



The Delaware County
**ELDER LAW HANDBOOK
& RESOURCE GUIDE**

For Seniors and Their Families in Delaware County, Pennsylvania



PUBLISHED BY

Delaware County Bar Association – Elder Law Committee

AND

Delaware County Office of Services for the Aging (COSA)

2015 EDITION

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Delaware County Office of Services for the Aging (COSA)

206 Eddystone Avenue, 2nd Floor, Eddystone, PA 19022-1594
Telephone: 610-490-1300 or 1-800-416-4504 • Fax: 610-490-1500
Website: www.delcosa.org • Denise V. Stewart, Director

Delaware County Council, 2015

Mario J. Civera, Jr., Chairman
Colleen P. Morrone, Vice Chairman
John P. McBlain • David J. White • Michael Culp
Marianne Grace, Executive Director
Telephone: 610-891-4000 • Website: www.co.delaware.pa.us

Delaware County Register of Wills and Clerk of Orphans' Court

201 W. Front Street, Media, PA 19063
Telephone: 610-891-4407 • Website: www.co.delaware.pa.us/registerofwills
Jennifer Holsten Maddaloni, Esquire

Delaware County Bar Association

335 W. Front Street, P.O. Box 466, Media, PA 19063
Telephone: 610-566-6625 • Fax: 610-566-7952 • Website: www.delcobar.org
Kristen M. Rushing, Esquire, 2015 President
William L. Baldwin, Esquire, Executive Director

Delaware County Bar Association, Elder Law Committee

2004–2014 Co-Chairs: Dana McBride Breslin, Esquire, & Linda M. Anderson, Esquire
2015 Co-Chairs: Linda M. Anderson, Esquire, & Elizabeth T. Stefanide, Esquire

Elder Law Handbook Committee

Editors

Harris J. Resnick, Esquire Cynthia A. McNicholas, Esquire

Contributors and Volunteers

R. Scott Aldridge, Esquire	Thomas M. Lilly, JD, CLU
Linda M. Anderson, Esquire, CELA	Janet M. Lis, Esquire
Timothy A. Berger, Esquire	Robert M. Lodge, Esquire
Dana McBride Breslin, Esquire, CELA	Helen Lynn, RN, BSN
Robert J. Breslin, Esquire	Jennifer Holsten Maddaloni, Esquire, Delaware County Register of Wills and Clerk of Orphans' Court
Robert R. DeLong, Jr., Esquire	Dionysios C. Pappas, Esquire
Robert B. Famiglio, Esquire	Phillip B. Rosenthal, Esquire
Thomas W. Flynn, Esquire	Honorable Anthony D. Scanlon
F. D. Hennessy, Jr., Esquire	Barry W. VanRensler, Esquire
Tracy Hornig	John J. Whelan, Delaware County District Attorney
Mary K. Kennedy, Esquire	Joshua R. Wilkins, Esquire
Jeff L. Lewin, Esquire	
Joseph P. Lesniak, Esquire	

Penn DOT Driver's License Center, Granite Run
Bryn Mawr Rehab Hospital, Driver Rehabilitation Program
Herb Denenberg, J.D., LL.M., Ph.D., CPCU, CLU (1930–2010)

Acknowledgments – Sixth Edition

Since its inception in 2003, the Handbook has been a joint effort of the Delaware County Bar Association (in particular the Elder Law Committee), and the Delaware County Office of Services for the Aging (COSA). Contributions have taken the form of many unpaid hours performing the work of researching, writing, reviewing, updating, editing, proofreading, word processing, publishing, distribution...as well as, of course, monetary contributions. Once again, we are very grateful to our donors, whose donations have allowed us to publish another print version of this Handbook, and provide it to the public free of charge, without relying on paid advertising within the book. The publication costs of the 2015 Edition of the Handbook were underwritten by the following:

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Delaware County Register of Wills

The attorneys and other knowledgeable people who contributed to the material presented in this Handbook are listed on page i, and information concerning each such contributor appears in chapter 38. This book truly is a community effort!

In addition to those who wrote or updated the various chapters, the editors wish to thank those who stepped up in recent weeks to assist with editing tasks, including Linda Anderson, Esquire, and her associate, Joshua Wilkins, Esquire.

Mention must be made of Dana M. Breslin, Esquire, who also stepped up in recent weeks to perform editing duties. Dana has served as Co-Chair (with Linda Anderson) of the Elder Law Committee of the Delaware County Bar Association since its formation in 2004. Dana and Linda recognized that Elder Law had become a distinct and specialized field of law encompassing the needs of senior citizens, and focused not only on Medicaid planning but also estate planning and other work with clients with diminished capacity, real estate and consumer issues, guardianships, Medicare issues, and planning with Veterans' benefits, among other things. Dana and Linda persuaded the Bar Association that a separate Elder Law Committee was warranted. After many years serving as Co-Chair of the Elder Law Committee, Dana stepped down in December 2014. But she is as active and involved as ever in her practice and her other professional activities. In addition to her work on this Handbook, she continues to organize many CLE seminars, including the popular "Breakfast with President Judge Kenney" series. We're grateful for her leadership, her generosity in sharing her vast knowledge, and her support of the profession.

A sincere word of thanks also is due to the Executive Director of our Delaware County Bar Association, William L. Baldwin, Esquire. We are truly grateful for Bill's friendship and constant support, particularly in the area of fundraising, where his efforts were key to the securing of much-needed dollars. Bill also gave us permission to use the impressive photograph (taken by Betty Ann Flynn) of the Delaware County Court House that graces the cover of this Edition of the Handbook.

Editors' Notes – Sixth Edition

With each new Edition of the Elder Law Handbook and Resource Guide, we strive to improve the content, its presentation and clarity. We also try to ensure that the most relevant and current information is provided. And, we try to be sure that you can find answers to your questions easily when needed. With this Edition, we feel we've made improvements in all those areas.

Included in this Edition is a brand new chapter describing Delaware County's new, supervised Treatment Court Programs. With its Veterans Court, Mental Health Court and Drug Treatment Court, Delaware County's criminal justice system is attempting to respond to certain defendants whose special circumstances may have led to criminal behavior, and to protect the community's welfare by preventing future criminal activity. See chapter 30.

A new Power of Attorney statute was signed into law on July 2, 2014. The new law made extensive changes and, it's fair to say, has changed our approach to integrating Powers of Attorney into the estate planning process. Your estate planning attorney will be spending more time discussing your Durable Power of Attorney than ever before, and you should come away with a good understanding of the powers that you are granting to your agent and have every opportunity to place any appropriate limits on those powers. The changes that were instituted should reduce the risk of abuse of the powers granted in a Power of Attorney. In response to the new law, we have a completely revised chapter on Powers of Attorney, courtesy of Dana M. Breslin, Esquire. See chapter 7.

New regulations affecting Reverse Mortgages were issued September, 2013, and

our chapter on Reverse Mortgages has been revamped by Robert J. Breslin, Jr., Esquire. Whether you are considering a reverse mortgage, or you or a parent are already bound by one, it's so important to get the facts from an unbiased source, in order to understand the advantages and disadvantages, as well as the alternatives, to a reverse mortgage. We've made this information easier to find in our book by giving the material its own chapter. See chapter 24.

In previous Editions, we had included a telephone directory of various services and a senior citizen transportation directory. While these were useful, we found in practice that the contact information changed too often, so that the information was largely unreliable a year after the Edition went to print. The most current contact information for various services, as well as senior citizen transportation options, is still available from COSA by calling 610-490-1300. And contact information for various agencies and programs does appear within the various chapters of the book.

Each year (or in some cases twice a year) various government agencies set new benefit, eligibility and other figures, and we have included this information, updated as needed, with the Elder Law Handbook material appearing on the websites of the Delaware County Bar Association (www.delcobar.org) and COSA (www.delcosa.org). For the first time, we are publishing the most recent numbers in the print version of the Handbook. Updated information will still be available online. The figures relate to Medicaid eligibility, SSI benefits, Medicare deductibles, co-pays, premiums and coverage, and exemptions/exclusions for Federal Estate and Gift Tax purposes. See chapter 16.

Overall, the reader should be aware that the material in this Handbook was accurate

when written but that laws, regulations and policies can change at any time, and therefore, one should check the Bar Association and COSA websites as well as the various government websites, call the appropriate agency, and/or consult with a qualified attorney or other expert when necessary, to verify that the information being relied upon is still accurate.

This year, as we go to print, many changes are being made within Pennsylvania state government, and websites and telephone numbers change rapidly. For that reason, the information provided with regard to some topics is general in nature, and you may search the websites of the various agencies involved for the most current details.

As mentioned in the Acknowledgments, the field of Elder Law has become a distinct and specialized field in recent years, but many of the issues dealt with by “elder law attorneys” are also dealt with by attorneys who do not have “elder law” as their primary focus. And so, this Handbook is also used as a go-to reference for attorneys who need an overview of a particular benefit, program or topic, in order to advise or direct a particular client. In that way, the public is better served as well.



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CHAPTER 1

Elder Law

Elder Law is the term used by the legal profession to focus on the special legal rights and problems of senior citizens and disabled individuals. Attorneys who work in this field need to master an ever-changing body of law, legislation and regulations which deal with financial planning, health care and housing as well as discrimination, abuse and consumer fraud. Such a challenge usually requires training and experience in this special area of the law.

Attorney-Client Relations

A big question in elder law is: “Who is the client?” Attorneys fairly often find that a child brings in a parent to the attorney’s office. That child and parent may have differing interests. Also, some older people have physical or mental disabilities, which may limit their capacity to make proper decisions. Fortunately, attorneys have ethical rules, known as Rules of Professional Conduct, which help to clarify these situations.

According to Rule 1.5, all fee agreements must be in writing. This avoids disputes about what the attorney is to do and how much these professional services will cost. If a fee dispute arises with a Delaware County attorney, contact the Delaware County Bar Association at 610-566-6625. If the attorney in question is not a member of the Delaware County Bar Association, contact the Office of Disciplinary Counsel, District II, 820 Adams Avenue, Suite 170, Trooper, PA 19403; telephone 610-650-8210.

Rules 1.6 through 1.12 of Professional Conduct state what to do to prevent conflicts of interest. In general, a single lawyer cannot represent both sides when clients have dif-

fering agendas. Therefore, if two (2) people come into an attorney’s office together, the attorney must make a clear determination about who will be represented. This helps to protect vulnerable seniors when others try to exert undue influence, to coerce or to use threats to push seniors to execute powers of attorney or convey property against their will. Also stated in the rules: Pennsylvania attorneys are required to keep client information confidential.

Rule 1.14 explains that lawyers assume that their clients are competent and can understand what is happening. If the attorney “reasonably believes” that the client cannot act in his or her own self-interest, the attorney can seek a guardian or take other protective action.

Pennsylvania Lawyers Fund For Client Security

Although the percentage of lawyers involved in fraud and theft is extremely low, the news of attorney misconduct is often given wide play in the media. The fact is that lawyers are often put in positions of trust and temptation, yet it very rarely results in a financial loss to a client. In such cases, the Pennsylvania Lawyers Fund for Client Security can help to recoup some or all of the losses. Claims are submitted on pre-printed forms from the Supreme Court of Pennsylvania, Pennsylvania Lawyers Fund for Client Security, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 5400, Harrisburg, PA 17120; telephone 717-231-9510.

Choosing an Elder Law Attorney

Every individual has notions about how to work with a professional advisor to resolve personal problems. To choose the best person to act on your behalf in elder law matters, you should first think about your goals. Is it a simple question of updating your Will? Or, is it the more complex process of

planning the series of financial steps for retirement or disability planning. Once your needs are outlined, you can consult friends, relatives, business colleagues, clergy and others for recommendations about an attorney. Other sources of referrals to an attorney include:

The National Elder Law Foundation (“NELF”), comprised of attorneys who are certified specialists in the area of elder law, that can be contacted by telephone at 520-881-1076, or through the online directory found at www.nelf.org.

The National Academy of Elder Law Attorneys (“NAELA”), a professional association of attorneys dedicated to improving the quality of legal services provided to people as they age and people with special needs, that can be contacted by telephone at 520-881-4005, or through the online directory found at www.naela.com.

The Delaware County Bar Association Lawyer Referral Service by telephone at 610-566-6625, extension 221. There is no charge for calling the Delaware County Bar Association Lawyer Referral Service. However, please remember that the staff of the Lawyer Referral Service are not lawyers and cannot provide legal advice to you.

Legal Aid of Southeastern Pennsylvania (LASP), a non-profit corporation, that provides legal services to individuals in Bucks, Chester, Montgomery, and Delaware counties. LASP can be reached through its toll-free telephone Helpline at 1-877-429-5994, or online at www.lasp.org.

CHAPTER 2

Older Americans Act

More Americans are living longer and demanding more from local, state, and federal

lawmakers so that more programs for elders are offered, enlarged, or refined. One of the most important laws which provide a basic framework for these services is the Older Americans Act (OAA) of 1965. The OAA established Area Agencies on Aging (AAAs) all over the United States. In Pennsylvania, AAAs are administered by the Pennsylvania Department of Aging (PDA).

PDA's office is located at 555 Walnut Street, 5th Floor, Forum Place Building, Harrisburg, PA 17101-1919; telephone 717-783-1550. The PDA website is www.aging.state.pa.us.

County Office of Services for the Aging (“COSA”)

Delaware County's local AAA is called COSA. COSA's mission is to plan, develop, coordinate, and administer a comprehensive and coordinated service system for older county residents to promote well-being and allow them to maintain their independence and dignity in a home environment for as long as possible. These services and programs are available regardless of race, religion, physical handicap, sex, color, residence, national origin, or political beliefs. Consumers may be asked to share toward the cost of some of the services provided, or in some cases, to make a donation.

COSA's office is located at 206 Eddystone Avenue, 2nd Floor, Eddystone, PA 19022-1594; telephone 610-490-1300 or toll-free 800-416-4504. TDD telephone number 610-490-1900. Staff members at COSA will help you make a start in the search for information regarding programs relating to elder needs and the rules regarding many elder services. Emails can also be sent to COSA at COSA@co.delaware.pa.us. COSA operates Monday through Friday, 8:30 a.m. to 4:30 p.m. COSA's website is www.delcosa.org.

COSA Services

Information and Assistance (by telephone or walk-in) to answer questions from the general public on the needs of the elderly and assist people in need with appropriate services regarding:

- Public Benefits and Entitlements
- Health and Wellness
- Health Insurance Counseling
- Housing Information
- Legal Assistance
- Victim Services

In-Home Services to help support seniors and families in their home including:

- Adult Day Care
- Care Management
- Family Caregiver Support
- Home Delivered Meals
- Home Health
- Home Modification
- Medical Equipment & Supplies
- Mental Health Counseling
- Personal Care
- Respite

The Ombudsman Program protects the rights of persons receiving long-term care services in their homes, nursing homes, or personal care boarding homes. The COSA ombudsman can be reached by telephone at 610-872-1868.

Protective Services of COSA investigates reports of suspected abuse, neglect, financial exploitation, or abandonment for county residents over the age of sixty (60). **REPORTS CAN BE MADE ANONYMOUSLY AND CONFIDENTIALITY IS ASSURED IN ALL CASES. SUSPECTED ABUSE CAN BE REPORTED 24 HOURS A DAY BY CALLING COSA AT 610-490-1300.**

Community-Based Long-Term Care Services

COSA provides an alternative to people who need nursing facility care by assisting them in receiving community-based long-term care services. Specifically, the Options and PDA Waiver Program provide community services to qualifying seniors who would otherwise require nursing facility care, but can be safely cared for at home.

Community-based services can include adult day care, personal care, home delivered meals, respite care, home health care and home support. For 2014, a medically eligible senior may qualify for the PDA Waiver Program if that senior is age sixty (60) or older and has net income of \$2,163 or less per month. For 2015, this amount is \$2,199. The application process for either PDA Waiver or Options is initiated by contacting COSA.

Resources

For seniors who have Internet access, the Pennsylvania Department of Aging has an excellent informational website that describes all of the services offered and ways to obtain them at: www.aging.state.pa.us.

The website for the Pennsylvania Association of Area Agencies on Aging is www.p4a.org; the telephone number is 717-541-4214. The PDA website provides a listing of telephone numbers, addresses, and links available by county listing, map, city or zip code, or by calling 717-783-1550 or emailing Aging@state.pa.us.

PDA publishes an annual guidebook entitled "Benefits and Rights for Older Pennsylvanians" which is available from COSA, any member of the Pennsylvania Legislature, or by calling PDA at 717-783-1549.

For listings of Delaware County nursing homes, adult day care centers, assisted

living facilities or for PACE and tax rebate forms, contact COSA by telephone at 610-490-1300.

CHAPTER 3

Income Tax & Financial Planning

All of us, and especially those approaching their retirement years, are well advised to plan now, while mentally able, to make sure our estates are sufficient, at the least, for our needs for the remainder of our life expectancies, and are passed to intended beneficiaries after death. Planning can help you achieve those goals, reduce death taxes and administrative expenses, and lessen the possibilities of disputes among family members and others. Planning also gives you the peace of mind that their financial affairs are in order.

Income Taxes and Planning*

Income taxes play an important role in our financial lives. An excellent starting point for information affecting senior citizens is IRS Publication 554, "Tax Guide for Seniors," which is available free of charge by calling the IRS Forms Distribution Center at 1-800-829-3676. You can also check the IRS website: www.irs.gov, or contact your attorney or accountant for information.

IRS Office Location:

1400 N. Providence Road
Media, PA 19063
610-891-6002

8:30 a.m. to 4:30 p.m. (closed 1:00 p.m. to 2:00 p.m. for lunch)

Tax Preparation*

Some seniors, especially those with fixed incomes, find it difficult to hire a tax professional. For those of limited means, volun-

teers may be available to prepare tax returns. You can call Volunteer Income Tax Assistance (VITA) or Tax Counseling for the Elderly (TCE) at 1-800-906-9887, or your local public library might help you locate the nearest volunteer income tax assistance program. Before going to a VITA or TCE site, see Publication 3676-B for services provided and check out the "What to Bring" page to ensure you have all the required documents and information the volunteers will need to help you.

Taxpayers who made \$58,000 or less last year can also use IRS Free File software to prepare and e-file their own returns for free. Fourteen companies make their brand-name tax software products available. For those who earned more, Free File Fillable Forms, the electronic version of IRS paper forms, can be used. Taxpayers should be comfortable preparing their own returns. Free File is available only at IRS.gov/freefile.

The Internal Revenue Service is phasing out free walk-in tax preparation services. Publication 910 (the IRS Guide to Free Tax Services) is another source of information for assistance. Veterans can call the Delaware County Bar Association (610-566-6625) to inquire about a free tax preparation program run by Delaware County attorneys for veterans.

*At time of publication, IRS had published many of the important numbers for the 2014 tax year, but not many of the tax forms or instructions for 2014. Thus, check for the forms and instructions after 01-01-2015 or with your tax advisor before preparing your 2014 income tax returns.

Standard Deduction at Age 65

There is a basic standard deduction allowed that varies according to your filing status, and is adjusted annually for inflation. When you reach age 65, you are allowed an additional standard deduction amount over and above the basic standard deduction. (For

example, for tax year 2014, a single taxpayer who is 65 or older is entitled to the basic standard deduction of \$6,300 plus the additional standard deduction amount of \$1,550, for a total of \$7850.)

Review all IRS instructions carefully, to find out when you begin to qualify for the additional standard deduction amount, and especially as you decide whether to use the standard deduction or to itemize deductions.

Income Tax Credit Age 65 or Older

Taxpayers 65 or older who have limited income may receive a tax credit, which is subtracted from your income tax liability. The allowable credit varies according to the taxpayer's filing status. For 2014 this credit is calculated on Schedule R of the tax return. The calculations for determining your tax credit can be complicated and may require the services of a tax professional, whether paid or unpaid.

Medical Expense Deductions

Medical expenses for taxpayers aged 65 or older are deductible to the extent they exceed 7.5% of a taxpayer's adjusted gross income, and you are itemizing deductions and not using the standard deduction. The medical expenses must be "out-of-pocket" expenditures; if you are reimbursed by insurance, you cannot deduct the expense. This 7.5% threshold applies for married seniors even if one is under 65 years of age, whereas for most other taxpayers the threshold is 10% of adjusted gross income. However, if your adjusted gross income is over \$150,000 you must check the IRS forms to see how your deduction will be limited, depending upon your filing status.

The entire cost of a skilled nursing care facility, and qualified long term care serv-

ices and insurance therefor, including meals and lodging, is a deductible medical expense if the principal reason for admission to the facility is the availability of medical care. However, in an assisted-care facility only a portion of the cost may be deductible. Your retirement community business office usually will provide you with the percentage to apply to your total cost to determine how much of your annual expense can be taken as a medical expense.

Equipment and home modifications to accommodate the handicapped, for instance, (and there is no age threshold for this deduction), that do not increase the market value of the home are deductible as a medical expense. Examples of such deductible improvements include wheelchair ramps and widening entrances to the home.

For 2014, the standard mileage rate for operating expenses for a car when used for medical reasons is 23.5 cents per mile, and for 2015 it drops to 23 cents per mile. See Transportation in IRS Publication 502, under What Medical Expenses are Includible.

When a person dies owing medical expenses, which are paid by the estate within one year from the day after the decedent's death, a medical expense deduction can be taken on the decedent's final income tax return (Form 1040), or on the federal estate tax return (Form 706). If the estate is under the federal taxable limit (\$5,340,000 in 2014, and \$5,430,000 in 2015), or if there will be no estate tax due because of the unlimited marital deduction, or the Estate is going to charities, it usually makes sense to deduct these expenses on the personal income tax return. The surviving spouse or estate executor must attach a statement to the tax return saying the expenses have not been and will not be claimed on the estate tax return.

Sale of Residence: Exclusion of Gain from Income

Generally, a capital gain is realized on the sale of a residence when the amount received at the sale is more than the purchase price, plus the cost of capital improvements made over the years, such as installing new windows. An unmarried taxpayer of any age, however, may exclude up to \$250,000 of capital gains realized on the sale of a principal residence, and married taxpayers can exclude up to \$500,000 of capital gains, and the taxpayer(s) does not have to report the sale at all on the return if the whole amount can be excluded. To qualify for the capital gains exclusion, one must have used the real estate as their principal residence for at least two of the five years prior to sale, among other requirements. Ask your tax return preparer to help you if you are unable to understand these or any other IRS rules.

Sale of Assets: Special Rules for Beneficiary of Inherited Property, and Surviving Joint Owners of Property and Spouses

You or your tax preparer must know the “tax basis” rules when calculating capital gains on the sale of property, such as a house, stocks or mutual funds. The capital gains tax on these and on other property is paid on the difference between the purchase price (the “basis”) and the sales price of the asset. Special rules apply, however, where the sole owner of property, or one owner of jointly held property, dies. For a surviving spouse, or anybody else who inherits property, these rules can result in significant tax savings when she or he sells jointly owned stock or other appreciated property after the death of a spouse, parent, or anybody else.

The following illustrations show the potential tax savings involved:

Illustration 1:

- If, during their lifetimes, a husband and wife sold jointly owned stock worth \$10,000, which they bought for \$1,000, they would pay capital gains tax on \$9,000 (the sale price minus the purchase price).

Illustration 2:

- If the husband in Illustration 1 dies and the same jointly-held stock is worth \$10,000 on the date of death, and then the stock is sold, the tax basis “steps-up” from \$1,000 to \$5,500, (one half of the date-of-death value plus one half the purchase price). When the surviving spouse sells the stock for \$10,000, the taxable gain is \$4,500, instead of \$9,000, and the tax is therefore reduced significantly.

If property is owned by a spouse, parent, or anybody else in her or his name alone, and she or he passes away, the step-up in the basis is on all of the asset’s value, which steps-up to the date of death value. For assets that have appreciated, this can reduce the tax bill substantially.

Many married people own some, if not all, of their property jointly. Since the tax basis rules are important and can be hard to understand, taxpayers should discuss these issues and their possible effects with a qualified attorney or other tax professional to avoid paying more tax than necessary.

Estimated Tax Payments

All taxpayers, seniors included, must make estimated tax payments, or have money withheld from (for example) pension payments, or a combination of both. The amount that must be paid, withheld, or both depends on a number of factors. IRS Publication 505 should be reviewed to determine whether estimated taxes must be withheld or paid, and how much must be paid to IRS during the year. There are

penalties and interest if the proper amount is not paid. Your tax professional can do this for you, if needed.

CHAPTER 4

Estate Planning

What is Estate Planning?

Your “estate” is another name for your property, and “estate planning” is simply planning ahead to make sure that your property passes according to your wishes about who should inherit your property. Many people think estate planning applies only to very wealthy people. Nothing is further from the truth. Regardless of how little property you own, you should plan ahead to make sure the desired people or institutions receive your property after your death.

Your estate planning decisions will be reflected in various documents. Your Will is the most fundamental document, as it selects the personal representative who will carry out your wishes and determines who will receive your “probate” property, which is property owned outright in your sole name, and without a beneficiary designation on the account. Examples of probate property, which is distributed according to your Will, include your home (if solely in your name or a share held as a tenant in common), any bank accounts or securities solely in your name and without a beneficiary designation, and your car, jewelry and other personal effects.

Other important documents will determine the recipients of your “nonprobate” property, which is property that passes outside of your Will based on decisions and transactions made during your life, and/or based on an agreement with the account holder. Examples of nonprobate property, which will

be discussed in greater detail below, include homes held as joint tenants or tenants by the entireties; joint bank accounts; life insurance policies; annuities; IRAs, 401(k) or 403(b) accounts; and revocable trusts. For many people, especially for couples, virtually all of their property consists of non-probate property, so an important part of any estate plan should involve consideration of non-probate property, and the beneficiaries who will receive it directly at your death.

The existence of a well-considered estate plan, most importantly a Will, can help avoid disputes among your heirs and give you the peace of mind of knowing that your final wishes will be carried out.

It is best to consult with a local attorney whose practice includes or concentrates on estate planning. You should select an individual with whom you feel comfortable and who will help you design a plan to suit your needs, wishes and budget. The cost of planning usually is far less than the expenses your family could incur in the future without proper planning.

Do I Need a Will?

A Will is an important legal document and the cornerstone of most estate plans. In a Will, you name a personal representative (an “executor”) to administer your estate and direct how your property is to be distributed.

Half of all Pennsylvanians die without a Will. If you die without a Will (“intestate”), your probate assets, including your home, money and other property, will be distributed to your heirs according to Pennsylvania’s “intestacy” laws. The intestacy laws were created to distribute property according to the supposed wishes of an average person, and they cannot take into account your unique situation.

Even if you are satisfied that the intestacy laws provide an appropriate distribution, you

should have a Will to select a personal representative to administer your estate. The personal representative named in a Will is commonly referred to as the “executor.” The executor collects estate assets, pays estate debts and inheritance taxes, and makes distributions to the beneficiaries you have designated in your Will. Even if all of your assets were to pass outside of probate, your estate needs to have a personal representative to prepare an inheritance tax return and arrange for payment of the inheritance tax.

Non-Probate Property

Your Will distributes “probate” property that you own outright but does not apply to “non-probate” property that is said to pass “outside” your Will. You need to be aware that jointly-held property, accounts held “in trust for” (“ITF”) another person, life insurance policies, annuities, IRAs and most retirement accounts do not pass according to the provisions of your Will. Rather, these items pass by law to the survivor listed on the account or to your designated beneficiaries. Be sure these beneficiary designations are carefully reviewed when developing your estate plan.

Joint Property

There are several ways of owning property jointly with another person: “tenants by the entirety” (with your spouse), “tenants in common,” and “joint tenants with right of survivorship.” People often transfer their property into joint name with family members, or even friends, in an attempt to avoid inheritance taxes, avoid probate, reduce estate administration costs and generally “make things easier.” While joint ownership may be appropriate in some situations, it often fails to accomplish the above purposes, and it often results in unexpected outcomes, hardship and bad feelings. When you transfer your property so that you own it

with another, you are exposing your property to the creditors of that person. There also may be income tax, federal estate and gift tax, and Pennsylvania inheritance tax issues. You should not transfer your property into joint names with another without obtaining legal advice from an attorney who is able to explain the tax and other consequences.

Putting your home in joint names with your children is sometimes appropriate, but the risks and costs often outweigh the benefits. Adding your children to the deed is considered to be a gift, which may prevent you from receiving Medicaid benefits if you must enter a nursing home within a few years after the gift. Once the property is in joint names, you lose control over future sale or mortgage of the property, and the property is vulnerable to claims by your children’s creditors. Transferring property to your children by lifetime gift instead of at death also can have adverse income tax consequences for the children which can far exceed possible savings in inheritance tax. Hence, you should consult with an attorney and give careful thought before putting your home in joint names with your children.

Putting title to bank accounts, CDs, and investment accounts in joint names is easy to do, but it also could be a mistake. Banks and other financial institutions may provide forms but are not capable of advising of the potential dangers. How you end up owning your property may depend upon the forms you are given to sign by an employee who does not understand the various types of joint property or know anything about your situation.

If you want certain property to go to a particular person after your passing, you should discuss with your lawyer whether this should be done by putting the property in joint names, by passing it through your Will, or

by creating a trust or making some other arrangement in your estate plan. If your goal is to provide for the management of your affairs in the event you become incapacitated, an attorney can advise you of the merits of a general power of attorney or a revocable living trust, which may be preferable to creating joint accounts.

Trusts

Your attorney might recommend the use of a “trust” for larger estates, estates with young beneficiaries, and in other special circumstances. What is a trust? Some estate planners explain that a trust is like a box where you can place your property. A person places money in the box, the trust, and designates a manager, known as the “trustee,” to safeguard the contents of the box. The trustee then distributes trust assets to the beneficiaries you select, at such times and in such amounts as you direct. Of course the money is not really put in a box. The “box” usually is a bank account or a brokerage account where the funds are invested by your trustee. The investment and distribution of trust funds are controlled by a written trust document and are regulated by state law, including Pennsylvania’s Uniform Trust Act.

Trusts can have several important advantages, including professional management, protection against overspending, and possible tax advantages. They are not right for everyone’s situation, however.

Trusts can be created during the life of the person creating the trust (“inter vivos” or “living” trusts) or by Will (“testamentary” trusts). Living trusts and Wills that contain testamentary trusts usually cost more money to create than simple Wills because they are more complicated, involving active management of assets and distributions over time, beyond simply distributing property among beneficiaries at one’s death.

In addition to the costs of drafting a trust, there may be costs associated with the transfer of assets into the trust and continuing costs for attorneys’ fees and trustees’ commissions as a trust is administered over the years. Many trusts must file yearly fiduciary income tax returns, requiring the cost of an accountant or attorney to help prepare and file these tax returns. When deciding whether it makes sense to create a trust, you should consider whether the benefits of the trust are sufficient to justify the added costs of creating and administering the trust.

Supplemental Needs or Special Needs Trusts

A supplemental needs or special needs trust can be used by a parent or grandparent who wishes to set aside money for a disabled child but hesitates to do so for fear of disqualifying that child from certain government benefits. A parent or grandparent could place the money in a carefully drafted trust, designate a trustee to invest and safeguard the funds, and enable the disabled child to benefit from the trust while maintaining eligibility for “needs-based” government benefits such as Medicaid or Supplemental Security Income (SSI) payments. Depending on the circumstances, a supplemental or special needs trust may be created in one’s Will or during one’s life. To qualify as a supplemental or special needs trust, however, the trust must be restricted so that it cannot be used for the beneficiary’s basic support. It requires careful consideration to determine whether a supplemental or special needs trust is appropriate, and to draft and administer the trust to preserve the beneficiary’s right to receive public benefits.

Testamentary Trusts

A testamentary trust often is used to provide asset management for family members who are not capable of managing assets themselves, such as children, persons suffering from disabilities, or persons who are not good at managing money. Discretionary trusts can be written to protect spendthrift beneficiaries from squandering their inheritance through wasteful spending habits. Trusts also can be used to set aside money for designated purposes, such as for education.

Living Trusts

Rather than creating a trust at your death through your Will, you may want to consider creating a living (“inter vivos”) trust during your life. The creator of a living trust is known as the “grantor” or “settlor” of the trust. A living trust can be either revocable or irrevocable.

Irrevocable Living Trusts

When you create an irrevocable living trust, you are making a current gift and giving up control of any property you give to the trust. An irrevocable living trust may make sense if you want to reduce the size of your estate to avoid estate or inheritance taxes. An irrevocable trust can be used to make a large gift during your lifetime to someone who is not capable of managing the money, such as a child or someone suffering from a disability. An irrevocable living trust also can be used to own a life insurance policy so that the death benefits are not included in your estate. Ordinarily, though, when people think about living trusts, they have in mind revocable living trusts.

Revocable Living Trusts

A revocable living trust can be revoked or amended during your lifetime. Because you

still have control over property in the trust, the trust property is still “yours” for most practical purposes (including for income, estate, and inheritance taxes), but it has the possible advantage of being administered outside of probate.

A revocable living trust is appropriate and may be the best choice if you own real estate in another state, such as a second home in New Jersey or Florida. If you own property in another state at your death, it ordinarily must go through separate probate administration (“ancillary probate”) in the other state. Property transferred to a revocable living trust will not be subject to ancillary probate in that other state at your death, which can save considerable cost and simplify the administration of your estate.

You also might consider a living trust for management of your assets in the event you become incapacitated. You can be the trustee of the trust so long as you are capable of managing your assets, and when you become incapacitated the successor trustee can step in to continue in your place. Asset management in the event of incapacity often can be accomplished without a trust, however, at lower cost and with greater flexibility, by using a well-drafted durable general power of attorney.

Perhaps the most significant reason to have a revocable living trust is to establish a unified estate plan with regard to non-probate assets, a plan that may be difficult or impossible to create using the beneficiary designation forms provided by financial institutions that manage annuities, 401(k) and 403(b) accounts, and IRAs. For example, the rules of many or perhaps most financial institutions provide that if you designate your children as “beneficiaries” and your grandchildren as “contingent beneficiaries,” your assets will be divided among

your living children, leaving nothing to any grandchildren unless all of your children predeceased you. If you want to leave the share of any deceased child to that child's "issue" (children and grandchildren), you may not be able to do so using the forms provided by the financial institution and you might be able to accomplish your goal more easily using a revocable trust.

Many people have been led to believe that a revocable living trust should be used to avoid the supposed cost and delay of the probate system. Although this may be true in some states, the probate system in Pennsylvania is neither costly nor inefficient for the estate of a person who had a well-drafted Will.

For Pennsylvania residents who do not own property in another state and are satisfied with the beneficiary designations available for their nonprobate assets, a revocable living trust generally has no substantial advantages over a properly drafted Will coupled with a durable general power of attorney. Nevertheless, in an appropriate situation, a revocable living trust can be an important part of your overall estate plan. Before preparing a revocable living trust, you must determine whether it will be useful for your situation.

Scams involving living trusts are increasingly common. Promoters of such scams frequently target seniors through free seminars and mail solicitations. These promoters know that seniors are concerned about making sure their "affairs are in order" and can be susceptible to high pressure sales techniques. Living trust scam promoters emphasize allegedly high probate fees, delays, and the supposedly damaging psychological impact of the probate process, and they suggest you can avoid all of these fees and problems by using a revocable living trust. What they don't tell you is that the costs,

taxes, and time commitment involved in administering a trust are, in most respects, virtually identical to those involved with probating and administering an estate. Living trust scam promoters sometimes promise, falsely, that a revocable living trust will allow you to avoid death taxes and eliminate the possibility of a challenge by disgruntled heirs. Living trust scam promoters also sometimes promise, again falsely, that trust assets are protected against creditors or against being subject to payment for the cost of nursing home care.

If you are contacted by anyone trying to sell you a revocable living trust, here are some of the warning signs that may indicate that this is a scam:

- **unsolicited sales visits**
- **calls and visits by non-lawyers**
- **suggestion that "attorneys don't want you to know this information"**
- **use of pre-printed, "one-size-fits-all" forms**
- **excessive prices for the trust and related forms**
- **suggestion that the Living Trust will avoid death taxes**
- **suggestion that the Living Trust will avoid claims by creditors or nursing homes**
- **suggestion that the Living Trust is the "only document you'll ever need" and other high-pressure sales tactics**

Before signing any documents to create a living trust, you should get an opinion from an attorney of your own choosing. If you wish to get a low cost second opinion from an estate planning attorney before proceeding with a living trust, call the Delaware County Bar Association Lawyers Reference Service at 610-566-6625. Tell the service representative that you would like to meet

with an estate planning attorney before going forward with the preparation of a living trust to make sure that it is right for you. A half-hour consultation costs only \$20. This meeting might save your money and your peace of mind by making you aware of options not mentioned by the salesperson of the revocable living trust.

Transferring Property from an Estate or Trust

When conveying property from an Estate or Trust to the heirs or beneficiaries, or upon sale, unique issues often arise that require careful attention. Individuals involved in such matters must be aware of potential pitfalls. It is important to seek an attorney who possesses the knowledge to implement the appropriate alternatives and solutions.

Inheritance, Estate and Gift Taxes

Over the years, senior citizens have watched tax regulations at all levels grow more and more complicated. Guideline information is offered below with the advice to consult with a professional if you have questions.

Pennsylvania Inheritance Tax

Pennsylvania's Inheritance Tax is a tax imposed upon the transfer of property at the time of an individual's death. Assets titled in the decedent's name and real estate located within the Commonwealth of Pennsylvania are subject to the tax. **Unlike the federal estate tax, there is no exclusion for small estates.** There are, however, deductions for funeral expenses, debts, and certain expenses of estate administration.

The rate of tax is determined by the relationship of the beneficiary to the decedent. Property passing to a surviving spouse or from a child under the age of 21 to a parent is not subject to tax. Transfers to a child (or stepchild) or grandchild (or to a parent or

grandparent) are taxed at **4½%**, while property passing to a sibling is taxed at **12%**. All other transfers are taxed at a rate of **15%**. The tax must be paid within nine months of the date of death to avoid paying interest. If you pay all or part of the tax within three months of death, you will receive a 5% discount.

Federal Estate Tax

The federal government imposes a tax "on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States," but federal estate taxes apply only to very large estates. A tax credit, known as the "unified credit," allows most estates to escape taxation by establishing an "exclusion amount" that passes free of federal estate and gift taxes.

From 1987 through 1997, the exclusion amount was \$600,000. After increasing slightly in the next few years, legislation in 2001 raised the exclusion amount to \$1 million and established a schedule of increases over the succeeding years, until it reached \$3.5 million in 2010, followed by the "repeal" of the estate tax in 2010 and its reinstatement in 2011 with an exclusion amount of "only" \$1 million. The 2001 legislation also reduced the maximum estate tax rate to 45%. Legislation in December of 2010 reinstated the tax but with a much higher exclusion amount and lower tax rates for the few estates large enough to pay any estate tax. The maximum estate tax rate now is 40%. **The exclusion amount was set at \$5 million for 2011**, and annual inflation adjustments have increased the exclusion amount to its current level of \$5.43 million per person for 2015. Under current federal tax law, a married couple can pass assets well in excess of \$10 million to their children without incurring any federal estate tax liability, preferably by proper lifetime estate planning, or if necessary, after the death of

the first spouse, by using new “portability” rules on a timely basis. Consultation with a competent estate planning attorney is crucial for taxpayers in this situation.

For the foreseeable future, only individuals with assets (including life insurance benefits) in excess of \$5 million have substantial reason for concern with federal estate taxes. Individuals or couples with combined assets of more than the exclusion amount require complex planning by a professional estate planner. If you anticipate that your estate, including life insurance benefits, will be larger than \$5 million, you should ask an estate planning attorney to consider how you might reduce exposure to the federal estate tax.

Pennsylvania Estate Tax

The Pennsylvania Estate Tax applies only when the size of the estate requires filing of a federal estate tax return. The IRS allows a state death tax credit against the federal estate tax, based on the value of the estate. If the allowable state death tax credit is greater than the amount of the Pennsylvania Inheritance Tax, the Department of Revenue imposes a Pennsylvania Estate Tax on the difference. This is called a “make-up” or “pick-up” tax, because it picks up revenue for the state without increasing the total amount of estate taxes.

Federal Gift Tax

The federal government also imposes a tax on gifts. The Internal Revenue Service defines a gift as any voluntary transfer of property from a donor to a donee without what is called full and adequate consideration. A gift has been made when the donor gives up control over the transferred asset. The value of a gift for federal gift tax purposes is the “fair market value” of the property transferred.

The amount of gift tax is based on the total amount of lifetime gifts. Under current law, which is subject to change, no tax is owed until total lifetime gifts exceed \$5 million (adjusted upward for inflation).

The federal gift tax applies only to gifts to any person in any year that exceed the “annual exclusion” amount. For many years, the annual exclusion amount was \$10,000 per donee. In 2002, the exclusion was increased to \$11,000, and it has been adjusted upwards every few years. For 2014 and 2015, the annual exclusion amount is \$14,000. Thus, a person can make annual gifts of up to \$14,000 per donee without having to file a gift tax return. **For gifts in excess of \$14,000 per donee, a gift tax return must be filed, but no gift tax must be paid!** Annual gifts in excess of \$14,000 per donee simply use up a portion of the donor’s lifetime exclusion amount, which is more than \$5 million. **No federal gift tax is owed until total lifetime gifts exceed the lifetime gift exclusion amount of \$5 million.**

For a married couple, the husband and wife each can take advantage of the annual exclusion from gift tax reporting. Together, they can transfer up to \$28,000 to each donee (for example, \$28,000 to each of their children and each of their grandchildren) per year without using up any of the lifetime gift tax exclusion and without even having to file a gift tax return for that year.

Planning for Gifts

If you plan to make substantial gifts, important decisions need to be made about the timing of the gifts and the selection of which property to give. To make these decisions, you need to know something about federal estate and gift taxes, income taxes, estate law, real estate law and divorce law. You also need to consider the cost of long-term care should you become disabled, be-

cause gifts can affect your eligibility for public medical assistance (Medicaid) benefits. Your first step should be to consult an attorney. Your attorney will ask you to gather copies of all federal income tax and gift tax returns, gift checks, recorded and unrecorded deeds, copies of gift letters and trust agreements. After a review of all the documents and a discussion of your goals, you will be ready to select the property to be gifted and the timing of your gifts.

You may want to consider a gift to charity. Many not-for-profit institutions have resources to aid you in making gifts, particularly in setting up a charitable gift annuity that allows you to give cash or securities while providing you with a guaranteed, life-long income. Under certain conditions, you could enjoy a significant charitable tax deduction without incurring a capital gains tax if you give appreciated securities with a low cost basis. You should ask your attorney to help you review all of your options.

Planning for Incapacity

Estate planning primarily addresses the disposition of your property at your death. When you make your estate plan, you also should consider the possibility that you become incapacitated. Planning for management of your property and for personal care decisions in the event you become incapacitated is accomplished with a durable power of attorney, a topic addressed in a later chapter of this Handbook. Your estate planning attorney should talk with you about the desirability of creating a power of attorney as part of your estate plan.

Preparing to Meet with Your Attorney

Perhaps the most difficult part of the estate planning process is overcoming procrastination and scheduling an initial consultation. For best results, you should deal with an

attorney who provides estate planning services on a regular basis.

When you call to schedule your appointment, be sure to ask whether there is a fee for the initial consultation. At your first conference, be sure to ask about the total cost to have your documents prepared. Some attorneys charge for documents on a flat fee basis, while others bill at an hourly rate. In either case, reputable attorneys always discuss fees up-front at the initial consultation, and they will put the agreement in writing.

Before you visit your attorney, you can make the initial meeting more productive by writing down the following information:

- a list of your intended beneficiaries, with their names, birth dates, and addresses;
- your choice of executor and at least one alternate, with their addresses;
- your choice of agents and successor agents for a power of attorney;
- a list of your substantial assets; and
- a list of any questions you have about estate planning. With this information in hand, your attorney will be able to spend more time developing a plan with you and less time writing down basic information.

It generally is advisable to nominate one executor and one or more alternates rather than naming two individuals to serve as co-executors. Co-executors frequently have difficulty getting paperwork signed in a timely manner, which can delay estate administration and increase administration costs. Moreover, disagreements between co-executors can substantially increase the time and costs of administration.

In distributing your estate, you should be prepared to consider the possibility that the persons to whom you wish to leave your estate may die before you do. You may find it upsetting to plan for the possibility that

you could outlive your children or even your grandchildren. Nevertheless, a thoughtful attorney will ask you to imagine these possible scenarios and to decide who should receive your property if one or more of your intended beneficiaries is not alive at your death.

If you suspect trouble in your family or the family of a beneficiary, such as a disability, a problem with alcohol or drugs, a potential divorce, or a dispute between beneficiaries, mention this to your attorney so the issues can be addressed in a way that carries out your wishes and minimizes conflict.

In listing your assets, consider both your probate and non-probate property. Bring copies of recent statements, which contain important information about the assets and their value. For life insurance, annuities, retirement accounts, and other such assets, make sure you know who has been designated as beneficiaries at your death.

Remember that anything you discuss with your attorney is confidential client information. While your children may accompany you to meet with your attorney, the attorney may wish to meet with you alone to preserve confidentiality and to protect against claims that your children influenced the content of the Will and other documents.

After working with you to develop your plan, your attorney will prepare the necessary documents. It is very important that you understand all papers you sign. You should ask your attorney to forward drafts for your review in advance of the meeting at which the documents will be signed.

Protecting Your Will

Keep your original Will in a secure place, such as a fire-proof box, a safe deposit box at your bank, or with your attorney. (For your Powers of Attorney and Living Will, it is best to keep the originals where they will be

readily accessible, and not at a bank or with your attorney.) If you do not want others to know the contents of your Will or are afraid that people might tamper with or destroy your Will if they were to read it, you can leave it with your attorney or place it in a safe deposit box. If your attorney is holding your Will, ask whether it is being held in a fireproof vault or other protected location.

In Pennsylvania, a safe deposit box is “frozen” or sealed upon death of the owner except for the limited purposes of retrieving the decedent's Will and cemetery deed. The safe deposit box is not frozen, however, if the co-owner of the box is the surviving spouse.

You have the right to request your original estate planning documents from your attorney at any time. The documents belong to you, not your attorney.

Updating Your Will and Estate Plan

You have the right to revoke your Will and write a new one at any time you choose, providing you have the mental capacity to do so. To make small changes to your Will, you can amend it by making a “codicil.”

If you already have a Will, take it out and re-read it. Do you understand what it says? Do you agree now with the arrangements you made earlier?

You may need to update your Will if circumstances have changed. Marriage, divorce, death, birth, asset growth, retirement, disability, moving to a different state or a change in estate tax laws are events that may trigger the need to revise your Will. A good rule-of-thumb is to review your Will at least once every five years.

Just as you need to review your Will periodically, you should check the beneficiary designations on your life insurance and

retirement accounts to make sure they are up to date. Many people select beneficiaries when purchasing a life insurance policy or opening their retirement accounts but never re-check these decisions. It is particularly important to do so as families change over the years.

CHAPTER 5

When a Loved One Dies: Priority List

There are many things to be done almost at once. Whether or not there is a Will, a lawyer experienced in estate work can provide valuable help, and a prompt initial consultation is recommended. Many false starts and missed deadlines can be avoided. This priority list will provide guidance on getting started and topics to discuss with your attorney.

I. Immediately:

1. Notify the Organ Bank / Hospital (if appropriate).
2. Notify next of kin. Notify Agent under Power of Attorney (since the authority granted to an Agent by a Power of Attorney ends at the Principal's death). Notify any Guardian of the Person or Estate of the decedent.
3. Locate vital documents: Will, burial instructions, personal directory, bank records, insurance policies, safe deposit keys.
4. Secure deceased's credit / debit / ATM cards from loss or misuse.
5. Secure the decedent's home and vehicle.
6. Determine whether any tax, mortgage or rent, or utility payments may be past due.

II. Make the following calls:

1. Executor named in Will (who can make the following calls).
2. Lawyer (even if no Will found).
3. Funeral director (even if cremation specified).
4. Anyone who has been acting as trustee or custodian of money / property.

III. Take to meeting with lawyer:

1. Will, checkbook and bank records, personal directory, income tax returns, deed or lease, stocks and bonds, addresses of heirs and next of kin.

Lawyer can advise and help give notices to banks, landlord, employer, etc.

IV. Take to meeting with Funeral Director:

1. Burial instructions, cemetery deed, birth certificate, service discharge papers.

Funeral Director can arrange with church, cemetery, obtain death certificates, offer suggestions on funeral luncheon, death notices, obituary, etc.

V. To be done by Personal Representative (Executor/Administrator), with help of lawyer, as soon as possible:

1. Determine if probate of the Estate is necessary. If total value of the decedent's assets is low enough, or if all assets are held jointly or with beneficiary designations or in trust, the probate process may not be necessary, and a simplified procedure might be available. Even so, there may be other reasons to probate and obtain Letters Testamentary or Letters of Administration. Consult with an attorney to determine which option is best.

Probate can only take place after the burial or cremation of the decedent.

2. If probate is necessary, contact the Register of Wills office in the County where the decedent resided to learn the requirements for probate, which vary from County to County. In Delaware County, you will need to present the following at the Register of Wills office:

- **Original** Will and codicil(s) if any;
- Original death certificate;
- Photo ID of the person seeking appointment as Personal Representative (Executor/trix, if there is a Will, or Administrator/trix if there is no Will);
- Blank check for probate fee;
- In certain instances, Witness Affidavits, Renunciations or Death Certificates of other named Personal Representatives, or Bond.

Check the Delaware County Register of Wills website at www.co.delaware.pa.us/registerofwills or call 610-891-4406 for further information.

3. If you probate the Estate, a short certificate is the document that you can obtain and use to transfer assets. If you've filed a Petition for Settlement of a Small Estate, a certified copy of the Decree of the Orphans' Court may be used. (Be aware that if you have not probated the Estate, but need to file an Inheritance Tax Return, a filing fee will be assessed when the Return is filed.)

4. There are other tasks to be considered, such as:

- a. Obtain enough short certificates for all accounts;

- b. Obtain EIN (tax ID number) for Estate if necessary, and choose fiscal year;
- c. Send legal notices to heirs and legatees, and advertise Estate;
- d. Notify banks, brokerages, IRA administrators, post office, employer, insurance agents, credit card companies, utilities, Social Security Administration and/or Medicare if applicable, other payors of government benefits, payors of pensions and annuities, health care plans, unions, veterans organizations and bureaus, accountants and tax preparers;
- e. Write or call Mortgage or Reverse Mortgage Lender to obtain information on options and deadlines;
- f. If the decedent's home is to be sold, consider as soon as possible what needs to be done to ready the house for sale;
- g. Follow Pennsylvania Department of Revenue procedure for opening and inventory of safety deposit box;
- h. Inventory real and personal property and obtain any necessary appraisals of tangible assets;
- i. Send proper Notice to Pennsylvania Department of Human Services (f/k/a Department of Public Welfare) re: Medicaid Estate Recovery claim, if decedent was at least 55 years of age;
- j. Open Estate checking account, for deposit of funds and payment of bills;
- k. Gather all claims and bills, and pay according to statutory priority;

- l. Keep detailed records, especially of receipts and expenditures.
- m. Consult with lawyer about further requirements and deadlines, as applied to the particular Estate and situation.

CHAPTER 6

Health Insurance Portability & Accountability Act (HIPAA)

While medical and related records have always been confidential, now a federal law called the Health Insurance Portability and Accountability Act of 1996 (HIPAA) further increases the privacy of your health information which is held by health care providers, health plans, and others covered by the law, including “business associates” providing services to those directly covered by the law.

You will receive Notices of Privacy Practices from those covered by HIPAA. These Notices will tell you what can be done with your health information without your authorization, and that other uses and disclosures of your health information can only be done with your authorization which you can revoke.

These Notices will also list rights you have regarding your health information, such as requesting (1) restrictions on use or disclosure of information or on how information is sent to you, (2) to inspect, copy, and amend records, including that you can request electronic copies of records, and (3) an accounting of disclosures. The Notices will tell you how to take advantage of these rights and some of the limits on these rights. The Notices will also include your right to be in-

formed when there is a likely risk to the privacy of your health information and that you will be given a copy of a Notice of Privacy Practices at any time upon request. In addition the Notices will tell you how to make complaints when you feel your privacy rights have been violated and whom to contact for further information about the privacy of your health information.

The Notices of Privacy Practices are available at places where health care services are provided and may also be posted on the website of the health care provider or plan. These Notices will include up-to-date revisions. In some circumstances you may receive a revised Notice, but you can also ask for a copy of a Notice at any time to make sure you have the correct information.

If you want others, such as trusted friends or family members, to be able to receive your health information, like talking with your doctors or picking up your prescriptions, you should inquire about anything you must do to make sure this will happen. This is best done before a need arises.

CHAPTER 7

Power of Attorney (POA)

A Power of Attorney (POA) is an important and powerful document that you can create to enable another person to lawfully act for you. The person creating the document is called the Principal and the person carrying out the wishes of the principal is called the Agent. The Principal must be mentally competent when he signs the document, but the document may remain legally valid even if the Principal becomes incapacitated. This continuing authority is known at law as durability. This is why the term “Durable Power of Attorney” is often used. It is now

the law in Pennsylvania that all powers of attorney are durable unless the document specifies otherwise. It is important to be aware that a Power of Attorney, and the authority it gives to an agent to act, terminates upon the death of the Principal.

Pennsylvania law concerning powers of attorney for finances and property was significantly revised on July 2, 2014 by Act 95. Most of the changes are effective for powers of attorney signed on or after January 1, 2015. (Powers of attorney signed before that date are still good.) As under the old law, all new POA documents must carry a large NOTICE provision that warns the Principal of the significant breadth and scope of the powers being given to his agent. Additionally, in order for the power of attorney to be legally binding, the Agent must also sign an ACKNOWLEDGMENT. In the Acknowledgement the agent promises to act in accordance with the reasonable expectations of the principal to the extent actually known by the agent, otherwise in the principal's best interest, and to act in good faith and only within the scope of authority granted to the agent by the principal. Your Agent may be granted power to sell your property or handle your investments or other far reaching powers and, for that reason, your selection of your Agent is CRITICAL.

A power of attorney becomes particularly valuable should its maker later become incapacitated – whether this incapacity is short lived or of longer duration. Importantly, the Agent may be empowered to make estate planning decisions, in order to minimize estate taxes and/or to take Medicaid planning steps. These steps may involve giving monies or assets to the Principal's heirs now, rather than at the Principal's death. In a power of attorney, this act is called "gifting." Not surprisingly, gifting is sometimes abused by an Agent. As a consequence, if gifting is to be permitted

at all, the POA document must contain very specific language. Again, contact your elder law or estate planning attorney.

In essence, a power of attorney may grant the Agent the power to do almost anything financially that the Principal could do. Therefore, it is important to consider to how much power you want to give your Agent. It might be appropriate to grant an Agent limited, closely defined authority or very far-reaching powers. Your attorney can review these and other details with you as you work together on the creation of an appropriate document for your particular circumstances and needs. For example, you may wish to specifically authorize your Agent to use your funds to consult with an attorney or other professional for appropriate and timely legal, accounting or investment advice – all to better serve you as your legally authorized Agent.

A power of attorney may be effective immediately or only when a specific, future event has occurred. Such a future or "triggering" event might be when your doctor certifies that you are disabled either physically and/or mentally. This type of triggering mechanism is often called a "springing" clause. However, the delay and expense to certify a future or "triggering" circumstance can work against your more general desire to enable your agent to act for you. Therefore, you should carefully evaluate the pros and cons of this feature with your lawyer.

To avoid or minimize family squabbles, you should consider advising your family of your plans for incapacity (power of attorney) as well as your plans for your estate. Additionally, it is much more efficient to have one agent rather than a group of agents. Obviously, some children might be disappointed to not be the one chosen to act. If you communicate with your children – particularly your chosen Agent – during the planning

process, you will be able to forestall or at least diminish many family disputes.

Under the new law, your signature (execution) of your power of attorney must be witnessed by two adults (not your family) and a Notary Public. In most cases, copies of your power of attorney can be as valid as the original. Additionally, a notarized power of attorney may be recorded (for a fee) in our County Recorder of Deeds Office or with the Clerk of the Orphans' Court. Once recorded, certified copies may be purchased and may be more readily accepted by financial institutions.

Be very careful of forms you get from the internet, and do not just copy someone else's form. "One size does not fit all." You want a power of attorney document to help your Agent to be able to help you when you need it, but not to be able to do more than you want done.

CHAPTER 8

Durable Health Care Power of Attorney

Sometimes, an event, condition or circumstance might make it impossible for a patient to interact with her doctor. Perhaps, for example, she has been in an accident or has been given medicine to control her pain. She may have undergone surgery and still be feeling the effects of her anesthesia. Under such circumstances, her ability to listen to her doctor's explanation of treatment choices and her ability to think and evaluate alternatives may be significantly impaired. Similarly, if a person is suffering from Alzheimer's or other dementia, she may not be able to effectively interact with her health care providers and/or may be unable to give informed consent to a proposed form of treatment.

Many people chose to anticipate this type of sad event and name an agent (sometimes called a surrogate) to act for them regarding some or ALL health care decisions.

You may have heard the expression "Advance Directive" or "Living Will" used to describe a document detailing your wishes under certain circumstances. While advance directives have some value, most legal scholars agree that a more efficient legal document, that formally records your choice of agent to make decisions for you when you can not, is a Durable Health Care Power of Attorney (DHCPOA).

Similar to the power of attorney that enables your agent to attend to your financial and property decisions, the DHCPOA can enable your agent to make your health care decisions for you if you are too ill to make them yourself. Your agent for health care decisions may be the same person who is your agent for your financial and property decisions or it may be someone else. This is so because the abilities and characteristics needed for each task are different; an agent for your health care decisions should be able to represent your desires without regard to the agent's own personal feelings or beliefs.

Additionally, because now we are living longer than ever before, more people recognize that the possibility is that much greater that they will have some period of incapacity – whether temporary (for an operation) or longer (with a progressive or cognitive illness like Alzheimer's disease).

A Living Will only comes into use at the very end of your life. However, a DHCPOA can cover the much larger period of time between intellectual incapacity and end of life. An agent empowered by a well crafted DHCPOA can help ensure that our individual preferences, desires, and wishes regarding our health care are honored and enforced.

This freedom to name a person who is not your spouse as your agent of choice for a DHCPOA was affirmed by a Pennsylvania Superior Court case called Duran. In November 2006 our legislature passed and the Governor signed a new law specifically enabling a DHCPOA (Act 169). For many years, Pennsylvania has provided a sample Living Will form, which is not mandatory but can be a good starting point. Act 169 also provided a sample form that combined a Living Will and DHCPOA into one document. Because of these relatively recent changes, please contact your attorney to properly initiate this type of planning.

For persons with mental health issues, some years ago Pennsylvania also created a new mental health care power of attorney. The law can be found in chapter 58 of the Probate Estates and Fiduciary Code.

CHAPTER 9

Living Wills

You may be familiar with the current Living Will form if you or a family member has been a patient in a hospital. When you are admitted as a patient, you are asked if you have a Living Will or Advance Directive because this is required by Federal patient rights law. The law does not require the Hospital to explain the purpose of an Advance Directive, Living Will or DHCPOA.

The Pennsylvania Statutory Living Will form is composed of limited yes or no questions related to your care at the end of your life. A Pennsylvania Statutory Living Will becomes active only if your attending physician certifies that you are near death. In Pennsylvania, anyone of sound mind who has either turned 18, graduated from High School or married may execute a Living Will. The Pennsylvania Statutory Living Will only re-

quires two witnesses aged 18 or older. Each state has a similar law with unique requirements. Therefore, you may wish to improve the acceptance of your document in other states by adding the formality of having your and your witnesses' signatures notarized.

It is perhaps most critical to discuss with your physician the kinds of treatments you might wish to withhold and under what circumstances. Certainly, you would want to understand what effect certain treatments would have on your body. A copy of your DHCPOA or Living Will should be given to your primary care physician who will safeguard it in your medical records. Your doctor will appreciate this communication because your written instructions can protect the physician from liability. However, because your choices might not be compatible with the physician's moral or religious beliefs you may find that your doctor is not comfortable with your expressed preferences. It is much better to discover this belief difference before a crisis occurs. You can then find a doctor whose quality of life values are more compatible with your own.

Additionally, you might wish to name a surrogate (agent) to carry out your wishes should you be unable to communicate (see DHCPOA discussion above). Also, you may specifically prohibit certain persons from acting as a surrogate. For example, you might not want an ex-spouse or estranged child from interacting with your doctor regarding your care.

By law, hospitals and nursing homes must provide patients with limited information concerning Living Wills. However, information concerning DHCPOA and Health Care Declarations is optional. Hospitals and nursing homes may not charge different fees dependent upon whether or not a patient has a Living Will.

Again, a Pennsylvania Statutory Living Will becomes operable (or empowers your agent) ONLY when the attending physician is provided with a copy AND the attending physician determines that the patient is incompetent AND in a terminal condition OR in a state of permanent unconsciousness. The attending doctor must certify this diagnosis in writing and this diagnosis must be confirmed by another physician. ONLY WHEN AND ONLY IF ALL of these steps are followed is the Pennsylvania Statutory Living Will able to give your agent authority to make end-of-life decisions for you.

Absence of a Living Will

If a patient has not executed an Advance Directive (Living Will or similar document), there is no presumption of the patient's intentions to consent to or to refuse life-sustaining treatment. However, the Pennsylvania Supreme Court (in *In re: Fiori*) has held, and recent Pennsylvania legislation has affirmed by statute, that when there is no advance directive, a close relative, with the consent of two physicians and without Court involvement, may remove life-sustaining treatment from an adult relative who is in a persistent vegetative state.

CHAPTER 10

Out-of-Hospital, Do Not Resuscitate (DNR) Orders

Should medical circumstances warrant, a physician may, upon consultation with her patient or the patient's agent, write a DNR or Do Not Resuscitate Order. In Pennsylvania, this specialized medical instruction is enforceable inside or outside the walls of a medical facility. This instruction in a patient's chart means that should their heart

stop beating on its own or should they stop breathing, no CPR (cardiopulmonary resuscitation) should be performed. For example, a DNR order might be appropriate for a terminally ill cancer patient who has been admitted to Hospice care or a very frail and very elderly person who lacks the physical vitality to respond to or recover from CPR.

It used to be that a DNR order was only enforceable within a medical facility. This meant that a person with a DNR order could not enforce it outside the hospital. Thus, if they were well enough to travel and then be in an accident, EMS or similar emergency medical service responders would be required to perform CPR (because their public charge is to save lives at all cost), even though this was against the patient and doctor's orders.

More recently, Pennsylvania joined most other states that have procedures to protect patients' rights, ensure EMS compliance and still protect the professional integrity of our Police, Fire, EMT and invaluable emergency responders. In Pennsylvania, a person can have a "mobile DNR" and wear a special bracelet to quickly and effectively advise the emergency responder of the existence of the DNR order. The official advisory on the bracelet enables the emergency responder to respect the patient's wishes and her doctor's orders.

You can quickly find more information regarding the Pennsylvania Mobile DNR on the web at the Pennsylvania Department of Health Website OR <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=556980&mode=2>

CHAPTER 11

Guardianships

Sometimes people are unable to make or communicate decisions about their health or other personal care or about their finances, and can no longer manage for themselves. Dementia or other progressive mental, emotional, or physical illnesses can rob people of their ability to make personal and financial decisions and to keep themselves safe. Individuals can suffer harm from lack of personal care or can become victims of others who see opportunities to take cash and possessions while “helping” or doing favors.

To provide a decision-maker for people in these situations, Pennsylvania law allows the local Orphans’ Court to appoint a guardian of the person (for making health care decisions, living arrangements, and other personal decisions) and/or a guardian of the estate (for financial matters). Anyone interested in the person’s welfare can file the petition seeking appointment of a guardian. The person filing the petition should propose a guardian. This should be a person who understands the duties of a guardian, who can fulfill these duties, and who agrees to act as guardian. This can also be an agency which performs guardian services. There is no public guardian service in Delaware County at this time. There are, however, private guardian agencies.

Because a ruling of “incapacity” and appointment of a guardian involves the curtailing of many important legal rights, high standards must be met. A guardian can be appointed only if the court finds that a person (the “alleged incapacitated person”) is impaired in such a way that he is partially or totally unable to meet essential requirements for his physical health and safety or

to manage his financial resources, and, due to a lack of or inadequacy of other supports, a guardian is needed. “Incapacity” for guardianship is an impairment of decision-making ability; a person may be physically limited but not be incapacitated because they have the ability to make arrangements for their care.

Notice of the filing of a guardianship petition must be given to the alleged incapacitated person and to his next of kin.

A guardian may be appointed for a short time on an emergency basis, where decisions important to the welfare of the alleged incapacitated person must be made quickly to prevent harm. When needed for long-term incapacity, a guardian may be appointed on a permanent basis.

Hearing Before the Court

The alleged incapacitated person is required to attend a hearing before the Orphans’ Court where the petition was filed (generally Delaware County for persons residing in Delaware County) unless excused, for example, by a doctor who says that it would be harmful for the person to attend the hearing. The alleged incapacitated person may hire an attorney or he may request that the court appoint an attorney and to have the attorney’s fees paid for him if he cannot afford to pay them himself. The court may also order appointment of an attorney in appropriate cases, with fees paid by the Commonwealth if the alleged incapacitated person is unable to pay. This may occur when there is family conflict or other questions are raised. However, an attorney for the alleged incapacitated person is not required unless ordered by the court.

When testimony by a person qualified to perform an evaluation of capacity or incapacity, such as a psychiatrist or other health care provider, establishes by clear and con-

vincing evidence that the person is incapacitated, and it is shown that the person needs a guardian, a guardian will be appointed. However, the standard to prove incapacity is high. Just because a person has periods of confusion, this does not necessarily mean that they will be found to be incapacitated under the law.

The alleged incapacitated person may request an independent evaluation of his capacity and to have the evaluation fees paid for him if he cannot afford to pay them. The court may also order an independent evaluation, with fees paid by the Commonwealth, if the alleged incapacitated person is unable to pay.

If incapacity and the need for a guardian are established, the court will appoint a guardian of the person and/or estate with full (plenary) or limited powers and duties, as described in the court decree appointing the guardian.

Powers and Duties

Generally, it is the duty of the guardian to assert the rights and best interests of, and to respect the expressed wishes and preferences of, the incapacitated person to the greatest possible extent. The guardian should also encourage the incapacitated person to participate in all decisions which affect him to the maximum extent of his abilities. However, ensuring the best interests of the incapacitated person may mean that the guardian will not follow the wishes of that person if they are in conflict with his best interests. For example, an incapacitated person may want to continue to live in his home, but if the guardian determines that assisted living or skilled nursing care is necessary, the guardian is authorized to admit the person to a facility even over that person's objections.

The powers and duties of the court-appointed guardian may be limited to specific powers and duties, but often include the power and duty to make every kind of decision for the incapacitated person. However, a guardian cannot consent to admission to an inpatient psychiatric facility or a state center for the mentally retarded or consent to relinquishment of parental rights. Court approval is needed for consent to abortion, sterilization, psychosurgery, electroconvulsive shock therapy (ECT), or removal of a healthy body organ, to prohibit marriage, to consent to divorce, or to consent to experimental procedures. When there is a hearing about whether a guardian is to consent to or not consent to a specific act, the guardian is to tell the court of any known objection of the incapacitated person, whether expressed before or after the guardian was appointed.

Typical decisions made by a guardian of the person include arranging for medical care and consenting to surgery or other treatments, determining where an incapacitated person is to live, and contracting for admission to nursing facilities. A guardian of the estate handles financial matters and has many of the same responsibilities as a person appointed to manage an estate for a person who has died, with specific requirements and limitations. Every guardian must file annual reports with the Orphans' Court explaining what they did over the past year.

If, after appointment of a guardian, a person regains the capacity to make decisions for himself, or sufficient supports become available to provide for the person's care, a petition can be submitted to the court to review the continuing need for a guardianship and to reverse the guardianship if appropriate. A review hearing can also be requested by any interested person if a guardian is not fulfilling required duties.

A guardian’s authority expires upon the death of the incapacitated person. Then matters such as final arrangements, payment of bills, distribution of assets, etc., are handled by a person entitled to act under estate law. This would include an executor named in a Will or a person who can become administrator of the estate under Pennsylvania law covering persons who die without a Will (intestacy law), such as a person entitled to part of the estate under a Will, family members, principal creditors, “other fit persons,” etc.

Making a power of attorney covering personal and financial decision-making may make guardianship proceedings unnecessary, and is less expensive and stressful than the court process. Anyone can also name in advance a preferred guardian of the person or estate for consideration by the court in case a guardianship proceeding becomes necessary.

CHAPTER 12

Social Security

This chapter contains contact information for the Social Security Administration and a brief description of some of the programs and benefits available as well as general eligibility requirements. Some eligibility requirements are complicated and cannot be fully addressed in this Handbook. You are encouraged to contact the Social Security Administration (SSA) or consult with a qualified attorney with respect to your eligibility for particular benefits.

Contacting Social Security

By Toll-Free Telephone:

800-772-1213 (24 hours a day)
Representative available 7am–7pm M–F

TTY for the Hearing Impaired:

800-325-0778

In Person – Delaware County Offices:

807 Crosby Street
Chester, PA 19013

8645 West Chester Pike
Upper Darby, PA 19082

Hours:	Monday	9am–3pm
	Tuesday	9am–3pm
	Wednesday	9am–noon
	Thursday	9am–3pm
	Friday	9am–3pm
	Saturday	Closed
	Sunday	Closed

Online:

www.ssa.gov

Online services include:

- obtaining a copy of your earnings record and an estimate of the benefits you and your family will receive when eligible
- filing an application for retirement and/or social security disability benefits
- replacing a lost Social Security card or changing the name on your Social Security records
- replacing a lost Medicare card
- downloading copies of booklets and fact sheets about benefits
- create My Social Security Account online
- retire online

Retirement Benefits

Full Retirement Age

Use the following chart to determine when you will be eligible to collect full Social Security retirement benefits:

If Your Year of Birth is:	Your Full Retirement Age is:
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 or later	67

If you choose to begin collecting retirement benefits before your Full Retirement Age, the amount of your monthly benefit will be permanently reduced, as follows:

If Full Retirement Age is:	And You Collect at Age:	Your Benefit is Reduced by about:
65	62	20%
65	63	13.33%
65	64	6.66%
66	62	25%
66	63	20%
66	64	13.33%
66	65	6.66%

The disadvantage of taking your retirement benefits before your full retirement age is that your monthly benefits are permanently reduced. The advantage is that you collect benefits for a longer period of time. Because each person’s situation is different, you should contact Social Security or a qualified attorney or advisor before making any decisions.

If you elect to defer receiving your retirement benefits beyond your full retirement

age, your monthly benefit will increase up to age 70.

Alert: If you decide to delay your benefits beyond age 65, you should still apply for Medicare benefits within three months of your 65th birthday to avoid increased costs for Part B (medical) and Part D (prescription drugs).

Please Note: You can take retirement benefits before your full retirement age and “earn back” the permanent reduction if you apply for and win Social Security disability benefits.

Effect of Earnings on Retirement Benefits

Retirees who are collecting Social Security retirement benefits before their Full Retirement Age (see chart above), and have earnings from work or self-employment, will have \$1.00 in retirement benefits deducted for each \$2.00 of earnings above the exempt amount which is \$15,720 in 2015.

In the year you reach full retirement age, \$1.00 in retirement benefits will be deducted for each \$3.00 you earn above the exempt amount (\$41,880 in 2015). After you reach your full retirement age, you can collect your Social Security benefits with no reduction based on earnings.

Retirement Benefits for Spouse

Social Security retirement benefits are received in one of two ways: based on your own record of contributions to the Social Security system or as a spouse or former spouse of such a contributor.

The spouse of a wage earner who collects Social Security benefits can, when he or she reaches retirement age, choose to collect benefits based upon his or her own earnings record or the earnings record of his or her spouse. The spouse would receive either 100% of benefits based on his or her own earnings record or 50% of the amount of

the wage-earning spouse's benefits (with no reduction of the wage-earning spouse's benefit). At the time of death of a wage-earning spouse, the widow(er) can make an election between his or her own benefits or 100% of the deceased wage-earning spouse's benefits.

Retirement Benefits for a Divorced Spouse

Divorce does not prevent the divorced spouse from collecting benefits on the divorced spouse's record ("derivative benefits") IF the marriage was at least ten years in duration. A divorced spouse, at least 62 years old and unmarried, who was married to the wage-earner for a minimum of 10 years, can receive retirement benefits based on the wage-earner's earnings record, as long as the wage-earner is eligible for retirement benefits, e.g., is at least 62 years of age and fully insured, even if he/she is not actually collecting benefits; however, if the wage-earner is not collecting benefits, the divorced spouse must wait two years from the date of the divorce to begin collecting benefits in that manner. The wage-earner's benefits are not affected by the divorced spouse's election to collect benefits in this manner rather than on his or her own wage-earning record.

If the dependent and divorced spouse remarries, he/she will not be eligible for derivative benefits from a contributing spouse. However, if such remarriage terminates, the dependent spouse becomes eligible for derivative benefits once again from the former contributing spouse. If a dependent spouse has been married more than once and each time for at least ten years, derivative benefits can come from the former spouse's contributions providing the higher benefits.

Retirement Benefits for Divorced Widow(er)s

To receive retirement benefits based on the earnings record of a deceased ex-spouse, the deceased wage-earner must have been fully insured at the time of death, and the dependent surviving ex-spouse must:

- be at least 60 years of age, or 50 years of age if disabled, and have been married to the deceased wage-earner for at least ten years;
- be any age if caring for a child who is eligible for benefits on the wage-earner's earnings record;
- not be eligible for an equal or higher benefit on his/her own earnings record; and
- not be currently married, unless the remarriage occurred after age 60, or 50 for disabled widow(er)s.

The surviving divorced widow(er) receives 100% of the benefits instead of the 50% received if the former spouse is alive.

Disability Benefits – SSD and SSI

Social Security administers two programs for getting disability payments which are Social Security Disability (SSD) and Supplemental Security Income (SSI).

Each program requires the same medical proof of disability, e.g., a medically determinable physical or mental impairment which has lasted or could be expected to last for a continuous period of not less than 12 months and which makes it impossible for the claimant to work in competitive employment, or, to use Social Security's term of art, to engage in "substantial gainful activity." SSD is not normally payable for a temporary condition (i.e., less than 12 months) or for a partial disability; however, you can gross up to \$1090 per month in 2015, and still be considered unable to engage in "substantial gainful activity."

By contrast, SSI applicants must meet strict income and asset guidelines and be either medically disabled, blind, or have attained age 65. SSI may be used to supplement other income, e.g., from SSD, retirement benefits or a pension if the income and asset guidelines are met. There are certain disregards of income and assets, so a disabled person with limited income and assets should contact SSA, consult a qualified attorney, or call Legal Aid to determine eligibility for SSI.

SSD has no income or assets test per se, but requires that the applicant have established a certain number of “covered quarters,” or quarters of employment for which FICA taxes were paid. An application for SSD can be filed on-line, whereas an application for SSI cannot.

SSD pays benefits to the wage-earner and qualifying family members, whereas SSI benefits only cover the individual claimant. SSD provides a special program to help adults who are unmarried, have never engaged in substantial gainful activity and who become disabled before they attain age 22. If such a disabled adult’s parents are deceased (having been fully insured for retirement benefits at the time of death), or are eligible to collect retirement benefits, the disabled adult child can receive 50% of his or her parents’ benefits.

The process of applying for and receiving Disability Benefits is complicated. The assistance of a qualified attorney with experience in this area of law is highly recommended.

Sources for Finding Attorneys:

- NOSSCR (National Organization of Social Security Claimants’ Representatives): 800-431-2804
- Legal Aid of Southeastern Pennsylvania (LASP), Delaware County Division: 610-874-8421

- Delaware County Bar Association Lawyer Referral Service: 610-566-6625.

Applying for Benefits; Denials; SSA Records

Never delay in applying for benefits for which you may be eligible. Any delay on your part could result in your receiving fewer benefits than you are entitled to. When in doubt, contact Social Security to begin the application process as soon as you may be eligible. Remember that you can apply for some Social Security benefits online.

Social Security will give you a deadline to finish certain tasks (e.g., file a written application after you call them; file a written appeal if you are dissatisfied with their decision, etc.) and you must comply with their timelines or you will lose your right to potential benefits. Typically, their deadlines are within 60 days; however, some deadlines might be shorter so you must check this carefully.

If Social Security denies your claim for benefits, you are entitled to a written explanation of the reasons for the denial and in most cases you will have the right to appeal the decision.

If you are receiving benefits or applying for benefits from Social Security, it is important that you inform the Social Security Administration of any changes or corrections to your records. For example, if you move, change bank accounts, or disagree with the earnings records that they have posted to your Social Security account, you should take immediate steps to inform Social Security of any changes or additions. Likewise, if you marry or divorce or if someone receiving benefits dies, you should notify the Social Security Administration immediately. It is important to check your records every couple of years, at least until you are receiving

benefits, to verify your earnings records on file with Social Security.

CHAPTER 13

Medicare

Instituted in 1965, Medicare is a program administered by the federal government to assist older Americans, along with others who are disabled, with payment of medical costs. The traditional Medicare program has three parts. Part A consists of coverage for most of the costs involved in a hospital stay; Part B is medical insurance which pays a portion of the cost for doctor and outpatient medical care. In Pennsylvania, Part B is administered by Highmark Medicare Services in Camp Hill. Part D is a prescription drug plan.

An individual is entitled to Medicare because the individual or the individual's spouse paid for it through Social Security taxes. The program is provided to assist senior citizens whose medical bills are typically higher than the rest of the population.

Medicare eligibility begins at sixty-five (65) years of age. It is advised that you apply three (3) months before your sixty-fifth (65th) birthday even if you are waiting to apply for Social Security benefits until full retirement age.

Part A – Hospital Insurance

Part A has two types of eligibility. Most people age sixty-five (65) or older are covered, for free, based on their work records or on their spouses' work records. People over age sixty-five (65) but who are not eligible for free Part A coverage based on their work record can enroll and pay a monthly premium. This premium amount changes from year to year. For 2015, the maximum Part A premium is \$407.

Part B – Medical Insurance

Anyone who is age sixty-five (65) or older and a citizen of the United States or a resident of the United States who has been here lawfully for five (5) consecutive years is eligible to enroll in Medicare Part B medical insurance. This is true whether or not the individual is eligible for Part A hospital insurance. Everyone enrolled must pay a monthly premium. For 2015, the premium ranges from \$104.90 to \$319.70 per month.

Eligibility and enrollment are handled by the Social Security Administration: Chester Office, 807 Crosby Street, Chester, PA 19013 at 800-772-1213 or the Upper Darby Office, 8645 West Chester Pike, Upper Darby, PA 19082 at 610-694-8907. The website is www.SocialSecurity.gov.

The Pennsylvania Department of Human Services has various programs that will pay the Part B monthly premium (and in some cases the Medicare deductibles and co-payments) for eligible residents. You can reach the Department of Human Services at 800-692-7462.

Cost of Treatment

Part A of Medicare covers most of the costs incurred directly from a hospital as inpatient care. In addition, some of the costs of inpatient treatment in a skilled nursing facility may also be covered. Medicare Part A also covers hospice care (including drugs; medical, nursing and social services; certain durable medical equipment; and some other services such as spiritual and grief counseling) for people with a terminal illness. However, doctors' bills are not covered under Part A as they fall under Part B. To be eligible for Part A hospital insurance coverage, the care and treatment must be medically reasonable and necessary. This means that if the treatment could safely be given in an

outpatient setting at the doctor's office or even at the patient's home, Part A will not provide coverage. It also rules out elective or cosmetic surgery. During each benefit period, the individual must pay the hospital insurance deductible before Medicare will pay anything toward the incurred bill. In 2015, the deductible is \$1,260.

To be covered by Medicare Part A, a stay in a skilled nursing facility must be preceded by a stay of at least three (3) days in a hospital and the patient's doctor must verify that the individual requires daily skilled nursing care. Medicare will cover up to one hundred (100) days of skilled care in a skilled nursing facility during any one benefit period and the first twenty (20) of these days is covered 100%. For the balance of the days, the patient is responsible for the daily co-payment, which in 2015 is \$157.50 per day. Once a person has been in a skilled nursing facility for one hundred (100) days in a benefit period, there will be no further coverage from Medicare Part A and the patient will be totally responsible thereafter.

Part B medical insurance requires that the services provided by the doctors, clinics and laboratories are medically necessary. With the passage of health care reform, traditional Medicare now provides many more preventive medical procedures. For Medicare Part B, there is an annual deductible of \$147 per year (2015).

Medicare Part B then pays eighty percent (80%) of the Medicare approved amount and the individual is responsible for twenty percent (20%) which is usually covered by his or her supplemental health insurance. Pennsylvania has enacted the Medicare Overcharge Measure ("MOM") law, which forbids any doctor from billing patients for the balance of the bill above the approved Medicare amount. You can call the Pennsyl-

vania State Department of Aging at 717-783-8975 if your doctor is attempting to bill you for any amount above the amount Medicare approves. The doctor can bill the patient for the twenty percent (20%) of the approved fee not paid by Medicare. This is why it is important to have supplemental insurance, aka Medigap, if you have traditional Medicare.

Appeals in Denials of Benefits

If you are denied Medicare benefits you have the right to an appeal, which is somewhat complicated. Pennsylvania has a program called "APPRISE" wherein trained volunteer counselors provide free one-on-one assistance or telephone assistance with eligibility and benefits questions for all people over the age of sixty (60), their families or their caregivers. You can call them toll free at 800-783-7067, or contact the APPRISE Office in Delaware County by calling 484-494-3769. As of July 1, 2007, all Medicare participating hospitals must provide Medicare patients with a notice of discharge and appeal rights within two (2) days of admission. If a beneficiary receives notice of discharge, he or she may make a request for review with Livanta, the contracted quality improvement organization, at 866-815-5440 or www.bfccqioarea1.com. Filing a timely request for review should stay the discharge pending review. You can also call the Medicare Hotline at 800-Medicare (800-633-4227) or TTY/TDD at 877-486-2048 or the website at www.medicare.gov.

As a general rule, no Medicare coverage is available outside the USA with one exception: a citizen of the USA would be covered in Canada if he/she were en route to Alaska.

Questions concerning Medicare Part B should be addressed to Highmark Medicare Services, Part B Claims, P.O. Box 890418 Camp Hill, PA 17089-0418; telephone

877-235-8079, or contact the APPRISE program through Senior Community Services at 610-237-6222, ext. 24.

Note: Many Medicare appeals – whether traditional or managed care – are successfully won by the consumer. It is worth your time to question and seek review. If you are in an HMO and services are reduced or denied, you have a right for an expedited appeal [a seventy-two (72) hour review]. Call HMO Member Benefits Department and state, “I am calling to request an expedited seventy-two (72) hour decision because I believe my health could be seriously harmed if my services are cut or reduced.”

Program Changes

Medicare has been undergoing substantial change. One way to keep current is to refer to the Medicare handbook, *Medicare and You*, which is periodically mailed to every person covered under the Pennsylvania program, or call 800-633-4227, or go to the website at www.medicare.gov to get help with your Medicare questions. You may also request a Medicare handbook on audiotape, in large type or in Braille.

Supplemental Health Insurance for Traditional Medicare

Even after Medicare pays its portion of an individual’s medical bills, the remaining balance can be staggering. Therefore, it is recommended that people purchase some type of private insurance to pay all or part of that balance. Because such insurance policies are designed to fill the gaps in Medicare payments, the term “Medigap” has developed. There are ten (10) standardized policies referred to as Plan A through Plan J. Plan A offers the most basic coverage and all insurance companies selling Medigap policies are required to make Plan A available. If they offer any other Medigap

policies, they must also offer either Medigap Plan C or Plan F. In Pennsylvania, as of June 2014, there are fifty-nine (59) companies that sell Medigap Insurance. All the Plans are regulated by the federal government, so that they offer the same benefits, BUT they are not all at the same price for the same plan. It pays to shop for the best price. (Example: Plan B with one company offers the same basic benefits as Plan B in another company, but the price can vary). Warning: Medicare Part D is discussed in the Prescription Drug Assistance chapter. However, be very careful to coordinate your Medigap Insurance or any employer insurance with the drug plan you choose.

Note: As of 2010, Plans E, H, I and J are no longer sold. But, if you already have one of these plans, you can keep it.

With traditional Medicare, you receive a Medicare Card (the red, white and blue card with Medicare Parts A&B). If you purchase a Medigap policy as secondary insurance, Medicare is billed first for covered medical services, pays its share and then the secondary insurance receives the bill and pays its share. With traditional Medicare, seniors do not have a “provider network”; there are no co-pays; patients do not need a referral and are covered anywhere in the country. This is not the case with Medicare Advantage Plans.

Medicare Advantage Plans

Many Medicare participants have chosen to enroll in a form of Medicare coverage other than traditional Medicare. This alternative insurance coverage is referred to as Medicare Advantage, or Medicare Part C. As a result of health care reform, many of the benefits of Medicare Advantage are now available to Medicare enrollees under traditional Medicare (e.g. preventative health care and medical tests). The following rep-

resent the types of Medicare Advantage plans available:

- 1) HMOs are managed care plans that require you to go to doctors and hospitals in the plan's network, except in a medical emergency.
- 2) PPOs are managed care plans that allow you to see specialists without a referral. You pay more if you go to a doctor or hospital outside the plan's network, except in a medical emergency.
- 3) PFFs plans are private fee-for-service plans that allow you to go to any doctor or hospital that accepts their terms. Not all providers agree to them; they can reject or accept a plan on a visit-to-visit basis. In an emergency, the plans must cover treatment by any doctor or hospital.

Keep in mind that with Medicare Advantage plans there can be significant co-pays and deductibles that the participant must pay for hospital and skilled nursing facility stays. If you are enrolled in a Medicare Advantage program, but are interested in considering a switch to traditional Medicare, you should contact the APPRISE program through Senior Community Services at 484-494-3769.

CHAPTER 14

Medicare Prescription Drug Benefit/PACE & PACENET/Other Sources of Help for Prescription Medications

The Medicare Prescription Drug Benefit – Medicare Part D

Medicare Part D is a federally subsidized drug program offering limited insurance cov-

erage for prescription drugs to those persons who are Medicare recipients. This includes disabled persons who also receive Medicare benefits. The drug benefit is available only through private insurance companies who contract with Medicare to provide drug plans.

Keep in mind the following points:

- 1) The program is voluntary although there is a financial penalty for those who do not sign up during their initial enrollment period.
- 2) To obtain the coverage, you will pay a monthly premium of approximately \$32.42 or more depending on the coverage you choose. However, it will be waived in instances of those with limited income and limited resources.
Note: The health care reform law establishes a new income-related Part D premium, effective in 2011.
- 3) Be careful when you decide to enroll because you normally can only switch plans one time per year.

The Medicare D standard plan provides for a \$320.00 deductible in 2015, you will then pay 25% and the plan pays 75% of drug cost up to \$2,960.00 including the deductible. Once the plan and beneficiary have together paid the initial coverage limit of \$2,960.00, the beneficiary has a gap in coverage known as the "Donut Hole." Beneficiaries who are in the donut hole will get a 55% discount on brand names and 35% on generic drugs. The discounts will gradually increase annually until everyone is paying a flat 25% for drugs in 2020. Be careful because only the covered drugs under the plan count toward your out-of-pocket costs. Once a consumer has spent a total of \$4,700.00 he/she enters the catastrophic coverage phase for the remainder of the calendar year. The beneficiary pays 5% of the cost of drugs or \$2.65 for generics and \$6.60 for

brand name drugs, whichever is greater.

Note: The above figures change annually. Once the initial coverage limit of \$2,960.00 is reached, the consumer will pay 65% for plan-covered generic drugs and 45% for plan-covered brand drugs in the donut hole. Benefits for the Catastrophic benefit period will begin once the beneficiary has paid a total of \$4,700.00. During the Catastrophic benefit period co-pays for prescriptions will be \$2.65 for generic medications and \$6.60 for brand name drugs.

This describes the basic Medicare D drug coverage; however, each prescription plan provider will offer something slightly different and in some cases a more generous coverage. The premiums and co-pays will vary between plans.

If you are in a Medicare Advantage plan; i.e., HMO, PPO or PFFS some will offer hospital, medical and prescription drug coverage under a single policy but not all plans offer prescription drug coverage. Consumers who wish to enroll in a Medicare Advantage plan must take the plan's prescription drug coverage. If you enroll in a stand alone prescription drug plan you could lose your medical insurance.

Note: Starting in 2011 the Medicare Advantage **Disenrollment** Period runs from January 1 to February 15 of every year. People enrolled in a Medicare Advantage plan can disenroll from Medicare Advantage, re-join original Medicare, and enroll in a PDP (prescription drug plan) for drug coverage.

There will no longer be a separate Medicare Advantage Open Enrollment Period. Instead, there will be a 45 day period at the start of the year where beneficiaries can disenroll from a Medicare Advantage Plan and return to Original Medicare. Consumer can enroll in a Part D plan if they had Part D coverage

in the plan they disenrolled from. *They cannot enroll in a different MA plan.*

Warning: Whatever plan you choose, you must be certain that that plan will cover your required drugs. If the plan does not cover your required drugs, then you will pay 100% of the cost for those drugs and expense will not count towards your out-of-pocket costs. In some cases, you may ask your doctor if different medication covered by the plan would be appropriate for your condition. Drugs purchased from Canada or other countries will not count toward the out-of-pocket limits.

Enrollment

Anyone with Medicare is eligible to enroll in a Part D plan. To enroll in a PDP, the individual must have Part A OR Part B. To enroll in an MA-PD, the consumer must have Part A and Part B. Sign up or changes in plans are made between OCTOBER 15TH AND DECEMBER 7TH.

How do you find out about the plans offered in your area?

First, you may go onto the Medicare website at www.medicare.gov or call Medicare at (800) 633-4227. Second, you may call the APPRISE program at Senior Community Services at (484) 494-3769.

Hints:

- 1) If you are in a Medicare HMO or PPO which offers prescription coverage, then you must accept that plan's prescription drug coverage.
- 2) If you are in Medicaid, you could be automatically enrolled in a Medicare Part D Plan. If you do not like the plan for any reason, you are eligible to change every month.

Creditable Coverage

Creditable coverage is prescription drug coverage that is as good as, or better than, standard Part D coverage. Examples of creditable coverage include Veteran's benefits, Federal employee group health insurance, certain retiree drug plans, PACE/PACENET, and TriCare (coverage for military and their families). All insurers are required to notify their Medicare-eligible members of their plan's creditable coverage status. This notice must be received prior to the October 15 Annual enrollment period.

Late Enrollment Penalties

If you choose not to enroll in Medicare Part D during your initial enrollment period, there can be a penalty. The Medicare Part D premium will increase at least one percent (1%) per month of the average national premium until the month that you do enroll. You do not pay the penalty if you are currently enrolled in a drug program through a private insurer such as through a retirement plan that has creditable or equivalent coverage nor do you pay a penalty if you are under Medicaid or PACE/PACENET.

Extra Help for People with Limited Incomes

The Social Security Administration offers extra financial help in paying premiums and co-pays for people with limited incomes and assets. You may qualify for this Extra Help if your income is below \$1,458.75/month (or \$1,966.25/month if you are married and living with your spouse—and more if you have dependent children or grandchildren living with you), and if your assets are below \$13,440 (or \$26,860 if you are married). Your assets include things like bank accounts, stocks, and bonds. They do not include the house you live in, your car and other personal possessions such as your furniture or jewelry and life insurance.

You may already be receiving some form of government assistance that makes you automatically eligible for the Extra Help—for example, a Medicare Savings Program that pays your Medicare Part B premium, or Supplemental Security Income (SSI). If so, you will automatically get Extra Help and need not apply.

If you are not included in one of these government programs but think you may qualify for the Extra Help based on your limited income and assets, you will need to apply for it with the Social Security Administration. You can apply on your own or, if you prefer, someone else can help you.

- **By Mail**—Get an application from the Social Security Administration. (Must be original LIS application- SSA-1020) Fill it out and mail it to the Social Security Administration. If you are married, both you and your spouse must apply separately. An application can also be mailed to you by calling APPRISE at (484) 494-3769.

Send the application to:

Social Security Administration
Wilkes-Barre Data Operation Center
P.O. Box 1020
Wilkes-Barre, PA 18767-9910

- **By Phone**—Call the Social Security Administration at 1-800-772-1213 (TTY: 1-800-325-0778).
- **By Internet**—you may apply online through the Social Security Administration's www.ssa.gov/prescriptionhelp. No signature is required.
- **In Person**—you may apply by going to the local Social Security office.

Sources of Information

The Medicare and You 2015 Booklet

AARP has numerous publications.

The Facts about Medicare Prescription Drug

Plans, Centers for Medicare & Medicaid Services.

Senior Community Services APPRISE Program at (484) 494-3769, or APPRISE at 1-800-783-7067.

Medicare web site at www.medicare.gov.

Medicare Help Line 1-800-Medicare or 1-800-633-4227.

PA Department of Aging web site at www.aging.pa.gov

PA Long Term Care Hotline at 1-866-286-3636 or web site at www.longtermcare.state.pa.us

Social Security Administration web site at www.ssa.gov

PACE and PACENET (Pharmaceutical Assistance Contract for the Elderly)

Pennsylvania has a limited pharmaceutical assistance program for the elderly (age 65 and over), funded by the PA lottery. Under the PACE program, citizens are eligible if their annual income, not including their Part B premium, is not higher than \$14,500 for a single person or \$17,700 for a married couple. There is a \$9 co pay for name brand and \$6 for generic brand for each subscription.

You must have lived in Pennsylvania for at least ninety days prior to the date of your application and you must not be eligible for pharmaceutical benefits under Medicaid for both the PACE and PACENET programs. Medicaid provides full prescription drug coverage.

The PACE and PACENET programs are based on income only and not on assets. PACENET's income limits are slightly higher than PACE. A single person's total income can be between \$14,500 and \$23,500, not including the cost of the Part B premium.

A couple's combined total income can be between \$17,700 and \$31,500. PACE/PACENET eligibility is subject to annual renewal on review of income. Eligibility could be terminated if you move out of state or are found guilty of fraud or abuse by the Department of Aging or if you are covered by another plan which pays the full costs of your prescriptions.

PACE PLUS is the term used when PACE and PACENET cardholders are also enrolled in Medicare Part D. PACENET cardholders will pay the equivalent of the Medicare Part D plan premium, \$33.91 in 2015, to either the pharmacy or directly to the non-partner Part D plan, plus any additional premium amount above the benchmark, if applicable. Once the monthly premium has been paid, they will pay no more than the PACENET co-payments of \$8 for each generic prescription and \$15 for each brand name.

If the premium is not met each month, it will accumulate. In addition, the individual will pay \$8 for generic and \$15 for brand names.

PACE can assign you to a Medicare Part D partner but you will have the full benefit of PACE. The Part D plan may have a lower monthly premium.

Note: Income for both PACE and PACENET is based on prior year; therefore if you apply in 2015, eligibility is based on 2014 income. Your income does not include the cost of your Medicare Part B premium, which is \$104.90 for most covered individuals in 2015.

Applications are available from your local area Agency for the Aging, APPRISE, senior citizen center or your local legislator's office. Or you can apply online through the website at <https://pacecares.magellanhealth.com>. Your completed application must be accompanied by proof of age and residency.

You may apply thirty days prior to your 65th birthday. If done too soon before your 65th birthday, you will be rejected and need to re-apply.

PACE/PACENET is only used in Pennsylvania.

If you have other questions about PACE or PACENET or want to enroll over the phone, you can call toll-free 800-225-7223. In Delaware County you can contact the APPRISE Program at (484) 494-3769.

Veterans Benefits

Are you a veteran? If so, the Department of Veterans Affairs (VA) covers prescription drugs (after a small co-payment) for veterans who meet certain guidelines. A VA doctor must prescribe the drugs. Further information is available from the VA at (877) 222-8387 or online at www.va.gov.

Veterans are the only exception to having an additional Part D plan and can enroll in PACENET without having to pay a premium. They may have an additional plan to facilitate access to prescriptions without having to visit the VA hospital.

Note: For additional information see Chapter 20 on Veteran's Benefits.

Pharmaceutical Company Programs

Several pharmaceutical companies offer discounts to many of their customers. These programs have income limits. Typical income limits are \$20,000 (single) and \$25,000 (married). They may require that applicants have limited prescription coverage or none.

Many manufacturers participate in the PA Patient Assistance Program to assist people with lower incomes. This program is particularly helpful to persons between 55 and 64 years of age or disabled who do not receive any prescription coverage. It

also offers assistance to people currently in the donut hole. For more information, call the PA Patient Assistance Program at (800) 955-0989 or the Senior Community Services APPRISE Program at (484) 494-3769.

Consumers can also research company assistance programs through the Partnership for Prescription Assistance Web site at www.pparx.org or call (888) 477-2669. Another website is www.needymeds.com. This site allows you to print the application. Some pharmacies have discount plans or in store programs for discounts. Medications purchased from drug discount programs do not count towards the out of pocket costs for the consumer.

There are many drug discount programs available. These do not replace Medicare Part D and should be used in addition to/or in the donut hole only.

Ways to Hold Down Drug Costs

Here are some additional tips:

- Buy a 90-day supply. The "per pill" cost may be much less if a 90-day supply is purchased rather than a 30-day supply. In addition, if the insurance requires a co-payment there may be fewer co-payments if a 90-day supply is purchased. Most have a mail order option and the consumer pays only two instead of three co-pays for mail order service.
- Ask the doctor to prescribe generic drugs as often as possible.
- Review medications with the doctor at each visit. There may be medications that are no longer needed.
- Request free samples from the doctor. Ask for as many free samples as possible. Pharmaceutical companies give doctors some drug samples each year.

CHAPTER 15

Medicaid

Medicaid is a joint federal/state program operated by the Pennsylvania Department of Human Services (DHS), formerly known as the Department of Public Welfare, through its local County Assistance offices. Medicaid helps to pay for long-term care if someone is in a nursing home or the individual needs medical help at home. Currently, Medicaid in Pennsylvania does not pay for assisted living. Eligibility is based on medical need as well as financial need.

In Delaware County, all applications for Medicaid and long term care benefits are handled through the Delaware County Assistance Office at 701 Crosby Street, Chester, Pennsylvania 19013. However, the in-home benefits under Medicaid are channeled through the County Office on Services for Aging (COSA), 206 Eddystone Avenue, 2nd Floor, Eddystone, PA 19022; telephone 610-490-1300.

Eligibility for Nursing Home Benefits

Medicaid benefits are available under the following eligibility standards:

General Eligibility

The Applicant must be 65 years or older or disabled. The Applicant must be a citizen of the United States (or equivalent) to apply in Pennsylvania. The Applicant must be a resident of Pennsylvania.

Note of Caution: Medicaid eligibility is based on a combination of federal and state law. The following information should be used as only a general guide for Pennsylvania residents. You should be sure to consult with an attorney who is an experienced practitioner in the area of elder law to be

sure the current rules are correctly applied to your situation.

Medical Eligibility

An Applicant for Medicaid benefits must actually need long term care in a skilled nursing facility (or, if at home, require a similar level of care). A medical assessment, an MA-51 Options Assessment, should be completed by the treating physician.

Financial Eligibility

Assets

As a general rule someone is eligible for Medicaid in a nursing home if the assets (generally cash, stocks, bonds and real estate) of the nursing home resident are below \$2,400; however, there are a number of exemptions or excluded assets. For someone whose income is under \$2,199 per month in 2015, there is a disregard of \$6,000 of assets so the nursing home applicant may have up to \$8,000 in assets.

Asset Exemptions (whether a single applicant or married applicant)

Assets which are not counted for purposes of the above calculation and which may be protected include, but are not limited to: the family residence (however, special rules apply as to possible estate recovery and for 2015 there is a limitation on home equity of no more than \$552,000), one motor vehicle, property used in a trade or business, term insurance, life insurance with a face value of a maximum of \$1,500, an irrevocable burial reserve, household goods and personal effects, and a community spouse's (spouse at home) qualified retirement account or IRA.

Income

If the applicant's income is insufficient to meet nursing home expenses, then the applicant is income eligible. The income of the individual receiving benefits (both

earned and unearned income, such as Social Security or pension) must be contributed toward the care of the individual except he/she is allowed to keep \$45 per month for personal needs. Under certain circumstances for married couples, a community spouse will also be allocated income from the institutionalized spouse's income, with this amount being deducted from the institutionalized spouse's contribution to his/her nursing home costs.

Example: Applicant's income is \$3,000 per month and the nursing home cost is \$11,000 per month. The applicant's income will not make the applicant ineligible because the income (\$3,000) is insufficient to meet his/her medical needs. Note, however, that this income will be applied toward nursing home care costs when qualified for Medicaid.

Special Rules for Married Couples' Assets

For married couples, the community spouse can keep \$23,844 in 2015 as a minimum or one-half of the combined countable assets of both spouses up to a maximum amount, which in 2015 is \$119,220. This figure is known as the Community Spousal Resource Allowance (CSRA) or the "spousal share."

Available assets consist of assets owned individually by the applicant or his/her spouse, assets titled jointly between spouses, and assets titled jointly with a spouse and any third party (assuming the third party did not contribute the funds). However, as stated above, the community spouse's IRA or pension type savings is completely exempt. In order to determine the CSRA, the value of assets is calculated based on completion of a Resource Assessment Form which lists the amounts as of the date of the admission of the applicant to the nursing home.

Income

For husband and wife, the income of the spouse who remains at home is not counted. In 2015, if the community spouse's income is below the range of \$1,967 to \$2,980.50, then it may be possible for the community spouse to keep some of the institutionalized spouse's income. Also, if the community spouse has extraordinary needs, such as pharmacy bills or assisted living costs then it is possible to receive more than the limit. There is also a possibility of increasing the amount of income allocated to the community spouse based on shelter costs.

Ineligibility (whether single or married)

As part of the DRA (the Deficit Reduction Act of 2005), many Medicaid eligibility rules were changed. Several of the most important and confusing changes to these rules relate to the treatment of gifts (a "gift" includes any transfer for less than fair market value).

Under the prior gifting rules for those gifts made before February 8, 2006, (the date of the enactment of the DRA), a gift made the applicant temporarily ineligible for Medicaid benefits even if all of the other eligibility criteria had been satisfied. Under the prior rules, a person who made a gift transfer would be ineligible from the first day of the month in which the gift was made, and the penalty having begun in that month, would continue for the number of months that the gifted funds could have been used to fund his/her care. The actual length of time that a person was ineligible varied on the size of the gift, but the starting point for the penalty period began during the month that a gift was made. Also under these prior rules, an individual would have to supply financial information for a "look-back" period of thirty-six (36) months prior to the Medicaid application date, but that actual period

of ineligibility could be shorter or longer depending on the size of the gift. Please note, even under the prior rules, certain transfers into and out of certain trusts were subject to a sixty (60) month look-back period.

Under the DRA the rules for gifts made on or after February 8, 2006 were significantly changed so that an individual who applies for Medicaid must provide financial information for the 60 months prior to the date of his/her Medicaid application. This application must establish that the applicant is medically and otherwise financially eligible for Medicaid. Then, as part of the application process, the County Assistance Office will review the financial records of the applicant to see what, if any, gift transfers were made within the applicable look-back period.

Under the new rules, the value of all of the gifts occurring within the 60 month look-back period, are added together, and then there will be a calculation to see how many days/months these gifts could have funded the person's care. What is critical here is the penalty period will not begin to run until a person is "otherwise eligible" as required under the DRA. In order for these new requirements to be met, and in order to begin a penalty commencement date, the person must submit a Medicaid application to establish medical and financial eligibility and have this application denied solely due to the existence of pending transfer penalties. Only after an individual has depleted his/her assets, become medically eligible and submitted an application which is denied solely due to transfers, will the transfer penalties begin to run. The length of the penalties continue to be measured by the size of the total amount gifted, but is now determined by the number of days (and no longer the number of months) of ineligibility.

The DRA took into account that these transfer penalty rules may create hardship cases (where a denial will deprive an individual of medical care and endanger his/her health or life). The Department of Human Services (DHS) will consider whether to impose a penalty for a transfer where it would cause an undue hardship. Requesting relief requires a timely filed appeal.

The advice of an experienced elder law attorney is often required to resolve many of the difficult issues which arise from the extended look-back period of 60 months, and the delayed commencement of the transfer penalty. Elder law attorneys can help you understand these complex rules

Estate Recovery

Upon the death of a person over fifty-five (55) years of age who has received Medicaid benefits during the five (5) years preceding death, the state must seek recovery of the amounts paid from the deceased's estate. At this time, Pennsylvania limits recovery to an individual's probate estate. This includes any assets titled in the individual's name alone at the time of death that are or could have been transferred by a Will.

There are also provisions for a person or family to request waiver of the recovery due to hardship or to request postponement of the recovery. For additional information, contact the Estate Recovery Program Hotline at 800-528-3708, an experienced elder law attorney, or Legal Aid of South-eastern Pennsylvania – Delaware County Division at 610-874-8421.

CHAPTER 16

Delaware County Elder Law Handbook – January 1, 2020 Governmental Program and Other Matters

Medicaid (Medical Assistance):

Minimum Community Spouse Resource Allowance (CSRA)	\$25,716
Maximum CSRA	\$128,580
Minimum MMNA	\$2,114/month
Maximum MMNA	\$3,214.50/month
Income cap for Waiver (MA for Home Services)	\$2,349/non-gross
Penalty Divisor (Daily)	\$342.58/day
Monthly Personal Needs Allowance	\$45/month
Excess Home Equity Limit	\$585,000

SSI Benefit

	<u>Federal</u>	<u>State Supplement</u>	
Individual	\$783 +22.50		\$805.50
Couple	\$1,175	+33.30	\$1,208.30

Medicare: Part A & Part B

Part A:

Hospital Deductible	\$1,408
Hospital Co-Pay (days 61-90)	\$352/day
Hospital Co-Pay (days 91-150)	\$704/day
Hospital Co-Pay (days 151+)	All Costs on Patient
SNF Co-Pay (days 21-100)	\$176/day projected

PART B:

Part B Premium for most enrollees (Higher if income greater than \$87,000/individual-\$174,000/couple)	\$144.60/month**
Part B: Deductible	\$198/year

Medicare: Part D

Beneficiaries who do not qualify for any level of subsidy will pay the following for a 2020 standard Part D Plan in addition to the plan's premium: (average basic plan 32.79/Mo)

* An Annual deductible of \$435

* During the initial coverage period, a 25% co-pay for each prescription until the consumer's total drug costs reach \$4,020

* During the coverage gap (also referred to as the "doughnut hole"), a percentage of the costs of drugs 25% of the cost of brand name drugs and 37% for generic drugs plus a small dispensing fee) until the consumer's total out-of-pocket expenses reach \$6,350

* During the catastrophic coverage period, a co-pay of \$3.60 for generics and \$8.95 for name brand drugs, or a 5% co-pay, whichever is greater

* (Part D donut hole went away at end of 2019)

Veterans Benefits - Changed as of 10/18/2018

Federal Estate Tax/Gift Tax - Estate and Gift Tax Exemption and persons dying on or after 1/1/2018 and before 1/1/2026 will be 10 million (as indexed for inflation).

Annual gift exclusion is \$15,000 per person

Revised: 12/2/19

CHAPTER 17

Low Cost Legal Services for Seniors

Senior citizens who need legal services have several options, including:

- COSA (County Office of Services for the Aging) can assist with referrals to low-cost legal clinics or agencies. COSA is located at 206 Eddystone Avenue, 2nd Floor, Eddystone, PA 19022, telephone: 610-490-1300.
- Legal Aid of Southeast Pennsylvania (LASP) can be reached at the Delaware County Office, 610-874-8421, from 8:30 am – 4:30 pm, Monday – Friday; ask for Karen Tyler. LASP provides free legal services to seniors facing eviction, needing a protection from abuse order, and seeking a food stamp grant or Medical Assistance (Medicaid).
- Delaware County Bar Association, 335 West Front Street, Media, PA, 19063, 610-566-6625, for a referral to an attorney who handles Elder Law issues.

CHAPTER 18

Public Benefits for Non-Citizens

Most non-citizens, except qualified non-citizens, are not immediately eligible for public benefits (e.g. Cash Assistance, Food Stamps, Medical Assistance). Qualified non-citizens include asylees, refugees, Cuban/Haitian entrants, veterans, victims of trafficking and certain battered spouses and their children. Even those persons with a “green card” (lawful permanent residents) are not eligible for means tested public ben-

efits until they have lived in this country for at least five years. Lawful permanent residents may be eligible for up to seven years of Supplemental Security Income (SSI) benefits from the Social Security Administration if they can establish they are disabled. Lawful permanent residents who have resided in the United States for less than five years, “undocumented immigrants,” or other immigrants who have not been granted legal residency are eligible for Medical Assistance only if they are pregnant or suffering from a dire medical condition which eventually may be life-threatening. However, citizen children of undocumented parents (or children of parents not yet eligible for public benefits because they have not resided in this country for five years) have the same rights to public benefits as all other citizens and non-citizen parents may (and should) apply for these benefits on behalf of their children. Undocumented parents are not required to disclose any information about their immigration status when applying for benefits for their citizen children.

CHAPTER 19

Food Stamps (SNAP)

Supplemental Nutrition Assistance Program (SNAP) is a Pennsylvania program that provides the benefit previously known as “food stamps.” SNAP benefits are used to buy food and help low-income households obtain more nutritious diets by increasing their food purchasing power. Food stamp coupons or paper stamps are no longer issued. Instead, the SNAP recipient receives a plastic card, the Pennsylvania EBT ACCESS Card. This card allows withdrawals for food purchases at grocery stores and supermarkets. The store simply uses the EBT ACCESS card to “electronically” subtract purchases from the SNAP account. Eligibility for SNAP is

calculated based on a household's income (how much you and the people who live and eat with you earn or receive from the government) less certain expenses (including rent or mortgage, taxes and insurance, and utilities). The benefit amount varies based upon the applicant's income and resources. Resources do not include the value of your home, personal items in the home (furniture or jewelry), and one car.

For information, you should contact the Delaware County Assistance Office at either of these locations:

701 Crosby Street	845 Main Street
Chester, PA 19013	Darby, PA 19023
610-447-5500	610-461-3800

CHAPTER 20

Veterans' Benefits & Contact Directory

Veterans of the United States armed forces may be eligible for a broad range of programs and services offered by the federal Department of Veterans Affairs (VA). There are as many sets of criteria to qualify for VA benefits as there are different VA benefits programs. Contact the nearest Regional Office at 1-800-827-1000 or visit www.va.gov for additional information. Counselors can answer questions about benefits, eligibility and application procedures. You may also be referred to other VA offices and facilities, such as medical centers and national cemeteries.

General Eligibility

Eligibility for most VA benefits is based upon discharge from active military service under other than dishonorable conditions. Dishonorable and bad conduct discharges issued by general court martial may bar VA

benefits. Active service means full-time service, other than active duty for training, as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or as a commissioned officer of the Public Health Service, Environmental Science Services Administration or National Oceanic and Atmospheric Administration, or its predecessor, the Coast and Geodetic Survey. Members of the Reserve or National Guard, if called to active duty, may be eligible for the same VA benefits as any other veteran. Certain VA benefits also require service during wartime. According to federal law, VA recognizes the following periods of war:

- **Mexican Border Period:** May 9, 1916 – April 5, 1917, for veterans who served in Mexico, on its borders or in adjacent waters.
- **World War I:** April 6, 1917 – November 11, 1918; for veterans who served in Russia, April 6, 1917 – April 1, 1920; extended through July 1, 1921, for veterans who had at least one day of service between April 6, 1917 – Nov. 11, 1918.
- **World War II:** December 7, 1941 – December 31, 1946.
- **Korean War:** June 27, 1950 – January 31, 1955.
- **Vietnam War:** August 5, 1964 (February 28, 1961, for veterans who served “in country” before August 5, 1964), through May 7, 1975.
- **Gulf War:** August 2, 1990, through a date to be set by law or Presidential Proclamation.

Veterans' Health Care Benefits

VA operates the nation's largest integrated health care system with more than 1,500 sites of care, including hospitals, community clinics, nursing homes, domiciliarys, readjustment counseling centers, and various other facilities. For additional informa-

tion on VA health care, call 1-877-222-8387 or visit <http://www.va.gov/health>.

Enrollment

For most veterans, entry into the VA health care system begins by applying for enrollment. Claimants are required to complete VA Form 10-10EZ (Application for Health Benefits) which may be obtained from any VA health care facility or regional benefits office, via the Internet at <http://www.va.gov/vaforms/medical/pdf/vha-1010EZ-fill.pdf> or by calling 1-877-222-8387. Once enrolled, veterans can receive health care at VA health care facilities anywhere in the country.

Financial Assessment

Most veterans not receiving VA disability compensation or pension payments must provide information on their gross annual household income and net worth to determine whether they are below the annually adjusted financial thresholds. The financial assessment includes all household income and net worth, including Social Security, retirement pay, unemployment insurance, interest and dividends, workers' compensation, black lung benefits and any other income. Also considered are assets such as the market value of property that is not the primary residence, stocks, bonds, notes, individual retirement accounts, bank deposits, savings accounts and cash.

VA also compares veterans' financial assessment with geographically based income thresholds. If the veteran's gross annual household income is above VA's national means test threshold and below VA's geographic means test threshold, or is below both the VA national threshold and the VA geographically based threshold, but their gross annual household income plus net worth exceeds VA's ceiling (currently \$80,000) the veteran is eligible for an 80-percent reduction in inpatient co-pay rates.

VA Medical Programs

Obtaining Prosthetic and Sensory Aids

Veterans receiving VA care for any condition may receive VA prosthetic appliances, equipment and services, such as home respiratory therapy, artificial limbs, orthopedic braces and therapeutic shoes, wheelchairs, powered mobility, crutches, canes, walkers, and other durable medical equipment and supplies. VA will provide hearing aids and eyeglasses to veterans who receive increased pension based on the need for regular aid and attendance or being permanently housebound, receive compensation for a service-connected disability or are former POWs. Otherwise, hearing aids and eyeglasses are provided only in special circumstances, and not for normally occurring hearing or vision loss. For additional information, contact the prosthetic representative at the nearest VA health care facility.

Home Improvements and Structural Alterations for Disability Access

VA provides up to \$6,800 for service-connected veterans and up to \$2,000 for non service-connected veterans to make home improvements necessary for the continuation of treatment or for disability access to the home and essential lavatory and sanitary facilities. For application information, contact the prosthetic representative at the nearest VA health care facility.

Services for Blind Veterans

Blind veterans may be eligible for services at a VA medical center or for admission to a VA blind rehabilitation center. In addition, blind veterans enrolled in the VA health care system may receive: (1) A total health and benefits review; (2) Adjustment to blindness training; (3) Home improvements and structural alterations; (4) Specially adapted housing and adaptations; (5) Automobile grant; (6) Low-vision aids and training in

their use; (7) Electronic and mechanical aids for the blind, including adaptive computers and computer-assisted devices such as reading machines and electronic travel aids; (8) Guide dogs, including cost of training the veteran to use the dog; and (9) Talking books, tapes and Braille literature.

Domiciliary Care Provides Rehabilitative and Long-Term Care

Domiciliary care provides rehabilitative and long-term, health-maintenance care for veterans who require minimal medical care but do not need the skilled nursing services provided in nursing homes. VA may provide domiciliary care to veterans whose annual gross household income does not exceed the maximum annual rate of VA pension or to veterans the Secretary of Veterans Affairs determines have no adequate means of support. The co-payments for extended care services apply to domiciliary care. Call your nearest benefits or health care facility to obtain the latest information.

Outpatient Pharmacy Services

VA provides free outpatient pharmacy services to the following veterans: Veterans with a service-connected disability of 50 percent or more; Veterans receiving medication for service-connected conditions; Veterans whose annual income does not exceed the maximum annual rate of the VA pension; Certain veterans receiving medication for treatment of cancer of the head or neck; Veterans receiving medication for a VA approved research project; and Former POWs.

Veterans who do not qualify under one of the above categories will be charged a co-pay of either \$8 or \$9 for each 30-day or less supply of medication. Co-pays apply to prescription and over-the-counter medications, such as aspirin, cough syrup or vitamins, dispensed by a VA pharmacy. However, veterans may prefer to purchase

over-the-counter drugs, such as aspirin or vitamins, at a local pharmacy rather than making the co-pay. Co-pays are not charged for medications injected during the course of treatment or for medical supplies, such as syringes or alcohol wipes.

Nursing Home Care

The Veterans Health Administration (VHA) provides nursing home services to veterans through three national programs: VA owned and operated nursing homes, state veterans' homes owned and operated by the states, and the community nursing home program. Each program has admission and eligibility criteria specific to the program.

The general admission criteria for nursing home placement requires that a resident must be medically stable (i.e. not acutely ill), have sufficient functional deficits to require inpatient nursing home care, and is assessed by an appropriate medical provider to be in need of institutional nursing home care. Furthermore, the veteran must meet the required VA eligibility criteria for nursing home care or the contract nursing home program and the eligibility criteria for the specific state veterans home. For VA nursing home care, a veteran may be subject to a co-payment determined by information supplied by completing a VA Form 10-10EZ (*Application for Health Benefits*). VA social workers are available to assist veterans in interpreting their eligibility and co-pay requirements if indicated.

- **VA Nursing Homes:** VA owned and operated nursing homes typically admit residents requiring short-term skilled care or those who have a 70 percent or greater service-connected disability.
- **State Veterans' Home Program:** The state veterans' home program is a cooperative venture between the states and VA whereby the states petition VA for matching construction grants and once granted,

the state, the veteran, and VA pay a portion of the per diem. The per diem is set in legislation. State veterans homes accept all veterans in need of long-term or short-term nursing home care. Specialized services offered are dependent upon the capability of the home to render them.

- **Community Nursing Home Program:**

VA maintains contracts with community nursing homes through every VA medical center. The purpose of this program is to meet the nursing home needs of veterans who require long-term nursing home care in their own community, close to their families.

Long-Term Care Services

In addition to nursing home care, VA offers a variety of other long-term care services either directly or by contract with community-based agencies. Such services include adult day health care, inpatient or outpatient respite care, inpatient or outpatient geriatric evaluation and management, hospice and palliative care, and home based primary care. Veterans receiving these services may be subject to a co-pay.

Emergency Medical Care in Non-VA Facilities

VA may reimburse or pay for medical care provided to enrolled veterans by non-VA facilities only in cases of medical emergencies where VA or other federal facilities were not feasibly available. Other conditions also apply. To determine eligibility or initiate a claim, contact the VA medical facility nearest to where the emergency service was provided.

Disability Compensation (Veterans with Service-Connected Disability)

Disability compensation is a monetary benefit paid to veterans who are disabled by an

injury or disease that was incurred or aggravated during active military service. These disabilities are considered to be service-connected. Disability compensation varies with the degree of disability and the number of veteran's dependents, and is paid monthly. Veterans with certain severe disabilities may be eligible for additional special monthly compensation. The benefits are not subject to federal or state income tax. Claimants are required to complete VA Form 21-526 (*Veterans Application for Compensation and/or Pension*). Additional information, including benefit rate tables, can be found on-line at <http://www.benefits.va.gov/compensation/rates-index.asp> or by calling 1-800-827-1000.

VA Pension

Veterans with low incomes who are permanently and totally disabled, or are age 65 and older, may be eligible for monetary support if they have 90 days or more of active military service, at least one day of which was during a period of war. The veteran's discharge must have been under conditions other than dishonorable and the disability must be for reasons other than the veteran's own willful misconduct. Payments are made to bring the veteran's total income, including other retirement or Social Security income, to a level set by Congress.

Unreimbursed medical expenses may reduce countable income for VA purposes.

Congress establishes the maximum annual improved disability pension rates. Payments are reduced by the amount of countable income of the veteran, spouse or dependent children. When a veteran without a spouse or a child is furnished nursing home or domiciliary care by VA, the pension is reduced to an amount not to exceed \$90 per month after three calendar months of care. The reduction may be delayed if nursing-home care is being continued to provide the

veteran with rehabilitation services.

Claimants are required to complete VA Form 21-526 (*Veterans Application for Compensation and/or Pension*). Additional information, including benefit rate tables, can be found via the Internet at <http://benefits.va.gov/pension/rates.asp> or by calling 1-800-827-1000.

Burial and Memorial Benefits

This chapter contains information on several VA burial and memorial benefits. Readers with questions should contact the nearest national cemetery, call 1-800-827-1000, or visit the website at <http://www.cem.va.gov/>. Pennsylvania has three national cemeteries, Indiantown Gap in Annville, PA (717-865-5254), NC of the Alleghenies in Bridgeville, PA (724-746-4363), and Philadelphia NC in Philadelphia, PA (609-877-5460).

Eligibility

Veterans discharged from active duty under conditions other than dishonorable and service members who die while on active duty, as well as spouses and dependent children of veterans and active duty service members, may be eligible for VA burial and memorial benefits. The veteran does not have to predecease a spouse or dependent child for them to be eligible. Reservists and National Guard members, as well as their spouses and dependent children, are eligible if they were entitled to retired pay at the time of death, or would have been if they were over age 60.

VA national cemetery directors verify eligibility for burial in their cemeteries. A copy of the veteran's discharge document that specifies the period(s) of active duty and character of discharge, along with the deceased's death certificate and proof of relationship to the veteran (for eligible family members) are all that are usually needed to determine eligibility.

Burial in VA National Cemeteries

Burial in a VA national cemetery is available for eligible veterans, their spouses and dependents at no cost to the family and includes the gravesite, grave-liner, opening and closing of the grave, a head-stone or marker, and perpetual care as part of a national shrine. For veterans, benefits also include a burial flag (with case for active duty) and military funeral honors. Family members and other loved ones of deceased veterans may request Presidential Memorial Certificates.

Burial options are limited to those available at a specific cemetery but may include in-ground casket, or interment of cremated remains in a columbarium, in ground or in a scatter garden. Contact the nearest national cemetery to determine if it is open for new burials and which options are available.

Inscribed Headstones and Markers for Veterans' Graves

Veterans, active duty service members, retired reservists, and National Guard service members are eligible for an inscribed headstone or marker to mark their grave at any cemetery - national, state veterans, or private. The headstone or marker will be delivered at no cost, anywhere in the world. Spouses and dependent children are eligible for a government headstone or marker only if they are buried in a national or state veterans cemetery.

Headstones and markers previously provided by the government may be replaced at the government's expense if badly deteriorated, illegible, vandalized or stolen. To check the status of an application for a headstone or marker for a national or state veterans cemetery, call the cemetery. To check the status of one being placed in a private cemetery, call 1-800-697-6947.

Inscription: Headstones and markers must be inscribed with the name of the deceased, branch of service, and year of birth and death. They also may be inscribed with other markings, including an authorized emblem of belief and, space permitting, additional text including military rank; war service such as “World War II;” complete dates of birth and death; military awards; military organizations; civilian or veteran affiliations; and words of endearment.

Private Cemeteries: To apply for a headstone or marker for a private cemetery, mail a completed VA Form 40-1330 (*Application for Standard Government Headstone or Marker for Installation in a Private Cemetery or a State Veterans’ Cemetery*), and a copy of the veteran’s military discharge document and death certificate to Memorial Programs Service (41A1), Department of Veterans Affairs, 5109 Russell Rd., Quantico, VA 22134-3903. Or fax documents to 1-800-455-7143.

“In Memory Of” Markers: VA provides memorial headstones and markers, bearing the inscription “In Memory Of” as the first line, to memorialize those whose remains were not recovered or identified, were buried at sea, donated to science or cremated and scattered. Eligibility is the same for regular headstones and markers. There is no fee when the “In Memory Of” marker is placed in a national cemetery. Any fees associated with placement in another cemetery will not be reimbursed by VA.

Burial Flags Furnished by VA: VA will furnish a U.S. burial flag for memorialization of Veterans who served during wartime or after Jan. 31, 1955; Veterans who were entitled to retired pay for service in the reserves, or would have been entitled if over age 60; and Members or former members

of the Selected Reserve who served their initial obligation, or were discharged for a disability incurred or aggravated in line of duty, or died while a member of the Selected Reserve.

Burial Allowance

VA will pay a burial allowance of up to \$2,000 if the Veteran’s death is service-connected and a \$300 allowance for veterans who, at time of death, were entitled to receive pension or compensation or would have been entitled if they were not receiving military retirement pay. Eligibility also may be established when death occurs in a VA facility, a VA-contracted nursing home or a state veterans nursing home. In non service-connected death cases, claims must be filed within two years after burial or cremation.

Plot Allowance

VA will pay a \$300 plot allowance when a veteran is buried in a cemetery not under U.S. government jurisdiction if: the veteran was discharged from active duty because of disability incurred or aggravated in the line of duty; the veteran was receiving compensation or pension or would have been if they weren’t receiving military retired pay; or they died in a VA facility. The \$300 plot allowance may be paid to the state for the cost of a plot or interment in a state-owned cemetery reserved solely for veteran burials if the veteran is buried without charge. Burial expenses paid by the deceased’s employer or a state agency will not be reimbursed.

Military Funeral Honors at Veterans’ Funerals

Upon request, the Department of Defense (DoD) will provide military funeral honors consisting of folding and presentation of the United States flag and the playing of “Taps.” A funeral honors detail consists of

two or more uniformed members of the armed forces, with at least one member from the deceased's branch of service. Family members should inform their funeral directors if they want military funeral honors. The DoD maintains a toll-free number 1-877-645-4667 for use by funeral directors only to request honors. VA can help arrange honors for burials at VA national cemeteries. Veterans' service organizations or volunteer groups may help provide honors. For more information, visit <http://www.militaryfuneralhonors.osd.mil/>.

Benefits for Dependents and Survivors

Death Pension

VA provides pensions to low-income surviving spouses and unmarried children of deceased veterans with wartime service. Claimants are required to complete VA Form 21-534 (*Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child*). Additional information, including benefit rate tables, can be found via the Internet at http://benefits.va.gov/pension/current_rates_survivor_pen.asp or by calling 1-800-827-1000

To be eligible, spouses must not have remarried and children must be under age 18, or under age 23 if attending a VA approved school, or have become permanently incapable of self-support because of disability before age 18.

The veteran must have been discharged under conditions other than dishonorable and must have had 90 days or more of active military service, at least one day of which was during a period of war, or a service-connected disability justifying discharge.

Children who become incapable of self-support because of a disability before age 18 may be eligible for the death pension as

long as the condition exists, unless the child marries or the child's income exceeds the applicable limit.

A surviving spouse may be entitled to a higher income limit if living in a nursing home, in need of the aid and attendance of another person or is permanently housebound.

Death pension provides a monthly payment to bring an eligible person's income to a level established by law. The payment is reduced by the annual income from other sources such as Social Security. The payment may be increased if the recipient has unreimbursed medical expenses that can be deducted from countable income.

Dependency and Indemnity Compensation

Dependency and Indemnity Compensation is a monetary benefit paid to eligible survivors of a military service member who died while on active duty; a veteran whose death resulted from a service-related injury or disease; or a veteran whose death resulted from a non service-related injury or disease, and who was receiving, or was entitled to receive VA Disability Compensation.

Claimants are required to complete VA Form 21-534 (*Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child*). Questions and additional information, including benefit rate tables can be found on the Internet at <http://www.benefits.va.gov/compensation/rates-index.asp> or by calling 1-800-827-1000.

Appeals of VA Claims Decisions

Veterans and other claimants for VA benefits have the right to appeal decisions made by a VA regional office or medical center. Typical issues appealed are disability compensation, pension, education benefits, recovery of overpayments, and reimbursement for

unauthorized medical services.

A claimant has one year from the date of the notification of a VA decision to file an appeal. The first step in the appeal process is for a claimant to file a written notice of disagreement with the VA regional office or medical center that made the decision.

Following receipt of the written notice, VA will furnish the claimant a "Statement of the Case" describing what facts, laws and regulations were used in deciding the case. To complete the request for appeal, the claimant must file a "Substantive Appeal" within 60 days of the mailing of the Statement of the Case, or within one year from the date VA mailed its decision, whichever period ends later.

Military Medals and Records

Replacing Military Medals

Medals awarded while in active service are issued by the individual military services if requested by veterans or their next of kin. Requests for replacement medals, decorations, and awards should be directed to the branch of the military in which the veteran served. However, for Air Force (including Army Air Corps) and Army veterans, the National Personnel Records Center (NPRC) verifies awards and forwards requests and verification to appropriate services.

Requests for replacement medals should be submitted on Standard Form 180 (*Request Pertaining To Military Records*) which may be obtained at VA offices or the Internet at <http://www.va.gov/vaforms/>. Forms, addresses, and other information on requesting medals can be found on the Military Personnel Records section of NPRC's website at <http://www.archives.gov/st-louis/military-personnel/index.html>. For questions, call Military Personnel Records at 314-801-0800 or e-mail questions to: MPR.center@nara.gov.

When requesting medals, type or clearly print the veteran's full name, include the veteran's branch of service, service number or Social Security number and provide the veteran's exact or approximate dates of military service. The request must contain the signature of the veteran or next of kin if the veteran is deceased. If available, include a copy of the discharge or separation document, WDAGO Form 53-55 or DD Form 214.

Replacing Military Records

If discharge or separation documents are lost, veterans or the next of kin of deceased veterans may obtain duplicate copies by completing forms found at <http://www.archives.gov/st-louis/military-personnel/public/index.html> and mailing or faxing them to the NPRC. Alternatively, write the National Personnel Records Center, Military Personnel Records, 9700 Page Blvd., St. Louis, MO 63132-5100. Specify that a duplicate separation document is needed. The veteran's full name should be printed or typed so that it can be read clearly, but the request must also contain the signature of the veteran or the signature of the next of kin, if the veteran is deceased. Include the veteran's branch of service, service number or Social Security number and exact or approximate dates and years of service. Use Standard Form 180 (*Request Pertaining To Military Records*).

It is not necessary to request a duplicate copy of a veteran's discharge or separation papers solely for the purpose of filing a claim for VA benefits. If complete information about the veteran's service is furnished on the application, VA will obtain verification of service.

Veterans' Benefits Contact Directory

Phone Numbers & Addresses

- Headstones & Markers ...1-800-697-6947
- Health Care.....1-877-222-8387
- Life Insurance1-800-669-8477
- Telecommunication Device
for the Deaf (TDD)1-800-829-4833
- VA Benefits – Generally ..1-800-827-1000

Veterans – Pennsylvania:

- Office of the Deputy Adjutant General
for Veterans Affairs (Bldg S-0-47, FTIG,
Annville, PA 17003, 1-800-547-2838)

Veterans – Delaware County:

- Department of Veterans Affairs
(Government Center, Room 115,
201 W. Front Street, Media, PA 19063,
610-891-4646)

Veterans – Regional Office:

- Regional Office and Insurance Center
(P.O. Box 8079, 5000 Wissahickon
Avenue, Philadelphia, PA19101,
1-800-827-1000)

Veterans – Medical Centers:

- Philadelphia, 19104 (University &
Woodland Aves., 215-823-5800 or
1-800-949-1001)
- Wilkes-Barre, 18711 (1111 East End Blvd.,
570-824-3521 or 1-877-928-2621)

Veterans – Clinics:

- Allentown, 18103 (3100 Hamilton Blvd.,
610-776-4304 or 1-866-249-6472)
- Reading, 19601 (145 N. Sixth St.,
3rd Fl., St. Jos. Med. Comm. Camp.,
610-208-4717)

- Spring City, 19475 (11 Independence Dr.,
610-948-1082)
- Springfield, 19064 (194 W. Sproul Rd.,
Suite 105, Crozier Keystone Healthplex,
610-543-3246)
- Willow Grove/Horsham, 19044
(433 Caredean, 215-823-6050).

Veteran – Centers:

- Philadelphia, 19107 (801 Arch St.,
Suite 102, 215-627-0238)
- Philadelphia, 19120 (101 E. Olney Ave.,
215-924-4670).

Veterans' Web Sites

- Burial and Memorial Benefits
.....www.cem.va.gov
- Department of Defense
.....www.defenselink.mil
- Health Care Eligibility
.....www.va.gov/healthbenefits
- Life Insurance
.....www.insurance.va.gov
- Records
.....[www.archives.gov/st-louis/
military-personnel](http://www.archives.gov/st-louis/military-personnel)
- VA Benefit Payment Rates
.....www.vba.va.gov/bln/21/Rates
- VA Facilities
.....www.va.gov/directory/guide/home.asp
- VA Forms
.....www.va.gov/vaforms
- VA Home Page
.....www.va.gov

CHAPTER 21

Long-Term Care Facilities

Long-term care facilities can be thought of as housing with integrated supportive services. The level of service varies with the type of facility. This chapter outlines important aspects of the most common types: nursing homes, assisted living facilities, personal care homes, and Continuing Care Retirement Communities.

Nursing Homes

A nursing home is a facility where residents receive round-the-clock nursing care designed to help individuals with their activities and needs of daily living and health care. These residents do not need the kind of acute health care provided in a hospital. A person may enter the nursing home for short term care after a hospitalization for rehabilitation or acute skilled nursing care. The person may need to stay in the nursing home for an extended period of time receiving nursing care, but not necessarily skilled nursing care.

Medicare provides limited coverage for nursing home care. See the chapter on Medicare for further information. A person may receive Medicare coverage at least in part for up to 100 days following a stay in the hospital of at least three days duration, when a doctor certifies the need for skilled care on a daily basis or for therapy. Medicare does not cover intermediate nursing home care, custodial care or long term nursing home care.

Medical Assistance, or “Medicaid,” is a public benefit program that covers intermediate or skilled care provided in a nursing home after Medicare benefits are exhausted, provided the person meets the

financial need test for Medicaid. See the chapter on Medicaid in this handbook for information pertaining to eligibility for Medicaid.

The Veterans Administration may provide some assistance in the payment for care through its pension program for veterans and his/her dependents, or through a veterans’ facility. See the chapter on Veterans’ Benefits.

To compare nursing homes in your area, go to www.medicare.gov/NursingHomeCompare.

For list of facilities in Delaware County call COSA at 610-490-1300 or go to COSA@Co.Delaware.pa.us.

Nursing Home Residents’ Rights

Upon admission to a nursing home, a resident or his/her representative will be required to sign an admission contract. A prospective resident or the representative for the resident might feel pressure under emergency circumstances to sign a nursing home admission contract without a careful review of its terms. Do not be pressured. Read the contract and have it reviewed by an attorney before signing. Federal and state laws have been enacted to protect individuals entering nursing homes and an experienced advisor can make sure that you get the benefit of these protections. For example:

- Although a nursing home is not required to accept Medicaid, a nursing home cannot require a resident to waive his/her right to apply for Medicaid. Furthermore, if a nursing home does accept Medicaid, it cannot discriminate against a resident who is receiving Medicaid. Nursing homes must establish and maintain identical policies and practices regarding transfer, discharge and covered services for all residents regardless of source of payment.

- A nursing home cannot require a third party to guarantee payment as a condition of admission or continued stay. A nursing home is allowed to require that an individual having legal access to a resident's income and assets, such as an agent under a power of attorney, sign a contract promising to pay for a resident's care from the resident's funds.
- A nursing home cannot require a resident to agree to pay privately for a specified period of time before the nursing home will "allow" the resident to convert to Medicaid. However, a resident and his representative need to cooperate in the Medicaid application process.

Once admitted to a nursing home, a resident enjoys certain rights mandated by both Federal and Pennsylvania law.

For example:

- A nursing home must conduct a comprehensive assessment of every resident's functional capacity within 14 days of admission. This assessment must be used to develop, review and periodically revise, as necessary, an individualized plan of care for each resident. The resident, the resident's family and, if desired, the resident's legal representative, must be given full opportunity to participate in the development of the plan of care.
- A resident has the right to choose a personal attending physician and to be kept fully informed about care and treatment.
- A resident has the right to remain free of physical and chemical restraints which are not required to treat the resident's medical condition.
- A resident has the right to privacy with regard to communications in writing and by telephone and with regard to visits of family and meetings of resident groups. A resident must be provided with reasonable access to the use of a telephone where

calls can be made without being overheard.

- A resident has the right to access clinical records upon request by the resident or the resident's legal representative.
- A resident has the right to voice grievances with respect to treatment or care without fear of reprisal.
- A resident can only be transferred or discharged from a nursing home under limited circumstances which are spelled out in the law, upon 30 days advance written notice.

A nursing home must inform every resident of his/her legal rights, orally and in writing, at the time of admission. Pennsylvania maintains an ombudsman program to investigate and resolve complaints made by or on behalf of residents of nursing homes and other long-term care facilities. COSA provides these ombudsman services. Call 610-872-1868.

You may call the Pennsylvania Department of Health's Complaint Hotline regarding nursing homes, hospitals and home health agencies at 800-254-5164.

Assisted Living Facilities and Personal Care Boarding Homes

There are some differences between a facility licensed as an Assisted Living facility and a facility licensed as a Personal Care Boarding Home.

Assisted living facilities can deliver health services to their residents in addition to assistance with activities of daily living. A resident will be able to "age in place" and avoid transferring to a nursing home if arrangements can be made to provide health and nursing services directly to the person in the assisted living setting. A facility seeking an assisted living license is required to have higher staffing requirements as well.

On the other hand, a facility licensed as a personal care home rather than an assisted living facility is only able to provide a resident with assistance with activities of daily living, and is not allowed pursuant to Pennsylvania regulations to have someone living there who is considered to need a nursing home. A personal care boarding home can be a good choice for a person who needs some supervision and assistance. Personal care boarding homes are licensed by the Pennsylvania Department of Human Services (formerly known as the Department of Public Welfare).

Be careful to use current information regarding these types of facilities because, until 2011 when Pennsylvania passed regulations for the licensing of assisted living facilities, most of these types of facilities referred to themselves as “assisted living,” but many have not pursued the assisted living level of license and are actually personal care boarding homes and may simply be called “senior residences.”

The distinction between assisted living and personal care facilities will be important if the Pennsylvania Medicaid Program ever covers assisted living, or if someone has a long term care insurance policy which would only cover assisted living in a facility licensed for assisted living services.

Contract Questions

Upon entrance to a personal care boarding home or an assisted living facility, a prospective resident should carefully review the admission contract. Significant issues to consider in evaluating an admission contract include:

- What personal care services are to be provided? Who delivers these services? Is the service provider licensed or certified?
- What are the monthly or other charges for such services? Are housekeeping services

included? How can fees be increased and what happens if fees are increased and a resident cannot afford the higher fee?

- In the case of a married couple, what happens upon the death of a spouse? Is a change of living unit required? How would fees be affected?
- What recreational or cultural activities are available and are they included with the monthly fee?
- Is transportation provided to such things as doctor appointments, shopping and community activities? Is a separate fee charged?
- Are nursing services available at the site? What happens if a resident's health declines? Is the facility responsible for coordinating medical care?
- How does the facility determine the point at which a resident cannot be served by the facility? What recourse does a resident have to challenge the facility's decision? Is there a grievance process?
- How does the facility determine the point at which a resident cannot be served by the facility? What recourse does a resident have to challenge the facility's decision? Is there a grievance process?

Assisted Living Facilities/Personal Care Homes: Residents' Rights

Under Pennsylvania law, residents of personal care homes and assisted living facilities have many rights, including:

- to be treated with dignity and respect;
- privacy, including the right to have access in reasonable privacy to a telephone and the right to have uncensored access to the mail;
- to receive visitors;
- to leave and return to the home;
- to participate in religious activities;

- to exercise the rights of a citizen and to voice grievances;
- to be provided with 30 days advance written notice of the facility's intent to terminate a resident's stay and the reason for termination;
- to be free of chemical and physical restraints;
- freedom from discrimination.

In addition, a resident of a licensed assisted living residence also has the following protections:

- a medical evaluation must be completed sixty (60) days before entry or within fifteen (15) days if the admission was under certain emergency circumstances;
- each resident must have an initial assessment thirty days prior to admission, or within fifteen (15) days of admission under an emergency admission, which will spell out the needs for assistance with activities of daily living or need for supplemental health services and special needs;
- a core package of services in an assisted living facility and an enhanced core package for those with greater needs (to enable a consumer to compare one assisted living facility against another);
- process for informed consent, i.e., if resident needs additional help or the provider determines a resident is at risk, there is a process to work out how the individual resident may remain in the facility;
- if the facility has a special care unit such as a dementia unit, there are state requirements to meet this designation, to ensure that the consumer will get the services which are being promised.

Continuing Care Retirement Communities (CCRCs)

Continuing Care Retirement Communities in most circumstances provide independent

apartments, personal care or assisted living, and nursing home care. New residents usually move into independent living units. As they age and become physically disabled and need assistance with activities of daily living, residents move to a personal care or assisted living facility located on the grounds of the continuing care retirement community. Some CCRCs provide home care services to the independent living units so that the resident does not have to move. If physical decline continues and more intensive care is needed, nursing home care is also available within the premises of the Continuing Care Retirement Community. Upon entrance into a CCRC, a resident enters into a contract whereby the Continuing Care Retirement Community agrees to provide housing, a certain level of activities, and health care support as needed, in return for the resident's payment of an entrance fee and monthly occupancy fees. In most cases, residents do not own their living unit. The services offered can vary; most provide house cleaning, laundry facilities and at least some meals. The monthly fee for residents who move into the assisted living or nursing home facilities may be higher than if they had remained in an independent living unit.

Some CCRCs provide in their contract for a refund of all or part of the initial payment when the resident leaves or dies. It is important to read the contract for details about refunds, rather than relying solely on the marketing brochure.

A careful review of the contract, preferably by an attorney, is advised to make sure the resident understands what they are buying. Some CCRCs offer unlimited health services in exchange for the entrance fee, while others provide that residents pay an additional fee for health care services as they are needed. Still others offer a combination of the two. The fee-for-services arrangement is

becoming increasingly more common.

Warning: Before signing a contract for a CCRC and moving in, look at the financial viability of the community, its corporation and its parent corporation. In Pennsylvania, the oversight of continuing care communities falls under the Pennsylvania Insurance Department. Under its regulations, the community is required to provide any prospective buyer full disclosure of its financial affairs, and the ability to access any audits. Also inquire as to the occupancy rate, as this may affect future fees and/or services.

In addition to checking with the Pennsylvania Insurance Department and your local Area Agency on Aging (which is COSA in Delaware County, telephone number 610-490-1300), you might wish to determine whether a particular CCRC is accredited by the “Commission on Accreditation of Rehabilitation Facilities” (or CARF) which is an independent non profit accreditor of various health and human services providers including CCRCs. You can use the website at www.carf.org to search for an accredited provider in your desired area.

Other important issues to be reviewed in a Continuing Care Retirement Community contract are:

- Who determines when a resident must change living arrangements due to a decline in health?
- What are a resident’s rights and responsibilities with regard to furnishing and altering his/her living unit?
- Under what circumstances would the entrance fee be refundable?
- Under what circumstances can the monthly service fee be increased?
- If the entrance fee is refundable, in whole or in part, will the fee be held in escrow or only paid after the unit is reoccupied by another resident?

- What services are not covered by the monthly service fee?

Pennsylvania law mandates that all Continuing Care Retirement Community contracts:

- provide for continuing care;
- specify all services to be provided and provide that a resident cannot be liable to a health care provider for services that the continuing care retirement community promises to furnish;
- describe any exclusions or limitations on coverage for pre-existing conditions;
- provide for termination by either party upon 30 days written notice and the terms for refund upon termination;
- contain notice of rescission rights before moving in.

The advantages of living in a Continuing Care Retirement Community can be:

- An individual whose health declines can move into a personal care or assisted living unit or, if necessary, to a nursing home within the same residential community.
- Payment of the entrance fee may lock in a fixed price for continuing care at an amount that is usually less than the market rate for nursing home care. For this reason, some people consider a Continuing Care Retirement Community as a form of long term care insurance. However, if there will be a substantial increase in the monthly service fee upon moving into the assisted living or the nursing home portion of the CCRC, there could still be a need for long term care insurance.
- A couple that moves into a Continuing Care Retirement Community helps to ensure that, if one spouse must enter the personal care section or nursing home section, the other spouse will be living on-site and can easily visit. (However, if the personal care section or nursing home section at the CCRC is full, the CCRC may

place the spouse in need of additional care in another facility until a bed becomes available at the CCRC.)

Because a Continuing Care Retirement Community comprises personal care/assisted living and nursing home care, different activities within the continuing care retirement community can be governed by different laws and regulations, and different state and/or federal agencies can be involved with licensing and monitoring. Residents would be protected by the laws that apply to personal care homes or assisted living facilities while they are receiving these services and they would be protected by the laws that apply to nursing homes when residing in the nursing home component of the CCRC.

A caveat is that Continuing Care Retirement Communities usually require a health review for admission. This is because they offer higher levels of care when needed at below market cost. Therefore, if you plan to move to one of these communities you should act while you are free of major impairments.

Long Term Care Facilities' Licenses: Problems, Sanctions and Revocations

There are people and agencies to help in the event of an issue or problem with the long term care facility. One contact person is the Ombudsperson who responds to care issues in all licensed facilities in your county. The telephone number for Delaware County's Ombudsman is 610-872-1868. Family members and friends can call the Ombudsman on behalf of a resident of a nursing home or assisted living facility.

To investigate licensed personal care homes and assisted living residences, you may contact the Pennsylvania Department of Human Services.

You may also call the Pennsylvania Department of Health's Complaint Hotline, if you have a concern regarding a nursing home, hospital, or home health agency. The Hotline number is 800-254-5164.

Any employee or administrator of a licensed facility who has reasonable cause to believe that a resident of the facility is a victim of abuse is required under Pennsylvania law to report the abuse immediately. The law does not require that the reporter be a direct eye witness; having more than a suspicion obligates them to make an oral report at once, followed up by a written report to law enforcement officials. This reporting requirement protects a care-dependent person and applies to all caretakers. Civil and criminal fines and imprisonment for up to one year can be imposed upon the person or facility that commits the violation or abuse.

Pennsylvania law protects long term care facility residents by requiring criminal history background checks by the Pennsylvania State Police of all employees of public or private nursing homes, assisted living residences, personal care facilities, adult day-care and home healthcare providers. Employees with certain felony and misdemeanor convictions are precluded from working in these facilities.

The final sanction under Pennsylvania state law is that a facility can have its license revoked or its licensing withheld in the first place for any one of the following reasons: gross incompetence, negligence, misconduct in operating the facility or mistreating or abusing an individual cared for in the facility. This sanction applies to both physical and mental abuse of a patient. This law serves as a deterrent to such abuse since the facility cannot do business without a license. Court cases in Pennsylvania have upheld the decision to revoke the license of a facility for abuse of patients.

Other Resources

Call 1-800-753-8827 to reach the Link to Aging and Disability Resource Center, which is funded by the Pennsylvania Department of Aging and provides information and referral for programs and services related to aging and disability.

Call 211, which is a regional human services information directory.

CHAPTER 22

Long Term Care Insurance

By Thomas M. Lilly, JD CLU

Basic Long Term Care Insurance Decisions

Comprehensive long term care insurance (LTCI) pays for home health care, adult day care, as well as assisted living facility and skilled nursing facility care. A well structured policy can help to preserve your independence and your assets by assuring that you are in control of your care.

Securing that coverage involves a process that must be comparative and basic decisions that should be grounded in common sense and pragmatism. This article is about that process and those decisions.

Start with the basics...*your* concerns, *your* health history, and *your* budget. Don't let an agent fit you into a policy. Benefits and costs should be tailored to *your* needs.

Insurability

Before you consider benefits, you should address the issue of *insurability*. Underwriting judgments, premiums, and benefits can vary significantly between companies. Pre-qualifying how insurers will treat your health history will allow your planning thereafter

to focus on competitive policy benefits and costs. The anonymous inquiry is made by your advisor and should be to the underwriters of at least three long term care experienced and financially well-rated companies.

Benefit Triggers

Benefits are triggered in most policies available today by you requiring someone nearby to assist you, if needed, with two of six activities of daily living (eating, bathing, dressing, toileting, continence, or transferring), or by you being diagnosed with severe cognitive impairment, and by a health care professional's certification that your condition is likely to last 90 days or longer.

Those are the basic, standardized triggers for a claim established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA compliant contracts are referred to as *qualified* long term care policies.

A Pool of Money

Basic benefits are paid from a *pool of money* for a *limited period of time* or for your *lifetime*. When you apply for coverage, you determine how large your pool will be and how long the pool will last. Most LTCI companies offer limited benefit periods of 2 to 10 years.

If you, for example, select a 5 year benefit period, and a daily benefit of \$150, your pool of money will be \$150 x 365 x 5 or \$273,750. If, on claim, you access your pool at the rate of \$150 a day *continuously* for 5 years, the pool will be emptied and your policy benefits will cease at the end of 5 years. If your care requires less than \$150 a day, your pool will last longer than 5 years.

Should a policy that is otherwise appropriate for you offer the option to select a *monthly* benefit, take it. The cost of your care on a daily basis may vary. Being able to access your benefit dollars on a monthly

basis reduces the possibility that you may be out-of-pocket on a day when the cost of your care exceeds, in our example, \$150.

Benefit Amount

When you apply for your policy, you select the *benefit amount* that fits your likely need. As we noted above, that is the rate at which you can draw from your pool of money. Be careful here. If another person is dependent on your income, be sure that the benefit amount you select will be reasonably sufficient to pay for the cost of your care *at least* in an assisted living facility so that your income remains available to the other person. We suggest that you consider applying for a benefit of at least \$4,500 a month as a basic safety net for insured long term care financial planning.

Your analysis of your needs and resources may show that you have income that your partner will *not* need to maintain their lifestyle if you are ill and receiving benefits. That income could be used to *reduce* the net benefit for which you should apply, and thus reduce the cost of your policy.

Shared Care

If you are willing to consider a limited benefit period *and* are applying with a partner, you should include *shared care* in your comparison of policies and in your final policy choice.

Shared care is, in its most basic form, a provision in a limited benefit period policy whereby one insured can, should he or she exhaust their own policy's benefits, access, with the permission of their spouse/partner, the benefits of the other's policy. The individuals must apply for issuance of coverage at the same time and have identical policy benefits. Shared care may also be provided through a single policy insuring two individuals, each having access to a single pool of money.

Shared care can be a very economical and tactically useful policy structure in view of the dramatic revision by the Deficit Reduction Act of 2005 of the rule triggering a period of ineligibility created through the disposition of assets for less than fair market value.

A Deductible

Benefits are payable after a *deductible* (an "elimination period"). You are responsible for your expenses during that period. It is typically 30, 60 or 90 days, depending on the choice you make when you apply for your policy.

The shorter the elimination period, the greater will be the policy premium. You should, however, "do the math" when selecting your deductible period. Consider the time value of the premium saved with a 90 day deductible compared to the cost of a 30 day deductible over, say, 20 years against the out-of-pocket cost you may incur paying for care during the 31st to the 90th day. Remember to also inflate that cost by a 20 year factor with an annual health care inflation rate of 7% or more. You may well conclude that the premium savings isn't worth the out-of-pocket expense risk.

Be sure to find out whether your deductible is satisfied by *calendar* or *service days*, and whether you can add a provision waiving the elimination period for certain types of care, or whether the policy has a built in waiver.

Premiums

A word on cost. Premiums are not guaranteed. An insurer can, with the permission of the state insurance department, raise rates on a class of in-force policies. An insurer cannot, however, single out an individual insured for a rate increase. With no historical basis for the suggestion, we do suggest that you consider the possibility that the premiums for your policy may increase in the

future by at least 50%.

Inflation

Once you have the basics covered in terms of your needs and budget, you should consider including an *automatic annual inflation provision* at an additional cost. This is an important choice because you may not need the coverage for many years to come.

The inflation benefits offered by LTC insurers today don't guarantee that your benefits will keep up with the growth in health care costs. But, without at least some inflation protection, you *are* guaranteed that your policy benefit will be inadequate.

There is, however, an alternative approach to selecting your policy's benefit amount. You could decide to eliminate an automatic annual inflation provision and use the premium you would have otherwise spent on that rider to increase your actual monthly benefit. Depending on the cost of the inflation rider, you may double the actual monthly benefit amount that you will have the day the policy is issued. If your inflation rider is at 3% compound, it will take 24 years for your initial benefit to double. At 5% compound, it will take about 14 years to double. The upside to this approach is that you would have today the benefit to which the inflation rider would eventually grow your benefit. The downside is that your benefit would be fixed, although at least one company provides a guaranteed option every few years to increase your benefit without evidence of insurability but at the rate it would then be charging for the incremental amount.

Please note that there are planning techniques which may utilize LTCI for a limited period of time (e.g., five years) in which case there may be no need for an inflation provision.

There are a number of other optional benefits offered by most insurers at additional costs. Some may have value in terms of your concerns. We, however, urge you to be certain that you can afford the cost of the basic benefits you need before considering supplemental provisions.

Tax Benefits

A word on the *tax benefits* of HIPAA qualified policies. Benefits are free of federal income tax up to a per diem limit (\$330 a day in 2014). Benefits in excess of the per diem limitation will also be free of such tax so long as you actually incurred qualified expenses at least equal to the benefit received. IRC Secs. 7702B(a)(2), 104(a)(3), and (105(b)).

You may also receive an individual federal income tax deduction for some or all of your premium. The deduction depends on whether the *eligible* portion of your premiums paid in the current tax year, together with your other un-reimbursed medical and dental expenses, exceeds 10% of your adjusted gross income. If you are 65 or older, that percentage remains at its old level, 7½%, through 2016. The HIPAA eligible premiums are age graded, adjusted yearly for inflation, and can be found at IRC Sec. 213(d)(10)(A).

None of us wants to consider the personal and possible financial impact on ourselves and on our families should we need long term care. The reality, however, is that, should such a need develop, our choices are to pay out-of-pocket or to seek Medical Assistance (Medicaid).

Long term care insurance is a planning tool which should be considered as an alternative to those options if you are insurable. Coverage that works for you, your needs and your financial circumstances, should be an integral part of your estate plan.

The Pennsylvania Partnership Program

A Long-Term Care policy can be called a Partnership policy if it complies with the provisions of Pennsylvania's Partnership Program and is approved by the PA Insurance Department as meeting the requirements of that Program.

The "partnership" is between Medicaid, the state's Department of Human Services (DHS), the insurance company, and the insured.

Practically speaking, the most significant requirement in a Partnership policy concerns inflation protection.

- If you are age 60 or younger at the time your policy is issued, the policy must include provision for *compound* annual inflation protection at a rate equal to the Consumer Price Index (CPI) or at a fixed rate of not less than 3%.
- If your "issue age" is between 61 and 75, the policy must include *either* compound or simple annual inflation protection at a rate equal to the CPI or at a fixed rate of not less than 3%.
- If your issue age is 76 or older, inflation protection is *not* required.

While there is no extra cost for a Partnership policy, the requirement of inflation protection will add to the cost of your policy. But your Partnership policy provides a potentially very significant bonus called *asset disregard*.

Asset Disregard provides that, should you need to receive care through Medicaid, assets which you normally would have to spend down *before* financially qualifying for Medicaid benefits can be protected from Medicaid's reach in an amount *equal* to the benefit dollars paid for you by your Partnership policy.

The bottom line is that, if you elect to include an inflation rider that complies with the Partnership policy requirement for your issue age, then you should consider selecting a PA Partnership qualified long-term care policy. You'll have the asset disregard benefit at no additional cost. Do be sure that the policy is offered by a well-rated and market experienced insurer that will provide favorable health underwriting for you and a benefit structure appropriate for your needs and likely future resources.

At www.futurecareassociates.com, you will find several articles focused on the Partnership Program. They were written for the Pennsylvania Bar Institute.

Tom Lilly, JD CLU
February, 2015

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CHAPTER 23

Housing & Energy Assistance & Resources

LIHEAP

Low Income Home Energy Assistance Program (LIHEAP), administered by the County Assistance Office in Chester, is a federally funded program that helps eligible low-income households pay their home heating bills through two types of benefits: home heating energy assistance grants, and crisis grants which provide additional money in an emergency, such as broken heating equipment, leaking lines, lack of fuel, or termination of utility service. You do not have to have an unpaid bill, and you can receive assistance without being in the Cash Assistance program (a family of four with up to \$37,775 can qualify for assistance, according to the Pennsylvania DPW web-

site). No lien will be placed on your property, nor will other assets affect eligibility for LIHEAP benefits. In addition, eligibility for public assistance benefits is not affected by receipt of LIHEAP benefits. LIHEAP is a seasonal program. More information about LIHEAP and other low income energy programs is available at www.dpw.state.pa.us/ServicesPrograms/LIHEAP.

Contact:

- County Assistance Office, Chester Branch – 610-447-3099
- LIHEAP Hotline – 1-866-857-7095 or TDD – 1-800-451-5886

Delaware County Weatherization Program

The Delaware County Weatherization Program provides eligible low-income homeowner and renter households with weatherization assistance such as caulking, insulation of hot water tanks, attic ventilation and insulation, window replacement, oil and gas heater repairs and weather stripping.

Contact:

- Community Action Agency of Delaware County – 610-521-9340

Homeownership First Program

The Homeownership First Program provides up to \$5,000 in down payment and closing costs to qualifying first time homebuyers purchasing a property in Delaware County (excluding Chester City, Haverford Township and Upper Darby Township). The assistance takes the form of a 0% interest loan that is only repayable upon sale or transfer of the property.

Contact:

- Chester Community Improvement Project – 610-876-8663
- Media Fellowship House – 610-565-0434

Pennsylvania Housing Finance Agency (PHFA) Programs

HEMAP is an emergency loan program that is designed to help people who, through no fault of their own, are experiencing financial hardships and are unable to make their mortgage payments as they come due and are in danger of losing their homes to foreclosure. The loans allow homeowners to bring their delinquent mortgages current. Assistance is limited to 36 months of assistance or \$60,000, whichever comes first. Homeowners must apply for HEMAP assistance through a state-approved, non-profit housing counseling agency.

For more information about assistance and relief from mortgage foreclosure, and other housing and home ownership programs, contact the Pennsylvania Housing Finance Agency (PHFA) at 717-780-3800 (Harrisburg Office) (TTY 717-780-1869), 610-270-1999 (Norristown Office), or check online at www.phfa.org, or call one of the housing agencies below.

Contact:

- American Red Cross – 610-874-1484
- Chester Community Improvement Project – 610-876-8663
- CLARIFI – 800-989-2227
- Media Fellowship House – 610-565-0434

Keystone Renovate and Repair Program

The Keystone Renovate and Repair Program is a loan program designed to prevent lower-income homeowners from becoming victims of predatory lending for home repairs. The loan may be used for repairs or improvements that make the increase energy efficiency, livability or make the home accessible for the elderly or disabled. Qualifying households having a combined income of no more than 150% of the statewide me-

dian income may borrow up to \$35,000.00 or 120% of the home's value for approved repairs. For more information, contact PHFA at 1-800-822-1174.

Access Modification Program

This is a mortgage loan program to provide funds up to \$10,000.00 to help persons with disabilities or families with a disabled person who are purchasing a home that needs modification for accessibility. The program provides a deferred payment loan, with no interest, and no monthly payment. The loan becomes due and payable upon sale, transfer, or non-owner occupancy of the property. For more information, call PHFA Homeownership Programs at 717-780-3871.

Homeowners Energy Efficiency Loan Program (HEELP)

Offers loans for specific energy repairs including air sealing, insulation and ductwork, energy efficient windows and doors, heating or cooling system repairs or replacements and roof at 1% for 10 years. The income limit for a household of 2 is \$42,600.00. Contact PHFA at 1-800-822-1174 for more information.

Don't Borrow Trouble Helpline

The Don't Borrow Trouble Suburban Philadelphia Campaign is a public education initiative aimed at stopping predatory lending practices in Bucks, Chester, Delaware and Montgomery Counties. The Campaign seeks to educate families and individuals about how to avoid predatory lending scams and about viable community resources. The Helpline is a safe place to call before signing anything that puts your home at risk.

Contact:

- Don't Borrow Trouble Helpline – 1-888-275-8843

Housing Counseling for Developmentally Disabled Persons

Handi Crafters offers comprehensive services, particularly with developing plans and accessing resources, to people with disabilities who wish to establish housing of their choice in the community.

Contact:

- Handi Crafters – 610-384-6990
www.handi-crafters.org

Fair Housing Education

The Fair Housing Council of Suburban Philadelphia (FHCSF) provides fair housing education services for County residents, housing providers, municipal governments and social service agencies.

Contact:

- FHCSF – 267-419-8918

CHAPTER 24

Reverse Mortgages

In September, 2013 new Regulations were passed regarding Reverse Mortgages. Reverse Mortgages are government insured non recourse loans where no payments are made on the loan until such time as the owner dies, no longer occupies the home for 12 months, sells or transfers the property, fails to maintain the property or fails to pay real estate taxes or homeowners insurance. When the real estate market suffered a decline many reverse mortgages were left "under water." Further, a significant number of defaults occurred due to the inability of the homeowner to pay property taxes or homeowners insurance or maintain the property. To limit future losses new regulations were put into place that:

(a) Lower the maximum limits of borrowing by as much as 15% from pre-September, 2013 reverse mortgages;

(b) May require property repairs following a pre-loan appraisal either prior to the settlement on the loan or from the loan proceeds;

(c) Require a financial assessment of the Borrower(s) to insure they have the “capacity and willingness” to meet the obligations of the loan. This includes a credit history check and/or review of the Borrowers’ debt to verify satisfactory payment on credit cards, mortgages and property taxes. The assessment will also analyze household cash flows and debt levels;

(d) May require a set aside of a portion of the available proceeds to guarantee payment of property taxes and hazard insurance;

(e) May require substantially higher M.I.P. payments (Mortgage Insurance Premium) where greater than 60% of the maximum available loan is initially distributed equal to 2.5% of the maximum available loan amount. However, where upfront distributions are less than 60% of the maximum available loan the M.I.P. may be as low as .50%.

It is believed that seniors with lower incomes, higher household debts or marginal credit histories will be less likely to qualify for a reverse mortgage.

The basic requirements of a reverse mortgage are as follows:

- All Borrowers must be at least 62 years of age or older with no maximum age limit.
- The mortgaged property must be used as the principal residence of the Borrower.
- The property to be mortgaged must be free and clear of all existing mortgages. The Borrower will be required to pay the bal-

ance of any existing mortgage or liens from the proceeds of the reverse mortgage.

Reverse mortgage programs generally do not lend on cooperative apartments or mobile homes, although some “manufactured” homes may qualify if they are built on a permanent foundation, classed and taxed as real estate and meet other requirements.

The amount of cash you can get from your home depends on a variety of factors including the value of the home, your age and interest rates. Those funds may be distributed as a lump sum, as a line of credit or in a monthly amount. For the monthly option, it may be for a specific number of years, or as long as you live in your home. All of the reverse mortgages have costs and almost all of them can be included in the borrowed amount so that the only up-front costs to the senior is the appraisal.

Those costs may include an origination fee of 2% of the initial \$200,000 of the loan and 1% of the balance with a maximum fee of \$6,000. Fees also include a yearly M.I.P. (along with the initial M.I.P.), an appraisal fee, credit report fee, flood certification fee, document preparation fees, recording fees, courier fees, title insurance fee, termite inspection fee, a survey fee in some cases, and a monthly servicing fee along with any closing costs charged by the title company.

The Borrower must undergo counseling with a HUD-approved non profit organization.

A reverse mortgage has no impact on an individual’s receipt of Social Security or Medicare benefits, but it may have an impact on an individual’s ability to receive Supplemental Security Income (SSI) and Medicaid benefits. Reverse mortgage payments to an individual may be treated as income by the Department of Human Services. Additionally, if an individual receives

reverse mortgage proceeds and does not expend them in the month they are received, they are considered “liquid assets” and may adversely affect eligibility for SSI and Medicaid benefits.

The funds received are not subject to income taxes.

Another important feature of these loans is that you can never owe more than the value of the home. In banking terminology they are known as “non-recourse” loans.

It is recommended that an individual who is considering obtaining a reverse mortgage first consult with an Elder Law Attorney to see if there are alternatives available. While reverse mortgages may be of benefit in some cases, they may also be a temporary resolution to a long term problem.

Further information can be obtained from the National Reverse Mortgage Lenders Association (NRMLA) at www.reversemortgage.org and AARP at www.aarp.org/money/revmort/.

CHAPTER 25

Property Tax & Rent Rebates

In Pennsylvania, home owners or renters age 65 or older, widow/ers age 50 or older, or individuals permanently disabled during all or part of the claim year and 18 years or older during the claim year and unable to work because of a medically-determined or mental disability, with a total household income of \$35,000 or less for homeowners and \$15,000 or less for renters, may file a claim with the Pennsylvania Department of Revenue for a real property tax or rent rebate and inflation divided. Claimants may exclude 50% of their Social Security/Railroad Retirement income in determining their eli-

gibility requirements. Claim applications are due for filing between January 1 and June 30 of the year following the year in which the individual paid the tax or rent. (This June 30th deadline is often extended but not guaranteed).

In addition, owners must have paid the taxes prior to filing and renters must make certain their landlords were required to pay property taxes or make payments in lieu of property taxes on the rental property. Rebate checks are mailed beginning July 1st of each year. Proof of income is required, such as copies of the state or federal income tax returns for the claim year in which you are filing. If you are claiming a rental rebate, you must submit a “Rent Certificate” which includes proof of the rent you paid, such as an affidavit signed by the landlord or the landlord’s agent. If the landlord’s signature cannot be obtained, the claimant must complete and submit a notarized rental Occupancy Affidavit with the Rent Certificate. Rent receipts (not cancelled checks) are also accepted.

For renters with income \$8,000 or less, the maximum rebate is \$650. For renters with income between \$8,001 and \$15,000, the maximum rebate is \$500.

For owners with income \$8,000 or less, the maximum rebate is \$650; for income between \$8,001 and \$15,000, the maximum rebate is \$500; for income between \$15,001 and \$18,000, the maximum rebate is \$300 and for income between \$8,001 and \$35,000, the maximum rebate is \$250.

If you require further information on this program, you may call the Pennsylvania Department of Revenue at 1-888-222-9190 to talk with a representative or their website: www.revenue.state.pa.us. Additional help is available by contacting the Revenue District Office at (610) 270-1780.

CHAPTER 26

Family Law

Protection from Abuse – Personal and Financial

Pennsylvania Law provides criminal and civil remedies to protect against physical abuse, including sexual abuse, or threats of imminent physical abuse. In cases involving certain family or other household or intimate relationships, the Protection from Abuse Act allows Judges to enter orders against abusers which can remain in force for as long as 36 months. The abuser can be ordered to stop abusing and/or threatening the victim or other protected persons (such as children), and to stop contacting them and/or going to their home, place of employment, or other places where they may be found. The abuser can also be evicted from a residence shared with the abused party and can be ordered to surrender any weapons. Violation of such an order can be punished by imprisonment for contempt of the order. The victim can obtain a Temporary Order of Custody and/or Support, if appropriate, as part of the Protection from Abuse (PFA) Order.

Anyone who believes that he or she needs this kind of protection for themselves or other protected persons, should call a family law attorney, the Lawyers' Reference Service of the Delaware County Bar Association (610-566-6625), the Domestic Abuse Project (610-565-6272), the local police, or one of the other numbers listed in the chapter concerning Elder Abuse and Neglect, which appears elsewhere in this Handbook.

Also, where the parties are involved in a Divorce action, a Judge can award exclusive possession of the marital residence to a spouse who has been abused, or when other

circumstances make the entry of such an order equitable.

A Judge can also enter an order preventing one spouse from encumbering or disposing of marital assets until a final order is entered in the Divorce action equitably dividing the marital property.

Marriage

Since January 1, 2005, when common law marriage was abolished in Pennsylvania (see below), the only way for a couple to marry in Pennsylvania is to apply for a marriage license at least three days before the ceremony (with very few exceptions). There is no restriction based upon advanced age. There are restrictions on the issuance of a marriage license to people who are related to each other or to persons who are under the influence of alcohol or drugs. Also, a marriage license will not be issued to a person who is of unsound mind or who is under guardianship as a person of unsound mind unless a Judge decides that it is for the best interest of the applicant and the general public to issue the license.

Until recently, Pennsylvania was one of a small number of states permitting the creation of a "common law marriage." In order to enter into a common law marriage, the parties needed to exchange vows in the present tense with the specific purpose of creating the legal relationship of husband and wife. This was sometimes done in order to obtain medical or other benefits for a companion when there had been no ceremonial marriage. The Pennsylvania Legislature has now enacted a law that provides that no "common law marriage" entered into on or after January 1, 2005 will be recognized as valid. A common law marriage entered into before January 1, 2005 may be found to be valid, if all the requirements for a common law marriage can be proven. A person who

claims benefits based upon the existence of a common law marriage should consult a family law attorney for guidance.

Same sex marriage became legal in Pennsylvania on May 20, 2014, when a U.S. Federal District Judge ruled that the Commonwealth's 1996 statutory ban on recognizing same sex marriage was unconstitutional. Additionally, a same sex marriage performed in another state will now be recognized in Pennsylvania.

Marriage – Rights and Responsibilities

Marriage is a statutorily-created legal relationship. From the legal relationship flow certain rights and responsibilities. For example, a spouse has the right to a share of his or her spouse's estate and may have a right to support. Marriage presents a couple with the opportunity for certain tax advantages and options with regard to Social Security and retirement benefits. (These concepts are treated in more detail elsewhere in this Handbook.) On the other hand, one spouse owes a duty to provide medical necessities for his or her spouse and may be required to contribute to hospital or nursing home costs incurred by his or her spouse. (See the chapters on Medicaid and nursing home costs.)

Upon divorce, a spouse has the right to have a court equitably divide the couple's marital property and he or she may qualify for an award of ongoing support or alimony. (See the discussion hereinafter related to Planning for Subsequent Marriages.)

Spouses are NOT automatically AGENTS for one another. Therefore, each spouse should have a durable financial power of attorney and a durable medical power of attorney, granting power to his or her spouse to handle financial matters and to make medical decisions in the event of incapacity. The

power of attorney should also allow the agent to obtain medical information under HIPAA. One or more alternate agents should be named as well.

Planning for Subsequent Marriages

Divorced or widowed persons thinking about entering into a marriage should be aware of the consequences of a second marriage. For example, a party who remarries may forfeit the right to collect Social Security benefits on the account of the prior spouse. (See the chapter on Social Security elsewhere in this Handbook.)

Your subsequent spouse also has rights in the event of divorce, or in the event of your death.

Effects of Divorce

In the event of a divorce, your spouse may be entitled to a substantial share of the property that you acquired during the marriage ("marital property"), as well as to the appreciation in value of separately-titled property you may have brought to the marriage. Marital property is divided in a process called Equitable Distribution in which the court considers a series of factors including the length of the marriage, the source of the assets, and the needs and future economic prospects of the parties. A percentage which the court considers to be equitable under the circumstances is awarded to each spouse.

Your spouse may also be entitled to support or alimony during and even after divorce.

Generally speaking, "marital property" means all property acquired by either party beginning on the date of the marriage and prior to the date of the final separation, no matter how titled, as well as the appreciation in a spouse's separate or excluded property. Some property is specifically not

considered to be “marital property.” For example, property acquired by gift or inheritance is not deemed to be marital property unless it is gifted to the marriage by being placed in joint names or is commingled with marital property in some manner. The law provides for other exclusions, as well. Even in the case of excluded property, however, any appreciation in such property is considered to be marital property. If this is an issue for you, you should consult with a qualified attorney.

If one or both parties intend to retain separate ownership of property in order to leave their assets to their respective children, if they wish to prevent the new spouse from acquiring rights to property deemed to be marital property, if they wish to provide in advance for the terms of any divorce, or if they wish to prevent the other from claiming support or alimony, they should enter into a “Prenuptial Agreement” or “Antenuptial Agreement” prior to the marriage, and should prepare their Wills and other estate planning documents accordingly. Such agreements should be prepared and signed as much in advance of the date of the marriage as is possible, and should be entered into with the advice of counsel. Married couples can also enter into a Marital Agreement during the marriage, but, at that time, marital rights will already have attached. Similarly, if either or both parties wish to keep certain property to themselves, without adding it to the “marital property,” they should avoid putting it in joint names or otherwise commingling it with marital property.

Effect of Death of Spouse

Marriage also vests substantial rights in the new spouse in the event of the death of a party. These rights may be contrary to the wishes of the party. If a party who has remarried dies without a Will, the subsequent

spouse is entitled to an intestate share of the party’s estate. If a party who has remarried dies with a Will, even if the Will makes no, or minimal, provision for the subsequent spouse, the subsequent spouse can claim an “elective share” of the party’s estate. The size of the surviving spouse’s intestate or elective share depends upon the size of the estate and the identity and degree of kinship of the decedent’s next of kin.

For these reasons, people who intend to marry, or remarry, should be aware of, and should plan for, the legal consequences of the marriage. Planning is especially important for people with children from prior marriages or relationships, and assets or income to be left to those children. Planning is also especially important for people who have an interest in a family business or closely-held corporation, for people who come to a marriage with substantial assets, and for people who anticipate future receipt of substantial assets or income, such as through an inheritance.

To avoid unintended consequences, a party contemplating marriage, or remarriage, should consult a qualified attorney in order to be aware of and to plan for the consequences of the marriage. An experienced attorney can advise you about the possible use of Prenuptial Agreements, Trusts, and other means which will preserve your rights and the rights of your intended beneficiaries to your assets and income.

Grandparents’ and Great-Grandparents’ Custody Rights

In most family situations, grandparents and great-grandparents have undisturbed relationships with their minor grandchildren. However, when there is a dispute between parent and grandparent, the parent is presumed to have the right to custody of a child, and to make all decisions in the

child's best interests. If the parent and grandparent cannot arrive at an informal agreement, it may be necessary for the grandparent to petition the Court for visitation (the right to see the child but not take him/her away from the parent's control) or partial custody (the right to take the child away from the parent for a specific period of time). In such cases, the grandparent bears a heavy burden of persuasion.

Pennsylvania law specifically gives grandparents the right to petition for partial custody and visitation rights in three situations: (1) when a parent of the child is deceased; (2) when the parents are divorced or divorcing, or have been separated for a period of six months; and (3) when the grandchild has actually resided with the grandparent for 12 consecutive months or more and then is removed by a parent. In the latter event, the grandparent must petition within 6 months after the removal of the child. (These provisions do not apply where the child has been adopted by a third party.)

Where an Order of Custody has been entered, Pennsylvania law provides a formal procedure which must be observed before a person having custody or visitation rights may be deprived of such rights by reason of the relocation of the primary custodian to another location. Again, a prompt filing must be made in order to preserve such rights.

In each case, the grandparent must prove that the visitation or custody rights sought are in the best interests of the child and would not interfere with the parent-child relationship.

It is to be remembered that issues of custody and visitation of children are always governed by the "best interests of the child" standard, and not by the interests or desires of the parents or grandparents. In these cases, a court will examine the amount and

type of contact the grandparent had with the child before filing the petition. For example, a grandparent petitioning for partial custody who has been in constant contact with a child, and has been involved in actual parenting activities, is more likely to succeed than is a grandparent who has had only occasional or social contacts with a child. For example, it is more helpful to show that a grandparent helped the child with homework or took him or her to the doctor or dentist, than it is to show that he or she took the child to the movies or the zoo.

Another key factor is the grandparent's attitude toward the parent(s). Courts will be reluctant to award custody or visitation rights to a grandparent who has denigrated a parent or tried to interfere with the child's relationship with his or her parent.

As the amount of time requested by the grandparent increases from visitation to partial custody, the reasons offered in support of the grandparents' petition must become correspondingly more convincing.

In the case of a grandparent versus a third party such as Children and Youth Services, however, grandparents have a better chance of being awarded custody rights.

A grandparent has standing to petition for primary physical and legal custody of a grandchild if it is in the best interests of the child NOT to be in the custody of either parent (e.g., because of parental abuse, neglect, drug or alcohol abuse, mental illness, etc.) AND it is in the best interest of the child to be in the custody of the grandparent. To establish standing to bring such a petition, the petitioner must be a grandparent: (1) who has genuine care and concern for the child; (2) whose relationship with the child began with the consent of a parent of the child or by order of court; and (3) who for 12 months has assumed the roles

and responsibilities of the child's parent, providing for the physical, emotional and societal needs of the child. Each such case depends on its own facts and circumstances. A grandparent can also be awarded custody rights if a court finds that he or she stands "in loco parentis."

In any contested custody/visitation case, it is wise for the grandparent(s) to be represented by experienced counsel to guide them through the family court process.

Physical Abuse Protection From Abuse Orders (PFAs)

As has been discussed above, a party who has suffered abuse, or the threat of imminent abuse, within the meaning of the Protection from Abuse Act, can get an order to keep the abuser away from the party and other parties entitled to protection. A Protection From Abuse Order (PFA) is a restraining order issued by a Magisterial District Judge or a Judge of the Court of Common Pleas. Under the Protection from Abuse Act, abuse is defined as physical abuse, a threat which places you in immediate fear of physical injury, or a pattern of conduct which places you in immediate fear of physical injury. In order to petition for a PFA, you must be, or must have been, in a relationship with, or a family member of, the person against whom you want to file. A PFA can prohibit abusive conduct and remove the abuser from your residence.

Depending on the time when an act of abuse occurs, there are 3 ways to obtain an order under the Protection from Abuse Act:

- An Emergency Order can be issued by the Magisterial District Judge in the district in which the event occurred if the event occurs after 3:00 PM on a business day or on a weekend or other time when Court of Common Pleas is closed. It will typically

remain in effect until the next business day at the Court of Common Pleas at which time an order must be requested from the Court of Common Pleas.

- A Temporary Order can be issued by the Court of Common Pleas in appropriate cases and will continue in effect until a hearing for a Permanent PFA Order is held.
- A Permanent Order can be issued after a hearing before the Court of Common Pleas. The hearing is scheduled when a Temporary Order is issued and is typically held within approximately one week.

In any emergency, call 911. The police will assist you, provide information on how to get an emergency PFA Order, and will file a report. They will also serve an Order on the party against whom it has been entered. To obtain information on filing for a PFA Order and, with few exceptions, free legal representation throughout the process, you can contact the Domestic Abuse Project of Delaware County, 14 West Second Street Media, PA 19063, 610-565-6272, 610-565-4590 (bi-lingual) before 10:30 AM Monday through Friday for a same day Court appearance. After 10:30 AM, assistance will be provided for a next day Court appearance. If you wish to file on your own, you may go to the Office of Judicial Support in the Media Courthouse or seek private legal counsel of your own or through the Delaware County Bar Association Lawyer Reference Service at 610-566-6625.

There are many organizations in Delaware County working to prevent elder abuse, but they can't help if they don't know about the abuse. Whenever you hear or see abusive behavior you should call 911. If you ignore abuse or think it will get better without intervention, you may be risking your life or the life of someone you know. Abuse frequently gets worse if permitted to continue.

CHAPTER 27

Elder Abuse & Neglect

Everyone has the right to be safe. It's the law. Elder abuse or neglect can occur at any time, in any community, at any economic level, among all races and nationalities. Many people who hear "elder abuse and neglect" think about older people living in nursing homes, but most elder abuse and neglect takes place at home. When elder abuse happens, family, other household members and/or paid caregivers usually are the abusers. Often the abuse is subtle, and the distinction between normal stress and abuse is not always easy to discern. Elders who are ill, frail, disabled, mentally impaired, or depressed are at greater risk of abuse, but even those who do not have these obvious risk factors can find themselves in abusive situations and relationships.

IN AN EMERGENCY, CALL 911.

If you are abused you should not confront your abuser. Wait until the abuser is gone or has calmed down so you can secretly and safely call one of these numbers for help:

- County Office of Services for the Aging, 206 Eddystone Avenue, 2nd Floor, Eddystone, PA 19022, 610-490-1300 or 800-416-4504.
- Domestic Abuse Project of Delaware County, 14 West Second Street Media, PA 19063, 610-565-6272, 610-565-4590 (bi-lingual).
- Delaware County Elder Abuse Hotline, 610-490-1300, 24 hours a day.
- Senior Victim Services, 610-627-2292, provides assistance with court appearances and recovery of losses for elderly crime victims.

- Delaware County District Attorney's Office, 201 West Front Street Media, PA 19063, 610-891-4811.
- Pennsylvania Department of Aging, 717-783-3126.
- Pennsylvania Elder Abuse Hotline 800-490-8505.

Be sure to call. You may be able to prevent the next abusive situation by getting help from people who have worked with these problems and will work with you to develop your own personal safety plan. This could mean the difference between life and death.

Physical Abuse

Physical abuse can range from slapping or shoving to severe beatings and restraining with ropes or chains. When a caregiver or other person uses enough force to cause unnecessary pain or injury, even if the reason is to help the older person, the behavior can be regarded as abusive. Physical abuse can include hitting, beating, pushing, kicking, pinching, burning, or biting. It can also include such acts against the older person as over- or under-medicating, depriving the elder of food, or exposing the person to severe weather, deliberately or inadvertently. Look for:

- Bruises or grip marks around the arms or neck
- Rope marks or welts on the wrists and/or ankles
- Repeated unexplained injuries
- Dismissive attitude or statements about injuries
- Refusal to go to same emergency department for repeated injuries
- A history of doctor or emergency room "shopping"
- Repeated time lags between the time of any "injury or fall" and medical treatment
- Cuts, lacerations, puncture wounds

- Any injury incompatible with history
- Burns.

Emotional/Psychological Abuse

Emotional or psychological abuse can range from name-calling or giving the “silent treatment” to intimidating and threatening the individual. When a family member, a caregiver, or other person behaves in a way that causes fear, mental anguish, and emotional pain or distress, the behavior can be regarded as abusive. Emotional and psychological abuse can include insults and threats. It can also include treating the older person like a child and isolating the person from family, friends, and regular activities either by force or threats or through manipulation. Look for:

- Unwillingness to communicate or respond to questions
- Unreasonable fearful or suspicion
- Lack of interest in social contacts
- Chronic physical or psychiatric health problems
- Evasiveness or hesitation to talk openly
- Implausible stories
- Confusion or disorientation
- Denial
- Agitation.

Sexual Abuse

Sexual abuse can range from sexual exhibition to rape. Sexual abuse can include inappropriate touching, photographing the person in suggestive poses, forcing the person to look at pornography, forcing sexual contact with a third party, or any unwanted sexualized behavior. It also includes rape, sodomy, or coerced nudity. Look for:

- Unexplained vaginal or anal bleeding
- Torn or bloody underwear
- Bruised breasts

- Venereal diseases or vaginal infections

Financial Abuse or Exploitation

Financial exploitation can range from misuse of an elder’s funds to embezzlement. Financial exploitation includes fraud, taking money under false pretenses, forgery, forced property transfers, purchasing expensive items with the older person’s money without the older person’s knowledge or permission, or denying the older person access to his or her own funds or home. It includes the improper use of legal guardianship arrangements, powers of attorney, or conservatorships. It also includes a variety of scams perpetrated by sales people for health-related services, by mortgage companies or financial managers, or even by so-called friends. Look for:

- Unusual banking activity (e.g., large withdrawals during a brief period of time, switching of accounts from one bank to another, ATM activity by a homebound elder)
- Bank statements, credit card statements, etc. no longer coming to the older adult
- Documents being drawn up for the elder to sign but the elder cannot explain or understand the purpose of the papers
- The elder’s living situation not commensurate with the size of the elder’s estate (e.g., lack of new clothing or amenities, unpaid bills)
- A caregiver who expresses concern only about the financial status of the older person and does not ask questions or express concern regarding the physical and/or mental health status of the elder
- Personal belongings, such as jewelry, art, furs, are missing
- Signatures on checks or other documents do not match the signature of the older person

- Recent acquaintances, housekeepers, “care” providers, etc., declaring great affection for the older person while isolating him or her from long-term friends or family
- Recent acquaintances, housekeeper, caregiver, etc. making promises of lifelong care in exchange for deeding all property and/or assigning all assets over to the acquaintance, caregiver, etc.

Neglect

Caregiver neglect can range from care-giving strategies that withhold appropriate attention from the individual to intentionally failing to meet the physical, social, or emotional needs of the older person. Neglect can include failure to provide food, water, clothing, medications, and assistance with the activities of daily living or help with personal hygiene. If the caregiver has responsibility for paying bills for the older person, neglect also can include failure to pay the bills or to manage the elder person’s money responsibly. Look for:

- Sunken eyes or loss of weight
- Extreme thirst
- Bed sores
- Soiled clothing or bed.

If you feel you are being abused or neglected, your personal safety is most important. If your abuser is threatening you with greater abuse if you tell anyone, and if the abuser refuses to leave you alone in a room with others who could help, you are probably afraid to let anyone know what is happening to you. A good strategy is to let your physician know about the abuse. The physician has a legal obligation to report the abuser and to help you find safety. If you are able to make phone calls, call a trusted friend who can help you find safety and also find help for the person who is abusing you. There is no shame or embarrassment in

asking for help.

If you feel you have been abusive or are in danger of abusing an older person in your care, there is help available. The solution may be to find ways of giving yourself a break and relieving the tension of having total responsibility for an older person who is completely dependent on you. There are many local respite or adult day care programs to help you. The most important thing for you is to be honest with yourself and with those who want to help you. Someone’s life may depend on it.

Protection From Abuse Orders (PFAs)

There is assistance available to get an order to keep the abuser away from the victim. A Protection From Abuse Order (PFA) is a restraining order issued by a Magisterial District Judge or a Court of Common Pleas Judge. Under the Protection From Abuse Act, abuse is defined as physical abuse, a threat which places you in immediate fear of physical injury, or a pattern of conduct which places you in immediate fear of physical injury. In order to petition for a PFA, you must be, or must have been, in a relationship with, or a family member of, the person against whom you want to file. A PFA can prohibit abusive conduct and remove the abuser from your residence.

There are 3 kinds of PFAs:

- An Emergency Order is usually issued by a Magisterial District Judge after 3:00 PM on a business day or when Court of Common Pleas is closed. It is typically in effect until the next business day at the Court of Common Pleas.
- A Temporary Order is issued by Court of Common Pleas and is in effect until a hearing for a Permanent PFA is held.

- A Permanent Order is issued for a number of months based on a hearing before Court of Common Pleas. The hearing date is scheduled when you receive the temporary PFA.

In any emergency, call 911. The police will assist you and provide information on how to get an emergency PFA and will file a report. To obtain information on filing for a PFA and, with few exceptions, free legal representation throughout the process, you can contact the Domestic Abuse Project of Delaware County, 14 West Second Street Media, PA 19063, 610-565-6272, 610-565-4590 (bi-lingual) before 10:30 AM Monday through Friday for a same day Court appearance. After 10:30 AM, assistance will be provided for a next day Court appearance. If you wish to file on your own you may go to the Office of Judicial Support in the Media Courthouse or seek private legal counsel of your own or through the Delaware County Bar Association Lawyer Reference Service at 610-566-6625.

There are many organizations in Delaware County working to prevent elder abuse, but they can't help if they don't know about the abuse. Whenever you hear or see abusive behavior you should call 911. If you ignore the abuse or think it will get better without intervention, you may be risking your life or the life of someone you know. Abuse always gets worse without help.

CHAPTER 28

Senior Victim Services

Senior Victim Services, Inc. is a private non profit organization, serving victims of crime in Delaware County age 55 years and older. The organization provides advocacy, assistance and safety within the criminal justice system and with social service agencies and

community organizations, in order to restore older person's lives and prevent further victimization. Assistance is free and confidential.

Services Include:

- Keeping you informed on the progress of your case
- Accompanying you to any court appearance or medical treatment related to a crime
- Offering free telephone counseling services
- Furnish home visits
- Helping you file a private criminal complaint
- Giving information and referrals as needed for such services as emergency food, housing or legal services
- Intervention with creditors on your behalf
- Assisting with Pennsylvania Crime Victims' Compensation claims
- Coordination of transportation services
- Providing alternative opportunities for justice
- Free presentations to senior groups on crime prevention and the needs of older victims of crime.

Senior Victim Services, Inc.
 20 South Olive Street, Suite 303
 Media, PA 19063
 (610) 627-2292 (telephone)
 (610) 627-2249 (fax)
seniorvictims@verizon.net
www.seniorvictims.org

CHAPTER 29

Delaware County Criminal Investigation Division (CID) Senior Exploitation Unit

Under the leadership of District Attorney Jack Whelan, the Delaware County Office of the District Attorney includes the Senior Exploitation Unit. This Unit was created in 2003 to investigate physical, sexual and financial crimes committed against anyone who is sixty years of age or older. Examples of senior crimes include Identity Theft, Fiduciary Theft, Credit Card Theft or Misuse, Gypsy Scams and physical or financial abuse, including misuse of power of attorney. This Unit was developed to combat the problem of rising crime against senior citizens in Delaware County. Pennsylvania has the second highest number of senior citizen residents in the country. Delaware County has the largest number of senior citizen residents when compared proportionally to other counties within the Commonwealth.

The mission of the Senior Exploitation Unit is twofold: (1) to investigate crimes against seniors; and (2) to educate the general population of Delaware County concerning the many crimes and illegal schemes perpetrated against the seniors of the county. Since its inception, the Senior Exploitation Unit has handled more than 400 cases and the total amount of thefts reported has exceeded \$3,000,000.

The education segment of the mission raises awareness about the need to identify these crimes and the need to report the crimes to the proper authorities. In support of this mission, the Senior Exploitation Unit presents programs throughout Delaware County. The Unit presents programs such

topics including: Crimes Against the Elderly, Don't Allow Yourself To Be a Victim, Senior Personal Safety and other pertinent subjects explaining the increasing number of crimes committed against seniors and how seniors can protect themselves.

Statistics show that many seniors throughout the country do not report the fraudulent and illegal schemes committed against them because they are afraid the actors may return to victimize them again or that a family member may find out and may believe the victims are not able to properly handle their own affairs. It is very important to convince the senior victims of the need to report these crimes and to cooperate in the prosecution of individuals who prey on seniors. The Unit explains to seniors that if they become victims, the District Attorney's Office will assist them and will work to preserve their dignity and rights.

The Senior Exploitation Unit works closely with other elder driven agencies, including the County Office of Services for the Aging (COSA), Senior Victim Services, The Legal Rights Agency of Southeastern PA and many other organizations both within and outside of Delaware County. The assistance of these agencies has allowed the Senior Exploitation Unit to increase the understanding and cooperation of the senior community of Delaware County. The Unit has made and will continue to make a positive impact in cutting the rate of crime and scams committed against our seniors.

Erica Parham, Assistant District Attorney, is chief of the unit. Detectives from the Criminal Investigation Division work closely with the Assistant District Attorney to accomplish the Unit's purpose of investigating and prosecuting those who cheat, abuse, or deceive older adults in Delaware County.

Reporting these crimes is important. If you believe that you or a senior you know has been a victim of any of the above mentioned crimes, please contact your local Police Department or the Senior Exploitation Unit and discuss your circumstances with us. You can reach the Unit at 610-891-5249 or you can send an email to seniorcrimes@co.delaware.pa.us.

If you are not sure if your situation needs to be addressed by the Unit, you should contact your personal attorney or the Delaware County Bar Association, Lawyer Referral Service at 610-566-6625.

For more information about the Senior Exploitation Unit or to request a presentation at your church, school or club please contact the Senior Exploitation Unit at 610-891-5249. Additional information, including the District Attorney's Tips for Crime Prevention Video, is available at www.delcoda.com/investigations/senior-exploitation-unit.

CHAPTER 30

Treatment Court Programs

Through the criminal court system, Delaware County has created several courts to help criminal defendants overcome special circumstances, such as addiction and mental illness, that have affected their quality of life and may have led them to engage in criminal activity. These programs are diversionary programs aimed to treat the offender and help to prevent him or her from going on to committing additional crimes. These programs are specifically for those individuals who have been accused of committing a crime and are suffering from mental illness or addiction, or are a Veteran. These treatment courts are supervised court programs

aimed at improving the lives of participants and protecting community welfare by providing treatment options, guidance and support.

Drug Treatment Court

To better address the needs of eligible non-violent defendants suffering from drug addiction, Delaware County created this program, which contains three different tracks, each with unique eligibility requirements. One point of eligibility specifically focuses on the offender's willingness to undergo strict court supervision. The program allows the offender to address his or her substance abuse addiction while under the strict supervision of the Office of Adult Probation and Parole and the Treatment Court Judge. This program can help the defendant establish an individualized treatment plan, obtain housing and vocational training, and potentially avoid incarceration. Applications for Drug Treatment Court are available from the Office of the District Attorney, The Office of the Public Defender, Adult Probation and Parole, the District Courts, and Mental Health Liaisons at the prison.

Mental Health Court

The Mental Health Court Program is limited to Delaware County residents, 18 or older, who suffer from a serious mental illness (SMI) diagnosis that potentially contributed to their criminal act. SMI diagnoses can include schizophrenia, major mood disorder, psychoses NOS (not otherwise specified), and borderline personality disorder. Participation in Mental Health Court is voluntary. This program introduces the individual to many services available through the county to aid in his or her treatment.

Veterans Court

Veterans Treatment Court is available to applicant defendants who have served in a branch of the military. The Court seeks to address the increasing numbers of Veterans entering the criminal justice system after serving our country and suffering from the wounds of combat, including Post-Traumatic Stress Disorder (PTSD). The Court's mission is to provide substance abuse and mental health treatment to these defendants.

Veterans Court welcomes mentors from the community to act as role models, coaches, and advocates for the Veteran defendants as they progress through the program. If you are a Veteran of any military branch, Active Duty, Reserve, or National Guard, and would like to volunteer as a Veterans Court Mentor, please visit the website listed below for more information and to download the Veterans Court Mentor Application Form. Mentors must pass a criminal background check, successfully complete a Veterans Court Mentor online training course, and have been discharged from the Military with an Honorable or General, Under Honorable Conditions characterization of service.

For More Information on Treatment Court Programs

For more details relative to the above Treatment Court Programs, including eligibility criteria, please visit the Delaware County District Attorney's Office website, www.delcoda.com. Once on that website, click on the "Information" tab and select "Treatment Courts" from the drop down menu.

CHAPTER 31

Consumer Protection

Herb's Rules for Rip-Off Avoidance

by Herb Denenberg (1930–2010)

If you want to master the art of rip-off avoidance, you have to go through a two-step process – first, know the rules; and then get them so firmly embedded in your consciousness that you don't lose track of them during the pressure, heat, diversion, excitement (and all the rest) of a consumer transaction. That's why consumers often say, "I knew better, but I just went ahead with the deal anyway." Like magicians, rip-off artists are skilled at distracting their victims so they don't go through the usual rational processes. You have to learn to keep your cool under the pressure and despite the distraction techniques employed by those who want to take advantage of you.

RULE #ONE: Check it out in advance or don't do it! If you don't know what you're doing or if you have questions or concerns, check things out and get answers from a source you can trust before proceeding. If in doubt, check it out...further. You've got to learn to say "no" and don't be embarrassed in the slightest when you do. Better a bit of embarrassment now than financial disaster later. Be aware that in many cases, an army of lawyers won't be able to help, as the culprit often disappears or is judgment-proof. So before entering into a home improvement contract, check the contractor out by calling references, by calling the Pennsylvania Attorney General's Office to confirm that the contractor is registered with the state, and by calling your municipality to make sure the contractor is licensed. Don't pay for the whole job in advance; don't pay in full

until the job is satisfactorily completed, and pay by credit card if possible. The next best is by check. Avoid paying by cash. “THINK.” Take a deep breath, consider what you’re doing, run it by a friend or family member for a reality check, and if there is any doubt or unanswered question, don’t do it.

RULE #TWO. When it comes to consumer protection, don’t take things at face value. “Don’t trust and do verify.” In fact, you are in the sights of con men, as they typically prey on senior citizens, considering them more vulnerable than others.

RULE #THREE. A good rule, implicated by the first two, is if you don’t understand a deal or a transaction, don’t go for it. In the pressure of a deal by a con man or even a legitimate salesman, there is often an attempt to pressure you for a decision in a hurry, to close the deal. But get your questions answered and make sure you understand the deal before even thinking about going ahead. **READ THE ENTIRE CONTRACT AND GET A COMPLETE COPY OF IT TO KEEP.** Don’t sign it, if you don’t understand it. Don’t sign a document with blanks that aren’t filled out. Don’t rely on oral statements not in the written contract. And certainly don’t fall for that oldest and most disreputable of tactics that you have to sign up now or you’ll miss this opportunity. You should view the pressure of “you’ve got to take the deal now or you’ll miss it” as a red flag that should make you run – not walk – away from the transaction.

RULE #FOUR. Realize you are not alone, and there are plenty of people and places where you can go for advice and help, including several government agencies like the Delaware County Office of Consumer Affairs at 610-891-4865. In fact, on matters of sufficient importance and complexity, you should always consider consulting a lawyer. For a lawyer in Delaware County, call

the Delaware County Bar Association Lawyer Referral Service at 610-566-6625. There’s one other important source of help rarely if ever mentioned in most discussions of consumer protection – your local public library.

RULE #FIVE. Keep records of all transactions in case you have a complaint or perhaps a lawsuit, and in case you have questions of any kind about the transaction later. When you start to complain, keep records of all calls and conversations, with dates, times, subject matter and contact person. Save any letters, e-mails and the like. They may be necessary to substantiate your claim and may be useful if you push it to higher authority within the company.

RULE #SIX. BEWARE OF SCAMS. Be aware of the kinds of transactions that have red flags flying and have the smell of rip-off from a continent away, some of which are described below. Yes, there are no free lunches and there are no sources of legal and good money with almost no work. When it sounds too good to be true, it almost always is just that. But this brings us full circle back to the beginning – you have to know and pay attention to these rules at all times, and drill them into yourself so in the heat and pressure of a consumer battle you will protect yourself with the simple basics of consumer protection.

And a final word on consumer protection in general. It is said, “Eternal vigilance is the price of freedom.” Eternal vigilance is also the price of consumer protection. You have to protect yourself, and that means eternal vigilance in every consumer transaction.

Medicare Benefit Scam

There are scam artists who will call or contact you claiming to represent Medicare or insurance companies that offer assistance in getting benefits, including Medicare Part D (Prescription Drug) Benefits; in reality,

they may be just trying to get some personal information to get access to your bank account or credit card. In other words, they are in the business of identity theft (see later chapter devoted to this subject). So here's one of those rules you have to have come to the fore when you have one of these encounters:

- Never give your Medicare number, Social Security number, bank account, credit card, pension or other personal information in exchange for “free” or “lower cost” prescription drugs, or to someone who has made an unsolicited call to you. Never give your personal information to someone you don't know and trust.
- Medicare will never call you.

The official government publication “Medicare & You” also offers this related advice:

- Only give your personal information to doctors, other medical providers, and Medicare insurance plans approved by Medicare, and to the people in your community who work with Medicare, like your State Health Insurance Assistance Program or Social Security (SSA). Call 1-800-MEDICARE (1-800-633-4227) if you have questions. TTY users should call 1-877-486-2048.

The Social Security Administration does send out written applications for “Extra Help” with the Prescription Drug Benefit program. They may contact you by phone if your application is not complete, but they will NEVER ask for your Social Security number, date of birth or other personal information. They already have it. If you have been a victim of this scam or know someone who has, call the Social Security Administration at 1-800-447-8477.

For more information about the Medicare Prescription Drug Benefit and how to get

help choosing your plan, see the chapter describing this program elsewhere in this Handbook, and check the official U.S. government handbook entitled “Medicare and You,” or visit www.medicare.gov.

Other Scams

- You receive an angry, threatening call by someone claiming to be from the Internal Revenue Service and giving an IRS badge number informing you that you have made a mistake on your tax return and you owe additional money that must be paid immediately over the phone. You should know that the IRS makes first contact with a taxpayer through official correspondence, not by telephone or email. The IRS also never asks for credit card, debit card or prepaid card information over the telephone and it does not demand use of a specific payment method to pay tax obligations. If you know you don't owe taxes or have no reason to think that you owe any taxes (for example, you've never received a bill or the caller made some bogus threats as described above), you can report the incident to Internal Revenue Service and the Treasury Inspector General for Tax Administration at 800-366-4484.
- There are also scams involving telephone calls or visits from people alleging to be Social Security employees. The scammers attempt to obtain personal information, such as a Social Security or bank account numbers, from Social Security recipients. Another variation involves emails supposedly from the SSA or a third party working on behalf of the official government agency and claims that you are eligible for a new benefit and can apply by completing an online form. Completion of the form gives the scammers the information they need to steal

your identity. If you are contacted in this way, report it to the Social Security Administration's Fraud Hotline at 800-269-0271 or the main toll-free number at 800-772-1213, TTY 800-325-0778

- Nigerian letter scheme – Be wary of contacts from individuals representing themselves as Nigerian or foreign government officials asking for your help in placing large sums of money in overseas bank accounts. The scheme relies on convincing people to take advantage of an “opportunity” to share in a percentage of millions of dollars that the author—a government official or prince—is trying to transfer illegally out of Nigeria. The victim is asked to send personal and banking information and money with the promise that all expenses will be refunded and the victim will be paid for helping the perpetrator transfer funds out of the country. Millions of dollars have been lost as the perpetrators steal the victims' identities and drain their bank accounts. If you receive an email or letter such as this, you can report it to the Philadelphia FBI Office at 215-418-4000.

Specific Scams Prohibited by Pennsylvania's Consumer Protection Law

There are infinite possibilities when it comes to designing scams, and the scam artists are constantly coming up with new ones and trying old ones. Many scams are specifically defined as “unfair methods of competition” and “unfair or deceptive acts or practices” by the Pennsylvania Unfair Trade Practices and Consumer Protection Law. Some involve:

- Claiming an item is new when in fact it is used.

- Claiming that products have certain benefits or uses they don't have, or that a person has a sponsorship, approval or other connection that he/she doesn't actually have.
- Claiming that goods or services are of a particular standard, quality or grade, or of a particular model or style, when in fact they are not.
- Passing off goods or services as those of another.
- Bait and switch tactics, where the seller has no intention of satisfying reasonably expected public demand for an advertised item, or no intention to sell it as advertised.
- False statements concerning price reductions.
- Pyramid schemes, or chain-letter plans, where only those few who join or invest in the very early stages make money and most people make little or no money.
- Failing to honor a written guaranty or warranty.
- Knowingly misrepresenting that services, replacement or repairs are needed if they are not needed.
- Making repairs, improvements or replacements of a nature or quality inferior to or below the standard of that agreed to in writing, or making a repair that has not been authorized.
- Making solicitation phone calls without stating clearly: the identity of the seller, that the purpose of the call is to sell goods or services, the nature of the goods or services, or that no purchase is necessary to win a prize in a sweepstakes.
- Including a 'confession of judgment' clause in a consumer contract. (Note: confession of judgment would allow the seller

to obtain a money judgment against the consumer without giving the consumer a chance to assert a legal defense.)

- A car dealer failing to tell a buyer of a new car that dealer rustproofing is optional and that the car has already been rustproofed by the manufacturer, and that a warranty may apply to the rust proofing.
- Engaging in any other fraudulent or deceptive conduct which creates the likelihood of confusion or of misunderstanding. (This is the “catch-all” provision, encompassing consumer abuses that may not fit within the above descriptions.)

If you suffer damages as a result of one of the deceptive practices listed above, you may sue to recover either your actual damages or \$100, whichever is greater, as well as up to three times your actual damages and attorney’s fees. This provision makes it much easier to get legal representation, as attorney’s fees and treble damages can be recovered from the defendant.

It’s Probably a Scam and Often Most Certainly Is a Scam If:

- You have to pay money to claim your prize, such as a “confirmation deposit.”
- “You’ve won!” — but you never entered the contest or lottery.
- It’s a high-pressure situation.
- You have to give a credit card number or Social Security number to a stranger over the telephone.
- You sent “too much money” to someone you don’t remember and now they need a new check.
- “Thanks for your pledge.” (What Pledge?)
- They are going to get you a loan or a job, but you have to pay money up front.
- You get an invoice and bill for something

you never ordered and know nothing about. (See also the article in this Handbook on Identity Theft.)

- You have an offer for an investment that pays way in excess of the rate for other like investments. High return/low risk investments are available only in heaven and you don’t even need them there.
- An offer of stock that is now only selling for 25 cents a share but will soon be going up to \$10 or \$20. If such a stock existed, the person calling you would have bought it all himself.

Many are variations of the old “get rich quick” schemes, but the only ones who get rich quick are the scam artists – not you.

Suggestions for Getting Action on Complaints

If you are unable to resolve your consumer complaint, you can file a written complaint on a pre-printed form with the Delaware County Office of Consumer Affairs or the Bureau of Consumer Protection of the Office of the Pennsylvania Attorney General. You can download a form from the website of the Delaware County Office of Consumer Affairs. Go to www.co.delaware.pa.us/consumeraffairs and click “How To File a Complaint.” That will take you to a page of instructions and a complaint form, which you can print.

Here are the mailing addresses and phone numbers of those two agencies:

- DELAWARE COUNTY OFFICE OF CONSUMER AFFAIRS, 201 WEST FRONT STREET, MEDIA, PA 19063 (The Delaware County Court House – Government Center). PHONE: 610-891-4865.
- ATTORNEY GENERAL’S BUREAU OF CONSUMER PROTECTION, 21 SOUTH 12TH ST, 2ND FLOOR, PHILADELPHIA, PA 19107. PHONE: 215-560-2414.

TOLL-FREE HOTLINE: 1-800-441-2555.

Here are some other good names and numbers to know:

- For reliability reports on business and help in resolving complaints: The Better Business Bureau of Eastern Pennsylvania (Main Regional Headquarters), 1880 JFK Blvd., Suite 1330, Philadelphia, PA 19103. Phone: 215-985-9313. Web site: www.easternpabbb.org.
- For mail fraud and other crimes related to postal service: U.S. Postal Inspection Service, 877-876-2455 or your local Postmaster.

Charitable Organizations

A standard method of ripping off senior citizens is through the front of a charitable organization which simply doesn't deliver what it promises or is not what it seems to be. All too many of us in the trusting public assume that crooks will not use charities as instrumentalities for ripping off the consumer.

There are many good sources of information on charities, so check them out before you part with your money. There are over one million non-profits out there so the individuals who gave over \$222 billion to charities in a recent year do not have an easy time of it.

Experts suggest several approaches to make the job easier. Volunteer to work with a charity so you get to know it from the inside. Focus your donations on a few or even one charity so you fully understand its operations and can follow what it does more carefully.

Of course, check out a charity as you would check out anyone else you might be doing business with. One good source is the Pennsylvania Department of State's Bureau of Charitable Organizations (toll-free # 1-800-

732-0999) to find out if the organization is registered to solicit contributions, how much income the organization received, and how much the organization spends on programs, services, administration and fundraising. For example, one important rule of thumb in judging charities is whether they dedicate at least 70 percent of their budget to services, i.e., the purposes for which the charity is founded. Seniors can also call the toll-free number with any complaints they have about organizations that have solicited funds from them. You can get detailed information on charities on the Bureau's website at www.dos.state.pa.us (Click on Charities). You can also search their online database.

You can also get valuable information on charities from groups that rate them such as Charitynavigator.org, Give.org (operated by the Better Business Bureau), and Charitywatch.org. They evaluate charities, but do not evaluate the purpose of the charity. Donors have to decide whether the charity is working for a cause they believe in. Then the rating organization can provide information on how efficiently and effectively the charity works toward those charitable objectives.

Here are some suggestions for handling calls or other solicitations for charitable giving:

- Ask for written information, including the charity's name, address and telephone number, and information about its programs and finances.
- Ask for identification, and if the solicitor refuses, hang up.
- Call the charity to check whether it is aware of the solicitation. If it says it is not responsible for the solicitation, you should report the call to your local police department so they can investigate the potential for fraud. You should also report it to the

Pennsylvania Department of State's toll-free hotline discussed above.

- Watch out for organizational names, which sound like established charities. Some phony groups adopt names for their organizations that closely resemble respected legitimate organizations.
- Know that "tax-exempt" is not the same as "tax-deductible." The exemption refers to whether the organization is tax-exempt, but not whether your contributions are deductible on your personal tax return. If tax deductions are important to you, make sure your contributions are tax-deductible and ask for a receipt for your contribution.
- Don't give cash, or credit card numbers or bank numbers. Use a check so you have a record.
- Be skeptical if someone thanks you for a pledge you never made or don't remember making. Keep records and check them.
- Refuse high-pressure appeals. No legitimate organization will or should pressure you for a contribution.
- Be leery about giving donations to fund raisers on the street. Some are well-established and well-respected like the Salvation Army. But if you don't know about the charity, don't give on the street.
- When taking a suspect solicitation over the phone, don't hesitate to use that wonderful maneuver called hanging up. And don't forget that other wonderful maneuver – "Give it to me in writing." That is often enough to send phony solicitors for phony charities looking for suckers elsewhere.

Telemarketing

Telemarketing is another method commonly used to get your personal information such as credit card numbers, checking account numbers, Social Security number, driver's license number, etc. **DO NOT GIVE OUT**

THIS INFORMATION unless you placed the call yourself to a well known, reputable company. Also, never allow a caller to pressure you into acting immediately and never agree to any offer until you have seen it in writing.

If a telemarketer doesn't tell you up front that he or she is selling something, or does not clearly describe the nature of the goods or services being sold, it may be a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law. The telemarketer may also be in violation of the law if you receive a call even though you've signed up for the Do Not Call Registry.

Do Not Call Registry

You can avoid unwanted, high pressure telemarketing calls, and some telephone scams by adding your telephone number(s) to the National "DO NOT CALL" Registry. Adding a home land line or cell phone number is done by going to the official Federal Trade Commission website at www.donotcall.gov or call toll-free at 1-888-382-1222 (TTY: 1-866-290-4236). If you register by phone, only one number at a time can be registered and you must call from the number you wish to register. On the website, you can register up to three numbers at a time. If you register online, you will have to complete the registration process by email verification.

The National Do Not Call Registry is a free service of the federal government for consumers. The FTC does not allow private companies or third parties to register consumers for the National Do Not Call Registry. Some states may also offer their own free "DO NOT CALL" registries, but any website or solicitor that offers to register a number and charges a fee, is a scam and should be avoided. If you are contacted in this way, do not give any personal informa-

tion. Contact the FTC at www.ftc.gov /1-877-FTC-HELP, or the state attorney general (Elder Abuse Hotline 1-866-623-2137) to report the caller's organization, their phone number and/or return email address.

Registration is generally permanent, however, if your number is disconnected and then reconnected, or in some instances, if you change calling plans or the billing information on the account, you may need to re-register. To verify that your number is in the Registry, go to www.donotcall.gov or call 1-888-382-1222 (TTY: 1-866-290-4236).

There are exceptions to the "DO NOT CALL" Registry. Political solicitations, surveys and calls from charities are not considered "telemarketing" and are not stopped by the "DO NOT CALL" Registry. However, if a third party telemarketer calls on behalf of a charity, a consumer may then ask not to receive further calls from that charity. If you have a business relationship with a company or have given written permission to contact you, the company may place calls to your number. So if you enter a contest or participate in a promotion, you then establish a business relationship with the company and agree to receive their calls. You may revoke that authorization by asking the company to place your number on its own do-not-call list and it must honor your request.

If your number has been on the Registry for at least 31 days and you receive a call from a telemarketer that you believe is covered by the Registry, you can file a complaint at the FTC's website listed above and using the File a Complaint page or by calling the toll-free number.

Pennsylvania also maintains a "DO NOT CALL" Registry operated by its Office of the Attorney General. You can register online by visiting www.attorneygeneral.gov, click on either Consumers or Seniors, and then Do

Not Call. The website will walk you through the registration process. If you prefer to enroll by telephone, you can call the toll-free hotline at 1-888-777-3406. You can also file a complaint for violations of the registry through the website or by calling the hotline.

Stop Pre Approved Credit Card and Insurance Offers

The Fair Credit Reporting Act (FCRA) allows the Consumer Credit Reporting Companies (Equifax, Experian, Innovis, and Trans-Union) to put your name on lists used by credit card companies or insurers to make offers of credit or insurance to you that you have not sought out. Pre-approved credit offers coming through the mail can be fall into the hands of thieves and subject the consumer to identity theft and/or credit card fraud.

The FCRA provides you the right to "Opt-Out" of receiving such offers of credit or insurance. Opting out prevents the Consumer Credit Reporting Companies from providing your credit file information to credit card issuers or insurance companies.

If you want to remove your name from lists supplied by the four Consumer Credit Reporting Companies, you can do so at www.optoutprescreen.com. Once at the website, you will need to provide your personal information on the "Click Here to Opt-In or Opt-Out" link. When you provide your information through this secure website, your name will be removed from inclusion on firm offer lists provided by all four Consumer Credit Reporting Companies. The personal information you provide is confidential and will only be used to process your request. You may also opt out by phone by dialing 888-5-OPT-OUT (888-567-8688). Deaf and hearing-impaired consumers can opt-out of firm offers by calling 7-1-1 and

referring the Relay Operator to 1-800-821-9631.

Stop Unwanted Mail Solicitations

While you are stopping telemarketers and pre-approved credit card offers, you may want to slow down the flow of junk mail as well. The Direct Marketing Association is a trade association that promotes advertising through communication straight to the consumer, which includes catalogs, magazine offers and other mail offers in addition to the telemarketing and credit offers previously discussed.

Through the Direct Marketing Association's website, you can choose what kinds of mail you would like to limit or cut off altogether. On the website, advertising mail is divided into four categories: Credit Offers, Catalogs, Magazine Offers and Other Mail Offers. You can request to stop receiving mail from individual companies within each category—or eliminate an entire category. Your selection(s) will be effective for five years from the date you make them.

To opt of direct mail solicitations, go to www.dmachoice.org, click on the Get Started tab and enter your name, address and email information. If you prefer to register by mail, you can download the PDF registration form from the website, print it and send it along with a check for \$1 (one dollar) to the DMA.

If you need to stop mail from being sent to a deceased person, the website also contains a link for a **Deceased Do Not Contact List** (DDNC) which all DMA members are required to honor. There is also a link for a **Do Not Contact for Caregivers** list for people who want to manage mail sent to dependent persons for whom they provide care. These lists are available to companies and non-profit organizations for the sole purpose of removing names and addresses from their

marketing lists.

Predatory Lending: Loan Fraud

Older people are more likely to own homes than any other age group in the United States. What's more, they have owned their homes for longer periods than other age groups and consequently have paid down their mortgages or paid them off altogether and have more equity in their homes. Equity is the money left over for the owner after the mortgage and all other costs are subtracted.

This equity attracts lenders, but it also attracts rip-off artists and con men who want to steal the equity and even steal the ownership of the home through predatory lending – unfair or illegal loans.

Predatory lenders, usually not your local banks or credit unions, may engage in predatory lending when the homeowner takes out a mortgage or enters into a home improvement contract. As a result of predatory lending and economic trends, mortgage defaults and foreclosures have skyrocketed. According to the U.S. Government Accountability Office, the defaults and foreclosures have spiked to more than one million as of June 2007, a 50% increase since June 2005.

This kind of predatory lending and loan fraud takes too many forms to catalog here, but there are many signs of predatory lending practices, red flags, that should put you on notice. Here are some of those signs:

- Aggressive or pushy advertising mailed to you about getting a loan or about getting money to pay off your bills.
- A person going door-to-door or calling you about home improvements or a loan arranged by the home improvement contractor.
- A mortgage broker is involved in the loan and this broker gets a large fee or kickback.

- Being encouraged to pay off your mortgage with another mortgage that has a high interest rate.
- Being pressured to pay off your bills by taking out another mortgage on your home.
- Being encouraged to borrow an amount of money that is more than the value of your home.
- If you are behind in your mortgage and someone calls, writes or comes by telling you he or she can save your home from foreclosure.
- A monthly payment that is more than 25 or 30% of what you get monthly from all your sources of income (e.g., pension, wages, Social Security, etc.).

Not all loans are predatory, but if you see any of the signs mentioned above or have any suspicions or questions, DO NOT SIGN THE LOAN PAPERS. Take them to an attorney. If you cannot afford an attorney, you may qualify for a free attorney, and here are some more ways to find one. To find out if you qualify, call Legal Aid of Southeastern Pennsylvania (LASP), Delaware County Division at 610-874-8421. Other agencies that may be able to help you are Delaware County Office of Services for the Aging (COSA) at 610-490-1300 or the Delaware County Office of Consumer Affairs at 610-891-4865.

A Note on Payday and Car Title Loans

Payday loans (also called a payday advance or salary loan) are small, short-term loans payable on the borrower's next pay day or next Social Security benefit payment date. Car title loans offer cash from the lender, in return borrowers sign over the title of a paid-for car to secure the loan. Typically, these loans are due back in full 30 days later. The loans are usually given without

much of a credit check and only minimal income verification. The cost of borrowing is usually charged as a fixed-dollar fee (for example \$15.00 for every \$100 borrowed) for a two-week loan. Charging for loans in this way can translate to an annual percentage rate (APR) to the borrower of 300% to 1,000% percent, or more. Federal law requires lenders to disclose interest rates in terms of an annual percentage. However, many of these predatory lenders will try only quote you the monthly interest so that it appears to be a lower rate (just know that a monthly interest rate of 25% is equivalent to a 300% APR). In addition to the high interest, there are also many fees that can add up such as processing fees, document fees, late fees, origination fees and for title loan lien and repossession fees. Because of the very high interest rates, some jurisdictions, such as Pennsylvania, do not permit payday and car title lending. These lenders, however, can be just a short hop down I-95 to Delaware, where there are storefront loan hawkers everywhere, or they and their products can be accessed via the internet.

For those who cannot pay off the loan when due, they can "roll over" the loan for another period. People who keep stretching out payday loans pay far more in interest and fees than they ever borrowed in the first place. These lenders cater to lower income consumers who cannot access credit elsewhere. Not being able pay off the initial loan and then renewing it the next month costs borrowers even more money in interest, on top of the original amount they've already borrowed. The loans are crafted to keep borrowers in a never-ending whirlpool of debt and bring customers either to the verge of bankruptcy and repossession or to actual repossession of their cars.

If you find yourself in an emergency situation and in need of cash, a payday loan may be a viable solution for the short-term only.

Be sure that you carefully shop around for the best rate, understand the transaction and how the interest and fees are computed, and save all documentation. If you face a long-term financial problem, payday and title loans will only make things worse. You might want to consider other solutions such as paycheck cash advances from your employer, cash advances on credit cards, emergency community assistance, small consumer loans, or borrowing from friends or family. For long-term help with budgeting and debt management, you can contact CLARIFI, a consumer credit counseling service, at www.clarifi.org or call 800-989-2227.

Credit Cards and Credit Card Bills

Senior citizens also need to be careful about offers for credit cards. You may get calls or letters asking you to get a new credit card or switch to another credit card. Be very careful about these offers. While credit cards are easy to get, it is very, very hard to pay the bill if you only pay the minimum balance each month. In fact, depending on the amount of the charges and the interest rate, that period often runs for many years. So offers to switch to a lower-rate card can be tempting, but they can harbor some hidden time bombs. In fine print on the BACK of many credit applications, it says that the credit card company can charge a higher interest rate if they think that your credit rating does not qualify you for the lower rate. The company often will not tell you this in advance.

If you find that you are having trouble paying your credit card bills, you can contact CLARIFI. This is a nonprofit organization that can help you work out arrangements to pay bills if you are having trouble keeping up with them. Their number is 1-800-989-2227. Their website is www.clarifi.org.

They will refer you to their nearest office. There are many credit counseling services that advertise how they can help you, but not all are on the up-and-up, and that includes some advertising themselves as “non-profit.” So if you select one other than CLARIFI mentioned above, be sure to check it out.

And here’s one important consumer tip to minimize your interest charges. If you have more than one credit card, which you are paying off, send the minimum payments to all cards except the one with the highest interest rates, and send the full amount of the payment you can afford to the one with the highest interest rate. That simple maneuver can save hundreds and even thousands of dollars over the long-run.

As with all consumer problems, prevention is better (and less expensive!) than later correction. So use credit cards with great care. A wise man said it may take 30 years to build a good reputation, but you can lose it in five minutes. By like token, it takes years to build a good credit rating, but you can soon lose it by making one injudicious charge you can’t afford.

Identity Theft

Identity Theft is a serious crime. It occurs when someone uses your personal information (such as your Social Security number, credit card number or bank account number) to open up accounts in your name and run up charges without your permission – the thief takes the cash or property, and you are left with the bills and the damaged credit history. Rectifying the damage to your good name and credit can be difficult, expensive and time-consuming, and in the meantime it may be difficult or impossible for you to get the job, the loan, and the insurance you want. Victims of identity theft may suddenly start getting bills for mer-

chandise they have never charged, calls from collection agencies, or traffic tickets for violations for which they are not responsible, and which they know nothing about. Some people can resolve this problem quickly, while others may need to spend a lot of time and money to get out of the financial hell caused by the identity thief. The faster you take action after you realize you may have been victimized, the faster you can correct the situation.

The Federal Trade Commission (FTC) estimates that identity theft affects about 9 million Americans a year. BE AWARE that thieves get your information in many ways, including: going through trash to steal your bills and statements — stealing your cards from your purse or wallet — implanting “skimming” devices into ATM’s and credit card scanners — diverting your bills by changing your address — and contacting you (by phone or email) on a pretext and asking for your numbers. **NEVER GIVE YOUR SOCIAL SECURITY NUMBER, BANK ACCOUNT NUMBERS OR CREDIT CARD NUMBERS TO ANYONE UNLESS YOU KNOW THEM AND TRUST THEM, AND YOU HAVE INITIATED THE CONTACT.** Also, **MAKE SURE YOU’VE RECEIVED ALL OF YOUR MONTHLY BANK STATEMENTS AND CREDIT CARD BILLS, AND REVIEW THEM CAREFULLY.** If you’re able to check your accounts online, look at them regularly to make sure there are no transactions other than the ones you’ve made yourself. And don’t give your online passwords to anyone.

Other ways to help avoid becoming a victim of identity theft include these: Keep receipts and statements in a secure place and destroy or shred them when no longer needed. Pay attention to billing cycles and contact a company whose bill does not arrive on time. Check all bills before paying and question any items you don’t recognize.

Report unauthorized charges immediately. Check your credit rating annually with each of the major credit reporting agencies. (See listing below.) Don’t give your bank account numbers to anyone, unless you initiated the transaction and know and trust the company involved. Guard your mail, and place all outgoing mail in a post office collection box. When you travel, have your mail and newspapers held. Don’t put your credit card number or any other personal information on a postage-paid return post card, as that is an invitation for the information to be stolen and misused. Use only the last four digits of your credit card number on your payment check. Also, be particularly careful with your credit cards, bank cards, Social Security card, Medicare card, medical card, driver’s license and any other papers bearing your personal information or identification or account numbers.

You should do everything you can to avoid the problem in the first place, and take immediate and aggressive action if it looks like you may be on the way to becoming a victim of identity theft.

The following are the steps you should take if you may be a victim or a target of identity theft.

- First, if a credit card is lost or stolen, notify the creditor immediately, and ask that any lost or stolen credit card be cancelled and replaced with a new one. Ask how to dispute any fraudulent transactions.
- Also, contact the major credit bureaus to ask that a fraud alert be placed on your credit report, to help prevent the thief from opening any more accounts in your name. The main credit reporting agencies are Equifax (www.equifax.com; 1-800-685-1111); Experian (www.experian.com; 1-888-397-3742), and TransUnion (www.transunion.com; 1-800-680-7289). After you place a fraud alert with the

credit bureaus, you are entitled to a free copy of your credit report from each of the three companies. Get the report and check it thoroughly. Continue to check your reports for at least a year, to look for additional fraudulent activity. The FTC's website contains detailed information about initial (90 day) fraud alerts and extended fraud alerts, as well as a more drastic tactic, a credit "freeze" which will prevent potential creditors and others from getting a copy of your credit report and can help keep an identity thief from opening new accounts in your name.

- Do file a complaint with the FTC. The FTC ID Theft Complaint, along with a police report, can entitle you to certain protections, including permanently blocking fraudulent information from appearing on your credit report, placing an extended fraud alert on your credit report, ensuring that fraudulent debts do not reappear on your credit report, and stopping debt collection of fraudulent debts. Also, using your report, the FTC can help law enforcement officials across the nation track down identity thieves and stop them. You can file a complaint with the FTC using an online complaint form or by calling the FTC's Identity Theft Hotline, toll-free: 1-877-ID-THEFT (1-877-438-4338); TTY 1-866-653-4261.
- In addition, you should file a report with your local police or the police in the community where the identity theft took place. Try to file the report in person, and take a printed copy of your FTC ID Theft Complaint form with you. Ask the police officer to give you a copy of the Identity Theft Report (the police report with your ID Theft Complaint attached) so you can use it to dispute the fraudulent account and debts. If the police are reluctant to take the report, call the state police or the PA Attorney General's Office.

- If the mail was involved with the identity theft, contact the U.S. Postal Inspection Service at 1-877-876-2455, or your local Postmaster.

If you continue to experience problems caused by the identity theft, you may want to consider asking the Social Security Administration for a new Social Security Number. Because this step might create new problems for you, you should consider it carefully before applying. Contact the Social Security Administration if you think you need a new Social Security number and card, or if you need help correcting your earnings record.

CHAPTER 32

Landlord-Tenant

Tenants who have disputes with landlords may contact the Delaware County Office of Consumer Affairs at 610-891-4865 to attempt to resolve the complaint with the landlord without going to court. Tenants may also seek legal advice from a lawyer referred through the Bar Association's Lawyer Referral Service at 610-566-6625 or www.delcobar.org, and low income tenants may contact Legal Aid of Southeastern Pennsylvania at 610-874-8421 (Delaware County Division) or 1-877-429-5994. If an eviction action is filed against you, seek advice immediately. Court rules require that these cases be heard quickly. If you fail to appear in court, it is likely that judgment will be entered against you and the court will award possession of the apartment to the landlord, with the result that the tenant will be evicted. Therefore it is extremely important that you appear in court. Inability to pay rent is no defense, but if you can prove that conditions in the premises are so bad that the place is not habitable, you may be

entitled to at least a partial abatement of the amount of rent owed. Legal advice is critical in presenting this kind of defense.

Repairs are sometimes an issue for tenants. If the landlord has agreed to make repairs before the tenant takes possession, the tenant should obtain the landlord's agreement in writing. If repairs are needed during the tenancy, the tenant should notify the landlord in writing and keep a copy of the notification. If the repairs are not made in a timely manner, the tenant may wish to contact the Delaware County Office of Consumer Affairs or seek legal advice as detailed above.

The relationship between a landlord and tenant is governed by the written lease, principles of contract law, statutes and rules of court. The laws are technical and arcane. Therefore, a landlord (that is, anyone who leases all or part of a home or apartment to another person) should try to have an attorney on retainer in case any problems arise. Disputes about rent and property damage are normally handled in one of Delaware County's Magisterial District (or "small claims") Courts. You can file for damages or eviction on a simple form and district court staff can advise you about the procedure. These forms can be found online, either through www.pacourts.us (click on Forms and look below For the Public), or through www.co.delaware.pa.us (click on left side tab Court of Common Pleas, and look below Court Departments for Magisterial District Judges). It is important to remember that in eviction cases, you must first notify the tenant that you intend to seek possession prior to filing in district court. The notice to evict a tenant must be in writing and served personally on the tenant. Failure to give notice will prevent you from obtaining possession. Ten days notice is required in eviction cases involving rent, whereas cases involving breach of lease and staying beyond the

lease term require 15 days. This notice requirement can be modified by the lease if the lease is clear on this point.

Both tenants and landlords should be concerned if any tenants are noisy, harass others or engage in criminal activity. Tenants should call the police, document all suspect activity, and notify the landlord. Any tenant has the right to quiet enjoyment of the premises. In order to raise this defense in Court, the use of the premises must be substantially decreased by the landlord or other tenant's interference. Under the law, tenants are entitled to be free from harassment and noise, and your landlord should help you resolve these problems and seek to evict the offensive tenant for breach of lease if the problems do not cease.

Some seniors might seek boarders to help pay for the expense of a single family home or apartment or obtain help with the maintenance of a property. You should always contact an attorney before inviting someone to live in your house to advise you about the proposed arrangement and to help draw up a written lease. Also, you should check the person's background and references to ensure your safety.

Subsidized housing may be publicly or privately owned. A tenant in a federally subsidized apartment may be evicted for the same reasons as a tenant in any other type of rental unit. There are some differences in evicting a tenant from subsidized housing. Some of these differences involve the length of time and procedures in the eviction notice. If there is a question concerning some of these procedures, a qualified attorney should be consulted.

Last, be aware that security deposits must be kept in special accounts and must be returned within thirty days of surrender of the premises or termination of the lease. Failure

to return the security deposit (minus damage deductions) within thirty days may subject the landlord to double damages and prevent him or her from recovering for damage done to the premises by the tenant. Contact your attorney to ensure that you comply with this important requirement or you may find yourself in court with your former tenant, and you may be ordered to pay twice the amount of the security deposit you originally collected.

Damage deductions from security deposits are allowed only for damages above normal wear and tear which occurred during the tenancy. A new tenant, immediately upon taking possession, should inspect the apartment for existing damages and needed repairs. The tenant should prepare a written list of existing damages and repairs for the landlord and keep a copy for himself or herself. This will help at the end of the tenancy to determine what damages were already there and what damage may have been done by the tenant.

Before vacating the premises, the tenant and landlord should walk through the property to assess any damages. In order to be entitled to return of the security deposit, the tenant must provide the landlord with a forwarding address and return all keys to the premises. A tenant who does not hear from the landlord within thirty days of vacating or the end of the tenancy may contact the Delaware County Office of Consumer Affairs for help, or file a Complaint in Magisterial District Court, or seek legal advice through the Delaware County Bar Association's Lawyer Referral Service or from Legal Services of Southeastern Pennsylvania (LASP).

CHAPTER 33

Small Claims Courts

Magisterial District Courts (so-called "Small Claims Courts") have jurisdiction over small claims of \$12,000 or under involving torts (cases where an individual or entity is harmed due to the negligent or purposeful conduct of another) and contracts. Individuals, corporations or partnerships may file a complaint represented by an attorney, or on their own. Some special rules apply to corporations, partnerships and unincorporated associations. There are thirty-three Magisterial District Courts throughout Delaware County, and you must file in the proper court. A case must be filed either (1) where the transaction took place; or (2) where the cause of action arose; or (3) where the defendant (the person or entity that you are suing) can be served. You can access a list of all of the Magisterial District Courts and Judges (with their addresses and telephone numbers online through www.co.delaware.pa.us (click on left side tab Court of Common Pleas, and look below Court Departments for Magisterial District Judges).

To file a case, you need only fill out a simple one page form that you can obtain from the Magisterial District Court or online through www.pacourts.us (click on Forms and look below For the Public), or through www.co.delaware.pa.us (click on left side tab Court of Common Pleas, and look below Court Departments for Magisterial District Judges). You will need to write the following information on the form: your name and address, the names and addresses of all of the defendants, and a short statement to explain the basis of your claim, including where the cause of action took place. You or your attorney must sign it, and provide your phone number.

Many people choose to represent themselves and the rules permit them to do so. However, depending on the amount of money and the complexity of the case, it may be advisable to hire an attorney, or at least consult with an attorney before filing your Complaint.

Then, you may call the district court to fill out the amount of the filing fees and service costs. The court will process the complaint when it is filed properly, with the proper filing fees and service costs. In order to obtain jurisdiction over the defendant, the Court will “serve” a copy of the Complaint on the defendant(s). Service can be accomplished by certified mail, return receipt, or by constable service. When the defendant receives the complaint, he or she will also receive a hearing date and be advised to notify the court if they intend to defend the case by appearing at the hearing. If the defendant fails to notify the court and fails to appear at the hearing, or notifies the court that he or she intends to defend and fails to appear, a default judgment is entered in favor of the plaintiff.

If all parties appear, they should bring any relevant witnesses, documents, pictures or any other information that they feel supports their case. Please note that most rules of evidence apply and that Magisterial District Judges cannot admit most statements or affidavits as they are hearsay and inadmissible. Estimates, bills, receipts and statements of account are admissible. Coming to Court prepared with copies of the necessary documents for the Judge and the other parties will make the hearing go faster. After the hearing, the Judge must make a decision within five days. All parties have the right to appeal the decision within thirty days to the Court of Common Pleas.

CHAPTER 34

Mediation Services

Mediation is a process that provides a setting to resolve conflict cooperatively through face-to-face dialogue, with the assistance of an impartial third party. Participants in mediation come up with solutions to their problem, instead of having a court determine the outcome. If the conflict isn’t resolved in mediation, normally the disputants can then file a complaint in Court.

In particular, seniors, their families, and caregivers may need support to deal with conflicts that sometimes arise in situations like the following:

- Decisions such as selling the family home and moving into a retirement community or moving in with a family member;
- Adjustments to changes from independence to interdependence;
- Tension created by the interaction of two or three generations living together;
- Disagreements between health care providers, such as nurses or home health aides, and seniors and their families concerning the care being given;
- Conflicts regarding finances;
- Disputes between tenants and landlords.

Some of the benefits that are derived from implementing mediation as a method of solving problems are:

- Learning new ways to handle conflict and resolve problems;
- Maintaining a better sense of personal dignity and independence;
- Avoiding escalation to painful and costly litigation;
- Increasing opportunities for seniors and their families to communicate more

effectively and to work together to resolve their problems;

- Improving the quality of life and the relationships within their circle of support.

The Center for Resolutions, located at 26 East Fourth Street, Media, Pennsylvania 19063 (telephone number: 610-566-7710) www.center4resolutions.org offers mediation services and other conflict resolution programs for a very small fee. Through mediation, families and their aging relatives can develop improved communication and other skills to manage the difficult transition to an assisted care facility, and decide how family members will share caregiving responsibilities and handle finances. Included in the training is mediation in elder person cases. This training will benefit attorneys, social workers, health care professionals, families, and other individuals and agencies who work with the aging population, by providing them with enhanced communication and negotiation skills that meet the specific needs of their clients, including criteria to determine an individual's capacity to make sound decisions.

The Ombudsman Program of Delaware County investigates and resolves complaints received from or on behalf of older individuals who reside in nursing homes, personal care homes or domiciliary care homes, or receive long-term care services in their own homes. An ombudsman advocates for and protects the rights of an elder person receiving long-term care services and seeks to bring about needed changes to improve the quality of care received. The program is administered by COSA. Anyone with a concern about long term care given to a Delaware County resident may contact COSA at 610-490-1300 and ask for the Ombudsman, or call the Ombudsman directly at 610-872-1868.

CHAPTER 35

Driver's Licenses; Driving Safely

Fach has been written in recent years about senior driving safety. For an older person considering whether to limit or stop driving, the main concern may be perceived loss of independence. For family members and friends, the main concern is that their loved one may be hurt (or worse) in an accident, or hurt someone else.

According to AAA's website, seniors have the second highest (after teens) crash death rate per mile driven. The problem is not that senior drivers crash more (since they tend to drive less, particularly at night and in bad weather), but that they injure more easily than younger drivers. Most seniors begin to limit their driving long before they give up their driver's licenses. Planning for this process can reduce the emotional and financial impact of making the decision not to drive when it becomes unsafe to do so. This article contains suggestions for seniors and their loved ones to make the process easier.

Legally speaking, a driver's license is considered a privilege, and a person's license may be recalled or suspended for a variety of reasons. The privilege of driving may be revoked upon a determination of incompetence. The privilege may also be revoked if a physician finds that a person has a condition that prevents him or her from safely operating a motor vehicle. There are a number of common physical changes that may occur with age and may affect vision or hearing or reaction time, all of which may affect a person's ability to operate a motor vehicle safely, particularly on the highway or at night. Some medical conditions and some medications also affect the ability to drive.

Seniors should also be aware that there have been changes in the traffic rules in recent years.

According to the Pennsylvania Department of Transportation (PennDOT), a number of drivers over age 45 are chosen at random each month for review at the time of license renewal and are required to undergo vision and physical exams by their doctors. If the need is indicated by those tests, the driver may be required to take a driver's examination. Also, PennDOT receives confidential reports from doctors and family members concerned about a medically incapacitated person's ability to drive; in those instances, PennDOT will initiate an evaluation process, and may add restrictions to the person's license, or recall it, or may ask the person to provide more specific medical information or to complete a driver's examination.

If a person's license has been recalled or suspended, an appeal can be filed in the Delaware County Court of Common Pleas. The appeal will not postpone the recall of a driver's license and the person still must turn over his or her license to the Bureau. A hearing will be held in court about sixty (60) days from when the appeal was filed. The attorney for PennDOT will argue that the license should remain revoked based upon the medical evidence of the person's doctor or psychologist. (Note that the "confidential" report of a physician or family member may be admitted as evidence in these legal proceedings.) A person can challenge this argument by presenting reports of other doctors or by passing a road test given by a driving rehabilitation center. They make a determination whether the person can or cannot drive.

If the person is successful in his or her appeal, a letter is sent to PennDOT and the license is returned and reinstated. If unsuccessful, the person can appeal to a higher

court, but remember that filing another appeal will not reinstate the license until the next court decision.

The good news is that there are many resources, on both the local and national levels, to help people deal with this process before a serious issue arises. First, there is a wealth of information available, on the internet and by telephone, from many organizations, including American Association of Retired Persons (AARP) (1-888-OUR-AARP, i.e., 1-888-687-2277; www.aarp.org); American Automobile Association (AAA) (877-844-2366, www.midatlantic.aaa.com); National Safety Council (800-621-7619; www.nsc.org – search for Mature Drivers); and PennDOT (800-932-4600; www.dot.state.pa.us), to name just a few. Many of these sites offer **advice** on talking with loved ones about driving concerns, online quizzes, descriptions of conditions that impair driving ability, lists of warning signs that a person should limit or stop driving, etc. Informational brochures and guides are available from these organizations as well as from the National Highway Traffic Safety Administration (www.nhtsa.gov), the Pennsylvania Department of Aging (www.aging.state.pa.us), and the American Optometric Association (www.aoa.org).

In addition, there are several safe driving programs and courses available which may qualify the driver for a **discount on his or her auto insurance premium**, including AARP's well-known, and very low-cost program. AARP's website (www.aarp.org) also has an online seminar to help families determine how to assess a senior person's driving skills, as well as vision safety tips, car safety tips, and advice concerning the effect of medications on driving ability.

Since 1983, Bryn Mawr Rehab Hospital (414 Paoli Pike, Malvern, PA 19355) has offered a Driver Rehabilitation Program, which provides an objective and thorough evaluation of an individual's driving ability. Its director is an Occupational Therapist and Certified Driver Rehab Specialist. The program is medically-based, and a physician's prescription (on a one-page Referral Form) is required. The cost of the self-pay program typically is not covered by insurance. Additional training (e.g., for the PennDOT test) and adaptive vehicle equipment recommendations are also available. Family members many also initiate a referral. To make a referral, schedule an evaluation, or simply ask for advice, call 484-596-3943 or 484-596-5400.

Anonymous reports to PennDOT about a person's ability to drive can be made by calling the Medical Unit at 717-787-9662.

MIT's Age Lab and The Hartford Insurance Company developed an "Agreement with My Family about Driving," which states a person's desires about continuing to drive safely, and involves family members in the decision about when it is no longer safe for the older person to drive. Both MIT's and Hartford's websites have extensive information about having these conversations.

Rest assured that there is a great deal of support available to older drivers who wish to continue to drive safely, and for their concerned family members and friends. You only need to ask.

CHAPTER 36

Photo ID Cards

Driver's licenses are often requested for identification. If you do not have a driver's license (or even if you do), you can obtain a Photo Identification Card, similar in appear-

ance to a driver's license, at the Pennsylvania Department of Transportation Driver License Centers. If you have never held a Pennsylvania Driver's License, you must apply in person for your initial Photo ID Card, and pay a fee of \$13.50. If you wish to hold a Photo ID Card along with your Pennsylvania Driver's License, the fee is \$13.50. Any Pennsylvania driver who voluntarily surrenders his or her license because of health reasons which may affect his or her ability to safely operate a motor vehicle, can obtain a Non-Driver Photo ID Card for NO FEE. (Your driver's license can be reissued if you successfully complete the appropriate examination at a later date.) You must bring proof of identification such as a birth certificate or your old driver's license, along with your Social Security card, and two proofs of your residency, to the Driver License Center near you to apply for your Identification Card. In an effort to reduce the incidence of identity theft, PennDOT will issue a temporary card which is valid for 15 days, and will mail you your permanent Card after checking to ensure that your photograph does not match another photograph appearing in its database under a different driver name.

CHAPTER 37

Handicapped Parking

If you are disabled and need a special parking placard or special parking place you must first complete Form MV-145A. Your physician must also sign the form. To get this form, contact the Pennsylvania Department of Transportation, Bureau of Motor Vehicles, Riverfront Office Center, 1101 South Front Street, Harrisburg, PA 17104 or call 800-932-4600. To be allocated use of a special handicapped parking spot near your home, you then need to con-

tact your local municipality and follow their regulations. If it is approved and a designated handicapped parking spot is marked out near your home, please note that anyone with a handicapped license plate or placard may park there.

CHAPTER 38

Contributors

R. Scott Aldridge, Esquire
115 W. State Street, Suite 200,
Media, PA 19063 • Phone: 610-565-0701
Email: saldrige@saldrigelaw.com

Scott has maintained an office for the practice of law in Media since 1977. In addition to his undergraduate and law degrees, he earned a Master's in Taxation in 1995. He concentrates his practice in family law and estate planning matters, and, in the course of his practice, handles divorce, support and child custody matters, and prepares Pre-Nuptial Agreements, Wills, Health Care Directives and Powers of Attorney. He also counsels clients in planning for second marriages and business succession. He has been active in the Family Law Section of the Delaware County Bar Association and served as its Chairperson for 2006. He is a member of the Board of Directors and the Executive Committee of the Delaware County Estate Planning Council. He contributed to the chapter on Family Law.

Linda M. Anderson, Esquire
Certified Elder Law Attorney
Anderson Elder Law
206 Old State Road, Media, PA 19063
Phone: 610-566-4700
www.AndersonElderLaw.com

Linda is a Certified Elder Law Attorney (CELA) by the National Elder Law Founda-

tion (NELF) and is the principal of Anderson Elder Law. Linda and her staff provide specialized legal services in areas of elder law, long-term care & asset protection planning, special needs planning for disabled individuals and children, Medicaid eligibility, estate and tax planning, estate and trust administration, and Veterans Aid & Attendance Pension benefits. Linda is a Fellow of ACTEC (American College of Trusts and Estates Counsel), has been selected by her peers as a "Super Lawyer" in the field of Estate Planning and Elder Law since 2004, and "One of the Top 50 Female Lawyers in PA" since 2008. Linda has also been chosen as one of the Best Lawyers in American since 2008. Linda has also received the prestigious "AV" rating from Martindale Hubbell, and is an invited member of the Special Needs Alliance. Linda is also an accredited VA attorney. Linda contributed to the chapters on Elder Law, Older Americans Act, Medicare, and Medicaid.

Timothy A. Berger, Esquire
320 W. Front Street, Media, PA 19063
Phone: 610-565-4750
Email: tberger@pfblaw.com
www.pfblaw.com

A partner in the firm of Paul, Flandreau & Berger, LLP, Tim has been working to help individuals and small businesses secure their future for over 20 years. As part of his diverse practice, he represents disabled clients who are applying for Social Security Disability and Supplemental Security Income (SSI) benefits, both at the initial level and on appeal before Social Security judges. He works with them to obtain and develop the evidence needed for them to qualify for benefits. His practice also includes litigating civil, commercial and workers compensation cases. Finally, he is a resource for his business and real estate clients, helping them successfully address

the issues needed for them to succeed. Tim contributed to the chapter on Social Security.

Dana McBride Breslin, Esquire
Certified Elder Law Attorney
Pappano & Breslin
3305 Edgmont Avenue, Brookhaven, PA
19015 • Phone: 610-876-2529

Dana is a Certified Elder Law Attorney (CELA) by the National Elder Law Foundation; a long-time member of the National Academy of Elder Law Attorneys and its PA Chapter; a member of the PA Bar Association Elder Law Section (Past Chair); and a member of Delaware County Bar Association (past Co-Chair of Elder Law Committee). She is also a fellow with the American College of Trust and Estate Counsel. Dana has served on the boards of the PA Health Law Project, Senior Community Services and Delaware County Estate Planning Council. She contributed to the chapters on Long Term Care Facilities and Powers of Attorney.

Robert J. Breslin Jr., Esquire
Pappano & Breslin
3305 Edgmont Avenue, Brookhaven, PA
19015 • Phone: 610-876-2529

Bob is a 1974 graduate of Villanova University School of Law (J.D.) and a 1971 graduate of Villanova University having received his B.S. in Business Administration. His practice focuses on estate planning and administration, elder law and real estate matters. He is a member of the Pennsylvania Bar Association, its Elder Law Section, the Delaware County Estate Planning Council, the Delaware County Bar Association and its Elder Law Committee, NAELA and PAELA. He lectures frequently on elder law issues. He contributed to the chapters on Reverse Mortgages and Property Tax and Rent Rebates.

Robert R. DeLong, Jr., Esquire
17 Veterans Square, P.O. Box 604,
Media, PA 19063
Phone: 610-627-5865
Email: robertdelongesq@hotmail.com

Mr. DeLong received his J.D. cum laude from Widener University School of Law and is a sole practitioner concentrating in Estate and Incapacity Planning, Estate Administration, and Elder Law. Rob is Vice President of the Delaware County Bar Association and an active member of the DCBA's Elder Law, Probate, and Rules committees. Rob has served on the Pennsylvania Bar Association's Elder Law Section Council for over a decade and is a Board Member of Senior Community Services of Delaware County. Rob is also a former Board Member of Legal Aid of Southeastern PA; former President of the Delaware County Estate Planning Council; a Continuing Legal Education speaker and program co-creator; and former Adjunct at Widener's Legal Education Institute. A "second career" lawyer, Rob received his BA from Franklin and Marshall College and worked for 20 years in the Securities Investments Industry in Chicago, Houston, and Philadelphia for brokerages, a bank (First Pennsylvania – DVP), and SEI Investments Co. He contributed to the chapters on Living Wills, Durable Health Care Powers of Attorney, and Out-of-Hospital DNR Orders.

Robert B. Famiglio, Esquire
P.O. Box 1999, Media, PA 19063
Phone: 610-359-7300
www.FamiglioAssociates.com

Bob Famiglio provided advice concerning copyright law and procedures.

Thomas W. Flynn, III, Esquire
Crawford Diamond Flynn LLC
124 Bloomingdale Avenue, P.O. Box 8333,
Wayne, PA 19087 • Phone: 610-688-2727
Email: twflynn@erols.com

Tom's practice in Wayne (since 1986) focuses on estate planning (wills, trusts, powers of attorney, health care directives, asset titling), estate administration, real estate, and tax preparation and planning. He advises elder clients, and families, and speaks at National Business Institute seminars on these topics. Tom is past President, and continuing member of the Delaware County Estate Planning Council, member of the Delaware County Bar Association and Elder Law Committee, and the PA Bar Association, and served on the Board of Barrier Awareness of Delaware County (removing barriers for individuals using wheelchairs and walkers). Tom prepared the book's income tax/financial planning chapter.

F. D. Hennessy Jr., Esquire
55 N. Lansdowne Avenue,
Lansdowne PA • Phone: 610-623-3445
Email: fdhennessy@msn.com

Dave Hennessy of the law firm of Hennessy, Bullen, McElhenney, and Landry has been in the general practice of law in Delaware County for many years. Member of the American, Pennsylvania, and Delaware County Bar Associations, he continues to serve on the sections and committees dealing with probate, real estate, and elder law issues. Dave is a past president of the Delaware County Estate Planning Council, past chairman of the county bar association Orphans' Court Rules and Continuing Legal Education committees. He has presented and participated in programs on wills, estate planning documents, estate administration and inheritance taxes, and other topics of interest to groups at senior centers, retire-

ment communities, and churches. He contributed to the chapter on Priorities When a Loved One Dies.

Tracy Hornig
Director of Mediation and Training,
Center for Resolutions • 26 E. Fourth St.,
Media, PA 19063 • Phone: 610-566-7710
www.center4resolutions.org

Ms. Hornig contributed to the chapter on Mediation.

Mary K. Kennedy, Esquire
Conan Law Offices, LLC
755 N. Monroe Street, Media, PA 19063
Phone: 610-565-6688

Mary is a 1989 graduate of Temple University School of Law and a 1986 graduate of Temple University School of Business Administration with a BBA in Economics and Finance. Her practice includes general civil litigation, elder law and estates. Prior to joining Conan Law Offices, Mary was a staff attorney for Legal Aid of Southeastern Pennsylvania, Delaware County Division where she handled landlord-tenant, public housing, consumer, child custody, public benefits and elder law matters. She is a member of the Delaware County Bar Association's Elder Law Committee. Mary contributed to the Consumer and Housing chapters.

Joseph Lesniak, Esquire
1 Veterans Square, Suite 106, Media, PA
19063 • Phone: 484-444-2348
www.jpilaw.net

Joe earned his Juris Doctorate from the Villanova University School of Law. He served in the Delaware County District Attorney's Office in the Special Victims Domestic Violence Division. While in the District Attorney's Office Mr. Lesniak was responsible for the creation and presentation on important topics such as: Protection from

Abuse Orders, Internet Safety, Prosecuting Kidnapping, School Safety, and Custody Issues. Currently, he is the principal at the Law Offices of Joseph Lesniak, LLC where he practices criminal defense and civil litigation. He contributed to the chapter on Elder Abuse and Neglect.

Jeff L. Lewin, Esquire

15 East Front Street, Media, PA 19063

Phone: 610-565-4191

www.LewinLaw.com

Jeff opened his law practice in Media in 2000 after 17 years as a professor of law, having taught property, wills and trusts, law and economics, trial advocacy and health law. He is a member of the National Academy of Elder Law Attorneys, and his practice focuses on elder law, estate planning, probate administration, and real estate. He is an active member of the Delaware County Bar Association's Elder Law and Orphans' Court Rules Committees. Jeff contributed to the chapter on Estate Planning.

Thomas M. Lilly, JD CLU

Phone: 1-877-687-4700

Email: tom@futurecareassociates.com

www.futurecareassociates.com

www.ltcalternatives.com

Mr. Lilly owns Futurecare Associates, Inc., a firm specializing in the development and sale of individual and group long-term care insurance plans. Tom has clients in many states. He is a member of the Elder Law committees of the Allegheny County and the Pennsylvania Bar Associations. Tom was admitted to the bar in 1973, served as an assistant district attorney, a clerk in the Court of Common Pleas, and practiced privately until, in 1977, he entered the insurance industry. He has published articles in professional journals on life, disability income, and long-term care insurance. Tom has spo-

ken frequently on fraudulent and deceptive sales practices, particularly those targeted against seniors, as well as on long-term care insurance before many groups, including Pennsylvania Bar Institute conferences. He received his J.D. from the University of Pittsburgh School of Law in 1973. He wrote the chapter on Long Term Care Insurance.

Janet M. Lis, Esquire

P.O. Box 2102, Media, PA 19063

Phone: 610-892-0696

Janet's law practice focuses on health-care related matters, especially guardianship, advance directives, and human subjects research. She received J.D. and B.S.N. degrees from Georgetown University, and practiced nursing prior to practicing law. She is a member of national, state, and local bar associations, and serves on the Elder Law Committee of the Delaware County Bar Association. Janet contributed the chapters on Guardianships and the Health Insurance Portability and Accountability Act (HIPAA).

Robert M. Lodge, Esquire

**Delaware County Office of the
Public Defender**

313 West Front Street, Media, PA 19063

Phone: 610-891-4080

Email: Robert.lodge@temple.edu

Robert attended Widener University School of Law where he graduated with a law degree. He began working at the Office of the Public Defender in Media in 2007 as an Assistant Public Defender and has worked in the preliminary hearing division, juvenile, and on a trial team. He is now trial team leader of Veterans and Mental Health Courts where he has represented clients at various stages in the Criminal Justice System. He is a member of the Delaware County Bar Association, the Guy G. deFuria Inns of Court,

and the Temple Inns of Court. Robert recently graduated with honors from Temple University's LL.M in Trial Advocacy program and has been appointed a member of the adjunct faculty at Albright College, where he has taught Criminal Law. Mr. Lodge contributed to the chapter on Delaware County's Drug Treatment, Veterans, and Mental Health Courts.

Helen Lynn, RN, BSN

**Legal Assistant, Pappano & Breslin
3305 Edgmont Avenue, Brookhaven, PA
19015 • Phone: 610-876-2529**

Ms. Lynn is a registered nurse and also received her B.S.N. (Bachelors of Science in Nursing). Helen volunteers as an Apprise Counselor. She has been a Legal Assistant with the firm of Pappano & Breslin since 1999. She contributed to the chapter on PACE and PACENET and Medicare Part D.

**Jennifer Holsten Maddaloni,
Esquire**

**Delaware County Register of Wills
and Clerk of Orphans' Court
201 West Front Street, Media, PA 19063
Phone: 610-891-4407
www.co.delaware.pa.us/registerofwills**

Jennifer was elected to serve as the Register of Wills and Clerk of Orphans' Court for a four year term beginning in 2014. As Register, she presides over hearings pertaining to will disputes and other probate issues. She has instituted changes in order to make the office more user friendly for all those who enter the Register of Wills. She frequently presents seminars and participates in programs pertaining to wills and guardianships. She was admitted to the Pennsylvania Bar in 1995. She was employed as an attorney at the Law Firm of Holsten and Associates where she spent almost two decades representing municipalities and counties as well as their employees and elected officials.

She previously served as a school district hearing officer and the solicitor for the Domestic Relations section of the Delaware County Court of Common Pleas. She is a member of the Pennsylvania Association of Registers of Wills and Clerks of Orphans' Court and the Delaware County Bar Association, where she serves on several committees. Mrs. Maddaloni contributed to the chapter entitled "When a Loved One Dies."

**Cynthia A. McNicholas, Esquire
225 N. Olive Street, P.O. Box 1065
Media, PA 19063 • Phone: 610-892-0461**

Cynthia McNicholas is a sole practitioner concentrating on Estate Planning (Wills, Trusts, Powers of Attorney), Estate Administration, Elder Law, Orphans' Court Litigation, Guardianships, Real Estate, and Fiduciary services. She is Chair of the Orphans' Court Rules Committee of the Delaware County Bar Association, Past President of the Delaware County Estate Planning Council, Member of the Zoning Hearing Board for Chester Heights Borough, and a Member of the Dickinson College Alumni Council. She received her B.A. from Dickinson College and her J.D. from Villanova University School of Law. Ms. McNicholas has served as an Editor of the Delaware County Elder Law Handbook since 2006.

**Dionysios C. Pappas, Esquire
2551 Baglyos Circle, Suite A-14,
Bethlehem, PA • Phone: 610-694-9455**

"Dennis" is an attorney with the law firm Vasiliadis & Associates in Bethlehem, Pennsylvania, where he practices in the areas of Elder Law, Trust & Estate planning, Trust and Estate administration, and Veterans' Pension Benefits Planning. He is a VA accredited attorney for the preparation, presentation, and prosecution of claims for veterans' benefits before the Department of

Veterans Affairs. He was a contributing author to *Elder Law in Pennsylvania, Ch. 8 – Veterans' Benefits* (3rd ed., PBI Press 2012). Mr. Pappas frequently lectures and contributes articles to professional and community organizations on issues in his subject matter area. He has been selected as a Pennsylvania Super Lawyers Rising Star® every year since 2010. He contributed to the chapter on Veterans' Benefits.

Harris J. Resnick, Esquire
22 State Road, Media, PA 19063
Phone: 610-565-0301
www.resnickelderlaw.com

Harris is a sole practitioner in Media, where he concentrates his practice in the areas of Medicaid Planning, Guardianships, Disability Planning, Wills and Trusts, Special Needs Trusts and Estate Administration.

He was admitted to the Pennsylvania Bar in 1983. He is a member of the National Academy of Elder Law Attorneys and the Elder Law Committees of the Montgomery County, Delaware County and Pennsylvania Bar Associations. He has lectured on elder law topics for the Pennsylvania Bar Institute, Penn State University, Drexel University School of Nursing, Neumann College, the Osher Lifelong Learning Institute of Widener University and the Montgomery County and Delaware County Bar Associations. Harris served as Editor of this edition of the *Elder Law Handbook and Resource Guide* as well as the five previous editions.

Phillip B. Rosenthal, Esquire
Chester, PA • Phone: 610-874-8421

Phillip is a staff attorney with the Delaware County Office of Legal Aid of Southeastern Pennsylvania. Phil is the office's "public benefits advocate." His practice concentrates on helping individuals secure and keep a wide variety of public benefits,

including cash assistance, food stamps, Medicaid, LIHEAP, SSI and unemployment compensation. Phil is a 1980 graduate of the University of Pittsburgh, School of Law. He contributed to the chapters on Public Benefits for Non-Citizens, Food Stamps, and Low Cost Legal Services for Seniors.

Honorable Anthony D. Scanlon
Delaware County Courthouse
201 West Front Street, Media, PA 19063
Phone: 610-891-4519

Judge Scanlon was appointed to the Delaware County Court of Common Pleas in July 2014. Previously, he maintained a general practice while serving as Magisterial District Judge in Springfield, Delaware County, Court #32-2-54. Judge Scanlon also served as Assistant County Solicitor for the Delaware County Department of Human Resources, and as a Trial Attorney for the Delaware County Public Defender. He contributed to the Landlord-Tenant chapter.

Barry W. VanRensler, Esquire
10 South Plum Street, P.O. Box 1760,
Media, PA 19063 • Phone: 610-566-3830

Mr. VanRensler has over 40 years of experience in real estate, business, wills and estates, and general litigation in federal and state courts, and administrative tribunals. He earned his BS at the University of Delaware and his J.D. from Temple University School of Law. Mr. VanRensler also has a background in Marketing and Engineering Administration.

Mr. VanRensler is a member of Legal Services for Exceptional Children Committee, Charitable Organizations Committee, Unauthorized Practice of Law Committee, Senior Lawyer Committee, Children's Rights Committee, Delaware County Bar Association Board of Directors, Chairman of Municipal Solicitors – Boroughs and Township Com-

mittee, Delaware County Estate Planning Council, Pennsylvania School Boards Association, Association of Trial Lawyers of America, Solicitors' Association of PSBA, National School Board Association, Pennsylvania Borough of Solicitors Association, and Pennsylvania Trial Lawyers' Association.

Mr. VanRensler contributed to the chapter on Social Security.

John J. Whelan

Delaware County District Attorney

John J. "Jack" Whelan was elected Delaware County District Attorney in November 2011 and took office in January 2012, for a four-year term.

District Attorney Whelan has been dedicated to criminal justice and law enforcement from the time he was in college, majoring in criminal justice at Temple University, to his term on Delaware County Council where he made public safety a priority. From 1986-1991, he was a Delaware County Assistant District Attorney, serving as a trial team leader. He prosecuted many defendants for capital offenses as well as for other felonies and misdemeanors.

Mr. Whelan is a respected practicing attorney for 25 years, and led the firm of Whelan, Doyle & Pressman LLC in the area of civil litigation, municipal representation and decedent estates. Before becoming District Attorney, Mr. Whelan served as Chairman of Delaware County Council, which oversees the county government operations that serve the 550,000 residents of Delaware County. He was first elected to a four-year term on County Council in 2005, was re-elected to a second four-year term in 2009 and took the oath of office in January 2010.

As District Attorney and Chief Law Enforcement Officer for Delaware County, he has

taken the lead on many public safety initiatives that focus on homeland security through the Anti-Terrorism Unit, working closely with federal investigators. Mr. Whelan established the Anti-Violence Task Force with the mission to provide collaborative programs and resources to assist the community in recognizing and reporting violent crimes. Beginning in January 2012 and continuing since, Mr. Whelan expanded the Senior Exploitation Unit, investigating crimes and raising awareness about the many illegal schemes perpetrated against seniors.

A graduate of Temple University School of Law, he also has a bachelor's degree in criminal justice from Temple University. He and his wife, Peggy, live in Ridley Township with their four children.

Mr. Whelan contributed information about the Delaware County District Attorney's Senior Exploitation Unit.

Joshua R. Wilkins, Esquire

Anderson Elder Law

206 Old State Road, Media, PA 19063

Phone: 610-566-4700

www.AndersonElderLaw.com

Josh practices at Anderson Elder Law in the areas of Elder Law, estate and long-term care planning, special needs planning, veterans' benefits planning, and trust and estate administration. He is an accredited attorney with the United States Department of Veterans Administration. He graduated from the Dickinson School of Law (J.D.) and Temple University (B.A.). He previously practiced at an Elder Law firm in Williamsport, PA, and served as the Clinical Fellow at the Elder Law and Consumer Protection Clinic at the Dickinson School of Law. Josh provided general editing assistance for this publication.

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www.delcobar.org

AND

www.delcosa.org