

# PROTECTION OF LEGAL RIGHTS

In a third part, the ADA prohibits discrimination on the basis of disability by public accommodations (private persons or businesses that own, operate, or lease to a place of public accommodation) to full and equal enjoyment of goods, services, facilities, and accommodations (for example, hotels, restaurants, shopping centers, retail stores, doctors' offices, libraries, parks, theaters, and pharmacies). Removal of existing barriers for access to places of public accommodation is required unless removal is too expensive and difficult, in which case alternative means of enjoying and receiving the goods and services must be provided.

The above requirements of the ADA are also substantially required under Section 504 of the Rehabilitation Act of 1973 and are enforceable against any person or entity that receives federal financial assistance.

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

Further information regarding any of the above laws or other laws protecting individuals with disabilities may be obtained from the Virginia Board for People with Disabilities at 202 North 9th Street, Richmond, VA 23219, (804) 786-0016; or you may contact the Virginia Office for Protection and Advocacy (VOPA), a state agency that provides protection and advocacy services for individuals with disabilities, toll-free at (800) 552-3962 (in-state calls only), at (804) 786-0016 in the Richmond area, or in writing at 11910 Byrd Avenue, Richmond VA 23219, (804) 225-2042.

## Grandparent Rights to Visitation and Custody

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

Your Area Agency on Aging or your Local Legal Aid office may give you further assistance or referral on visitation and custody issues.

## Elder Abuse

In 2003, there were almost 12,000 reports of adult abuse, neglect, or exploitation in Virginia, and investigations proved about 60% were valid. Often, however, elderly persons are reluctant to report abuse. The problem is complicated because elder abuse, neglect, and exploitation are sometimes hidden problems which are difficult to address.

### What Is Elder Abuse?

The term "abuse" is used to describe the act of intentionally hurting someone. Elder abuse (Section 63.2-100 of the *Code of Virginia* defines "adult abuse," "adult exploitation" and "adult neglect") can take many forms. It may be sexual abuse, financial exploitation, emotional abuse, or confinement. Elder abuse may involve physical violence against an older person. It may also involve the deliberate neglect by a caregiver of the medical, health, and nutritional needs of a vulnerable older person.

# PROTECTION OF LEGAL RIGHTS

## Signs of Elder Abuse

Elder abuse is often made evident by the following signs:

- unusual or unexplained bruises and injuries;
- signs of confinement;
- poor hygiene;
- dehydration;
- fear;
- withdrawal;
- anxiety;
- hesitation to talk openly.

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

- not permitting seniors to speak for themselves and indifference or anger toward an older person;
- previous history of alcohol or drug problems;
- threatening or insulting the older person.

Financial exploitation may be indicated by:

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

## Preventing Abuse

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

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

# PROTECTION OF LEGAL RIGHTS

## Reporting Abuse

There are laws which protect the elderly from abuse, neglect, and exploitation. These laws, however, are of little use if incidents of abuse remain unreported. If you are aware of any signs of abuse to a neighbor, friend, or relative, or suspect abuse in a nursing home or other long-term care facility, you should immediately contact your local Adult Protective Services Office or the Adult Abuse Hotline at (888) 832-3858. The Department of Social Services, Adult Protective Services, may also be reached at (804) 726-7533. Adult Protective Services accepts reports of suspected abuse, neglect, or exploitation across all care settings for adults 60 and over and adults 18 and over who have a disability. Reports may be made anonymously.

## Alternative Dispute Resolution

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

### Arbitration

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

### Mediation

Mediation is a relatively new procedure which also reduces delay and expense but avoids the disadvantages of binding arbitration. The case is conducted by a neutral mediator whose task is to guide the parties and their attorneys to a mutually acceptable settlement of the case. The mediator is not a judge or arbitrator and has no power to decide who wins or loses. Mediation is, thus, entirely different from a trial or the hearing of a case by a judge or arbitrator(s). The parties are in control of their case inasmuch as they have the right to decide upon a mutually acceptable settlement or to refuse to settle. If the parties do not agree to a settlement, the case stays on the court's docket for trial. Mediation is usually successful (i.e., a settlement results), but sometimes the parties reach an impasse. The expense is usually considerably less than that of a trial and usually less than arbitration. Mediation has become popular, and approximately 75% of the cases which are mediated result in mutually acceptable settlements. It is confidential. It is informal. The various states which