

LEGAL HANDBOOK FOR OLDER DELAWAREANS

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THE MATERIAL CONTAINED IN THIS BOOKLET IS FOR GENERAL
INFORMATION PURPOSES AND IS NOT INTENDED AS LEGAL ADVICE.

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INTRODUCTION

This handbook has been prepared to help older people in Delaware, their families and concerned others, to be aware of their rights and responsibilities under certain state and federal laws. Since these laws are subject to change at any time, the information contained in this handbook should be verified with an attorney or with the agency which administers the law. For example, Social Security questions should be directed to the Social Security office.

PROTECT YOURSELF

There is a great deal you can do to protect yourself from legal problems or to make them easier to deal with if they arise. Here are some suggestions.

1. Read and understand every document before signing it. Ask for an explanation of things you do not understand. Ask for a copy of the document to take home and study before you sign it, if you do not understand it. Ask for drafts of attorney-prepared documents to review before the appointment for signing.

2. Keep important papers in a safe place. You should save every paper you receive from Social Security, SSI or other similar benefit programs. All medical bills, Medicare statements and insurance statements should be saved. There are occasions when bills which were paid by Medicare or an insurance company are later challenged.

a. Receipts, canceled checks and money order receipts should be kept as proof of payment.

b. Bank statements, deposit slips and receipts from automatic teller machines should be saved, as should all receipts for credit card purchases.

c. Receipts and warranties should be saved at least for the length of the warranty.

d. Deeds, mortgages, wills, stock certificates, loan contracts, military discharge papers, birth, marriage and death certificates, divorce decrees, pre-nuptial and separation agreements and insurance policies should be kept together in a safe and fireproof place so that you or someone who must handle your affairs will have easy access to necessary information. A safe deposit box is ideal for this purpose. It is helpful if you authorize the person who will handle your affairs to have access to your box.

3. If you receive any kind of notice, court papers or other legal document requiring you to take some action within a certain time limit, be sure you meet the deadline. Failure to do so can mean that you give up important rights. For example, failure to appeal a Social Security decision before the deadline usually means that you must abide by the decision, even if you believe it is wrong. In most legal matters, it is prudent to consult with an attorney to ensure that you do not forfeit your legal rights.

4. If you receive a summons to appear in Court, or have a complaint in a lawsuit delivered to you, consult an attorney as soon as possible. If you ignore such papers, you may have a judgment entered against you, whether or not you were responsible for what is claimed in the lawsuit.

If You Need an Attorney and do not have one, you may wish to contact:

For Legal Services for a fee:

LAWYER REFERRAL SERVICE

New Castle County
478-8850

Kent County
1-800-773-0606

Sussex County
1-800-773-0606

This service of the Delaware State Bar Association makes referrals to attorneys who provide a one-half hour consultation for a fee of \$35.00. If the attorney takes your case, arrangements for paying the additional fees will be worked out between the two of you.

The Lawyer Referral Service (LRS) does NOT receive walk-in clients. The LRS is a telephone-accessed automated system, which you may use with either a push-button or rotary-dial telephone. This is how it works: when you call you will leave a message with all of the information about your needs; LRS will contact an attorney who practices in the area of the law that will meet your needs; the attorney will call you back to schedule an appointment.

For Legal Services that are free to those who qualify:

DELAWARE VOLUNTEER LEGAL SERVICES

New Castle County
P.O. Box 7306
Wilmington, DE 19803
478-8680

Kent County
1-800-773-0606

Sussex County
1-800-773-0606

The Delaware Volunteer Legal Services (DVLS) program offers free services provided by volunteer attorneys for persons with low incomes who have non-criminal, non-fee generating cases (not personal injury litigation, for example). The program includes assistance with any civil issue an older Delawarean may have, including guardianship and the preparation of wills, powers of attorney and advance directives for health care.

To qualify for the program there are two thresholds, an income threshold and an asset threshold, which track the federal poverty guidelines. If either (or both) your income or your assets exceed the maximum allowed, you will not be able to participate in this program. Call DVLS to see if you qualify at the time of your need.

If you have a personal injury case or some other case in which you believe you are entitled to sue for damages (money), you will not be eligible for free legal services.

ELDER LAW PROGRAM OF COMMUNITY LEGAL AID SOCIETY, INC. (CLASI)

New Castle County
100 W. 10th Street, Suite 801
Wilmington, DE 19801
575-0666

Kent County
840 Walker Road
Dover, DE 19904
674-3684

Sussex County
144 E. Market Street
Georgetown, DE 19947
856-4112

The Elder Law Program, run by CLASI, provides free legal services in certain kinds of non-criminal, non-fee generating cases to persons age 60 and over. While there are no income or asset thresholds to qualify for the program, the program does give priority to the socially and economically needy. ELP is partially funded by the Delaware Division of Services for Aging and Adults with Physical Disabilities and the Delaware Criminal Justice Council which receives funding from the U.S. Department of Justice, Office for Victims of Crime.

LEGAL SERVICES CORPORATION OF DELAWARE, INC.

New Castle County
100 W. 10th Street, Suite 203
Wilmington, DE 19801
575-0708

Kent County
208 S. Governor's Avenue
Dover, DE 19904
734-8820

Legal Services Corporation of Delaware, Inc. (LSCD) provides free legal services for persons with low incomes in certain types of civil (non-criminal) non-fee generating cases (as an example, no personal injury cases). Some of the types of cases that LSCD handles are consumer cases, including bankruptcy cases, private landlord-tenant cases, and unemployment compensation cases. As with CLASI and DVLS, to qualify for representation or other assistance there is an income threshold and an asset threshold, as called for by federal regulations. If either the income or assets of the members of your household exceed the maximum allowed, LSCD will not be able to provide services to you. Call LSCD to see if you qualify at the time of your need.

If you are in New Castle County and have a legal problem, call the Legal HelpLink at 478-8850, or call 800-773-0606 if you are in Kent or Sussex Counties. The HelpLink can connect you to the appropriate legal service program Monday through Friday.

INCOME MAINTENANCE PROGRAMS

Social Security

The Social Security program provides benefits to eligible workers and their families when income is reduced or stopped because of retirement, disability or death.

Eligibility

Generally, eligibility is related to two factors: (1) a family member must have worked in employment which is covered by the Social Security system, and (2) the worker must have worked long enough to gain “insured status”.

A worker acquires “insured status” by working in insured employment for the required time. The time required depends on the worker’s age and other factors.

Retirement Benefits are available to those who have worked a sufficient amount of time under the Social Security System. The amount of time depends on age.

Benefits are available at age 62, but persons who choose to receive retirement benefits prior to full retirement age will receive lower monthly benefits than if they wait. The age for full retirement is currently 65 for those born prior to 1938. For those born after 1938, the full retirement age gradually increases to age 67. Those who delay retirement may have future monthly benefits increased.

When retirement benefits are paid to a worker, eligible family members may also receive checks. Eligible family members are children under 18, or 19 if still in high school; 18 or over who were severely disabled before age 22 and who continue to be disabled; spouses age 62 or over; and spouses under age 62 who are caring for the worker’s children under 16 (or over 16, if disabled). If you are divorced and single, or you remarried but the marriage ended, you may be eligible for benefits based on your ex-spouse’s work record.

Persons under age 65 who collect Social Security benefits but continue to work will have their benefits reduced by \$1 for every \$2 earned above the annual limit. The annual limit for 2001 is \$10,680. Check with the local Social Security office for information about the effect of work on benefits.

A portion of Social Security benefits received by persons with higher incomes is taxed by the Federal Government. Information on this can be obtained from the local Social Security office or the Internal Revenue Service.

Survivor’s Benefits may be available to the spouse, children and/or parents of a deceased worker. If the worker was fully insured, the surviving spouse who is over 60, or between 50 and 60 if disabled, will receive monthly benefits. These benefits are also available to surviving divorced spouses who meet the requirements, if the marriage lasted at least 10 years. Younger surviving spouses may be eligible for benefits if they are unmarried and caring for the deceased worker’s children under the age of 16 (or over 16, if disabled). Children under age 18 or disabled also receive survivor’s benefits if the parent died or became disabled while insured. Parents of a deceased worker who died while insured may receive benefits if the parent is 62 or older and was dependent on the deceased worker for at least half of his/her support.

Disability Benefits are available to disabled workers who have worked under Social Security for 5 of the last 10 years before becoming disabled.

Under the Social Security Act a worker is disabled if he/she can no longer engage in any “substantial gainful activity” as a result of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for at least 12 consecutive months.

Applying for Benefits

Application for benefits may be made at the local Social Security office. A person should always request that he/she be permitted to fill out and file an application, even if a Social Security employee tells the applicant he/she is not eligible. There can be no official action taken unless an application is filed. Certain proofs must be provided when the application is filed. To save time, call your local Social Security office and ask what you need as proof of eligibility for benefits.

If possible, telephone or visit the Social Security office after the 15th of any month since the offices are busiest at the beginning of each month.

You will be notified in writing about your application or anything which affects your continuing eligibility or the amount of benefits you receive. If you disagree with what the notice says, you may appeal.

Appealing a Decision Against You

At any point in the appeals process you may wish to consult an attorney. The first step in the process is reconsideration. A request for reconsideration should be filed in writing at your local Social Security office within 60 days of receiving the initial decision. Additional medical evidence may be submitted. Reconsideration is usually a paper review performed by someone who did not review the file originally. A written notice of the decision will be sent after reconsideration. If you still disagree with the decision you must, within 60 days, request in writing a hearing before an administrative law judge. At the hearing all testimony will be taken under oath and you may be represented by an attorney or another person.

The administrative law judge sends a written decision after the hearing. If you disagree with the decision you may file a written appeal within 60 days to the Appeal Council which is in Washington, D.C. The Appeals Council reviews your entire record and issues a written decision. If that decision is against you and you wish to pursue the matter, you must file a suit in Federal Court within 60 days of the decision of the Appeals Council.

Overpayments

Occasionally, a Social Security recipient will be notified that he/she has been overpaid benefits. If this occurs, and you do not understand the reasons given for the overpayment, you should ask the Social Security office for an explanation. If you disagree there was an overpayment you may appeal in the same manner as described above. If you agree there was an overpayment, but you were not at fault and it would be a hardship for you to repay the overpayment you may ask for a waiver.

If repayment is required, you may be able to negotiate the terms of the repayment.

Supplemental Security Income

Supplemental Security Income (SSI) is a program based on need. It is available to those who are over 65, blind or disabled and who have little income and few resources. Effective January 1, 2001 the SSI payment is \$530/month for individuals and \$796/month for couples.

Under current law an individual is not eligible for SSI if countable resources exceed \$2,000 in value. A married couple cannot have countable resources which exceed \$3,000. Among resources which are not counted are the applicant's home; household goods and personal effects up to \$2,000; a vehicle with market value of \$4,500 or less, or which is used for employment or to obtain medical treatment or which is equipped for a person with a disability; insurance policies with no cash surrender value or face value not exceeding \$1,500; burial plans not exceeding \$1,500; and property essential for self-support.

Countable income is determined in a complex manner and may be treated differently depending on whether it is considered "earned" (like wages), "unearned" (like Social Security, interest and dividends), or "in kind" (like room and board in a relative's home).

Application for SSI is made at the local Social Security office. You may apply by mail, but fewer problems occur if you apply in person. You must establish proof of age, blindness or disability, and provide proof of income, assets and living arrangements. After you start receiving SSI, changes in your income, etc., may affect your eligibility and you may wish to consult an attorney.

Once a person is granted SSI benefits he/she is required to report any changes in income, assets or living arrangements to the Social Security Administration.

The appeals process in SSI cases is essentially the same as that described above for Social Security cases, and overpayments are handled in a similar manner.

Food Stamps

Food stamps or coupons are provided to help low income people buy food. They are given free of charge to households based upon income and resources qualifications. A household may be one person or a group of people who buy food and prepare meals together.

Application for food stamps is made at a local state service center. That office must give you an application form and permit you to file it on the first day you ask to apply. You can request the form in person or by telephone, and you can take the application to the office or return it by mail. After receiving the application, a caseworker will call to schedule an interview with you.

At the interview, you will be asked the number of people who live in your household, their names, Social Security numbers and what they own and earn. You will be required to have identification with a photograph for the interview. If you are unable to go to the office for the interview, you may give written permission for an “authorized representative” to go to the office for you.

The caseworker must decide on your eligibility for food stamps **within 30 days** of receiving your application. In an emergency you may be entitled to food stamps within seven (7) days.

Eligibility is based on the household’s income and resources. Because these requirements change from time to time, you should ask the local Food Stamp Office for the current income and resource limits.

If you qualify for food stamps, you will be given an identification card and told how many stamps you are entitled to. It is necessary to be recertified for eligibility periodically.

If you dispute a decision made by the Food Stamp Office, you may request a “fair hearing.” At the hearing you will be able to state why you think the decision in your case was wrong.

If you live in the City of Wilmington, you may be told that you will need to pick up your food stamps each month. If this is difficult for you, you should state your age or describe your disability and the food stamps will be mailed to you.

Other Benefit Programs

There are two other major Federal programs which provide retirement, disability and survivor’s benefits. They are **Railroad Retirement** and **Veterans Benefits**. These programs have their own rules about eligibility and benefits, and they will not be described here.

If you have been a railroad employee, you should consult the **Railroad Retirement Board** about any benefits which might be available to you. A representative of the Board visits Wilmington once a month. For information about the dates and times or for any other information about Railroad Retirement Benefits, call 215-656-6993 in Philadelphia, or 410-962-2550 in Baltimore, or toll-free 1-800-808-0772.

Veterans’ benefits may include survivor benefits and are determined by many factors. Many elderly veterans and survivors do not know they are eligible. Benefits may only be received from the date of application, so it is important to submit a claim immediately if you think you may qualify. Various types of cash benefits are available, and related to income level, type and extent of disability, and whether the disability is service-connected. Medical benefits may also be available. Survivors of veterans may be eligible for a health care insurance program until they become Medicare eligible. Military retirees and their dependents are eligible for a new program, Tricare for Life, which supplements Medicare and supplemental insurance. For information, call 1-888-363-5433.

Information about Veterans' benefits can be obtained by calling 992-0539 in New Castle County, or 1-800-827-1000 in Kent and Sussex Counties, or by calling the Veterans' Benefits Clinic at 478-8680 (New Castle County) or 1-800-773-0606 (all counties). Veterans' organizations may have persons to assist you and/or your family with problems involving veterans' benefits. For information, contact your local VFW.

Both the Railroad Retirement Board and the Veterans Administration have appeals procedures. If you disagree with a decision in your case, ask for information on appealing. Ordinarily, such information is included with a written notice of a decision in such cases.

HEALTH CARE

Medicare

Medicare is a federal health insurance program administered by the Social Security Administration. It was designed to help meet the medical expenses of those people who are at least 65 or who are disabled.

Eligibility

1. You are at least 65 and eligible for Social Security or Railroad Retirement benefits; or
2. You are disabled and have been receiving Social Security disability benefits for 24 months; or
3. You are undergoing dialysis or need a kidney transplant because of permanent kidney failure.

Coverage

Part A:

Medically necessary hospital care;

Full coverage of twenty days of skilled care in a nursing home and 80 days of partial coverage; and

Temporary full-time or permanent intermittent home health care if you require some skilled care (Home health care is also covered under Part B).

Part B:

You usually have to pay a premium to be covered by Part B unless your income and resources fall below certain limits. If you are a Qualified Medicare Beneficiary (QMB), you do not have to pay for Part B or for deductibles or co-pays.

Part B covers doctor's services, out-patient services, and medical supplies. It pays 80% of the "reasonable charges" for covered services after a deductible has been satisfied. It does not cover prescription medications.

You should ask your physician whether she accepts "assignment," which means that you will be responsible only for the 20% of the reasonable charge that Medicare does not pay, rather than for the balance of the doctor's customary fee.

You should always receive a written notice of noncoverage whenever Medicare denies your claim. The notice will tell you about your right to appeal the denial. You may also call Social Security at 1-800-772-1213 for more information about Medicare and to be sent a booklet called **Your Medicare Handbook**, which provides a detailed description of services available under Medicare.

Qualified Medicare Beneficiary (QMB)

Certain low income Social Security recipients can have their Medicare premiums, co-payments and deductibles paid by the State. Federal law requires that state Medicaid agencies pay the Part A and Part B Medicare premiums, deductibles, and co-insurance expenses for financially qualified individuals known as Qualified Medicare Beneficiaries (QMBs). You may be a QMB if you are entitled to Medicare Part A and your income is at or below 100% of the Federal Poverty Level plus \$20 (2001: \$716/month single; \$968/month couple).

If your income is at or below 120% of the Federal Poverty Level plus \$20 (2001: \$859/month single; \$1,161/month couple), you may qualify as a Specified Low-Income Medicare Beneficiary (SLMB). This program is like the QMB program except it only pays your Medicare Part B premium. It does not pay your co-insurance, deductibles or Part A premium.

If your income is at or below 135% of the Federal Poverty Level plus \$20 (2001: \$967/month single; \$1,307/month couple), you may qualify for a limited federal program that pays your Medicare Part B premium. If your income is at or below 175% of the Federal Poverty Level plus \$20 (2001: \$1,253/month single; \$1,694/month couple), you may qualify for a limited federal program that pays a portion of your Medicare Part B premium.

The income guidelines increase each year. The resource limits are \$4,000 for a single person and \$6,000 for a couple. Contact your local state service center to determine your eligibility and to apply for the QMB, SLMB or federal programs. You are required to apply and to provide some verifications.

Supplemental Health Insurance

You may wish to purchase a supplemental fee for service insurance policy (a "Medigap" policy) which will cover most Medicare deductibles after payment of a deductible amount. Each time you go to a doctor you incur a charge, and you may have to submit a claim in order to be reimbursed. You will be able to select your own physicians, rather than being restricted to an approved list of doctors.

The Delaware Insurance Commissioner has a list of insurance companies that provide supplemental insurance for Medicare beneficiaries. You will be able to choose from a menu of standard policies, including some expensive policies that partially cover the cost of prescription medications. Companies are not permitted to sell you duplicate coverage. For more information about supplemental health insurance, contact the Delaware Insurance Commissioner's office at 1-800-282-8611.

Medicare Plus Choice Plans

There are a variety of possible alternatives to traditional fee-for-service Medicare, including managed care plans (Medicare HMO's). The Delaware Insurance Department can tell you which plans are currently available.

The most commonly selected option is the Medicare HMO. Medicare contracts with health maintenance organizations to provide Medicare benefits under managed care. Subscribers to these plans benefit by receiving more services, such as prescription drug and dental coverage, for what may be less money. Subscribers also do not have to file claims. The disadvantages may be that you cannot use your own physician and may find it difficult to get a referral to a specialist.

Until the end of 2001, you will be permitted to enroll in and disenroll from a Medicare HMO whenever you choose. After that you will be permitted to make changes only at specified times. You would then be covered by Medicare Parts A and B and would probably want to enroll in a supplemental Medigap policy. You may want to enroll in a Medigap policy before disenrolling from an HMO to ensure continuity of coverage. At the beginning of the year 2001, Delaware had two HMO plans and one private fee-for-service plan.

Medicaid

Medicaid is a combined state and federal program. It pays for medical services for persons who receive Supplemental Security Income (SSI) or certain types of welfare payments. It also pays for nursing home care for persons medically and financially eligible, and for home and community based services.

You must be medically and financially eligible for Medicaid. You are medically eligible for Medicaid coverage of nursing home care if your condition requires at least minimal nursing care and/or some type of therapy. You are financially eligible for Medicaid for nursing home care if your resources and income meet certain income guidelines. If your "available income" exceeds the Delaware income limit, you may be able to use a "Miller Trust" to satisfy the income threshold for Medicaid. However, a Miller Trust does not permit you to save assets and qualify for Medicaid. Even if you have a satisfactory Miller Trust, you still need to meet the resource requirements. If you wish to set up a Miller Trust, you should consult an attorney.

Special rules apply when a nursing home resident has a spouse who is living in the community. The "community spouse" is permitted to keep a home and a car, and both spouses may

have irrevocable pre-paid funeral arrangements. In addition, the community spouse can keep some savings and should have sufficient income to permit the spouse to continue to live comfortably in the community.

You should receive a written notice of any decision regarding your eligibility for Medicaid, whether you are applying for the program, your coverage is being changed, or your coverage is being terminated. You have a right to appeal any decision against you within the time stated in the written notice of the decision.

For more information about the Medicaid program, contact the Division of Social Services nearest your home.

Nursing Homes and Other Residential Facilities

Nursing homes, assisted living homes, rest homes and adult foster care homes are licensed in Delaware by the Division of Long-Term Care Resident Protection. Nursing homes which participate in Medicaid or Medicare must meet additional requirements in order to be certified under federal law to participate in those programs.

As with all contracts, you should read a long-term care facility contract before signing it. The federal Nursing Home Reform law prohibits a nursing home from requiring a third-party guarantee of payment as a condition of admission or continued stay. Delaware law applies this prohibition to assisted living and rest homes as well. Therefore, you cannot be required to guarantee the payment of your family member's care out of your own funds. Prior to admission, you should request a copy of the contract, review it thoroughly, and confer with an attorney to help you understand it.

Medicare may pay for part of your stay in a nursing home if you have been hospitalized for at least 3 days and you require daily skilled care. If you qualify for Medicare coverage, it may pay all of the first 20 days and some of the next 80 days as long as you continue to need daily skilled care. A nursing home is prohibited from requiring a deposit if your care may be covered by Medicare.

Medicaid covers all expenses related to the resident's care. It does not cover certain personal needs (for example, haircuts), but each Medicaid recipient receives a monthly needs allowance (2001: \$42.00), which must be set aside for that individual. If you are a veteran or a spouse of a veteran, you may be eligible for a VA benefit allowance that may be higher. Many Medicaid recipients have income such as Social Security or a pension which pays a part of the cost of their care, and Medicaid pays the remainder.

Rights of Residents

Residents of nursing homes, assisted living homes, rest homes and adult foster homes are given certain rights under Delaware law. Among them are the right to be treated with respect and consideration, the right to receive current information about diagnosis and the right to par-

ticipate in planning treatment unless it is medically inadvisable. If you are a resident of a nursing home, you may refuse medication or treatment and you must be informed of the medical consequences of various medications and treatments which might be prescribed for you. You also have the right to choose your own physician. If you are unable to make your own health-care decisions, your health-care agent or surrogate can make decisions for you.

You are entitled to have your medical records and information about you kept confidential. You are also entitled to privacy in your room. Facility staff should knock before entering.

You have the right to associate and communicate privately with individuals or groups of your choosing, to send and receive mail unopened, to have access at reasonable hours to a telephone where you may speak privately and to have access to writing materials and postage.

You have the right to be free from chemical and physical restraints, except as authorized by a physician according to clear and indicated medical requirements.

You have the right to manage your own financial affairs, and if the facility manages your affairs, you must be able to inspect a monthly accounting and you and your family must receive at least a quarterly statement of your account.

You, personally or with others, have the right to present grievances and recommend changes in facility policies or services without fear of reprisal or discrimination.

You cannot be transferred or discharged except for medical reasons, your own welfare or the welfare of other patients or for nonpayment of justified charges.

You must be given written notice of the decision to transfer or discharge you and be provided with reasons for the decision, and you must be provided the opportunity for an impartial hearing to challenge the action. Except in case of an emergency, you must be given 30 days notice before any transfer or discharge can occur. If you receive Medicaid and have been discharged from a nursing home because of a lengthy hospital stay, you have the right to be readmitted to the first available bed.

In addition to rights under state law, if you are living in a nursing home, you may be entitled to similar rights under federal law. If you are unable to assert your rights, your family, guardian or other personal representative can speak for you.

Problems with Nursing Homes, Rest Homes and Adult Foster Care Homes can be referred to the Long-Term Care Ombudsman or to the Division of Long-Term Care Resident Protection. Both of these agencies are authorized to investigate and attempt to resolve such problems. Your name does not need to be disclosed to the facility if you are afraid of possible retaliation for complaining.

PROTECTIVE SERVICES and PROCEDURES

Representative Payee

Social Security and SSI recipients can have their benefits deposited directly in their bank accounts by filling out a form at their bank.

If the Social Security Administration (SSA) determines on the basis of adequate evidence that it is in the interest of the beneficiary, regardless of the person's legal competency, it may appoint an individual or organization to serve as a representative payee. Before certifying the payee's acceptability, SSA is required, in a face to face interview if possible, to verify the payee applicant's Social Security Number, determine whether the applicant has been convicted of certain crimes under the Social Security Act, and determine whether the applicant was previously terminated or suspended as a payee.

Various factors influence the choice of a representative payee. The payee's relationship to the beneficiary and the payee's interest in and knowledge of the beneficiary are important. Priority is generally given to a legal guardian, spouse, parent, or other relative, but friends, institutions, and social agencies may also be chosen. A beneficiary who has a preference for a payee should so inform the SSA.

Procedural standards for the appointment process do not require predetermination notice of the names of the persons under consideration to be payee, of the right to counsel, or of the right to a face to face interview with an SSA representative, nor do they require that the beneficiary be notified that an appointment is being considered. If you do not want a payee appointed, you should take steps to protect your benefits at the earliest hint of a possible payee appointment by contacting SSA to supply evidence of your capacity.

The representative payee must use the benefit payments to promote the best interest of the beneficiary, which ordinarily include current maintenance and institutional costs. Prior debts of the beneficiary need not be paid by the payee unless the current and reasonably foreseeable needs of the beneficiary are met. Any surplus should be conserved and invested for the beneficiary. The representative payee may be required to account to SSA for the benefits received and may be criminally and personally liable for misuse of benefits.

Power of Attorney

A power of attorney is a written document in which you (known as the principal) give someone else, usually a relative or friend, the authority to act for you in managing your affairs. It may be a broad, general power of attorney which authorizes another person (known as the attorney-in-fact) to handle all of your affairs. Or, it may be limited to a specific purpose, such as selling your home, or limited to a specific period of time, such as six months.

In Delaware, it is possible to have a power of attorney which will become effective immediately or only if and when you become disabled or incapacitated.

You should have a durable power of attorney so that it will be effective if and when you become incompetent.

A power of attorney ceases to be effective upon the death of the principal.

You should choose the person to whom you give a power of attorney carefully. He or she should be trustworthy and honest because of the potential for abuse. If you designate an attorney-in-fact who may have a present or future interest in your financial matters, you must make it clear the authority the attorney-in-fact has for transactions which may benefit himself/herself. To illustrate: You make gifts to your children every year. You appoint one of the children to be your attorney-in-fact. You become incapacitated, and the child takes over your financial matters under the power of attorney. Can the child continue your gift-giving program even if it includes gifts to himself/herself? The document must specify limits or qualifications.

You can revoke a power of attorney by signing and dating a written statement which says "I revoke the power of attorney I gave to ..." and sending or giving it to your attorney-in-fact. You also must notify everyone who might have done business with your attorney-in-fact while he/she was using the power of attorney. This is necessary to protect you from unauthorized use of the power of attorney.

A power of attorney is an important and powerful document. You should consult an attorney to assist you with creating a power of attorney.

It is generally advisable to have a durable power of attorney. Without such a document, it may be necessary to go to court to have a guardian appointed if you become incapacitated.

Guardianship

Delaware has provided a method for the appointment of a person to manage the property, and/or make personal decisions for an incapacitated person when that person has failed to execute a power of attorney. Property includes, e.g., real estate, personal property, income and expenses.

The person appointed by the court is called a guardian. The person for whom a guardian is appointed is called a disabled person. The guardian may be appointed to manage the personal decisions for the disabled person, or the property of the disabled person, or both.

A guardian of the person may be necessary when someone is incapable of caring for him/herself, or is unable to consent to medical treatment or make other personal decisions about his or her life. These decisions may include such things as where a person will live and how meals will be provided.

A guardian of the property may become necessary when someone is not able to manage his or her financial affairs. This may include such things as paying bills, depositing funds, and taking care of real estate. A guardian of the property may also be appointed when there is a risk the disabled person may be exploited. A guardian of the property must post a bond, usually

without surety, maintain a guardianship bank account, and use the disabled person's income and property for the disabled person's benefit. The guardian must file periodic financial reports with the Court, including an inventory within thirty days of the appointment as guardian and, generally, an initial accounting one year after the appointment of the guardian and every two years thereafter.

The guardianship process is begun when a "petitioner" files a petition in the Court of Chancery. The alleged disabled person must be represented by an attorney known as an "attorney ad litem" who is appointed by the Court of Chancery for the duration of the petition.

The petition for guardianship must include an affidavit from the alleged disabled person's doctor stating the diagnosis of the person and the opinion of the doctor as to whether the person is able to manage his or her affairs. Notice of the petition for guardianship must be provided to, among others, the alleged disabled person (unless it would be meaningless or harmful), his or her spouse, and adult next of kin.

A number of different people may file a petition for guardianship. The person him/herself may ask the Court to appoint a guardian. More often, a relative or close friend will file a petition to become guardian of a person when necessary. In other cases, Adult Protective Services may petition on behalf of a disabled person. Upon petition the Court may change the guardian to a different guardian in some situations.

If you learn that a petition for guardianship has been filed to obtain guardianship over you and/or your property, you may challenge the petition if you do not want a guardian. You have the right to be represented by an attorney, and to present witnesses and evidence on your behalf. Or, if there is a guardianship of your person and/or property which you believe is not necessary, you may file a petition to terminate the guardianship. To terminate the guardianship, it is necessary to prove that you are capable of managing your own affairs and caring for yourself.

Unless the Court limits the authority of the guardian, a guardian may make all decisions regarding the disabled person's affairs. Because the Court has determined that a person is not capable of caring for him/herself when a guardian is appointed, the disabled person is deprived of almost all of his or her civil rights. Therefore, guardianship is an action which should be taken only when absolutely necessary.

The Court of Chancery oversees the actions of the guardian. The guardian has to obtain approval of the Court before undertaking nearly every transaction on behalf of the disabled person. Many minor transactions can be lumped into a general authorization to expend funds; for example, a monthly amount of money to pay the expense of day-to-day care. Other transactions, such as the sale of residence, need greater safeguards, such as the Court requiring an independent appraisal and Court review of the contract before approving the sale.

It is prudent to consult an attorney before undertaking any guardianship action.

Adult Protective Services

Protective services are available to persons over the age of 18 who are unable to care for themselves and are possible victims of abuse, mistreatment, neglect or exploitation.

The Adult Protective Services (APS) program is a part of the Department of Health and Social Services.

The Adult Protective Services staff investigates complaints, makes referrals, arranges for services and is authorized to seek court orders for the protection of persons not able to protect themselves.

Anyone having reasonable cause to believe an adult person is infirm or incapacitated and needs protective services shall report such information to the Department of Health and Social Services. Anyone making a good faith report shall not be held liable.

To make a referral to the program, call 453-3820 in New Castle County, or 422-1386 in Kent County and in Sussex County.

PROGRAMS FOR VICTIMS OF CRIMES

Delaware's Violent Crimes Compensation Board (VCCB) financially assists people who suffer physical injury as the innocent victims of violent crime. Surviving family members of such victims also may be eligible for assistance. Claims must be filed within one year of the incident.

The following requirements must be met before the Board will consider the claim.

1. A violent crime must have been committed in the State of Delaware;
2. You must be innocent of the crime;
3. Police records must show prompt reporting of the crime and cooperation with the authorities, including through prosecution of the assailant; and
4. You must cooperate with the VCCB and office staff throughout the investigative process.

Awards can be made in amounts up to \$25,000.00 to cover medical, dental and mental health expenses not otherwise covered, prescription eye glasses, loss of earnings not covered by other insurance, out of pocket expenses necessary because of the crime, and compensation for disability and disfigurement.

Loss of personal property is not covered.

If you wish to file a claim, you may obtain a form from:

1. Violent Crimes Compensation Board, 1500 Newport Pike, Suite 10, Wilmington, Delaware 19804, or
2. Police agencies, or the Department of Justice.

After investigation of your claim, a hearing will be held and you will have the opportunity to bring witnesses and to tell the Board about your case. You may be represented by an attorney of your choice who will be paid by the Board.

After the hearing you will receive the Board's decision in writing. If you are dissatisfied with the Board's decision, you may appeal to Superior Court within 30 days of receiving the decision.

The **Victim/Witness Assistance Program** assists victims and those who have witnessed crimes. The Program is available through the Delaware Department of Justice, the New Castle County Police, the Delaware State Police, the Dover Police, the Wilmington Police, and Delaware Victims Services (1-800-VICTIM1). The program provides information on the status of the case, explanation of court procedures and preparation for trial. In many cases it also provides someone to accompany the victim/witness to court in serious cases.

Victims of violent crimes are also offered social service information and referral.

Violent Crimes Compensation Board
995-8383

Delaware Department of Justice
New Castle County: 577-8500
(Statewide: 1-800-870-1790)

The **Delaware Center for Justice** has an **Elderly Crime Victim Service** that assists crime victims aged 50 and over who have experienced any of a variety of crimes. The Center's **Project Target** specializes in assisting women who have become victims of domestic violence or sexual abuse. If you or someone you know is 50 years of age or older and is the victim of any type of crime, you may contact the Elderly Crime Victim Service/Project Target Coordinator at 302-658-7174 Monday through Friday 8:30 a.m. to 4:30 p.m.

The **Senior Victim Advocate Program** is a volunteer advocate program that guides older victims through the criminal justice process and provides support. For more information contact the State of Delaware's Department of Justice at 302-577-8338, or visit the following web site: www.state.de.us/attgen.

JOINT OWNERSHIP OF PROPERTY

Joint ownership of property is often suggested as a method of reducing the costs of probating an estate, but it is desirable and advantageous in very few instances. Joint ownership may not avoid taxes. In addition, there may be unforeseen, unintended results and tax disadvan-

tages by putting your assets in joint name. For example, joint ownership of assets (e.g., bank accounts, stock, bonds) may defeat the intent of your will. So you should proceed with caution, and it is best to seek legal advice from an attorney before adding someone else's name on your assets.

1. Joint ownership causes problems more often than not when the joint owners are not spouses. If you were to add one of your children's names to the deed to your house, for example: (i) you would not be free to sell the property at any time unless the joint owner agreed; (ii) if you would otherwise be eligible for a property tax exemption because of age or disability, you would lose a part of the exemption by having a co-owner who is ineligible; (iii) federal gift taxes might be incurred when the child's name is added to the asset; (iv) if the child runs into credit problems, the creditor could foreclose on your property to satisfy the child's debts; and (v) you could disinherit your other children from receiving any portion of the asset transferred, regardless of what your will might say.

2. If you wish for one or more of your children, or some other concerned person, to assist you with your finances, it is not appropriate to put the person's name on your bank account as a joint owner. You should execute a Power of Attorney naming the person(s) you wish to handle your financial affairs if you are unable to do so.

3. Joint ownership saves probate expenses, but it may not save federal estate taxes. Joint ownership may cause capital gains taxes on the sale of the property, which greatly exceed probate expenses.

4. Joint ownership by spouses of inherited assets, or assets from a prior marriage may not be desirable for non-tax reasons. You should consult with an attorney regarding the consequences of owning such property jointly or solely.

5. For a married couple with a small estate, joint ownership of assets by the spouses is the usual case, but it may not be appropriate in every case.

WILLS

If You Die Without a Will in Delaware, What Happens to Your Property?

Some people believe that the State gets your property if there is no will. This is not the case.

Each state has its own (unique) laws that determine how property will pass when a person dies without a will. The laws apply to the property that is in the decedent's sole name. In Delaware when there is no will:

1. The surviving spouse receives all of the deceased person's property, if the deceased person has no surviving parents or issue (issue means children, the children's children, etc.).

2. If there is a spouse and one or more parent(s) but no issue of the deceased person, the spouse receives the first \$50,000 plus one half of the balance of the personal property, and lifetime rights to real estate; the remainder of the estate goes to the decedent's surviving parent(s).
3. If there is a spouse and issue, all of whom are issue of the deceased person and the spouse, the spouse receives the same share of the estate as described in 2. above, and the remainder goes to the issue.
4. If there is a spouse and issue, one or more of whom are not issue of the surviving spouse, the spouse receives one half of the personal property plus lifetime rights to the real estate. The remainder of the estate is divided among the surviving issue.
5. If there is no surviving spouse, the estate is divided among the surviving issue.
6. If there is no surviving spouse and no surviving issue, the estate goes to the surviving parent(s) of the deceased person.
7. If there is no surviving spouse, no surviving issue and no surviving parent, the estate is divided among the decedent's surviving brothers and sisters and the issue of any deceased brothers and sisters.
8. If there is no surviving spouse, no surviving issue, no surviving parent and no issue of parents, the estate goes to the next-of-kin.

The property escheats to the State only if there is no surviving spouse or blood relatives of the person who has died.

It should be noted that any property which is titled in the names of joint owners with right of survivorship passes to the surviving joint owner(s) upon the death of a joint owner regardless of whether or not there is a will. Similarly, beneficiary-designated property (life insurance, retirement plans), is paid to the named beneficiary, regardless of whether or not the decedent had a will.

Why Have A Will?

There are many good reasons to have a will.

1. A will allows you to decide who will manage your assets (your executor) and to whom your assets will pass at your death. If you do not have a will, you are allowing your estate to pass according to Delaware statute.
2. Without a will you cannot create a trust for minor children or grandchildren or disabled beneficiaries, which may create the need for a court-ordered guardianship for such beneficiaries. A will avoids the delay and expense of a guardianship.

3. Without a will you cannot choose who among your next-of-kin will inherit from your estate, or how much each beneficiary will receive.

4. Without a will, you cannot give your assets to close friends, to in-laws, or nieces and nephews by marriage.

5. Without a will, you give up the ability to make charitable gifts at your death.

6. Without a will, you could subject your estate to significant taxes that could have been avoided.

What Are The Legal Requirements Of A Will In Delaware?

Although making a will may appear simple, it is not a “do it yourself” project. An attorney should always be consulted when you decide to make a will because there are many legal considerations involved. A mistake may lead to your desires being frustrated, controversy among your beneficiaries, and/or significant adverse tax consequences. An attorney will be able to properly advise you about all of the important issues involved, including cost-saving measures with regard to probate expenses and estate taxes.

In Delaware a person must be at least 18 years old and be of sound mind to make a will. Wills must be signed in the presence of two witnesses who must sign in the presence of each other and the testator/testatrix (the person whose will it is). The will should have a notarized “self-proving affidavit,” making it a self-proving will and the witnesses need not appear before the Register of Wills after the testator’s/testatrix’s death.

Wills cannot be changed by writing in or crossing out anything in the will. Such changes could be invalid. Changes can be made by codicil, which is an amendment to the will, or by doing a new will. If a person wishes to leave items of personal property (jewelry, heirlooms, antiques, furniture, pictures, etc.) to specific persons, the will can refer to a separate list, made to deal with these items. This list can be changed as often as a person desires without changing the will. The list must be signed and dated each time and it must contain specific descriptions of the items and the names of the persons who are to receive them. You should keep the original list(s) with the original of your will.

What Should Be Done With A Will?

After the will is made it should be kept in a safe place and the executor/executrix told where to find it upon your death. In Delaware a will may be obtained from a safe deposit box when the box owner dies.

If you live in New Castle County, it is possible for you to file your will with the Register of Wills office for safekeeping during your lifetime. (Kent and Sussex Counties do not provide this service.) There is a fee of \$5.00, and if you wish to read the will at anytime after it is filed, there is a fee of \$1.00 for each time you request to see it. If you remove the will from the office and

return it, or file a new one in its place, there is another \$5.00 charge. Wills filed in this manner are not public records. They are filed in sealed envelopes.

Upon death, the will must be filed within 10 days of receiving information of death. It should be taken, along with a certified copy of the death certificate, to the Register of Wills office in the county in which the person was living at the time of his/her death.

What Is Probate?

Probate is the process of settling the estate of a person who has died (the decedent). It involves identifying and protecting the decedent's assets, valuing the assets as of the decedent's date of death, identifying and satisfying the decedent's debts, preparing and filing the decedent's final personal income tax returns and any estate tax returns required for the decedent's estate, filing the will, preparing and filing the other documents required by the Register of Wills, and distributing the decedent's estate according to the terms of his or her will, or according to State law if the decedent did not have a will.

It is necessary to open a formal probate estate at the Register of Wills office in the county in which the decedent was living at the time of death, if the decedent had any real estate in his or her sole name, or personal assets having a value of \$20,000 or more in his or her sole name. The Register of Wills provides forms and information about dates when certain steps must be completed in the probate process.

In the case of a small, simple estate it may be possible to complete probate without an attorney. But in all other instances, and even to determine whether the decedent has a small, simple estate, it is a good idea to seek legal advice. What seems "simple" may not be, and treating an estate as a simple estate, when it is not, could cause significant problems later.

In addition, the person handling the decedent's assets may be held personally liable for any mistakes that he or she makes. It is important to consult with an attorney to learn what the responsibilities of the personal representative of the estate are.

ESTATE TAXES will not be discussed in this handbook because they are too complicated for a brief discussion and subject to change. If you are concerned about minimizing estate taxes or want more information, you should consult an attorney.

ADVANCE HEALTH-CARE DIRECTIVE (LIVING WILL)

Delaware authorizes an advance health-care directive (the directive) which is a written document allowing you to: (1) provide individual instructions for health care, particularly in end of life situations, and/or, (2) designate a person or persons to be a health-care agent(s) to make health-care decisions for you when you are unable to make them. The directive can assert your intent to accept or to refuse treatment.

A directive becomes effective only upon a determination that the person who made the directive lacks the capacity to make health-care decisions. When the directive is to be applied to the providing, withholding or withdrawal of a life sustaining procedure, it becomes effective only upon the doctor's determination that the person who made the directive lacks capacity and has either a terminal condition or is permanently unconscious.

"Terminal condition" means any disease, illness or condition for which there is no reasonable medical expectation of recovery and which, as a medical probability, will result in death regardless of the use or the discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.

"Permanently unconscious" means a medical condition that has existed for at least four weeks and that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as to total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

If a person is mentally competent, the person may revoke all or part of an advance health-care directive by a signed writing or in any manner that communicates an intent to revoke in the presence of two competent witnesses, one of whom is a health-care provider.

An advance health-care directive cannot be given effect unless someone knows it exists. If you have a directive or living will, tell those people who would be involved (e.g., family members and doctors) where it is located. Your wishes cannot be followed unless your doctors know about them.

If you made a living will before July 12, 1982, it probably does not comply with Delaware law and should be redone. If you made a living will before June 26, 1996, it may be limited to a terminal condition and say nothing about what you want in the event you are permanently unconscious. You may wish to have it redone.

If an adult patient does not have an advance health-care directive, agent or guardian, and the patient has been determined by the attending physician to lack capacity, a "surrogate" may make a health-care decision to treat, withdraw or withhold treatment for that patient. A surrogate is selected in the following order of preference:

1. A spouse, unless a petition for a divorce has been filed, or unless the patient has filed a petition or complaint alleging abuse of the patient by the spouse;
2. An adult child;
3. A parent;
4. An adult brother or sister; or,
5. An adult grandchild.

6. If none of the individuals listed above are eligible to act as a surrogate or are reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may make health-care decisions as a surrogate if appointed as a guardian for that purpose by the Court of Chancery.

There is no specific form required for the advance health-care directive, but it must meet all of the requirements described above. The Delaware Division of Services for Aging and Adults with Physical Disabilities has forms available by calling (302)453-3820 or 422-1300 (Kent and Sussex), or writing to the Division at 1901 North DuPont Highway, New Castle, Delaware 19720. Many Delaware attorneys also have their own forms and can provide further information about the advance health-care directive.

An advance health-care directive may be required for admission into a nursing home.

ANATOMICAL GIFTS

Any individual of sound mind and at least 18 years of age may give all or any part of the individual's body to take effect upon the donor's death.

A gift of all or part of the body may be made by an advance health-care directive, a document or card designed to be carried on the person signed by the donor in the presence of two witnesses, or indicating consent on your driver's license.

The Board of Medical Practice provides forms for those who wish to donate their bodies or any organs after death. The form allows you to name the institution or person to whom the gift is being made and the purpose of the gift, such as medical research or transplantation.

You may obtain the form and instructions by contacting the Division of Motor Vehicles in your county.

FUNERALS

The Federal Trade Commission (FTC) rules require funeral homes to give price information by telephone, and if you go in person to make funeral arrangements, you must be given a written price list.

You are not required to purchase unwanted goods or services, and the funeral home must tell you this in writing. You also must be told in writing about any specific law which would require a particular item such as embalming.

You cannot be required to purchase a casket if there is to be a cremation.

You are entitled to an itemized bill with the total cost of each of the goods and services you have selected. Items such as obituary notices, flowers, pallbearers, etc. may be estimated and

the funeral provider may pay these bills for you, treat them as cash advances and bill you later. You must be told if there is a service fee in addition to the cost of the items.

The FTC rules provide other protections which can be read in more detail in the Consumer Guide to the FTC Funeral Rule. A free copy is available from the Federal Trade Commission, Washington, DC 20580.

Since it is the personal representative of the estate who will control the decedent's money, it is recommended that the personal representative make the funeral arrangements. If family members pay for the funeral, they can be reimbursed from the decedent's estate, if there are sufficient assets. If there are not sufficient assets in the decedent's estate to pay for his or her funeral, then the person making the arrangements will be responsible to pay for them.

Funeral or burial arrangements may also be pre-planned during your lifetime. Such "pre-paid funeral contracts" are controlled by Delaware law. If you purchase such a plan, all of the money you pay must be held in trust in a bank in an interest-bearing account. The funds, together with interest accrued, are held until the financial institution has received a certified statement that the services and goods have been provided as required by the funeral or burial plan contract. If the pre-paid funeral contract is revocable, you may cancel it by giving 15 days written notice to the financial institution, and you will receive a refund of all money you have paid plus interest. If the pre-paid funeral contract is for Medicaid purposes, the contract must be irrevocable.

LANDLORD/TENANT LAW

The Delaware Residential Landlord Tenant Code was revised in July 1996. The new Code applies to all leases signed after July 17, 1996. The new Code may apply to a renewal or extension of any pre-July 1996 rental agreement if both the landlord and the tenant agree that it is applicable. Otherwise, the prior Landlord Tenant Code shall apply to renewals and extensions of pre-July 1996 leases.

To obtain a summary of the Landlord Tenant Code or to ask a general question about the Code, you may contact the Consumer Protection Unit of the Attorney General's Office (New Castle County: 577-8600; Kent and Sussex Counties: 1-800-220-5424). When you call, you should specify whether the pre-July 1996 or post-July 1996 Landlord Tenant Code applies. The specific provisions outlined below apply to the new Code.

There is a special provision in the Code which allows a tenant to terminate his or her rental agreement early if the tenant is accepted for admission into a senior citizen facility, a group facility or retirement home. A tenant may also terminate early if the tenant is accepted for admission into subsidized private or public housing. Even if a tenant terminates early, a minimum of 30 days notice is required and the 30 days begins to run on the first day of the month following notice.

If you live in senior citizen housing which is subsidized with federal funds, you may have additional rights available to you as a tenant. You should receive a copy of the rules covering your rights and responsibilities when you sign your lease.

In general, it is a good idea to communicate with your landlord in writing rather than orally. Complaints about the condition of your rental unit should be put in writing, as well as any communication regarding termination of your lease. Be sure to keep copies of all lease provisions and correspondence.

MOBILE HOMES

Mobile home rentals are governed by Delaware's Mobile Home Lots and Leases Act. To obtain a copy of the act you may contact the Consumer Protection Unit of the Attorney General's Office as described above.

Anyone offering a mobile home or lot in a mobile home park for rent must provide a written rental agreement. Before the tenant signs the agreement or occupies the premises, the landlord must deliver to the tenant a copy of the rules or regulations of the mobile home community, a copy of the Mobile Home Lots and Leases Act, and a copy of the rental agreement which contains specifics such as the term of the lease, the services to be provided, the amount of rent, and the options for termination and renewal.

If only the lot is rented, the rental term may be for one year, a lesser period as the tenant may request, or a longer period as mutually agreed upon by the parties. Upon expiration the rental agreement is automatically renewed for the same term as the original agreement, subject to a modification of the rent amount, unless:

1. The tenant gives the landlord a minimum of 60 days written notice of termination prior to the expiration of the agreement;
2. A shorter or longer term is agreed to by the parties; or
3. The landlord gives the tenant a minimum of 60 days written notice prior to termination of the rental agreement.

If both the lot and the home are rented, a landlord may offer all current and prospective residents a rental agreement for a term of any duration not to exceed one year. Upon expiration of the initial term, the rental agreement shall convert to or continue for a month-to-month term, subject to modification of the rent amount, unless:

1. Either party delivers written notice at least 60 days prior to expiration of the rental agreement; or
2. A shorter or longer term is agreed upon by the parties.

PROPERTY TAX EXEMPTIONS

People 65 and over (and in some cases, younger disabled persons) may be entitled to partial or total exemption from property taxes. Eligibility may depend on income, but Social Security and Tier II Railroad Retirement benefits are not counted. The amount of the exemption depends on the assessed value of the property. To qualify, you must use the property as your principal residence.

The income threshold, amount of exemption and date of application vary by city and county. To find out eligibility requirements and how to apply for an exemption, call 395-5520 if you live in New Castle County; 736-2145 if you live in Kent County; and 855-7760 if you live in Sussex County. In addition, if you live in Wilmington or another city, you also may be eligible for an exemption from city property tax. To find out eligibility requirements and how to apply for an exemption in Wilmington, call 571-4320. Call your local tax office for information for other cities. You may need to periodically renew your exemption application. If you are a Wilmington resident, the application must be renewed every three years.

If you are eligible for a tax exemption, but own your property with someone who is not eligible, you will receive a partial exemption. If you have lifetime rights to the property, you may be entitled to a full exemption.

CONSUMER LAW

There are state and federal laws which give important rights to you as a consumer. The topics discussed below are particularly important because they cover situations in which older people have often been victimized.

Equal Credit Opportunity

Under the federal Equal Credit Opportunity Act (ECOA), it is against the law for a creditor to deny you credit or terminate existing credit simply because of your age, sex, marital status, race, color, religion or national origin. The creditor's concern should be your willingness and ability to repay your debts.

When you apply for credit or a loan, one major indicator of your ability to repay is your current income. Creditors who consider income must consider types of income likely to be received by older Americans such as Social Security, pensions, and other retirement benefits. The creditor will also evaluate your debts, assets, credit history and reliability.

If you believe you have been discriminated against in applying for credit, you should discuss your belief with the creditor and try to convince him/her that you are credit worthy. If this fails and you still believe you have been discriminated against, you may be able to sue for damages.

Home Solicitations and Door to Door Sales

Home solicitation and door to door sales are regulated by both Delaware and federal laws. Because high pressure sales tactics are typically used in door to door sales, you are given a “cooling off period” in which you can change your mind. You may cancel the sale in writing within three business days. Be sure to keep a copy of the written cancellation. The law applies to goods and services costing \$25 or more, and the seller must give you a notice of your right to cancel at the time of the sale or the signing of the contract. The seller is also required to tell you where to send the cancellation notice.

Under state law, if the contract is for home repairs or improvements, the work generally cannot be started until the end of the cancellation period. However, you may sign a written statement which says you waive your cancellation rights because of an emergency which requires the work to be done immediately. This provision gives you additional time to consider the price and other details of the contract, in case you want to change your mind.

The Delaware and federal laws also apply to sales made at a location which is not the seller’s usual place of business. This means you may cancel a contract within three business days if you signed it at a special exhibit at a mall or a fair, for example. Violations of this law should be reported to the Consumer Protection Unit of the Attorney General’s Office.

Under a different federal law, you have the right to cancel a contract in writing within three business days (including Saturdays) if a mortgage against your home is provided as security for a personal loan.

Unordered Merchandise

If a merchant mails or delivers unordered merchandise to you which is intended for you, you may refuse to accept delivery of the merchandise. Alternatively, you may consider it to be a gift and use it or dispose of it in any manner you choose without obligation.

Debt Collection

You are responsible for paying your debts. If you fall behind in paying your creditors or an error is made on your account, you may be contacted by a “debt collector.” A debt collector is someone other than the creditor who regularly collects debts owed to others. Under the federal Fair Debt Collection Practices Act, you have the following rights:

- Debt collectors may not contact you before 8 a.m. or after 9 p.m.;
- Debt collectors may not contact you at work if they know your employer disapproves;
- Debt collectors may not harass, oppress, or abuse you;
- Debt collectors may not lie when collecting debts;

- Debt collectors must identify themselves to you on the phone; and
- Debt collectors must stop contacting you if you ask them to in writing.

If you are having problems paying your bills, you should contact your creditors and try to work out an agreeable payment plan.

Telemarketing

The Federal Trade Commission has a Telemarketing Sales Rule requiring certain disclosures and prohibiting misrepresentations. It covers most types of telemarketing calls to consumers as well as calls consumers make in response to materials received in the mail. You should be aware that you have the following rights:

- A telemarketer may not call you if you have asked not to be called;
- Telemarketers may not call before 8 a.m. or after 9 p.m.;
- Telemarketers must tell you it is a sales call and must identify the seller at the beginning of the call. If it is a prize promotion, they must tell you that no purchase or payment is necessary to win;
- It is illegal for any telemarketer to misrepresent any information;
- Telemarketers must tell you the total cost of the products or services offered and any restrictions, or that a sale is final or non-refundable, before you pay. In a prize promotion, they must tell you the odds of winning;
- It is illegal for a telemarketer to withdraw money from your checking account without your express authorization; and
- You do not have to pay for credit repair until the services have been delivered.

If you have any doubt about a telephone offer, you should request information in writing before making a decision.

Warranties

Most major purchases come with a written warranty, but it is not legally required. Warranties can vary greatly, so you should compare available warranties before making a purchase. It is important to note expenses that are excluded, how long the warranty lasts, and whether there are any conditions on the warranty. Warranties are included in the contract price while service contracts, sometimes called “extended warranties,” are separate and cost extra.

Under Delaware law, there is generally an “implied warranty” that the goods are suitable for their proposed use. However, this implied warranty may be excluded or modified by specific language to that effect.

The Federal Trade Commission publishes free brochures on consumer-related issues. For a complete list of publications, write to Best Sellers, Public Reference, Federal Trade Commission, Washington, DC 20508, or call (202) 326-2222, TDD (202) 326-2502.

Consumer Pitfalls to Avoid

DON'T pay a home repair contractor before the job is completed to your satisfaction.

DON'T wait to address a legal problem; it may get worse.

DON'T co-sign loans for others, including your children, unless you can afford to pay back the entire loan on your own.

DON'T accept credit card offers that you do not need and cannot afford.

DON'T sign anything until you have read it and understand it. Ask to take the proposed contract with you so you can read it thoroughly without time constraints. If that is not permitted, do not sign the contract. Do not trust anyone who offers you a discount for signing quickly.

DON'T assume that anyone is offering you the best available financing, even if they claim to be doing so.

DON'T add another person's name to your bank account or the deed to your house without legal advice.

AGE DISCRIMINATION IN EMPLOYMENT

If you are aged 40 or older, Delaware law and the Federal Age Discrimination in Employment Act protect you from discrimination based on age. The Delaware law applies to employers who have four or more employees. The federal law applies to those with 20 or more employees.

Discrimination may involve refusal to hire you, discharging you or otherwise discriminating against you with regard to pay, fringe benefits, conditions or privileges of employment, because of age. There are some exceptions, such as where age is a “bona fide occupational qualification” reasonably necessary to the normal operation of a particular business, such as driving a school bus.

A charge of discrimination may be filed with the Delaware Department of Labor, Division of Industrial Affairs, Office of Labor Law Enforcement (NCC office 761-8200; Milford office 422-1134; Sussex office 856-5331). The Office handles both state and federal claims. Under state law you have 90 days from the discrimination in which to file a claim; under federal law you have

300 days. In order to preserve your claim, you should file as soon as possible. If you receive an unfavorable decision, you will be given 15 days in which to file an appeal.

You may also want to consult an attorney.

DISABILITY DISCRIMINATION

If you have a disability, a variety of state and federal laws protect you from discrimination based upon that disability. These laws include employment, housing, access to public accommodations, governmental services and transportation.

Employment

If you are a qualified employee with a disability, Delaware law and the Federal Americans with Disabilities Act (ADA) prohibit discrimination based upon disability and require covered employers to make reasonable accommodations to take into account an employee's disability. Discrimination may involve a refusal to hire, discharge, or otherwise failing to make reasonable accommodations in the terms and conditions of employment. You are a qualified employee with a disability if you have, or are regarded as having, a physical or mental impairment that substantially limits a major life activity and you can perform the essential elements of your job with (or without) reasonable accommodations. Additionally, there are strict limitations on what questions a prospective employer may ask about a disability before making a job offer. Generally, employers may not ask about disabilities or medical treatment during the interview process, or require a pre-offer examination.

Generally, the federal law applies to employers with 15 or more employees and the state law applies to employers with 20 or more employees. If you wish to file a disability discrimination complaint against your employer, you must file it with the Delaware Department of Labor. Under federal law, you must file your complaint within 300 days of the discriminatory act. For claims under Delaware law, the complaint must be filed within 90 days of the discriminatory act, or within 120 days of the discovery of the act, whichever is later. The Department of Labor will either investigate the complaint itself or refer the complaint to the federal Equal Employment Opportunity Commission (EEOC) in Philadelphia for investigation.

After the investigation is completed, the federal or state agency will send you a letter telling you whether or not reasonable cause exists to believe that discrimination occurred. If no settlement can be reached, there may be a hearing before the state Equal Employment Review Board. Either party may appeal the Board's decision to the courts. In a federal case, if the EEOC determines that there is reasonable cause to believe discrimination occurred, and the matter cannot be resolved by negotiation with the employer, the EEOC can bring an action in federal court or it can authorize you to file a private civil suit within 90 days of being notified. The EEOC will send you a "right to sue" letter, even if it concludes that no discrimination occurred.

If you need further information, or want to file a complaint, contact:

Delaware Department of Labor
Labor Law Enforcement
4425 N. Market Street
Wilmington, DE 19802
(302) 761-8200

Housing

Both federal and state law prohibit discrimination on the basis of disability in the rental or sale of housing. The state and federal laws apply to most landlords and most sellers of real estate. State law also prohibits such discrimination on the basis of age. These laws mean that landlords cannot refuse to rent to you because of your disability, or have different lease provisions for people with disabilities. The laws also mean the landlords must make reasonable accommodations for people with disabilities. For example, even if a landlord has a “no pet” rule, it cannot apply the rule to a blind person who has a seeing eye dog, a person who has an assist animal, or a person who needs an animal for psychological reasons. Private landlords must also permit tenants with disabilities to make reasonable alterations to the home or apartment that are necessary because of the person’s disability. The tenant, however, has to pay for these accommodations. Landlords in subsidized and public housing programs may have to pay for such reasonable alterations.

If you believe you have been discriminated against in housing because of your disability, you can file a complaint under state and federal law with the Human Relations Commission, which investigates and attempts to resolve complaints under both the federal and state statutes. If the matter cannot be mediated, the Human Relations Commission can award damages and other relief. Federal claims are sometimes referred to HUD for conciliation and/or administrative relief. Either party can appeal a Human Relations Commission decision to the courts. Alternatively, you can file a court action in state or federal court within two years. You do not have to file a complaint with the Human Relations Commission before filing a case in court. Under both the state and federal law, any administrative complaint must be filed within one year of the discriminatory act.

For more information contact:

Human Relations Commission
Carvel State Building, 4th Floor
820 North French Street
Wilmington, DE 19801
(302) 577-5050

Office of Fair Housing & Equal Opportunity
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3380
(215) 656-0647

Public Accommodations

Both state and federal laws require private entities that are open to the public to take certain actions to make their places of business accessible to people with disabilities. These laws apply to both old and new buildings but the standards differ. Buildings constructed for occupancy or substantially renovated after January 26, 1993 must be built in compliance with federal regulations that ensure such buildings are accessible to people with disabilities. Owners of properties constructed before that date must make those alterations that are “readily achievable” to permit access by individuals with disabilities. Such alterations could include the installation of curb cuts or ramps, widening of doors and removal of steps. In addition to architectural accessibility, the statute also applies to services offered by businesses and may require the business to provide auxiliary aids. For example, under some circumstances a doctor’s office must provide an interpreter for a person who is deaf if an interpreter is necessary for the doctor to be able to communicate effectively with his or her patient.

If you believe you have been discriminated against by a place of public accommodation, you can file a federal lawsuit against the business in federal court. Alternatively, you can contact the United States Attorney’s Office for Delaware. That office can attempt to resolve the matter informally and has the legal authority to file an action in federal court in appropriate cases.

You can also file an administrative complaint with the Human Relations Commission to enforce the state Equal Accommodation Law. You must file such a complaint within 90 days of the alleged act of discrimination.

Governmental Services

Federal law prohibits state and local governmental agencies from discriminating against individuals on the basis of their disability in employment and in services offered by the governmental agency. Governmental buildings should also be accessible to people with disabilities. Examples of actions required by governmental bodies could include providing interpreters at legislative sessions. If you believe you have been discriminated against by a local governmental agency on the basis of disability, you can file an administrative complaint with one of eight designated federal agencies, including the Department of Justice and the Department of Transportation. Alternatively, you can file an action in state or federal court.

Transportation

Federal law requires public transportation providers to take certain steps to make public transportation systems accessible to people with disabilities. One primary effect of this law has been the expansion of paratransit services to people with disabilities. Paratransit services must be provided when the fixed route (bus) system is not fully accessible to people with disabilities. Other groups, such as the elderly, may be eligible to use the paratransit system if sufficient capacity exists after providing service to those individuals eligible under the Americans with Disabilities Act. Paratransit services must be made available in a manner that parallels the fixed route system. If you believe you have been discriminated against on the basis of disability by a

transportation system, you can file a complaint with the United States Department of Transportation or file an action in state or federal court.

Recipients of Federal Funding

Private and governmental organizations that receive federal funding are also covered under the Rehabilitation Act of 1973. The Rehabilitation Act prohibits discrimination in employment and services on the basis of “handicap” (although the term “handicap” is considered offensive by many person with disabilities, it is used in this section because it is the term used in the statute).

OTHER RESOURCES

The **Helpline** referral system is available Monday through Friday 7:30 a.m. to 5:00 p.m. by calling 1-800-464-4357. The Helpline provides a link to a wide variety of state and community services.

The **Legal Helplink** may be reached at 478-8850 in New Castle County and 1-800-736-0606 in Kent and Sussex Counties. It is a centralized intake system for Delaware Volunteer Legal Services, the Legal Services Corporation, Community Legal Aid Society, Inc., and the Lawyer Referral Service. These programs are described elsewhere in this booklet.

The **Delaware Commission for Women** provides information and seminars for people who want to get divorced without an attorney. They have also provided seminars on Elder Care in the past. Information and schedules are available by calling 761-8005.

The **Eldercare Locator Service** is a nationwide hotline that provides assistance in locating community services. It may be helpful if you are trying to assist an elderly relative outside of Delaware. The telephone number is 1-800-677-1116.

Community Resources For Older Delawareans

SERVICE	NEW CASTLE	KENT	SUSSEX
ADULT PROTECTIVE SERVICES (Division of Services for the Aging and Adults with Physical Disabilities www.DSAAPD.com)	453-3820	1-800-223-9074 (Kent & Sussex) or 422-1386 (Kent & Sussex)	
CAREVAN www.inglesidehomes.com	888-2273		
COMMISSION FOR WOMEN, DELAWARE www.delawareworks.com	761-8005		
COMMUNITY LEGAL AID SOCIETY, INC www.declasi.org	575-0660 (1-800-292-7980)	674-8500 (1-800-462-7070)	856-0038 (1-800-537-8383)
CONSUMER PROTECTION UNIT- ATTORNEY GENERAL'S OFFICE	577-8600	1-800-220-5424 (Kent & Sussex)	
DELAWARE INSURANCE COMMISSIONER www.state.de.us/inscom		1-800-282-8611 (for all counties)	
DELAWARE VICTIM SERVICES		1-800-VICTIM1 (842-8461) (for all counties)	
DELAWARE VOLUNTEER LEGAL SERVICES www.dvls.org	478-8680	1-800-773-0606 (all counties)	
ELDER LAW PROGRAM (Community Legal Aid Society, Inc.)	575-0666	674-3684	856-4112
ELDERCARE LOCATOR SERVICE		1-800-677-1116 (Nationwide Service)	
ELDERINFO LINE - INSURANCE COMMISSIONER'S OFFICE www.state.de.us/inscom/eldindex.htm		739-6266 or 1-800-336-9500 for all counties	
ELDERLY CRIME VICTIM SERVICE (Delaware Center for Justice)	658-7174		