

ACKNOWLEDGMENTS

This document was produced under the direction of the Elder Law Section of the Delaware State Bar Association. Sections were contributed and reviewed by the following attorneys:

Laurence V. Cronin
William J. Dunne
William W. Erhart
Emily Farley
Joyce Koria Hayes
Thomas Herlihy, III
Jerry A. Hyman
Suzanne I. Seubert
Andrew P. Taylor
Beverly J. Wik

The Section also thanks William Bagnell, Reverse Mortgage Specialist at M & T Bank for his contribution to the discussion of Reverse Mortgages.

DISCLAIMER

The materials presented in this guide are for informational purposes and are not intended and should not be considered legal advice or a legal opinion on any specific fact or question. There is no attorney-client relationship between the contributors to this Handbook and the readers or users. The material is as complete and up-to-date as possible as of the date of publication, but the reader should always reconfirm the information with the relevant government agency or consult with a private attorney or, if unable to afford an attorney, seek free legal advice from one of the sources referred to in the Introduction.

Contents

INTRODUCTION	1
Protect Yourself	1
If You Need an Attorney	3
Professional Qualifications	4
Free Legal Services	6
DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES (DSAAPD)	9
INCOME MAINTENANCE PROGRAMS	10
Social Security Benefits	10
Railroad Retirement Benefits	13
Supplemental Security Income	13
Food Stamp Program	14
Veterans' Pensions	16
HEALTH CARE	177
Medicare	17
Eligibility	18
Enrollment.....	18
Coverage in Original Medicare.....	18
...Supplemental Insurance	20
Medicare Beneficiary Programs	20
Medicare Health (sometimes called "Advantage") Plans (Part C)	21
Part D Prescription Drug Benefit	22
Extra Help With Prescription Costs -- Federal Low Income Subsidy -- “.....	23

Medicaid	24
Nursing Homes and Other Residential Facilities.....	26
Advance Health-care Directives (Living Will).....	27
Delaware Medical Order for Life Sustaining Treatment (DMOST).....	30
GUARDIANSHIPS AND OTHER PROTECTIVE SERVICES	31
Representative Payee for Social Security Payments.....	31
Personal Power of Attorney	32
Guardianship.....	33
Adult Protective Services	35
OLDER ADULTS AS VICTIMS	36
Elder Abuse and Exploitation.....	36
Programs for the Victims of Crimes	37
Delaware’s Victim’s Compensation Assistance Program	37
Victim/Witness Assistance Program	38
Elderly Victim Service.....	39
Senior Victim Advocate Program	39
Age and Disability Discrimination in Employment	40
HOUSING ISSUES	41
State and County Assistance in Delaware	41
Home Equity Conversion Mortgage (HECM) (Otherwise Known as "Reverse Mortgage").....	43
Landlord/Tenant Law	48
Mobile Homes.....	49
Property Tax Exemptions	50
CONSUMER LAW	52

Equal Credit Opportunity.....	52
Home Solicitations and Door-to-Door Sales.....	53
Unordered Merchandise.....	54
Debt Collection.....	54
Telemarketing.....	55
Warranties.....	55
Home Repair.....	56
Consumer Pitfalls to Avoid.....	57
END OF LIFE PLANNING.....	58
Estate Planning.....	58
What is Estate Planning?.....	58
Wills.....	58
Non-Probate Property.....	59
Joint Property.....	59
Trusts.....	60
Anatomical Gifts.....	61
Funerals.....	61
Disposition of Last Remains.....	62

INTENTIONAL BLANK PAGE

INTRODUCTION

This Handbook has been prepared to help older people in Delaware, their families, their caregivers, and concerned others, to be aware of their rights and responsibilities under certain state and federal laws. Since laws change from time to time, when the information is needed, the information in this Handbook should be verified with an attorney or with the agency which administers the law or the benefits that you or a person responsible for you are seeking to obtain. For example, questions about Social Security benefits, eligibility, and consequences of applying for Social Security at different ages should be directed to the Social Security Administration.

Protect Yourself

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

1. Read and understand every document you are asked to execute before signing it. Ask for an explanation of anything in a document that you do not understand, and do not sign the document unless you feel comfortable with the explanation. When a document is presented for you to sign, if you do not understand anything in the document, you should ask for a copy of the document to take home and study before you sign it. You should also ask for drafts of attorney-prepared documents to review before you make an appointment to sign such documents.

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

- a. Receipts, canceled checks, and money order receipts should be kept as proof of payment until the payment is reflected in a statement from the payee or as long as necessary to support any claims you might make.

- b. Bank statements should be saved for several years, for the periods Income Tax Returns should be saved. You can find out the general rules for how

long to keep records relating to income, deductions, and Income Tax Returns by going to <http://www.irs.gov> and searching "How Long do I Keep Records".

c. Deposit slips, receipts from automatic teller machines (ATM), and receipts for credit card purchases should be saved until these types of transactions are confirmed or reflected on your bank statements and credit card bills.

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

e. The following documents should be kept together in a safe and fireproof place: deeds; mortgages, promissory notes, and other loan documentation; wills; trust agreements; stock certificates; military discharge papers; birth, marriage, and death certificates; divorce decrees; pre-nuptial (pre-marital) and post-nuptial agreements; property division, and separation agreements; property division, separation, or support stipulations and orders relating to a divorce or separation; and insurance policies. If such documents are organized and in order where they can be found, you or someone who must handle your affairs upon your death or earlier incapacity will be able to easily access the information necessary to take required actions on your behalf or for the beneficiaries of your property. In Delaware, a safe deposit box can be used for this purpose and a fireproof safe in your home can also be used. You should tell the persons whom you have appointed to take care of your affairs upon your death or incapacity where such documents are kept. You may also consider authorizing the person who will handle your affairs to have access to your safe deposit box or a safe that you keep at your home.

f. A durable power of attorney appointing agents to take care of financial and other non-medical matters on your behalf should be kept in a fireproof place where the persons named as your agents can find it, if you become incapacitated. You may also consider giving a copy of such power to the agents you have named in such power. In some powers of attorney, agents are referred to as "attorneys in fact."

g. The original of an advance health-care directive and durable power of attorney for health-care decisions should be kept in a fireproof place where the persons named as your agents can find it, if you become incapacitated. A copy of an advance health-care directive and durable powers of attorney for health-care decisions should be given to your primary physician, and other physicians whom you see on a regular basis. An advance health-care directive is sometimes referred to as a "living will," an "advance directive for health-care," and similar names, if you signed such documents when you were in a state other than Delaware.

3. If you receive any kind of notice, court papers, or other legal document requiring you to take some action within a certain time limit, be sure you meet the deadline. Failure to do so can mean that you give up important rights. For example, by failing to appeal a Social Security decision before the deadline specified in a decision or notice that you receive, you usually will be legally bound by the decision, even if you believe the decision is wrong. In most legal matters, it is prudent to consult with an attorney to ensure that you do not forfeit your legal rights by failing to respond by a deadline. If you address an issue before the deadline, even if you cannot file an appeal by the deadline, you may be able to request and be granted an extension of time to appeal the decision giving you more time to evaluate your options.

4. If you receive a summons to appear in Court, or have a complaint in a lawsuit delivered to you or served on you, you should consult an attorney as soon as possible. If you ignore a summons to appear in Court, or do not respond to a complaint filed against you, you may lose the right to dispute the claim made against you and the Court may enter a judgment against you, whether or not you were responsible for what the lawsuit claims you did or did not do and could have defended the claim made against you.

If You Need an Attorney

If you think you need an attorney to handle a legal matter for you, you should first determine the type of legal service that you need. Attorneys practice in different areas of law. It should not be assumed that all attorneys will be qualified to handle your type of legal matter or that an attorney who has handled one type of legal matter competently and successfully will be qualified to represent you in a legal matter in another area of the law. Therefore, it is always advisable to evaluate an attorney's qualifications, credentials, and experience that are relevant to

your type of legal matter, just as you would evaluate the qualifications of a doctor you would use to treat a particular type of illness or medical condition and the qualifications of an applicant you would hire for a particular type of job.

Professional Qualifications

You should choose an attorney based upon, among other things, the attorney's education in, and particular experience with, your type of legal matter. A good way to begin your search for a qualified attorney is by talking to friends, relatives, business colleagues, clergy, and others about attorneys providing services for legal matters similar to your legal matter. You also have the right to ask an attorney for a résumé and/or a summary of his or her professional credentials and experience with your type of legal matter. The attorney's professional activities and participation in committees of state bar associations, the American Bar Association, and other legal professional groups in the areas of law related to your legal matter and articles and publications the attorney has authored related to your legal matter may indicate appropriate knowledge of and experience in the specific area of the law.

In addition, you should determine if the attorney maintains legal malpractice insurance. In Delaware attorneys are not required to carry malpractice insurance, which would compensate you for damages that might be caused if the attorney fails to handle your claim in a reasonable manner under all of the circumstances. An attorney cannot be expected to succeed in every lawsuit. However, an attorney could be considered to have committed malpractice, if the attorney fails to file a lawsuit before the time limit for filing the lawsuit (the statute of limitations) expires and that failure prevented you from obtaining damages or other benefits that you may have been able to obtain if your lawsuit had been timely filed (filed before the statute of limitations expired). If an attorney failed to represent you properly, and the attorney has no malpractice insurance, you could only obtain damages for the attorney's failure from the attorney's personal assets, which may or may not be sufficient to satisfy the damages awarded to you.

An attorney's credentials are also available on websites for the attorney or the attorney's law firm and through the Martindale-Hubbell Law Directory, a national legal registry which maintains attorney ratings, and which attorneys use to register their credentials, and information about their areas of practice. See www.martindale.com. Finally, to find an attorney, you may look in the business pages of your local phone book and contact lawyer referral programs such as the Lawyer Referral Service, a service of the Delaware State Bar Association, and Legal HelpLink.

Contact information for lawyer referral programs in Delaware is listed at the end of this section of the Handbook.

Note: If you have a personal injury case, a medical malpractice case, or a similar type of case which you believe entitles you to sue for damages and receive money for an injury to you or a family member, you will not be eligible for free legal services described later in this Handbook. However, attorneys who handle personal injury cases, medical malpractice cases, or similar types of cases are generally paid on a contingent fee basis, meaning attorney compensation is based on a percentage of any money you are eventually paid or awarded as damages. Such attorneys generally will meet with potential clients at no charge and will be compensated only if you are paid or awarded money as damages. Nevertheless, you should review the qualifications of such attorneys just as carefully as you would if you were paying such attorneys for legal services on an hourly or other non-contingent basis.

Initial Consultation

When you are satisfied with an attorney's qualifications, if your matter will involve work on an extended basis or is based on complex personal or financial matters, it may be advisable to schedule an initial consultation with the attorney before you retain the attorney, even if a fee is charged. If legal representation is limited to a specific service, the attorney should be able to give you an estimate of the cost of services for your matter during an initial consultation or before you agree to retain the attorney. In other cases, it may not be possible to give an estimate of legal costs because there may be many factors that may not be known at the time of your initial discussions.

Contact Information: Paid Legal Services

Lawyer Referral Service (LRS), a Service of the Delaware State Bar Association

New Castle County	Kent or Sussex County
(302) 478-8680	(888) 225-0582

The LRS refers individuals seeking legal services to attorneys who provide a one-half hour consultation for a fee of \$35.00. If the attorney takes your case, the lawyer and you will make arrangements for the payment of the additional fees and costs. Referrals by the LRS are obtained

by calling the LRS and leaving a message with all of the information about your legal need. The LRS will contact an attorney who practices in the area of law that matches your legal need based on your message. The attorney contacted by the LRS will call you to schedule the consultation.

Free Legal Services

To be considered for free legal services, you may contact Legal HelpLink, a centralized intake system that enables an individual seeking free legal services to make one phone call to determine if he or she has a case that is handled by one of four legal service organizations: Delaware Volunteer Legal Services, Community Legal Aid Society, Inc. (CLASI), Legal Services Corporation of Delaware, and Widener University School of Law. Except for the Elder Law Program of CLASI, each of the free legal services programs connected by HelpLink requires that your income and assets not exceed a certain level tied to poverty guidelines set by the federal government. As explained earlier in this section of the Handbook, if you have a personal injury case, a medical malpractice case, or any case which you believe entitles you to sue for damages and receive money for an injury to you or a family member, you will not be eligible for any of the free legal services described below.

The American Civil Liberties Union of Delaware (ACLU) may also be contacted for free legal assistance for certain types of cases.

The following section includes contact information and descriptions of the types of matters handled by the four organizations providing free legal services that are connected by HelpLink and by the ACLU.

Legal HelpLink, a Referral Service for Individuals Seeking Free Legal Services

New Castle County	Kent County and Sussex County
(302) 478-8850	(888) 225-0582

Community Legal Aid Society (CLASI) and Elder Law Program (ELP)

www.declasi.org

New Castle County	Kent County	Sussex County
(302) 575-0666/0660 (800) 292-7980	(302) 674-3684 (800) 537-8383	(302) 856-4112 (800) 462-7070

CLASI is a private, non-profit law firm that provides representation in non-criminal cases, also known as civil cases. CLASI represents individuals who have disabilities and who have income and assets under certain amounts tied to federal poverty guidelines. In addition, the Elder Law Program (the ELP) of CLASI provides legal services to individuals age 60 and over. The ELP provides assistance with consumer problems, such as debt collection and home repair issues, housing problems, such as eviction, and benefits issues related to Medicaid and Social Security. The ELP also prepares powers of attorney and advance health-care directives, formerly known as living wills, for individuals age 60 or over. The ELP does not prepare wills. There are no financial eligibility requirements for the ELP. However, the ELP does give priority to individuals who are socially and economically needy.

Delaware Volunteer Legal Services (DVLS)

www.dvls.org

New Castle County	Kent or Sussex County
(302) 478-8850	(888) 225-0582

DVLS offers free services provided by volunteer attorneys for individuals who have non-criminal cases, also known as civil cases, in any issue an older Delawarean may have, such as guardianships; the preparation of wills, powers of attorney, and advance health-care directives;

housing issues when there is a legal excuse for not paying rent; and protection from abuse and other family law matters for victims of domestic violence.

Legal Services Corporation of Delaware, Inc. (LSCD)

www.lscd.com

New Castle County	Dover Office
(302) 575-0408	(302) 734-8820

LSCD provides free legal services in certain types of non-criminal cases, also known as civil cases, such as bankruptcy cases, private landlord-tenant cases, debt collection, repossession, deceptive trade practices, fraud, breach of contract, and unemployment compensation cases.

Widener University School of Law

www.law.widener.edu

You may be eligible for legal services through one of the clinics at the Delaware campus of Widener University School of Law. The Delaware Civil Law Clinic represents victims of domestic violence and custody and visitation matters in conjunction with DVLS. There may be other clinics at Widener University School of Law which will provide free legal services to you based on your type of legal issue and your financial situation.

American Civil Liberties Union (ACLU) of Delaware

www.aclu-de.org

(302) 654-5326

The ACLU is not connected to HelpLink and must be contacted directly. The ACLU is a non-profit, non-partisan organization devoted exclusively to the defense and promotion of individual rights and liberties guaranteed to every person in the United States by the Constitution and laws of the United States. The ACLU represents all people, including older people, on all ACLU issues, including, among other things, prison conditions, free speech, religious freedom, immigrants' rights, racial justice, discrimination, and privacy issues.

DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES (DSAAPD)

DSSAPD has created the Delaware Aging and Disability Resource Center (ADRC) as the State's one-stop access point designed to help older Delawareans and adults with physical disabilities and their caregivers find the resources they need efficiently. By contacting the ADRC, you can get reliable information and person-centered counseling on a range of available long-term services and support options. The ADRC is also where qualifying low-income older and disabled adults and their caregivers can go to get connected to public programs and benefits within the State.

The many services available through the ADRC to the aging and disabled either through the DSAAPD or through private service providers are also listed in DSAAPD's *"Guide to Services for Older Delawareans and Persons with Disabilities."* This Guide is available on the internet at: www.dhss.delaware.gov/dsaapd or www.delawareadrc.com. Again, some programs may be available at lower or no cost to qualifying low-income individuals.

The Aging and Disability Resource Center (ADRC) can be contacted

By phone: 1-800-223-9074 (toll free)

OR

By email: DelawareADRC@state.de.us

INCOME MAINTENANCE PROGRAMS

Social Security

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

Retirement

Retirement benefits are available to those who have worked a sufficient amount of time under the Social Security system. A worker is “fully insured” and is thus eligible to receive retirement benefits if he or she has been credited with at least forty quarters of work, during which time contributions were made to the Social Security system. A “quarter” of credit is not based on calendar quarters, however. It is based on dollars earned. In 1978 one quarter was equal to \$250. Therefore, someone who earned \$1,000 of wages in 1978, and had Social Security taxes withheld from those wages, would have been credited with four quarters of Social Security coverage. In 2014, it takes \$1,200 of Social Security covered wages to earn one quarter.

For those people fully insured for Social Security retirement, benefits are available—at a permanently reduced rate—beginning at age 62. Traditionally, full retirement benefits have been available for Social Security retirees who waited until age 65 to begin their benefits. However, the “full retirement age” has been increased, based on the retiree’s year of birth, as shown by the table below:

Birth Date	Full Retirement Age
Before 1/2/1938	65 years
1/2/1938 – 1/1/1939	65 years and 2 months
1/2/1939 – 1/1/1940	65 years and 4 months
1/2/1940 – 1/1/1941	65 years and 6 months
1/2/1941 – 1/1/1942	65 years and 8 months
1/2/1942 – 1/1/1943	65 years and 10 months
1/2/1943 – 1/1/1955	66 years
1/2/1955 – 1/1/1956	66 years and 2 months
1/2/1956 – 1/1/1957	66 years and 4 months
1/2/1957 – 1/1/1958	66 years and 6 months
1/2/1958 – 1/1/1959	66 years and 8 months
1/2/1959 – 1/1/1960	66 years and 10 months
1/2/1960 and later	67 years

For workers who take early Social Security benefits (before full retirement age), but continue to work, there may be a penalty. Every two dollars they earn above a certain amount (\$15,480 in 2014) will cause their Social Security benefit to be reduced by one dollar. However, during the twelve months just prior to reaching full retirement age, this threshold amount is higher (\$41,400 in 2014) and the penalty is less (one dollar of Social Security will be forfeited for every three dollars earned above this threshold). After full retirement age, anyone may earn wages in any amount without any forfeiture of Social Security retirement benefits.

However, no matter when a person collects Social Security benefits, a portion of those benefits may be subject to income taxation whenever the Social Security recipient's other income (from wages and other sources) exceeds certain amounts: \$25,000 for single Social Security recipients; \$32,000 for married Social Security recipients.

Disability

A worker who becomes disabled prior to full retirement age may be eligible for Social Security Disability Income benefits. In order to qualify, the disability must be severe enough to prevent the worker from working in any form of “substantial gainful employment” for at least 12 months.

The worker must also have attained Social Security disability insurance status. Although there are some exceptions, in order to be insured for receipt of disability benefits, the worker must have at least forty quarters of Social Security work coverage, and at least twenty of those quarters must have occurred during the ten years just prior to becoming disabled.

Coverage of Family Members

The spouse, children, divorced or widowed spouse, disabled or surviving children, and (in some cases) surviving parents of a worker or deceased worker may also be eligible for Social Security. The rules vary depending on which family member is involved and whether the worker has or had attained retirement or disability status.

For example, the spouse of a retired worker is entitled to a benefit of half of the worker’s full retirement benefit if the spouse waits until his or her full retirement age to collect it. However, if the spouse has his or her own work record that would entitle him or her to a greater benefit, the spouse would receive that higher benefit instead. When the worker dies, if the spouse survives, then the spouse’s benefit is stepped up to the full amount of the worker’s benefit, unless (of course) the spouse is entitled to an even higher benefit based on his or her own work record.

An un-remarried divorced spouse of a worker may also be entitled to Social Security benefits—based on the work record of the worker—if the marriage lasted at least ten years. The rules that pertain to when and how much the divorced spouse may collect, as well as the rules that pertain to the eligibility of other family members, are available from the Social Security Administration.

Contacting the Social Security Administration

To apply for Social Security benefits, or to contact the Social Security Administration for any other reason, you may call the agency's national toll-free phone number: 800-772-1213, or visit a local office. There is a local office at Suite 200, 920 West Basin Road, New Castle, Delaware 19720. The phone number is 866-667-7221 (TTY 800-325-0778). You may also apply online for Social Security retirement benefits, and visit the Social Security Administration for information, at www.socialsecurity.gov.

Railroad Retirement Benefits

The Railroad Retirement Board pays benefits to former railroad employees and their families that are similar to the retirement and disability benefits payable under the Social Security system. The amount of Railroad Retirement benefits is based on the railroad worker's contributions from covered wages. To be eligible, the worker must have had at least 10 years of railway employment service. If the worker does not meet the 10 year requirement, his or her credited years of service are transferred to the Social Security Administration and can be counted toward Social Security benefits. For workers who have 10 or more years of railway service it is also possible to collect both Railroad Retirement and Social Security benefits. When that is the case, the entire benefit is payable by the Railroad Retirement Board.

You can contact the Railroad Retirement Board via a toll-free helpline at 877-772-5772. Applications and other information are obtained from the agency's field offices. The nearest field offices to Delaware are located in Philadelphia (serves New Castle County) and Baltimore (serves Kent and Sussex Counties). You can also visit the agency's web site at www.rrb.gov.

Supplemental Security Income

Supplemental Security Income (SSI) is a program based on need. It is available to those who are over 65, blind or disabled and who have little income and

few resources. Effective January 1, 2014 the maximum SSI payment is \$721/month for individuals and \$1,082/month for couples. Any individual or couple with countable income above these amounts would not be eligible for SSI.

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

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

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

Once a person living in Delaware is granted SSI benefits he/she is also eligible for Medicaid. Anyone on SSI is also required to report any changes in income, assets or living arrangements to the Social Security Administration.

Food Stamp Program (SNAP)

The food stamp program is provided to help low income people buy food. It is free of charge to households based upon income and resources qualifications. A household may be one person or a group of people who buy food and prepare meals together.

In 2008, the official name of the program changed to Supplemental Nutrition Assistance Program (SNAP). In 2009, the program switched from using paper stamps or coupons to an electronic benefit transfer (EBT) card that is used like an ATM card and accepted at most grocery stores. In Delaware this is called the Delaware Food First card.

Eligibility for this service is based on factors such as who lives and eats together as well as relationships in the home and income. All children under the age of 22 years old who live with their parents must apply with their parents. You must be a U.S. Citizen or an eligible alien to qualify. Individuals who receive Temporary Aid to Needy Families, General Assistance or Supplemental Security Income (SSI) do not need to meet an income test in order to receive Food Stamps. The maximum monthly income limit for most other people is set at 130% of the Federal Poverty Level (\$1,264 for an individual and \$1,704 for a couple in 2014). There is no resource test in Delaware.

Effective November 1, 2013, SNAP benefits decreased due to the expiration of Federal funding that had been put in place, in 2009, as part of economic recovery legislation. This cut is likely to remain in place for the remainder of the Federal government's fiscal year (September 30, 2014). The following chart illustrates the sizes of these cuts for each household size.

Maximum Food Stamp Allotments after ARRA sunset

November 1, 2013 – September 30, 2014

Household Size	Old Amount 10/2013	New Amount 11/2013
1	\$200	\$189
2	\$367	\$347
3	\$526	\$497
4	\$668	\$632
5	\$793	\$750
6	\$952	\$900
7	\$1,052	\$995
8	\$1,202	\$1,137
Each Additional Member	\$150	\$142

At the time of this writing (early 2014) potential additional cuts in SNAP benefits were being debated in Congress, so that further decreases in the above dollar allotments may occur.

In Delaware, SNAP benefits are made available during a 16-day period each month, based on the first letter of the recipient's last name. So, at the beginning of 2014, recipients whose last names began with "A" would have their monthly benefits available on the 2nd of the month; recipients whose last names began with "X," "Y," and "Z" could access their benefits on the 17th. Beginning in March 2014, however, this 16-day cycle will change to a 22-day cycle.

You can apply for SNAP benefits by completing an application form at a local benefits office. For locations and other information call 800-372-2022 or 302-255-9500 or 211. Delawareans may also apply online at <https://assist.dhss.delaware.gov>.

Veterans' Pensions

The Department of Veterans Affairs has a pension program that pays monthly income to veterans and widow(er)s of veterans who are either totally and permanently disabled, or 65 years of age and older, and who demonstrate financial hardship. Income from a Veterans pension is often used to help the veteran or the widow(er) pay for long-term care or other medical expenses.

In order to qualify for this pension program, the veteran must have been in active duty in the United States armed forces for at least 90 days, at least one of those days must have been during an official period of wartime, and the veteran must have obtained a form of discharge that was not dishonorable. In order to show the requisite financial hardship the veteran or widow(er) must have income and resources below certain limits.

Generally, countable resources below \$80,000 will qualify. The primary residence, one automobile and certain other forms of property will not count toward the \$80,000 limit. The threshold for income eligibility is on a sliding scale, based upon the level of disability that the veteran or widow(er) has and on the number of

dependents the veteran or widow(er) has. The income threshold is also calculated by subtracting the person's medical and other allowable deductions from income.

For example, a veteran who is so disabled that he or she needs the highest level of care (a so-called "aid and attendance" rating), and has one dependent (a spouse, for example) could qualify for a Veterans pension if his or her countable assets were below \$80,000 and if the income of the veteran and spouse (after medical and other allowable deductions) were below \$24,652 per year (\$2,054 per month) in 2013. If the allowable deductions completely offset income—so that countable income were 0—then this veteran could qualify for the highest pension amount available in 2013: \$2,054 per month.

It is important to also understand that the veteran's or the widow(er)'s disability need not stem from his or her service in the armed forces. It does not have to be a service-connected disability.

The Veterans Administration does have other programs that pay income, or provide health care, to veterans and their families based on injuries that the veteran suffered while in service, or are otherwise connected to their service. These service-connected disability programs generally do not require a showing of financial hardship.

For information and assistance in filing an application for Veterans' benefits, you may call 800-827-1000 or visit the Department of Veterans Affairs website at www.va.gov. Also information on Delaware Veterans Benefits is available at www.military.com/benefits/veteran-benefits/delaware-state-veterans-benefits. Tricare, the veterans' health-care benefit, is discussed under the Supplemental Insurance Section of the Medicare discussion below.

HEALTH CARE

MEDICARE (Revised December 15, 2015)

Medicare is a federal health insurance program, administered by the Social Security Administration. It was designed to help meet the medical expenses of people who are at least 65 year of age or disabled. You can find a comprehensive discussion of Medicare in the federal

government's publication, "Medicare and You". The 2016 version of the publication is available on the internet at: <https://www.medicare.gov/medicare-and-you/medicare-and-you.html>. The Delaware Department of Insurance's program, *ELDERinfo*, offers counseling about Medicare issues. For information, visit the website at <http://delawareinsurance.gov/dmab> or call 800-336-9500.

Eligibility

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

Enrollment

Now that the age for full Social Security benefits is older than 65, enrollment in Medicare is automatic only for those who have elected to take their Social Security benefits early. To enroll, contact your local Social Security office or go on-line at www.ssa.gov. You can sign up for Medicare benefits as soon as three months before your 65th birthday and should sign up no later than three months after the month of that birthday. Enrollment in Part B can be delayed if you or your spouse are employed by an employer that provides health insurance. However, you must enroll in Part B within eight months after you leave employment in order to avoid having a penalty imposed.

Coverage in Original Medicare

Part A:

Medically necessary hospital care;

Full coverage of twenty days of skilled care in a nursing home and 80 days of partial coverage if you have had a qualifying three day inpatient stay in a hospital prior to admission to the skilled nursing care facility; and

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

The Part A premium is usually covered by the payments that you or your spouse made while employed. The Part A deductible for hospitalization varies from year to year but in 2016, the deductible will be \$1,288 per period of illness. A subsequent hospitalization more than 60 days after discharge will result in a new period of illness and a new deductible. Co-payments are required for hospitalizations exceeding 60 days.

Part B:

Part B covers doctor's services, out-patient services, and medical supplies. It pays 80% of the "reasonable charges" for covered services after a deductible has been satisfied. Under the Patient Protection and Affordable Care Act of 2010 (2010 Health Act), effective January 1, 2011, preventive care is also to be covered under Part B without co-pays or deductibles.

You will usually have to pay a premium for Part B. Medicare will send you a bill until you start receiving Social Security benefits. After that the premium will be withheld from your benefit payment.

The Medicare Part B premium and deductible vary from year to year. The Medicare Part B premium and deductible vary from year to year. In 2016, the premium continued at \$104.90 per month for individuals who were receiving Social Security benefits since there was once again no increase in social security benefits. For all others, the Part B premium for 2016 will be \$121.80 per month. The part B deductible will be \$166 per year

The premium may be increased over the minimum, if your income is above certain limits. However, you may be able to appeal an increased premium.

Whether a claim is under Part A or Part B, you should always receive a written notice of from the Center for Medicare and Medicaid Services (CMS) telling you what Medicare has covered and what you may be responsible for. Medicare generally forwards the information on to your supplemental insurance carrier (discussed below). What is not covered by Medicare or your supplemental insurance is your responsibility. If Medicare denies your claim you will have appeal rights that will be discussed in the Notice.

Supplemental Insurance

If you have original Medicare Parts A and B, you may wish to purchase a supplemental insurance policy, a “Medigap” plan. The coverages of the different plans are defined by the federal government. As of June 1, 2010, plans formerly designated E, H, I, and J are no longer be offered to new enrollees because they became unnecessary. New plans K, L, M and N were added. These newer plans have higher deductibles and/or co-pays and therefore premiums generally are lower. Most Medigap policies cover the deductibles and co-pays not covered by Medicare Parts A and B, but the other benefits offered and premiums charged will vary from type of plan to type of plan. You must determine what benefits are important to you. Every company must offer Plan A but may choose which other plans it offers. For a list of the companies offering Medigap plans in Delaware go to the Delaware Department of Insurance website:

http://www.delawareinsurance.gov/DMAB/docs/MedicareSup_Guide.pdf?updated

If you sign up for a Medigap policy within six months of the date that you first become eligible for Part B or within six months after you or your spouse is no longer employed and covered by employee insurance, the insurance company must accept you and cannot impose a waiting period because of a pre-existing condition.

Military retirees and eligible family members are eligible for the free program, Tricare for Life, which provides benefits that are quite similar to a Medigap plan. However, they might be required to enroll in Part B Medicare to maintain their VA health care. Moreover, Tricare does not cover emergency care in other countries. For further information, you may go to the Tricare website: www.military.com/benefits/tricare.

Medicare Beneficiary Programs

Certain low income Social Security recipients can have their Medicare premiums, co-payments and deductibles paid by the State. Delaware has no asset limits for these programs.

Federal law requires that state Medicaid agencies pay the Part B Medicare premium, deductibles, and the 20% co-insurance expenses for financially-qualified individuals known as Qualified Medicare Beneficiaries (QMBs). Thus Medicaid becomes the supplemental insurance for QMB's. If you qualify, Medicaid also pays for the Part A Medicare premium, in the unlikely case that it is not free for you. You should note that Medicare beneficiary programs do not provide any foreign coverage (including trips to Canada and Mexico) as there might be with a Medigap plan described above.

If your gross monthly income does not exceed 120% of the FPL, you are a Specified Low Income Medicare Beneficiary (SLMB), and Medicaid pays only your monthly Part B premium. Finally, you might qualify for the Qualified Individual Program (QI) if your gross income does not exceed 135% of the FPL. Although Medicaid also pays only your monthly Part B premium, the QI program differs from the SLMB program because it depends on reauthorization by Congress. Note that SLMB and QI beneficiaries are still responsible for the 20% co-pays and deductibles. Such individuals might consider signing up for a Medigap plan or a Medicare Health Plan discussed below.

To apply for a Medicare beneficiary program you must first apply for "Extra Help" as discussed below even though your asset level may disqualify you from help under that program. Delaware does not count assets for the Medicare Beneficiary Program nor for the Prescription Assistance Program discussed below, but you are required to enroll in Extra Help if you qualify.

More information on the income thresholds and benefits is available on the Delaware State Website at: <http://www.dhss.delaware.gov/dhss/dmma/qmb.html>

Medicare Health (sometimes called "Advantage") Plans (Part C)

Medicare contracts with private insurance companies that sell what are sometimes called Medicare Health Plans or Medicare Advantage plans. Medicare Advantage Plans offer the benefits that otherwise would be offered by Medicare Parts A and B and a Medicare supplemental insurance plan discussed above and may include a prescription drug plan (Part D discussed

below) – all in one plan. Although you must have enrolled in both Part A and Part B to enroll in a Medicare Advantage plan, following enrollment, you will no longer be enrolled in original Medicare. Medicare Advantage Plans may include Health Maintenance Organizations (HMOs) (you must use affiliated doctors), Preferred Provider Organizations (PPOs) and private fee for service plans. They are required to provide at least as many services as original Medicare. All the Medicare Advantage Plans are listed on the Medicare (www.medicare.gov) and the Delaware Insurance Commissioner (www.delawareinsurance.gov) websites. The plans vary in their premiums and in how they provide coverage. In most cases you will pay a premium each month as well as co-pays when you receive services. You may be limited in your choice of physicians and other providers and if you travel outside the state or outside the country, you may want to confirm coverage or purchase travel health insurance. If you sign up for a Medicare Advantage plan that offers prescription drug coverage, you must accept that coverage. The 2010 Health Act made changes in the way in which Medicare Advantage companies are reimbursed but did not change the benefits offered.

Part D Prescription Drug Benefit

Part D Medicare is a voluntary prescription drug benefit provided by private insurance companies. You are eligible for Part D if you are enrolled in either Part A or Part B Medicare. You are subject to a penalty if you delay enrollment unless you have other prescription drug coverage that is at least as good as Part D, the so-called “creditable coverage.” You must retain your “creditable coverage” letter to verify your coverage. Since the penalty increases with every month you delay your enrollment and, after you enroll, is added to your monthly Part D premium for as long as you are a participant, the penalty can be extremely costly. Most people can change plans only once a year, during the period between October 15 and December 7.

Effective January 1, 2011, Medicare beneficiaries with higher incomes may be subject to a monthly adjustment increasing their prescription drug plan premiums similar to the increase in Part B premiums discussed above..

In the standard prescription drug plan you pay a monthly premium and you may pay an annual deductible, In addition, you may pay a portion of the cost of the drugs until the total cost of the drugs, what you pay and what the insurance company has paid, total \$3,310 in 2016. Then there is a coverage gap, sometimes called the “doughnut hole,” until you personally have spent a total of \$4,850 (in 2016). Your total expenditure includes your deductibles and co-pays prior to

reaching the donut hole. After your total out of pocket expenditure reaches that \$4,750 level, you will need to pay only the lesser of 5% of the cost of your drugs or \$2.95 for generic drugs or \$7.40 for other drugs. In January of the following year, the process starts again. As a result of the 2010 Health Act, the costs of drugs during the donut hole are discounted to a greater extent each year until the "doughnut hole" is eliminated in 2020. For more information, visit Medicare.gov The following is information for 2016: <http://www.q1medicare.com/PartD-The-2016-Medicare-Part-D-Outlook.php>

There are many other prescription drug plans offered in Delaware. Some have no deductibles or lower co-pays. A few may offer some coverage of generics while you are in the "doughnut hole". How drugs are priced differs from company to company. If you go to the Medicare web site (www.medicare.gov) you will be able to enter your current medications, dosages and favored pharmacy in order to locate plans that cover your drugs at the least annual cost. You can also obtain counseling by contacting the Delaware Medicare Assistance Bureau at the Delaware Insurance Department, 800-336-9500. Because enrollment in a prescription drug plan may cause you to lose employee benefits, it is vital that you contact your former employer's human resources unit if you are covered by retiree health insurance before you enroll in a Part D plan.

Extra Help With Prescription Costs -- Federal Low Income Subsidy – "Extra Help"

You may be entitled to extra help in paying for prescription drugs. People who are entitled to both Medicare and Medicaid are automatically eligible for extra help and need not file an application. Such people must belong to a prescription drug plan but they will not be responsible for premiums and deductibles and the co-pays will be reduced. Anyone who does not qualify automatically but has assets (not including their residence, vehicle, burial plots, and insurance policy) below the limits will qualify for benefits under the Low Income Subsidy (LIS) program if their income is under 145% of the Federal Poverty Level and may qualify for benefits on a sliding scale if their income exceeds these amounts by a slight amount. The following is a chart of the 2013 Resource Limits for Individuals:

The local Social Security Administration office can assist with applications for the LIS program or you may apply online through the Social Security Administration at: <https://secure.ssa.gov/i1020/start> The government will send you a letter that requires you to verify your eligibility for the LIS program each year. You MUST answer that letter to continue

qualifying for extra help. If you qualify for extra help, you can change your prescription drug plan as often as once a month.

Delaware Prescription Assistance Program

Under the Delaware Prescription Assistance Program, elderly or disabled individuals, with incomes under 200% of the Federal Poverty Guidelines or whose drug costs exceed 40% of their income, can qualify for up to \$3,000 per year per person for medically necessary prescription drugs. Clients pay 25% of the cost of the prescription or a minimum of \$5. You must be enrolled in the Social Security Extra Help Program if you are eligible. To apply you mail a completed application and proof of income to the address on the form. The form may be obtained by calling (800) 996-9969 or calling 211 and asking for the Delaware Prescription Assistance Program or on-line at: www.dhss.delaware.gov/dhss/dmma/dpap.html

MEDICAID

Medicaid is a combined state and federal program which primarily covers medical expenses for low income beneficiaries. This Handbook will discuss only those benefits provided under the long-term care program. The long-term care program provides benefits for individuals who receive care in nursing homes, or under the home and community or assisted living waiver programs.

There is a medical requirement for eligibility, which is that the applicant must have sufficient deficiencies in activities of daily living to require 24 hour care. Under the home and community waiver, some of that care can be provided by family and loved ones. The applicant must also meet asset and income limitations.

Asset Limitation:

A single individual cannot have more than \$2,000 in countable assets. Assets that do not count include: personal belongings, a car, an irrevocable funeral arrangement, term life insurance, other life insurance with a face value of no more than \$1,500, and a home (if the applicant resides there or intends to return).

If the applicant is married, the spouse remaining in the community is permitted to retain at least \$25,000 in countable assets and may retain up to 50% of the couple's total countable assets

up to a maximum of \$117,240 in 2014. The community spouse's solely-held retirement funds are unaffected. The community spouse can also have an irrevocable funeral arrangement and keep the home as a residence.

An experienced Elder Law attorney can counsel families on preserving assets and qualifying for Medicaid under appropriate circumstances. Caution should be used in consulting with agencies or purported advisors who may not be qualified to give advice about this complicated area.

Income Limitation:

Delaware is what is called an "income cap state" and limits the applicant's available income to \$1,833 in 2014 (250% of the Supplemental Security Income (SSI) Level plus \$20). However, the limitation can be overcome by depositing the income into an irrevocable income trust commonly known as a "Miller Trust" and using the funds in the trust to pay the nursing home or other health-care provider. Miller Trusts are generally prepared by experienced Elder Law attorneys. The community spouse is not required to contribute any income toward the care of the Medicaid beneficiary and may have his or her income supplemented by a share of the beneficiary's income or retain additional assets to provide at least a living standard called the "minimum monthly maintenance needs allowance." From July 1, 2013 to June 30, 2014, this amount is \$1,939. If certain basic household expenses are more than 30% of this amount, the community spouse may be entitled to keep extra income (called the Excess Shelter Amount) up to \$2,931 (the Maximum Monthly Maintenance Needs Allowance) of the married couple's total income. If even more income is needed, the community spouse can request a fair hearing to attempt to prove the need for a higher amount.

Home Based Waiver Services

The Delaware Home & Community Based Waiver and Assisted Living Waiver Services are intended to allow the elderly and disabled to remain in their homes or in assisted living if they can do so safely with a package of services. However, the cost of such services cannot exceed the cost of a nursing home. Effective in April, 2012, all applications are handled by the Department of Medicaid & Medical Assistance (DMMA). More information is available at:

www.dhss.delaware.gov/dhss/dmma/homeandc.html or you may call 866-940-8963.

NURSING HOMES AND OTHER RESIDENTIAL FACILITIES

Nursing homes, assisted living homes, rest homes, and adult foster care homes are licensed in Delaware by the Division of Long-Term Care Residents Protection. The website of the division is: www.dhss.delaware.gov/dhss/dltcrp . Nursing homes which participate in Medicaid or Medicare must meet additional requirements in order to be certified under federal law to participate in those programs.

For a full list of licensed nursing homes in Delaware, visit:
<http://www.dhss.delaware.gov/dltcrp/licensednursinghomes.html>

For a full list of licensed assisted living facilities in Delaware, visit:
www.dhss.delaware.gov/dhss/dltcrp/assistedlivingfacilities.html

Lists of group, neighborhood and rest homes are also available from the Division of Long-Term Care Resident Protection and anyone with a complaint concerning a long term care facility should call the Division of Long-Term Care Resident Protection at (302) 577-6661 in New Castle County or (302) 424-8600 in Kent and Sussex Counties.

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

Medicare may pay for part of your stay in a nursing home if you have been hospitalized for at least three days and you require daily skilled care. If you qualify for Medicare coverage, it may pay all of the first 20 days and some of the next 80 days as long as you continue to need daily skilled care. A nursing home is prohibited from requiring a deposit if your care may be covered by Medicare. Medicare does not pay for long term care.

Medicaid covers all expenses related to the resident's care. Medicaid is not insurance and is a welfare program of last resort. It does not cover certain personal needs (e.g. haircuts), but each Medicaid recipient receives a monthly needs allowance (2014: \$44.00), which must be set

aside for that individual. If you are a veteran or a surviving spouse of a veteran, you may also be eligible for a VA benefit allowance (2014: \$90.00 in a long-term care facility). If you are receiving Medicaid benefits, your income pays part of the cost of care, and Medicaid pays the remainder.

ADVANCE HEALTH-CARE DIRECTIVE (LIVING WILL) (Revised January 12, 2016)

Delaware authorizes an advance health-care directive ("the Directive") which is a legal document that lets you name another individual or individuals as your "agent(s)" to make health-care decisions for you if you become incapable of making and communicating your own decisions. It also allows you to communicate your wishes - ahead of time - regarding your care near the end of your life. If desired, the Directive has provisions for you to make choices about being an organ donor.

Your agent will not have the authority to make any health-care decisions for you as long as you are capable and can communicate for yourself. You always have the right to give instructions about your own health care, if you are able. Your agent's authority and the provisions of the Directive become effective only upon a determination that you lack capacity, and when the Directive is to be applied to the providing, withholding or withdrawal of a life-sustaining procedure, the Directive shall become effective only upon a determination that you lack capacity and have a "qualifying condition".

"Qualifying condition" means you have 1 or more of the following conditions, certified in writing in your medical record by the attending physician and by at least one other physician who, when the condition in question is "permanently unconscious" shall be a board-certified neurologist and/or neurosurgeon:

(1) "Permanently unconscious" or "permanent unconsciousness" means a medical condition that has existed for at least 4 weeks and that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

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

A form of Directive was developed by the Elder Law Section of the Delaware Bar Association in June of 2012. The Section's Form of Directive can be obtained on the internet at www.legalhandbookforolderdelawareans/ahcd.pdf. Unfortunately, the Section's form of Directive is not available in Spanish translation

. The Section Form of Directive has three parts. Part 1 is a power of attorney for health care. You can name one or more persons as your agent(s) for health-care decisions and several alternates, if the primary person(s) you designate is unable to serve or is not available. This part allows the agent to obtain medical information about you under the Health Insurance Portability and Accountability Act, generally referred to as HIPAA. Part 2 provides you with the ability to give specific instructions regarding whether or not you wish to receive life-sustaining medical measures if you are ever declared "terminally ill" or "permanently unconscious". Before deciding on your specific instructions, you may want to consult with a doctor for guidance. Part 3 lets you express an intention to donate your body, organs and/or tissues following your death, if you so choose.

Another form of Directive can be obtained from the Division for Services for Aging and Adults with Physical Disabilities by calling 1-800-223-9074 or writing to the Division at 1901 North DuPont Highway, New Castle, Delaware 19720 or downloading a printable version from the Division's website at: www.dhss.delaware.gov/dhss/dsaapd/files/advancedirective.pdf. The "Division of Aging Directive" is valid, but it is not as flexible in the naming of agents nor in the extent of listing of options under instructions for end-of-life decisions as the Section Form of Directive.

Every form of a Directive must be signed by the person making the Directive, the "declarant", in the presence of two qualified witnesses, who also sign the Directive. To be qualified the witnesses:

1. Cannot be related to the declarant by blood, marriage, or adoption;

2. Cannot be entitled to any portion of the estate of the declarant under any will of the declarant or codicil thereto then existing nor, at the time of the executing of the advance health-care Directive, be so entitled by operation of law then existing;

3. Cannot have, at the time of the execution of the advance health-care Directive, a present or inchoate claim against any portion of the estate of the declarant;

4. Cannot have a direct financial responsibility for the declarant's medical care;

5. Cannot have a controlling interest in or is an operator or an employee of a health-care institution in which the declarant is a patient or resident; or

6. Cannot be under eighteen years of age.

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

A Directive cannot be given effect unless someone knows it exists. If you make a Directive, tell about its location to, and/or provide copies to, those people who would be involved (e.g., family members and doctors). Your wishes cannot be followed unless your health-care providers know about them. If you executed a living will before July 12, 1982, it probably does not comply with the current Delaware law and you should execute a new Directive. If you executed a living will before June 26, 1996, it may be limited to a terminal condition and may not direct what you want in the event you are permanently unconscious as allowed under the current Delaware statute. You may wish to execute a new Directive. You should have an executed Directive before you enter a hospital or long term care facility, although the hospital or long term care facility may not require you have a Directive in order to be considered for admission.

If you find the language of the Section Form of Directive or the Division of Aging Directive too limited, you may execute a separate Medical Power of Attorney with provisions particular to your wishes. If you do want something more than what those Directives provide, then consultation with your doctor about procedures and consultation with an attorney about the drafting of the Medical Power of Attorney is recommended.

If You Have Not Executed An Advance Health-Care Directive If an adult patient does not have a directive, medical power of attorney, or court-approved guardian, or if the directive does not address the specific issue, a surrogate may make a health-care decision to treat an adult patient if the patient has been determined by the attending physician to lack capacity. This determination of a lack of capacity shall be confirmed in writing in the patient's medical record by the attending physician. The surrogate may also order the withdrawal of life sustaining treatment if the patient has a requisite "qualifying condition" discussed above. A surrogate is selected in the following order of preference:

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

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

DELAWARE MEDICAL ORDER FOR LIFE SUSTAINING TREATMENT (DMOST)(Added January 12, 2016)

Beginning on April 1, 2016, DMOST, a new form of medical order, is available for patients whose health-care practitioners would not be surprised if the patient died in the next year. The form is voluntary and cannot be required for admission to a health-care facility. DMOST is a single document that will function as an actionable medical order and transition with a patient through all health-care settings. To create a DMOST, the patient (and if the patient desires, anyone the patient wishes to be present) will meet with a health-care practitioner to discuss the patient's wishes for treatment and those wishes will be then documented on the DMOST form which is then signed by the health-care practitioner and the patient. The DMOST form can be completed by any licensed physician or by an advance practice registered nurse or physician's assistant if those providers

have taken the training required by the statute and regulations. If the patient lacks decisional capacity, a legally authorized agent or guardian may meet with the health-care practitioner to complete the DMOST form. The law requires any health-care provider to honor the DMOST form, if the patient is unable to communicate. The DMOST is not intended to replace the Directive but rather to supplement it, except that there is a section of the DMOST, which when signed by the patient, will limit the ability of an agent for health-care to alter the DMOST.

GUARDIANSHIPS AND OTHER PROTECTIVE SERVICES

Representative Payee for Social Security Payments

Social Security and Supplemental Security Income ("SSI") recipients can have their benefits deposited directly into their bank accounts by filling out a form at their bank.

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

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

Procedural standards for the appointment process do not require advance notice of the names of the persons under consideration to be payee, of the right to counsel, or of the right to a face to face interview with an SSA representative, nor do they require that the beneficiary be notified that an appointment is being considered. After the determination, SSA notifies the beneficiary and gives him 10 days from receipt of the notice to appeal the decision to provide a

representative payee or to appeal the designation of the particular person as representative payee. 20 CFR §404.2030. Note that prior notice that the process has been initiated is not required.

If you do not want a payee appointed, you should take steps to protect your benefits at the earliest hint of a possible payee appointment by contacting SSA to supply evidence of your capacity.

The representative payee must use the benefit payments to promote the best interest of the beneficiary, which ordinarily include current maintenance and institutional costs. Prior debts of the beneficiary need not be paid by the payee unless the current and reasonably foreseeable needs of the beneficiary are met. Any surplus should be conserved and invested for the beneficiary. The representative payee may be required to account to SSA for the benefits received and may be criminally and personally liable for misuse of benefits. More information is available from the website of the Social Security Administration at <http://www.socialsecurity.gov/payee/>

Personal Power of Attorney (Revised December 15, 2015)

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

In Delaware, it is possible to have a power of attorney which will authorize the attorney-in-fact to act on your behalf immediately; or, one which will only authorize the attorney-in-fact to act if and when you become disabled or incapacitated.

You should have a durable power of attorney so that it will continue to be effective if and when you become incapacitated. If your power of attorney is not durable or if you have no power of attorney, it may be necessary to go to court to have a guardian appointed upon your becoming incapacitated.

A power of attorney ceases to be effective upon your death.

The person to whom you give a power of attorney should be chosen carefully. He or she should be trustworthy and honest because of the potential for abuse of your trust (by spending your

funds other than as you would wish). If you designate an attorney-in-fact who may have a present or future interest in your financial matters, you must make it clear in the document what authority the attorney-in-fact has for transactions which may benefit himself/herself. To illustrate: You make gifts to your children every year. You appoint one of the children to be your attorney-in-fact. You become incapacitated, and the child takes over your financial matters under the power of attorney. Can the child continue your gift-giving program even if it includes gifts to himself/herself? The document must specify limits or qualifications.

Effective October 1, 2010, Delaware adopted a new statutory form of personal durable power of attorney set forth in new Chapter 49A of Title 12 of the Delaware Code (<http://delcode.delaware.gov/title12/c049A/index.shtml>). Like the statutory form of advance health-care directive, a printable pdf version of the statutory form of Durable Personal Power of Attorney is available on line at <http://dhss.delaware.gov/dhss/dltcrp/poa.html>. The new statutory form is designed not only to make the form more accessible but also to provide additional protections from abuse of the personal power of attorney. To do so, the law allows the filing with the Court of Chancery of a petition to compel an accounting (among other things). Such a petition may be filed by the principal or the agent; the spouse, child or parent of the principal; a guardian, trustee or other fiduciary acting for the principal; a representative, trustee or beneficiary of the principal's estate; or any other person who is interested and can demonstrate to the Court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that the principal is incapacitated and the Court's intervention is necessary.

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

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

Guardianship

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

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

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

A guardian of the property may become necessary when someone is not able to manage his or her financial affairs. This may include such things as paying bills, depositing funds, and taking care of real estate. A guardian of the property may also be appointed when there is a risk that the disabled person may be exploited. A guardian of the property must post a bond, usually without surety, maintain a guardianship bank account, and use the disabled person's income and property exclusively for the disabled person's benefit. The guardian must file financial reports with the Court, including an inventory within thirty days of the appointment as guardian and, generally, an initial accounting one year after the appointment of the guardian and each year thereafter.

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

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

A number of different people may file a petition for guardianship. The person him/herself may ask the Court to appoint a guardian. More often, a relative or close friend will file a petition to become guardian of a person when necessary. In other cases, Adult Protective Services, a unit of the DSAAPD discussed in the next section of this Handbook, or a facility in which the disabled person resides may file a petition for appointment of a guardian. Upon petition, the Court may change the guardian to a different guardian if appropriate.

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

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

The Court of Chancery oversees the actions of the guardian. The guardian has to obtain approval of the Court before undertaking every major transaction on behalf of the disabled person. Many minor transactions can be lumped into a general authorization to expend funds. For example, the guardian may be given the authority to spend a monthly amount of money to pay the expense of the disabled person's day-to-day care. Other transactions, such as the sale of real estate, need greater safeguards, such as the Court requiring an independent appraisal and Court review of the proposed contract before approving the sale.

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

Forms to petition for guardianship may be obtained from the Delaware State Court website www.courts.state.de.us under "Forms."

Adult Protective Services

If any person is in immediate danger, call 911 immediately.

In other instances, if you have reasonable cause to believe an adult person is infirm or incapacitated and needs protective services, Delaware law requires that you shall report such information to the DSAAPD. In some states the law only provides that certain categories of people, such as social workers, doctors, nurses, or police have a duty to report. Under Delaware law the reporting requirement applies to everyone. Under Section 3910 of Title 31 of the Delaware Code, any person with reasonable cause to believe that an adult is infirm or incapacitated and in need of protective services has a duty to report to the DSAAPD. Anyone making a good faith report is immune from criminal and civil liability for making the report. When a report is made, Adult Protective Services (APS), a program in the DSAAPD created by legislation passed in 1983, investigates the complaint, assesses risk, makes referrals and develops a case plan for services. APS is also authorized to seek court orders for the protection of persons not able to protect themselves. The staff is represented in court by a deputy attorney general.

As is discussed in the following section, elder abuse and exploitation are also crimes. However, since the abuser is often a family member or a caregiver, the emphasis is placed on protection, rather than prosecution, to encourage reporting and to encourage the victim's cooperation. An infirm or incapacitated elderly or disabled person can voluntarily obtain protective services or such services may be ordered by the Court of Chancery.

To make a referral to the program, call the state-wide toll free number, 1-800-223-9074, or you may call **211** during any non-holiday weekday between 8 a. m. and 8 p.m. and ask for Adult Protective Services.

If you have reasonable cause to believe that a resident of a long term care facility, who is infirm or incapacitated, needs protective services, your report should be made to the Division of Long Term Care Residents Protection at the Delaware Department of Health and Social Services by calling 302-577-6661.

OLDER ADULTS AS VICTIMS

Elder Abuse and Exploitation

Elder abuse is a crime under the laws of the state of Delaware:

“(a) Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an infirm adult shall be guilty of a class A misdemeanor.

“(b) Any person who knowingly or recklessly exploits an infirm adult by using the infirm adult’s resources shall be guilty of a class A misdemeanor where the value of the resources is less than \$500 and a class G felony where the value of the resources is \$500 or more but less than \$5,000. If the value of the resources is \$5,000 or more but less than \$10,000, the person shall be guilty of a class E felony. If the value of the resources is \$10,000 or more but less than \$50,000, the person shall be guilty of a class D felony and if the value of the resources is \$50,000 or more the person shall be guilty of a class C felony. Any subsequent conviction under this subsection shall be treated as a class C felony regardless of the amount of resources exploited.

“(c) Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an infirm adult, and causes bodily harm, permanent disfigurement or permanent disability shall be guilty of a class D felony. Where the abuse, mistreatment or neglect results in death, such person shall be guilty of a class A felony. ”

Bottom-line this means that when an older person needs assistance with such things as grocery shopping, getting to the doctors or paying bills, it is a punishable crime to use the person’s resources improperly. Physical mistreatment would be a crime no matter what the age of the victim, but neglect is also a crime when the person being neglected is infirm or disabled. If you believe a dependent elder is being harmed or could be harmed through neglect or abuse or if you believe that elder is the victim of exploitation, call the police so that they may investigate.

Programs for the Victims of Crimes

Delaware’s Victim’s Compensation Assistance Program

Delaware’s Victim’s Compensation Assistance Program (VCAP) (formerly the Violent Crimes Compensation Board), (<http://attorneygeneral.delaware.gov/VCAP>) offers financial assistance to people who suffer physical or emotional injury as the innocent victims of violent crime. Surviving family members of such victims may also be eligible for assistance. Claims must be filed within one year of the incident.

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

1. A violent crime involving personal injury must have been committed in the State of Delaware;
2. You must be innocent of the crime;
3. Records must show reporting of the crime within 72 hours to law enforcement or an appropriate agency and cooperation with the authorities, including through prosecution of the assailant; and
4. You must cooperate with the VCAP and office staff throughout the investigative process.

Total awards up to \$25,000.00 may be made to cover medical, dental and mental health expenses not otherwise reimbursed, prescription eye glasses, loss of earnings not covered by other insurance, funeral and/or burial expenses, and out of pocket expenses necessary because of the crime, such as moving/relocation, temporary housing, and replacement of items seized as evidence may be made. Total awards up to \$50,000 may be made to victims determined to be totally and permanently disabled, a very high standard to meet.

Loss of personal property is not covered.

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

Victim's Compensation Assistance Program, 900 N. King St., 4th Floor, Wilmington, Delaware 19801, 302- 255-1770 or

Police agencies or the Department of Justice (800-464-4357).

The application must be filed within one (1) year of the crime.

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

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

Victim/Witness Assistance Program

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

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

Delaware Department of Justice

New Castle County: 302-577-8500

Statewide: 800-870-1790

Elderly Victim Service

The Delaware Center for Justice has an Elderly Victim Service that assists crime victims aged 50 and over, who have experienced any of a variety of crimes. The Center's **Project Target** specializes in assisting victims of domestic violence. If you or someone you know is 50 years of age or older and is the victim of one or more of a variety of crimes, you may contact the Elderly Victim Service's Project Target Coordinator at 302-658-7174, Ext. 12, Monday through Friday 8:30 a.m. to 4:30 p.m.

Senior Victim Advocate Program

The Senior Victim Advocate Program is a volunteer advocate program that guides older victims through the criminal justice process and provides support. For more information contact the Delaware Department of Justice at 302-577-8600, or visit the following web site: www.state.de.us/attgen. The Delaware Department of Justice also formed the Senior Protection Initiative in 2008. Led by Deputy Attorney General Marsha White, the Initiative works to educate the elderly about how to avoid becoming a victim, and law enforcement personnel about how to detect abuse and neglect and exploitation so that investigations and prosecutions will be more effective. Elder abuse, neglect or exploitation may be reported to the Attorney General's office at (800) 220-5424 or to DSAAPD at (800) 223-9074 or by calling 911.

Age and Disability Discrimination in Employment

If you are aged 40 or older and/or suffer from one or more physical or psychological impairments, both Delaware and federal law may provide you with protections against discrimination in employment based on your age and/or disability. Such discrimination can involve an employer's decision not to hire you or your employer's decision to discharge you from your job. It may also involve such matters as pay, fringe benefits and/or other conditions of your employment, including severe harassment based on your age or disability. With respect to disabilities, illegal discrimination may also occur if the employer is not willing to make reasonable accommodations to your working conditions so that you can do your job safely and effectively. In order to make a claim of age or disability discrimination against an employer, the claim (also commonly referred to as a "charge of discrimination") must be filed initially with a governmental agency given the responsibility of investigating these types of claims. In Delaware, the Office of Labor Law Enforcement of the State Department of Labor is often the best choice for filing a charge of discrimination. If you believe that you may have been the victim of employment-related age or disability discrimination, you should contact the Office of Labor Law Enforcement directly for instructions on how to file a charge of discrimination. For those living in New Castle County, the Department of Labor can be reached at 302-761-8200. For those living in Kent and Sussex Counties, the Department of Labor can be reached at 302-422-1134. Additional information is available on the Office of Labor Law website: <http://www.delawareworks.com/industrialaffairs/services/LaborLawEnforcementInfo.shtml> The Federal Equal Employment Opportunity Commission (EEOC) also performs this investigation function, although its nearest offices are in Philadelphia and Baltimore. You do not need to file a charge of discrimination with both the state and federal agencies in order to pursue a claim of discrimination. Representatives of either agency can explain to you how the two agencies work together in allocating their resources in investigating these types of complaint.

When trying to decide whether to pursue a claim of age or disability discrimination in employment, it is important to keep in mind at least two additional considerations. First, the time period in which you can make such a claim (also referred to as a statute of limitations) is usually much shorter than the time periods when a person can bring other types of lawsuits with which you may be familiar. Therefore, you should not delay in contacting the Department of Labor (or the EEOC or a private attorney) if you believe you may have been the victim of age or disability discrimination in employment. Second, the filing of a charge of discrimination with the Department

of Labor (or the EEOC) is a prerequisite that must be complied with before you will be given a “right to sue.” In other words, the charge of discrimination is not itself a lawsuit, but rather, an administrative requirement that must be fulfilled in order to be allowed to file a lawsuit alleging age or disability discrimination in employment.

Upon filing the charge of discrimination, trained investigators with the Department of Labor (or the EEOC) will ultimately be assigned to investigate your claim. While you are waiting to hear from that investigator, or even before you contact either of these governmental agencies to file a charge of discrimination, you may wish to consult with a private attorney who specializes in these kinds of cases. The names of attorneys who specialize in this kind of work (Labor and Employment Law) are available in telephone directories and on the internet, on such sites as www.lawyers.com. You may also consider contacting the Lawyer Referral Service in New Castle County (302-478-8850) or in Kent and Sussex Counties (800-773-0606) for the names of attorneys in Delaware who may be able to assist you.

HOUSING ISSUES

State and County Assistance in Delaware

For Renters:

There are five housing authorities in Delaware. The cities of Wilmington, Dover and Newark each have their own and New Castle County Housing Authority covers the county outside Newark and Wilmington and Delaware State Housing Authority covers Kent and Sussex Counties outside the city of Dover. The agencies’ contact information is as follows:

Delaware State Housing Authority

18 The Green
Dover, DE. 19901
Phone: (302) 739-4263
Fax: (302) 739-6122

<http://www.destatehousing.com/index.php>

Dover Housing Authority

76 Stevenson Drive
Dover, DE. 19901-4021
Phone: (302) 678-1965
Fax: (302) 678-1971

<http://www.doverhousingauthority.org/>

New Castle County

Newark Housing Authority

87 Read's Way
Government Center for New Castle County
New Castle, DE. 19720-9720
Phone: (302) 395-5600
Fax: (302) 395-5592
<http://de-newcastlecounty.civicplus.com/456/Community-Development-Housing>

313 E Main Street
Newark, DE. 19711-7152
Phone: (302) 366-0826
Fax: (302) 366-8212
<http://www.newarkhousingauthority.org>

Wilmington Housing Authority

400 Walnut Street
Wilmington, DE. 19801-9801
Phone: (302) 429-6736
Fax: (302) 429-6815
<http://www.whadelaware.org>

The Delaware State Housing Authority publishes an annual guide that lists agencies that provide emergency shelter, emergency assistance with fuel bills, home repairs or weatherization or mortgage payments. It also lists the affordable rental properties throughout the State. The guide is available on the internet at: http://www.destatehousing.com/Renters/rental_directory.pdf.

In addition to public housing owned by the various authorities, "Choice Vouchers" (formerly Section 8) and On-site Section 8 for some new construction, there are also rental properties that have received tax credits and offer lower income individuals more affordable rentals. The requirements to rent tax-subsidized housing vary from property to property. All tax-subsidized housing throughout the state is listed in the directory.

For Homeowners

When an elderly or low-income homeowner needs funds, whether to avoid a foreclosure or for renovations or repairs, there are a number of programs available.

Delaware has an Emergency Mortgage Assistance Program administered by the Delaware State Housing Authority to help low-income homeowners avoid foreclosure by loaning the homeowner funds to bring mortgage payments up to date in exchange for a second or third

mortgage. Income limits for qualification are \$91,080 in New Castle County and \$84,065 in Kent and Sussex Counties as of 2013 but are subject to change annually. For more information go to: http://www.destatehousing.com/HomeOwnership/hb_demap.php

Also, due to the inordinate number of foreclosure proceedings being brought, the Delaware Superior Court instituted a mediation procedure effective September, 2009 that was revised in 2012 and again in 2013. All residential homeowners faced with foreclosure of their primary residence can participate in the residential foreclosure mediation program. It is recommended that the homeowners meet with a housing counselor to work out a proposal for presentation to the mortgage company in mediation. The mortgage company is not required to agree to the terms. But, it is expected that the mediation program will result in many loan renegotiations and many homeowners retaining ownership of their homes. A notice of the mediation program must accompany the foreclosure notice and the homeowner must then act in accordance with the notice to initiate the mediation process. Further information is available on the internet at: <http://delawarehomeownerrelief.com>

Various housing authorities may also offer grants for home repairs or weatherization. These programs may require no pay back of the funds made available to the low-income homeowner, but there are frequently long waiting lists. Some housing authorities may offer to take a second or even third lien on a home at a low interest rate to permit home renovation to make a home handicap accessible or to make needed home repairs.

Home Equity Conversion Mortgage (HECM) (Commonly referred to as a “Reverse Mortgage”)

How is a Reverse Mortgage different than a Conventional Mortgage?

The Reverse Mortgage or a HECM Loan is a federally insured mortgage that was put in place by Congress specifically to allow senior homeowners over the age of 62 to borrow monies using their equity in their primary residence as collateral without using credit scores or income as qualifiers. The Reverse Mortgage allows individual(s) to borrow monies without requiring a monthly payment since the future payback will be required only when the borrower(s) die, sell the home or the home ceases to be their primary residence. The Reverse Mortgage was specifically designed to allow our Seniors to tap into the built up equity in their home in order to supplement cash flow during their retirement years.

A clearer way to explain the Reverse Mortgage Product is to first outline the mechanics of standard conventional loans (whether the loan is a conventional mortgage, a home equity line of credit or a business loan) and then contrast the Reverse Mortgage to these standard types of loans.

In a regular mortgage/loan, a borrower qualifies for the mortgage/loan after the lender looks at their Income and past payback history (credit scores) to determine if the borrower can pay back the loan by means of a monthly payment. The monthly payment is based on the length of time that the parties agree the loan will be outstanding. This payback period could be 5, 10, 15 years or up to 30 years. The monthly payment amount includes both a repayment of principal and interest. The principal is the amount of monies that the lender lent to the Borrower and the interest is the amount of monies that the lender needs to make a profit.

In a Reverse Mortgage, the borrower is not required to make a monthly payment yet the lender still needs to earn interest on the monies they lent to the borrower. The interest that the bank needs to earn is added onto the amount owed to the bank so the outstanding balance goes up monthly by the amount of interest the bank earns. The interest owed but not paid is referred to as "accrued interest". The principal and the accrued interest will be paid back to the lender when the last borrower dies, the home is sold or the home ceases to be a borrower's primary residence.

In essence, the only thing that the bank/lender wants in either a conventional loan or a Reverse Mortgage is the principal that they lent the borrower plus interest.

The Four (4) NEVERS of a Reverse Mortgage

- 1) You NEVER make a payment on the reverse mortgage. You remain responsible for maintenance of the home, insurance (which must be continued) and real estate taxes.
- 2) You NEVER come off title to your home. The home is still in your name. However, failure to pay taxes or to maintain the home in habitable condition or to maintain insurance can result in an action that could affect the ownership of your home.
- 3) You NEVER owe the lender more than what the home is worth.

4) You NEVER pass on debt to your heirs.

How to I Qualify for a Reverse Mortgage?

- All individuals named on the deed as owning the house must agree to be a borrower and all borrowers must be at least 62 years old. This means if someone has added a child to the title to their home, they will be disqualified from using a Reverse Mortgage until that child turns 62 or is removed from the title.
- The home must be the primary residence of all Borrowers on the title/deed.
- There are no minimum income requirements, nor minimum credit scores or debt to income ratios used to determine eligibility.
- The Reverse Mortgage must be the only lien on the home after closing. Any existing conventional mortgage or home equity line of credit must be paid off with the proceeds of the Reverse Mortgage.
- All borrowers must attend mortgage counseling with a HUD-authorized counselor prior to becoming obligated on the Reverse Mortgage.

How Much Can I Borrow?

The amount that can be borrowed with a Reverse Mortgage is determined by HUD regulations. The Reverse Mortgage will allow you to borrow an amount referred to as the "Principal Limit," which is determined by applying a percentage to the home's appraised value. The percentage will be between 50% and 65% based on the age of the youngest borrower (the older you are the higher the percentage made available).. How much then can actually be borrowed will depend on the value of the property as determined by an independent FHA appraiser, the current interest rate and the age of the borrower(s).

[Note: While it is possible to elect a fixed interest rate, the fixed interest rate option has some complex limitations that are not discussed here. In this discussion

we are assuming that the borrower has elected the more common adjustable rate of interest.]

Effective in 2013, HUD limits the amount that a homeowner can draw down or borrow during the first year of a Reverse Mortgage to 60% of the Principal Limit. One year later, the borrower can draw down the remainder of the Principal Limit in one of the ways discussed below. If more than 60% of the Principal Limit must be drawn down in the first year to pay off liens on the property and to make any required repairs, then the borrower is allowed to draw down enough to pay off the mandatory liens, make any needed repairs, pay any closing costs and an additional amount up to 10% of the Principal Limit.

When the amount drawn down in the first year exceeds 60% of the Principal Limit, the premium for the HUD insurance will be significantly higher, as discussed in the following example.

EXAMPLE: Borrower, age 62, which is the minimum age, owns a property that is appraised at \$200,000. Assume that 50% of the value or \$100,000 might be the Principal Limit for the 62 year old borrower. To qualify for the one-half of a percent (0.5%) HUD insurance premium, the borrower cannot take down more than 60% of the \$100,000 or \$60,000 in year one. The lender's origination fee, closing costs and the one-half of one percent (0.5%) insurance would further reduce the amount he could borrow in year one. If the costs totaled \$6,000, in our hypothetical, the amount that the homeowner could actually borrow or draw down in year one would be \$54,000. In year two the remaining \$40,000 of the Principal Limit would become available. In addition, if the homeowner borrowed less than \$54,000, any unused portion of the first year's draw-down limit will be added to the amount available in the 2nd year and continue to be available until borrowed or drawn down using one of the methods discussed below.

If more than \$54,000 were needed in year one to pay off other liens against the house and to make necessary repairs, then, the HUD insurance premium would be two and one-half percent (2.5%) of the appraised value, increasing the costs by an additional 2% of the appraised value or in this instance \$4,000. In year one, the borrower could draw down an amount equal to all mandatory obligations plus an

amount of cash equal to ten percent (10%) of the Principal Limit (in this instance 10% of \$100,000 or \$10,000). If the liens were \$65,000, the HUD insurance increase would increase closing costs from \$6,000 to \$10,000 so that the allowed withdrawal would be \$75,000. Borrower could also take down ten percent (10%) of the Principal Limit for an additional \$10,000 making the draw-down in year one \$85,000. In year 2, the remainder of the Principal Limit (\$15,000) would be available.

The borrower can take the allowed amount of the Principal limit in any of the following ways:

- Lump Sum
- Monthly Payments (for life or a set period)
- Line of Credit or
- A combination of the above.

A Line of Credit that remains unused will increase over time at the same rate that funds drawn down or borrowed will be accruing interest.

Money drawn down under a Reverse Mortgage is not considered income, is not taxable and will not affect Social Security benefits or Medicare.

What are the Costs Associated with a Reverse Mortgage?

The costs associated with a reserve mortgage are as follows:

1) The following costs can vary from lender to lender and as discussed above reduce the amount that can be borrowed:

- The origination fee charged by each lender is usually 2% of the appraised value for the first \$200,000 and 1% thereafter to a maximum of \$6,000. (In our example, the origination fee would likely be 2% of \$200,000 or \$4,000)
- The closing costs are comprised of title insurance, mortgage recording fees, appraisal fees and other title company charges.

2) The monthly service fee may also vary from lender to lender and is added to the balance due to the lender over the life of the reverse mortgage. Currently industry practice is not to charge a monthly service fee.

3) As discussed above, the FHA/HUD Mortgage Insurance fee protects the lender, the borrower and the borrower's heirs if the outstanding balance on the loan exceeds the value of the property at the end of the loan. The FHA/HUD Insurance Fee is a set fee of one-half of a percent (0.5 %) of the appraised value if 60% or less of the Principal Limit is drawn down in the first year but two and a half percent (2.5%) of the appraised value if the draw down exceeds 60%. In our example, the insurance fee is either \$1,000 (0.5%) or \$5,000 (2.5%)

4) The rate at which interest will accrue on the loan and add to the balance due may vary also from lender to lender.

All rates, fees, interest rates and principal amounts received are regulated by HUD

The Elder Law Section thanks Mr. William Bagnell of M & T Bank for his invaluable assistance in preparing this explanation of reverse mortgages.

Landlord/Tenant Law

The Delaware Residential Landlord Tenant Code was revised in July 2004. The new Code applies to all leases signed after July 17, 1996. The new Code may apply to a renewal or extension of any pre-July 1996 rental agreement if both the landlord and the tenant agree that it is applicable. Otherwise, the prior Landlord Tenant Code shall apply to renewals and extensions of pre-July 1996 leases.

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

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

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

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

Mobile Homes

Mobile home rentals are governed by Delaware's Manufactured Home Owners and Community Owners Act, which took effect on August 23, 2003. To obtain a copy of the act you may contact the Consumer Protection Unit of the Attorney General's Office as described above.

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

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

1. The tenant gives the landlord a minimum of 60 days written notice of termination prior to the expiration of the agreement;
2. A shorter or longer term is agreed to by the parties; or
3. The landlord can terminate the lease or refuse to renew the lease for due cause only. Due cause means (a) an intended change in the use of the land; or (b) failure by the tenant to comply with the lease or the rules, also called noncompliance.
4. If both the lot and the home are rented, a landlord may offer all current and prospective residents a rental agreement for a term of any duration not to exceed one year.

Upon expiration of the initial term, the rental agreement shall convert to or continue on a month-to-month basis, subject to modification of the rent amount, unless:

(A) Either party delivers written notice at least 60 days prior to expiration of the term under the rental agreement or (B) a shorter or longer term is agreed upon by the parties.

Property Tax Exemptions

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

The income threshold, amount of exemption and date of application vary by city and county. To find out eligibility requirements and how to apply for an exemption, if you live in New Castle County call 395-5520 ; if you live in Kent County call 744-2401; and if you live in Sussex County call 855-7824. In addition, if you live in Wilmington or another city, you also may be eligible for an exemption from city property tax. To find out eligibility requirements and how to apply for an exemption in Wilmington, call 571-4320. Call your local tax office for information for other cities. You may need to periodically renew your exemption application. If you are a Wilmington resident, the application must be renewed every three years. You will find applications and other helpful information by clicking on the links below.

If you are eligible for a tax exemption, but own your property with someone who is not eligible, you will receive a partial exemption. If you have lifetime rights to use the property, you may be entitled to a full exemption. Unmarried co-owners of property should each check the eligibility requirements. However, no more than one full credit may be taken per property.

You may also qualify for a sewer tax reduction, but not many jurisdictions have this benefit. For example, in New Castle County, if you qualify for a senior property tax exemption, you should qualify for a sewer tax reduction. You may also receive some money toward the cost of a sewer lateral cleanout.

A credit on the School tax of 50% of the school tax line item, not to exceed \$500 is available for Seniors 65 years of age before July 1. Seniors of all income levels qualify for this credit; however, you must also have been domiciled in Delaware at least 3 consecutive years. See the instructions in the link below. For New Castle County call 323-2600; For Kent County 744-2341; and for Sussex County 855-7824.

New Castle County

<http://www.nccde.org/DocumentCenter/View/233> -- NCC Application for real estate exemption

NCC FAQ – Senior & Disability Exemptions

<http://www.nccde.org/DocumentCenter/Home/View/240>

Kent County-

<http://www.co.kent.de.us/media/762250/application-for-exemption-from-property-taxes.pdf> -
- Application for Exemption from Property Tax

<http://www.co.kent.de.us/media/694336/ElderlyDisabilityFormFY2013.pdf> -- Kent County
Elderly/Disability Tax Exemption Application #1

<http://www.co.kent.de.us/media/9014/PropertyTaxExemption.pdf> -- Kent County
Elderly/Disability Tax Exemption Application printout #2

Sussex County

<http://www.sussexcountyde.gov/tax-assistance-programs> -- Tax Assistance programs

City of Wilmington

http://www.ci.wilmington.de.us/docs/201/App_Affidavit_Property_Tax_Exemption.pdf -
Application for Property Tax Exemption for Citizens Over 65 years of age and/or Disabled

http://www.ci.wilmington.de.us/docs/349/Property_Tax_Seniors_PRINT.pdf -- Seniors 65+
property tax exemption program printout

Senior School tax credit, all three counties: Please note phone numbers for each County at top of form.

http://finance.delaware.gov/publications/proptax/ssptc_app.pdf

CONSUMER LAW

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

Equal Credit Opportunity

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

The law applies to any creditor who regularly extends credit, including banks, small loan and finance companies, retail and department stores, credit card companies, credit unions, and real estate brokers who arrange financing.

When you apply for credit or a loan, one major indicator of your ability to repay is your current income. Creditors who consider income must consider types of income likely to be

received by older Americans such as Social Security, pensions, and other retirement benefits. The creditor will also evaluate your debts, assets, credit history and reliability.

You have the right to know whether your application was accepted or rejected within 30 days of filing a completed application and, if rejected, why your application was rejected if you ask within 60 days after your application was rejected. Indefinite and vague reasons are illegal, so ask the creditor to be specific.

If you believe you have been discriminated against in applying for credit, you should discuss your belief with the creditor and try to convince him/her that you are credit worthy. If this fails and you still believe you have been discriminated against, check with the Delaware Attorney General's office to see if the creditor violated any equal credit opportunity laws. You may also be able to sue for damages. Finally, file a complaint with the appropriate government agency. If you're denied credit, the creditor must give you the name and address of the agency to contact. In addition, complaints against all kinds of creditors can be referred to the U. S. Department of Justice, Civil Rights Division, Washington, DC, 20530, at 877-382-4357 or online at www.ftc.gov.

Home Solicitations and Door-to-Door Sales

Home solicitation and door-to-door sales are regulated by both Delaware and federal laws and apply to the sale, lease or rental of consumer goods or services costing \$25 or more. Because high pressure tactics are typically used in door-to-door sales, the law requires the seller to provide the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution. The contract must include the date of the transaction, the name and address of the seller, and a "Notice of Cancellation," which informs the buyer of his/her right to cancel the transaction within three business days and provides the buyer with specific information about how to cancel the contract. In addition, at the time the buyer signs the contract or purchases the goods or services, the seller must inform each buyer, orally, of the right to cancel.

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

The Delaware and federal laws also apply to sales made at a location which is not the seller's usual place of business. This means you may cancel a contract within three business days if you signed it at a special exhibit at a mall or a fair, for example. To get further information, discuss a problem, or make a complaint, call the Attorney General's Consumer Protection Unit from anywhere in Delaware at 800-220-5424. Consumer information and complaint forms are also on-line at www.state.de.us/attgen

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

Unordered Merchandise

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

Debt Collection

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

- Debt collectors may not contact you before 8 a.m. or after 9 p.m.;
- Debt collectors may not contact you at work if you have asked them not to;
- Debt collectors may not harass, oppress, or abuse you;
- Debt collectors may not lie when collecting debts;
- Debt collectors must identify themselves to you on the phone; and
- Debt collectors must stop contacting you if you ask them to in writing.

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

Telemarketing

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

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

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

If you want to stop telemarketing calls, you can register on the National Do Not Call registry online at donotcall.gov or by calling 1-888-382-1222 from the telephone number you want to register. Registration is free.

Warranties

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

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

The Federal Trade Commission publishes free brochures on consumer-related issues. For a complete list of publications, write to Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave. NW, H-130, Washington, DC 20508, or download online at www.ftc.gov.

Home Repair

Before you hire anyone to do repairs on your home, make sure that the person is licensed or registered with the State and with the county or city where your home is located and provides proof of liability and workers compensation insurance. If a contractor contacts you first by phone or by door-to-door solicitation, never agree to have work done immediately. Ask for a written estimate, and check the contractor's references.

Make sure that the contractor provides you with a written and signed contract that includes the contractor's full name, address and telephone number; the total cost of the work; the start date and estimated completion date; a detailed description of the work to be performed; the schedule and method of payment including the first payment, intermediate payments, and the final payment; provisions for canceling the contract by either party; a list of the materials to be used; provisions for obtaining any local permits; and any warranty of workmanship or materials.

Never give full payment at the beginning of the job or your final payment until the work is completed to your satisfaction.

If you believe that you've been the victim of contractor fraud, call the Attorney General's Consumer Protection Unit at 800-220-5424 or file a complaint in person at 820 N. French Street,

Fifth Floor, Wilmington, DE, 19801 or 114 E. Market Street, Georgetown, DE 19947; or by email to consumer.protection@state.de.us. The complaint form is on-line at www.state.de.us/attgen

Consumer Pitfalls to Avoid

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

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

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

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

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

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

DON'T give out any personal information over the telephone about you or your family -- especially your Social Security, credit card or bank account numbers, or date of birth.

DON'T buy over the phone or the internet unless you initiated the contact and you're convinced that you're dealing with a reputable company.

DON'T call a 900 telephone number or similar service number or click a computer pop-up to respond to a notice that you have won a prize, have received an award, or have been selected or are eligible to receive something of value.

DON'T send money to anyone who insists on immediate payment for an item or service.

DON'T give your bank account information or credit card number to anyone who calls soliciting a donation to a charity or for a religious or social cause. Ask that written information about the group be sent to you.

END OF LIFE PLANNING

Estate Planning

What is Estate Planning?

Estate planning is simply planning to make sure that your property passes according to your wishes at your death. Regardless of how little you own, you should plan to ensure the intended persons receive your property after your death.

The will selects the personal representative who administers and determines who receives the property in your estate. Examples of probate property, which is distributed according to your will, include real estate, bank accounts, vehicles, jewelry and other personal effects titled in your name alone when you die.

Other documents determine the recipients of property that passes outside of your Will based on decisions and transactions made during your life. Examples include assets titled as joint tenants with right of survivorship or tenants by the entireties, beneficiary designated assets such as life insurance, annuities and IRAs and assets titled in the name of a revocable trust

Wills

A will helps avoid disputes among the beneficiaries of your estate and gives you control over how your property is distributed.

In a will, you name a personal representative to administer your estate and direct how your property is to be distributed.

If you die without a will, your assets, including your home, money and other property is distributed according to intestacy laws. The intestacy laws were created to distribute property to your spouse and/or next of kin as decided by the Legislature and do not take into account your unique situation.

Even if you are satisfied with the intestacy laws, 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 the estate debts and 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 tie up your affairs (e.g. file your final personal income tax returns).

A brochure containing information on wills and the probate process and additional forms are available on the internet on the website for the New Castle County Register of Wills <http://www.nccde.org/152/Register-of-Wills> . In New Castle County, wills can also be sent to the Register of Wills to be indexed and kept for a current fee of \$10.

Whenever there is a death in New Castle County, the Register of Wills must be involved if: (1) the decedent (the person who died) had a will, (2) The decedent did not have a will, but died with over \$30,000 in probate assets. (If the estate is less than \$30,000, only the next of kin may receive what is known as a "Small Estate Affidavit" instead in order to transfer property), or (3) the decedent had any solely held real estate in Delaware. An estate needs to be probated in the county in which the decedent resided.

Non-Probate Property

Your Will distributes property that you own outright but does not apply to all property. Jointly-held property, accounts and other assets held in trust, life insurance policies, annuities, IRAs and many retirement accounts do not pass according to the provisions your will. These items pass by law or by contract to the designated beneficiaries. Be sure these beneficiary designations are carefully reviewed when developing your estate plan.

Joint Property

There are several ways of owning property with another. The most common ways are "tenants in common," "tenants by the entireties," and "joint tenants with right of survivorship." People often transfer property into joint ownership with family members or friends, in the mistaken belief that this will reduce estate administration costs and/or avoid probate and taxes. While joint ownership may be appropriate in some situations, it often results in unexpected outcomes, disappointments and hardships. When you transfer your property so that you own it jointly with another, you make an immediate gift to that person of the property, which could adversely affect your estate plan and your lifetime rights in the property. There also may be income tax, federal estate and gift tax, and inheritance tax consequences. The gift may prevent you from receiving

Medicaid benefits if you enter a nursing home. Once the property is held jointly, you lose control over the property, and the property is subject to claims by your children's creditors. The same problems can arise if you add joint owners other than a child or children.

You should obtain legal advice from an attorney who is able to explain the tax and other consequences to you prior to putting any property in joint name.

Titling bank accounts, CDs, and stock in joint names is easy to do, but can also be a mistake. Banks and other financial institutions may provide forms to make an account a joint account, but the bank's officers and employees are not capable of advising of the potential dangers of joint ownership

If you want certain property to go to a particular person you should discuss with your lawyer whether this should be done by putting the property in joint names, by passing it to the intended person through the will, or making some other arrangement. 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.

Trusts

A trust is a special way to own and control property. A person creates a trust by executing a trust document, which places property in the trust and designates a trustee to safeguard and distribute property. The trustee then controls trust assets for the beneficiaries you select and distributes income and principal at such times and in such amounts as you direct. The rules governing investment and distribution of trust funds are controlled by a trust document.

Trusts can have several important advantages, including professional management, protection against overspending, avoiding probate fees, and caring for young and/or disabled beneficiaries. They are not right for everyone.

Trusts can be created by will (testamentary trusts) or during the life of the person creating the trust (living trusts) by a trust document. Living trusts and wills that contain testamentary trusts cost more money than simple Wills because they are more complicated and are designed for each individual.

Anatomical Gifts

Organ donations may be made in various ways. You can execute an advance health-care directive, a document or card designed to be carried on the person signed by the donor in the presence of two witnesses, a Declaration of Disposition of Last Remains or by indicating consent on your driver's license. When you apply for or renew your driver's license, you will be asked if you want to be an Organ and Tissue Donor. If you agree a red heart is placed on your driver's license and you will be provided a Uniform Organ Donor Card to carry with you.

You may sign up on-line at (<https://citizen.dmv.de.gov/public.ejs?command=PublicOdHome>). Your family may not revoke your designation as a donor after your death. Additional information can be found at <http://www.donatelife-de.org/>.

Funerals

The Federal Trade Commission (FTC) rules require funeral homes to give price information by telephone, and if you meet in person to make funeral arrangements, you must be given a written price list. The rules apply to pre-need arrangements in addition to arrangements after someone has died.

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

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

You are entitled to an itemized bill with the total cost of each of the goods and services you have selected. Items such as obituary notices, flowers, pallbearers, etc. may be estimated and the funeral provider may pay these bills for you, treat them as cash advances and bill you later. You must be told if there is a service fee (or mark-up) in addition to the cost of the items, or if the funeral provider receives a discount, commission or rebate.

The FTC rules provide other protections which can be read in more detail in the FTC Guide Shopping for Funeral Services. A free copy is available from the Federal Trade Commission,

Washington, DC 20580 or at <http://www.consumer.ftc.gov/articles/0070-shopping-funeral-services>.

For any who are interested, there is a guide for funeral homes called Complying with the Funeral Rule at <http://business.ftc.gov/documents/bus05-complying-funeral-rule>.

Since the personal representative of the estate controls the decedent's money, it may make sense for the personal representative to make the funeral arrangements. If family members pay for the funeral, they can be reimbursed from the decedent's estate, if the estate has sufficient assets. If the estate assets are not sufficient to pay for the decedent's funeral, then the person making the arrangements will be responsible to pay for the portion that is not covered.

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

Some people may choose a "no-cost exit" by donating his or her body. The University of Florida maintains a list of programs which accepts donations at <http://old.med.ufl.edu/anatbd/usprograms.html#d> which currently lists two programs close to Delaware – at Humanity Gifts Registry, Health Sciences Center, 130 South 9th Street, Suite 1455; Philadelphia, PA 19107; 215-925-7469; and Anatomy Board of Maryland, 655 West Baltimore Street, Room B-O26; Baltimore, MD 21201; 401-547-1222.

Disposition of Last Remains

A Declaration of Disposition of Last Remains ("Declaration") helps avoid disputes among your family members and gives you control over what services you receive after death, as long as the cost has been pre-paid or the estate has sufficient funds to pay for the services.

A Declaration fills the void left by other estate planning documents – the powers granted pursuant to a Power of Attorney expire with the decedent; a personal representative named in a will or by the Register of Wills may not be appointed until weeks after the date of death and after a memorial service has been conducted. Without a Declaration, the closest next of kin, such as a spouse, decides what services the decedent will receive.

In Delaware an adult, 18 years or older, may specify what is to become of his or her body, called cremains, if you direct your body to be cremated. The Declaration must be in a written document, signed by the declarant and notarized, and with two (2) witnesses if the Declaration includes an organ donation. In the Declaration you may authorize a specific individual (it does not need to be a family member) to handle the disposition and ceremonial arrangements after your death. The form authorized by statute also allows the declarant to make an organ or tissue donation, as discussed above.