
- Hesitation to talk openly.

Additionally, the following caregiver behaviors may indicate that a person is abusing or neglecting an older person:

- Not permitting seniors to speak for themselves and indifference or anger toward an older person;
- Previous history of alcohol or drug problems;
- Threatening or insulting the older person;
- Isolating the senior from family and friends.

Financial exploitation may be indicated by:

- Unusual activity in bank accounts, such as the withdrawal of large sums of money;
- Exploiter having a power of attorney, when the older person was not competent to have given one;
- A refusal by the exploiter to spend money on the older person for health or welfare;
- Checks and other documents being signed, when the older person is unable to write;
- The loaning by the older person of a large sum of money without adequate documentation;
- Hiding the older person from view.

Preventing Abuse

Seniors can help protect themselves from abuse by taking the following precautions:

- Become aware of resources for seniors in your community.
- Do not be isolated; stay in touch with as wide a range of people as possible.
- Make regular visits to a trusted physician and let him or her know your concerns and desires regarding possible health or social problems.
- Consider using community resources rather than depending on individual caregivers if you feel vulnerable to exploitation.
- Put your wishes in writing regarding finances and personal care.
- Do not sign anything that you do not understand. Get help from a lawyer, social worker, or other adviser.

Reporting Abuse

There are laws that protect the elderly from abuse, neglect, and exploitation. These laws, however, are of little use if incidents of abuse remain unreported. If you are aware of any signs of abuse to a neighbor, friend, or relative, or suspect abuse in a nursing home or other long-term care facility, you should immediately contact your local Adult Protective Services Office or the Adult Abuse Hotline at (888) 832-3858. The Department of Social Services, Adult Protective Services, may also be reached at (804) 726-7533. Adult Protective Services accepts reports of suspected abuse, neglect, or exploitation across all care settings for adults sixty years of age and over and adults eighteen years of age and over who have a disability. Reports may be made anonymously.

ALTERNATIVE DISPUTE RESOLUTION

When a legal dispute arises, the party who has been injured or damaged (the plaintiff) files his or her law suit against the alleged wrongdoer (the defendant) in a state court or, in some more restricted instances, in one of the federal district courts. These lawsuits are tried in the ordinary course, which often means that the resolution of the dispute is delayed and, depending on the facts involved, may be relatively expensive. Court dockets are often crowded, and each suit has to wait its turn before trial occurs. Of course, each case has to be prepared, and proper preparation can result in considerable delay and cost to the client. As a result, most federal district courts and many state trial courts have procedures to speed the resolution of lawsuits. These procedures are commonly referred to as “alternate dispute resolution” (ADR) methods.

Arbitration

For many years, binding arbitration has been a recognized procedure for resolving disputes. It involves the selection of a single arbitrator or a panel of three arbitrators who hear and decide the case. Although not judges, they act as such since they decide which side wins and which side loses. The main advantage of arbitration is that delay and expense are often reduced. One of the principal disadvantages of binding arbitration is that an appeal from an arbitration award is very restricted, and, as a practical matter, there often is no ground for an appeal. Some criticize arbitration because of the difficulty of appealing the arbitrator’s decision.

Mediation

Mediation is a relatively new procedure that also reduces delay and expense but avoids the disadvantages of binding arbitration. The case is conducted by a neutral mediator whose task is to guide the parties and their attorneys to a mutually acceptable settlement of the case. The mediator is not a judge or arbitrator and has no power to decide who wins or loses. Mediation is, thus, entirely different from a

trial or the hearing of a case by a judge or arbitrator(s). The parties are in control of their case inasmuch as they have the right to decide upon a mutually acceptable settlement or to refuse to settle. If the parties do not agree to a settlement, the case stays on the court's docket for trial. Mediation is usually successful (i.e., a settlement results), but sometimes the parties reach an impasse. The expense is usually considerably less than that of a trial and usually less than arbitration. Mediation has become popular, and approximately seventy-five percent of the cases that are mediated result in mutually acceptable settlements. It is confidential. It is informal. The various states that provide for mediation require mediators to undergo formal training, which is usually forty hours for a general civil mediator and some additional hours for a family mediator. Mediation of family disputes (i.e., divorce, child custody, etc.) is often more desirable than the trial of such cases. It is frequently used with success in other civil cases. The parties often mutually select the mediator. Information can be obtained from the office of your local bar association, the administrative office of your state court system, or the clerk's office of your local U.S. district federal court.

Collaborative Family Law

Collaborative family law is a fourth consideration in alternatives to litigation in protecting your legal rights, particularly in a divorce proceeding.

This specifically designed model for dispute resolution allows for the collaborative legal representation without litigation. It allows you and your lawyer to work with a financial expert, a trained divorce coach, and a child specialist if needed, along with your spouse and his or her lawyer. This interdisciplinary approach typically results in a divorce that costs less than it would have in litigation, and has been referred to as "therapeutic jurisprudence" because it is much less adversarial and stressful on the participants.

SPECIFIC CONCERNS FOR SENIORS

The following items require particularly close scrutiny and care:

1. **Charitable Giving:** Seniors are often targets of frauds involving "look-alike" charities and appeals that fraudulently associate themselves with police and public safety organizations (badge fraud). Citizens can call the office of consumer affairs (listed under "Helpful Contacts") to determine if a charity is properly registered and can get specific information about how the funds are spent.
2. **Investments:** Seniors are subject to a variety of frauds including "get-rich-quick" schemes aimed at increasing their income with various stocks, bonds, and other options. Some will involve limited partnerships, reverse mortgages and offshore accounts. Some will involve so-called "Ponzi Schemes." If it appears too good to be true, it usually is.
3. **Employment:** Low-income seniors are particularly subjected to ploys that promise large income from work-at-home plans and home-based businesses.
4. **Health Care Plans:** Seniors facing mounting health care costs are the targets of various health plans and promotions that promise to supplement or cover health costs, including medications that are not covered by Medicare or Medicaid. In some cases, the "plans" are merely discount clubs or restrictive policies that afford little protection or coverage.
5. **Sweetheart Scams:** Seniors with few social contacts often are subjected to frauds involving social clubs, "dance clubs," and dating services. In many cases they are required to pay ongoing fees and dues to participate, and, in some cases, these social contacts take advantage of the senior by taking money and property.

The Commonwealth of Virginia Roadmap to Services is a comprehensive resource guide for people with disabilities, long term illnesses, and the elderly. It can be accessed at http://www.dmas.virginia.gov/Content_atchs/atchs/vaservices.pdf

VIRGINIA'S JUDICIAL SYSTEM

The mission of Virginia's judicial system is to assure that disputes are resolved justly, promptly, and economically. The components necessary to discharge this function are a court system unified in its structure and administration, competent, honest judges and court personnel, and uniform rules of practice and procedure. This *Senior Citizens Handbook* is offered to promote a better understanding of the operation of the Virginia court system and the manner in which its mission is accomplished.

The present system consists of four levels of courts: the Supreme Court, the Court of Appeals, the circuit courts, and the district courts. In addition, magistrates serve as judicial officers with authority to issue various types of processes. The courts are organized into thirty-one judicial circuits and thirty-two similar judicial districts. More than 2,600 people, including judges, clerks, and magistrates, work within the judicial branch.

Magistrates

In many instances, a citizen's first contact with the judicial system of the commonwealth comes through the office of the Magistrate. A principal function of the magistrate is to provide an independent, unbiased review of complaints brought to the office by police officers, sheriffs, deputies, and citizens. Magistrate duties include issuing various types of processes such as arrest warrants, summonses, bonds, search warrants, subpoenas, emergency mental and medical custody orders, temporary mental and medical detention orders, emergency protective orders and other civil processes. One of the chief duties of the magistrate is conducting bond hearings to set bail in instances in which an individual is charged with a criminal offense. A magistrate may also accept prepayments for traffic infractions and minor misdemeanors.

The Office of the Executive Secretary of the Supreme Court of Virginia provides administrative supervision and training to magistrates. Virginia is divided into eight magisterial regions, and each region is comprised of between three and five judicial districts. A chief magistrate supervises the magistrates serving within each judicial district. Each region has a regional magistrate supervisor who provides direct supervision to the chief magistrates. The eight regional supervisors assist a magistrate system coordinator in administering the statewide system. There are magistrate advisors who provide legal and procedural advice to the magistrates.

Each magistrate is authorized to exercise his or her powers throughout the magisterial region for which he or she is appointed. Magistrates provide services on an around-the-clock basis, conducting hearings in person and through videoconferencing systems.

District Courts

Virginia's unified district court system consists of the general district and the juvenile and domestic relations district courts. Within the thirty-two districts of the state, there are general district courts and juvenile and domestic relations district courts in every city and county.

The General District Court hears all criminal cases involving misdemeanors under state law and offenses that are violations of ordinances, laws, and by-laws of the county or city where it is located. A misdemeanor is any charge that carries a penalty of up to one year in jail or a fine of up to \$2,500, or both.

The Code of Virginia defines criminal offenses and sets penalties. For many offenses, the penalty described is a fine. Fines collected for violations are paid into the treasury of the city, town, or county whose ordinance has been violated, or into the State treasury for a violation of state law. The district courts do not conduct jury trials. All cases are heard by a judge. Each defendant in a criminal case is presumed innocent until proven guilty beyond a reasonable doubt. Upon consideration of evidence, the

judge decides the question of guilt or innocence and on a finding of guilt determines which penalty, if any, is proper and lawful.

The general district court decides civil cases in which the amount in question does not exceed \$25,000. Civil cases vary from suits for damages sustained in automobile accidents to suits by creditors to receive payment on past due debts. In Virginia, claims for less than \$4,500 can be initiated only in general district courts. A separate small claims division has jurisdiction over civil actions when the amount claimed does not exceed \$5,000.

The general district court also hears cases in which a person is charged with a traffic infraction. If convicted of certain traffic violations, the Virginia Department of Motor Vehicles will assess points against the person's driver's license. This is in addition to any fine imposed by the judge.

The general district court holds preliminary hearings in felony cases, that is, any offense which may be punishable by imprisonment of more than one year. At a preliminary hearing, the court determines whether there is sufficient evidence to justify holding the defendant for a grand jury hearing. The grand jury determines whether the accused will be indicted and held for trial in the circuit court.

The Juvenile and Domestic Relations District Court in Virginia handles cases involving:

- Juvenile delinquency and status offenses
- Juveniles accused of traffic violations
- Children in need of services or supervision
- Children subjected to abuse or neglect
- Children who are abandoned or without parental guardianship
- Foster care and entrustment agreements
- Children for whom relief of custody or termination of parental rights is requested
- Adults accused of child abuse or neglect, or of offenses against Family or household members
- Adults involved in disputes concerning the custody, visitation or support of a child
- Spousal support
- Minors seeking emancipation or work permits
- Court-ordered rehabilitation services
- Court consent for certain medical treatments

In Virginia, a juvenile is any person under the age of eighteen. A juvenile is adjudicated "delinquent" when a court finds that the juvenile has committed an act, which would be a crime if committed by an adult. A "status offender" is a juvenile who has committed a certain action, which, if committed by an adult would not be considered a criminal offense—such as a curfew violation. A "child in need of supervision" is one who habitually and unjustifiably is absent from school or runs away from home. A "child in need of services" needs treatment, rehabilitation or services to keep the child or his family safe, and the intervention of the court is required. "Child abuse and neglect" cases involve the improper care or injurious treatment of juveniles.

Juvenile and domestic relations district courts differ from other courts in their duty to protect the confidentiality and privacy of juveniles and their families who have legal matters before the court. In addition to protecting the public and holding delinquent juveniles accountable, the court considers services needed to provide for rehabilitation. As a district court, this court does not conduct jury trials.

As with the general district courts, all parties subject to a juvenile and domestic relations district court order or judgment may appeal the decision to the circuit court. Appeals must be noted with the clerk within ten days of the court's decision. Cases appealed to the circuit court are reheard *de novo* (as completely new cases).

Circuit Courts

The only trial court of general jurisdiction in Virginia is the circuit court. The Circuit Court has jurisdiction over the following:

Civil Actions:

- Concurrent jurisdiction with general district courts of monetary claims over \$4,500 but not exceeding \$25,000
- Exclusive original jurisdiction of monetary claims exceeding \$25,000
- Attachments
- Validity of a county or municipal ordinance or corporate bylaw
- Divorce proceedings
- Wills, trusts, estate matters, and guardianships and conservatorships
- Property disputes
- Adoption proceedings

Criminal Cases:

- All felonies, offenses that may be punished by imprisonment of more than one year
- Misdemeanor offenses that were appealed from district court or originated from a grand jury indictment
- Transfer or certification of felony offenses committed by juveniles

Appeals:

- Appeals from the general district court or juvenile and domestic relations district court (heard *de novo*)
- Appeals from administrative agencies

The circuit court also handles any case for which jurisdiction is not specified in the Code of Virginia.

At the beginning of each term of the circuit court, a grand jury is convened. These juries consider bills of indictment to determine whether there is sufficient probable cause to believe that a person accused of having committed a serious crime did commit such crime and should stand trial. The grand jury does not hear both sides of the case and does not determine the guilt or innocence of the accused.

A special grand jury may be convened to investigate any condition which tends to promote criminal activity in the community or which indicates malfeasance of governmental agencies or officials. This grand jury has subpoena powers and may summon persons, documents, or records needed in its investigation.

Court of Appeals

The court of appeals of Virginia provides appellate review of final decisions of the circuit courts in domestic relations matters, appeals from decisions of an administrative agency, traffic infractions and criminal cases, except where a sentence of death has been imposed. It also hears appeals of final decisions of the Virginia Workers' Compensation Commission. While appeals of criminal, traffic, concealed weapons permit, and certain preliminary rulings in felony cases are presented by a petition for appeal, all other appeals to the court of appeals are a matter of right. Other civil decisions of the circuit court are appealed directly to the Supreme Court of Virginia by petition for appeal. The court of appeals also has original jurisdiction to issue writs of mandamus, prohibition, and habeas corpus in any case over which the court would have appellate jurisdiction, and writs of actual innocence (based on non-biological evidence).

The decisions of the court of appeals are final in traffic infraction and misdemeanor cases where no incarceration is imposed, in domestic relations matters, and in cases originating before administrative agencies or the Virginia Workers' Compensation Commission. Except in those cases where the decision of

the court of appeals is final, any party aggrieved by a decision of the court of appeals may petition the Supreme Court for an appeal.

The court of appeals consists of eleven judges. The court sits in panels of at least three judges, and the membership of the panels is rotated. The court sits at such locations as the chief judge designates, so as to provide convenient access to the various geographic areas of the commonwealth.

Supreme Court

Although the Supreme Court of Virginia possesses both original and appellate jurisdiction, its primary function is to review decisions of lower courts, including the court of appeals, from which appeals have been allowed. Virginia does not allow an appeal to the Supreme Court as a matter of right except in cases involving the State Corporation Commission, certain disciplinary actions against an attorney, and review of the death penalty.

The Court's original jurisdiction is limited to cases of habeas corpus (ordering one holding custody to produce the detained person before the Court for the purpose of determining whether such custody is proper), mandamus (ordering the holder of an office to perform his duty), prohibition (ordering a public official to stop an action), and actual innocence (based on biological testing). The Supreme Court also has original jurisdiction in matters filed by the Judicial Inquiry and Review Commission relating to judicial censure and retirement, and removal of judges.

Law Enforcement and Prosecution of Criminal Cases

Even though there are many state and federal law enforcement agencies in Virginia, most law enforcement is done by local police and/or sheriff's departments and by the Virginia State Police. For your emergency needs, you should call 911; otherwise, you should call the regular non-emergency law enforcement telephone number for your jurisdiction. Prosecution of criminal cases is done mostly by local commonwealth's attorneys and their assistants. The commonwealth's attorney is a constitutional officer who is popularly elected for a four-year term of office.

HELPFUL CONTACTS

Editor's Note: The following compilation is a listing of numerous agencies and organizations in Virginia that provide services and programs for older citizens. If you cannot locate an agency or number you need, the Information and Referral Center (dial 211) can help.

AGENCIES ON AGING

For information related to nutrition programs, transportation, day care, in-home services, winterization, home repair, senior center activities, senior employment and volunteer programs, law-related services, senior discount programs, and other community services for the elderly, your local Area Agencies on Aging can usually assist. If not listed herein, check your local listings or contact the Virginia Association of Area Agencies on Aging, 24 East Cary Street, Suite 100, Richmond, Virginia, 23219, (804) 644-2804, or visit their website at <http://www.vaaaa.org>.

Alexandria Office of Aging and Adult Services

2525 Mount Vernon Avenue

Alexandria, VA 22301

Phone: (703) 746-5999

Website: <http://alexandriava.gov/Aging>

City of Alexandria

Appalachian Agency for Senior Citizens, Inc.

216 College Ridge Road
P.O. Box 765
Cedar Bluff, VA 24609-0765
Phone: (276) 964-4915
Toll-free: (800) 656-2272
Fax: (276) 963-0130
Agency e-mail: aasc@aasc.org
Website: <http://www.aasc.org>
Counties of Buchanan, Dickenson, Russell and Tazewell

Arlington Agency on Aging

c/o Department of Human Services
3033 Wilson Boulevard, Suite 700B
Arlington, VA 22201
Phone: (703) 228-1700
Fax: (703) 228-1174
Agency e-mail: arlaaa@arlingtonva.us
Website:
<http://www.arlingtonva.us/Departments/HumanServices/services/services/aging/aaa/HumanServicesServicesAgingAaaAgencyonAging.aspx>

Bay Aging

5306 Old Virginia Street
P.O. Box 610
Urbanna, VA 23175
Phone: (804) 758-2386
Toll-free: (866) 758-2386
Fax: (804) 758-5773
Website: <http://www.bayaging.org>
Counties of Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland.

Central Virginia Area Agency on Aging, Inc.

501 12th Street
Lynchburg, VA 24504
Phone: (434) 385-9070
Fax: (434) 385-9209
Agency e-mail: cvaaa@cvaaa.com
Website: <http://www.cvaaa.com>
Counties of Amherst, Appomattox, Bedford, and Campbell. Cities of Bedford and Lynchburg.

Crater District Area Agency on Aging

23 Seyler Drive
Petersburg, VA 23805
Phone: (804) 732-7020
Toll-free: (888) 732-7020
Fax: (804) 732-7232
Agency e-mail: craterdist@aol.com
Website: <http://www.cdaaa.org>
Counties of Dinwiddie, Greensville, Prince George, Surry, and Sussex. Cities of Colonial Heights, Emporia, Hopewell, and Petersburg

District Three Senior Services

4453 Lee Highway
Marion, VA 24354-4269
Phone: (276) 783-8157
Toll-free: (800) 541-0933
Fax: (276) 783-3003
Agency e-mail: district-three@smyth.net
Website: <http://www.district-three.org>
Counties of Bland, Carroll, Grayson, Smyth, Washington, and Wythe. Cities of Bristol and Galax

**Eastern Shore Area Agency on Aging
Community Action Agency, Inc.**

5432 Bayside Road
Exmore, VA 23350
Phone: (757) 442-9652
Toll-free: (800) 452-5977
Fax: (757) 442-9303
Agency e-mail: esaaacaa@intercom.net
Counties of Accomack and Northampton

Fairfax Area Agency on Aging

12011 Government Center Parkway, Suite 708
Fairfax, VA 22035-1104
Phone: (703) 324-7948
Toll-free: (866) 503-0217
Fax: (703) 449-8689
Website:
<http://www.fairfaxcounty.gov/service/aaa/default.htm>
County of Fairfax. Cities of Fairfax and Falls Church

Jefferson Area Board for Aging

674 Hillsdale Drive, Suite 9
Charlottesville, VA 22901-1799
Phone: (434) 817-5222
Fax: (434) 817-5230
Agency e-mail: jaba@jabacares.org or
info@jabacares.org
Website: <http://www.jabacares.org>
Counties of Albemarle, Fluvanna, Greene,
Louisa, and Nelson. City of Charlottesville

Lake Country Area Agency on Aging

1105 W. Danville Street
South Hill, VA 23970-3501
Phone: (434) 447-7661
Toll-free: (800) 252-4464
Fax: (434) 447-4074
Agency e-mail: lakecaaa@lcaaa.org
Website: <http://www.lcaaa.org>
Counties of Brunswick, Halifax, and
Mecklenburg

LOA–Area Agency on Aging, Inc.

706 Campbell Avenue, SW
Roanoke, VA 24016
Mailing Address:
P.O. Box 14205
Roanoke, VA 24038-4205
Phone: (540) 962-0465 (Alleghany Highlands)
(540) 966-1094 (Botetourt County)
(540) 864-6031 (Craig County)
(540) 884-2892 (Eagle Rock)
(540) 966-1094 (Fincastle)
(540) 985-9600 (FGP and SCP offices)
(540) 345-0451 (Roanoke Valley/Main Office)
Fax: (540) 981-1487
Agency e-mail: info@loaa.org
Website: <http://www.loaa.org>
Counties of Allegheny, Botetourt, Craig, and
Roanoke. Cities of Covington, Roanoke and
Salem

Loudoun County Area Agency on Aging

215 Depot Court, SE, 2nd Floor
Leesburg, VA 20175-3017
Phone: (703) 777-0257
Fax: (703) 771-5161
Agency e-mail: aaa@loudoun.gov
Website: <http://www.loudoun.gov>
County of Loudoun

Mountain Empire Older Citizens, Inc.

1501 Third Avenue, East
P.O. Box 888
Big Stone Gap, VA 24219-0888
Phone: (276) 523-4202
Toll-free: (800) 252-6362
Fax: (276) 523-4208
Agency e-mail: info@meoc.org
Website: <http://www.meoc.org>
Counties of Lee, Scott and Wise. City of Norton

New River Valley Agency on Aging

141 E. Main Street, Suite 500
Pulaski, VA 24301-5029
Phone: (540) 980-7720
Toll-free: (866) 260-4417
Fax: (540) 980-7724
Agency e-mail: nrvaoa@nrvaoa.org
Website: <http://www.nrvaoa.org>
Counties of Floyd, Giles, Montgomery, and
Pulaski. City of Radford

Peninsula Agency on Aging

739 Thimble Shoals Boulevard, Suite 1006
Executive Center Building 1000
Newport News, VA 23606-3585
Phone: (757) 873-0541
(A free call for Peninsula area residents only)
Fax: (757) 873-1437
Agency e-mail: information@paainc.org
Website: <http://www.paainc.org>
Counties of James City and York. Cities of
Hampton, Newport News, Poquoson, and
Williamsburg

Piedmont Senior Resources Area**Agency on Aging, Inc.**

5339 Colonial Trail Highway

P.O. Box 398

Burkeville, VA 23922-0398

Phone: (434) 767-5588

Toll-free: (800) 995-6918

Fax: (434) 767-2529

Agency e-mail: psraaa@embarqmail.com

Counties of Amelia, Buckingham, Charlotte,

Cumberland, Lunenburg, Nottoway, and

Prince Edward

Prince William Area Agency on Aging

7987 Ashton Avenue, Suite 231

Manassas, VA 20109-2885

Phone: (703) 792-6374

Fax: (703) 792-4734

Website: <http://www.pwcgov.org/aoa>

County of Prince William. Cities of Manassas and

Manassas Park

Rappahannock Area Agency on Aging, Inc.

171 Warrenton Road

Fredericksburg, VA 22405-1343

Phone: (540) 371-3375

Toll-free: (800) 262-4012

Fax: (540) 371-3384

Agency e-mail: info@raaa16.org

Website: <http://www.raaa16.org>

Counties of Caroline, King George, Spotsylvania,

and Stafford. City of Fredericksburg

Rappahannock-Rapidan Community**Services Board**

15361 Bradford Road

P.O. Box 1568

Culpeper, VA 22701-1568

Phone: (540) 825-3100

TDD: (540) 825-7391

Fax: (540) 825-6245

Agency e-mail: rrcsb@rrcsb.org

Website: <http://www.rrcsb.org>

Counties of Culpeper, Fauquier, Madison,

Orange, and Rappahannock

Senior Connections

The Capital Area Agency on Aging, Inc.

24 E. Cary Street

Richmond, VA 23219-3796

Phone: (804) 343-3000

Toll-free: (800) 989-2286

Fax: (804) 649-2258

Website: <http://www.seniorconnections-va.org>

Counties of Charles City, Chesterfield,

Goochland, Hanover, Henrico, New Kent, and

Powhatan. City of Richmond

Senior Services of Southeastern Virginia

Interstate Corporate Center, Building 5

6350 Center Drive, Building 5, Suite 101

Norfolk, VA 23502-4101

Phone: (757) 461-9481 (Central Office,

Chesapeake, Norfolk, Portsmouth &

Virginia Beach)

(757) 569-8206 (Franklin)

(757) 357-4050 (Isle of Wight)

(757) 653-2105 (Southampton)

(757) 925-1449 (Suffolk)

Toll-free: 1 (800) 766-8059 (Ombudsman)

Fax: (757) 461-1068 (Central Office)

Agency e-mail: services@ssseva.org

Website: <http://www.ssseva.org>

Counties of Isle of Wight and Southampton.

Cities of Chesapeake, Franklin, Norfolk,

Portsmouth, Suffolk, and Virginia Beach

Shenandoah Area Agency on Aging, Inc.

207 Mosby Lane

Front Royal, VA 22630-3029

Phone: (540) 635-7141

Toll-free: (800) 883-4122

Fax: (540) 636-7810

Agency e-mail: saaa@shenandoahaaa.com

Website: <http://www.shenandoahaaa.com>

Counties of Clarke, Frederick, Page, Shenandoah,

and Warren. City of Winchester

Southern Area Agency on Aging, Inc.

204 Cleveland Avenue
Martinsville, VA 24112
Phone: (276) 632-6442
Toll-free: (800) 468-4571
Fax: (276) 632-6252
Agency e-mail: saaa@southernaaa.org
Website: <http://www.southernaaa.org>
Counties of Franklin, Henry, Patrick, and
Pittsylvania. Cities of Danville and Martinsville

Valley Program for Aging Services, Inc.

325 Pine Avenue
P.O. Box 817
Waynesboro, VA 22980-0603
Phone: (540) 949-7141
Toll-free: 1 (800) 868-8727
Fax: (540) 949-7143
Agency e-mail: vpas@intelos.net
Counties of Augusta, Bath, Highland, Rockbridge,
and Rockingham. Cities of Buena Vista,
Harrisonburg, Lexington, Staunton, and
Waynesboro

Statewide**Virginia Division for the Aging
Department for Aging and Rehabilitative
Services**

1610 Forest Avenue, Suite 100
Henrico, VA 23229
Phone: (804) 662-9333
Toll-free: (800) 552-3402 (Voice/TTY)
Fax: (804) 662-9354
Website: <http://www.vda.virginia.gov>

Alzheimer's Association Chapters**In Virginia**

24/7 Helpline: (800) 272-3900

Central and Western Virginia Chapter

1160 Pepsi Place Suite 306
Charlottesville, VA 22901
Phone: (434) 973-6122 (Main Office,
Charlottesville)
(434) 792-3700 (Danville)
(434) 845-8540 (Lynchburg)
(800) 272-3900 (Mid-Valley Office)
(540) 345-7600 (Roanoke)
Fax: (434) 973-4224 (Charlottesville)
Website: <http://www.alz.org/cwva>

Greater Richmond Chapter

4600 Cox Road, Suite 130
Glen Allen, Virginia 23060
Phone: (804) 967-2580 (Main Office, Richmond)
(540) 370-0835 (Fredericksburg)
(804) 695-9382 (Middle Peninsula/Northern
Neck)
(804) 526-2359 (Tri-Cities)
Fax: (804) 967-2588 (Richmond)
Website: <http://www.alz.org/grva>

National Capital Area Chapter

3701 Pender Drive, Suite 400
Fairfax, VA 22030
Phone: (703) 359-4440
Website: <http://www.alz.org/nca>

Southeastern Virginia Chapter

6350 Center Drive, Suite 102
Norfolk, VA 23502
Phone: (757) 459-2405
Fax: (757) 461-7902
Website: <http://www.alz.org/seva>

CITIZEN HELP LINES**Alcoholics Anonymous**

(804) 355-1212

Alzheimer's Hotline

(800) 272-3900

Consumer Protection Hotline

(804) 786-2042

(800) 552-9963

Virginia General Assembly—Citizen Concerns
(800) 889-0229

Elder Abuse Hotline
(888) 832-3858

Information & Referral Services of Virginia
211
Hearing Impaired Users: Dial 711 for Virginia
Relay then dial 2-1-1
VideoPhone users dial 1-800-230-6977

Medicare Home Health
See Virginia Division for the Aging

Medicare Hotline
(800) 633-4227

Toll-free: (800) MEDICARE
TTY: (877) 486-2048

National Health Information Center (NHIC)
(800) 336-4797

Railroad Medicare
(800) 833-4455

**SAMHSA's (Substance Abuse and Mental Health
Services Administration) National Mental
Health Information Center**
(800) 789-2647

Small Business Administration
(800) 827-5722

Social Security
(800) 772-1213

Virginia Division for the Aging
(800) 552-3402

CONSUMER PROTECTION

**Antitrust & Consumer Litigation
Office of Consumer Affairs**
900 E. Main Street
Richmond, VA 23219
Phone: (800) 552-9963, CONSUMER
PROTECTION HOTLINE
(800) 552-7945, FINANCIAL INSTITUTIONS

Better Business Bureau of Central Virginia
720 Moorefield Park Drive Suite 300
Richmond, VA 23236
Phone: (804) 648-0016
Fax: (804) 320-0248
www.richmond.bbb.org

Department of Agriculture & Consumer Services
102 Governor Street
Richmond, VA 23219
Phone: (804) 786-3523
Toll-free: (800) 552-9963
TTY: (800) 828-1120

Note: For your local Office of Consumer Affairs
or Better Business Bureau, consult the white
pages of your telephone directory.

DISCRIMINATION

**Equal Employment Opportunity Commission
(EEOC)**

830 E. Main Street, Suite 600
Richmond, VA 23219
Phone: (804) 771-2200
Toll-free: (800) 669-4000
Fax: (804) 771-2222
TTY: (800) 669-6820

**U.S. Department of Justice Coordination
and Compliance Section**

U.S. Department of Justice
Civil Rights Division
Coordination and Compliance Section – NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530
Phone: (202) 307-2222
Toll-free/TTY: (888) 848-5306

Virginia Office of Protection and Advocacy

1910 Byrd Avenue, Suite 5
Richmond, VA 23230
Phone: (804) 225-2042
Toll-free: (800) 552-3962

EMPLOYMENT INFORMATION

**Virginia Employment Commission
State Administrative Office**

703 E. Main Street
Richmond, VA 23219
Phone: 1 (866) 832-2363

Note: Virginia Employment Commission (unemployment office) offices are located throughout the state; consult the white pages of the telephone directory under “Virginia—Commonwealth of.”

For employment discrimination problems, contact the local office of these federal government agencies: The U.S. Equal Employment Opportunity Commission and the U.S. Government Wage and Hour Division of the Department of Labor. For their main numbers, check the white pages of the telephone directory.

FUNERAL SERVICES

Board of Funeral Directors and Embalmers

Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463
Phone: (804) 367-4479
Complaints: (800) 533-1560

HEALTH CARE INFORMATION

Medicare

(800) 633-4227

Virginia Association for Hospices and Palliative Care

P.O. Box 70025
Henrico, VA 23255-0025
Phone: (804) 740-1344
Fax: (775) 599-2677
www.virginiahospices.org

Virginia Department of Behavioral Health and Developmental Services

1220 Bank Street
Richmond, VA 23219
Phone/TDD: (804) 371-8977
Fax: (804) 371-6638
www.dbhds.virginia.gov

**Virginia Department of Social Services
Adult Programs and Services**

801 East Main Street
Richmond, VA 23219
Phone: (804) 726-7000
(800) 552-3431
Fax: (804) 726-7895
www.dss.virginia.gov/family/as

Virginia Guardianship Association

P.O. Box 6357
Newport News, VA 23606
Phone: (804) 261-4046
www.vgavirginia.org
(Publishes “Virginia Handbook for Guardians and Conservators.”)

HOUSING INFORMATION

**U.S. Department of Housing
& Urban Development**

600 E. Broad Street, 3rd floor
Richmond, VA 23219-4920
Phone: (804) 771-2100
(800) 440-8647 (Housing FHA)
www.hud.gov/fha

Virginia Department of Housing and Community Development

Main Street Centre
600 East Main Street, Suite 300
Richmond, VA 23219
Phone: (804) 371-7000
Fax: (804) 371-7090
www.dhcd.virginia.gov

Virginia Housing Development Authority

601 S. Belvidere Street
Richmond, VA 23220-6504
Phone: (804) 782-1986
Toll-free: 877-VHDA-123
Virginia Relay
In Virginia: 711
Toll Free: 800-828-1140
www.vhda.com

Note: For local housing authorities, consult the white pages of your telephone directory. Look under the city or county name and find “housing.”

INFORMATION AND REFERRAL SERVICES

Dial 211 (This is a statewide number.)

Legal Assistance and Referral Services

Alexandria Bar Association

520 King Street, Suite 202
Alexandria, VA 22314
Phone: (703) 548-1105

Arlington County Bar Association

1425 N. Courthouse Road, Suite 1800, 1st Floor
Arlington, VA 22201
Phone: (703) 228-3390

Blue Ridge Legal Services, Inc. (BLRS)

204 N. High Street
Harrisonburg, VA 22802
Phone: (540) 433-1830
(800) 237-0141

203 North Main Street
Lexington, VA 24450
Phone: (540) 463-7334 or (540) 862-7642

132 Campbell Avenue, SW, Suite 300
Roanoke, Virginia 24011
Phone: (540) 344-2080

P.O. Box 436
303 South Loudoun Street Suite D
Winchester, VA 22601
Phone: (540) 662-5021

Central Virginia Legal Aid Society (CVLAS)

101 W. Broad Street, Suite 101
Richmond, VA 23220
Phone: (804) 648-1012
(800) 868-1012

Fairfax Bar Association

4110 Chain Bridge Road, Suite 216
Fairfax, VA 22030
Phone: (703) 246-2740

Legal Aid Justice Center

1000 Preston Avenue
Charlottesville, VA 22903
Phone: (434) 977-0553
(800) 578-8111

Legal Aid Society of Eastern Virginia (LASEVA)

125 St. Paul's Boulevard, Suite 400
Norfolk, VA 23510
Phone: (757) 627-5426
(888) 868-1072

Legal Aid Society of Roanoke Valley (LASRV)

132 Campbell Avenue, SW, Suite 200
Roanoke, VA 24011-1206
Phone: (540) 344-2088

Legal Services of Northern Virginia (LSNV)

6066 Leesburg Pike, Suite 500
Falls Church, VA 22041
Phone: (703) 778-6800

Rappahannock Legal Services, Inc. (RLS)

618 Kenmore Avenue Suite 1-A
Fredericksburg, VA 22401
Phone: (540) 371-1105
(888) 371-1214

Southwest Virginia Legal Aid Society (SVLAS)

www.svlas.org

Centralized Intake Unit

Phone: (276) 762-9317
Nationwide and Cellular: (888) 201-2772
Virginia Only: (866) 534-5243
Fax: (276) 762-9356

Castlewood Field Office

16932 West Hills Drive
Castlewood, VA 24224
Phone: (276) 762-9354
(866) 455-8716
Fax: (276) 762-9356

Christiansburg Field Office

155 Arrowhead Trail
Christiansburg, VA 24073
Phone: (540) 382-6157
(800) 468-1366
Fax: (540) 382-5981

Marion Field Office

227 W. Cherry Street
Marion, VA 24354
Phone: (276) 783-8300
(800) 277-6754
Fax: (276) 783-7411

Virginia Legal Aid Society (VLAS)

513 Church Street
Lynchburg, VA 24504
Phone: (434) 528-4722
Statewide Toll-free Client Access: (866) LEGLAID
[(866) 534-5243]
Free Legal Advice, Lawline: (866) 534-5243

Virginia Lawyer Referral Service (VLRS)

(Statewide Lawyer referral)
Eighth & Main Building, 15th Floor
707 E. Main Street
Richmond, VA 23219-2800
Phone: (804) 775-0808
(800) 552-7977
www.VLRS.net

LEGAL INFORMATION**American College of Trust and Estate Counsel**

901 15th Street, NW Suite 525
Washington, DC 20005
Phone: (202) 684-8460
www.actec.org

Legal Services Corporation of Virginia

700 E. Main Street, Suite 1504
Richmond, VA 23219
Phone: (804) 782-9438

National Academy of Elder Law Attorneys

1604 North Country Club Road
Tucson, AZ 85716
Phone: (520) 881-4005
www.nacla.org

Virginia Lawyer Referral Service (VLRS)

(Statewide Lawyer referral)
Eighth & Main Building, 15th Floor
707 E. Main Street
Richmond, VA 23219-2800
Phone: (804) 775-0808
(800) 552-7977
www.VLRS.net

Long-Term Care Insurance**Bureau of Insurance**

Tyler Building
1300 E. Main Street
Richmond, VA 23219
Mailing address:
P.O. Box 1157
Richmond, VA 23218-1157
Phone: (804) 371-9741
Toll-free: (800) 552-7945 (VA only)

LONG-TERM CARE**Ombudsman Programs**

You can contact this office to locate the ombudsman for your local area:

Office of the State Long-Term Care Ombudsman**Virginia Association of Area Agencies on Aging**

24 E. Cary Street, Suite 100
Richmond, VA 23219
Phone: (804) 565-1600
(800) 552-3402
www.elderrightsva.org, then look under Find Your Ombudsman.

NATIONAL ORGANIZATIONS

American Association of Retired Persons

601 E Street, N.W.

Washington, DC 20049

To join: (888) 687-2277

TTY: (877) 434-7598

www.aarp.org for free access to materials on issues of interest to the elderly

National Suicide Prevention Lifeline, 1 (800)

273-TALK, provides access to trained telephone counselors, 24 hours a day, 7 days a week.

American Bar Association Commission on Legal Problems of the Elderly

740 15th Street, NW

Washington, DC 20005-1022

Phone: (202) 662-8690

www.americanbar.org/aging

(Can provide materials on medical care decision making for the elderly)

American Hospital Association

325 7th Street, N.W.

Washington, D.C. 20004-2802

Phone: (202) 638-1100

1 North Franklin

Chicago, IL 60606-3421

Phone: (312) 422-3000

(Has prepared "Put It in Writing: A Guide to Promoting Advance Directives." Can provide materials and guidance for hospitals on issues related to ethics, death and dying and medical decision making)

Department of Health and Human Services Centers for Medicare & Medicaid Services

7500 Security Boulevard

Baltimore, MD 21244

Phone: (410) 786-3000

(877) 267-2323

National Consumer Voice for Quality Long Term Care, formerly NCCNHR

1001 Connecticut Avenue, NW, Suite 425

Washington, DC 20036

Phone: (202) 332-2275

www.theconsumervoice.org

National Council on Alcoholism and Drug Dependence

217 Broadway, Suite 712

New York, NY 10007

Phone: (212) 269-7797

Hope Line: (800) 622-2255 (24-hour Affiliate referral)

www.ncadd.org

National Council on Aging

1901 L Street, NW, 4th Floor

Washington, DC 20036

Phone: (202) 479-1200

Toll-free: (800) 424-9046

www.ncoa.org

NURSING HOMES, ADULT HOMES & DAY CARE

Office of Licensure and Certification

9960 Mayland Drive, Suite 401

Richmond, VA 23233

Phone: (804) 367-2102

Virginia Department of Health Professions, Enforcement Division

9960 Mayland Drive

Henrico, VA 23233

Phone: (804) 367-4400

Toll-free: (800) 533-1560

Virginia Department of Social Services Division of Licensing Programs

801 East Main Street, 9th Floor

Richmond, Virginia 23219-2901

Phone: (804) 726-7154

Fax: (804) 726-7132

www.dss.va.gov

RAILROAD RETIREMENT ACT BENEFITS

Railroad Retirement Helpline

844 N Rush Street
Chicago, IL 60611-2092
Toll Free: (877) 772-5772
TTY: (312) 751-4701

Social Services

(For list of local social service departments, go to <http://www.dss.virginia.gov> and look under local departments, or dial 1 (800) 552-3431, or look in your local telephone directory, or call your local Area Agency on Aging for information.)

SOCIAL SECURITY ADMINISTRATION

Office of Public Inquiries

6401 Security Boulevard
Baltimore, MD 21235
(800) 772-1213
www.ssa.gov

SOCIAL SERVICES

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VETERANS' AFFAIRS

Appellate Assistance:

Virginia Department of Veterans Services
Office of the Commissioner
900 East Main Street
Richmond, VA 23219
Phone: (804) 786-0286
Fax: (804) 786-0302
www.dvs.virginia.gov

Benefits:

United States Department of Veterans Affairs

116 North Jefferson Street
Roanoke, VA 24016
Phone: (800) 827-1000
www.benefits.va.gov/roanoke

VICTIMS OF CRIME COMPENSATION

Criminal Injuries Compensation Fund

2201 W. Broad Street, Suite 207
Richmond, VA 23220
Mailing address:
P.O. Box 26927
Richmond, VA 23261
(800) 552-4007
www.cicf.state.va.us

Note: Under a state program started in July 1977, a person who is the innocent victim of a crime may apply to the state for restitution. Compensable losses include lost wages and non-reimbursable medical expenses only; loss of personal property is NOT reimbursable.