SENIOR CITIZENS HANDBOOK

Laws and Programs Affecting Senior Citizens In North Carolina

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Acknowledgments to the Eleventh Edition

This is the Eleventh Edition of the Senior Citizens Handbook, which has been prepared by the Project Grace Committee as a joint effort of the Young Lawyers Division and the Elder & Special Needs Law Section of the North Carolina Bar Association. The handbook was first written and published by the Law and Aging Committee of the Young Lawyers Division in 1983 and has been updated regularly.

This Eleventh Edition replaces the Tenth Edition, published in 2012.

This handbook follows the format of previous editions, which have been well received as a valuable resource for North Carolina seniors, their families, their caregivers, and others throughout North Carolina assisting seniors. The committee has updated the handbook to reflect changes in the law and to expand on some of the information provided in the previous editions.

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All lawyers contributing to this effort are members of either the Young Lawyers Division or the Elder & Special Needs Law Section of the North Carolina Bar Association. In addition to the Project Grace Committee that prepared this handbook, the Young Lawyers Division and Elder & Special Needs Law Section have other committees comprised of lawyers who volunteer their time to benefit seniors and the general public in areas such as Will and Advanced Directive Clinics, legal aid support, youth education, child advocacy and protection, senior advocacy and protection, and disaster relief. The Young Lawyers Division and Elder & Special Needs Law Section to aid lawyers in improving their skills and competence so that they will be better able to serve both their clients and the public interest.

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Introduction

Programs for and rights of older adults are often confusing. Special programs and protections are available, but many older adults are not aware of them and do not know where to seek additional information concerning programs and services for seniors.

This handbook provides basic information about rights and opportunities of older adults and warns of dangers confronting the elderly. More information on these issues can be found on the Internet at the Division of Aging and Adult Services' website at *www. ncdhhs.gov/divisions/daas*. Internet access can be obtained at many local libraries and senior centers.

This handbook is intended to be a brief overview of some of the laws affecting North Carolina's senior citizens. It is not intended to replace the advice of a lawyer. The facts of your individual situation will affect how the law applies to you. You should seek the advice of an attorney when making any important legal decision and never rely solely on this handbook. If you cannot afford to hire an attorney or do not know any attorneys, the last section of this handbook contains a list of places to contact for legal advice and assistance. Please remember that laws can change rapidly, and you should always check to make sure that the information in this handbook is still current.

Special Notice For 2016 Revision

This Eleventh Edition of the Senior Citizens Handbook was revised in 2016. While the NCBA Young Lawyers Division and Elder & Special Needs Law Section have made every effort to verify the accuracy of information contained in the handbook at the time of publication, the laws and regulations in this area change frequently. As a result, some information included in the handbook, particularly benefit eligibility limits, dollar amounts, and tax rates, may change in the future. It is important that you never rely solely on this handbook for information and that you seek the advice of a lawyer before making any legal decision.

MONEY MATTERS

Social Security, Retirement Benefits and Disability Benefits

The name of the law that created our Social Security program in 1935 is the "Federal Insurance Contribution Act." The goal of our Social Security system is to provide financial assistance and health care to the elderly, the disabled, the survivors of deceased workers, and individuals with low incomes. Social Security taxes (referred to as "FICA" on some paychecks) finance all Social Security benefits, including retirement, disability, survivors, and Medicare.

Eligibility For Social Security:

Whether or not you are eligible for Social Security benefits depends on how long you have been working and paying Social Security taxes. As you work and earn money, you earn Social Security "credits". Every year, the amount of earnings needed for one credit increases slightly. In 2016, you must earn \$1,260 in covered earnings to receive one credit; \$5,040 must be earned to receive the maximum 4 credits per year. If you are like most people, you will earn in your lifetime many more credits than you need to qualify for Social Security benefits.

Retirement Benefits:

To qualify for retirement benefits, you must meet the following requirements:

1. You must apply for benefits. Enrollment is not automatic. You can apply by calling 1-800-772-1213 (1-800-325-0778 if you are deaf or hard of hearing). You can also apply in person by setting up an appointment at your local Social Security office, or online by completing an Internet application at *www. ssa.gov.*

2. Generally, you must have worked at least 10 years and earned at least 40 credits. If you were born before 1929, however, lower "credit" requirements will apply to you. Special rules also allow divorced spouses without sufficient credits of their own to receive retirement benefits based on their former spouse's credit earnings, if they were married for at least 10 years.

3. You must be at least 62 years old. The amount of your benefits will depend on your average earnings over your working career, and the age you elect to start receiving your benefits (the month you elect to start receiving benefits may also impact the amount of benefits paid in some cases). If you start your retirement benefits at age 62 (the earliest possible retirement age and often referred to as "early retirement") your benefit will be lower than if you waited until a later age. Full retirement age is 65 for persons born in 1937 or earlier and gradually increases to age 67 for those born in 1960 or later as follows:

Year of Birth	Full Retirement Age	
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	

If you are age 60 or over and not yet receiving Social Security Benefits, the Social Security Administration will mail you a Social Security Statement each year approximately three months before your birthday. The Statement provides an estimate of your retirement benefits at age 62 (early retirement), full retirement age, or age 70. You can also request an Estimate Statement by calling the toll-free Social Security number (1-800-772-1213) on a weekday between 7 a.m.-7 p.m., or your local Social Security office.

Not everyone retires at full retirement age. You may decide to continue working full time beyond that age, or live off of other assets. Working beyond full retirement will increase your Social Security benefit. Each additional year you work adds another year of earnings to your Social Security record. Higher lifetime earnings may result in higher benefits when you retire. In addition, if you choose to delay receiving retirement benefits, your benefit will be increased by a certain percentage. These increases will be added in automatically from the time you reach your full retirement age until you start taking your benefits, or you reach age 70. The percentage varies depending on your year of birth. See the chart below to determine the increase that will apply to you:

Increase for Delayed Retirement:

Year of Birth	Yearly Rate of Increase	Monthly Rate of Increase
1933-1934	5.5%	11/24 of 1%
1935-1936	6.0%	1/2 of 1%
1937-1938	6.5%	13/24 of 1%
1939-1940	7.0%	7/12 of 1%
1941-1942	7.5%	5/8 of 1%
1943 or later	8.0%	2/3 of 1%

Note: Persons born on January 1 of any year should refer to the rate of increase for the previous year.

If you do elect to delay applying for retirement benefits, you should still apply for Medicare at age 65. In some cases, medical insurance costs more if you apply after age 65. Because the rules regarding Social Security benefits are complicated, it is often a good idea to contact the Social Security Administration the year before the year you wish to actually retire.

Disability Benefits:

To qualify for disability benefits, you must be unable to work due to a physical or mental impairment that either (1) is expected to result in death; or (2) is expected to keep you from engaging in "substantial gainful activity" for at least 12 months.

The rules regarding whether you have a disability that triggers payment of Social Security disability benefits are complex. The fact that you may qualify for disability benefits from private plans or other government agencies does not mean that you will automatically be eligible for Social Security disability benefits. You should consult a lawyer who is experienced with Social Security disability claims if you want to make a claim for these benefits. To receive Social Security disability benefits, you must meet the following requirements:

1. You must apply for benefits by telephone, online or by setting up an appointment at your local Social Security office.

2. You must have worked and earned enough credits. To find out how many credits you need to qualify, contact your local Social Security office or visit *www.ssa.gov*.

What If Your Disability Application Is Denied?

Most applications for disability are denied at the first level of review. If you are denied, you can appeal your application, and ask the Social Security office to review your case again. This is known as a "Request for Reconsideration." You have the right to request a reconsideration of your application within 60 days of the date of the denial of your claim. It is important to request a reconsideration within the 60-day period—if you do not, your case will start over and you may lose any right to back-benefits accumulated while your claim is pending. Many claimants are denied upon reconsideration. The second level of appeal takes place in front of an administrative law judge (ALJ). It is at this level that you can appear and testify as to your impairments. There are appeal levels beyond that. If your Social Security Disability application is denied, you should consult a lawyer experienced with Social Security disability cases.

Working After Retirement Or Disability Payments Have Started:

Retirement Benefits - After retirement, you may want to go back to work on a full-time or part-time basis. If you return to work after reaching your full retirement age, you can generally work without any reduction in your monthly benefit, no matter how much you earn. If you return to work before reaching your full retirement age, your retirement benefits will be reduced if your earnings are over the annual limit (\$15,720 in 2016). If you earn more than the annual limit in the year before the year in which you reach full retirement age, your Social Security benefits will be reduced by \$1 for every \$2 earned over the annual limit. In the year in which you reach your full retirement age, your benefits will be reduced \$1 for every \$3 you earn over a different limit (\$41,880 in 2016) until the month you reach full retirement age. Then you can work without any reduction in the amount of your monthly benefit, no matter how much you earn. You should keep in mind, however, that you may be subject to income taxes on Social Security benefits if you have substantial income in addition to your retirement benefits.

Disability Benefits - If you are receiving disability benefits, you are entitled to work for a "trial period" of up to 9 months without having your benefits stopped or reduced, as long as you report your work and continue to have a disabling impairment. There is no limit on the income you can earn during this 9-month trial period. After these 9 months, however, Social Security will review your earnings to see if they amount to "substantial gainful activity." If they are substantial, Social Security may regard you as no longer qualifying as disabled and may terminate or reduce your benefits. There are additional rules about extending your period of eligibility. Usually monthly earnings of \$1,130 or more in 2016 are considered "substantial" for disability benefits purposes if you are disabled (\$1,820 if you are blind). Note that this amount changes periodically, and there are different rules for a "trial work" period. Therefore, it is imperative that you consult the Social Security Administration or an attorney if you have questions.

Supplemental Security Income (SSI):

The Supplemental Security Income (SSI) program is also administered by the Social Security Administration. The goal of the SSI program is to provide monthly income to the elderly, the blind, and the disabled. You can receive SSI even if you have never worked or do not qualify for Social Security. In addition, you can receive both SSI and Social Security benefits, as long as you qualify for both programs. Although this program is administered by the Social Security Administration, the money to pay for these benefits does not come from Social Security taxes; instead, these benefits are financed by the U.S. Treasury's general revenue fund. In 2016, the maximum amount a single individual can receive in SSI benefits is \$733 per month, and the maximum amount a couple can receive is \$1,100 per month.

Eligibility For SSI:

You may be eligible for SSI if you meet the following requirements:

1. You are considered elderly, blind or disabled under the SSI eligibility rules. If you are age 65 or older, you are considered elderly for SSI eligibility purposes. The rules for determining whether you are "blind" or "disabled" are more complex. Consider consulting a lawyer experienced with SSI if you want to make a claim for these benefits.

2. You are a single person with \$2,000 or less of countable assets; or a couple who together have \$3,000 or less of countable assets.

Examples of countable assets include some real estate (but not your primary residence), personal belongings, bank accounts, cash, and investments (like stocks, IRAs, 401ks, etc.). Examples of assets which will not be counted include your home, one car (generally), and a burial plot for you or your immediate family.

In order to determine your monthly SSI benefit, the Social Security office will ask about your "unearned income," which the Social Security administration defines as including interest on bank accounts, dividends payable from stocks, Social Security payments, pensions, and gifts. Any unearned income over \$20 a month will reduce your SSI benefits. Additionally, any earned income over \$65 a month will reduce your SSI benefits.

Where you live can also affect your SSI benefit. If you live in a friend's or relative's home, or a nursing home, your payments may be reduced. Also, an unmarried couple living together may be listed by the Social Security Administration as "holding out as husband and wife." If this happens and both persons are receiving SSI, then each check will be reduced to reflect the amount that a married couple would receive. If you feel that such rulings are wrongly applied to your situation, you can appeal them.

Appeals Process For Social Security And SSI:

If your application for Social Security or SSI benefits is denied, or if any of your benefits are reduced or terminated, you may appeal the decision. Appeals can generally be made at your local Social Security office, unless they are being appealed to Federal Court.

Here are the steps:

1. First, make a written request for a "reconsideration" within 60 days of the denial. Note: If you are already receiving benefits and you file your request for reconsideration within 10 days of the denial, your benefits will continue until the reconsideration decision is made.

2. If this fails, you must request a hearing before an Administrative Law Judge within 60 days of the denial of reconsideration.

3. If you are denied again, you can request a review by the Social Security Appeals Council in Arlington, Virginia within 60 days of the hearing decision.

4. If the Council refuses to review your case or decides against you, you have another 60 days to appeal to the local U.S. District Court (Federal Court).

If you win an appeal at any level, you will receive back benefits. Under certain circumstances, you may be entitled to have benefits continued during the time you are appealing a decision. If you lose your appeal, you may have to pay this money back, unless you qualify for what is known as a "waiver."

Appeal forms are available from any Social Security Administration office or online at *www.ssa.gov*. You are allowed to have a friend or relative assist you in an appeal. You also should consider contacting an experienced attorney to help you with an appeal concerning the Social Security or Supplemental Security Income programs. Information about how to contact an attorney is listed at the end of this handbook. A private lawyer's fee is set by the Social Security Administration according to a written fee agreement between you and the attorney. The Social Security Administration will pay the lawyer directly out of your award, up to a maximum of 25% of past due benefits or \$6,000, whichever is less. Legal Aid lawyers do not charge a fee.

Representative Payees:

Other people can receive Social Security benefit checks for beneficiaries who are not able to manage their own affairs. These people are known as representative payees. Their primary responsibility is to use the Social Security check for the beneficiary's basic or personal needs.

The person designated to receive checks is usually a spouse or other relative, friend or legal guardian. An institution such as a nursing home can also be designated to receive Social Security benefit checks and may, in some cases, place checks for several recipients in a "collective account." Institutions may charge a fee for serving as a representative payee. The maximum fee that can be charged is 10% of the monthly amount or \$25, whichever is less.

The process of having someone appointed to receive checks (called a "Representative Payee") begins with relatives or friends notifying the Social Security office that you are incapable of handling your own affairs. A doctor's statement to that effect should be filed. The Social Security Administration then determines whether you are mentally competent to continue receiving your own checks. Even if you have given someone power of attorney, a separate application must be filed with the Social Security office before someone else can receive your Social Security checks.

Any appointment can be challenged. For more details, call or visit your Social Security office.

Electronic Payment Of Benefit Checks:

Since 2013, federal law requires that you receive your benefit check electronically. You may choose to have your benefit check directly deposited into your bank account, or deposited into a debit card account. For more details, contact your bank or the Social Security Administration, or visit their website dedicated to direct deposit information at *www.ssa.gov/deposit/*.

Federal Supplemental Nutrition Assistance Program (Former Food Stamps Program)

The Supplemental Nutrition Assistance Program (SNAP) is a federal program, managed by the United States Department of Agriculture, which assists low-income individuals and families with buying the food that they need for nutritionally adequate diets. Applications are processed by the Department of Social Services office in each North Carolina county. If you move from one county to another in North Carolina, your eligibility for SNAP should not be affected. If you are eligible to receive SNAP benefits, your monthly benefits will be deposited into an Electronic Benefit Transfer (EBT) account, and you will receive an EBT card that can be used to purchase certain groceries.

Applying For SNAP:

You may request a SNAP application from your Social Services office in person, online (*epass.nc.gov*), over the phone, or by mail. After you have completed your application, a worker may hold a private interview with you or another member of your household. If you are age 60 or older, or if you are disabled, a worker can interview you at home or by telephone. In addition, if you are applying for or receiving Supplemental Security Income (SSI), you may also apply for SNAP in your local Social Security office. You should receive your benefits within 30 days of your original application date.

Eligibility:

Whether a household is eligible for SNAP benefits depends on the amount of income earned plus all other resources of the household. Under the eligibility rules, almost all types of income are counted, including wages, public assistance, retirement, disability benefits, and pensions. Only households with income at or below certain limits will qualify for SNAP. For a single-person household, the 2016 income limit is \$1,276 per month. To determine the income limit for your family size, check with your County Department of Social Services or visit *www.ncdhhs.gov*. Any change in your household's income must be reported to the Department of Social Services. In addition to meeting the income requirement, households with a person over age 59, or with a disabled person, may only have \$3,250 worth of countable resources to be eligible (\$2,250 for households without a person over age 59 or without a disabled person). Countable resources include cash and money in checking and savings accounts, stocks, bonds, and any land on which you do not live. Certain assets remain non-countable resources, including your house and its surrounding land, certain automobiles, and resources of an individual receiving SSI or Work First benefits. Any change in your household's resources must be reported to the Department of Social Services.

After you add your income and resources, you may subtract certain deductions. These deductions include a standard deduction of \$155 for a household of 1 to 3 people and \$168 for a household of 4 or more people, a 20% deduction from the income you earn, and a deduction for dependent care costs, medical costs and shelter costs. After taking into account all of your deductions, the Social Services office will determine whether you qualify for SNAP.

Using Your SNAP Benefits:

The SNAP program provides a monthly allotment of benefits issued via Electronic Benefit Transfer cards (EBT Cards). Most stores that sell food will also accept EBT payments just as they accept cash. No sales tax is charged on any item purchased with your EBT card.

SNAP benefits may be used to buy food, including fruits, meat, vegetables, bread, coffee, canned foods, drinks and desserts. SNAP benefits cannot be used to buy alcohol, cigarettes, medicines, pet food, household supplies or personal hygiene supplies.

Right To Appeal:

You can appeal any action taken on your SNAP case by requesting a hearing in writing, in person, or over the phone. It is recommended that you consult a lawyer experienced in this area early in the process.

Bank Accounts

Joint Bank Accounts:

If you have a joint bank account with your spouse, child, or another person, that account likely has a right-of-survivorship benefit. This means that when you die, all of the money in the account will automatically become the property of the person who owns the account with you. The account does not become part of your estate. It is recommended that you only use bank accounts with rights of survivorship carefully and sparinglynaming one child on an account may accidentally disinherit other children who are not so named.

If your joint account does not have right of survivorship, then at your death, your share of the money in the account will pass under your will to the person(s) you name as beneficiary(ies) with the bank or the person(s) that you list in your will. If you do not have a will, North Carolina has laws that determine how your property will be divided at your death among your spouse, children, parents or other relatives. It surprises many people to learn that if you die without a will, your living children or parents may split the money with your spouse, unless you have a will that says something different.

Your bank or savings institution can tell you if your joint bank account has a right of survivorship or beneficiary designation by looking at the signature card you signed when you opened the account.

Beneficiary-Designated Accounts:

Some banks, savings institutions and credit unions offer accounts which allow you to name a beneficiary who will receive the money in the account at your death. In this way, these accounts are similar to a joint bank account with the right of survivorship. However, there is a very important difference: if you only name a beneficiary, then you are the only owner and only you can make withdrawals from the account while you are living. The beneficiary has no right to the money in the account until your death.

Personal Agency Accounts:

Many people would like to have a trusted child, relative, or friend manage their bank account for them, but they do not necessarily want that person to be a joint owner of the account. Some banks, savings institutions and credit unions offer a type of account called a personal agency account. These accounts allow you to name a person who may (1) make deposits into the account for you and (2) write checks for you. However, that person will have no ownership right to the money in the account, neither during your lifetime nor after your death. This type of account will be useful if you need a friend or relative to help you manage your bank account, but you want to leave the money in the account to someone else. For example, you may want one child to help manage your bank account for you, but you want all of your children to split the money evenly in the account at your death. At your death, the money in your account will pass under your will to the person(s) you name as beneficiaries in your will. If you do not have a will, North Carolina has laws that determine how your property should be divided among your spouse, children, parents or other relatives.

Income Taxes

Certain types of payments to you are taxed as income; others are not. For example, monetary gifts are not considered income, and interest earned on certain municipal bonds is tax free, as well. Salaries, wages, payments from a pension or profit sharing plan, and investment income are examples of types of income that are taxed.

In the past, Social Security payments were not taxed, but now, if your income exceeds a certain amount (which varies depending upon whether you are married and whether you file a joint return), part of your Social Security payments may be taxable for federal income tax purposes. In the instructions for your IRS Form 1040, there is a worksheet that will help you determine whether any part of your Social Security payments are taxable. Social Security payments are not taxed by the state of North Carolina.

If you have taxable income, you usually will be required to file both a state and a federal income tax return. If you have a small amount of income, you may not be required to file a return, but most people should file a return even if they do not have to.

Personal Exemptions:

An exemption means that your income, for tax purposes, is reduced by the amount of the exemption before the determination of the tax you owe. Almost anyone who files a federal income tax return is allowed a personal exemption (exceptions include persons who are eligible to be claimed as a dependent by someone else and persons with a high annual income. Additional exemptions are allowed in some instances, if you provide primary support for a dependent (such as a parent, child, or grandchild) who has less than a certain amount of income (\$4,000 for 2015). See *www.irs.gov* for additional information.

Each exemption reduces your income for tax purposes by 4,000, for tax year 2015. So if you were entitled to 4 exemptions, your income for tax purposes would be reduced by 16,000 ($4,000 \times 4$). This exemption amount is adjusted annually for inflation.

Income Tax Credit:

You may also be eligible for a tax credit known as the "Credit for the Elderly or Disabled." In general, this credit is available if your income does not exceed the specified level as adjusted annually for inflation, and you were 65 years of age before the close of the tax year or you are permanently and totally disabled.

This credit can only reduce the tax you owe; it cannot result in a refund. The credit is computed on Schedule R. If you think you may be eligible for the federal tax credit, contact the IRS office near you or your tax advisor.

Earned Income Tax Credit:

If you are working and have a child or grandchild living with you, or if you meet certain other rules, you may be eligible for a tax credit called the Earned Income Tax Credit.

Earned income for this tax credit means wages, salaries, tips, and earnings from self-employment. It does not include pension and annuity payments. This credit is refundable, meaning that it can reduce your taxes below zero and may result in a refund to you, even if no taxes were withheld for you.

Medical Expenses:

If you file a tax return and itemize your personal deductions, you will want to consider your medical and dental expenses. Medical expenses include doctor and hospital bills, health insurance costs, prescription medicines and drugs, as well as hearing devices, glasses, nursing help, equipment such as elevators for the physically disabled, transportation costs to and from medical care, and nursing home expenses, if the home is necessary for medical care.

Until December 31, 2016, medical expenses are deductible if they total more than 7.5% of your adjusted gross income, if you are age 65 or older. If you are currently under age 65, and regardless of your age after December 31, 2016, medical expenses will only be deductible if they total more than 10% of adjusted gross income. If you have Medicare Part B coverage, the amount you pay each month is a deductible health insurance cost. The basic cost of Medicare insurance (Medicare Part A) is not deductible, unless voluntarily paid by the taxpayer for coverage.

Taxable Income: North Carolina:

In North Carolina, "taxable income" is defined as taxable income for federal income tax purposes, adjusted for certain deductions and additions. North Carolina does not tax Social Security benefits. The State of North Carolina has recently moved to a flat tax system, taxing income at 5.75% (in 2016), in lieu of the old tax brackets of 6%, 7%, and 7.75% which were based on filing status and income limits.

Individual Retirement Accounts ("IRAs")

IRAs are accounts that you can set up with a bank or broker to save for your retirement. If you are not an active participant in a pension or profit sharing plan sponsored by your employer, the amount you contribute to an IRA is tax deductible. If you are an active participant in a pension or profit sharing plan, the amount you contribute may still be deductible, depending upon your income. You are not taxed on your deductible contribution or on any income earned by your IRA, until you withdraw your money. Withdrawals are taxed at your ordinary income tax rate. Thus, IRAs allow you to take advantage of "taxdeferred" savings.

Roth IRAs are relatively new saving tools, created in 1998. Contributions to Roth IRAs are not tax deductible, but qualified distributions are tax free. Therefore, Roth IRAs allow you to take advantage of "tax free" growth on savings. Contributions to Roth IRAs are restricted by certain income limits.

Your financial advisor, accountant, or attorney can answer your questions about IRAs and Roth IRAs. You must generally begin taking distributions from a regular IRA once you attain age 70

1/2; however, as of the date of publication, Roth IRAs do not have similar minimum distribution requirements, and you may continue delaying distributions from – and even continue making contributions to – Roth IRAs beyond age 70.

Employer-Sponsored Retirement Plans

If you have worked for a private company or have been a member of a union or any other employee organization, you may be eligible for retirement benefits from a pension or profit sharing plan sponsored by your employer. You should check with your past and current employers to see if you are eligible.

The amount of time you work for an employer or belong to a union may affect your eligibility for benefits. In addition, if you stopped working for the employer and later returned to work, eligibility for benefits may be affected. Accrued benefits, such as pension credits, are usually based upon the length of time that you worked for the employer who created the plan.

Your employer must provide you with a booklet describing the plan's features, known as the "summary plan description." This booklet will explain how the plan operates and it will explain your rights under the plan. If you are denied benefits under your employer's retirement plan and you think you are entitled to them, you may appeal by requesting a hearing from your employer and presenting your complete work record. If you think the terms of the plan are unreasonable, say so. The terms may not comply with the law that sets minimum standards for retirement plans. In North Carolina, this law is enforced by the Employee Benefit Security Administration of the U.S. Department of Labor. The local office for North Carolina residents can be contacted by visiting their website at *www.dol.gov/ebsa*, by calling (404) 302-3900, or by writing to:

U.S. Department of Labor Atlanta Regional Office Pension and Welfare Benefits Administration 61 Forsyth Street, S.W., Suite 7B54 Atlanta, GA 30303

HEALTH CARE

Medicare

Medicare is a multi-part health insurance program established under the Social Security Act and administered by the U.S. Department of Health and Human Services, Center for Medicare & Medicaid Services (CMS), and the Social Security Administration. It is designed to help meet the hospital and medical costs of senior citizens (generally age 65 or over) and some disabled persons under age 65.

Medicare Part A (hospital insurance) helps cover the costs of hospital stays, hospice care, skilled nursing facility care or, if ordered by a doctor, care in your home by a home nursing care agency after you leave the hospital. Part A also covers some hospice care in cases of terminal illness. Doctors' services are not covered by Part A. There is generally no charge for Part A coverage.

Medicare Part B (medical insurance) is a supplementary insurance program for senior citizens (generally age 65 or over) and some disabled persons. It helps cover doctors' and outpatient hospital services, medical supplies, rural health clinics, ambulances (when medically necessary), physical therapy and some preventative services not covered by Part A. There is generally a monthly premium for Part B coverage.

Medicare Part C is commonly referred to as Medicare Advantage plans, and is essentially a combination of Part A (hospital/ inpatient coverage) and Part B (doctor visits/outpatient coverage), and often includes prescription drug coverage. The difference between Medicare Advantage plans from Parts A and B is that Medicare Advantage plans are administered by Medicareapproved private insurance companies, rather than by the government. However, Medicare Advantage plans are still subject to government oversight and must follow the rules established by CMS. The cost of Medicare Advantage plans can vary greatly from plan to plan.

Medicare Part D (prescription drug) helps cover the cost of prescription drugs for seniors. As with Medicare Advantage plans, Part D plans are provided by Medicare-approved private insurance companies, and the cost of Part D plans varies greatly; however, all plans must cover medically necessary drugs. There is generally a monthly premium for Part D coverage which varies greatly from plan to plan.

Medigap (Medicare supplement) policies are also available for purchase from private insurance companies. These plans offer coverage for the copays, deductibles, and coinsurance for Medicare covered services and goods.

Applications for Medicare benefits are handled online or at your local Social Security Administration office (to find the office nearest you, call 1-800-772-1213 or visit their website at *www.ssa.gov*). For general information on Medicare eligibility, benefits, and coverage, call 1-800-MEDICARE (1-800-633-4227) or visit their website at *www.medicare.gov*. TTY users should call 1-877-486-2048.

Eligibility:

Generally you are eligible for Part A (hospital insurance) if:

1. You are age 65 or over or qualify for Social Security retirement benefits, or Railroad Retirement benefits (you are entitled to benefits the first day of the first month you meet all eligibility requirements).

2. You are disabled and have been receiving Social Security disability benefits or Railroad Disability benefits for the past 24 months (you are entitled to benefits at the beginning of the 25th month).

3. You are receiving regular dialysis or need a kidney transplant because of permanent kidney failure.

4. You are age 65 or over and do not meet any of the above requirements, but you pay a Medicare premium.

If you are eligible for Medicare benefits based upon your age of 65 or over and you are receiving Social Security or Railroad retirement benefits, you do not need to complete an application to be enrolled for Part A benefits. If you do not meet this eligibility criteria, you must complete an application during an enrollment period.

You are eligible for Part B (medical insurance) if you are eligible for Part A, you are age 65 or over, and you pay a monthly premium. Premiums increase annually when Social Security benefits rise (the standard monthly premium for new enrollees for the year 2016 is \$121.80). Normally, unless you inform the Social Security office that you do not want to be in the program, your premium will automatically be taken out of your monthly Social Security check. You can also pay the premium by check each quarter.

You do not have to be eligible for Part A to qualify for Part B. You can qualify for Part B if you meet certain criteria of citizenship and residence and you are age 65 or over. You should sign up for Medicare as soon as you are eligible. If you delay in signing up or sign up outside of an enrollment period, you may be required to pay a higher premium.

Medicare Advantage Plans and Prescription Drug Plans:

The original Medicare Plans Part A and B are available in every area and allow you to go to any doctor, specialist or hospital that accepts Medicare. You pay your share, and Medicare pays its share. Some things are not covered, like prescription drugs.

Medicare Advantage Plans, on the other hand, are not available everywhere and vary somewhat from plan to plan. In most Medicare Advantage Plans, you can only go to doctors, specialists or hospitals on the plan's list. These plans must cover all Medicare Part A and Part B health care. Some plans cover extras, like prescription drugs. Your costs may be lower than in the original Medicare Plan. For more information on the particular plans available in North Carolina, call the Seniors' Health Insurance Information Program (SHIIP) at 1-800-443-9354 or (919) 807-6900 (TDD: 919-715-0319). Or go online to *www.ncdoi.com/SHIIP/Default.aspx*.

Medicare Part D (prescription drug) plans, like Medicare Advantage plans, are administered by private insurance companies. Part D plans can be added to the original Medicare plan, or to a Medicare Advantage plan. Additionally, you can join an HMO or PPO that includes Part D coverage. The monthly premium that you will pay, if any, depends on the plan that you choose. It is important to note that some plans have a coverage gap, often referred to as a "doughnut hole." While you are in the coverage gap, you will have to pay for the entire cost of your prescriptions until you meet a set limit. After you meet that limit, you will only have to pay a co-pay or deductible for your prescriptions. You can contact the SHIIP for more information, or you can research and enroll in a Medicare Part D plan at 1-800-MEDICARE.

Medigap (Medicare Supplemental Insurance) Policies:

Because Medicare does not cover all of a covered person's medical costs, you may wish to consider purchasing a Medigap policy. A Medigap policy is a health insurance policy sold by a private insurance company to fill some of the gaps in original Medicare plan coverage. Medigap policies, however, still may not cover all your medical expenses not covered by Medicare. Medigap policies must follow federal and state laws designed to protect consumers. The front of any Medigap policy must clearly identify it as "Medicare Supplemental Insurance." If you have a policy that does not include this statement, you do not have an official Medigap policy. In most states, including North Carolina, a Medigap policy must be one of 10 standardized policies called "Plan A" through "Plan N" so you can compare them

easily (plans E, H, I and J are no longer available, but if you already have one of these policies, you are permitted to keep it). Each policy has a different set of benefits. Two of the standardized policies may have a high deductible option. In addition, any standardized policy may be sold as a "Medicare SELECT" policy. Medicare SELECT policies usually cost less because you must use specific hospitals and, in some cases, doctors to get insurance benefits from the policy. In an emergency, you may use any doctor or hospital. Whether you need a Medigap policy, or which Medigap policy is best for you are decisions only you can make. However, if you do decide to purchase a Medigap policy, you should remember that the best time to buy a Medigap policy is during your Medigap open enrollment period. This period starts on the first day of the month in which you are both age 65 or older and are enrolled in Medicare Part B. The Medigap open enrollment period lasts for 6 months. If you do not buy a Medigap policy during your open enrollment period, you may not be able to buy the one you want, or you may be charged more for the policy. In addition, you should remember that if you have a Medigap policy and decide to drop it, you may not be able to get it back later. Visit www.medicare.gov/ supplement-other-insurance/medigap/whats-medigap.html for more information.

What Medicare Pays And What You Pay:

No private insurance program pays for all costs of a visit with your doctor or a stay in the hospital. Even though it's a public program, Medicare is no different.

Coverage Under Part A:

The Medicare program measures your use of services under Part A (hospital insurance) through benefit periods, also called spells of illness. Your first benefit period begins the first time you enter a hospital after your Medicare insurance goes into effect and ends 60 days after the date of discharge from either the hospital or a nursing home. A new benefit period begins the next time you enter the hospital if it has been at least 60 days since your last discharge from a hospital, skilled nursing facility or rehabilitative service. There is no limit to the number of spells of illness (benefit periods) you can have.

Part A covered services include such expenses as semi-private accommodations, meals, laboratory tests, nursing services, use of hospital facilities, drugs, medical and surgical services, supplies, diagnostic and therapeutic services, biological appliances and equipment.

Hospital Care Covered By Part A:

(Note: The dollar figures in this section will increase periodically.)

Under Part A, you receive up to 90 days of hospital care for each spell of illness.

FOR DAYS 1 TO 60

YOU pay: \$1,288 of the initial costs in 2016. This is the annual "deductible" you must pay before receiving Medicare coverage. MEDICARE pays: Remainder of covered expenses.

FOR DAYS 61-90

YOU pay: \$322 per day in 2016.

MEDICARE pays: Remainder of covered expenses.

After your 90 days are up, you have the option of using some of your 60 lifetime reserve days to help pay costs if a longer hospital stay is required. Reserve days are not renewable.

FOR EACH LIFETIME RESERVE DAY:

(i.e. DAYS 91-150) YOU pay: \$644 per day in 2016 MEDICARE pays: Remainder of covered costs for each day, up to a 60-day maximum.

FOR DAYS BEYOND 150

YOU pay: all costs MEDICARE pays: \$0

Nursing Care Covered By Part A:

(Note: The dollar figures in this section will increase periodically.)

Part A also gives up to 100 days of care in a skilled nursing facility per spell of illness (after three consecutive days of inpatient stay in the hospital). Your coverage in a skilled nursing facility is based upon your physical condition and the type of medical services you require.

FOR DAYS 1-20:

YOU pay: Nothing if expenses are covered. MEDICARE pays: All covered expenses.

FOR DAYS 21-100:

YOU pay: \$161 per day in 2016 MEDICARE pays: Remainder of covered expenses.

Home Health Services:

If you require skilled nursing care or rehabilitation in your home, home health care visits can be covered by Medicare. Typical coverage would include part-time nursing care by a registered nurse, physical, occupational or speech therapy, part-time home health aide services, medical supplies, medical social services and durable medical equipment. Except for limits on payment for durable medical equipment, Medicare pays for all covered home health services, except you pay 20% of allowable charges for durable medical equipment (such as wheelchairs, hospital beds, oxygen and walkers).

Hospice Care:

Part A Medicare pays for two periods of 90 days and an unlimited number of subsequent periods of up to 60 days each for hospice care from a participating hospice program. You pay a copayment of \$5 for prescription drugs and 5% of the Medicare-approved amount of inpatient respite care (short-term care given to a hospice patient by another caregiver, so that the usual caregiver can rest.)

Blood

You pay for the first three pints of blood, unless you or someone else donates blood to replace what you use.

Coverage Under Part B:

Part B of the Medicare program (medical insurance) has a basic payment for all charges for covered medical expenses. You pay the first \$166 of all allowable charges in each calendar year and Medicare will pay 80% of all other allowable charges. Covered medical expenses include physician services, supplies and treatments provided you by the physician, outpatient diagnostic services, x-rays, clinical laboratory services, home health care, rental or purchase of durable medical equipment and certain outpatient hospital services.

After the \$166 deductible, you pay 20% of all other allowable covered medical expenses except for outpatient mental health care for which you are required to pay between 20%-40% of the Medicare-approved charge.

Coverage Under Medicare Advantage, Medicare Part D and Medigap Plans:

The coverage available to you under these plans depends on the plan you select. You should either contact your Medicare insurance company directly, or go to *www.medicare.gov* for more information.

What Is An Allowable Charge?

The Medicare program has a predetermined maximum amount of money it will pay for a particular medical service. This maximum is called the "allowable charge." It may or may not be the amount you are billed by your doctor, the hospital or other medical provider.

The list of "allowable charges" is updated every year to try to keep pace with changes in medical care prices. The "allowable charge" on which benefits are based is often less than you are billed. This is especially true for Part B claims.

How Medicare Payments Are Made:

You do not have to send in any bills for care you receive from a participating hospital, skilled nursing facility or home health agency under Medicare Part A. They will normally make the claim for you and Medicare will pay its share of the cost directly to them. You will get a notice explaining exactly what was paid by Medicare coverage. Payment under Medicare Part B is made in two ways. The Medicare payment can go directly to the doctor or medical service supplier if you and the other party agree to this and you make the necessary arrangements with your doctor. This payment method is called assignment, and it will usually be the best option for you. The assignment method limits the amount you can be billed over and above what Medicare pays. Some physicians do not accept assignment. In that case, you may have to pay for your medical care yourself and be reimbursed by Medicare. The patient is responsible for paying the balance of the bill not paid by Medicare.

Services Not Covered:

Even though the Medicare program has broad coverage, there are many services and supplies that Medicare does not pay for. For example, as a general rule, Medicare does not pay for private rooms. In addition, special rules and limitations apply on the coverage of prescription drugs. Check with your local Social Security office or call 1-800-MEDICARE for a complete list of those expenses that Medicare does not pay.

Right To Appeal:

When you disagree with a decision Medicare has made on a claim, you can appeal. The rules are different for appeals under Part A and Part B. Generally you must make a written request for an appeal within 120 days of receiving your Medicare Summary Notice in the mail. The appeal rules for Medicare Managed Care Plans vary according to the particular plan but give you the right to appeal a managed care plan's denial of a particular service or benefit. In particular, these plans must include a procedure for fast determinations in situations where waiting for the normal time frame could seriously jeopardize your health. Ask at your Social Security office about your appeal rights. Know your appeal rights and use them.

At some point you may want a friend, relative or an attorney to help you with your appeal. Check the listings at the end of this handbook for legal assistance information.

If You Need Help:

It is impossible to provide information on all the important features of Medicare in a short summary such as this. For more detailed information, and to answer your questions about Medicare hospital and medical insurance programs and what they can do for you if you qualify, call or visit the Social Security Administration office nearest you (to find the office nearest you, call 1-800-772-1213). You can also call the Center for Medicare and Medicaid Services' (CMS) Medicare Hotline at 1-800-MEDICARE (1-800-633-4227; TTY/TDD: 1-877-486-2048) or visit CMS's Medicare website at *www.medicare.gov*.

Medicaid

Medicaid is a health insurance program for low-income individuals and families who cannot afford health care costs. Medicaid serves low-income parents, children, seniors, and people with disabilities. This handbook will discuss two different Medicaid programs available to senior citizens. First, there is Medicaid for the Aged, Blind, and Disabled, which helps recipients pay for medical expenses such as doctor and hospital bills, vision and dental care, and mental health care. Secondly, there is Medicaid for Long-term Care, which helps recipients pay for the costs of care in a nursing home.

In contrast to Medicaid for Long-term Care, Medicare provides only limited coverage for nursing home care: coverage is limited to skilled care, and the length of full coverage is only 20 days per period of illness. Medicaid for Long-term Care, however, provides for both skilled and intermediate care. It is administered on the state level by the North Carolina Division of Medical Assistance and on the county level by your county Department of Social Services. The Medicaid program is not related to Medicare, which is run by the Social Security Administration. Medicare recipients can also receive Medicaid.

Application:

You may apply for Medicaid at your county Department of Social Services. They will ask you for information about your income, your assets and belongings, where you live, and with whom you live. You should take the following items with you: your birth certificate or other proof of age; letters or forms which prove how much you receive from Social Security, SSI, Veterans Administration, retirement or other sources of income; your Social Security card; wage stubs; insurance policies; bank books; and proof of any other assets or debts.

Eligibility Categories:

For both Medicaid for the Aged, Blind and Disabled and Medicaid for Long-term Care, there are two ways to demonstrate eligibility for Medicaid benefits:

1. Categorically Needy. You are automatically eligible in this category if you are entitled to receive Supplemental Security Income (SSI) or State-County Special Assistance for Adults (described below). In addition, elderly Social Security recipients who previously received SSI benefits are eligible for Medicaid benefits in some situations.

2. Medically Needy. You can be eligible as a "medically needy" person if you do not fall within a "categorically needy" group due to income or assets. You may be eligible for benefits if you have sufficient income and assets to cover basic living expenses but insufficient income or assets to pay for medical or long-term care. In this case, you may have a deductible or spend-down before you are eligible for Medicaid benefits.

Medicaid for the Aged, Blind and Disabled: Income and Asset Limits for Medically Needy: Categorically needy recipients, that is, elderly persons who are

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receiving SSI or State-County Special Assistance for Adults, are automatically financially eligible to receive Medicaid without having to meet a Medicaid deductible or spend-down. However, other medically needy elderly and disabled persons must spend down all their income above the limits required by Medicaid for the Aged, Blind, and Disabled. In North Carolina, the income limits for medically needy elderly and disabled persons in a private living arrangement (that is, living at home or with a relative) are currently \$981 per month for an individual and \$1,328 per month for a couple. This limit represents the federal poverty level.

If your income exceeds the federal poverty level, you may still be eligible for Medicaid for the Aged, Blind, and Disabled if you can meet the deductible (also known as the spend-down). The deductible is determined by subtracting the "Medically Needy Income Limit," currently \$242 per month for individuals and \$317 per month for couples, from your income. The difference represents the deductible, and to qualify for Medicaid you must show that you have incurred medical expenses at least equal to the deductible, including both paid and unpaid medical bills not covered by Medicare or private insurance. If you are required to spend-down before you qualify for Medicaid, remember to save all medical bills and receipts.

There are also resource limits for Medicaid recipients. To qualify, you must demonstrate that your countable assets do not exceed the SSI limits of \$2,000 for individuals and \$3,000 for couples. If your countable assets exceed those amounts, you will need to spend down below those limits before you are eligible. It is important to note that there are many kinds of assets that do not count against the resource limits. They are known as "exempt assets," and they generally include a personal residence, one automobile for transportation, and certain other kinds of assets, including certain real property, some business assets and some investment assets. Your county Department of Social Services or an attorney specializing in elder law can help you with the rules for both exempt assets and spending down.

Medicaid for Long-term Care:

In addition to the Medicaid coverage described above, there is a separate Medicaid benefit specifically to help families and individuals pay for intermediate or skilled nursing home care, known as Medicaid for Long-term Care. To qualify for this benefit, the patient must demonstrate medical need for intermediate or skilled care, as certified by his or her physician. Additionally, the patient's countable assets must be less than the SSI asset limits (\$2,000 for an individual, \$3,000 for a married couple) and the patient's countable income must be less than his or her anticipated nursing home costs. Because of the high costs of nursing home care, the income test is usually not an obstacle to Medicaid qualification. However, the resource test means that applicants must still know about exempt assets and spending down, as described in the previous section. For married couples, there are also special rules to prevent the impoverishment of the spouse still living at home or in the community (called the community spouse). These rules may allocate a portion of the institutionalized spouse's income or resources to the community spouse, which means that they will not count against the institutionalized spouse's eligibility under the income or resource tests. Your county Department of Social Services or attorneys specializing in elder law can help you with these and other rules that may apply to your particular situation.

Transfer of Assets Rules:

Some people try to make themselves poor enough to qualify for Medicaid by transferring assets to their children or other relatives. Although some transfers are permitted, the rules are designed to discourage you from making transfers for less than fair market value. Uncompensated transfers can result in the loss of Medicaid eligibility for many months of nursing home care. There is a look-back period of 60 months prior to application during which transfers will be examined. Because of the complex and ever-changing nature of these rules and the severe penalties associated with some transfers, you should consult an attorney experienced in elder law issues or your local office of the Department of Social Services for specific eligibility requirements before attempting to transfer any assets for Medicaid purposes.

Medicaid Liens and Estate Recovery:

As required by federal Medicaid law, North Carolina has the right to seek recovery of certain Medicaid benefits from the estate of a Medicaid recipient after the death of the recipient and his or her spouse. This right is known as estate recovery, and is also sometimes informally referred to as the "Medicaid lien." North Carolina consistently pursues estate recovery. As part of the application and redetermination procedures, your county Department of Social Services is required to explain estate recovery to you.

However, there are limits to estate recovery in North Carolina. Most importantly, estate recovery will be waived by the state when the recipient is survived by a legal spouse, a child under age 21, or a child of any age who is blind or disabled. It will also be waived when assets in the estate total to less than \$5,000, or if the total amount paid by Medicaid during the recipient's coverage is less than \$3,000, or when recovery will cause undue or substantial hardship to a surviving heir.

Expenses Covered By Medicaid:

Many types of medical services are covered by the North Carolina Medicaid Program. Among the covered expenses are:

- Hospital Services
- Physician Services
- Prescription Drugs (up to 6 prescriptions per month)
- Dental Care
- Home Health Services
- Durable Medical Equipment

- Hospice
- Laboratory and X-Ray
- Skilled or Intermediate Nursing Home Care
- Optometrist Care and Eyeglasses
- Payment of Medicare Premiums
- Clinic Services

If you have any questions about whether Medicaid will pay for a service, you should always ask your county Department of Social Services in advance.

State-County Special Assistance for Assisted Living:

While Medicaid for Long-term Care provides a benefit only to persons who require intermediate or skilled nursing care, there is also a benefit for North Carolinians who are unable to afford the costs of assisted living or rest home services. This benefit is called State-County Special Assistance, or simply "Special Assistance." Special Assistance eligibility rules and transfer of asset rules are similar to those for Medicaid, but there are important differences, including how community spouses' income and assets are treated, "look back" periods, and how some real estate resources are counted toward asset limits. As noted above, recipients of Special Assistance are generally automatically eligible for Medicaid for Long-term Care upon medical need for nursing care. For more details about Special Assistance eligibility and benefits, contact your county Department of Social Services or an attorney experienced in elder law.

Your Rights:

If you are eligible to receive SSI or Special Assistance benefits, you automatically will receive a monthly Medicaid card and do not need to apply for Medicaid. Otherwise, you must file a written application with the county Department of Social Services (DSS) where you reside. Application for Medicaid also may be filed on behalf of an elderly or disabled person if authorized, or if the applicant is incapacitated or incompetent. DSS must tell you within 45 days of application whether or not you qualify (or 90 days for applications based on disability). If you do not give Medicaid the information they need during these 45 days, it can take longer. If you are denied, you can appeal that decision at your local Department of Social Services. You have 60 days from the date of denial to appeal (or 90 days with good cause).

An appeal hearing will be held at the local Department of Social Services office after your appeal is received. You have the right to be represented by an attorney or personal representative and to examine the contents of the Medicaid case file. If you are dissatisfied with the appeal decision, you should appeal within 15 days to the Division of Social Services, and after that you can appeal to the courts. If you receive Medicaid but cannot get to the doctor on your own, you have the right to get help from the county Department of Social Services in arranging or paying for your transportation.

Your Responsibilities:

If you qualify for Medicaid benefits, you must report changes that might affect your eligibility within 10 days. It is against the law to keep information or give false information to the Department of Social Services in order to get or keep getting Medicaid. Persons who give away any property in order to qualify for Medicaid can be denied Medicaid benefits even if they meet all the usual requirements. This includes land, cash, or other belongings.

More Information:

More detailed information for your particular circumstance can be obtained from your county Department of Social Services or the Division of Medical Assistance's CARE-LINE at 1-800-662-7030 or (919) 855-4400 or online at *dma.ncdhhs.gov*.

Nursing Homes

A nursing home may provide care almost as intensive as a hospital, or provide rooms, food, and people to help you do things you cannot do for yourself. Nursing homes generally provide two levels of care, skilled nursing care and intermediate care, rendered by licensed nurses under the supervision of a physician. It is important to note that nursing homes do not provide one-on-one care. In other words, you will not be assigned a single nurse or aide to assist you at all times. If you desire or require this level of care, you should look into home health or private duty nursing services.

When you are selecting a nursing home, it is important for you, your family, and friends to be thorough in locating an appropriate place. It is also essential to remain objective and to maintain a healthy consumer skepticism while examining your options. Because you are making both living and health care arrangements, choosing a nursing home that will suit your needs deserves more care and caution than buying a house or renting an apartment.

Before you begin to look at nursing homes, there are several things to consider. Your medical and physical needs are most important in choosing a nursing home. Your family, friends, and doctor can help you decide what kind of care you need. You must also consider the costs associated with each of the nursing homes you consider and your financial resources (including Medicaid resources) to be sure you find a nursing home that you can afford. Without sacrificing quality of care, you should also try to find a nursing home that is located near people you love. Their visits will be important to you.

When inspecting the credentials of a nursing home, do not hesitate to ask questions. It is important, though, not only to ask questions, but to ask the right questions. It is also important to remember that a facility may not be the best available choice just because it meets minimum requirements for licensure and certification. Simply put, not all nursing homes are created equal, and it is important that you find one that best suits your needs. Here are some important points to keep in mind and questions to ask when you are visiting homes:

1. Licensure. The nursing home is required to be licensed by the State of North Carolina. Each year the state conducts an inspection survey of the nursing home to assure quality care is provided. Determine whether the license is in danger of being revoked, suspended, or not renewed as a result of this survey. The most recent license survey inspection must be posted in a prominent location in the nursing home. You may ask to review the report to determine for yourself that the nursing home has remedied any problems.

2. Certification. If the nursing home accepts Medicare or Medicaid patients, a state or federal inspection survey of the facility is also conducted annually to assure that certain quality requirements are met. Ask to review this inspection survey as the nursing home must meet these requirements for continued participation in Medicare or Medicaid programs. If you have access to the Internet, you can find survey information for all Medicare-certified nursing homes on Medicare's Nursing Home Compare tool, located at *www.medicare.gov/NHCompare*. This website also contains other helpful guides for selecting a nursing home.

3. Nursing Services. What level of care is provided? Does it meet your needs?

4. Physician Services. Is there a staff physician or medical director who helps set policies and makes emergency calls? What provisions does the nursing home have for medical follow up by a family physician?

5. Activities **Program.** Ask to see the monthly calendar of scheduled activities. Are there organized activities which interest you? Is there a regular schedule? What religious services are available?

6. Rehabilitation and Physical Therapy. What facilities and staff are available for these services? Do they meet your needs as prescribed by your doctor?

7. Visiting Hours. What are they?

8. In-Service Education. Does the home have continuous inservice education programs for its staff? Residents need various types of rehabilitation services and the techniques used to deliver these services periodically change. It is important that all staff are provided in-service training to keep up to date on the changes.

9. Dietary Service. Does the nursing home serve appealing, nutritious meals that are planned by a Registered Dietitian? Are special diets available? Ask to see a copy of the planned menus. Visit the nursing home at a time when you can observe a meal.

10. Safety. Is there an adequate fire safety system that includes at least smoke, heat, and carbon monoxide detectors, as well as sprinklers or approved fire-resistant construction? There must be a plan posted for quick evacuation in case of fire, and the staff and residents should be trained in fire safety. Are there handrails in the hallways and grab bars next to bathtubs, showers, and toilets? Are there sufficient toilet and bathing accommodations with privacy to meet your needs?

11. Costs and Charges. What services are included in the basic daily charge of the nursing home? Ask the administrator to provide you a written summary of basic daily charges and extra charges. Do these extra charges include all of the supply costs that are necessary for the services the resident requires? Remember that the higher the level of care, the higher the costs are likely to be.

12. Deposits. If you are paying privately for nursing home care, will you be required to make a deposit? How much is required to be paid in advance? How will the deposit be returned if you do not stay at the nursing home or if you qualify for Medicare or Medicaid at time of admission?

13. Medications. You have the right to choose a pharmacy from a list available in the nursing home. However, if you choose a pharmacy other than the one the facility contracts with, then your pharmacist must be willing to provide your medications in the same administration packaging as the nursing home's pharmacist. For the safety and well-being of the resident, medications purchased by you or brought from home may not be allowed.

14. Third Party Payment. What third party payments will the nursing home accept? Does it take Medicare and Medicaid residents? If so, may you shift to Medicaid or Medicare payment if, after being admitted as a private resident, it is determined that you are eligible for Medicare or Medicaid?

15. Policies. What policies does the nursing home have about visiting hours, gifts of food, and the like? The nursing home must provide you with a written list of all policies.

When visiting a nursing home, be on the lookout. In general, nursing homes will look well-maintained and pleasant to the visitor. But in order to get a feel for the institution from a resident's viewpoint, several key factors should be kept in mind: nurse staffing, safety, cleanliness, pleasantness, morale, privacy, and respect.

16. Nurse Staffing. This is perhaps the most important factor in the delivery of care in a nursing home. The nursing home should have sufficient licensed nurses and certified nursing assistants to carry out the medical care program as ordered by the attending physician.

17. Safety. This is a special concern for everyone, but it is even more important if you have limited motion, visual impair-

ments, and other infirmities. Keep a lookout for fire hazards, blocked fire doors or unobserved smoking restrictions. To prevent the possibility of a fall, make sure that there are welllighted stairways and passageways free of obstacles such as light cords, throw rugs, torn carpets, and cracked tiles.

18. Cleanliness. This should be a high priority for any nursing home. If a home smells of urine or heavy "cover up" deodorant, watch out! Check things such as windowsills, counter tops and bedside tables for dirt or dust. These can be telltale signs that the nursing home is cutting corners by skimping on the house-keeping. Kitchens, nursing stations, lounges and residents' bathrooms must be clean—nothing less should be tolerated.

19. Pleasantness. This factor should not be discounted when looking at a nursing home. Comfortable chairs and good storage space for clothing, colorful bedspreads and draperies, flowers, pictures, seasonal decorations, and general orderliness are all important in providing a happy and comfortable homelike atmosphere for a full time resident. Things such as drinking fountains, a beauty shop, lounges, properly functioning televisions and radios, and easily accessible public telephones go a long way toward making your stay more pleasant.

20. Staff and Resident Morale. Morale cannot be overlooked when considering a nursing home's overall pluses and minuses. Regularly scheduled activities with encouragement by the staff to participate can be a big morale booster. See if the staff members have a positive attitude toward the residents. Indifferent and grumpy staff members can cause a bad atmosphere that hampers, if not destroys, good resident morale. A good indicator of staff morale is the patience and gentleness shown by staff in caring for residents. Take a good look at the residents. See how they act and how they are dressed. Do they appear to be happy, interested, and involved with what is going on?

21. Privacy and Respect. These factors are very important to a nursing home resident. Residents are entitled to be treated with respect and dignity, and to have as much privacy as possible. When baths are given in bed, curtains should be drawn to protect the resident's privacy. Residents should be addressed by their names and be treated as adults. Actions such as these show respect on the part of the staff and, by extension, the nursing home administration.

Watch and talk to the staff to get clues as to their attitudes towards their jobs and the residents that the staff serves. Notice how the residents are treated. If you visit a nursing home, or you are evaluating the facility for placement for yourself or a loved one, you may expect to see and hear residents who are helpless, bedridden, or crying out. Keep in mind that these individuals are residents of the nursing home because they have a medical condition requiring nursing care. What you see and hear may not reflect the quality of care provided by the nursing home. A visual measure of the quality of nursing is how wellkept and clean these residents are and the manner in which the staff responds to the resident's needs.

There are many resources available to help in selecting a nursing home, and you should look beyond this handbook to make sure that you are properly educated before selecting a nursing home. A good place to start is the U.S. Department of Health and Human Services website for nursing homes, *http://longtermcare.gov/*. This site has a wealth of information.

There also is a feature called "Nursing Home Compare" at *www.medicare.gov/nursinghomecompare*. This is a database of all Medicare-eligible facilities. It allows you to do side-by-side comparisons of facilities, as well as comparisons to national and statewide statistical averages. If you do not have Internet access, call your local public library and ask if Internet access, call your local public library and ask if Internet access, call you can also call Medicare at 1800-MEDICARE (1-800-633-4227) and request a copy of "Your Guide to Choosing a Nursing Home" published by the Center for Medicare and Medicaid Services. This guide for choosing nursing homes is also available over the Internet through the Medicare website at *www.medicare.gov/Pubs/pdf/02174.pdf*.

In considering a nursing home, you should again be sure to check that the nursing home is meeting state and federal minimum requirements that apply to nursing homes. The nursing home is required to be licensed by the State of North Carolina. Each year, the state conducts an inspection survey of the home to see that it meets certain minimum state requirements. You should check to see whether a facility is operating under a provisional license because it is not meeting state minimum standards. You should also request to see the most recent state inspection to determine for yourself whether the facility is meeting the state's minimum standards and in what areas the facility is having trouble meeting the state's minimum standards.

You should also consider the physician that will be treating you in the nursing home. Does your physician have patients in the nursing home or will you be forced to use a different doctor? If you must use the facility's doctor, meet him or her and make sure you are comfortable with him or her as your treating physician. Does this person have similar ideas about the care that should be rendered? Does the physician actually visit the facility or does the physician typically send a nurse or someone else instead?

Admission to a Nursing Home:

At some future time, either you or a loved one may require nursing home placement. You should expect to complete a considerable amount of paperwork in applying for and seeking admission to a nursing home. State and federal regulations governing nursing homes necessitate much of the paperwork you will be asked to complete. You should carefully review the Admission Agreement, because it is a binding legal document and may affect you and/or a family member. Ask to have sufficient time to read and understand this document. You have a right to have this agreement explained to you in language you understand. In addition, you are not required to have a "responsible party" personally liable for payment of your bill should you have insufficient resources.

Federal law prohibits a requirement for a financial guarantor. However, the facility may require any individual who has legal access to a resident's income or resources available to pay for a resident's care to sign the Admission Agreement. This individual will not incur personal financial liability but rather is obligated to provide payment to the facility from the resident's income or resources. In other words, if a resident names a person to be in charge of his or her finances, that person is required to use the resident's funds to pay for the resident's care.

Finally, many nursing homes are requesting that residents sign an agreement requiring them to arbitrate their disputes with the nursing home, instead of filing a civil lawsuit, including disputes arising out of negligent care resulting in personal injury or death. The nursing home cannot require the patient to sign the arbitration agreement as a condition of admission. Because an arbitration agreement is not a condition of admission, this agreement should be reviewed carefully and separately from the other documents which are signed at admission. An arbitration agreement usually provides that the resident is giving up his or her right to a jury trial if a lawsuit for negligent care is later brought, and instead agrees to present any disputes to an arbitrator or panel of arbitrators who will decide issues of responsibility and damages.

Drugs

When your doctor writes or calls in a prescription for you, the pharmacist may be given a brand name. A brand name identifies the drug by the name given to it by a drug manufacturing company rather than by its chemical name. Many drugs are also available by their chemical name. These are called generic drugs. Just like plain label groceries, drugs are likely to be less expensive if you can buy them by their chemical name rather than by a brand name.

If your doctor gives permission, the pharmacist can substitute a generic drug if it is available when your prescription is filled. Of course, the generic substitute must have the same active chemical ingredients of the same strength, quantity, and dosage form as the brand name drug your doctor prescribed. Not all drugs can be substituted, but many can. Ask your doctor and your pharmacist about a generic substitute the next time you have to buy a prescription drug. It could reduce the cost to you.

Over the counter medicines also can be bought by their generic name. For example, ibuprofen can be bought under a brand name (Motrin or Advil), or can simply be bought as generic ibuprofen. You may choose to select a brand name or to select a bottle simply labeled generically. Usually the generic label is less expensive.

Patients' Rights In Nursing Homes:

People who live in nursing homes have many rights under state and federal law. It is important to understand these rights. Under a North Carolina law called the "Declaration of Patients' Rights," a nursing home resident is entitled to the following rights:

1. To be treated with consideration, respect, and full recognition of personal dignity and individuality.

2. To receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and state law.

3. To receive at the time of admission and during the stay, a written statement of the services provided by the facility, including those required to be offered on an as needed basis, and of related charges.

4. To have on file a written or verbal order of the attending physician containing any information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical treatment.

5. To receive respect and privacy in the patient's medical care program. Personal and medical records shall be confidential.

6. To be free from mental and physical abuse and to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need.

7. To receive from the administrator or staff of the facility a reasonable response to all requests.

8. To associate and communicate privately with persons and groups of the patient's choice; to send and receive mail promptly and unopened; to have access at any reasonable hour to a telephone where the patient may speak privately.

9. To manage the patient's financial affairs unless authority has been delegated to another.

10. To enjoy privacy in visits by the patient's spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room.

11. To enjoy privacy in the patient's room.

12. To present grievances and recommend changes in policies

and services without fear of reprisal, restraint, interference, coercion or discrimination.

13. To not be required to perform services for the facility without personal consent and the written approval of the attending physician.

14. To retain, to secure storage for, and to use personal clothing and possessions, where reasonable.

15. To not be transferred or discharged from a facility except for medical reasons, the patient's own or other patients' welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. The patient shall be given at least 5 days advance notice to ensure orderly transfer or discharge, unless the attending physician orders immediate transfer, and these actions, and the reasons for them, shall be documented in the patient's medical record.

16. To be notified within 10 days after the facility has been issued a provisional license or received notice of revocation of license.

If the home accepts Medicare and Medicaid patients, residents also have rights provided by federal regulations which may overlap with patients' rights provided under state law, including:

A. To be treated with consideration, respect and full recognition of dignity and individuality.

B. To be free from verbal, sexual, mental or physical abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraint imposed for purposes of discipline or convenience or for other than treating medical symptoms.

C. To organize and participate in resident groups in the facility, and have members of the resident's family meet with families of other residents in private space in the facility.

D. To participate in social, religious and community activities that do not interfere with the rights of other residents in the facility.

E. To be encouraged and assisted throughout his or her stay in the facility to exercise these resident rights as well as those to which the resident is entitled as a U.S. citizen.

F. To manage personal financial affairs or have a legal representative handle those affairs on behalf of the resident, and the facility may not require the resident to deposit his or her personal funds with the facility.

G. To recommend changes in facility policies and services without fear of reprisal, restraint, interference, coercion or discrimination, and to have prompt efforts undertaken by the facility to resolve them.

H. To file a complaint with the state survey and certification agency concerning resident abuse or neglect or misappropriation of resident property in the facility.

I. To contact and to be visited by any representative of the U.S. Department of Health and Human Services, the state, or the state's long term care ombudsperson or advocacy system, or the resident's physician, or with the resident's consent, family or relatives, or any group or person who provides health, social, legal, or other services to the resident.

J. To examine the results of the facility's most recent survey conducted by representatives of the Department of Health and Human Services, and the Plan of Correction prepared by the facility in response to the survey.

K. To choose a personal attending physician (and be informed how to make contact), be fully informed in advance about care and treatment, and unless adjudicated incompetent or otherwise found incapacitated under state law, participate in planning medical treatment.

L. To contract with chosen providers, unless prohibited by applicable law, as long as the providers agree to and follow the reasonable rules and regulations of the facility.

M. To be fully informed in understandable language of the resident's medical condition and health status.

N. To refuse medical treatment and to refuse to participate in experimental research.

O. To review the resident's own medical record upon request to the facility 24 hours in advance and to purchase a copy of the record after such review upon 48 business hour advance notice to the facility.

P. To keep and use personal clothing and possessions in the facility as space permits unless doing so would infringe upon the rights and safety of other residents.

Q. To occupy the same room as the resident's spouse if the spouse is also a resident of the facility and agrees to the cohabitation.

R. To have reasonable access to a telephone for private conversation while in the facility.

S. To receive appropriate advance notice (usually 30 days written notice) of any involuntary transfer or discharge from the facility, as required by law. T. To refuse to be transferred or discharged from the facility unless:

i) the transfer or discharge is necessary for the resident's welfare because the resident's needs cannot be met in the facility;

ii) the resident's health has improved sufficiently so that the services of the facility are no longer necessary;

iii) the health or safety of others in the facility would be endangered by the resident's continued stay;

iv) the resident has failed, after reasonable and appropriate notice, to pay or arrange for payment to be made under Medicare or Medicaid, for charges incurred during his or her stay at the facility; or

v) the facility ceases to operate and/or is no longer authorized to care for the resident under applicable law.

U. To receive notice before a room or roommate in the facility is changed.

V. To refuse a room transfer if the purpose of the transfer is to move the resident between a Medicare certified bed and non-Medicare certified bed.

W. To have the facility comply with the terms of a written directive concerning medical care signed by the resident (e.g., Durable Power of Attorney for Health Care, Living Will, etc.) that complies with applicable state law.

X. To receive information prepared by the state regarding requirements and procedures for establishing eligibility for Medicaid, including the right to request assessment under Section 1924(c) which determines the extent of a couple's nonexempt resources at the time of institutionalization and community spousal assets.

Y. To a posting of names, addresses and telephone numbers of all pertinent state client advocacy groups such as survey and certification, licensing, ombudsman, protection and advocacy network, and Medicaid fraud control unit.

Z. To have the resident's physician and legal representative or interested family member informed of any accident involving the resident resulting in injury or requiring physician intervention, any significant change in the resident's condition, or need to alter treatment significantly.

AA. Upon written authorization to the facility, to have personal funds deposited with the facility. Personal funds in excess of \$50 shall be deposited in an interest bearing account with interest accruing to the resident.

BB. To refuse to perform services for the facility, but if the resident chooses to perform services, the facility must appropriately document the need or desire for work in the Plan of Care, and any agreed upon compensation must be at or above the prevailing rates.

CC. To privacy in written communication, including the right to send and promptly receive mail that is unopened, and to have access to stationary, postage and writing implements at the resident's expense.

DD. To self-administer drugs if the interdisciplinary team has determined the practice is safe.

Nursing home residents who feel that any of these rights have been violated or who need help with problems in the nursing home have several places to turn for help. Every county in North Carolina that contains a nursing home must have a Nursing Home Community Advisory Committee which is appointed by the county commissioners to help residents. Their local telephone number must be posted in the home. All complaints are confidential and neither the name of the person complaining nor the name of the resident will be told without their agreement.

The North Carolina Division of Aging and Adult Services has a network of state and regional Long Term Care Ombudsmen who work with the committees and will also receive confidential complaints from residents or their families.

Contact:

North Carolina Division of Aging and Adult Services 2101 Mail Service Center Raleigh, NC 27699-2101 (919) 733-3983 or (919) 855-3400

In addition, the Division of Aging and Adult Services also has a very informative website located at *www.ncdhhs.gov/divisions/ daas* with information on a wide variety of topics of interest to the elderly in North Carolina.

The North Carolina Division of Health Service Regulation has the responsibility for licensing nursing homes and enforcing resident rights. The Division will investigate complaints and may penalize the home or have the problem corrected. Contact the Division by calling (919) 855-4520, visiting their website at *www.ncdhhs.gov/dhsr*, or writing:

Nursing Home Licensure and Certification Section N.C. Division of Health Service Regulation 2711 Mail Service Center Raleigh, NC 27699-2711

Patients' Rights In Hospitals:

You may be spending time in hospitals or clinics in the future as a patient or volunteer helper. As a volunteer helper, you need certain information in order to assist patients with their problems while they are in the hospital. As a patient, you have a right to expect a high level of care and treatment while you are in the hospital. Illness may prevent you from expressing your complaints or wishes effectively. In response to these concerns, the Center for Medicare and Medicaid Services has introduced rules on Patient Rights with which all hospitals that participate in Medicare must comply. These rules require the following:

1. A hospital must inform each patient of his or her rights.

2. A hospital must have a process for resolving patient grievances in a timely manner.

3. The patient has the right to participate in the development of his or her plan of care.

4. The patient has the right to sufficient information to make informed decisions about his or her care.

5. The patient has the right to formulate advance directives and to have these directives honored by the hospital and its practitioners.

6. The patient has the right to have a family member or other representative promptly notified of his or her admission to the hospital.

7. The patient has the right to personal privacy, to receive care in a safe setting and to be free of all forms of abuse or harassment.

8. The patient has the right to have his or her medical records kept confidential.

9. The patient has the right to information contained in his or her medical records within a reasonable time of the request for such information.

10. The patient has the right to be free from seclusion and restraints of any form that are used as a means of coercion, discipline, convenience or retaliation by staff.

Consent To Treatment:

When you are being treated as a patient in a hospital or other health care facility, your treatment should be explained to you by your physician in words and terms you can understand. Before you can agree to receive or refuse treatment, you need to understand the diagnosis and prognosis of your medical condition, the risks, benefits, and alternatives of treatment, and the risks and probable outcomes of non-intervention. The decisions you make about your health care and treatment must be based on complete information. These decisions are yours alone as long as you have the capability to make such decisions. You have a right to refuse treatment if you wish. Ask questions of your physicians and expect answers.

The doctors, nurses, and other health care personnel who explain your treatment are required by law to obtain your written consent or agreement to the treatment they propose. If you sign such a document fully understanding the proposed treatment, you may not be able to successfully sue them for treating you without your consent.

Although this law protects the doctors, nurses, and others who treat you, it also helps you by requiring your health care providers to explain your treatment to you. Generally the law protects you from receiving treatment that you do not understand and do not agree to receive. If you are not mentally or physically capable of understanding or giving consent to the procedures to be performed upon you, consent to your treatment may be given by your guardian, health care power of attorney, spouse or nearest relative.

Confidentiality

In North Carolina, most communications between a doctor and patient are confidential. Your doctor cannot give out information about you, except in certain limited circumstances. Confidential communications include any information you give your doctor for the purpose of diagnosis or treatment when you are seeing him or her as a patient. The records that your doctor keeps for a number of years are also confidential. In a hospital or nursing home, confidential communications include most of your chart and medical records. Most other medical personnel, such as nurses and technicians, are also bound by rules of confidentiality.

You, as the patient, have a right to expect that your records will be confidential, unless you agree to their release or unless a court orders their release, with some exceptions. The following situations illustrate some of these exceptions:

1. When your insurance company asks for your medical records from your doctor or the hospital, may that information be released? **YES**, unless you have already paid in full and request that the records not be sent to your insurance company. Most insurance policies require you to sign a Consent to Release of Medical Information form when you apply for your insurance policy.

2. If your medical costs are paid in full or in part by Medicare or Medicaid, may either program access or secure information from your medical record? **YES.**

3. If your medical records are subpoenaed by a court of law, must the physician or hospital obey the subpoena? **YES**.

4. Should the physician, hospital or nursing home allow anyone to inspect your records before they are subpoenaed by the court if you have not consented? **NO**, except in certain circumstances. For example, the State Health Director can review medical records in the case of a disease outbreak and other similar circumstances.

5. Does your employer have a right to see your medical records? **NO,** unless you consent.

6. When you die, does your family have a right to see your medical records? **NO**, not necessarily. Your medical records remain confidential for 50 years following your death. Only the executor or the administrator of your estate has the right, just as you did before death, to agree to release your medical records to others.

7. Do you have a right to see your own medical records? Generally, **YES.** Your physician, hospital or nursing home actually owns the medical record itself. You have the right to inspect or copy these records. If you are a psychiatric patient, your physician may refuse to allow you to inspect your records if he or she believes access to this information would be injurious to your physical or mental well-being. In that case, you have the right to have the records sent to the physician or psychologist of your choice.

8. Should hospitals prepare a report when they know that a disabled person has been abused or neglected? **YES.** A report should be made immediately to the county's Department of Social Services.

9. Will your medical records remain confidential if you have cancer? **YES**, with one exception. When the doctor diagnoses your cancer, your name, address, date of birth, race and sex must be reported to the state's central cancer registry within 6 months.

10. Are hospitals required to report gunshot wounds, poisonings, stabbings, and other criminal injuries to the sheriff or police? **YES.** Hospitals may also provide information to law enforcement in certain situations involving crimes committed on the hospital campus, if you are a victim of a crime, or in other limited circumstances.

11. Should your hospital share your medical records when you are transferred to another hospital or nursing home? **YES.** Confidentiality of medical records does not prohibit health care providers from sharing your records among themselves as part of providing you with health care services. If you leave the hospital for a nursing home, your medical records, or copies of them, should be transferred with you.

Advance Directives

You alone have the right to make decisions regarding your medical care and treatment. You have the right to accept, refuse, or withdraw any treatment. You may state in advance that you do not want your life to be prolonged by extraordinary means, including artificial nutrition and hydration, if you are in a terminal condition and have no reasonable medical expectation of recovery.

At some point, you may not be physically or mentally able to make medical decisions for yourself. To be prepared and to make sure that your wishes are followed, you can sign a legal document called a Living Will (known under North Carolina law as an "Advance Directive for a Natural Death"). A Living Will tells others under what circumstances, if any, you would like to die a natural death without certain life-prolonging treatments like ventilators or feeding tubes. You may also name a health care agent in a legal document called a Health Care Power of Attorney. An agent under a Health Care Power of Attorney can make medical treatment decisions for you when you cannot make or communicate decisions for yourself.

Living Wills and Health Care Powers of Attorney are called "Advance Directives" because they allow you to state your wishes regarding your future medical treatment in advance. A Living Will and a Health Care Power of Attorney are two different documents that serve different purposes.

Living Wills:

A Living Will is authorized by the North Carolina General Statutes. It is not the same thing as a Last Will and Testament (a Will). A Living Will sets out your desires for medical care and treatment if you are in a terminal (or end of life) condition. A Will, on the other hand, states how you wish your assets to be disposed of when you die.

A Living Will becomes effective when you can no longer make decisions about your own medical care and two physicians have determined that: 1) you have an incurable condition that will result in your death within a relatively short period of time, 2) you are unconscious and your physicians determine that you will most likely never regain consciousness, or 3) you suffer from advanced dementia or a similar condition resulting in a substantial loss of cognitive ability and your physicians determine that your cognitive loss is not reversible. A Living Will allows you to direct that your physician may withhold or discontinue extraordinary means like life support, artificial nutrition, and/or hydration that only serve to delay your death if you are found to be in one of the above terminal conditions. You may also declare whether your health care agent serving under your Health Care Power of Attorney will have the authority to override your wishes as they are declared in your Living Will. A Living Will may be revoked by you at any time, and it will not affect any insurance policies you may have. You must sign the Living Will when you are competent and in the presence of two witnesses who are not related to you by blood or marriage, are not entitled to any part of your estate when you die by inheritance or claim, and who are not your physician, or an employee of your physician or the nursing home/group care home where you live. You and the two witnesses must all sign before a Notary Public or Clerk or Assistant Clerk of Superior Court.

A copy of your Living Will should be given to your physician to place in your medical record. If you change doctors, make sure your new physician has a copy. Do not give your original Living Will away to someone else to keep. Keep your original signed document at home with your other important papers. Inform your family and friends where you have placed it. Do not keep your original Living Will in a safe deposit box since others may not be able to locate it or enter the box in an emergency. You can also register your Living Will and other advance directives with the North Carolina Secretary of State, where the documents are kept in a secure online database. This option is discussed below.

You should beware of using a Living Will form provided in a magazine article or distributed by a national organization. These forms may not contain the necessary statements to make them valid in North Carolina. A form that meets all of North Carolina's requirements is provided in the North Carolina General Statutes. You can have an attorney prepare this form for you, or access it online at: *www.ncmedsoc.org/non_members/ public_resources/livingwillform.pdf.*

In addition, many hospitals routinely assist patients in executing Living Wills upon admission. The legal resources provided at the end of this handbook may also be able to assist you with preparing a Living Will.

Health Care Powers Of Attorney:

In a Health Care Power of Attorney, you name another person (or persons) to make health care decisions for you in the event that you are either unable to make decisions for yourself or unable to communicate these decisions. If you are age 18 or older and are competent, you may name a health care agent. The health care agent must be age 18 or older and may not be an individual who provides health care to you for compensation (like a doctor or caregiver that you pay to take care of you). Your health care agent is legally authorized by the Health Care Power of Attorney to make and communicate health care decisions for you if you become unable to make or communicate health care decisions for yourself, including the power to authorize the withholding or withdrawal of life sustaining procedures. If possible, you should name a second health care agent just in case the first person that you name is unavailable, unable to carry out his or her duties, or dies before you.

Your Health Care Power of Attorney becomes effective if your

physician determines that you do not have the ability to make or communicate your own health care decisions. For as long as you cannot make or communicate your own decisions, the health care agent is permitted to make these decisions for you. However, the health care agent is only authorized to make and communicate health care decisions for you. The Health Care Power of Attorney does not give the agent authority or control over your property and financial affairs.

A Health Care Power of Attorney may be revoked by you at any time by revoking it in writing, by making a new Health Care Power of Attorney, or by any other means of communication you may have. To effectively revoke a Health Care Power of Attorney, you must tell your health care agent and your attending physician.

A form to appoint a Health Care Power of Attorney is provided in Section 32A-25.1 of the North Carolina General Statutes. Access it online at: *www.ncmedsoc.org/non_members/public_resources/hcpowerofattorney2007.pdf*.

Registering Advance Health Care Directives with the State:

Although your family members and health care agents may be aware that you have executed advance directives, they may not always have immediate access to the executed documents when they are needed. To help address these concerns, the North Carolina Office of Secretary of State has established an Advance Health Care Directive Registry which allows residents to register their Living Wills, Health Care Powers of Attorney, and Declarations of Anatomical Gifts (organ donation) in a central registry maintained by the Secretary of State. Documents registered with the Secretary of State are available on the Internet 24 hours a day, 7 days a week, 365 days a year. In order to protect your privacy, your documents are assigned both a file number and password and can only be accessed by you or by others to whom you provide this information. You do not have to file advance directives with the Registry for them to be valid. Using the Registry is entirely voluntary. There is a \$10 filing fee for each directive you file with the Registry. For more information on the Registry or to obtain a registration sheet, please write to: Advance Health Care Directive Registry, Department of the Secretary of State, Post Office Box 29622, Raleigh, North Carolina 27626. You may also contact the Registry by phone at (919) 807-2167 or visit their website at: www.secretary.state.nc.us/ ahcdr/thepage.aspx. Again, please remember that documents filed in the Registry are accessible only on the Internet and are accessible only if a person attempting to access the document enters both the correct file number and password. Documents filed in the Registry, as well as file numbers, passwords, and any other information maintained in the Advance Health Care Directive Registry, are confidential and are not subject to disclosure to outsiders by the Agency. The North Carolina Secretary of State is prohibited by law from releasing this information to outsiders at any time.

Important Information About Advance Directives:

If you have completed a Last Will and Testament or a Power of Attorney for financial matters, do not assume that either of these documents provides for or will assure that your medical care and treatment wishes will be honored. You will need a Living Will and/or a Health Care Power of Attorney to make sure that your specific health care wishes are followed by your physician.

Because advance directives have life and death implications, you should fully understand the documents before you sign them. You may wish to consult with your family, physician, attorney, and/or religious advisor about any questions you may have. If you sign both a Living Will and a Health Care Power of Attorney, make sure your instructions in each document are consistent. While you do not have to sign both a Living Will and a Health Care Power of Attorney, having both documents is a good idea.

You can view frequently asked questions about advance directives on the North Carolina Bar Association's website at: *www.ncbar.org/public-resources/a-gift-to-your-family/faq/*. You can also request a pamphlet titled "Living Wills and Health Care Powers of Attorney," from the North Carolina Bar Association, P.O. Box 3688, Cary, NC 27519. The phone number is 1-800-662-7407. This pamphlet is also available on the North Carolina Bar Association's website at: *www.ncbar.org/media/209960/living-wills-and-health-care-powers-of-attorney.pdf*.

Who May Make Decisions If I Do Not Execute An Advance Directive?

If you do not sign an advance directive, North Carolina law authorizes others to make health care decisions for you based upon what they believe you would have decided. The following are the persons, in order of priority, who by law may make medical decisions for you if you do not have a Living Will or Health Care Power of Attorney and are unable to make or communicate your own health care decisions:

- 1. Your legal guardian
- 2. Your spouse
- 3. A majority of your available parents and children
- 4. A majority of your available brothers and sisters
- 5. Someone who has an established relationship with you
- 6. Your physician

Insurance

As your retirement approaches, your insurance needs may change. You may need more or different health insurance, but less life insurance. Choosing what insurance to buy or continue is an important decision. It is best to be a well-informed, careful buyer so that your insurance coverage is no more and no less than what you presently need.

Life Insurance:

Most people buy life insurance either to provide financial protection for their dependents or as an investment. If you have policies you bought years ago or are thinking about purchasing a new policy, there are some basic questions that you should ask yourself. You may also need to know what certain insurance terms mean.

"Term Insurance" means that you get a certain amount of life insurance coverage for a specific period of time. There is no cash value for the policy, and the coverage ends at the end of the term. For example, you may have a policy that insures your life until you reach age 65. At age 65, the policy terminates and you have no more coverage.

"Whole Life Insurance" (also called straight life or ordinary life) provides life insurance coverage for your entire life. There is a cash value that you may receive if you decide to terminate the policy. That value increases the longer the policy is in force. Typically, whole life policies are more expensive than term insurance.

"Cash Value" refers to the amount of money you can get if you terminate your policy. In other words, you can get an amount of money, usually much less than the face amount (or death value) of the policy, by voluntarily stopping your coverage before your death. You must notify the insurance company immediately if you make this decision. Otherwise, if you just stop paying the premium, the company may continue your coverage by taking premiums out of your cash value for as long as the cash value lasts.

"Face Value" (or "death value") means the amount of coverage you have. For example, if you pay for a policy that has a face value of \$5,000, your beneficiary will be paid \$5,000 if you die while the policy is in force. Some policies provide additional coverage in certain situations, such as doubling the face value if you die from an accident.

Questions To Ask About Life Insurance:

Some questions you should ask yourself about your life insurance needs are:

1. Is anyone dependent upon me for his or her financial support? If yes, how long will this be true?

2. If I die, will there be expenses not otherwise taken care of that someone will have to pay? If yes, are there other, more economical arrangements that could be made to handle these expenses?

3. Am I primarily interested in leaving money to someone? If yes, would I do better to save my money in a bank account or other investment vehicle than to pay premiums on an insurance policy?

Keep in mind that, for most people, the need for life insurance coverage declines as children grow up. Also, the amount of cash

value you can get back from an insurance policy is usually low compared to the amount of premiums you have paid.

Health Insurance:

Just like life insurance, health insurance policies should be carefully considered to be sure that they meet your needs. For some people, the best way to fill in gaps in Medicare's coverage is Medicaid, the state's medical assistance program. For those who are not eligible for Medicaid, shopping for supplemental (Medigap) coverage through a private insurance company can be confusing and difficult.

Although they may use different terms, most policies will exclude the same types of coverage that Medicare already excludes. Be careful! "Medically necessary," "customary charge," and other confusing terms in an insurance policy may mean that you are not purchasing coverage for the actual cost of medical care. Also, remember that a well-known insurance company's plan is not necessarily the best.

Finally, look for a policy that effectively supplements Medicare Part B. You will need the most assistance in this area. Be skeptical of policies which offer up to \$50,000 or more in hospital protection. In most cases, you would have to be hospitalized for "medically necessary" services for over 6 months in order to benefit from these offers, and such lengthy hospitalizations are rare. When you do not understand a policy that you are considering signing, have someone you trust read it for you before you sign. The Seniors' Health Insurance Information Program (SHIIP) at 1-855-408-1212 will provide you with assistance in selecting the most appropriate type of insurance for your needs. You can also get more information online at: *www.ncdoi.com/shiip/*.

Long Term Care Insurance:

Medicare and private health insurance pay for only brief nursing home stays. You may want to consider purchasing long term care insurance from a private insurance company to protect you in the event you require care in a nursing home or your own home for a long period of time.

Several types of policies are available, but they can be expensive. You should be sure that you understand the benefits the policy will provide before you purchase it, and what the policy excludes from coverage. It is important to shop carefully and buy from a financially sound insurance company so that you will be covered when you need it. If you think you will qualify for Medicaid, you may not want to purchase private long term care insurance, as Medicaid will cover your costs. If you have questions about how to qualify for Medicaid for Long-term Care, you should contact an attorney who practices elder law.

Be sure the insurance company or agent gives you a copy of a publication called "A Shopper's Guide to Long Term Care Insurance" published by the National Association of Insurance Commissioners. You can also access this publication for free online at: *www.nhli.org/webinars/2012/AARP_NHLI_ShoppersGuideToLongTermCareInsurance.pdf*. In addition, free counseling about long term care insurance is available through SHIIP at 1-855-408-1212 or online at: *www.ncdoi.com/shiip/.*

Before You Buy:

Before you purchase any insurance policy, you may wish to contact the North Carolina Insurance Commissioner's toll free Consumer Hotline at 1-855-408-1212. You may also wish to contact the Seniors' Health Insurance Information Program (SHIIP), also at 1-855-408-1212, for helpful information on purchasing health insurance and long term care insurance. Finally, many consumer publications contain useful articles on buying insurance. You can also schedule an appointment with a local SHIIP counselor in your county. You can find a list of local counselors at: www.ncdoi.com/SHIIP/SHIIP_County_Sites.aspx.

RIGHTS & PROTECTIONS

The Con Game

Older adults are often the victims of con artists and their schemes. These are attempts to swindle you out of money, property or other valuables. Con artists may, for example, pose as bank examiners and request that you withdraw money from your bank account and "temporarily" turn it over to them. Swindlers may convince you that this is all part of a test the bank is conducting to uncover a dishonest bank employee. Do not withdraw money from your bank at the suggestion of strangers.

Here are some common schemes you should be aware of:

1. Strangers selling anything door-to-door. This includes anyone attempting to sell legal or financial products, especially insurance salespersons who insist you must make your first payment immediately. Frequently the insurance company does not know this "salesperson," does not employ them, and is therefore not responsible for your claims. Seniors are also common targets for the sale of a "living trust" by a non-attorney salesperson, and are never given an opportunity to consult with an attorney about the trust. The final product is often poorly drafted, fails to accomplish the promised estate planning goals, and often costs more than what a licensed North Carolina attorney would typically charge for more comprehensive, thorough, and sound estate planning services. The North Carolina State Bar considers this practice the unauthorized practice of law and harmful to consumers. The preparation of a will or trust by a non-licensed attorney is illegal in North Carolina.

2. Glasses or hearing aids sold at bargain rates by unlicensed sales people. It can be tempting to make these purchases in an effort to save money. However, you should always ask your doctor before you buy medical products to ensure that you receive a quality product that meets your needs.

3. Products advertised as miracle cures. This is known as quackery. Every year people spend millions of dollars on products advertised as cures for arthritis, cancer, baldness, and insomnia. Do not buy a product advertised to cure an ailment if medical science has not found a cure for it.

4. Contributions to charity. Make sure your money goes to a legitimate charity. If you have doubts as to whether a charity is legitimate, call your local Better Business Bureau. Also, do not feel pressured to make donations solicited over the phone or in person. Most legitimate charities will be happy to provide you

with additional information by mail upon request rather than requiring immediate contributions. Research nonprofit and charitable groups before you donate. Nonprofits are generally required to share their financial and tax reporting information with the public. You can contact the charity itself and request a copy of its recent tax return, IRS form 990. Some charities make their tax returns available online. You may also find out more information about a charity or nonprofit by contacting the North Carolina Attorney General's office, or by visiting its website: *www.ncdoj.gov/Consumer/Charity.aspx*. Other useful websites for charitable donors are *www.guidestar.org; apps.irs. gov/app/eos/*; and *www.charitywatch.org/home*.

5. Opportunities that are "too good to be true." Before you spend any money, talk your plans over with someone you trust. Remember the old saying, "If it sounds too good to be true, it probably is."

6. Home repair frauds. Do not agree to let someone who is "just driving by" work on your home. Shop around before you spend money on home improvements, and ask for references from satisfied customers. Repairmen that you hire should be properly licensed and insured for that profession. You may search for a general contractor's license in North Carolina at *www.nclbgc. org/lic_fr.html.*

7. Any salesperson who pressures you to buy. Remember, "If the offer is only good today, walk away." If you do decide to make an immediate purchase, ask whether the seller has a return policy. North Carolina law gives you three days after signing a sales agreement to tell the seller you have changed your mind if the sale takes place at a location other than the seller's normal place of business. This includes sales that take place at your home. Make sure you get a phone number, or have some way to contact the sales person. This law does not include certain sales, such as sales of cars or real estate, or sales made by telephone or mail.

8. Pigeon Drop. There are many variations of this scheme. Typically, you are approached by one member of a con artist team. Once the con artist has become friendly with you, the partner approaches the two of you with a story about having found a large sum of money. You are invited to share in the good fortune but are asked for "good faith" money while details about how to divide the "found money" are worked out. Once you turn over your good faith money, you never see the con artist team again.

9. If you own a timeshare, beware of anyone attempting to help you sell it and beware of anyone offering to buy it. The FBI has

been involved in the investigation and prosecution of several companies attempting to defraud timeshare owners. If you suspect you have been defrauded, consult the North Carolina Attorney General's Office.

10. Anyone posing as a "Veterans Benefits Planner" or "Veterans Advocate" who is not affiliated with the Veterans Administration. These people are often insurance sales people, and while they promise that their services are "free," they are usually attempting to sell you an annuity or a trust. If you are approached by such person, inquire about his or her credentials: If this person is attempting to sell you a trust, is he or she a licensed attorney in this state? Is the person accredited by the Veterans Administration? How much of a commission will this person earn if you buy the product? Are there other opportunities to qualify for the same benefits that do not require the purchase of this product? This last question is extremely important, as often an annuity may be a poor investment choice, and other planning opportunities may exist that are better suited for your unique situation and do not involve such a substantial financial loss. Furthermore, such individuals may not be educated about other public benefits, such as Medicaid, that may be available to help you with long-term care concerns. Poor VA benefits planning can sometimes jeopardize a family's eligibility for Medicaid. The better approach is to consult with your Veterans Service Officer and possibly an attorney accredited by the Veterans Administration and knowledgeable about other public long-term care benefit programs. Be aware that the Veterans Administration restricts what private companies may charge for these services, so be sure that you are not being charged illegal fees for services that are made available for free by qualified professionals.

A healthy dose of skepticism goes a long way. Keep in mind the old adage, "there is no such thing as a free lunch." Often, people assume that if they attend a seminar at a community center, church, assisted living facility, or nursing home, that the presenter at the seminar has been thoroughly vetted as a legitimate and trustworthy individual. This is not always the case. Regardless of how or where you encounter someone attempting to restructure your investments or sell you something, always use your best judgment about the recommended product or plan and investigate the people attempting to give you advice.

The North Carolina Department of the Secretary of State offers certain services and protections for investors. The Secretary of State has an Investor Education Program and regulates and licenses investment advisors and their representatives. More information is available at *www.secretary.state.nc.us/sec/ invedu.aspx* or by calling (800) 688-4507. Here, you can find out whether your advisor is properly registered, education resources for investors, and recent alerts and tips.

Con artists are slick. Keep your guard up. Be skeptical. Watch out for anyone using the following words and phrases: "minor contract," "contract a mere formality," "something for nothing," "miracle cure," "last chance land deal" (or "last chance" on any product), "get rich quick," "a deal too good to be true," "earn big money at home," or "special once in a lifetime offer."

Listen carefully to what salespeople are saying, particularly if they are in your home. Do not be rushed into any purchase. If the transaction is very hurried and requires you to make immediate decisions or take immediate action, a swindle is probably in the making. Many con artists try to take advantage of your loneliness and to make you think that you can leave more money for your children if you cooperate with the con artist.

Be an informed consumer. If you need to consult advisors, ask for referrals from friends, family, or from an existing professional relationship.

Report suspicious people to the Police or Sheriff's Department. If you do not, they may cheat someone else. If you ever have questions about your rights and protections as a consumer, or if you suspect that you have been scammed, contact the North Carolina Department of Justice's Consumer Protection Section by calling 1-877-5-NO-SCAM (1-877-566-7226), by visiting their website at *www.ncdoj.com/Consumer.aspx*, or by writing:

North Carolina Department of Justice Attn: Alan Hirsch, Special Deputy Attorney General Consumer Protection Section P.O. Box 629 Raleigh, NC 27602-0629

Identity Theft

You can protect yourself from identity theft by safeguarding your personal information. Information such as email and online banking passwords, ATM PIN numbers, bank account numbers, Social Security numbers, and other personal forms of identification and log-in information can be used to both fraudulently access your accounts and open new accounts in your name. Devices such as smart phones, iPads, and computers have become treasure troves of personal information for thieves. Facebook, Twitter, LinkedIn, and other social networks may provide the necessary details of your life to change or access your passwords and financial information. Consider saving personal information and passwords to offsite storage such as Google or iCloud instead of on your cell phone, iPad, or computer. If you decide not to use offsite storage, set up your devices so that the data can be remotely erased if they are lost or stolen. This can be done with applications like Find My iPhone.

The North Carolina Attorney General reports that more than 11 million people in the United States are victims of identity theft each year, and about 300,000 people are victimized annually in North Carolina.

The North Carolina Attorney General's Office suggests that you protect yourself by following these tips:

- Never give your Social Security number, birth date, PIN number, or account number/password to anyone who you do not know, anyone you do not know well, or anyone who does not have a reason to access that information, even if they purport to represent a legitimate company.
- Do not carry your social security card in your wallet and do not print your driver's license number, birth date, or Social Security number on your checks.
- Use automatic deposit for payroll, Social Security or other benefit checks. It is now required for all recipients of Social Security, Veterans Affairs, or other federal benefits to receive payments by automatic deposit. To sign up for automatic deposit of Social Security checks and other federal benefit payments, call (800) 333-1795 or go to *www.go direct.org* to make the switch to electronic payments.
- Track your credit report for changes. Request a free credit report from a different credit bureau every 4 months. To get a free report, go online to *www.annualcreditreport. com* or call 1-877-322-8228.
- Avoid using easily available information for your PINs or passwords such as your mother's maiden name, birthdates, pet names, phone numbers, SS numbers or a series of consecutive numbers, and your street name or house number.
- Protect your mail with a locked mailbox and by opting out of preapproved credit card applications by calling 1(888) 5-OPT-OUT or visit *www.optoutprescreen.com*.
- Beware of phishing, emails that claim to come from a company or charity you do business with asking you to confirm your personal information or account number.
- All North Carolina residents can freeze their credit at no cost by contacting the three major credit bureaus (Equifax, TransUnion, and Experian) listed on the following page. By freezing your credit, you prevent others from opening new credit lines or getting credit in your name.
- Shred any unneeded documents that contain personal information. This includes old bank statements, insurance forms, credit applications, receipts, tax records that are at least three years old, and pre-approved credit card offers.
- Carry only the information that you need in your wallet. Leave items such as your Social Security card and extra credit cards at home. Make a photo copy of all items in your wallet (front and back) and keep the copies in a safe place in the event your card or wallet is lost or stolen.
- Use one credit card for all Internet purchases, and never use a debit card that is connected to a bank account. Do not send credit card numbers by email.

If you are the victim of identity theft, the North Carolina Attorney General's Office recommends that you take the following steps to report the crime:

1. REPORT TO LAW ENFORCEMENT. File a police report in the community in which the identity theft took place. If that is not possible, file a police report in your community. Ask for a copy of the police report.

2. PUT A FRAUD ALERT ON YOUR CREDIT. Contact each of the three major credit bureaus (Equifax, TransUnion, and Experian) to flag your accounts with fraud alert and to freeze your credit.

- Flag the accounts in writing and by calling the bureaus.
- Obtain a free credit report from each bureau. Review the reports for accuracy.
- Notify the bureaus of discrepancies in writing and by phone.
- Wait several months and review your credit reports again to ensure that discrepancies were cleared up and no more fraudulent activity has occurred.

3. CLOSE COMPROMISED BANK ACCOUNTS. Close any accounts that have been tampered with or fraudulently opened using your information.

4. FILE A COMPLAINT. File a complaint with the Federal Trade Commission (*www.ftc.gov*) by calling 1-877-IDTHEFT (1-877-438-4338). When reporting, it is important for you to keep a record of what agency/company you called, the person with whom you spoke, the date you called, and any other important information from the report. This may include the actions the agent was taking or the date of any follow up action by you.

5. IF YOUR PASSPORT INFORMATION WAS COMPRO-MISED, NOTIFY THE PASSPORT OFFICE. Notify the passport office in writing to be on the lookout for anyone ordering a new passport in your name. Contact them at: Washington Passport Agency, 1111 19th Street, N.W., Washington DC 20524 or call (202) 647-0518.

6. IF YOUR SOCIAL SECURITY NUMBER WAS COMPRO-MISED, NOTIFY SSA. Call the Social Security Administration's fraud hotline (1-800-269-0271) to report fraudulent use of your Social Security number. Order a copy of your Personal Earnings and Benefit Estimate Statement (PEBES) and check it for accuracy-the thief might be using your Social Security number for employment purposes

Take action quickly if you have been the victim of identity theft. The North Carolina Department Attorney General's office provides an ID Theft Victim Tool Kit to assist you at *www.ncdoj. gov/Help-for-Victims/ID-Theft-Victims/ID-Theft-Victim-Toolkit.aspx*.

Credit Bureaus:

Equifax: P.O. Box 740241 Atlanta, GA 30374-0241 Fraud reports: 1-800-525-6285 Ordering credit report: 1-800-685-1111 *www.equifax.com*

Experian: P.O. Box 9352 Allen, TX 75013 For all reports: 1-800-397-3742 *www.experian.com*

Trans Union: Fraud Victim Assistance Div. P.O. Box 6790 Fullerton, CA 92834-6790 Fraud Reports: 1-800-680-7289 Ordering credit reports: 1-800-888-4213 *www.transunion.com*

Unwanted Solicitation: Phone Calls and Junk Mail

The National Do Not Call Registry became effective on Oct. 1, 2003. This list prevents most telemarketers from contacting you. The Do-Not-Call registry, however, will not prevent all unwanted calls. It will not cover the following:

- Calls from organizations with which you have established a business relationship. Note, however, that if you ask a company with whom you have an existing business relationship to place your number on the do-not-call list, the company must honor your request;
- Calls for which you have given prior written consent;
- Calls which are not commercial or do not include unsolicited advertisements;
- Calls by or on behalf of tax-exempt non-profit organizations. This includes political organizations and charities. Telephone surveyors are also exempt.

You can place your number on the Do Not Call Registry by calling toll-free 1-888-382-1222 from the telephone number you want to place on the Registry or by going to *www.donotcall.gov*. After you make contact to be placed on the Do Not Call Registry, callers that are not exempt from the rules must stop telemarketing calls 30 days after your number is registered. Your phone number will stay on the Do Not Call Registry until you cancel your registration or discontinue service, which can be done using the same phone number or website provided above. You can file a complaint with the FTC if you receive a telemarketing call after adding your telephone number to the Do Not Call Registry. In 2003, North Carolina passed a similar Do-Not-Call Registry that ensures that North Carolina residents who sign up for the National Do-Not-Call Registry are automatically protected by the North Carolina law. No further sign up is necessary to benefit from the state laws. The North Carolina Registry also protects North Carolina residents if the national registry is struck down in court.

You may also remove yourself from junk mail lists, and there are several ways to do this. One way is to register with the Do Not Mail List at *directmail.com/mail_preference/*, which is a free service offered by *DirectMail.com*. You can also contact the Direct Marketing Association. You can sign up for this list by mail or through the Internet. To sign up by mail, you will need to fill out a form located here: *www.dmachoice.org/static/ pdf/registration_form.pdf*.

Once you have completed the form, mail it to DMAchoice, Direct Marketing Association, P.O. Box 643, Carmel, NY 10512. There is a \$1 fee for registering by mail. You may also register through the Internet by going to the following address: *www. dmachoice.org/register.php*. There is no charge for registering online. DMAchoice also allows you to stop mail being sent to a deceased individual or to a dependent person in your care. You can find the Deceased Do Not Contact list here: *www.ims-dm. com/cgi/ddnc.php*; and the Do Not Contact for Caregivers List here: *www.ims-dm.com/cgi/dncc.php*. Both services are free.

The Direct Marketing Association estimates that it may take up to three months for you to see a reduction in the mail you receive. Your phone number and address will remain on these lists for three years. After that, you must re-register.

Age Discrimination In Employment

If you are a worker over the age of 40, the Age Discrimination in Employment Act (ADEA) protects you from age discrimination in hiring, firing, layoffs, pay, promotions, fringe benefits, and other job matters. The ADEA is a federal law.

The ADEA does not apply if 1) your employer has fewer than 20 workers; 2) an age requirement or limit is necessary for the job (for example, actors needed to play young parts); 3) if an employment decision is part of a legitimate seniority system; or 4) if an employment decision is based on a good reason other than age (such as a hiring decision based on physical ability to perform a job or a firing for failure to follow employer policies).

What To Do If You Have Been Discriminated Against:

If you are an employee or job applicant over the age of 40 and you think you have been discriminated against because of your age, you can file a complaint with the Equal Employment Opportunity Commission (EEOC). If you are considering a lawsuit based on age discrimination, you must file a charge (complaint) with the EEOC before you may file a lawsuit.

Age discrimination complaints can be made in writing, by phone or in person at any EEOC office. The complaint generally must be made within 180 days of the act of discrimination. If you feel that you have been discriminated against, it is best to contact the EEOC as soon as possible. The EEOC will write up your complaint and send it to you to sign. The EEOC will then try to resolve the problem informally by talking with you and with your employer.

If that does not work, they will investigate the charge. The investigation will include speaking with you, your supervisor, and anyone else who was involved in the discriminatory act. If the EEOC finds discrimination after investigating, it will try to settle the complaint by negotiating with you and your employer. If no discrimination is found, the EEOC will notify you that it will not take any further action with regard to your charge, and you have 90 days to bring your own lawsuit.

If the EEOC chooses, it may file a lawsuit on your behalf. Otherwise, you will have to file a lawsuit yourself, if you are still dissatisfied. Employers are not allowed to fire or discipline workers because they complain to EEOC, and you do not need to be fired before you can file a complaint with the EEOC. As soon as possible after the discrimination occurs, you should write down exactly what happened, who was involved, and the date and the time of the discriminatory act. Because of the waiting periods involved, and because lawsuits can sometimes take years to resolve, gathering information and documenting incidents while they are still fresh is very important. You should also consider immediately contacting an attorney who practices employment law to discuss your options and learn about important deadlines.

EEOC Offices In North Carolina:

Charlotte District Headquarters

129 West Trade Street, Suite 400 Charlotte, NC 28202 1-800-669-4000 http://www.eeoc.gov/field/

Greensboro EEOC Field Office

2303 West Meadowview Road, Suite 201 Greensboro, NC 27407 1-800-669-4000 http://www.eeoc.gov/field/

Raleigh Area EEOC Field Office

434 Fayetteville Street, Suite 700 Raleigh, NC 27601-1701 1-800-669-4000 *http://www.eeoc.gov/field/* Raleigh, NC 27608-2129

Going To Court:

As noted above, before you can file a private lawsuit in state or federal court, you must first file a complaint with the EEOC. You must then allow the EEOC time to investigate your charge. If the EEOC has not completed their investigation within 6 months, you may request permission to proceed with your lawsuit, but if you do, the EEOC will end their investigation. When the EEOC has finished their investigation (or if you ask them to stop so you may sue), they will issue a "Notice of Right to Sue." This notice is very important, because you must be sure that your lawsuit is filed within 90 days of receiving notice from the EEOC that they have concluded their investigation, or you lose the right to sue under the federal law.

When a court rules that there has been age discrimination in employment, the judge can order an employer to hire you or to reinstate you, to give you back pay, award you attorneys' fees, and any other appropriate relief.

Age Discrimination In North Carolina:

North Carolina has an Equal Employment Practice Act which states that discrimination on the basis of age is against the public policy of North Carolina. The Human Relations Council in the North Carolina Department of Administration will investigate and try to resolve age discrimination complaints that the EEOC refers to them. In some situations (for example, if the time to file an EEOC charge has passed before you learn of the discrimination), you may choose to file a lawsuit under the state law, rather than the federal law. Because decisions about what kind of case to file and determination of what other claims you may have can be very technical, it is important to consult with an attorney promptly when you think you have been discriminated against. An attorney can help you document your situation and identify important witnesses while that information is still fresh and readily available, and she may also be able to help you resolve your situation without a lawsuit or long delays.

Voting Rights

All the rights and laws described in this handbook are the result of 1) laws passed by legislators or 2) a judge's judicial interpretation of those laws. Lawmakers and most judges are elected officials. It is, therefore, particularly important to vote if you are interested in having an impact on these rights and laws.

Common Cause North Carolina, a nonpartisan nonprofit organization, offers a comprehensive Voter Guide at *http://ncvoterguide. org/*. This site allows you to check whether you are registered to vote, find your polling place, see results of recent elections, contact your elections board, as well as many other useful features. You can also find this information on the North Carolina State Board of Elections website: *http://www.ncsbe.gov/ncsbe/*. The North Carolina State Board of Elections provides certain accommodations for people who have physical barriers to registering and voting in the ordinary manner. Registrars can come to your house and register you if you cannot go to your county election board's office. You may also download and complete a Voter Registration Application by going here: *www.ncsbe.gov/ ncsbe/Voter-Information/VR-Form*. You may then mail your completed application to your county Board of Elections. Just make sure that your application is postmarked at least 25 days before an election. Otherwise, you may not be eligible to vote in that election.

When election time comes, if you are unable to leave your house, you may submit an absentee ballot by mail. Any registered North Carolina voter can request an absentee ballot by mail. You can call your local Board of Elections to request a ballot. You can also find more information about absentee voting by visiting this website: *www.ncsbe.gov/ncsbe/Voting/ Absentee-Voting*. Also, if it is difficult for you to get inside the polling place on Election Day, you may vote at the curbside. For more information about these and other accommodations, you should contact your county's Board of Elections.

Beginning in 2016, North Carolina voters will be required to present photo identification to vote. The North Carolina Department of Motor Vehicles is offering a free ID for those residents who do not have a photo ID. Transportation to the DMV to get your ID is also available if you are unable to travel to the DMV on your own. To obtain the free ID, you will need to have a social security number, and you will need to present two documents proving your age and identity (such as a birth certificate or tax record), and one document proving you live in North Carolina (such as a lease or utility bill). The North Carolina State Board of Elections has set up a website with information regarding the new voter ID requirement: *www.voterid. nc.gov*. The website includes information on what type of ID will be accepted, who may use an expired ID, and how to get a free ID card if you need one.

Housing

Renting:

Many people need to rent a house after they reach retirement age. Here are some guidelines for tenants to follow.

Shop around thoroughly. Decide on the amount of rent you can afford and the type of house or apartment you want. Once you identify a possible house or apartment to rent, obtain as much information about it as you can before you sign a lease. Ask about the following:

1. Utilities (including whether water, trash, electric, gas, cable, and internet services are included in the rent, and if not, their cost and providers);

- 2. Insulation;
- 3. Garage door or gate keys;
- 4. Heating and cooling systems;
- 5. Pets;
- 6. Visitors allowed;
- 7. Security;
- 8. Parking;

9. Type of people living there (old, young, married, single, permanent, transient, etc.);

- 10. Quality of construction;
- 11. Availability of public transportation;
- 12. Yard work (who handles this and cost); and
- 13. Facilities for handicapped.

Thoroughly inspect the property that you are considering. Test every light, overhead fan, faucet, electric garage door, heating/ air conditioning control, appliance, and flush every toilet to make sure all are in good working order prior to signing any lease. Point out any problem areas and damage you see to the rental agent and keep notes for yourself. Do not be afraid to ask questions, because it might be too late after you have signed the lease. Also, ask other tenants or neighbors about the property. Their experiences with the landlord and the housing can be helpful.

Condos/Home Owners' Associations:

If you are planning to rent a condominium or a dwelling with a home owner's association, you should also be sure you understand whether you are responsible for paying any association dues or maintenance charges for the common areas in addition to your monthly rent.

Discrimination:

It is illegal under federal law for a landlord to discriminate on the basis of race, color, national origin, religion, sex, familial status, and handicap (disability).

If you have a physical or mental disability, the landlord may not refuse to let you make reasonable modifications to your dwelling unit at your own expense. The landlord must make reasonable changes to its rules, policies and practices, or services to allow a disabled person to use the housing. For example, an apartment complex with unassigned parking must honor a request for a mobility-impaired person to have a reserved space near his/her apartment. Any buildings constructed after 1991 must have public accommodations for persons with disabilities. For example, doors and hallways must be wide enough for wheelchairs.

Be Sure You Understand Your Lease:

Insist on a written lease. Read it carefully and do not hesitate to ask questions. The lease should clearly define the obligations of both you and the landlord. Do not hesitate to ask the landlord to read through the lease with you and explain anything that you do not understand. If you make any changes to the lease, be sure that the changes are set forth in writing in the lease. If you are not satisfied with the answers you get, it may be wise to consult a lawyer. This initial expense may help you avoid problems later.

A lease for a period of three years or more should be recorded with the county Register of Deeds. Never sign a lease until you have read it and are sure that you understand and agree with its contents. Remember, when you sign, you are telling the world that you understand and accept the conditions of the lease. Be sure to get a copy of the lease, showing all signatures and attachments.

Security Deposits:

Your landlord can and probably will require you to pay a security deposit. This deposit is supposed to guarantee that you will take good care of the rented property while you are there. The required deposit cannot exceed two weeks rent if you are paying by the week, one and one-half month's rent if you are paying by the month, and two months' rent if you are paying rent for longer periods.

Your landlord must keep your deposit in a trust account in a North Carolina bank or savings institution, or furnish a bond from a North Carolina insurance company. This information must be given to you within 30 days of paying the deposit. When you move out, the deposit must be refunded to you within 30 days, if you do not owe your landlord anything. You should give your landlord a forwarding address so that he or she can send your security deposit monies to you when you move. Your landlord can keep the deposit money to pay for:

1. Any rent that you owe. Note that if your landlord allows you to leave the rental unit before the end of the lease term, be sure to get that agreement in writing.

2. Damages to the property, except for damages from normal wear and tear.

3. Cost of renting if you leave before your lease expires.

4. Any bills due, such as repair bills, which someone else may hold your landlord responsible for.

5. Any reasonable fees charged for pets. Note that most pet fees are non-refundable.

If your landlord keeps any part of your deposit (other than a non-refundable pet fee) the landlord must list the damages and present them to you in writing. If your landlord does not explain why all of your deposit was not returned, you should see a county magistrate about a small claims action to recover it. If you want to hire an attorney to represent you in small claims court, you may be able to recover reasonable attorneys' fees. You can also contact your local Legal Aid office to learn if you qualify for free legal counseling or representation. Failure to take action within the specified time could result in the loss of your rights.

Your Landlord's Duties:

Your landlord must:

- 1. Comply with the local building and housing code laws.
- 2. Make repairs and keep your rental property fit and habitable.
- 3. Keep common areas safe.

4. Keep in good, safe working order all electrical, plumbing, heating, air conditioning and other appliances supplied by the landlord. Unless there is an emergency, the landlord must be told in writing of any problems.

5. Provide operable smoke detectors.

6. Tell you if the property is sold.

7. Tell you in writing of any complaints he or she has about the way you are treating the property.

8. Leave you alone while you are renting. The law makes some exceptions to this rule, but generally, while you rent you may live as if you owned the property. Exceptions when the landlord may enter your rented property include the landlord's right to inspect the property, the need to make repairs, cases of emergency, and to show the property to new tenants or purchasers. You may not borrow money against rental property.

Your Duties As A Tenant:

As a tenant, by law you are required to:

1. Keep your part of the property clean and safe – do not create any unsafe or unsanitary conditions in the areas that you use.

2. Dispose of all ashes, rubbish, garbage and other waste in a clean and safe manner.

3. Keep all plumbing fixtures clean.

4. Do not deliberately or negligently damage or remove any part of the property or knowingly permit anyone to do so.

5. Comply with any obligations of local building and housing codes. You are responsible for any damage that you cause to the property other than ordinary wear and tear.

Tenant Remedies:

If your landlord does not keep his or her obligations, you should tell the landlord at once. You should make any complaints or reports in writing, keeping a copy for yourself. If the landlord's actions violate health or building codes, contact the health department or building inspector or whatever agency handles City Code violations in your community. You can also sue your landlord for damages in civil court. If you decide to sue, you should consider talking with an attorney first. Legal Aid attorneys generally are familiar with these cases and they offer free or low-cost legal assistance if you qualify for their services. You may not withhold rent prior to suing your landlord.

Landlord Remedies:

If your rent is 5 days or more late, then your landlord may charge you a late fee. A late fee may be charged only once for each late payment. If your rent is paid monthly, a landlord may not charge more than \$15 or 5% of the monthly rent, whichever is greater. If your rent is paid weekly, a landlord may not charge more than \$4 or 5% of the weekly rent, whichever is greater.

If you do not fulfill your obligations, your landlord may try to evict you. Your landlord may only evict you by filing a civil action called a summary ejectment, in which the court is asked to make you leave the property. Your landlord cannot seize your personal property or interfere with your possession of your personal property prior to bringing a summary ejectment action or prior to receiving a writ for possession of the property that you rent.

If your landlord files a summary ejectment action against you, you will receive a summons from the Clerk of Superior Court. The summons will tell you where and when you should go before the magistrate for a hearing. A copy of the complaint will come with the summons. If you receive a summons, you should contact an attorney immediately. You have a right to file an answer to that complaint which might include a counterclaim against the landlord.

At the hearing, the landlord can ask that you be evicted and that he or she be put back into possession of the rental property. The landlord may also claim any back rent and any damages under \$5,000. If you lose in the magistrate's court ("Small Claims Court"), you have 10 days to appeal the Magistrate's decision to civil district court. In district court, you are entitled to a new trial. While the case is waiting to be heard in district court, the tenant must pay any rent due to the Clerk of Court.

Retaliatory Eviction:

There are some times when your landlord cannot legally evict you. A complaint about bad conditions or a request for repairs is not grounds for eviction. Neither is a complaint to a government agency about a landlord's violation of health or safety laws or any other law. You cannot be evicted for trying to enforce your rights under the lease or for joining a tenants' rights organization.

Housing Assistance:

Housing assistance may be available from the Department of Housing and Urban Development of the United States Government (HUD) at the main website *hud.gov*. "Section 8" housing assistance is one such program designed to allow low-income individuals (including low income older adults) to afford decent rental housing in the private market. The program is administered by your local public housing agency.

If you are accepted for participation by your local public housing agency, you will be given a Housing Choice Voucher (Section 8 Certificate), which allows you to contract with a qualified participating landlord for housing. Eligible tenants pay a portion of the fair market rent. The amount you must pay, including utilities, is about 30% of your adjusted gross income. HUD will pay the landlord the difference between your share and the fair market rent. Apartments and houses to be rented under the Section 8 program are inspected by HUD to insure that they are safe, sanitary, and that the rent is within an acceptable range. For more information contact your local public housing agency at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/ public_indian_housing/pha/contacts*.

Participating in the Section 8 program helps ensure that lower income older adults can afford safe and sanitary housing in spite of limited income. Housing authorities may establish local priorities to give preference to older adults within Section 8 or public housing, but there is no federal or state requirement to do so. Section 202 housing assistance, another HUD program, subsidizes low-income housing for elderly or handicapped individuals only.

Waiting lists for public housing and Section 8 Vouchers can be lengthy, so it may be a good idea to get on a local waiting list, provided you are income-eligible. If you have Section 8 Vouchers or live in public housing and have either an informal hearing or are being evicted, you may wish to contact your local Legal Aid office for assistance.

Protection Against Crime

Burglaries:

Do not hold an open house for thieves! Simple preparations can significantly reduce the threat of burglary. Consider these steps to lessen the threat of crime: 1. Organize or participate in a Community Watch program. Work with your friends and neighbors to protect your property. For more information, write or call your local police or sheriff's department, or contact the North Carolina Department of Crime Control and Public Safety by calling (919) 733-4564, visiting their website at *www.ncdps.gov*, or write them at:

North Carolina Department of Crime Control and Public Safety 4201 Mail Services Center Raleigh, NC 27699-4201

2. Make note when you see unfamiliar cars, trucks, and vans in your neighborhood. Write down their license numbers, the model/make of the vehicle, and think about how to specifically describe them.

3. Record all serial numbers of your appliances, motor vehicles, cellphone, television, computer, cameras and other electronics. Keep this record in a safe place and keep a copy of it somewhere away from your home or with a trusted relative.

4. Engrave or mark your possessions with your driver's license number (for example, NC-1234567).

5. Keep a written inventory of your items, including brand and model numbers, to discourage thieves from taking property and to assist the police in contacting you when they recover stolen items. To protect against identity theft, do not use your social security number to mark your possessions.

6. Photograph your jewelry, silver, antiques, and art objects. Keep these photos in a safe place.

7. Never leave a key under a doormat, cup, or hanging on a nail. Leave a spare key with a trusted neighbor or family member.

8. Never open a door for a stranger. Instead, install a peephole and a chain lock, dead bolt, or hinge lock on the door.

9. Install double cylinder dead bolt locks on all outside doors. Use window locks that can only be opened with a key. When you are at home, keep keys in these locks on the inside of your house to prevent your house from becoming a firetrap.

10. An empty garage invites crime. Keep garage doors closed and locked.

11. Make your home look and sound occupied when you are away. Leave lights and a radio or television on.

12. Light the outside of your house well. Cut back tall shrubs. Do not give burglars a place to hide.

13. Keep a dog. A barking dog is still an effective burglar alarm.

14. Only put your house or apartment number on your mailbox, not your name. A thief can look your name up in the phone book, make one call and determine that you are not home.

15. Cancel newspaper and mail deliveries if you will be away from home for some time or ask a trusted neighbor to take them in for you. Do not allow these items to pile up.

16. If you are robbed, check immediately with all coin and metal buyers and pawnshops in your community. You may be able to identify your property.

Assaults And Robbery:

Preventing street crime is difficult, but you can be safer if you follow these steps:

1. Always shop or walk with a friend. Try not to be alone on the street especially at night.

2. Do not carry large sums of money.

3. Resisting an assault or robbery can be dangerous, especially if the assailant has a weapon. Trying to talk the person out of hurting you might work.

4. Always keep two sets of identification and keys (each set should be kept in separate locations) in case one set is stolen.

5. Carry a whistle and use it to call for help.

6. Always lock your car doors when you are riding and when you leave your car for even short periods of time.

7. Avoid deserted laundromats, laundry rooms, and dark and unpopulated alleys.

Rape and Domestic Violence:

Sexual assaults can happen to anyone, anytime, at any age. Statistics show that most rapes are committed not by strangers but by acquaintances of the victim. Most rapes occur at the victim's home.

If you are sexually assaulted:

1. Report the crime to the police or sheriff.

2. Go to the hospital, even if you are not physically hurt. You need protection against venereal disease.

3. Do not change clothes, clean up, or bathe before you report the crime or before you go to the hospital. Your clothes and body may contain evidence of the rapist's identity.

4. Rapists are repeaters. If you do not report the crime, the rapist may hurt someone else. Telling the police what happened to you does not necessarily mean you will have to testify in court. If you are raped or experience domestic violence, get help from your family, clergy, friends, or a rape crisis center. You will need emotional support. If you cannot find a rape crisis center or victim advocacy group in the telephone book, several resources are listed below:

National Sexual Assault Hotline (available 24 hours a day): 1-800-656-HOPE (4673)

North Carolina Council for Women

Domestic Violence Commission Mailing Address: 1320 Mail Service Center, Raleigh, NC 27699-1320 Physical Address: 116 W. Jones Street, Suite G120 Raleigh, NC 27603 Main Office: 919-733-2455 Toll-Free: 1-877-502-9898 www.councilforwomen.nc.gov

The National Domestic Violence Hotline

(available 24 hours a day): 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY)

North Carolina Coalition Against Domestic Violence

3710 University Drive, Suite 140
Durham, NC 27707
919-956-9124 or 1-888-232-9124 *www.nccadv.org*

Rape Victims Assistance Program* Office of Victim Services 4232 Mail Service Center Raleigh, NC 27699-4703 (919) 733-7974 or 1-800-826-6200 (if within NC) *www.ncdps.gov*

*Some of your medical bills will be paid under a special program in North Carolina if you report the assault within 72 hours. Ask your doctor about this program or contact the Rape Victims Assistance Program directly.

Crime Victims Compensation Services may reimburse victims of rape, assault, child sexual abuse, domestic violence, and drunk driving, as well as the families of homicide victims, for medical expenses and lost wages as a result of being an innocent victim of a crime committed in North Carolina.

North Carolina offers an address confidentiality program to help ensure that certain perpetrators cannot locate their victims. To learn more about this program, please call 919-716-6785.

How To Report A Crime:

Call the police or sheriff in your community as soon as possible. In many areas of the state you can reach them by dialing 911. If your community does not have 911 service, and you cannot find the number in the telephone directory, call the operator by dialing 0. If you do not have a phone, ask to use a friend's phone or ask someone to drive you to the police station.

When you are reporting a crime, they will ask you your name, your telephone number, your address, where you are calling from, what crime you are reporting, where it happened, how many people were involved, and what the people committing the crime looked like. Let them know if you need medical assistance.

Organizations Providing Information and/or Assistance to Victims of Crime:

Your local district attorney's office can provide you with their Victims Rights Handbook, which explains your rights as a victim within North Carolina's criminal justice system. Contact your local district attorney's office to request a copy. You can look up your local office on the NC Conference of District Attorneys website at *www.ncdistrictattorney.org/yourDA.html*, or call (919) 890-1500.

The North Carolina Victim Assistance Network provides information to crime victims and connects victims with direct service providers in their communities. They also publish the Surviving Violet Crimes Handbook, which can be accessed on their website. Contact the NC Victim Assistance Network at 1-800-348-5068 or visit their website at *www.nc-van.org/victim.html* for more information.

The "Crime Survivors: What Do I Do Now?" Handbook is prepared by the North Carolina Bar Association Young Lawyers Division, and available online at the NCBA's website at *www.ncbar. org/media/74954/crimesurvivorshandbook.pdf*. If you do not have access to the Internet, you may also obtain a copy by contacting the NCBA at:

North Carolina Bar Association

P.O. Box 3688 Cary, NC 27519-3688 1-800-662-7407

You can also contact the North Carolina Department of Public Safety's Division of Crime Victims Compensation Services, discussed above, for additional information on statewide programs and services for crime victims.

Abuse and Neglect

Abuse and neglect are defined by state and federal statutes, case law, and regulations related to the protection of the elderly and/or disabled. County Departments of Social Services (DSS) protect elderly and/or disabled adults through Adult Protective Services (APS). North Carolina law requires that county departments of social services perform certain activities for disabled adults who are alleged to be abused, neglected or exploited and in need of protective services. The Division of Health Service Regulation (DHSR) of the N.C. Department of Health and Human Services (NCDHHS) is charged with enforcing federal and state regulations designed to protect the elderly and disabled who reside in long term care facilities such as nursing homes, assisted living facilities, and continuing care retirement communities. The State of North Carolina also criminally prosecutes abuse and neglect through local District Attorney's offices upon referral by APS, DHSR, or any complainant.

The three agencies discussed above have overlapping responsibilities to the elderly. APS only has duties to adults who are alive and at risk, so if the adult has been removed from the facility where abuse or neglect occurred or has died, APS has no duty to investigate the allegation. By contrast, DHSR has the obligation to review care regularly, and in response to complaints received from anyone. Death or removal from the facility being investigated will not excuse investigation of a complaint by DHSR, although its policy is not to investigate claims greater than a year in age after the alleged incident unless federal law requires otherwise. Finally, the State of North Carolina prosecutes the felonies of criminal abuse, neglect or exploitation of the elderly.

What Does "Abuse" Mean?

For APS's purposes, the word "abuse" means the "willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health."

"Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney."

In the long term care setting, "abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

Criminal "abuse" in the context of health care or residential custodial care is "the willful or culpably negligent infliction of physical injury or the willful or culpably negligent violation of any law designed for the health or welfare of a patient or resident." "Culpably negligent" in that setting is "conduct of a willful, gross and flagrant character, evincing reckless disregard of human life." Corporations as well as individuals may be charged with the crime of abuse or neglect in the health care or residential care setting.

When the elderly victim resides in the community, different rules apply to criminal "abuse." In the residential context, "[a] person is guilty of abuse if that person is a caretaker of a disabled or elder adult who is residing in a domestic setting and, with malice aforethought, knowingly and willfully: (i) assaults, (ii) fails to provide medical or hygienic care, or (iii) confines or restrains the disabled or elder adult in a place or under a condition that is cruel or unsafe, and as a result of the act or failure to act the disabled or elder adult suffers mental or physical injury." To be considered an "elder adult," the crime victim must be at least 60 years old, and must be incapable of providing "for the social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard [their own] rights and resources and to maintain [their own] physical and mental well-being."

What Does "Neglect" Mean?

For APS's purposes, the word 'neglect' refers to a disabled adult who is either living alone and not able to provide for the services necessary to maintain his or her mental or physical health, or is not receiving those services from his or her caretaker. For these purposes, caretaker includes custodial institutions such as nursing homes.

In the long term care setting, neglect is defined as "a failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness." For a detailed listing of the rights of nursing home residents in facilities receiving Medicare or Medicaid reimbursement, visit *www.medicare.gov/ download/Your_Resident_Rights_and_Protections_section.pdf*. These rights apply to residents in almost all of North Carolina's nursing homes, as only a handful do not receive Medicare or Medicaid reimbursement.

For community dwelling elder adults, criminal "neglect" is a crime when committed by a caretaker of "a disabled or elder adult who is residing in a domestic setting [who] wantonly, recklessly, or with gross carelessness: (i) fails to provide medical or hygienic care, or (ii) confines or restrains the disabled or elder adult in a place or under a condition that is unsafe, and as a result of the act or failure to act the disabled or elder adult suffers mental or physical injury." An elder adult is defined, for the purpose of this statute, as a person who is at least 60 years of age, and who is "not able to provide for [his or her] social, medical, psychiatric, psychological, financial, or legal services necessary to safeguard the person's rights and resources and to maintain [his or her] physical and mental well-being."

All of these actions are felonies with punishment dependent on the seriousness the injury sustained by the resident or disabled or elder adult. You should report any abuse, neglect, or exploitation to your local law enforcement authorities. The main difference between abuse and neglect outside of the criminal law is that abuse requires intentional misconduct or inaction. However, when the neglect occurs at a nursing home, rest home, or assisted living facility, as described above, and the neglect is so egregious that it is deemed "culpable," it is considered criminal abuse as well. Thus, the same deprivations or injuries may amount to abuse and neglect, depending on the state of mind of the person responsible for the deprivations or injuries.

What Does "Exploit" Mean?

In the context of APS, "Exploitation" "means the illegal or improper use of a disabled adult or his resources for another's profit or advantage."

Criminal "exploitation," by contrast, is defined in two ways. First, when the criminal stands in a position of trust and confidence or is in business with the elder or disabled adult, exploitation is the act of "knowingly, by deception or intimidation, obtain[ing] or us[ing], or endeavor[ing] to obtain or use, an elder adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elder adult or disabled adult."

Second, "It is unlawful for a person to knowingly, by deception or intimidation, obtain or use, endeavor to obtain or use, or conspire with another to obtain or use an older adult's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the older adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or benefit someone other than the older adult or disabled adult. This subsection shall not apply to a person acting within the scope of that person's lawful authority as the agent for the older adult or disabled adult." The exploitation statute defines an "older adult' as a "person 65 years of age or older." The severity of punishment is tied to the amount of resources at stake.

What should you do if you believe an elder adult is being abused or neglected or exploited?

You are legally required to report to your local APS when you have reason to believe that a disabled adult is in need of protective services due to abuse or neglect, or for other reasons. A "disabled adult" shall be "in need of protective services" if "that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services."

You will not be penalized for fulfilling this duty unless you act in bad faith: "Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose."

Contact your local county Social Services office to report suspected incidents of abuse or neglect. You may obtain contact information for your county office by visiting this website: *www.ncdhhs.gov/dss/local*. You may also contact the District Attorneys' office or your local police when you suspect an elderly person is being abused.

Contact DHSR to complain about abuse and neglect in a long term care facility in North Carolina by calling the Complaint Hotline: 1-800-624-3004 (within N.C.) or (919) 855-4500, or by mail:

Complaint Intake Unit

2711 Mail Service Center Raleigh, NC 27699-2711

You are not required to but may download complaint forms at *www.ncdhhs.gov/dhsr/ciu/filecomplaint.html*.

In addition, you may also report your concerns about an elderly person who is a resident in long term care to the regional ombudsman for the person's location See: *www.ncdhhs.gov/assistance/adult-services/long-term-care-ombudsman*.

It is important to know, however, that (unlike DHSR, APS, and the criminal courts), the ombudsmen have no regulatory authority. Long-Term Care Ombudsmen serve as advocates for residents in nursing homes and adult care homes (rest homes/ assisted living) throughout North Carolina. The North Carolina Long Term Care Ombudsman Unit does not investigate allegations of abuse, neglect or exploitation. However, the Ombudsman Program will refer any necessary information pertaining to an allegation of abuse or neglect to the local county Department of Social Services Adult Protective Services. For more information about the ombudsman program or to locate your Ombudsman, please visit *www.ncdhhs.gov/assistance/adultservices/long-term-care-ombudsman* or call (919) 855-3400.

LGBTQ Seniors

Like LGBTQ persons of any age, seniors who identify as lesbian, gay, bisexual, transgender, or queer face unique issues, including marriage equality, discrimination, access to medical care, and access to retirement living facilities. LGBTQ stands for Lesbian, Gay, Bisexual, Transgender, and Queer or Questioning. You might sometimes also see LGBTQIA; the "I" stands for Intersex and the "A" stands for Asexual or Allies.

Marriage Equality:

Marriage equality is the legal recognition of marriages without regard for the gender or sex of the spouses. Massachusetts was the first state to recognize marriage equality in 2004, and several other states followed suit over the next few years. As of 2015, all states and the federal government recognize marriage equality for all purposes. Some foreign countries recognize marriage equality, while many do not yet.

If you married in a state, territory, or foreign country that recognized your marriage at the time you were married, then the federal government and North Carolina now also recognize your marriage; you do not need to marry again in North Carolina. If you no longer wish to be married, then you must take the necessary steps to obtain a divorce.

Neither the federal government nor North Carolina recognizes domestic partnerships, civil unions, or other types of domestic relationships. If you entered into a domestic partnership or civil union but have not married your partner, then you must marry in order to take advantage of the rights that come with marriage. If you no longer wish to be in the domestic partnership or civil union, then you should consult an attorney in the jurisdiction in which you legally formalized the relationship to find out how to dissolve it. If you entered into a domestic partnership or civil union with one person and now wish to marry another, then you should take steps to dissolve the domestic partnership or civil union before marrying.

Your marital status affects you and your spouse with regard to taxes, Social Security and other public benefits, health-care decision-making, and inheritance.

Taxes:

If you are required to file a tax return and you are married, then you MUST file your federal and state tax returns using one of the married filing statuses, regardless of the gender of your spouse. If you married before North Carolina or the federal government recognized your marriage, then you might be able to amend tax returns for past years to reflect your married status. Tax rates for married couples differ from those of unmarried tax-payers. Your combined income as a married couple could also entitle you to or disqualify you from certain deductions and credits. Therefore, the amount of tax that you owe could change depending on your marital status. Whether the amount of tax you owe increases, decreases, or does not change after marriage depends on your particular circumstances. You should consult a qualified tax-preparer to determine how a change in your marital status could affect your tax bill.

Social Security and Public Benefits:

When your spouse dies, you are entitled to certain benefits from Social Security. These benefits could include a one-time cash payment or permanent increase in your monthly benefits. If you married before North Carolina or the federal government recognized your marriage and your spouse is now deceased, then you should file a claim for Social Security benefits based on your marriage. See also the section on Social Security in this handbook. In order to receive certain public benefits, such as Medicaid, your income and the value of property and assets that you own must be below certain thresholds. These thresholds are frequently different for people who are married and people who are unmarried.

Health Care Decision-Making:

North Carolina law lists the persons to whom doctors may turn to for health care decisions if an incapacitated patient does not have a Health Care Power of Attorney (discussed earlier in this handbook). A patient's spouse is high on this list, so if you are married, then your spouse may usually make your health care decisions for you during your incapacity, even if you do not have a Health Care Power of Attorney. Despite this, it is a good idea to consult with an attorney to prepare a Health Care Power of Attorney to make your wishes explicit.

Financial Decision-Making:

North Carolina law does not provide a priority list of persons to make financial decisions for you if you become unable to manage your finances and personal business. To give your partner and/or spouse authority to make such decisions for you, you should create a financial Power of Attorney.

Guardianships:

If you become unable to make your own health-care and/or financial decisions, then a court might appoint a guardian for you. You may nominate your spouse, partner, or another person whom you would want to serve as your Guardian of the Person in a Health Care Power of Attorney or your Guardian of the Estate in a financial Power of Attorney. Despite such a nomination, it is within the court's discretion to appoint a guardian based on what the court finds would be in your best interests.

Inheritance:

Under North Carolina law, your spouse is the only person whom you cannot completely disinherit. North Carolina law offers several options by which a surviving spouse can claim some of his or her deceased spouse's assets (these are described elsewhere in this handbook). Even though such protections exist, it is a good idea to consult with an attorney to prepare a Will to make your wishes explicit.

Resources/Organizations:

Several national and state-wide organizations offer more information specifically of interest to LGBTQ seniors, including the following:

• The American Society on Aging LGBT Aging Issues Network (*www.asaging.org/lain*) works to raise awareness about the concerns of LGBT seniors and offers a resources clearinghouse with a variety of information for LGBTQ persons of age 50-plus.

- GLAD: Gay and Lesbian Advocates and Defenders (*www. glad.org*) fights discrimination based on gender identity and expression, HIV status, and sexual orientation and has a variety of good resources for those who have suffered unfair discrimination.
- The Gay and Lesbian Medical Association (*www.glma. org*) advocates for equality for LGBTQ persons in access to medical care. You can get a referral to an LGBTQ-friendly doctor or health-care provider on their website.
- HRC: The Human Rights Campaign (*www.hrc.org*) offers a variety of information of interest to the LGBTQ communities, including a guide on coming out to your doctor.
- Lambda Legal Defense and Education Fund (*www. lambdalegal.org*) advocates for full recognition of the civil rights of LGBTQ persons and those living with HIV. They offer practical advice and tools right on their website and are a good resource for persons who feel that they have been subjected to unfair discrimination based on their sexual orientation or gender identity.
- The National Center for Lesbian Rights (*www.nclrights.org*) advocates and educates on a variety of topics of interest to lesbian women and others in the LGBTQ communities.
- The National Resource Center on LGBT Aging (*www. lgbtagingcenter.org*) offers a variety of information on discrimination, access to health-care, mental health, racial equality, general health issues, and general aging issues as they relate to the LGBTQ communities.
- PFLAG: Parents, Friends, and Families of Lesbians and Gays (*www.pflag.org*) is an organization of those who love someone who is LGBTQ, and has local chapters across the country and across North Carolina.
- SAGE: Services and Advocacy for Gay, Lesbian, Bisexual, and Transgender Elders (*www.sageusa.org*) works to improve the lives of LGBTQ older adults.
- CenterLink (e) can help you to find an LGBTQ community center near you. Centers offering services to the general population are located in Asheville, Durham, Raleigh, Wilmington, and Winston-Salem.
- The Assisted Living Directory offers a list of LGBTQfriendly assisted-living facilities at *www.assisted-livingdirectory.com/content/gay-friendly-facilities.cfm*.
- ACLU of NC: The American Civil Liberties Union of North Carolina (*www.acluofnorthcarolina.org*) advocates for a variety of civil rights issues, including issues of concern to the LGBTQ communities.
- Equality NC (*equalitync.org*) advocates for the interest of LGBTQ communities and persons in North Carolina.

PLANNING FOR THE FUTURE

Thinking about what happens to your family and how you provide for them after your injury, incapacity or death is a difficult process. However, the difficult decisions you make now will help your family make or even save your family from making these same difficult decisions later, when they are struggling to cope.

Most of us carry multiple forms of insurance to protect ourselves from a possible devastating loss: we have health insurance, car insurance, disability insurance, and homeowners insurance. Yet many of us have failed to plan for a certain devastating loss: what happens to our family after we die? For those who die without a Will, the State of North Carolina will direct how our hard-earned property passes after death. Oftentimes, this process is not only more cumbersome and expensive, but also fails to carry out our true intent. Having a Will is much like insurance in that it can make sure our loved ones are looked after in the way we intend and direct, and in the case of individuals possessing higher net worth, may save substantial probate expenses and taxes.

Powers of Attorney are also important legal documents. They allow a trusted person to act in your place in the event you are incapacitated. Durable General Powers of Attorney ensure that someone you trust will be able to carry on your legal, financial, and business affairs. Similarly, Health Care Powers of Attorney ensure that someone you trust will make health care decisions for you if you cannot make those decisions for yourself. An Advance Directive for a Natural Death, more commonly known as a Living Will, allows you to make decisions regarding the use of life prolonging measures, such as breathing machines and tubes and IVs for nutrition and hydration.

Without Powers of Attorney, family members or friends may instead be forced to seek guardianship, which will involve a hearing and the presentation of evidence before a Clerk of Court. Guardianship is another form of substitute decision-making, however guardianship procedures are generally much less flexible and much more costly than having a well drafted Power of Attorney. The Court may choose to appoint a guardian for you whom you would not have chosen for yourself. Additionally, the appointed guardian must be bonded and must file annual reports with the Clerk of Court, requirements that do not typically apply with a Power of Attorney.

Proper estate planning is extremely important, and can provide significant benefits for your family. Estate planning will help your loved ones through difficult circumstances and events by saving them money and by reducing uncertainty and complexity. Many decisions will be made by family members at a time when they are dealing with emotions and stress. Without proper planning, they will bear the additional burden of making those decisions without being sure of your wishes. Discuss with your attorney the benefits of having a Will, Durable (financial) and Health Care Powers of Attorney, and a Living Will.

Powers of Attorney and Living Wills

A Power of Attorney is a legal document that grants authority to another person, called an "agent" or "attorney-in-fact," to conduct business or make health care decisions for you without a court order. Powers of Attorney may be immediately effective, or may instead become effective only if you become incompetent or incapacitated. If you do not have a Power of Attorney, a court will generally have to appoint a guardian to make health care and financial decisions for you during a period of incapacity or incompetency. Having professionally drafted Health Care and Durable Powers of Attorney will save your family a significant amount of expense and frustration by avoiding the guardianship process. Additionally, do not assume that simply because you are married, or have surviving family members, that they will be able to handle your affairs or make decisions on your behalf. Without a Power of Attorney granting them authority to do so, spouses and family members are generally unable to handle a loved one's financial affairs.

General Or Durable Powers Of Attorney:

A General Durable Power of Attorney gives your agent the authority to handle your legal and financial matters. As these documents put a great deal of power into the hands of the named agent, you should be cautious about whom you name as your agent, and what powers you grant to your agent. Certain broad powers, such as the ability to make gifts of your property to your family members, may be beneficial under certain planning situations, but these types of powers can also be easily abused or used as a means of financial exploitation. It is important that you understand the powers granted in your documents and understand that if the power of attorney is too limited or does not describe in detail your agent's powers, your agent may have difficulty making some financial decisions on your behalf. It is best to discuss your power of attorney with a lawyer.

Health Care Powers Of Attorney & Living Wills:

Just as you can give another person the power to make legal and financial decisions, you can also give another person the power

to make health care decisions for you. The Health Care Power of Attorney and Living Will are discussed in the Health Care Section of this handbook, entitled "Advance Directives."

Wills and Disposition of Property

A will is a legal declaration of a person's wishes regarding the disposition of his or her property upon death. In North Carolina, the legal requirements for a Will are strictly enforced. To make a Will, a person must be at least 18 years old and of sound mind. The law imposes additional requirements depending on the type of Will, as discussed below.

Types Of Wills:

In North Carolina, there are three types of Wills: an attested written Will, a holographic Will, and an oral (or nuncupative) Will. An oral Will is extremely rare and is only effective in very particular circumstances, so it is not discussed here.

An attested written Will must be signed by the person making the Will (the "testator") and witnessed by at least two competent witnesses. North Carolina has strict requirements for witnessing the execution of a Will. A person who is a beneficiary under your Will should not be used as a witness to the execution of your Will.

Unless a Will is self-proving, the witnesses will have to affirm under oath that they saw the testator sign the Will willingly as his or her last Will, that the testator was at least 18 years of age, of sound mind, and under no constraint or undue influence. Professionally drafted attested Wills are generally "self-proving," meaning the witnesses make this sworn statement when the Will is signed, so the witnesses will not have to be found when the Will is admitted to probate, which may be years later.

A holographic Will must be entirely written and signed in your own handwriting. It does not have to be signed by witnesses, but it must be found among your valuable papers. It must also indicate your intent that it be your Will. North Carolina is one of the few remaining states which accepts a holographic Will as a valid Will; however, reliance upon a holographic Will is not advised since it often leads to confusion, or worse, litigation.

Why You Need A Will:

If you die without a Will, the State of North Carolina will decide who receives your property, which will affect your family, in ways you may have neither intended nor desired. As discussed in the section on "Rights of Surviving Spouse" below, you cannot completely disinherit your spouse or minor children, but in virtually every other way, you can dispose of your property however you like if you properly execute a valid Will. Having a Will can save your family or loved ones a great deal of financial instability and emotional stress. With a Will, you direct who will inherit your assets, in what shares, at what age, and in what manner, such as outright or in trust. You will specify who should handle your estate administration and the discretion they may have in doing so. Further, for individuals who will have taxable estates (see the section on Gift, Estate, and Inheritance Taxes below), a well-drafted estate plan could save your family hundreds of thousands of dollars in taxes alone. Quite simply, Wills are beneficial for all individuals in a variety of situations, and a professionally drafted Will typically makes estate administration easier and less expensive.

If you die without a Will, your estate will be governed by the Intestate Succession Act, which is a default, one-size-fits-all distribution scheme. Under this set of statutes, your property would pass to your spouse and/or children or parents, siblings, or other relatives, in shares determined by the statutes, without regard to your personal relationships or your relatives' ability to handle assets. The Intestate Succession Act likely fails to meet your desired objectives regarding how you want your assets to pass, how you want to provide for your children or grandchildren, and how much authority and flexibility you want the person handling your estate to have at his or her disposal. For example, you may want to provide for a friend, charity, or a relative who is not in line to receive an intestate share, or you may decide that a particular relative should not receive anything. The Intestate Succession Act will not carry out those wishes.

In addition, a properly drafted Will is important if you have a family member or friend who has special needs and is currently on, or will be receiving, public benefits such as Supplemental Security Income (SSI) or Medicaid. If such a disabled beneficiary receives an inheritance, that beneficiary could lose his or her public benefits. An attorney can assist you in setting up a Special Needs Trust for the benefit of the family member or friend with special needs so that the beneficiary does not lose public benefits.

Non-traditional families are particularly adversely affected by state inheritance laws. Non-married couples are not entitled to any portion of their partner's estate, and will receive nothing under state law. This is true even in the case of a man and women who have been living together in North Carolina for many years, as there is no "common law marriage" in this state (although North Carolina will respect a lawful common law marriage from another state). For blended families (families where each partner has children from a prior relationship), it is particularly important that each partner's estate plan details who is to inherit from that partner, and how.

Dying without a Will has additional consequences if you have minor children or grandchildren. In such circumstances, a guardian for your minor children or grandchildren must be appointed to manage any property they receive because of your death, including insurance proceeds, retirement assets, and real estate titled in your name. For example, if you are a single parent and own a home, or if you are married and your home is titled only in your name (rather than owned by you and your spouse together), your home will be owned at least partially by your children, or even your grandchildren, when you die. If they are minors, they cannot manage property on their own and a guardian must be appointed. Guardianship of a minor requires court supervision, a formal annual accounting to the court, and an annual bond. If the guardian needs to take certain action, such as refinancing the home, a lawyer must be retained to file the necessary petition for approval by the court. The attorneys' fees, bond premiums, guardian's commissions, and other costs of administration will be paid out of the minor's funds and could cost thousands of dollars. The reality is that the costs associated with a guardianship are significant and the procedures are frequently inflexible. A Will that provides for the management of a minor's inheritance without involving court supervision will likely save your loved ones significant time, effort, and money.

Moreover, when your children or grandchildren reach the age of 18, they will control all of their inherited assets, generally at a time when they are too inexperienced or immature to handle this amount of money responsibly. A Will can establish a trust to provide management of these assets to continue to provide for the care and support of your children or grandchildren until they attain an age when you believe they can handle this property responsibly.

Writing Your Own Will Or Using A Computer Program:

The old adage that you get what you pay for certainly applies to this situation. It is possible, but inadvisable, to have your own handwritten Will in North Carolina. It is also possible to use a computer program to help you with a Will. However, North Carolina law is very strict in its requirements for what document qualifies as a Will; therefore, the document you create on your own may not meet these requirements. As a harsh consequence, the directions and wishes you express in a document that fails to meet North Carolina's legal requirements for Wills will not have any legal effect. And if there is any question whether a document qualifies as a Will, a costly court proceeding may be necessary.

A professionally drafted Will has the benefit of certainty and clarity. Having a professionally drafted Will generally makes estate administration easier and less expensive, and should avoid litigation. If your Will is unclear or ambiguous, your loved ones may become embroiled in litigation and much of your estate will be paid to the attorneys hired to fight these issues in court, rather than to the loved ones you intended to receive those assets.

Rights Of Surviving Spouse:

State law prevents the complete disinheritance of a surviving spouse. A surviving spouse must receive a minimum amount of his or her spouse's estate, regardless of what may be written in the deceased spouse's Will. Surviving spouses are also entitled to a one-time "spousal allowance" of \$30,000 for support and maintenance after the death of a deceased spouse, if the estate of the deceased spouse is large enough. Children under 18, disabled children under 21, and school-enrolled children under 22 are entitled to \$5,000 each. These allowances are paid from the cash or other personal property in the deceased person's estate, if possible, and are free from any claims against the estate.

The surviving spouse is also entitled to an "elective share," or a fraction of the net value of the estate (total value of property minus total value of claims against the estate) minus any amount received by the surviving spouse as part of the spousal allowance or under the deceased spouse's will. In essence, the elective share ensures that the surviving spouse receives a certain portion of the deceased spouse's estate, although that portion may be partly or entirely made up of the spousal allowance and a bequest or devise in the Will.

Changing Your Will And Other Estate Planning Documents:

Once your estate planning documents have been properly executed, do not doodle on them, make hand-written changes to them, or attempt to modify them in any way. If you want something changed, talk to your attorney. You will most likely have to execute new documents or a codicil (amendment) to your Will to effect the changes. It is critical to make changes in a legally enforceable manner. If you attempt to modify your documents on your own, it may appear to be a revocation, making the entire document worthless, ineffective, or legally confusing and ambiguous.

A legally effective codicil will allow everything in your Will to stay the same except for the parts which are changed by the codicil. Whether you change your Will with a codicil or by executing an entirely new Will, the document must meet the strict testamentary formalities already discussed. Signing a new Will typically revokes any earlier Will.

Safeguarding Your Documents:

It is important that your heirs know where to locate your Will and other estate planning documents. These documents should be kept in a fire-safe box in your home, a safe deposit box, or your attorney's fire-proof vault. Keeping your documents at home provides easy access, but the documents are at greater risk of loss or destruction. Keeping your documents in a safe deposit box or at your attorney's office provides greater safety from loss or fire, a greater likelihood of discovery, and more privacy. However, note that only a joint tenant, lessee, or deputy of a safe deposit box will be able to access the document after your death without court intervention. Additionally, your estate planning documents may need to be accessed during the evenings or weekends, when it is not possible to reach the documents at your bank or your attorney's office.

Probate and Estate Administration

What is Probate?

Probate is the process by which the court determines whether a person died with or without a Will. It also frequently (and informally) refers to the process of court-supervised administration and distribution of assets after death. Following a person's death, the estate administration process will require that creditors receive notice of the person's death, that creditors have a short time period to file claims, and that probate property (and in some cases, certain non-probate property) be used to pay lawful debts. The property remaining after debts, expenses, and costs of administration are paid will go to the decedent's heirs at law or, in the case of a Will, to the decedent's chosen beneficiaries. Probate fees are currently set at a statutory maximum of \$6,000.

Non-Probate Property and Property Ownership:

Probate does not cover all property: pay-on-death contracts such as life insurance, retirement accounts, as well as survivorship property such as certain real estate, bank accounts or shares of stock, are generally referred to as "non-probate property". Non-probate property passes automatically by operation of law or by contract to a named beneficiary and does not pass through the probate process.

If you own any property, accounts, or contracts that will pass to a named beneficiary, it is important to review your beneficiary designations to ensure that you have named both a primary and contingent beneficiary to receive the property. Births, deaths, divorce and other life changes will often affect whom you intend to receive these assets, but if you do not change your beneficiary designations, an unintended or undesired beneficiary may receive them. Further, if a beneficiary is not designated, or if the designated beneficiary has died with no contingent beneficiary named, then this otherwise non-probate property may pass to your estate as the default beneficiary. As a result, it will have to pass through the probate process and be subject to probate fees and claims of creditors.

The structure of ownership of property affects its status as "probate" or "non-probate" property. You can own property by yourself or jointly with your spouse or other persons. Many types of property may be owned in such a way that the interest held by one owner will automatically pass upon death to the remaining owners, which is known as "survivorship property". The transfer of this interest occurs automatically upon death and without the necessity of probate. The right of survivorship must be selected by the joint owners in the creating document, usually a deed or written contract. Common survivorship property includes jointly owned real property, bank accounts, and shares of stock.

In North Carolina, if you own real property as husband and wife, your interest in that property is known as a "tenancy by the entirety". This means that you and your spouse own the property as a marital unit, and upon the death of the first spouse, the property will automatically pass to the surviving spouse.

Please note, however, that real property that you and another person own together without any right of survivorship, called a "tenancy in common," is property that passes by Will. In North Carolina, tenancy in common is the most common type of coownership of real property other than that between spouses. A tenancy in common is not survivorship property; therefore, the interest of one owner will not automatically pass to the remaining owner upon death. Unlike survivorship property, each owner's interest may be separately sold, encumbered, or given at death by a Will through the probate process.

Small Estate Administration:

When a person dies with or without a Will and the value of the personal property in the estate does not exceed \$20,000, or \$30,000 if there is a surviving spouse, there is a simplified administration procedure. Under this procedure, any person who is an heir, creditor, devisee or executor (if the decedent had a Will) of the decedent can file an affidavit in the office of the Clerk of Superior Court of the county where the decedent lived at the time of his death, and the affidavit will be sufficient to recover and transfer property. Forms for making this affidavit, known as an affidavit for collection of personal property of the decedent, are available from the Clerk of Superior Court.

Trusts

A trust is an arrangement where a trustee holds and controls property for the benefit of one or more beneficiaries. The trustee can be one of the beneficiaries, but the trustee's ability to make distributions to himself or herself will generally be restricted. A person who creates a trust is commonly referred to as the "grantor" (or "settlor") of the trust. The grantor may serve as a trustee, and may be a beneficiary. In most cases, anyone can contribute property to a trust once it has been created, as long as the trustee accepts the property.

There are many different types of trusts. A trust created by your Will, which does not exist during your lifetime but is created at your death, is commonly called a testamentary trust. A trust you create during your lifetime is called a living trust or an inter vivos trust. A trust you can modify is a revocable trust, while an irrevocable trust cannot be modified (except, in limited circumstances, by a court through a complicated and frequently expensive procedure). A special needs trust or supplemental needs trust provides funds for expenses other than basic needs for a beneficiary who qualifies for certain forms of governmental assistance. There are many other types of trusts; this is just a brief description of trusts North Carolina residents are most likely to encounter. Trusts can be very simple or very complicated. They can exist just long enough to distribute your property to your beneficiaries after your death, or they can exist for multiple generations. They are particularly useful if you plan to leave assets to beneficiaries who will not be able to manage their own finances, such as minor children and incompetent adults, or if you need governmental aid and are willing to reimburse the state for its costs after your death. Trusts may also reduce the cost of administering your estate in some cases.

If you are considering setting up a trust, it is strongly recommended that you consult with an attorney who can help you draft a formal written trust agreement or trust instrument explaining who will be responsible for the trust and how the trust's assets should be used. Before you take such a step, please be aware of the following common myths about trusts:

- "Living trusts are the simple solution to every estate planning problem." They are not. Different types of trusts serve different purposes; there is no "one size fits all" trust. It is unfortunately very easy to create a flawed trust if you try to do this yourself with software or a prepackaged "trust kit." You may save costs up front but will likely create problems after your death.
- "A trust can protect your assets from your creditors' claims." This is generally not the case in North Carolina, where assets in your revocable trust may be reached by your own creditors, and which has many laws against transferring assets to avoid known or anticipated debts.
- "Putting your assets in trust avoids taxes." This is not always the case. If you are likely to have a very large estate (more than \$5,000,000), some types of irrevocable trusts may help reduce estate taxes or help your family pay any estate taxes due, but a trust may also increase the amount of income tax paid by your estate or beneficiaries.
- "Trusts avoid the expensive, time-consuming probate process." Living trusts do allow assets held by the trust to avoid probate, and are generally less expensive to administer than probate estates, as long as the trustee understands and obeys the terms of the trust. However, be aware that any assets you leave in your own name will pass through your probate estate, even if you have set up a trust. Many people with a living trust will still have assets left outside of their trusts at the time of their deaths (such as a car that could not be transferred to the trust, a health insurance premium refund, a final social security payment, a security deposit, etc.) which will have to go through probate.

If you do decide to ask an attorney about creating a trust, be sure to explain to the attorney exactly what you intend to accomplish with the trust and what assets you want to contribute to the trust, so the attorney can guide you to the appropriate type of trust, or alert you if there is a simpler or less expensive way to accomplish your goals without a trust.

Living Trusts:

A "living trust" simply means a trust created during the grantor's lifetime. If you are concerned that you may not be able to manage your property during your lifetime (for example, if you face Alzheimer's disease, or some other debilitating illness or accident), a properly drafted living trust can be useful regardless of the size of your estate. Similarly, you may want to use a living trust to keep your estate confidential. Your Will becomes a matter of public record, along with the size of your probate estate and what you are leaving to your beneficiaries, while a living trust is a private agreement. A living trust can help provide professional management of your assets during your lifetime. In addition, if you have real estate in states other than North Carolina, a living trust can be utilized to avoid probate for those assets.

If you decide to establish a living trust, you will need to decide who you want to serve as trustee. Most grantors of revocable, living trusts will serve as their own trustees as long as they can, but the trust agreement should name at least one or more successor trustee. Any person can serve as trustee, but your trustee should be someone you trust to help you manage your assets during your lifetime and to manage and distribute assets for your other beneficiaries after your death. If you do not want to put a friend or family member in that position, you can name a corporate trustee or professional trustee. In North Carolina, only banks empowered to conduct trust business and trust companies are authorized to serve as corporate trustees and solicit trust business. Most corporate trustees will charge annual fees for trust services, frequently anywhere from 0.75% to 4.0% of the assets in trust each year, whereas individual trustees are limited by current law to 0.4% per year (unless your trust document says otherwise, the beneficiaries permit the trustee to claim greater compensation, or the Clerk of Court agrees that a larger trustee fee is justified). There are also attorneys and Certified Professional Accountants (CPAs) who are willing to serve as professional trustees. In any case, it is important to understand your trustee's fee schedule.

Testamentary Trusts:

A testamentary trust is a trust in the grantor's will that is not created until after the grantor's death. Even if you do not want to set up a living trust, it may be useful to include the terms of a testamentary trust in your will. For example, if you have a young child, grandchild, niece, nephew, etc. who inherits some part of your estate, they will receive this property outright at age 18 unless you put their share into a trust. Small outright gifts may be acceptable, but if you are leaving a substantial portion of your estate to a young beneficiary, you may want the beneficiary's access to funds to be restricted until they reach age 21, 25, 30, 35, or even older. Some beneficiaries (particularly those with developmental disabilities or substance abuse problems) may benefit from having their assets kept in trust for their whole lives. An outright gift to a disabled relative or friend who has qualified for governmental benefits may disqualify them from receiving benefits, forcing the beneficiary to spend the gift and then go through the qualification procedure again, but you can include a testamentary supplemental needs trust for a disabled beneficiary to leave them assets without disqualifying them from receiving benefits.

As with a living trust, you should carefully select the person or corporation that would serve as trustee of your testamentary trust, considering the fees they would charge as well as their relationship with your beneficiaries, their organizational skills, and their trustworthiness.

Guardianship

Adults are presumed competent to make decisions, however unwise those decisions may be. However, a person may be rendered unable to make informed, voluntary decisions because of illness, injury, or incapacity. If a person becomes unable to manage his or her own affairs or to make important decisions concerning his or her personal wellbeing, or property, a court can declare him or her to be legally incompetent and can appoint guardians to act on his or her behalf.

Any person may file an incompetency and guardianship proceeding, whether or not the allegedly incompetent person has previously executed a Power of Attorney. Many incompetency and guardianship proceedings are filed because a person has not executed valid Powers of Attorney. The benefits of Powers of Attorney are discussed previously in this handbook. In some cases, however, it may be necessary to declare a person incompetent even though they have Powers of Attorney in place.

An adult must be adjudged incompetent by the Clerk of Superior Court, based on "clear, cogent, and convincing" evidence that he or she "lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury or similar cause or condition." An advocate known as a "guardian ad litem" is appointed to represent the best interests of the allegedly incompetent person. A formal hearing will be held by the Clerk of Superior Court and the alleged incompetent person may request a jury proceeding. Petitioning to have someone declared incompetent is a serious, possibly adversarial proceeding which may cause a great deal of stress, confusion, and embarrassment to the allegedly incompetent person and his or her family.

In the event a person is determined to be incompetent, the clerk will appoint a guardian of the person, guardian of the estate, both of those, or a general guardian. If the ward cannot make decisions regarding his or her health care and personal needs, a guardian of the person will be appointed to make those decisions for the ward, such as where the ward will live and what medical care the ward will receive. If the ward cannot manage his or her finances and affairs, a guardian of the estate will be given possession and control of the ward's property and assets to manage them for the ward. A general guardian is someone who acts in both roles, if the ward is not competent to handle financial or personal affairs. If the ward needs a guardian of the person and a guardian of the estate, one person may be appointed as general guardian, or two people may be appointed, one for each role.

Every guardian must act in the ward's best interest. The guardian of the estate must post a bond, payable to the State of North Carolina, to insure the ward's assets in the event the guardian violates his or her fiduciary duties. A guardian of an estate must manage the business and financial affairs of the incompetent person in a prudent manner. The guardian must give an annual report each year of the receipts, disbursements, investments, and other transactions made that year from the ward's estate, and must account for all assets in the ward's estate. Court approval is required before certain transactions can take place, including the use of the ward's principal assets (as opposed to income), sale of real property, and many other investments or expenditures. In order to obtain court approval for the sale of real property, a special proceeding must be filed and generally an attorney must be retained to file the special proceeding with the court. Approval of other transactions, such as spending money for the incompetent person, is obtained by filing a petition with the clerk.

Guardianship generally supersedes a Power of Attorney, although a Power of Attorney may nominate the attorney-in-fact to be appointed guardian. The court generally appoints the nominated guardian from a Power of Attorney unless "good cause" is shown to appoint someone else. In such cases, it is a good idea for the newly appointed Guardian to revoke the prior Power of Attorney.

A ward can petition the court for a restoration of competency. The proceeding is similar to the original proceeding as the ward can be represented by counsel or a guardian ad litem, and can request a trial by jury. If the clerk or jury finds the ward to be competent, the clerk will enter an order that the ward is restored to competency, and the individual may handle his or her affairs again.

Gift, Estate and Inheritance Taxes

Gift Tax:

A gift tax is a tax on any value transferred without expectation of receiving anything of equivalent value. North Carolina has had no state gift tax since 2009, but the federal government and some other states still have a gift tax. The top federal gift tax rate is 40%. However, most gifts qualify for an exemption, so it is fairly unlikely that you will need to file a federal gift tax return, and even less likely that you will ever pay any gift tax. First, any gift to your spouse (provided your spouse is a U.S. citizen) or to a tax-exempt charity is automatically exempt from reporting and tax requirements. Second, any direct payment you make of another's medical or educational expenses (such as paying your child's college tuition) is automatically exempt from reporting and tax requirements. (Note, however, that this is only true if you make those payments directly to the doctor, hospital, school, etc.) Third, your total gifts of up to \$14,000 (in 2016) to any one person per year are automatically exempt from reporting and tax requirements. The \$14,000 Federal annual exclusion amount is indexed for inflation and increases every few years.

For example, if your child is married, both you and your spouse can each give \$14,000 to your child and \$14,000 to your child's spouse (\$56,000 total) over the course of a year without having to report anything. However, if you gave them \$57,000, you would need to file a federal gift tax return (IRS Form 709) to report the gift.

In addition to the three exemptions listed above, you have a large Applicable Exclusion Amount that is also indexed for inflation (\$5,450,000 in 2016). As a result, even if you are required to report a taxable gift, you will not actually pay any gift tax until your reported gifts exceed your lifetime exclusion amount. For example, if your child is married and you and your spouse give your child and your child's spouse a total of \$100,000 in 2016, then the first \$56,000 will fall under the annual exclusion amount, the remaining \$44,000 will be applied against your lifetime exclusion amounts, and the two of you could still give another \$10,856,000 without paying any gift tax.

To the extent you do not use your Applicable Exclusion Amount during your life, it will be available to exclude assets in your estate from estate tax at your death. If you are likely to need your entire Applicable Exclusion Amount to cover your estate at your death, you may want to make annual exclusion gifts during your lifetime as a way to transfer funds out of your estate without eating into your lifetime exclusion amount. Typically, people make such gifts to their children and grandchildren. When used aggressively, annual exclusion gifts can be used to transfer a significant sum of money out of your estate each year. Every dollar transferred out of your estate is a dollar that cannot be subject to estate tax at your death.

Be aware that if you make a gift of property (such as valuable artwork or land) during your lifetime, the recipient receives that property with your basis, whereas property transferred at death receives a "step up" in basis to its fair market value at the time of your death. For example, if your father purchased a parcel of land for \$200 in the 1940s and gave it to you during his lifetime, then your basis in that property is only \$200, even if it is now worth \$200,000. If you sell it for \$200,000, you will recognize a long-term capital gain of \$199,800. If you give it to your daughter during your lifetime, she will also receive that \$200 basis. But if you keep the property until your death and leave it to your daughter through your will or revocable trust, and the property is worth \$200,000 at the time of your death, then your daughter will receive it with a basis of \$200,000, and can sell it for that price without recognizing any capital gain. For this reason, you should consult with an attorney or tax professional, and think very carefully about long-term consequences before making significant lifetime gifts.

Estate Tax:

An estate tax is a tax on gifts made at death, paid by the estate, whereas an inheritance tax is paid by the beneficiary on the inheritance. North Carolina has repealed its estate tax and inheritance tax, and there is no federal inheritance tax, so most North Carolina estates only deal with federal estate taxes. However, some states still have estate and/or inheritance taxes that may affect any real estate or business interests you own in such states. If you own any property in another state, you should consult with an attorney or tax professional in that state to determine whether your estate or beneficiaries may owe taxes to that state upon your death.

When you die, everything you own or receive benefit from at the time of your death, wherever it may be located, becomes part of your gross estate for federal estate tax purposes. This includes any house, land, cars, household goods, furniture, jewelry, money, clothes, bank and investment accounts, stocks, business interests, retirement or pension plans, IRAs, life insurance policies, and any other property which you own or hold some interest in at the time of your death. The executor of your estate will need to determine the value of your gross estate, and will need to file a federal estate tax return (IRS Form 706) if the value of your gross estate exceeds your remaining Applicable Exclusion Amount (after accounting for your lifetime gifts).

Your estate will be able to claim estate tax deductions for any bequest you make to your spouse (provided your spouse is a U.S. citizen) or to a tax-exempt charity, and will likely have deductible expenses. If your gross estate, reduced by these deductions, still exceeds your remaining Applicable Exclusion Amount, then your estate will pay a 40% estate tax on the balance.

Since 2010, the Applicable Exclusion Amount has been "portable" between spouses. This means that if you do not use your entire Applicable Exclusion Amount during your lifetime or at your death, then the unused portion can be claimed by your spouse if your spouse survives you, augmenting their own Applicable Exclusion Amount. For example, if you have \$6,000,000 and your spouse has \$4,000,000, neither of you makes any lifetime gifts, your spouse survives you, and you leave your entire estate to your spouse, then the executor of your estate will file a federal estate tax return showing that your gross estate is worth \$6,000,000, but that you have not used any part of your Applicable Exclusion Amount because you gave your entire gross estate to your surviving spouse. Your spouse adds your unused Applicable Exclusion Amount (at least \$5,450,000) to her own, so when she dies, her \$10,000,000 estate is free from estate tax.

If you have general questions about the federal estate tax, you can call the Internal Revenue Service at its toll free Form 706 and 709 Help Line (1-866-699-4083). For more specific questions and advice about your own estate planning needs, consult an attorney experienced in tax and estate planning.

Veterans Affairs

The U.S. Department of Veterans Affairs (VA) is charged with administering benefits programs for veterans of the United States Armed Forces and their families. Eligibility for many VA benefits is determined by when you served in the military and the length of time served, provided you were not dishonorably discharged. Even if you were dishonorably discharged, you may be entitled to certain benefits and should apply to the VA for a discharge upgrade.

The following is a brief summary of some benefits available to veterans. More detailed information is available online at *www. va.gov/opa/publications/benefits_book/2014_Federal_Benefits_for_Veterans_English.pdf*.

Disability Compensation:

In order to get disability compensation from the VA, your disability must have been the result of an injury or illness which began, or was aggravated, during a period of active military service.

Monthly compensation payments are made according to a VA disability rating schedule. Payments may be made to fiduciaries of eligible veterans.

Veterans Pensions:

If you meet certain income and net worth limits and meet certain active duty requirements described below, a monthly pension is available if you are permanently and totally disabled even if that disability has nothing to do with former military service. Veterans age 65 and older are considered disabled for purposes of VA pension eligibility. Payment benefits are also available to widowed spouses of eligible veterans. Enhanced pension amounts are available to those who have higher levels of medical need.

In order to receive pension benefits, you must have completed 90 days of military service, part of which occurred during a wartime period as defined by law. If you were discharged because of a service-connected disability with less than 90 days of military service, you are also eligible. Veterans who entered active duty on or after Sept. 8, 1980, or officers who entered active duty on or after Oct. 16, 1981, may have to meet a longer minimum period of active duty.

Medical Care:

VA Medical Centers provide a full range of hospital and outpatient care, including limited home health care. VA medical care is available to all eligible veterans, but to be eligible, veterans who enlisted after Sept. 7, 1980, or who entered active duty after Oct. 16, 1981, must have served 24 continuous months or the full period for which they were called to active duty (but this requirement may be waived for veterans discharged for hardship, early out, or who have a disability incurred or aggravated in the line of duty). First priority is given to veterans with a service related disability. This is the case whether you are seeking medical treatment for a service related disability or for another medical condition.

Charges for VA medical treatment are generally based on your ability to pay. Some veterans are treated free of charge. If your income is high, the VA may submit charges for medical treatment to your private insurance company. You may have a copay requirement, based on your income and priority level.

Other Benefits:

Eligibility requirements vary for other VA benefits. These benefits include, but are not limited to, the following:

1. Reimbursement for burial expenses;

2. Life insurance;

3. A grant to adapt a home to accommodate a veteran's physical handicap;

4. A grant to purchase an automobile or for other conveyance or automobile adaptive equipment for veterans with certain kinds of physical or mobility losses or permanent disabilities;

5. Interment in a national cemetery;

6. An annual clothing allowance for a veteran who uses prosthetic or orthopedic appliances or whose medication for a skin condition damages clothing;

7. Educational assistance, including payment of a percentage of tuition and fees, as well as a housing allowance and some other costs;

8. Vocational training and rehabilitation;

9. Home loan guaranty benefits;

10. Civil service preference for the veteran and veteran's spouse, surviving spouse, or mother; and

11. Exchange and commissary store privileges.

Where To Call For Help and Information

Federal VA Benefits:

For information or assistance in applying for VA benefits, contact the Department of Veterans Affairs by calling 1-800-827-1000, visiting their website at *www.va.gov*, or by writing or visiting the following North Carolina VA Regional Benefit Office:

Veterans Administration Regional Office Federal Building 251 North Main Street Winston-Salem, NC 27155 1-800-827-1000

Insurance Information Hotline: Toll-free telephone service is available to policyholders and beneficiaries in the life insurance programs. The number is 1-800-419-1473 for service members and/or the Veterans Group Life Insurance Program and 1-800-669-8477 for all other VA life insurance programs.

North Carolina Veterans Benefits:

State Veterans Benefits: North Carolina offers benefits to veterans which are independent of federal benefits. Eligibility may depend on whether an individual resided in North Carolina at the time of enlisting in the armed forces. State benefits may include, but are not limited to, the following:

1. Some relief from income and property taxes, particularly for disabled veterans;

2. Scholarships for children of certain categories of deceased, disabled, combat or POW/MIA veterans at certain institutions;

3. Employment preference for veterans, spouses or surviving spouses with state departments, agencies or institutions; and

4. Special license plates for disabled veterans, prisoners of war, purple heart recipients and Pearl Harbor survivors.

Visit the North Carolina Benefits Office online at *www.milvets. nc.gov* or call (919) 807-4250.

Write to or visit the following address: Veterans Administration Regional Office Federal Building 251 North Main Street Winston-Salem, NC 27155 1-800-827-1000

LEGAL SERVICES

If you are accused of a crime, you are entitled to the services of a lawyer, even if you cannot afford one. A public defender or a private lawyer may be appointed by the court to represent you. But what if you need a lawyer for a civil case and you do not have a private lawyer? There are a number of ways to find a lawyer to help you. Perhaps the best way is to talk with your friends and relatives to find out about which lawyer or law firm they use, and what their experiences have been. There are a number of other sources, too. If you do not have a lawyer, you can contact the North Carolina Lawyer Referral Service, which is sponsored by the North Carolina Bar Association. Based on the information you provide, you will receive the name and telephone number of an appropriate attorney with whom you can meet to discuss your problem. The lawyer will meet with you for a nominal fee for up to one-half hour. If additional legal work is required you may decide to hire the attorney, and you would be responsible for any additional fees. You can contact the Lawyer Referral Service at:

North Carolina Lawyer Referral Service North Carolina Bar Association

P.O. Box 3688, Cary, NC 27519 (919) 677-8574 or 1-800-662-7660 *www.ncfindalawyer.org*

There are other sources for legal services that specialize in the needs of senior citizens. Four of those are listed below, which provide services at no cost to certain qualifying senior citizens in their service area.

Wake Forest University School of Law Elder Law Clinic

WFU School of Law, Worrell Professional Center P. O. Box 7206 Winston-Salem, NC 27109-6226 Phone: (336) 758-5061 *elder-clinic.law.wfu.edu*

Elon University School of Law Elder Law Clinic

201 North Greene Street Greensboro, NC 27401 Phone: (336) 279-9314 www.elon.edu/e/law/academics/clinics/elder-law-clinic.html

Campbell University School of Law Senior Law Clinic

225 Hillsborough Street, Suite 302 Raleigh, NC 27603 Phone: (919) 865-4693 *law.campbell.edu/page.cfm?id=588&n=the-senior-law-clinic* Legal Services for the Elderly Mecklenburg County Bar 438 Queens Road Charlotte, NC 28207 (704) 375-0120 www.meckbar.org/lawyerreferral

Legal Aid of North Carolina

Another resource is a Legal Aid (formerly Legal Services) lawyer, if you meet their income guidelines. If you qualify for Legal Aid, and your case meets certain other requirements, the services of a lawyer or paralegal are provided free of charge. A Legal Aid lawyer may help you solve legal problems involving your Social Security, Supplemental Security Insurance, housing, food stamps, Aid to Families With Dependent Children (AFDC), housing or unemployment. Legal Aid may also help with legal problems concerning consumer debts and contracts, civil rights, divorce, child custody, adoptions, name changes, workers' compensation and bankruptcy. Check with your local Legal Aid office to see what kinds of cases that office handles.

Legal Aid serves 94 counties in North Carolina through a network of 18 area offices (six counties near Asheville are instead served by Pisgah Legal Services--see below). Each office serves a specific region of the state. The Legal Aid offices in North Carolina are:

Legal Aid of North Carolina - Statewide Central Office

224 South Dawson Street P.O. Box 26087, Raleigh, NC 27611 (919) 856-2564 *www.legalaidnc.org*

Ahoskie Office

610 East Church Street Ahoskie, NC 27910 (252) 332-5124 or 1-866-219-5262 Counties Served: Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Northampton, Pasquotank, and Perquimans

Charlotte Office

1431 Elizabeth Avenue Charlotte, NC 28204-2506 (704) 971-2621 or 1-800-738-3868 County Served: Mecklenburg Concord Office 785 Davidson Drive NW Concord, NC 28025 (704) 786-4145 or 1-800-849-8009 Counties Served: Anson, Cabarrus, Stanley, and Union

Durham Office

201 West Main Street, Suite 400 Durham, NC 27701 (919) 688-6396 or 1-866-219-5262 Counties Served: Caswell, Durham, Franklin, Granville, Person, Vance, and Warren

Fayetteville Office 327 Dick Street, Suite 103 Fayetteville, NC 28301 (910) 483-0400 or 1-866-219-5262 Counties Served: Cumberland, Harnett, and Sampson

Gastonia Office

1508 South York Road Gastonia, NC 28052 (704) 865-2357 or 1-800-230-5812 Counties Served: Cleveland, Gaston, and Lincoln

Greensboro Office

122 North Elm Street, Suite 700Greensboro, NC 27401(336) 272-0148 or 1-866-219-5262Counties Served: Davidson, Guilford, Montgomery, Randolph, Rockingham, and Rowan

Greenville Office

301 South Evans Street, Suite 200Greenville, NC 27858(252) 758-0113 or 1-866-219-5262Counties Served: Hyde, Martin, Pitt, Tyrrell, and Washington

Morganton Office

211 East Union Street Morganton, NC 28655 (828) 437-8280 Counties Served: Alexander, Avery, Burke, Caldwell, Catawba, McDowell, Mitchell, Watauga, and Yancey

New Bern Office

607 Broad Street New Bern, NC 28560 (252) 637-9502 or 1-866-219-5262 Counties Served: Beaufort, Carteret, Craven, Jones, and Pamlico

Pembroke Office

101 East Second Street Pembroke, NC 28372 (910) 521-2831 or 1-866-219-5262 Counties Served: Hoke, Robeson, and Scotland

Pittsboro Office

959 East Street, Suite A&B,Pittsboro, NC 27312(919) 542-0475 or 1-866-219-5262Counties Served: Alamance, Chatham, Lee, Moore, Orange, and Richmond

Raleigh Office

224 South Dawson Street Raleigh, NC 27601 (919) 828-4647 or 1-866-219-5262 Counties Served: Johnston and Wake

Sylva Office

1286 West Main Street Sylva, NC 28779 (828) 586-8931 or 1-800-458-6817 Counties Served: Cherokee, Clay, Graham, Haywood, Jackson, Macon, and Swain

Wilmington Office

201 North Front Street, Suite 1002 Wilmington, NC 28401 (910) 763-6207 or 1-800-672-9304 Counties Served: Bladen, Brunswick, Columbus, Duplin, New Hanover, Onslow, and Pender

Wilson Office

208 Goldsboro Street East Wilson, NC 27893 (252) 291-6851 or 1-866-219-5262 Counties Served: Edgecombe, Greene, Lenoir, Nash, Wayne, and Wilson

Winston-Salem Office

102 W. Third Street, Suite 460, Liberty Plaza
Winston-Salem, NC 27101
(336) 725-9162 or 1-866-219-5262
Counties Served: Alleghany , Ashe , Davie , Forsyth , Iredell , Stokes , Surry , Wilkes, and Yadkin

Farmworker Unit

Program to meet the special needs of migrant and seasonal farm workers in North Carolina. 224 South Dawson Street Post Office Box 26626 Raleigh, NC 27611 (919) 856-2180 or 1-800-777-5869

Senior Law Project - Legal Aid of North Carolina

Legal Aid's Senior Law Project specifically serves clients that are 60 years of age or older. All North Carolinians who are age 60 or older are exempt from Legal Aid's income limitations and may receive services, but priority is given to seniors with the greatest economic or social need. Contact the Senior Aid Project by calling 1-877-579-7562.

Pisgah Legal Services

Pisgah Legal Services is another provider of pro bono legal services, and may be able to represent you if you live in their service area and if you meet their income guidelines. If you qualify for Pisgah Legal Services, and your case meets certain other requirements, the services of a lawyer or paralegal are provided free of charge. A Pisgah Legal Services lawyer may help you solve legal problems about poverty, housing, safety from abuse, health care, and income.

Pisgah Legal Services is the primary provider of legal aid in six North Carolina counties: Buncombe, Henderson, Madison, Polk, Rutherford, and Transylvania, and provides limited free legal help in an additional eleven counties: Burke, Cherokee, Clay, Graham, Haywood, Jackson, Macon, McDowell, Mitchell, Swain, and Yancey.

Asheville Office

62 Charlotte Street Asheville, NC 28801 (800) 489-6144 (toll-free for clients) (828) 253-0406 www.pisgahlegal.org info@pisgahlegal.org

Hendersonville Office

440 South Church Street Hendersonville, NC 28792 (800) 489-6144 (toll-free for clients) (828) 692-7622 www.pisgahlegal.org info@pisgahlegal.org

Rutherfordton Office

169 North Main Street Rutherfordton, NC 28139 (800) 489-6144 (toll-free for clients) (828) 210-3432 www.pisgahlegal.org info@pisgahlegal.org

North Carolina Client Assistance Program (CAP)

Established as part of the Federal Rehabilitation Act of 1973, as amended, the North Carolina Client Assistance Program (CAP) is a federally funded program designed to assist individuals with disabilities in understanding and using rehabilitation services. Contact CAP at:

CAP

2806 Mail Service Center Raleigh, NC 27699-2806 805 Ruggles Drive Raleigh NC 27603 Phone: 919-855-3600 Email: NCCAP@dhhs.nc.gov cap.state.nc.us

Friends of Residents in Long-Term Care (FORLTC)

Friends of Residents in Long-Term Care is a nonprofit charitable organization committed to advancing quality of life in North Carolina's long-term care facilities. They advocate for changes in public policy, support families of long-term care residents, and help build public awareness in North Carolina about issues facing long-term care residents and their families.

6300 Creedmoor Road, Suite 170 #326 Raleigh NC 27612 (919) 782-1530 (office) 1-888-411-7571 (Toll Free) friends@forltc.org www.forltc.org

List of North Carolina Elder Law Specialists (as certified by the North Carolina State Bar) www.nclawspecialists.gov/results.asp?SpecialtyID=1113

Federal Medicaid Website www.medicaid.gov/index.html

North Carolina Medicaid Website dma.ncdhhs.gov

NC MedAssist

NC MedAssist is a nonprofit pharmacy program providing access to lifesaving prescription medications, patient support, advocacy and related services to poor, vulnerable, and uninsured North Carolina residents.

Main Office/Pharmacy Location:

4428 Taggart Creek Road, Suite 101 Charlotte, NC 28208 (704) 536-1790; 1-866-331-1348

NC Department of Veterans Affairs Service Officers www.nc4vets.com/va-benefits

North Carolina Division of Aging and Adult Services

Taylor Hall, 693 Palmer Drive 2101 Mail Service Center, Raleigh, NC 27699-2101 Telephone: (919) 855-3400 www.ncdhhs.gov/divisions/daas

Nursing Home Compare

This tool has detailed information about every Medicare and Medicaid-certified nursing home in the country. Before you get started, you or your family member may have other long-term care choices like community-based services, home care, or assisted living depending on your needs and resources.

www.medicare.gov/nursinghomecompare/search.html

GLOSSARY

acknowledgment: A sworn statement before a public official, usually a notary public, declaring that a legal document is signed freely and that any statements in the document are accurate. The statutory forms for North Carolina living wills, health care powers of attorney, and durable powers of attorney all require acknowledgment.

advance directive for a natural death: A written document governed by North Carolina statute, which sets forth the wishes of a person with respect to artificial life-support systems and continuation of medical care in the event of terminal illness or continuing vegetative state. (Also known as a "living will").

attorney-in-fact: The person or organization designated in a power of attorney to act for the principal. This person or organization is also referred to as an agent. The agent has whatever power the principal authorizes, and can act to benefit or bind the principal and could be liable to the principal or a third party for a breach of that duty.

beneficiary: One who benefits from the act of another. This describes a person who is eligible to receive distributions of estate or trust property or income, i.e., a beneficiary of an estate or trust.

conservator: An individual appointed by the court to make decisions regarding property on behalf of someone else. (In North Carolina, the term "guardian of the estate" is used) (See guardian).

durable power of attorney: A written document indicating that the agency survives subsequent incapacity or disability of the principal, or which becomes effective upon incapacity or disability. (See power of attorney).

encumber: To place a claim, lien, charge or liability on property (e.g., mortgage, judgment lien, mechanic's lien, security interest).

fiduciary duty: The duty to act on behalf of, and in the interest of, another person. For example, an agent owes a fiduciary duty to his or her principal.

grantor: The person who establishes and funds a trust. (In North Carolina, the term "grantor" is also used in real estate deeds to describe a person who sells real property to another. Recording a deed following the sale of real estate does not create a trust.)

guardian: A court-appointed decision-maker who has powers to make decisions concerning the personal affairs and property of an incapacitated individual. The guardianship may be limited to personal decisions (a "guardian of the person") or to financial and personal decisions (a "guardian of the estate").

health care power of attorney: A medical power of attorney by which the principal designates a health care agent to make health-care decisions if the principal cannot make or communicate his or her decisions.

incapacitated: A term used to describe a person who lacks the ability to make a decision concerning health care or, more generally, any personal decisions. For health care decisions, there are two levels of determining incapacity: at the medical level where the decision is made by a health-care professional; and at the judicial level where the decision is a legal one.

incompetency: A legal term describing someone who lacks decisional capacity. When a person has a guardian appointed by a court, the person is often referred to as "incompetent." Incompetency also describes a legal disability to perform a specific act or acts.

inter vivos: This term is used in a transfer of property, or other transaction, which occurs between living persons. For example, a gift of property made during a person's lifetime is an inter vivos gift.

intestacy: The state or condition of dying without having made a valid will.

irrevocable trust: A trust by which a grantor (the person creating a trust) transfers title of the trust property to the trustee and reserves no right to cancel, alter or abolish the trust.

joint account: An account or deposit in a financial institution held in two or more names.

joint tenancy with right of survivorship: A way of holding property (e.g., bank accounts, stocks or bonds) with another person or persons, so that the survivors become the owners of the accounts regardless of the provisions of the decedent's will. Sometimes abbreviated as "JTWROS." Some JTWROS accounts are subject, at least in part, to claims of a decedent's creditors.

living trust: Term commonly used to refer to a revocable trust. (See revocable trust).

living will: See advance directive for a natural death.

long-term care facility: Any residential facility which is considered a permanent home and in which some degree of medical attention is provided. Most often, people associate this term with nursing homes, rest homes, and assisted living facilities.

notary public: A public official authorized to accept oaths affirming that the contents of documents are freely made and accurately recorded.

personal property: Generally refers to movable property; anything other than land or houses.

P.O.D. account: Payable on death, i.e., an account held as "John Doe payable on death to Jane Doe."

post-nuptial agreement: Post-nuptial agreements or settlements are made after marriage between couples still married; they take the form of separation agreements, property settlements in contemplation of a separation or divorce, or property settlements where there is no intention of the parties to separate.

power of attorney: The instrument which represents the agency agreement by which one individual (the principal) authorizes another person or organization (the attorney-in-fact) to act in his or her place. Only a power of attorney that expressly provides that it continues beyond the principal's becoming incompetent is a "durable power of attorney." All powers of attorney (durable or otherwise) end at the principal's death.

pre-nuptial agreement: An agreement entered into by prospective spouses prior to, and in contemplation of, marriage. Under this agreement, the property rights of one or both of the prospective spouses are established or waived.

principal: An individual authorizing another individual or organization to act in his or her place.

probate: All matters and proceedings pertaining to the administration of the estate of a deceased person.

real property: Land or anything growing or fixed on it.

revocable trust: A trust created by a grantor during his life, which expressly allows the grantor to amend or revoke the trust.

right of survivorship: A method of joint ownership where the surviving joint owner(s) gets title to the deceased owner's interest.

springing power of attorney: A durable power of attorney which becomes effective only upon the principal's incapacity or some other event.

SSA: Social Security Administration, which administers social security retirement, disability and survivors' benefits, as well as the SSI program.

SSI: Supplemental Security Income, a federal cash payment program which provides monthly payments on the basis of need to poor persons who are aged, blind or disabled.

testamentary: Providing for the disposition of property after death by a will and in accordance with the personal desires of a decedent. Formalities in the North Carolina statutes must be complied with in order for the disposition to be approved and not subject to challenge.

testator: One who makes a will.

NOTES

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NORTH CAROLINA FOUNDATION BAR ASSOCIATION

Additional copies of the Senior Citizens Handbook may be obtained for a nominal fee by writing Jacquelyn Terrell at the North Carolina Bar Association, P.O. Box 3688, Cary, NC 27519; calling 1-800-662-7407; or emailing *jterrell@ncbar.org*.

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