Senior Virginians Handbook

Legal Information and Resources

A Project of the Senior Lawyers Conference of the Virginia State Bar

Senior Virginians Handbook

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of the Virginia State Bar

Virginia State Bar

An Agency of the Supreme Court of Virginia

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PREFACE

The Senior Lawyers Conference ("SLC") of the Virginia State Bar ("VSB") was established in 2001 by Bar Council. Today the membership includes more than 20,000 lawyers age 55 and older and focuses on issues of interest to senior lawyers and promotion of the welfare of older residents of Virginia.

The SLC assisted in the implementation of the revised guardianship laws for adults, and prepares and publishes this *Senior Virginians Handbook*, formerly called the ***Senior Citizens Handbook***. The SLC also provides education and encouragement to lawyers to do proper planning for their own disability or death and is interested in receiving input from senior lawyers and citizens on issues of concern to them. Your input can help the SCL study issues, present programs and activities, produce publications of interest, and advocate appropriately. With your feedback we can work to be sure this publication is accurate and up to date. If you have suggestions for additional content, find links that are broken, or just want to comment on the book, please contact the VSB at (804) 775-0500 and ask for the SLC's staff liaison, or email: vsbnews@vsb.org.

With the encouragement and support of the bar and the judiciary, the distribution of this Handbook throughout the Commonwealth is provided as a benefit to Virginia's older residents. It is our hope that it will continue to serve as a valuable resource to seniors in addressing their needs and concerns. Because certain areas of the law are in almost constant change, in some cases the information provided is an overview, with references and contact information included to enable users to access updated information through telephone and online links. If you do not have your own computer to do research, you may be able to use a computer at your local public library, or at a resource center located in the apartment, assisted living center, or continuing care retirement community where you reside.

CAUTION: IF YOU USE A PUBLIC OR SHARED COMPUTER, DO NOT PROVIDE ANY OF YOUR CONFIDENTIAL PERSONAL INFORMATION OR DATA; OTHERWISE YOU MAY BECOME THE VICTIM OF IDENTITY THEFT.

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INTRODUCTION

Barbara S. Anderson, Esq.
Editor

We "seniors" are an incredibly diverse group that spans Virginians from age 50 to 100+ and really defies definition. We are the "GI Generation" who were teenagers during the Great Depression and fought in World War II. We are the "Silent Generation" who were too young to see action in WWII but generally believe that conforming to established rules guarantees success. We also are the "Baby Boomers" born during the financial boom that followed WWII, demonstrated against the war in Vietnam, and joined in the civil rights movement.

Many of us are retired but increasing numbers continue working well into their 70s, 80s, and even 90s! We are parents and grandparents raising and supporting children and grandchildren. We also are children caring for our parents! We seniors have collectively the greatest wealth and the most significant costs of healthcare as we live longer. How we balance our needs with the global concerns of healthcare, debt, resources, and climate will have a direct impact on our children's and grandchildren's lives.

While it is difficult to label all of us together as "seniors," that is the current term we use in this book until a better moniker is available. The one single unifying characteristic we share is that we all live in Virginia!

This Handbook provides summaries and references to various laws and programs affecting Virginia's older residents, as well as practical guidance to address our concerns. The Handbook also is a guide for identifying and locating public and private organizations that provide services to older Virginians. We hope you find it helpful and welcome your comments and thoughts about the content. Please contact the VSB at (804) 775-0500 and ask for the SLC's staff liaison, or email: vsbnews@vsb.org with your suggestions or comments.

Because of frequent changes in laws and programs, as well as differences in the interpretation of such laws and programs, the Senior Lawyers Conference and the Virginia State Bar expressly disclaim responsibility for any errors or omissions herein. The Senior Lawyers Conference makes this Handbook available for download on the VSB website. You can find the most current version of the Handbook there. Single printed copies also are available from the Virginia State Bar for free.

The Virginia State Bar, an administrative agency of the Supreme Court of Virginia, publishes brochures and publications on law-related issues as part of its mission to advance the availability and quality of legal services provided to the people of Virginia. These publications are not offered as and do not constitute legal advice or legal opinions and do not create an attorney-client relationship. Brochures and other publications may be downloaded on the VSB website.

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PART 1 – FINANCIAL ASSISTANCE

SOCIAL SECURITY

Social Security is a system enacted by Congress designed to supplement your retirement income. It is not intended to provide your sole source of income—but it adds to the pension benefits, savings plans, and other investments that you will rely on during retirement.

Different types of benefits are payable under various provisions of the Social Security Act, but when the average person uses the phrase "Social Security benefits," he or she usually means the Retirement, Survivors, Disability and Health Insurance Program (RSDHI). These are monthly cash benefits paid to you as a retired or disabled worker; to qualified spouses, children, and parents of retired or disabled workers; and to qualified widows, widowers, and divorced spouses of workers.

The RSDHI Program is financed largely out of taxes paid by employers and employees. It is an insurance program. Benefits received by you and your dependents have been earned by you through your employment and the taxes collected regularly from your wages. These tax deductions are shown on your paycheck next to the initials "FICA." The letters "FICA" stand for "Federal Insurance Contributions Act," which is the official name for the federal laws that established the Social Security program in 1935. These deductions rise periodically. The money collected from this tax goes into trust funds, and current benefits are paid out of these funds.

Social Security and your retirement plans

Social Security is part of the retirement plan of almost every American worker. If you are among the 90+ percent of workers who are covered under Social Security, you should know how the system works and what you should receive from Social Security when you retire.

How do you qualify for retirement benefits?

When you work and pay Social Security taxes, you earn "credits" toward Social Security benefits. The number of credits you need to get retirement benefits depends on when you were born. If you were born in 1929 or later, you need 40 credits (10 years of work).

If you stop working before you have enough credits to qualify for benefits, the credits will remain on your Social Security record. If you return to work later you can add more credits so that you qualify. No retirement benefits can be paid until you have the required number of credits.

How much will your retirement benefit be?

Your benefit payment is based on how much you earned during your working career. Higher lifetime earnings result in higher benefits. If there were some years when you did not work or had low earnings, your benefit amount may be lower than if you had worked steadily. Your benefit payment also is affected by the age at which you decide to retire. If you retire at age 62 (the earliest possible retirement age for Social Security), your benefit will be lower than if you wait until later to retire. This is explained in more detail below.

Note: *Each year, about three months before your birthday, you should receive a Social Security Statement. It can be a valuable tool to help you plan a secure financial future. It provides you with a record of your earnings and gives estimates of what your Social Security benefits would be at different retirement ages. It also gives an estimate of the disability benefits you could receive if you become severely disabled before retirement, as well as estimates of the survivors' benefits Social Security would provide your spouse and eligible family members when you die.*

Full retirement age

The "full retirement age" is 65 for people who were born before 1938. But because of longer life expectancies, the Social Security law was changed to gradually increase the full retirement age until it reaches age 67. This change affects people born in 1938 and later. Check the following table to find your full retirement age.

Age to receive full Social Security benefits

Year of birth	Full retirement age
1937 or earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67

NOTE: *People who were born on January 1 of any year should refer to the previous year.*

Early retirement

You can get Social Security retirement benefits as early as age 62, but if you retire before your full retirement age, your benefits will be permanently reduced, based on your age. For example, if you retire at age 62, your benefit would be about 25 percent lower than what it would be if you waited until you reach full retirement age.

Some people stop working before age 62. If they do, the years with no earnings will probably mean a lower Social Security benefit when they retire.

Note: *Sometimes health problems force people to retire early. If you cannot work because of health problems, you should consider applying for Social Security disability benefits. The amount of the disability benefit is the same as a full, unreduced retirement benefit. If you are receiving Social Security disability benefits when you reach full retirement age, those benefits will be converted to retirement benefits. For more information, ask for* Disability Benefits *(Publication No. 05-10029). You can access this publication online at www.ssa.gov/pubs/10029.html.*

Delayed retirement

You may choose to keep working even beyond your full retirement age. If you do, you can increase your future Social Security benefits in two ways.

First, each additional year you work adds another year of earnings to your Social Security record. Higher lifetime earnings may mean higher benefits when you retire.

Second, your benefit will increase automatically by a certain percentage from the time you reach your full retirement age until you start receiving your benefits or until you reach age 70. The percentage varies depending on your year of birth. For example, if you were born in 1943 or later, 8% per year will be added to your benefit for each year that you delay signing up for Social Security beyond your full retirement age.

Note: *If you decide to delay your retirement,* ***be sure to sign up for Medicare at age 65****. In some circumstances, medical insurance costs more if you delay applying for it. Other information about Medicare is in* SSA Publication 05-10043, which can be accessed online at www.ssa.gov/benefits/medicare/.

Deciding when to retire

Choosing when to retire is an important personal decision. Regardless of the age you choose to retire, it is a good idea to contact Social Security in advance to see which month is best to claim benefits. In some cases, your choice of a retirement month could mean higher benefit payments for you and your family.

In deciding when to retire, it is important to remember that financial experts say you will need 70-80 percent of your preretirement income to have a comfortable retirement. Since Social Security replaces only about 40 percent of pre-retirement

income for the average worker, it is important to have pensions, savings, and investments.

It may be to your advantage to have your Social Security benefits start in January, even if you do not plan to retire until later in the year. Depending on your earnings and your benefit amount, it may be possible for you to start collecting benefits even though you continue to work. Under current rules, many people can receive the most benefits possible with an application that is effective in January.

You should apply for benefits about three months before the date you want your benefits to start. If you are not quite ready to retire, but are thinking about doing so in the near future, you may want to visit Social Security's website to use their convenient and informative retirement planner at: www.socialsecurity.gov/retire2/.

Retirement benefits for widows and widowers

Widows and widowers can begin receiving Social Security benefits at age 60, or at age 50 if they are disabled. And they can take a reduced benefit on one record and later switch to a full benefit on the other record. For example, a woman could take a reduced widow's benefit at age 60 or 62 and then switch to her full (100 percent) retirement benefit when she reaches full retirement age. The rules vary depending on the situation, so you should talk with a Social Security representative about the options available to you.

Benefits for family members

If you are getting Social Security retirement benefits, some members of your family also can receive benefits. Those who can include:

- Spouses who are age 62 or older;
- Spouses who are younger than 62, if they are taking care of a child entitled on your record who is under age 16 or disabled;
- Former spouses, if they are age 62 or older (see Benefits for a divorced spouse);
- Children up to age 18, or up to 19 if they are full-time students who have not yet graduated from high school; and
- Disabled children, even if they are age 18 or older.

If you become the parent of a child (including an adopted child) after you begin receiving benefits, you must inform the Social Security office about the child so they can decide if the child is eligible for benefits.

Note: *Children's benefits are available only to unmarried children. However, in certain situations, benefits are payable to a disabled child who marries someone who is also eligible as a disabled child.*

Spouse's benefits

A spouse who has not worked or who has low earnings can be entitled to as much as one-half of the retired worker's full benefit. If you are eligible for both your own retirement benefits and for benefits as a spouse, Social Security always pays your own benefits first. If your benefits as a spouse are higher than your retirement benefits, you will get a combination of benefits equaling the higher spouse benefit.

At full retirement age, benefits as a spouse cannot exceed one-half of the retired worker spouse's full retirement amount. According to the Social Security Administration:

- If you were born before January 2, 1954 and have already reached full retirement age, you can choose to receive only the spouse's benefit and delay receiving your retirement benefit until a later date. If your spouse is full retirement age and applying for spouse's benefits only, **they can apply online** by using the retirement application. Your spouse can also contact us to schedule an appointment.
- If your spouse's birthday is January 2, 1954 or later, the option to take only one benefit at full retirement age no longer exists. If your spouse files for one benefit, they will be effectively filing for all retirement or spousal benefits.

If you have reached your full retirement age and are eligible for a spouse's or ex-spouse's benefit *and* your own retirement benefit, you may choose to receive only spouse's benefits and continue accruing delayed retirement credits on your own Social Security record. You may then file for benefits later and receive a higher monthly benefit based on the effect of delayed retirement credits.

If you are receiving a pension based on work where you did not pay Social Security taxes, your spouse's benefit may be reduced. Additional information on pensions from work not covered by Social Security can be found in *the Detailed Calculator provided by Social Security regarding pensions from work not covered by Social Security, which can be accessed online at: www.ssa.gov/OACT/anypia/anypia.html*.

If spouses want to get Social Security retirement benefits before reaching full retirement age, the amount of the benefit is reduced **permanently**. The amount of reduction depends on when the person reaches full retirement age. The Social Security Quick Calculator for determining the amount of your spousal benefit, based upon your date of birth and the effective date that you wish to begin receiving benefits can be accessed online at: www.ssa.gov/oact/quickcalc/spouse.html.

Note: *Your current spouse cannot receive spouse's benefits until you (the worker) file for retirement benefits.*

Maximum family benefits

If your children are eligible for Social Security, each will receive up to one-half of your full benefit. But there is a limit to the amount of money that can be paid to you and your family—usually 150-180 percent of your own benefit payment. If the total benefits due to your spouse and children are more than this limit, their benefits will be reduced. Your benefit will not be affected.

Social Security Benefits and Divorce

There are specific rules governing the impact of divorce on the receipt of Social Security benefits. Even though you are divorced, you may be entitled to collect Social Security retirement benefits on your former spouse's Social Security earnings record if you satisfy the following requirements: (1) you must have been married to that former spouse for at least ten years prior to your divorce, (2) you are at least sixty-two years old, (3) you are currently unmarried, and (4) you are not eligible for an equal or higher benefit on your own Social Security earnings record or on someone else's Social Security earnings record. If you receive retirement benefits on your former spouse's Social Security earnings record, the amount of benefits you get will have no effect on the amount of benefits your former spouse and/or his or her current spouse receive.

Remarriage before the age of sixty generally precludes you from collecting retirement benefits based on your former spouse's Social Security earnings record unless your subsequent marriage ends as a result of divorce, annulment, or death. You may be entitled to collect retirement benefits on your former spouse's Social Security earnings record if your remarriage occurred after your sixtieth birthday.

Divorce does not necessarily preclude you from receiving survivor's benefits if your former spouse dies. You may be entitled to receive such benefits if the marriage lasted ten years or more. If you are at least sixty years old, the survivor's benefits you receive will not affect the amount of benefits to which other survivors may be entitled. In the event that you receive survivor's benefits, you are entitled to receive retirement benefits as early as age sixty-two if you are eligible for such benefits and the amount of retirement benefits you are eligible for is in excess of the survivor's benefits you are currently collecting.

This is a brief summary of the rules pertaining to the impact of divorce on your ability to collect Social Security benefits on your former spouse's earnings record and is in no way a complete explanation of this topic. For more information and for the specific rules pertaining to your situation, please contact the Social Security Administration at (800) 772-1213 or online at: www.ssa.gov/retire2/yourdivspouse.htm.

How do you sign up for Social Security?

You can apply for retirement benefits online at www.socialsecurity.gov or you can call 1 (800) 772-1213. Or you can make an appointment to visit any Social Security office to apply in person.

Depending on your circumstances, you will need some or all the documents listed below. But do not delay applying for benefits because you do not have all the information.

Information needed:

- Your Social Security number;
- Your birth certificate;
- Your W-2 forms or self-employment tax return for last year;
- Your military discharge papers if you had military service;

- Your spouse's birth certificate and Social Security number if he or she is applying for benefits;
- Children's birth certificates and Social Security numbers, if you are applying for children's benefits;
- Proof of U.S. citizenship or lawful alien status if you (or a spouse or child applying for benefits) were not born in the United States; and
- The name of your bank and your account number so your benefits can be deposited directly into your account.

You will need to submit original documents or copies certified by the issuing office.

Right to appeal

If you disagree with a decision made on your claim, you can appeal it. For an explanation of the steps you can take, you can access The Appeals Process (Publication No. 05-10041) online at: www.ssa.gov/pubs/10041.html.

You have the right to be represented by an attorney or other qualified person of your choice. For more information, you can access Your Right To Representation (Publication No. 05-10075) online at: www.ssa.gov/pubs/10075.html.

If you work and get benefits at the same time

You can continue to work and still receive retirement benefits. Your earnings in (or after) the month you reach your full retirement age will not reduce your Social Security benefits. However, your benefits will be reduced if your earnings exceed certain limits for the months before you reach your full retirement age. (See *Age to Receive Full Social Security Benefits*, to find your full retirement age.)

Here is how it works:

- If you are younger than full retirement age, $1 in benefits will be deducted for each $2 in earnings that you have above the annual limit.
- In the year you reach your full retirement age, your benefits will be reduced $1 for every $3 that you earn over an annual limit until the month you reach full retirement age.
- Once you reach full retirement age, you can keep working, and your Social Security benefit will not be reduced no matter how much you earn.
- If, during the year, your earnings are higher or lower than you estimated, let the Social Security office know as soon as possible so that they can adjust your benefits.

A special monthly rule

A special rule applies to your earnings for one year, usually your first year of retirement. Under this rule, you can receive a full Social Security check for any month you earn under a certain limit, regardless of your yearly earnings. If you are self-employed, the work you do in your business is taken into consideration as well.

If you want more information on how earnings affect your retirement benefit, download or ask for *How Work Affects Your Benefits* (Publication No. 05-10069), which has current annual and monthly earnings limits at: https://www.ssa.gov/pubs/EN-05-10069.pdf.

Your benefits may be income taxable

Many people who get Social Security (Retirement, Survivor & Disability) benefits have to pay income taxes on their benefits. Supplemental Security Income (SSI) benefits are not taxable.

- If you file a federal income tax return as single, head of household, qualifying widow(er) or married filing separately living apart from your spouse, and your combined income* is $25,000 or above, you may have to pay taxes on part of your Social Security benefits.
- If you file a joint return with your spouse, you may have to pay taxes on part of your benefits if you and your spouse have a combined income* that is $32,000 or above.
- If you are married filing separately and living with your spouse, you probably will pay taxes on your benefits.

At the end of each year, Social Security will mail you a *Social Security Benefit Statement* (Form SSA-1099) showing the amount of benefits you received. You can use this statement when you complete your federal income tax return to find out if you have to pay taxes on your benefits. Although you are not

required to have federal taxes withheld, you may find it easier than paying quarterly estimated tax payments.

For more information, call the Internal Revenue Service's toll-free telephone number, (800) 829-3676, to ask for Publication 554, *Tax Information for Older Americans*, and Publication 915, *Social Security Benefits And Equivalent Railroad Retirement Benefits. Both of these publications may also be found at:*

www.irs.gov/Forms-&-Pubs.

**On the 1040 tax return, your "combined income" is the sum of your adjusted gross income without regard to your Social Security Benefits and certain other adjustments plus nontaxable interest plus one-half of your Social Security benefits.*

Virginia Income Tax

Social Security retirement benefits are not taxed in Virginia. Other types of retirement income, such as pension income and retirement account withdrawals, are deductible up to $12,000 for seniors.

Pensions from work not covered by Social Security

If you get a pension from work where you paid Social Security taxes, that pension will not affect your Social Security benefits. However, if you get a pension from work that was not covered by Social Security, for example, the federal civil service, some state or local government employment or work in a foreign country—your Social Security benefit may be reduced.

For more information, ask for *Government Pension Offset* (Publication No. 05-10007), for government workers who may be eligible for Social Security benefits on the earnings record of a spouse; and *Windfall Elimination Provision* (Publication No. 05-10045), for people who worked in another country or government workers who also are eligible for their own Social Security benefits. These publications are both available at www.ssa.gov/pubs/.

Leaving the United States

If you are a U.S. citizen, you can travel to or live in most foreign countries without affecting your Social Security benefits. There are, however, a few countries where Social Security payments cannot be sent. These countries are Cambodia, Cuba, North Korea, Vietnam, and areas that were in the former Soviet Union (other than Armenia, Estonia, Latvia, Lithuania, and Russia). However, exceptions can be made for certain eligible beneficiaries in countries other than Cuba and North Korea. For more information about these exceptions, please contact your local Social Security office. If you work outside the United States, different rules apply in determining if you can get benefits.

For more information, contact The Department of Social Security to ask for a copy of the publication, *Your Payments While You Are Outside The United States* (Publication No. 05-10137) This publication may be found at www.socialsecurity.gov/pubs/.

Supplemental Security Income

Supplemental Security Income (SSI) is a federal program administered by the Social Security Administration which provides income assistance to aged, blind, and disabled persons who do not own much property or have a lot of income. SSI is a federal income supplement program funded by general tax revenues and not by Social Security taxes. The SSI program provides monthly cash payments to those individuals who meet income and eligibility criteria. Essentially, the program guarantees a certain income to an individual or couple. SSI will provide supplemental payments so that the total income for an individual or couple will equal the guaranteed amount. The SSI program is administered by the Social Security Administration, but it differs from Social Security retirement or disability benefits because you can get SSI even if you have never paid into the Social Security system.

Eligibility

You may qualify for SSI on either the basis of age (65 or older) or physical impairment (blindness or disability). You must be a U.S. citizen or national, or in one of certain categories of aliens. In general, an alien who is subject to an active warrant for deportation or removal does not meet the citizenship/alien requirement.

Under the SSI program, "blindness" is defined as having central visual acuity of 20/200 or less in the better eye with the use of a corrective lens, or visual field restriction to 20 degrees or less.

"Disabled" is defined as inability to engage in any substantial gainful employment due to a physical or mental impairment, which has lasted or is expected to last for at least 12 months or is expected to result in death. An applicant's monthly income will affect the determination of whether the applicant is able to engage in substantial gainful employment. In some cases, however, a blind applicant who can work may still qualify for benefits.

An individual or couple must satisfy the following asset and income requirements for eligibility:

- An applicant's assets must total not more than $2,000 for an individual or $3,000 for a couple, after certain deductions and exclusions are made. See the SSI website at www.socialsecurity.gov/ssi/.
- An applicant's income also must fall below specific limits after certain exclusions and deductions. (Income limitations vary within states. Call (800) 772-1213 to obtain information on income limits.)
- If your resources are over the eligibility limit, you may spend them down to the resource level required for eligibility. In order to prove you no longer own the resources, you should keep receipts and other records of the ways you spend down your resources.

The following assets are NOT counted for SSI eligibility:

- your home and the land it is on;
- household goods and personal property that do not exceed $2,000 in value ($3,000 for a couple);
- the full value of your car if it is needed for employment or medical reasons; otherwise, up to $4,500 in value;
- life insurance if the face value is $1,500 or less;
- money set aside for burial expenses up to $1,500 ($3,000 for a couple);
- burial space for you and immediate family;
- property that cannot be sold.

In some cases, SSI recipients are eligible for other low-income assistance programs, such as food stamps. In some states, SSI recipients automatically are eligible for health benefits under the Medicaid program.

Income

Your "countable" income cannot exceed the current federal benefit rate in order to qualify for SSI. In 2020, the rates are $783 per month for individuals and $1175 per month for couples. These rates increase yearly. If you qualify, the amount of your monthly SSI benefit will depend on your countable income. Generally, the more income you receive, the less your SSI benefit.

"Income" is money you receive from any source, such as wages, Social Security, pension, and money from friends and relatives. Income also includes free food, clothing, or housing. Some of your spouse's income may also be counted. Certain types of income, however, are not counted for SSI eligibility:

- the first $20 of most income;
- the first $65 a month of earnings from employment;
- one-half of earnings from employment over $65 per month;
- food stamps;
- shelter you receive from private nonprofit organizations;
- most home energy assistance.

You can receive SSI and Social Security retirement benefits at the same time. For more particular information (based on where you live), call the Social Security Administration at (800) 722-1213.

Penalties

Your SSI benefits may be reduced under the following conditions:

- you have unearned income of over $20 a month; this income includes Social Security payments, pension, gifts, and other unearned money;
- you are living in the home of a friend or relative;
- you live in a nursing home.

Additionally, an unmarried couple living together may be listed by the Social Security Administration as "holding out as husband and wife." When this happens, and both persons are receiving SSI, their checks will be reduced, if necessary, so that the two checks together will equal the amount that a couple would receive. There no longer is any SSI eligibility

penalty for giving away property. There is, however, still a Medicaid eligibility penalty to consider.

Applying for Benefits

You can call the Social Security Administration's toll-free number, (800) 772-1213, and complete an application over the phone, or go to your local Social Security office. If you file an application at a Social Security office, a Social Security representative will assist you with your application. Other agencies, such as your Area Agency on Aging, may be able to assist you in applying for SSI. Do not delay filing an application if you think you are eligible, because SSI may only be paid from the date of the application. See what you need to know when you get Supplemental Security Income (SSI) Publication Number SSA 05-11011.

Appeals Process for SSI

You should receive a decision from Social Security within 60 days of your application. If you are denied SSI, you may appeal, and you may be represented by a person of your choice at any step in the appeals process. Your representative does not necessarily have to be an attorney. You and your representative will receive notices of all decisions on your claim.

The first step in the appeals process is called the reconsideration. You must ask for the reconsideration within 60 days of the date you receive notice of the initial decision. Do not delay appealing because the process takes a long time. If you have been receiving benefits and you receive notice that your benefits are being reduced or terminated, you must make the request within 10 days so your benefits will continue during the appeal. A Social Security representative will help you with your request. If you are not satisfied with the result of the reconsideration, you may appeal again and ask for a hearing before an administrative law judge. Many decisions are reversed after the hearing. You must request the hearing within 60 days of the date you receive notice of the reconsideration decision. Again, you should appeal immediately. Further appeals of the administrative law judge's decision are to the Appeals Council and to federal district court. You may want to contact the area Agency on Aging or Legal Aid office for assistance with your appeal or questions about SSI.

Overpayments

It is not uncommon for SSI recipients to receive a notice from the Social Security Administration that they have been overpaid. Do not panic if you receive such a notice. You may not have to repay the money or you may be able to repay as little as $10 a month. You have the right to appeal if you do not believe you were overpaid. If you appeal within 30 days of the date on your overpayment notice, your benefits will continue during the appeal. Even if you did receive the overpayment, you may not have to pay it back if you were without fault in causing the overpayment and you are financially unable to pay it back. You must file a request for waiver of the overpayment with Social Security if you feel the overpayment was not your fault. Your local Legal Aid office may be able to help you get a waiver. Social Security may withhold as little as $10 per month from your checks, even if you were not at fault. You must talk to a Social Security representative about this.

SOCIAL SECURITY DISABILITY INSURANCE

Social Security Disability Insurance (SSDI) is one of the major federal programs that provides financial assistance to people with disabilities. Unlike some other programs for people with disabilities (like Supplemental Security Income (SSI)), an SSDI claimant can qualify for benefits no matter how much money they have or how much money they make from sources other than work.

SSDI is available to any worker who has a "disability" as defined by the Social Security Administration (SSA) and who has paid into the Social Security system and have worked long enough and recently enough.

The number of work credits, with only 4 available per year, needed to qualify for Social Security Disability Benefits depends on your age when you became disabled. Generally you need a total of 40 credits with 20 credits earned in the last 10 years ending with the year you became disabled. However, some younger workers, depending on their age, may qualify with fewer credits.

SSA defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in

death or has lasted or can be expected to last for a continuous period of not less than 12 months."

SSA defines "substantial gainful activity (SGA)" as being able to earn more than $1260 a month from working (in 2020). This income restriction applies only to income earned by working; an applicant can receive any amount of unearned income from any source other than working and still qualify for SSDI.

SSA uses a 5-step evaluation to determine if a person should receive disability benefits. They are:

1. Are you working? If you are and you are earning more than the current SGA amount (currently $1,260 a month--2020), you generally cannot be considered disabled;

2. Is your condition severe? Your impairment must be expected to last one year or result in death during that year;

3. Is your condition found in the list of disabling impairments? Social Security maintains a list of impairments for each of the major body systems that are so severe they automatically mean you are disabled and you will receive benefits. If your condition is not on this list, Social Security has to decide if it is of equal severity to an impairment on this list. If it is, your claim is approved. If it is not, Social Security goes on to the next step;

4. Can you do the work you did previously? Does you condition prevent you from doing any work that you did in the last 15 years? If it does not, your claim will be denied. If it does, your claim will be considered further; and

5. Can you do any other type of work available in the national economy? The test isn't whether you are able to go back to your old job, and the test isn't whether you have been able to find a job lately. Rather, the test is whether you are capable of doing any job available in the national economy (even if this job involves different skills or pays less than your previous work). By using an extensive set of regulations, SSA takes into account your medical condition, your age, your abilities, your training and your work experience in deciding your case. If you cannot do any other kind of work, your claim will be approved. If you can, your claim will be denied.

How much your SSDI benefit will be depends on the amount you have paid into the Social Security system. A disabled person will receive the same monthly benefit that he or she would receive had he or she retired at full retirement age. In addition, if you have received Social Security Disability Insurance Benefits, for 24 months, you qualify for Medicare.

PENSIONS

For many individuals, pension plans provide an important supplement to savings and Social Security benefits and thus serve as a vital part of retirement income. Consequently, learning about pension plans and how they operate may prove to be a valuable safeguard before and at retirement.

A pension plan allows certain workers to defer compensation in order to earn benefits that are received upon retirement. While the law does not require employers to provide pensions, approximately half of all private employers and most government agencies offer some type of pension plan that pays benefits to those retired persons who meet certain eligibility requirements.

Pension Eligibility

A worker must meet eligibility requirements before he or she may participate in a pension plan. Under the Employee Retirement Income Security Act of 1974 (ERISA), an employee must (with some exceptions) be allowed to begin participation in his employer's pension plan if he or she is 21 years old or older and has worked for that employer for one year or more. ERISA defines a "year" as a 12-month period in which the worker has worked at least 1,000 hours. See 29 U.S.C. §1052(a)(3)(Supp. I 2000).

Once an employee becomes eligible to participate in the pension plan, the worker begins earning pension credits which serve as the basis upon which pension benefits are awarded. The rules of the pension plan will specify how many years of work are required for an employee to become vested. To be "vested" means that you have a legal right to collect the pension when you retire. *See* id. §1053. Usually, it takes between five and seven years of service with your employer to become fully vested. A vested employee does not lose the right to receive pension benefits even if he or she switches jobs, is fired for misconduct, or has a break in service.

Types of Pension Plans

Generally, there are two types of pension plans: (1) defined benefit plans and (2) defined contribution plans.

A **defined benefit plan** specifies how much in benefits the employer's or sponsor's plan will "pay out" to a retiree based upon a pre-determined formula, frequently tied to the employee's earnings history, tenure, or age. These plans do not depend upon investment returns or contributions from the employee. It is the most common type of plan for larger employers, military, and government agencies, and gives a retired worker a lump sum or a fixed periodic (monthly) amount as described in the plan.

A **defined contribution plan** specifies how much money the employer, employee, or both will "pay in" to the plan each year for the employee. With this plan, your contributions are fixed but your benefits may vary according to your contributions and what those contributions have earned over the years. There are several types of defined contribution plans including the following:

- Profit-sharing plans, where the employer contributes an amount up to 25% of employee's or participant's compensation;
- Employee stock ownership plans, where the employer's contribution is made in the form of company stock; and
- 401(k) plans.

An employee may elect to defer a portion of his or her income and place the money in an individual profit-sharing plan account. The employer may also contribute to the employee's individual account.

Pension Rights

In 1974, the Employees Retirement Income Security Act (ERISA) was enacted to increase protection for workers' pension plans. ERISA sets minimum standards for pension plans and guarantees that pension rights cannot be unfairly denied or taken from the worker. If you work for a private employer that offers a retirement plan, ERISA requires that pension plan rules be in writing in the Summary Plan Description (SPD). The summary should include the following:

- who is eligible to participate;
- how benefits are determined;
- the age at which you can start receiving benefits;
- who administers the plan;
- claims procedures.

You have the right to receive this information from the plan office within 30 days of your request for it.

In addition to your right to the SPD, you are entitled to receive a statement of your "personal benefit account," which explains how many benefits you have and what benefits you have vested. To be "vested" means that you have a legal right to collect the pension when you retire. Usually, it takes between five and seven years of service with your employer to become fully vested. So, if you leave your place of employment after you are fully vested, all your benefits are still yours. If, however, you leave before becoming fully vested, you lose the unvested portion of your pension benefits.

Under ERISA, employers are prohibited from discharging an employee for the purpose of preventing the employee from receiving a pension. If this happens to you, you have the right to file suit in federal court. You will have to prove that the motivating factor for the discharge was the employer's intention to prevent payment of your pension benefits. You could potentially recover lost wages and benefits, plus attorneys' fees.

Breaks in Service

A break in service (time away from work) may have the effect of canceling pension credits earned prior to the "break." Therefore, it is important that you learn and understand the break-in-service rule of your pension plan. Under ERISA, an interruption in employment cannot count as a break in service unless the worker has worked less than 500 hours during the year. If a break in service occurs, the worker loses previously earned credits only if the number of consecutive years of break equals or exceeds the greater of 5 or the number of years of credited work prior to the break. Fully vested benefits are not lost by any break in service.

Benefits for Workers' Spouses

For workers who retire after January 1, 1976, most pension plans must provide for a "joint and survivor annuity." This means that the employee may select to have higher benefits that stop at his or her death or a lesser benefit that continues for as long as either

the worker or his/her spouse is alive. The amount paid to the surviving spouse can be as low as one-half of the amount the couple received while both were living.

The Retirement Equity Act of 1984 (REA) contains several provisions affecting the rights of homemakers, widows, divorced women, and working wives to receive private pension benefits after their spouse's death. (Note: REA is sex neutral and can help men as well.) The REA requires that both spouses give written consent in a notarized form before survivor's benefits may be waived.

Protection of Pension Funds

Under ERISA, a worker is protected from loss of benefits due to the employer's going out of business, acquisition of the worker's company by a new employer, or amendment or termination of the pension plan. Additionally, ERISA requires the trustees of the pension plan to do the following:

- discharge their duties solely in the interest of the pension plan beneficiaries (employees);
- act carefully, skillfully, prudently, and diligently in administering the pension plan;
- diversify the pension trust fund investments to avoid large losses;
- operate the pension plan in accordance with the plan rules.

The Federal Pension Benefit Guaranty Corporation (PBGC) guarantees payment of vested retirement benefits under most defined benefits plans in certain situations, such as a company's bankruptcy. Benefits above a set level are not insured. (Note: Defined contribution plans do not receive this protection.)

Appeals

If your pension application is denied, you have the right to be notified, in writing, of the specific reasons for the denial. You also have the right to a full review of the denial by the trustees. If you feel you have been wrongfully denied pension benefits, you should promptly seek legal assistance to determine whether an appeal is in order.

In the event of an appeal, documentation of communications with your pension plan administrator will be very helpful. Therefore, it is very important that all your communications with your pension plan administrator be put in writing and sent via certified mail, return receipt requested.

VETERANS' BENEFITS

Numerous benefits are offered by the Department of Veterans Affairs (VA) to honorably discharged and qualified veterans. Information about veterans benefits may be found at www.va.gov, by calling 1 800 827-1000, or by writing the Virginia Department of Veterans Services ("DVS"), James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia 23219. DVS has offices located throughout Virginia and offers free services to veterans and their families. The Virginia Veterans Resource Guide can be accessed at https://online.flippingbook.com/view/246914/. Locate nearby service centers at www.dvs.virginia.gov/dvs/locations.

Veterans' benefits may include, but are not limited to, pensions for wartime veterans or their surviving spouses who are in financial need of supplemental income, medical, domiciliary, nursing home, and limited dental care, compensation for service-connected disabilities, non-service-connected (NSC) disability pension benefits for eligible wartime veterans, treatment programs for alcohol and drug addiction, home loan guarantees, education benefits, life insurance if retained upon discharge from active duty, and limited burial benefits. In addition, important possible benefits for veterans and their spouses include the Aid and Attendance Allowance and Housebound Pension. The pension benefits are paid monthly and are tax-free.

Basic Veterans Pension/Basic Survivors Pension

- The maximum benefit for a single veteran without dependent children in 2020 is $13,752/year ($1,146/month).
- The maximum benefit amount for a married veteran in 2020 is $18,008/year ($1,501/month).
- The maximum benefit for a surviving spouse without any dependent children is $9,223/year ($769/month).

Aid and Attendance Allowance

Aid and Attendance benefits may be available to an eligible war-time veteran and/or the spouse of a deceased eligible war-time veteran. There are income and asset eligibility limitations.

Aid and Attendance (A&A) is an enhanced or special monthly monetary pension benefit paid in addition to basic pension. One may not receive enhanced or special monthly pension without first establishing eligibility for basic VA pension. However, because enhanced pension is based upon a higher income limit, a claimant ineligible for basic pension due to excessive income may be eligible for enhanced pension benefits.

For 2020, the maximum benefits for Basic Veterans/ Survivor Pension plus the Aid & Attendance Pension are:

- Veteran without spouse or dependent child: $22,938/year ($1912/month).
- Veteran who is married: $27,194/year ($2,266/ month).
- Surviving spouse: $14,761/year ($1,230/month).

Housebound Pension for Veterans/ Surviving Spouses

The Housebound Pension is a cash "add on" to the Basic Veterans/Survivors Pension. For 2020 the maximum benefits a veteran or survivor spouse may be eligible to receive are:

- Veteran without spouse or dependent child: ($16,805/yer ($1,400/month).
- Veteran who is married: $21,063/year ($1,755/ month).
- Surviving spouse: $11,273/year ($939/month).

Eligibility

To be eligible for service-connected compensation benefits, a wartime veteran who was not dishonorably discharged must meet certain age or disability requirements and have income and net worth within certain limits set by Congress. According to the Veterans Administration website https://www.va.gov/pension/eligibility/:

Am I eligible for Veterans Pension benefits from VA?

If you meet the VA pension eligibility requirements listed below, you may be eligible for the Veterans Pension program.

Both of these must be true:

- You didn't receive a dishonorable discharge, **and**
- Your yearly family income and net worth meet certain limits set by Congress. Your net worth includes all personal property you own (except your house, your car, and most home furnishings), minus any debt you owe. Your net worth includes the net worth of your spouse. Find out about Veterans Pension rates at https://www.va.gov/pension/veterans-pension-rates/.

And at least one of these must be true about your service. You:

- Started on active duty before September 8, 1980, and you served at least 90 days on active duty with at least 1 day during wartime, **or**
- Started on active duty as an enlisted person after September 7, 1980, and served at least 24 months or the full period for which you were called or ordered to active duty (with some exceptions) with at least 1 day during wartime, **or**
- Were an officer and started on active duty after October 16, 1981, and you hadn't previously served on active duty for at least 24 months

And at least one of these must be true. You:

- Are at least 65 years old, **or**
- Have a permanent and total disability, **or**
- Are a patient in a nursing home for long-term care because of a disability, **or**
- Are getting Social Security Disability Insurance or Supplemental Security Income

Eligibility for Aid & Attendance or Housebound Benefits:

According to the Veterans Administration website at: https://www.va.gov/pension/aid-attendance-housebound/

Am I eligible for VA Aid and Attendance or Housebound benefits as a Veteran or survivor?

VA Aid and Attendance eligibility

If you get a VA pension and you meet at least one of the requirements listed below, you may be eligible for this benefit.

At least one of these must be true:

- You need another person to help you perform daily activities, like bathing, feeding, and dressing, **or**
- You have to stay in bed—or spend a large portion of the day in bed—because of illness, **or**
- You are a patient in a nursing home due to the loss of mental or physical abilities related to a disability, **or**
- Your eyesight is limited (even with glasses or contact lenses you have only 5/200 or less in both eyes; or concentric contraction of the visual field to 5 degrees or less)

Housebound benefits eligibility

If you get a VA pension and you spend most of your time in your home because of a permanent disability (a disability that doesn't go away), you may be eligible for this benefit.

Note: You can't get Aid and Attendance benefits and Housebound benefits at the same time.

Eligible dependents of a living or deceased veteran may be entitled to an array of VA benefits, to include education, NSC death pension, or dependency and indemnity compensation benefits. Medical care may be provided to the children of in-country Vietnam veterans diagnosed with spina bifida. Eligible dependents qualifying for the Civilian Health and Medical Program of VA (CHAMPVA) can receive reimbursement for most medical expenses. In addition, those dependents who are not covered by Medicare may receive treatment at many VA facilities on a space available basis, after the needs of veterans are met under the CHAMPVA In-House Treatment Initiative (CITI) program. Not all VA facilities participate in the CITI program.

How to Apply for Aid and Attendance:

You can apply for VA Aid and Attendance or Housebound benefits in one of these ways:

1. **Send a completed VA form to your pension management center (PMC).**

   Fill out VA Form 21-2680 (Examination for Housebound Status or Permanent Need for Regular Aid and Attendance) and mail it to the PMC for your state. You can have your doctor fill out the examination information section. Download the form at: https://www.vba.va.gov/pubs/forms/VBA-21-2680-ARE.pdf. Locate the closest Pension Management Center at: https://www.va.gov/pension/pension-management-centers/.

   You can also include with your VA form:

   - Other evidence, like a doctor's report, that shows you need Aid and Attendance or Housebound care
   - Details about what you normally do during the day and how you get to places
   - Details that help show what kind of illness, injury, or mental or physical disability affects your ability to do things, like take a bath, on your own
   - **If you're in a nursing home,** you'll also need to fill out a Request for Nursing Home Information in Connection with Claim for Aid and Attendance (VA Form 21-0779). Download the form at: https://www.vba.va.gov/pubs/forms/VBA-21-0779-ARE.pdf

2. **Apply in person.**

   You can bring your information to a VA regional office near you. Find the closest VA regional office at: https://www.va.gov/find-locations/?facilityType=benefits

Applying for VA Benefits and Information

To apply for VA benefits, contact your local VA Regional Office (VARO) by telephoning (800) 827-1000, or online at www.va.gov. All claims for VA benefits may be initiated at any local veterans' state or service organization office serving veterans but must be filed at the VARO for processing of

the claim. In Virginia, the VARO is located at 210 Franklin Road, SW, Roanoke, Virginia 24011.

A good general source of information is the VA's annual publication, *Federal Benefits for Veterans and Dependents*. The most recent copy of the publication in English and Spanish can be found on the VA's website at http://www.va.gov/opa/publications/benefits_book.asp.

Right to Appeal

Should a veteran or other claimant disagree with a determination made on a claim by the VARO, the decision may be appealed to the Board of Veterans' Appeals (BVA or Board) in Washington, D.C. A timely notice of disagreement (NOD) must be filed at the VARO to begin the appellate process. After the VARO issues a statement of the case, a timely substantive appeal must be filed to perfect the appeal to the BVA. Disagreement with a final unfavorable Board decision may be appealed to the United States Court of Appeals for Veterans Claims (Court) with the filing of a timely Notice of Appeal. (*See* www.vetapp.gov). In most instances, an unfavorable Court decision may be appealed to the United States Court of Appeals for the Federal Circuit and the United States Supreme Court.

Representation

Most major service organizations, such as The American Legion, Disabled American Veterans, Veterans of Foreign Wars, and Vietnam Veterans of America, have offices co-located at the VARO. In addition, some service organizations have service representatives located throughout the state to assist veterans and their dependents. The State of Virginia provides service to veterans through the Virginia Department of Veterans Services, (804) 786-0286 or www.dvs.virginia.gov/. Finally, attorneys may be of assistance, and an attorney is now permitted to charge a fee to assist a claimant with his or her VA appeal, if the claimant's NOD was filed with the VARO on or after June 22, 2007.

VA Pensions and Social Security Administration (SSA) Benefits

Social Security Disability Insurance (SSDI) or retirement benefits will not be reduced if you receive service-connected compensation benefits. However, if you receive Supplemental Security Income (SSI), your VA benefits will be considered income. Therefore, in order to avoid an overpayment, be sure to report all VA income to the SSA if you are in receipt of SSI.

If you are receiving NSC disability pension benefits, you must report all family income, changes in family income, and changes in number of dependents to the VA. VA NSC disability pension benefits are reduced dollar for dollar for family income, to include SSDI or Social Security. One of the few exceptions to such a reduction is if you are in receipt of SSI benefits.

VA Pensions and Medicaid

Individuals who may be eligible for either VA pension or Medicaid benefits must decide which programs to pursue. Receiving VA cash benefits can exceed Medicaid's income limits, making the veteran ineligible for Medicaid. It is important to consult with an Elder Law Attorney or a financial planner who is an expert in both areas. Generally, someone who needs nursing home care will want to use Medicaid benefits, while someone needing home care may benefit more from the VA benefits, but this becomes very complicated quickly for married couples with differing care needs.

Virginia Veterans Programs

For more information on specific programs for veterans and survivors in Virginia go to:

- Virginia State Veteran's Survivor's or Disabled Education Benefits: https://www.dvs.virginia.gov/education-employment/virginia-military-survivors-and-dependents-education-program-2-2
- Real Estate Tax Exemptions for 100% disabled veterans & Spouses – or spouses of KIA/POW https://www.dvs.virginia.gov/benefits/real-estate-tax-exemption

RAILROAD RETIREMENT ACT BENEFITS

The Federal Railroad Retirement Act offers retirement and disability annuities for qualified railroad employees, spousal annuities for their wives and husbands, and survivor benefits for the families of deceased employees who were insured under the Act. These programs are administered by the United States Railroad Retirement Board and are very similar

to Social Security benefits; eligibility is determined in much the same manner. If both railroad and Social Security benefits are payable, however, the railroad benefits may be reduced.

For more information, contact or visit the following:

U.S. Railroad Retirement Board
Roanoke, Virginia, District Office
First Campbell Square, Suite 110
210 First Street, SW
PO Box 270
Roanoke, VA 24002-0270
Telephone: (877) 772-5772

U.S. Railroad Retirement Board
Richmond, Virginia, Branch Office
400 North 8th Street, Room 470
Richmond, VA 23219-4819
Telephone: (877) 772-5772

Railroad Retirement Helpline
(800) 808-0772

Also available upon request from the United States Railroad Retirement Board offices is an information pamphlet entitled Railroad Retirement and Survivor Benefits. Download your personal copy at https://rrb.gov/sites/default/files/2019-03/2019_IB2.pdf. This pamphlet describes the retirement and disability annuities provided for employees under the Railroad Retirement Act and the benefits available to their spouses and survivors. Medicare, unemployment and sickness insurance payments, and other benefits paid by the Railroad Retirement Board are described in separate pamphlets.

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP - FOOD STAMPS)

Millions of older Americans on fixed incomes have difficulty obtaining food "basics" necessary for a proper diet. If you meet the income guidelines, the SNAP program may be able to help you stretch your food budget. Although it is a federal government program, it is run by state or local agencies. It provides funding for food, as well as plants and seeds to grow food. The program explicitly excludes by regulation such nonfood items as alcoholic beverages, pet food, vitamins, medicines, tobacco, and cigarettes. In September 2019 approximately 698,350 Virginians received SNAP allotments. In the following description, whenever "food stamps" are referred to, that term refers to a SNAP allotment.

The Myth

Many think that the program is only designed to help the desperately poor. This is not true. Anyone can apply for SNAP (not all may be eligible), but you and other people in your household must meet certain conditions. Everyone who is applying in your household must have or apply for a Social Security Number and be either a U.S. citizen, U.S. national, or have status as a qualified alien. For income limitations based upon household size, see the documents at: https://www.dss.virginia.gov/files/division/bp/fs/intro_page/income_limits/Income_Chart.pdf.

SNAP allotments can be used like cash to buy eligible food items from authorized retailers. A SNAP account is established for eligible households and automatic deposits are made into the account each month. In order to enable access to the account, an EBT card is issued, which will debit the account each time that eligible food items are purchased. Recipients of SNAP allotments also may own a car, a home of any value, as well as income-producing property, subject to some restrictions.

In 2020, households may own up to $2,250 in liquid resources, and households with at least one member who is 60 or older or is disabled may have liquid resources valued to $3,500 or less. The Food Stamp Program evaluates only liquid assets. Personal belongings, household goods, furniture, motor vehicles, clothing, life insurance, and burial sites are excludable resources. Households that receive Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or other General Relief (GR) are eligible for SNAP allotments without other limitations applying. There may be limitations for those individuals who receive TANF or SSI but live with other members of the household who do not receive such assistance. To see if your household is eligible, go to: https://commonhelp.virginia.gov/access/accessController?id=0.852506408870769

Applying for SNAP (Food Stamps)

There are many ways to apply for SNAP allotments. You can visit your local department of social services (LDSS), request an application by phone, or ask someone to get an application for you. You can

also access the online application at https://www.dss.virginia.gov/files/division/bp/fs/intro_page/forms/032-03-0824-33-eng.pdf or https://www.dss.virginia.gov/benefit/snap.cgi. Either way that you complete the application, make sure to fill in the form completely. Each county and city in Virginia has its own social service agency. The phone numbers and addresses can be located at https://www.dss.virginia.gov/localagency/index.cgi.

If your household has little or no money and needs help right away, let the agency office know. You may be eligible under the "expedited service" rules to receive SNAP benefits within seven days of the application date if you are classified as homeless or are a member of a low-income family.

Because benefits for a month are prorated based on the day of the month the application is filed, it is important to get a signed and dated application to your local agency, even if you can't come in or stay for an interview that day. If you are unable to visit the office because of age, disability, work hours, or transportation difficulties, you may ask an authorized representative to apply for you, or you may request a telephone interview. You may visit the DSS website to determine if you are eligible by using the prescreening tool available there.

After you have turned in your application, a worker will hold a confidential interview with you or another member of your household at the DSS office. If no one in your household can go, an adult friend or relative who knows your circumstances may go for you. If you are sixty-five or older, disabled, or suffer other hardships and cannot go to the office, let the office know. A worker will arrange to interview you at home or by telephone. If the worker refuses to interview you at home or by telephone, contact your local legal aid office for assistance at 1 (866) LEGLAID, or https://www.valegalaid.org/.

When you visit the agency, be sure to have verification of the following with you:

- Photo identification;
- Documentation of income, both earned and unearned;
- Documentation of shelter expenses—rent or mortgage, taxes, utility bills;
- Documentation of medical expenses for any elderly or disabled persons in your household;
- Documentation of dependent care expenses; and
- Documentation of court-ordered child support.

Having the verifications with you will facilitate the process.

Eligibility

You must reside in the area and be a U.S. citizen or lawfully admitted alien and register for work unless you are over 60 or meet other exemptions. Bring proof of countable assets to the interview to expedite your case. In most cases, your house and surrounding lot, one car, household goods and personal belongings, and life insurance policies will not be counted as resources. You must provide proof of your Social Security number.

A "household" (See 7 U.S.C. § 2012 (n)(1)) is defined as:

- an individual who lives alone, or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others; or
- a group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

Only households with net monthly incomes below the allowable limits may qualify for food stamps. These limits go up with increases in the size of the family and are adjusted twice yearly to reflect changes in the cost of living. Persons who are caretakers of minor children may apply for and receive food stamps as separate households and share the same residence. Persons with earned income must file monthly report forms with the local Food Stamp office. All persons, except for those who are disabled or elderly, will have their allotted food stamps determined retrospectively. For example, a person's income and expenses for March will determine the allotment for May. You may prove your income by recent pay stubs, information given by your employer, pension information, and benefit letters from the Social Security or Veterans' Administration. Check with your local Food Stamp office to determine current allowable income for your household.

After adding income of all members of the household, the worker can subtract certain deductions such as the standard deductions for every household, a 20% deduction for earned

income, dependent care (including care for disabled adults), and high-housing costs. Proof of these expenses may include bills or records of payment of rent or mortgage, house insurance, property taxes, electricity, gas, oil, sewerage, telephone, and water.

If you are eligible for food stamps, you should receive your stamps no later than 30 days from the date you first applied. If you do not qualify, a written notice will explain why. If your local office requires you to pick up your stamps but you cannot, arrange to have someone that you have named pick them up for you.

Be sure to report any changes in your household's circumstances by calling your caseworker or sending in the form provided by the Food Stamp office. If you receive extra food stamps because you have not reported a change, you will owe the Food Stamp Program the value of these stamps.

What to Do if Refused

If you think that your application has been wrongly denied, or that you have not received the right amount of food stamps, you should tell the Food Stamp office right away. If they disagree with you, you have the right to request a review by a hearing officer. You have 90 days from the date you receive the notice regarding your food stamps to request a review by a hearing officer. You may have a friend or relative attend the hearing with you, or you may wish to obtain the services of a legal aid or private attorney. The statewide legal aid number is 1-866-LEGLAID.

In some cases, you can continue to receive your regular allotment of food stamps while you await the hearing officer's decision. If the hearing officer decides in your favor, you will receive the correct amount of food stamps. If the decision is in favor of the Food Stamp office, you will be asked to repay the value of any stamps you were not entitled to receive.

RENTAL ASSISTANCE PROGRAM

Housing Choice Voucher (Section 8) is a rental subsidy program funded by the federal government. The program is designed to supplement the rent payments of low-income families and individuals who qualify. An advantage of the program is that an elderly tenant can live in the apartment or house of his or her choice and may even be able to get help paying for the place where he or she already lives. The program is not available in every Virginia locality. To find out if Section 8 assistance is available in your area and, if so, how to apply, contact your local social services department, redevelopment or housing authority, or Area Agency on Aging. You will be referred to the Public Housing Agency (PHA) for your locality.

Eligibility

To qualify for assistance, your income must be within the specific limit for your locality. The limit differs for each city and county in Virginia. The limit also depends on household size. Eligibility for a housing voucher is determined by the PHA based on the total annual gross income and family size and is limited to US citizens and specified categories of non-citizens who have eligible immigration status. In general, the family's income may not exceed 50% of the median income for the county or metropolitan area in which the family chooses to live. By law, a PHA must provide 75 percent of its voucher to applicants whose incomes do not exceed 30 percent of the area median income. Median income levels are published by HUD and vary by location. The PHA serving your community can provide you with the income limits for your area and family size.

During the application process, the PHA will collect information on family income, assets, and family composition. The PHA will verify this information with other local agencies, your employer and bank, and will use the information to determine program eligibility and the amount of the housing assistance payment

If the PHA determines that your family is eligible, the PHA will put your name on a waiting list, unless it is able to assist you immediately. Once your name is reached on the waiting list, the PHA will contact you and issue to you a housing voucher.

How Does the Program Work?

Your eligibility is determined during an intake interview. The local social services department can help you schedule one. If you are eligible and are considering moving or currently have no adequate housing, you will be told how to look for reasonably priced housing to meet your needs.

After certification to participate in the program, you have approximately 60 days to find suitable

housing and an owner who agrees to lease to you. Any housing approved under the program must meet minimum housing standards for decent, safe, and sanitary housing as established by the U.S. Department of Housing and Urban Development (HUD). Additional local minimum housing codes also must be met. Your present residence may qualify if it meets these required standards. Once in the program, tenants must certify their incomes once a year with their employer or the Department of Social Services.

Once your lease is signed with the landlord, the local agency reviews it and often inspects the dwelling to make sure it meets program standards. Next, the local agency and the landlord sign a contract authorizing payment of rent on your behalf. You pay a monthly amount for rent, which is determined by your income, family size, etc., and the local agency pays the difference between the family contributions and total amount of rent due. Both the family and the agency make the payments monthly, directly to the landlord.

VIRGINIA LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

The Virginia Low Income Home Energy Assistance Program is a federally funded program that helps eligible households with the cost of heating their homes. It has four components: Fuel Assistance; Crisis Assistance; Cooling Assistance; and Weatherization. To be eligible for assistance, a household must meet certain income and resource requirements, and these requirements change yearly. If you receive Supplemental Security Income, your household is probably eligible. For more information, contact your local Area Agency on Aging (see the list under Helpful Contacts in this book, or go to www.dss.virginia.gov/localagency/ to locate your local Area Agency on Aging).

OTHER ENERGY ASSISTANCE PROGRAMS

Both investor-owned utilities and rural electric cooperatives provide energy assistance to low-income households. Programs include fuel assistance, cooling assistance, and budget billing. For more information, contact your local electric utility.

TELEPHONE ASSISTANCE PROGRAMS

If you do not have a telephone or cannot afford the one you have, the local telephone company in your area may waive or reduce many of the service connection charges through the "Link-Up America" program, if you are in a low-income household. Go to www.fcc.gov/guides/lifeline-and-link-affordable-telephone-service-income-eligible-consumers , or call the Federal Communications Commission at 1 (888) 225-5322, or your local telephone company.

REVERSE MORTGAGES

Many older Virginians' home mortgages were paid off long ago and their largest asset is the equity in their homes. Many prefer to remain in those homes to age in place but may lack the funds to manage their needs long term. If you are a Virginia homeowner over the age of 62 you may be eligible to take out a reverse mortgage to help pay for medical bills, make repairs or improvements to your home, or just pay for living expenses. A reverse mortgage is a special type of mortgage which allows a homeowner to convert a portion of the equity in the homeowner's home into cash. Unlike a traditional home equity loan or second mortgage, no repayment is required until the borrowers no longer use the home as their principal residence.

There are various types of reverse mortgages available today, including loans insured by the United States Department of Housing and Urban Development (HUD) and the Federal Housing Administration (FHA), and other products offered by private lenders. The only reverse mortgage insured by the U.S. Federal Government is called a Home Equity Conversion Mortgage (HECM) and is only available through an FHA-approved lender.

The remainder of the information provided here is about the HUD Reverse Mortgage (HECM) which is a federally insured private loan. You can receive free information about reverse mortgages by calling AARP at 1 (800) 209-8085, or go to www.aarp.org/revmort. In addition, listed at the end of this section are numerous web sites and toll-free telephone numbers to obtain information about reverse mortgages in general. To access information about HUD's Reverse Mortgages, including Información en Español, go to: https://www.hud.gov/program

offices/housing/sfh/hecm/hecmhome. To reach a HECM counselor to assist you in applying for the program see the roster at: https://entp.hud.gov/idapp/html/hecm_agency_look.cfm or https://www.consumerfinance.gov/ask-cfpb/what-is-a-hud-approved-housing-counselor-how-can-they-help-me-en-261/

Who can qualify for a HUD HECM?

HUD's Federal Housing Administration requires that the borrower be a homeowner: (a) who is 62 years of age or older; (b) who owns his or her home outright (or who has an existing mortgage balance which is low enough that it can be paid off at closing with the proceeds from the reverse mortgage); (c) who resides in the home as a principal residence, (d) is not delinquent on any federal debt, and (e) has financial resources to continue to meet ongoing property obligations. Before obtaining an HECM, you are required to obtain consumer information from a HUD-approved counseling source (see the links above for a roster) or call the HOPE Hotline, open 24 hours a day, seven days a week, at (888) 995-HOPE (4673). You also can call the Consumer Financial Protection Board (CFPB), an agency of the U.S. Government at (855) 411-CFPB (2372) to be connected to a HUD-approved housing counselor over the phone.

With a traditional second mortgage or home equity loan, you must have sufficient income versus debt ratio to qualify for the loan, and you are required to make monthly mortgage payments. The HECM is different, in that it pays you and is available regardless of your current income. The amount that you can borrow depends upon your age, the current interest rate, and the current appraised value for your home (or FHA's mortgage limit for your area, whichever is less). Generally, the more valuable your home is, the older you are, and the lower the interest rate, the more that you can borrow.

What are the Property Requirements for HECM loans?

The borrower's home must be a single-family dwelling, or a 2-to-4 unit property in which the borrower owns and occupies at least one unit. Townhouses, detached homes, units in HUD-approved condominiums, and some manufactured housing are eligible.

Must the proceeds of the HECM loan be used by the homeowner only for certain specified things?

No, the homeowner may use the proceeds of the HECM for any legitimate purpose, such as to supplement Social Security or retirement benefits, maintenance of the property, payment of real estate taxes and insurance, medical bills, living expenses, etc.

How are the proceeds of the HECM loan paid to the homeowner?

For adjustable rate mortgages there are five options available to the homeowner to receive payments:

1. Tenure -- equal monthly payments as long as one borrower continues to live in and occupies the property as a principal residence;
2. Term -- equal monthly payments for a fixed period of months selected by borrower;
3. Line of credit — unscheduled payments or in installments, at times and amounts of borrower's choosing, until the line of credit is exhausted;
4. Modified tenure — combination of line of credit and scheduled monthly payments as long as borrower remains in the home;
5. Modified term — combination of line of credit plus monthly payments for a fixed period of months selected by the borrower.

For fixed interest rate mortgages the borrower will receive a single lump sum disbursement payment plan.

Is the homeowner personally liable to repay the HECM loan?

HECM loans are non-recourse loans, that is, the homeowner is not personally liable to repay the HECM loan; liability is limited to the net sales proceeds from the property. No deficiency judgment may be taken against the homeowner or the homeowner's estate.

Does the homeowner have obligations under the HECM loan?

The borrower has the continuing obligations to maintain the property in good repair, keep the property properly insured, pay real estate taxes when

they are due, and be sure the property is not used for any illegal purposes.

When must the HECM be repaid?

The due date for repayment of the HECM is when one of the following occurs:

(a) when the last borrower dies;

(b) all borrowers have conveyed their title to the property;

(c) the property is no longer any borrower's principal residence;

(d) because of physical or mental illness, a borrower fails to occupy the property as his or her principal residence for a period of more than 12 consecutive months, and the property is not the principal residence of another borrower;

(e) an HECM loan obligation of the borrower is not performed (for example, real estate taxes are not paid, the property is not maintained in good repair, etc.)

Does the homeowner need to pay a fee to a planner or loan finder in order to obtain an HECM loan?

No, it is not necessary to pay such a fee. There have been abusive instances reported in this area, in which "loan finders" or "estate planners" have contacted homeowners and have offered to find a reverse mortgage for the homeowners for a percentage fee (such as 5% to 10% of the loan amount). This is not necessary and should not be done.

Is an HECM loan expensive?

There are significant costs associated with an HECM. They include FHA mortgage insurance, closing costs, interest, and loan service costs. The longer a homeowner keeps an HECM, the lower the total annual loan costs (TALC) will be, because they will be spread over a greater number of years. On the other hand, the longer an HECM is held, the higher the amount of interest will be, because the amount of principal advanced will usually be higher.

Should the homeowner obtain counseling before obtaining an HECM?

As mentioned above, HUD requires that a homeowner obtain consumer information from a HUD-approved counseling source. In addition, because of the complexity of reverse mortgages, a homeowner should consult with an experienced attorney before obtaining a reverse mortgage

Reverse mortgage documents are complex and can be confusing. Consequently, anyone contemplating a reverse mortgage should consult and be counseled by an experienced attorney who is completely independent of the mortgage lender. It is essential that the homeowner or mortgagor understands the contract and its disadvantages, as well as its advantages, before signing.

Web sites or toll-free telephone numbers for more information about HECM loans or other reverse mortgage loans:

If you do not have access to a computer at home or work, access can be obtained at your local public library, and the library staff will gladly assist you in accessing the internet.

- HUD Reverse Mortgages web page: https://www.hud.gov/program_offices/housing/sfh/hecm/hecmhome
- Consumer Financial Protection Board consumer information: https://www.consumerfinance.gov/ask-cfpb/what-is-a-reverse-mortgage-en-224/
- National Reverse Mortgage Lender's Association website includes consumer guides and a mortgage calculator: http://www.reversemortgage.org/
- AARP consumer information: 1 (800) 209-8085
- AARP Reverse Mortgage web page: http://www.aarp.org/revmort/
- Approved HECM financial counselors: https://entp.hud.gov/idapp/html/hecm_agency_look.cfm or https://www.consumerfinance.gov/ask-cfpb/what-is-a-hud-approved-housing-counselor-how-can-they-help-me-en-261/

PART 2 – FEDERAL AND STATE INCOME TAXES

As a caution to the users of this Handbook, the federal and state tax laws are a continuing source of political friction between the United States Congress and the Administration and are subject to change. It is important to check for current advice and instructions in making your income, estate, gift and other tax-related decisions.

Certain types of income are taxed, while others are not. For example, gifts to you and interest earned on certain municipal bonds are not reportable as taxable income. Salary and wages, payments from a pension plan, and investment income are forms of taxable income. If your income exceeds a certain level, your Social Security payments may be taxable for federal income tax purposes. Included in both IRS Publication 554 and the IRS Form 1040 Instructions is a worksheet that will help you figure whether any part of your Social Security payment is taxable.

Several publications which may be of assistance to you and which are available online are: Publication 524 (Credit for the Elderly or the Disabled) at www.irs.gov/pub/irs-pdf/p524.pdf ; Publication 554 (Tax Guide for Seniors) at www.irs.gov/pub/irs-pdf/p554.pdf; Publication 17 (Your Federal Income Tax) at www.irs.gov/pub/irs-pdf/p17.pdf.

Federal income tax laws that affect seniors changed substantially in December 2017. Unless Congress makes these changes permanent, most of these changes will expire in the year 2026. These changes are discussed in more detail on the following pages.

OVERVIEW OF THE INCOME TAX:

Federal income tax is calculated using IRS Form 1040. The income tax is a (somewhat) basic formula as follows:

Gross Income

Minus Adjustments

Equals Adjusted Gross Income

Minus Standard Deduction or Itemized Deduction

Equals Taxable Income

Taxable Income times the Tax Rate (your tax rate depends on your filing status)

Equals Tax

Minus Credits

Minus Withholding and Estimates paid

Equals Tax Owed or Refund

Virginia income tax is calculated using Virginia Department of Taxation Form 760. The starting point for calculating your Virginia income tax is your adjusted gross income as reported on your IRS Form 1040. The Virginia Form 760 is available on their website at tax.virginia.gov

Filing Status. Your filing status will affect your federal tax rate and your standard deduction amount on your federal income tax return. It will also affect the number of exemptions you can claim on your Virginia income tax return.

There are five filing statuses: Single, Married Filing Jointly, Married Filing Separately, Head of Household, and Qualifying Widower. Your filing status is determined on the last day of the year, December 31. If you are married on the last day of the year, then you generally must use one of the two married filing statuses. Most people who are married choose married filing jointly because it is a more beneficial tax status than married filing separately. If you are not married on the last day of the year then your filing status will most likely be Single or Head of Household. If your spouse died within the last two years, then you might be eligible for the filing

status of Qualifying Widower. The IRS instructions to Form 1040 provide all the detailed requirements for each filing status.

Do I need to file an income tax return with the IRS?

If your gross income exceeds a certain threshold then you must file an income tax return, IRS Form 1040. For example, for the year 2019, if you are not married and over age 65, then you generally must file a tax return if your gross income exceeds $13,600. The definition of gross income for this purpose includes all income you received during the year, however, do not include social security unless one-half of your social security benefits plus your other gross income and any tax-exempt interest is more than $25,000. The IRS usually adjusts these thresholds slightly upward each year because of inflation.

Important Point: Remember that you must always file a tax return to receive a refund from the IRS. Time limits exist for filing a tax return to receive a refund. Do not delay.

For a more detailed answer to the question, "do I need to file", refer to the instructions for Form 1040 on the IRS website. You also can use the interactive assistant found on the IRS webpage: https://www.irs.gov/help/ita/do-i-need-to-file-a-tax-return.

Do I need to file an income tax return with Virginia?

If your Virginia adjusted gross income exceeds certain thresholds then you must file a Virginia tax return, Form 760. For example, for the year 2018, if you were not married and your Virginia adjusted gross income is $11,950 or more then you must file a Virginia tax return. You must partially fill out Form 760 to determine your Virginia adjusted gross income.

Important Point: Remember that you must always file a Virginia income tax return to receive a refund from Virginia.

When is the due date for filing the IRS income tax return?

The due date for the IRS Form 1040 is April 15. If you cannot file your return by this date, then you can request a six-month extension from the IRS by filing Form 4868 by April 15. The extension to file your tax return is not an extension to pay your income tax. If you pay your income tax owed after April 15 then you will most likely incur penalties and interest.

When is the due date for filing the Virginia income tax return?

The due date for the Virginia Form 760 is May 1. If you cannot file your Virginia return by this date, then Virginia grants an automatic six-month extension. No form is required. The extension to file your tax return is not an extension to pay your income tax. If you pay your income tax owed after May 1 then you will most likely incur an extension penalty and interest. For a more detailed answer to this question, please refer to the instructions for Virginia Form 760 found on the Virginia Department of Taxation website: tax.virginia.gov

What are the most common forms of income that must be reported on your income tax return?

Some of the most common forms of income that are not exempt from tax, and therefore included in your gross income are as follows:

- Salary or wages you receive from a job. This amount is reported to you by your employer on a Form W-2.
- Interest you received throughout the year. This amount is usually reported to you on Form 1099-INT.
- Dividends you received throughout the year. This amount is usually reported to you on Form 1099-DIV.

Important Point: Some types of interest and dividends are exempt from federal gross income, for example, interest and dividends received from municipal bonds. Although exempt from federal income tax, they are sometimes taxed by Virginia unless the municipal bonds are from Virginia.

- Sales of securities, for example, sales of stocks or mutual funds, reported to you on Form 1099-B.

Important Point: Investment companies will commonly combine all these 1099 forms on one consolidated 1099-CONS. Be sure to examine your consolidated form 1099 carefully to make sure you don't miss anything.

- Social Security Payments, depending on the level of your other gross income, may be included in your taxable income on your federal income tax return.
- Pension and IRA Distributions are another common form of income and are usually reported to you on Form 1099-R.

What is the difference between the Standard Deduction and Itemized Deduction?

After you add up all your sources of taxable income on the Form 1040, you get to subtract either the Standard Deduction OR the Itemized Deductions. Most people choose whichever one is larger. One of the biggest changes to federal tax law that occurred in the year 2017 was the increase in the Standard Deduction. As a result of this increase, a lot more people are choosing the Standard Deduction. At present, the Standard Deduction for unmarried people is $12,000. If you were over 65 or blind, then your Standard Deduction is increased by an additional $1,600. The Standard Deduction for married people is $24,000. If you and your spouse were over 65 or blind, then you can increase your Standard Deduction by an additional $2,600.

Important Point: Whichever deduction you choose on your IRS Form 1040 – the Standard Deduction or the Itemized Deduction, you MUST choose the same thing on your Virginia income tax return Form 760. **However**, the Virginia Standard Deduction did not get increased when Congress increased the Standard Deduction for federal income taxes. The Virginia Standard Deduction remains much lower. There may be an occasion therefore when you choose the Itemized Deduction on your IRS Form 1040 even though it is slightly lower than the Standard Deduction because it will result in a lower Virginia income tax.

What are the most common types of Itemized Deductions?

The most common types of itemized deductions are:

- Medical expenses that exceed 7.5% of your adjusted gross income (for tax years 2017 - 2020)
- State taxes, for example, state income taxes, state real estate tax, and state personal property taxes. This deduction is limited to $10,000.
- Charitable contributions
- Mortgage interest that you pay on a loan secured by your home. If your loan is more than $750,000 then your mortgage interest deduction might be limited. If you did not use the proceeds of the loan to buy, build or substantially improve your home, then your mortgage interest deduction might be limited. IRS publication 936 provides more information.

Important Point: Interest on a home equity loan and a line of credit might qualify for the mortgage interest deduction if the borrowed funds were used to buy, build or substantially improve your home that secures the loan.

Charitable Contributions and the Income Tax Charitable Deduction

Contribute to Qualified Charities. If you plan to take an itemized charitable deduction on your income tax return, your donation must go to a qualified charity by Dec. 31. Ask the charity about its tax-exempt status. You can also visit www.irs.gov and use the Exempt Organizations Select Check tool to check if your favorite charity is a qualified charity. Donations charged to a credit card by Dec. 31 are deductible for the year in which the charge is made to the credit card, even if you pay the bill in the following year. A donation made by check also counts for the year in which the envelope is postmarked. Gifts given to individuals, whether to friends, family or strangers, are not income tax deductible.

What You Can Deduct. You generally can deduct your cash contributions and the fair market value of most property you donate to a qualified charity. Special rules apply to certain types of donated property, including clothing or household items, cars and boats, works of art, etc. See the IRS publication referenced below.

Keep Records of All Donations. You need to keep a record of any donation you deduct, regardless of the amount. You must have a written record of all cash contributions to claim a deduction. This may include a cancelled check, bank or credit card statement or payroll deduction record. If you donate more than $250 to a charity, you MUST obtain a written acknowledgement from the charity before you can claim a charitable contribution deduction. Charities are required to provide you with this disclosure.

Record keeping for non-cash donations. Many people donate clothing, furniture, and household goods to charities, for example, Goodwill and the Salvation Army. While these kinds of donations qualify as a charitable contribution, the record keeping requirements are very stringent. The record keeping requirements change depending on the total deduction you take. In all instances, however, a detailed description of the donated property is required. Some tax advisors even suggest taking a picture of the property that you donate. Refer to Publication 526 (below) for more information.

Gather Records in a Safe Place. As long as you're gathering those records for your charitable contributions, it's a good time to start rounding up documents you will need to file your income tax returns. This includes receipts, canceled checks and other documents that support income or deductions you will claim on your tax return. Be sure to store them in a safe place so you can easily access them later when you file your tax return.

For more information about contributions, check out Publication 526 (Charitable Contributions), available at www.irs.gov/pub/irs-pdf/p526.pdf . The booklet is available on IRS.gov or order by mail at 800-TAX-FORM (800-829-3676).

What qualifies as a medical expense?

Deductible medical expenses may include, but are not limited to the following:

- Payments of fees to doctors, dentists, surgeons, chiropractors, psychiatrists, psychologists, and nontraditional medical practitioners
- Payments for in-patient hospital care or nursing home services, including the cost of meals and lodging charged by the hospital or nursing home
- Payments for acupuncture treatments or inpatient treatment at a center for alcohol or drug addiction, for participation in a smoking-cessation program and for drugs to alleviate nicotine withdrawal that require a prescription
- Payments to participate in a weight-loss program for a specific disease or diseases, including obesity, diagnosed by a physician but not ordinarily, payments for diet food items or the payment of health club dues
- Payments for insulin and payments for drugs that require a prescription
- Payments for admission and transportation to a medical conference relating to a chronic disease that you, your spouse, or your dependents have (if the costs are primarily for and essential to medical care necessitated medical care). However, you may not deduct the costs for meals and lodging while attending the medical conference
- Payments for false teeth, reading or prescription eyeglasses or contact lenses, hearing aids, crutches, wheelchairs, and for guide dogs for the blind or deaf
- Payments for transportation primarily for and essential to medical care that qualify as medical expenses, such as, payments of the actual fare for a taxi, bus, train, or ambulance or for medical transportation by personal car, the amount of your actual out-of-pocket expenses such as for gas and oil, or the amount of the standard mileage rate for medical expenses, plus the cost of tolls and parking fees
- Payment for health insurance costs (Note: Medicare Part B premiums are deductible; the basic cost of Medicare Part A is not deductible unless voluntarily paid by the taxpayer for coverage).
- A portion of long-term care and nursing home expenses, if the home is necessary for medical care.

For more information, contact your local IRS office or your tax advisor, or see Publication 502 (Medical and Dental Expenses), available at www.irs.gov/publications/p502/index.html.

What is a tax Credit?

After subtracting deductions from your adjusted gross income to arrive at your taxable income, you calculate your tax by multiplying your taxable income by the tax tables. Tax credits are then subtracted from the tax. Common tax credits include the child tax credit, the earned income tax credit, and credit for the elderly or disabled.

Federal Income Tax Credit for the Elderly and the Permanently and Totally Disabled

An individual who (a) is 65 or older, or (b) who is under 65 and who retired with a permanent and total disability and receives taxable disability income

(a "qualified individual"), may be eligible for this credit depending on their income levels. There are two income limits: an adjusted gross income that exceeds a certain amount OR if your total nontaxable social security and other nontaxable pensions, annuities, or disability income exceeds a certain amount. The maximum credit is between $3,750 and $7,500.

This credit will reduce the tax you owe, but it will not result in a refund. Contact your tax advisor or local IRS office if you think you may be eligible for the federal tax credit or see the IRS publications referenced above. The IRS provides an interactive online tool to help you determine your eligibility: https://www.irs.gov/help/ita/do-i-qualify-for-the-credit-for-the-elderly-or-disabled. IRS Publication 527 states that "If you can take the credit and you want the IRS to figure the credit for you, attach Schedule R to your return. Check the appropriate box in Part I of Schedule R and fill in Part II and lines 11, 13a, and 13b of Part III, if they apply to you.

If you file Form 1040A, enter "CFE" in the space to the left of Form 1040A, line 32. If you file Form 1040, check box c on Form 1040, line 54, and enter "CFE" on the line next to that box. Attach Schedule R to your return.

Earned Income Credit

You may be eligible for the Earned Income Credit if you are working and your earned income is below certain thresholds. The tax credit is available to anyone who maintains a home for themselves and only if you have less than the specified level of income. Eligibility for this credit does not require that you have children, but the credit is higher if you have children. Earned income for this tax credit includes salaries, tips, and earnings from self-employment. Pension and annuity payments are not included. This tax credit may reduce the tax you have to pay and may even result in a refund.

For tax year 2019, the maximum earned income tax credit (EITC) is $6,557 for low and moderate income workers and working families, and the maximum income limit for the EITC is $55.952. The credit varies by family size, filing status and other factors. The IRS provides an interactive online tool that you can use to determine if you are eligible for this credit: https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/use-the-eitc-assistant

Miscellaneous Topics

Do I pay tax if I sell my Principal Residence?

Regardless of age, there is an exclusion of up to $250,000 (or $500,000, in the case of married taxpayers filing a joint return) of income realized on the sale or exchange of a principal residence by a taxpayer. To be eligible for the exclusion, a taxpayer must have owned the residence and occupied it as a principal residence for at least two years during the five years before the date of sale. The exclusion is not a one-time exclusion, but generally is available no more frequently than once every two years.

If I give someone a gift will I pay tax on the gift? The Gift Tax Exclusion

Effective January 1, 2019, a donor (someone giving a gift) may give up to $15,000 per year to as many recipients as he or she wishes without incurring gift tax.

In addition, a person may make what are called "qualified transfers" for the benefit of another individual, which do not count as gifts, without dollar limit, as provided in Section 2503 (e) of the Internal Revenue Code: (a) by making payment as tuition to an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code for the education or training of such individual, or (b) by making payment to any person (provider) who provides medical care (as defined in Section 213(d) of the Internal Revenue Code) with respect to such individual as payment for such medical care.

Other important changes in the federal tax structure occur frequently and affect individuals, families, businesses, and investors. Tax advisors are often needed to analyze many of the changes.

Are there deductions available for real estate taxes?

Many local political subdivisions (counties and cities) offer elderly property owners a reduction in their real estate taxes. The rate of reduction and qualifications vary from place to place, so call your local finance department, commissioner of revenue, or real estate tax assessor's office to obtain an application which must be filed annually.

What if I can't pay the amount I owe to the IRS or Virginia?

If you can't pay the amount that you owe the IRS or Virginia, you have options. Both the IRS and Virginia offer several payment options to help you pay your taxes. Both the IRS and Virginia offer the ability to pay your tax over time with payment plan, sometimes referred to as an installment agreement. If you owe the IRS less than $50,000, you can apply for a payment plan online: https://www.irs.gov/payments/online-payment-agreement-application.

Important Point: Interest charges are associated with an installment agreement.

What if I have an issue with the IRS that I cannot resolve, and I am suffering a financial hardship?

If you are having an issue with the IRS that you cannot resolve and are suffering a financial hardship, you might be eligible for help from the Taxpayer Advocate Service. The Taxpayer Advocate Service is an independent division within the IRS committed to helping taxpayers with problems they cannot solve on their own. To receive help from the Taxpayer Advocate Service, you must fill out and file Form 911 (appropriately named). The link to the Taxpayer Advocate Service is here: https://taxpayeradvocate.irs.gov/

Where is my refund?

If you file your federal income tax return and are expecting a refund but have not received it yet, you can go on the IRS website to find out the status: https://www.irs.gov/refunds. You can check the status of your Virginia refund here: https://www.tax.virginia.gov/wheres-my-refund

I received a phone call from someone who claimed to be from the IRS and they told me that I owe the IRS money, what should I do?

This is a scam! The IRS NEVER EVER initiates contact with taxpayers over the phone, email, text messages, or social media. The IRS will only initiate contact with you via the United States Postal Service. To learn more about the latest IRS scams, visit the following IRS webpage: https://www.irs.gov/newsroom/tax-scams-consumer-alerts

What if my identity was stolen?

If you believe that you are the target of identity theft, the IRS provides the following publication 5027 for steps to take: https://www.irs.gov/pub/irs-pdf/p5027.pdf. The IRS recommends, in addition to filing a complaint at identitytheft.gov and contacting one of the three major credit bureaus, you should complete IRS Form 14039, Identity Theft Affidavit, and file it with the IRS. You should continue to pay your taxes and file your tax return, even if you have to file it by paper instead of electronic filing.

MEDICAID

Medicaid is a cooperative federal-state program which provides health care services to the poor of all ages. The program is administered by state agencies, and thus the regulations governing Medicaid vary within the states. In Virginia, the program is administered by the Department of Medical Assistance Services (DMAS). At the federal level, Medicaid is administered by the Centers for Medicare and Medicaid Services (CMS).

Medicare and Medicaid frequently are mistaken for one another, but the programs serve two different populations. Note the following differences between Medicaid and Medicare:

Medicaid is a joint state and federal program for public assistance recipients and other medically indigent adults and children. Medicaid was designed to meet the medical needs of low-income, uninsured individuals, and therefore, the elderly often must spend down a major part of their assets before they are eligible for Medicaid benefits.

Medicare is a federal medical benefits insurance program that is financed through the Social Security system and is primarily for the elderly, but also covers some or certain disabled persons.

Eligibility

Among those people eligible for full Medicaid benefits are Supplemental Security Income (SSI) recipients and other persons who are age 65 or greater, are blind or disabled (according to Social Security disability standards) and who meet certain income and asset limitations. Medicaid benefits may include:

- Medicare Part B premiums, deductibles, and coinsurance;
- inpatient hospital services with limitations and deductibles;
- outpatient hospital and rural health clinic services;
- nursing home care;
- physician services;
- transportation;
- long-term care alternatives, such as personal care services;
- x-ray and laboratory services;
- home health care services;
- clinic services;
- prescription drugs;
- medical supplies and equipment in limited circumstances;
- physical therapy and related services; and
- emergency hospital services.

Among those people eligible for limited Medicaid benefits are:

- Qualified Medicare Beneficiaries (QMBs)—certain elderly and disabled persons entitled to Medicare Part A whose annual income is at or below the national poverty level and whose resources are very limited. Medicaid will pay the Medicare Part A deductibles and coinsurance and the Part B premiums, deductibles, and coinsurance for QMBs.
- Specified Low-Income Medicare Beneficiaries (SLMBs)—certain elderly or disabled persons entitled to Medicare Part A whose annual income is no greater than 120% of the national poverty level and whose resources are very limited. Medicaid will pay the Medicare Part B premium for SLMBs.
- Qualifying Individuals (QIs)—certain elderly or disabled persons entitled to Medicare Part A whose annual income is greater than 120% but no more than 135% of the national poverty level and who are not otherwise eligible for Medicaid benefits. Medicaid will pay the Medicare Part B premium for QIs. This benefit is not an entitlement but is available on a first-come, first-served basis, as funds permit.

Medicaid Expansion in 2019 extended Medicaid health care benefits to an estimated 400,000 additional adults in Virginia. According to DMAS,

The new eligibility rules are also changing the face of the Medicaid program as more parents and single adults gain health coverage. Virginia adults may now be eligible if they are between the ages of 19 and 64, are not receiving or eligible to receive Medicare, and meet income eligibility rules. Effective January 1, 2019, expansion services will be provided through DMAS' existing delivery systems and contracted health plans. More information about the new health coverage for adults is available at coverva.org. When you visit the website, please sign up for regular email and text updates.

Applying for Medicaid

Applications for Medicaid are accepted by the local department of social services. The Department of Social Services requires personal information about the applicant, as well as information about property owned, bank account balances, stocks and bonds, income, and medical bills. Applicants are strongly advised to seek professional guidance from social workers or elder law attorneys familiar with the process before moving forward, particularly if you are considering transferring assets to someone else in an effort to qualify for benefits. Such transfers have serious consequences for eligibility.

Resource Limitations

In determining Medicaid eligibility, resources are categorized as either countable or noncountable. Countable assets are used to determine Medicaid eligibility and include those assets for which there is a meaningful possibility that they could be sold or otherwise converted into cash. Among countable assets are bank accounts, stocks, Individual Retirement Accounts, deeds of trust, or real property other than the home. Noncountable assets are those assets which are not counted in determining the resources available to a person for purposes of qualifying for Medicaid treatment. Noncountable assets include the following:

- your home;
- personal effects, including clothing, jewelry, and photographs;
- household furnishings, such as furniture, paintings, appliances, and electronics that are exempt only while being used in the applicant's home;
- one automobile;
- property essential to the institutionalized person's self-support;
- some life insurance policies;
- some burial funds and cemetery plots;
- some irrevocable trusts and purchases.

Transfer of Assets

When an individual applies for Medicaid, he or she will be asked to disclose any property transfers made within the last 60 months prior to application.

Intentional reduction of assets in order to qualify for Medicaid — by putting assets into a trust, giving them away, or otherwise disposing of them without receiving compensation of a like value — can cause ineligibility for Medicaid coverage of long-term care services. The penalty period depends on the value of the asset transferred, how long ago the transfer occurred, whether compensation was received, plus other factors. Therefore, before any transfer of assets is made, consultation with an attorney knowledgeable about Medicaid matters is suggested.

Medicaid and Long-Term Care

Medicaid is the largest single payer for long-term care services. Many individuals of substantial means eventually spend their money and then seek coverage through the Medicaid program. Medicaid covers care in nursing facilities and in community alternatives allowed by waivers to federal rules. It is important to advise a nursing home or home for adults when planning for admission if you expect to apply for Medicaid within six months of entering, because preadmission screening must be conducted in order to verify that the intended care is medically appropriate.

If you are single and require long-term care, you most likely will be expected to pay a portion of your income toward your cost of care, retaining an amount for personal needs, with Medicaid making up the difference each month. For married people, if a spouse is institutionalized, income assets are treated differently in order to prevent the spouse living at home from becoming impoverished.

You may request a Medicaid resource assessment before you file an application for Medicaid, if you have not done so previously. At the time you file a Medicaid application, a resource assessment will be performed. Although the income of your spouse is not deemed to be yours, married persons are considered to have available to them all resources held by their spouses. For Medicaid to assess your resources, you must list all your assets, which will be categorized as either countable or noncountable.

Noncountable assets are assets which you may retain. Some noncountable assets are your home, automobile, personal furnishings, cemetery plots, some funds set aside for burial, and some life insurance policies. Countable assets are assets which are legally available to you. You must spend all but $2,000 of your countable assets before you will be eligible for Medicaid under current law. If you are married and require institutional care, you will be referred to as the "institutionalized spouse," and your well spouse will be referred to as the "community spouse." The community spouse will receive a notice of Medicaid resource assessment which will state the protected resource amount for the community spouse. The protected resource amount is the minimum value of assets that the community spouse may retain and protect from the necessary resource reduction before the institutionalized spouse achieves eligibility. This amount may be raised by a court order.

There is no strict income limit for individuals receiving nursing home care, if the individual's income is less than the average monthly private pay rate for care in a nursing home. If you are a Medicaid applicant to whom an income limit applies and your income is above the Medicaid limit, you may be placed on a spend-down. Once eligible for Medicaid, you will be entitled to maintain a small amount of income for personal needs. If you are married, your spouse will be entitled to keep all of his or her income and may be entitled to keep a portion of your income as well.

The scope of Medicaid services depends on the type of eligibility that a person meets. For SLMBs, coverage is limited to payment of the Medicare Part B premium amount. For QMBs, coverage includes the Medicare coinsurance, and deductibles for Part A, in addition to Part B premium, coinsurance and deductible amounts. For full coverage, Medicaid includes doctor visits, hospital inpatient and outpatient care, drugs, X-rays, lab tests, transportation to medical services, and prescription drugs. Long-term care can be offered in rehabilitation hospitals, nursing facilities, or community alternatives including adult day care or in-home aides as needed.

Appeals

If you feel you have been unfairly denied Medicaid eligibility, you have the right to appeal the denial within 30 days. To file an appeal, write to the Appeals Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219, telephone no. (804) 371-8488. In making the choice to appeal, you may wish to obtain the advice of legal counsel.

Conclusion

Medicaid rules are very complex, and detailed rules determine what are countable income and assets, when property transfer is a potential bar to receipt of services, and whose income and resources will be used against what financial standards. For specific guidance, particularly regarding estate planning and long-term care, you should contact an attorney who practices in the area of elder law.

For more information about Medicaid, visit https://www.benefits.gov/benefit/1643, or call Virginia's Department of Medical Assistance Services at (804) 786-7933. Information on Virginia's Medicaid Program At A Glance may be found at: http://www.dmas.virginia.gov/#/index. To apply for Medicaid, call your local department of Social Services, the addresses and other contact information for which may be found in the Helpful Contacts section of this Handbook, or: www.dss.virginia.gov/localagency/.

MEDICARE

Medicare is health insurance for people age 65 or older, under age 65 with certain disabilities, and any age with End-Stage Renal Disease (ESRD) (permanent kidney failure requiring dialysis or a kidney transplant). Medicare publishes an annual handbook, titled "Medicare & You." It is comprehensive and is available in print and on-line. To download a digital copy, go to www.medicare.gov/publications; this new download option is available for your personal computer and for the iPad, Nook, Sony e-reader, Kindle, and all other

e-Reader devices. Additional information may be obtained by calling 1 800 633-4227 and following the prompt questions. In addition, the U.S. Department of Health & Human Services is beginning to provide data and comparisons regarding hospitals, nursing homes, physicians, home health care providers, dialysis facilities, and Medicare Plans; these may be found at https://www.medicare.gov/hospitalcompare/search.html?, under Hospital Compare, Nursing Home Compare, Physician Compare, Home Health Compare, Dialysis Facility Compare, and Medicare Plan Finder.

As part of the 2010 Affordable Care Act, in 2013, Medicare now newly covers the following services:

Alcohol misuse counseling: One alcohol misuse screening per year for adults with Medicare who use alcohol, but don't meet the medical criteria for alcohol dependency; if your primary care doctor* or other primary care practitioner* determines that you're misusing alcohol, you can receive up to four brief face-to-face counseling sessions per year.

Cardiovascular disease behavioral therapy: One visit per year with your primary care doctor in a primary care setting, such as a doctor's office, to help lower your risk for cardiovascular disease.

Depression screening: One depression screening per year in a primary care setting, such as a doctor's office.

Obesity screening and counseling: If you have a body mass index of 30 or higher, coverage is provided for intensive counseling to help you lose weight. This counseling must take place in a primary care setting, such as a doctor's office.

Sexually transmitted infections screening and counseling: Screenings are covered for chlamydia, gonorrhea, syphilis, and/or Hepatitis B, when the tests are ordered by a primary care doctor or other primary care practitioner.

If you are covered by a Medicare Prescription Drug Plan (Part D) you probably already know about the "donut hole." This is a gap in coverage of prescriptions after your plan has paid for coverage up to a pre-determined level. In 2020 that amount is $4,020. While you are in the coverage gap you will pay 25% of the plan's cost for brand or generic drugs, until you reach the catastrophic coverage level of out-of-pocket costs ($6,350.00), when the plan again covers your drugs. Because of the Affordable Care Act the coverage gap has been closing each year and is scheduled to be phased out completely late in 2020.

*Primary care doctor —Your primary care doctor is the doctor you see first for most health problems. He or she makes sure you get the care you need to keep you healthy. He or she also may talk with other doctors and health care providers about your care and refer you to them. In many Medicare Advantage Plans, you must see your primary care doctor before you see any other health care provider.

*Primary care practitioner —A doctor who has a primary specialty in family medicine, internal medicine, geriatric medicine, or pediatric medicine; or a nurse practitioner, clinical nurse specialist, or physician assistant.

The Different Parts of Medicare

The different parts of Medicare help cover specific services if you meet certain conditions. Medicare has the following parts:

Medicare Part A (Hospital Insurance)

- You usually do not pay a premium for Medicare Part A coverage if you or your spouse paid Medicare taxes while working. This is sometimes called "premium-free Part A"
- Helps cover inpatient care in hospitals
- Helps cover skilled nursing facility, hospice, and home health care

Medicare Part B (Medical Insurance)

- If you elect to have Medicare Part B, you pay a premium each month. Most people pay the standard premium amount (which for 2020 is $144.60). However, if you rmodified adjusted gross income is above a certain amount, you may pay more.
- Helps cover doctors' services and outpatient care
- Helps cover some preventive services to help maintain your health and to keep certain illnesses from getting worse

Medicare Part C (Medicare Health Plans)

Medicare Health Plans include all Medicare Advantage Plans, Medicare Savings Accounts, and other Medicare health plans. 115 Medicare Advantage Plans are available in Virginia for 2020, with an average monthly premium of around $25.

- Your out-of-pocket costs in a Medicare health plan depend upon many factors, some of which are: whether the plan charges a monthly premium; whether the plan pays any of your monthly Medicare Part B premium; whether the plan has a yearly deductible or deductibles; how much you pay for each visit or service (copays); the type of health care services which you require and how often; and others.
- A health coverage choice run by private companies approved by Medicare.
- Includes Part A, Part B, and usually other coverage including prescription drugs. Vision and Dental benefits also may be included in some plans.

Medicare Part D (Prescription Drug Coverage)

- Most Medicare Prescription Drug Plans charge a monthly premium, which varies from plan to plan.
- Helps cover the cost of prescription drugs
- May help lower your prescription drug costs and help protect against higher costs in the future

Your Medicare Coverage Choices

With Medicare, you can choose how you get your health and prescription drug coverage. Below are brief descriptions of your coverage choices

Original Medicare

- Run by the Federal government.
- Provides Part A and Part B coverage.
- You can join a Medicare Prescription Drug Plan to add drug coverage.
- You can buy a Medigap (Medicare Supplement Insurance) policy (sold by private insurance companies) to help fill the gaps in Part A and Part B coverage.

Medicare Advantage Plans (either HMO or PPO)

- Run by private companies approved by Medicare.
- Provides your Part A and Part B coverage but can charge different amounts for certain services. May offer extra coverage and prescription drug coverage for an extra cost. Costs for items and services vary by plan.
- If you want drug coverage, you must get it through your plan (in most cases).
- You do not need a Medigap policy.

Other Medicare Health Plans

- Plans that are not Medicare Advantage Plans but are still part of Medicare.
- Include Medicare Cost Plans, Demonstration/ Pilot Programs, and Programs of All-Inclusive Care for the Elderly (PACE).
- Some plans provide Part A and Part B coverage, and some also provide prescription drug coverage (Part D).

Note: You might also have health and/or prescription drug coverage from a former or current employer or union.

To get general Medicare information:

Dial: 1 (800) 633-4227; TTY 1 (877) 486-2048; go to http://www.medicare.gov

State Insurance Counseling Assistance Program (VICAP)

To get free personalized health insurance counseling, including help making health care decisions, information on programs for people with limited income and resources, and help with claims, billing, and appeals.

Dial Virginia Department for the Aging and Rehabilitative Services at:

Voice: 804.662.7000
Toll Free Numbers: 800.552.5019 or 711
Videophone: 804.325.1316
www.vadars.org

Social Security

To get a replacement Medicare card, change your address or name, get information about Part A and/or Part B eligibility, entitlement, and enrollment, apply for "extra help" with Medicare prescription drug costs, and report a death.

Dial 1 (800) 772-1213
TTY 1 (800) 325-0778

You also can securely access information about your Social Security account, including earnings history, estimates of retirement, disability and survivors benefits, online by establishing an account at https://secure.ssa.gov/RIL/SiView.action. Among the many benefits, you can change your address if you move, apply for direct deposit benefits to your account, change deposit information if you change banks, and order replacement Social Security cards if needed, all without waiting for telephone assistance.

Coordination of Benefits Call Center

To get information on whether Medicare or your other insurance pays first.

Dial 1 (800) 999-1118
TTY (800) 318-8782

Department of Defense

To get information about TRICARE. To get information about TRICARE for Life.

Dial 1 (866) 773-0404
TTY (866) 773-0405

Department of Health and Human Services

Office of Inspector General

If you suspect fraud.

Dial 1(800) 447-8477
TTY (800) 377-4950

Office for Civil Rights

If you think you have been discriminated against by a health care entity or regarding HIPAA.

Dial 1 (800) 368-1019
TTY (800) 537-7697

Department of Veterans Affairs

If you are a veteran or have served in the U.S. military.

Dial 1 (800) 827-1000
TTY (800) 829-4833

Office of Personnel Management

To get information about the Federal Employee Health Benefits Program for current and retired Federal employees.

Dial 1 (888) 767-6738
TTY (800) 878-5707

Railroad Retirement Board (RRB)

If you have benefits from the RRB, call them to change your address or name, enroll in Medicare, replace your Medicare card, and report a death. (877) 772-5772.

Quality Improvement Organization (QIO)

To ask questions or report complaints about the quality of care for a Medicare-covered service, call 1(800) MEDICARE to get the telephone number for your QIO.

DEMENTIA AND ALZHEIMER'S DISEASE

Dementia is an umbrella term referring to a collection of symptoms affecting cognition and memory caused by a number of different diseases that damage brain cells and affect daily functioning. The symptoms experienced by people living with dementia vary widely by individual and specific disease, but typically include significant impairment of at least two of the following areas: memory, communication and language, ability to focus and pay attention, reasoning and judgment, and visual perception (Alzheimer's Association, 2019d).

Alzheimer's disease is the most common form of dementia, causing 60-80% of dementia cases (Alzheimer's Association, 2019). Other common diseases that cause dementia include vascular dementia, frontotemporal lobar degeneration, dementia with Lewy bodies, and Parkinson's disease dementia. Mixed dementia refers to a combination

of diseases, often Alzheimer's disease and vascular dementia. It appears to be more common in those over 75 and may affect a majority of those living with dementia. Throughout this section, dementia includes Alzheimer's disease and related disorders that cause dementia.

According to the Commonwealth of Virginia's Dementia State Plan 2020-2025, at least 150,000 Virginians have dementia in 2019, but this is expected to rise to 190,000 by 2025. This data comes from Medicare, however, and experts believe the actual numbers may be significantly undiagnosed and underreported.

Causes of Alzheimer's Disease

The National Institute on Aging's ADEAR Center writes that "Scientists don't yet fully understand what causes Alzheimer's disease in most people. The causes probably include a combination of age-related changes in the brain, along with genetic, environmental, and lifestyle factors. The importance of any one of these factors in increasing or decreasing the risk of Alzheimer's disease may differ from person to person.

Alzheimer›s disease is a progressive brain disease. It is characterized by changes in the brain—including amyloid plaques and neurofibrillary, or tau--tangles that result in loss of neurons and their connections. These and other changes affect a person's ability to remember and think and, eventually, to live independently."

Symptoms

The onset of Alzheimer's usually is gradual, beginning with minor memory problems and progressing to significant memory loss. Alzheimer's also may cause visio-spatial difficulties, poor judgment, personality changes or other evidence of impaired brain function. In turn, this decline in mental function leads to behavioral and emotional changes, loss of ability to care for oneself, and ultimately death due to physical deterioration. Alzheimer's affects each individual differently. Therefore, the number and degree of symptoms, as well as the course of the disease, may vary from person to person. Eventually, Alzheimer's leaves its victims totally unable to care for themselves. Symptoms you may notice in an individual with Alzheimer's include problems remembering recent events; difficulty in performing familiar tasks; confusion; personality and behavioral changes; impaired judgment; and difficulty in finding words, in finishing thoughts or in following directions. Be particularly alert for depression, which often occurs early and is hidden or "masked" in Alzheimer's patients. If it is suspected, seek professional help. Alzheimer's patients can live for a very long time with slowly progressing symptoms.

Services Available

Caregivers for the Alzheimer's patient will need support and assistance in giving that care. Although a wide variety of care options exist, according to the Centers for Medicare and Medicaid Services *How Dementia Affects Virginia* (Alzheimer's Association, 2019), for people living with dementia, the vast majority of care is provided by family or other informal care partners in the home. Supporting these care partners is a vital component of dementia capability. In 2017, an estimated 465,000 Virginians provided 529 million hours of unpaid care worth $6.7 billion for people living with Alzheimer's. There are many people who can help—family and friends, health care professionals, the Alzheimer's Association Chapter, and others. Specialized programs and services can make life easier and more enjoyable for the caregiver and the person with Alzheimer's. For example, individuals with Alzheimer's may forget or refuse to eat. Meals on Wheels is a helpful program, but someone may have to be at home to accept delivery and supervise the eating. It is important that an individual with Alzheimer's receives help from people who are trained to help those with Alzheimer's.

Health Care Services

If you suspect that someone you know has Alzheimer's, it is important to contact their family physician or nearby teaching hospital for a physician referral. A comprehensive evaluation involving physicians, nurses, neurologists, and social workers can assist families in developing comprehensive plans of care for patient and family. Medical professionals also can evaluate the patient for other medical problems that may be causing or contributing to the dementia. It is important to have one primary care physician. That physician can provide continuing care for the person with Alzheimer's, and in providing that care, treat other illnesses that arise, prescribe medications, answer questions, and provide caregiver support. When needed, the caregiver may seek a second opinion

from a physician specially trained in managing Alzheimer's disease. A physician may also suggest that you consult a geriatric psychiatrist to help manage the behavior, depression and personality changes that often accompany the disease. Nurses involved with Alzheimer's patients or Alzheimer's support group members can teach family members the ongoing practical care of a person with Alzheimer's.

A family may also want to consult the local Department of Social Services to provide information on government financial support through Medicare, Medicaid, Social Security, disability, or Veterans benefits. It is also important to contact an Elder Law attorney to review the documents the patient will need to have in place to permit someone to make appropriate medical and financial decisions as the disease progresses. Elder Law attorneys also can provide referrals to care managers, care providers, and care facilities to ensure that the patient's needs are met.

Rest for the Caregiver

The job of caring for a person with Alzheimer's can be overwhelming. It is important that the caregiver take occasional breaks from hands-on caregiving. Remember that asking for help will allow you to care for your loved one longer. There are several options for the caregiver to have some time away from caregiving. These options provide for care for the Alzheimer's patient for a few hours, a few days, or even on a permanent basis.

Day-to-Day Assistance for the Caregiver in the Home

If you would like the Alzheimer's patient to remain in the home, you may contact visiting nurses, home health aides, and paid companions to provide service in the home. These individuals provide services that may include health care, personal care, shopping, cooking, or housework. Make sure that the person providing the home care is familiar with Alzheimer's so that they can provide special care.

Day-to-Day Assistance Outside the Home

Adult day care programs provide people with Alzheimer's several hours a day of structured recreation and mental stimulation. In an adult day care program, people with Alzheimer's can interact with others, exercise, listen to music, and engage in other activities. These activities can give them an opportunity to enjoy life and can be extremely beneficial to the patient and the family.

Short-Term Assistance for the Caregiver

Certain hospitals, nursing homes and residential facilities offer short-term stays for the Alzheimer's patient. This service, often called "respite care," provides full-time care of the Alzheimer's patient within the facility for a period of days or weeks. When the Alzheimer's patient is in respite care, the caregiver has a chance to take a vacation or just get some relief from the stress of caregiving.

Long-Term Assistance

As Alzheimer's disease advances and symptoms worsen, the family of the Alzheimer's patient may have to decide to make other living arrangements for the patient. Placing a family member in a nursing home or other long-term facility for any reason is a difficult decision, and yet, at some point, it may be the most responsible decision that can be made. Some nursing homes specialize in the care of persons with Alzheimer's, offering so-called Reminiscence, Memory Care or other Special Care Units. One word of caution: be certain the program that you choose is in fact one of substance with high-quality personnel. It is important to visit the program and observe it in action. If a person with Alzheimer's is terminally ill, he or she may be accepted in a hospice program.

Resources for Families

Alzheimer's affects families physically, emotionally, financially, and socially. Many families find that other problems become magnified under the stress of caregiving and that they need help, support, or advice in areas not directly related to the illness. Although you may receive support from families, neighbors and clergy, it may be advisable to seek outside assistance. The Alzheimer's Association often receives phone calls from families of Alzheimer's patients who have questions about protecting the future security of the patient and/or his family. The Alzheimer's Association has chapter and peer support groups in cities across the country and provides the support families need. In addition to providing support and guidance, chapters offer educational literature, consumer information and workshops for caregivers and professionals. There

also is a MedicAlert and Safe Return program which creates a file with photographs of the Alzheimer's patient, which can be of assistance if the patient becomes lost. If you or someone that you know has Alzheimer's disease or a related dementia, please call the Alzheimer's Association for more information about education and support groups and other programs, 1 (800) 272-3900, or go to the Alzheimer's Association website at www.alz.org. Also, check the National Institutes of Health National Institute on Aging Alzheimer's Disease Education and Referral Center at xpndtw31 www.nia.nih.gov/alzheimers. The United States government now has a website, primarily for caregivers, at www.alzheimers.gov.

Legal Considerations for Alzheimer's Patients

As soon as Alzheimer's is suspected, the family and the patient should meet with a knowledgeable attorney to plan for legal and financial complications. This is important because during the early stages of the disease, the Alzheimer's patient may be capable of participating in legal and financial planning to protect the future management of his or her life and assets. When meeting for a legal consultation, it may be helpful to have the following documents: executed wills and trusts, prior tax returns, health and life insurance policies, pension information, deeds, mortgages, bank accounts, and information about other financial investments. The attorney may ask that the patient be examined by his or her physician to determine whether the patient still has the required capacity to execute documents.

PART 4 – LONG-TERM CARE

Long-term care (LTC) may be needed at any age; it encompasses a broad spectrum of medical and support services for people who have reduced capacity to function on their own as a result of a medical condition, chronic illness, age or disability. Long-term care can be provided in a variety of settings including one's home, adult day care, independent living communities, assisted living facilities (ALF), nursing facilities (NF), or continuing care retirement communities (CCRC).

The main consideration in deciding what type of care you will receive is what care is needed. Typically, providers will assess your needs by measuring your ability to perform "Activities of Daily Living" (ADLs) and "Instrumental Activities of Daily Living" (IADLs). ADLs include eating, bathing, dressing, transferring, and continence. IADLs include housekeeping, medication management, money management, laundry, or using the phone.

The second consideration is how to pay for your care. These costs may be paid privately from your own funds, long term care insurance, through government programs such as Veterans' Administration or Medicaid benefits, or some combination of all of these.

It is critical to note that the federal Medicare program is health care insurance. It pays for medical needs, but it does not pay for long term, custodial care in a nursing or assisted living facility. Medicaid, on the other hand, may pay for long term custodial care, but only for persons with severely limited income and assets.

Choosing long term care is an important decision and determining how to pay for it requires planning. Some of the best resources for learning what one needs to know are available on the web. One should use discretion when using the internet for research, however, as the validity of the information will vary depending upon the source of information. Good sources of information include:

- The official federal Center for Medicare/ Medicaid (CMS) website provides comprehensive information in a user-friendly format at www.medicare.gov.
- Another good source of information on care and other resources for the aging is your Area Agency on Aging. There is a statewide Agency on Aging (see Virginia Division on Aging at https://www.vda.virginia.gov) and each planning district within the Commonwealth has a local agency on aging. You can find the one that serves your area at the Virginia Division on Aging website shown above.
- Consumer-based information about LTC can be found at The National Consumer Voice for Quality Long-Term Care at https://theconsumervoice.org/.
- The Virginia Health Care Association website provides basic information about its member nursing homes and assisted living facilities as well as a useful list of links to other relevant resources. *See* www.vhca.org.
- National Care Planning Council at: https://www.longtermcarelink.net/a13information.htm.
- The Mid-Atlantic Aging Life Care Association (ALCA) (formerly the Mid-Atlantic Professional Geriatric Care Managers Inc.) is an organization of private practitioners who advance the dignified social, psychological, and health care for patients with chronic needs and their families. https://www.midatlanticalca.org/.

The Virginia Academy of Elder Law Attorneys has resources and a library on its website at www.vaela.org.

LONG-TERM CARE AT HOME

Many people want to remain in their own home as they age. This is often called "aging in place." There are many services to support people at home. The continuum of assistance – from companion care through skilled nursing care – can be provided at home for many people.

- Your local Area Agency on Aging (AAA) is a good place to start learning about the types of services available near you. You can find your local AAA in the Resources section of this *Handbook* or at www.vaaaa.org. In addition, you can hire a geriatric care manager – often a nurse or social worker – to help you find what is right for you. The Aging Life Care Association (www.aginglifecare.org) can identify geriatric care managers in your area.

There are many available resources to make staying in your home a viable solution. The possibilities range from private, in-home caregivers who do as much or as little is you agree upon, to licensed agency-based assistance at various levels, to skilled home health care. Choosing services depends on the level of care you need and how much assistance you require. Very few budgets will allow for 24/7 private care in the home, but one does not always need 24 hour care or monitoring.

Private In-Home Care

One altrernative is to hire someone privately to provide in-home care. Some caregivers may not be licensed or have any training, and they will not be regulated in any way. On the other hand, you may find a fully licensed nurse, either LPN or RN, looking for extra work. If you wish to hire a nurse, check that their credentials are current on the Virginia Board of Nursing website: https://dhp.virginiainteractive.org/Lookup/Index.

There are risks and benefits in obtaining private in-home care. The cost of unlicensed, non-agency caregivers is typically lower than agency-based care. However, you will be responsible for scheduling, paying, and reporting wages to Social Security and other taxing agencies. Many caregivers may prefer a less formal arrangement.

The risks in hiring unlicensed, non-agency caregivers are higher because there is no regulation of the quality of their care and criminal background checks are not required. You will have to rely on references and word of mouth. Moreover, non-agency caregivers will probably not have backup providers in place if they are unable to make it to a scheduled shift. On the other hand, some private, in-home caregivers are licensed CNAs or nurses who are “moonlighting” from their regular agency or nursing home jobs and are fully qualified and certified to do such work.

Typically, caregivers provided by agencies fall into one of several categories: Companion Care, Personal Care, Certified Nursing Assistant or Skilled Nursing Care.

- **Companion caregivers** may provide company, assist with games or other activities, run errands, do light housekeeping and prepare meals. They cannot provide any care that requires physical contact (such as bathing, dressing, shaving). They are not permitted to fill pill boxes or administer medication.
- **Personal Care Attendants** (PCA) or **Certified Nursing Assistants** may make physical contact to assist in bathing, dressing, toileting, shaving, or other needs. They may remind the client to take medications, but they are not permitted to administer medicines or fill pill boxes.

Most home care – companion or personal care – is private pay or paid by long-term care insurance. Medicaid or Veterans’ Administration may pay for such care, or a portion of such care, in certain cases, usually due to a specific diagnosis such as Dementia or Spina Bifida or based on severe financial need.

Home Health Care (skilled care)

One may also utilize home healthcare agencies. Their services differ from companion or attendant services because they provide skilled healthcare services. These agencies may also provide CNAs to assist with activities of daily living. Skilled care includes physical, occupational, or speech therapists. It may also include skilled nursing services for home-based patients for such things as wound care IV therapies or ostomy services. If home health care immediately follows a 3-day hospitalization OR is ordered by the attending physician, Medicare may pay for for some of those costs. Depending on your Medicare plan, co-pays or deductibles may apply. The home health care agency should be able to assist you with Medicare claims.

ADULT DAY CARE

Adult day care programs are a popular non-residential option for older adults who need supervision during the day. Adult day care centers work to help older adults remain living in the community at the highest possible level

of independence. Many participants and family caregivers may delay or avoid costly in-home or nursing home care by using adult day care. Adult day care may also complement in-home care.

These programs provide health and social services for older adults who may be physically or cognitively impaired but who do not need 24-hour supervision. Individuals in adult day care programs typically attend on a regular, planned basis on weekdays, and some centers also offer weekend services. Admission requirements and procedures vary somewhat across centers, but all centers require that the applicant have a personal physician or clinic for coordination of care.

Regulation of Adult Day Care

Adult day care centers are licensed by the Virginia Department of Social Services (VDSS) and must meet standards for the ratio of staff to participants, staff and volunteer qualifications, staff training, and continuing education. Health, fire, and licensing officials monitor physical environment and safety issues. In addition, many adult day care funding sources conduct periodic inspections of the facility, staff, and the care that is provided. Complaints about care can be directed to the Long-Term Care Ombudsman for your area of Virginia; contact information can be obtained at 1 (800) 552-3402.

Services Provided

Adult day care services are designed to assist both the participant and the family. Adult day care centers provide health maintenance services, therapeutic activities, personal care, and emotional support to participants. Older persons may benefit from the special care if they are:

- physically impaired
- socially isolated
- in need of personal care help
- mentally confused
- limited in their ability to function independently in the community
- in need of supervision

Family caregivers also benefit from adult day care. Adult day care services provide a respite for family caregivers to go to work, take care of personal business, or just relax while their relative attends the adult day care program.

Paying for Adult Day Care

Costs for adult day care range from $25 a day to over $100 per day, depending on the services offered and type of reimbursement. Although many adult day care participants pay for care out-of-pocket, almost all centers have provisions like sliding fee scales or scholarships to serve those who need financial assistance. Medicare and insurance do not generally cover the costs of adult day care; however, Medicaid may pay for adult day care and transportation if the person meets financial and nursing home preadmission screening criteria. Additional funding may also be available through federal or state government programs under the Older Americans Act or the Veterans Administration.

Program for All Inclusive Care (PACE)

PACE is a form of adult day care that provides more services than most regular programs. Participation in PACE typically requires that the members are dually eligible for both Medicare and Medicaid. It is possible to pay the Medicaid portion privately. PACE provides all medical care such as one might receive in a nursing facility – physical therapy, occupational therapy, pharmacy, a doctor, nurses, social workers – coupled with practical assistance and support with meals, transportation, and recreation. PACE permits an individual who might otherwise need and qualify for nursing home care to remain in their home as long as care may safely be provided both at home and during the day at PACE centers. PACE programs contract with other area providers, dentists, medical specialists, and hospitals to provide the full spectrum of care to members.

ASSISTED LIVING FACILITIES (“ALFS”)

An assisted living facility is for four or more adults who need personal care and support services. Residents are individuals who need help with daily living activities as a result of physical or cognitive impairment. Assisted living facilities are not licensed as a nursing home or for delivery of any type of healthcare; therefore, neither Medicare nor Medicaid

are available to pay for ALF services. In rare and restricted circumstances, Medicaid may provide payment through an "Auxiliary Grant" (AG) for indigent adults, but very few ALFs accept Auxiliary Grants.

Generally, assisted living combines housing, personal services, and medication management. ALF support services may include general oversight and assistance with activities of daily living. Assisted living facilities provide support to individuals too frail to live alone but too healthy to require most of the medical services provided in a nursing facility.

Design

Assisted living facilities come in different forms. They may be freestanding, located near or integrated with nursing homes, established as components of continuing care retirement communities, or operating as independent housing complexes. Small assisted living facilities may be found in residential neighborhoods. Assisted living options may range from multi-bedroom apartment suites to single room units with private bathrooms. Most have community dining areas and other common areas such as libraries and recreation rooms. Some also have gardens or other outdoor areas.

Individuals needing assistance because of dementia or other cognitive dysfunction will typically find "Memory Care" units – locked or otherwise restrictive units – in ALFs (not nursing homes).

Regulation

Unlike nursing care, the federal government does not regulate ALFs; therefore, services and levels of care vary at these facilities In Virginia, ALFs are licensed and regulated by the Virginia Department of Social Services Division of Licensing (VDSS). Information about every licensed ALF in Virginia, including ownership, number of units, and survey (inspection) reports is available online through the VDSS website: https://www.dss.virginia.gov/facility/search/alf.cgi. VDSS is located at 7 North 8th Street, Richmond, Virginia 23219. To file a complaint or to obtain more information, dial 1 (800) 543-7545.

Paying for Assisted Living

When shopping for an ALF, be sure to compare prices accurately. Some ALFs provide "flat rate" fees – one fee covers everything. Others have a base rate and then assign additional fees for "levels of care" (LOC), a designation determined by the facility and re-assessed for each resident on a regular basis. Additional fees may include: medication management, continence care, and memory care.

Most residents living in ALFs pay for services from private sources or long-term care insurance. Medicare does not cover assisted living expenses under any circumstances. Local social services departments may offer auxiliary grants for some assisted living services. For more information about auxiliary grants, visit the Department of Social Services website: https://www.dss.virginia.gov/, or call 1 (800) 726-7252.

Choosing an Assisted Living Facility

Choosing an ALF can be a difficult decision. It is important to visit several communities and to talk with residents and staff. An unannounced visit may be very helpful. A careful comparison should be made of fees and services offered by different facilities.

- AARP has created "Assisted Living: Weighing the Options," a useful checklist of the questions to ask when considering an ALF. The checklist is available at www.aarp.org in its Caregiving Resource Center.
- *Long-Term Care: A Consumer's Guide is* available on the Virginia Health Information website: http://vhi.org/LTC-Guide/default.asp.

SKILLED NURSING FACILITIES ("SNFS")

Skilled Nursing Facilities (also called "nursing homes") are designed for people who require continuous nursing and other health-related services on an inpatient basis. Such care might be needed as a result of aging or because of prolonged illness or injury. However, residents are not in an acute phase of illness and do not need the level of care that a hospital provides.

SNFs provide care on a 24-hour basis, 365 days per year. Their services include rehabilitative care, including both skilled nursing care (physical, occupational and speech therapy, wound care and other nursing services) as well as unskilled, custodial care (rooms, laundry, dining, security).

Nursing facilities also provide all their residents with social workers and recreational and spiritual activities. It is important to distinguish between skilled care and unskilled care. Skilled care is medical care and is typically paid for by Medicare. Unskilled, custodial care is not paid for by Medicare.

Many SNFs are proprietary (for-profit) facilities. However, a number of nonprofit homes operate in Virginia and are usually community or church affiliated.

All licensed SNFs in Virginia are under the supervision of an administrator licensed by the Board of Long-Term Care Administrators. Many people are involved in providing services to the residents of nursing homes. They include a Medical Director, a licensed physician responsible for overseeing the delivery of medical care to all residents in the nursing home; a Director of Nursing (registered nurse); an Assistant Director of Nursing; other RNs and LPNs; and Certified Nurses Aides (CNAs)

- Generally, the Director of Nursing and Assistant Director of Nursing supervise the work of the nursing staff. The RNs and LPNs provide medical treatments, administer medications, and document the medical care that is provided. The CNAs provide custodial care to patients (*e.g.*, bathing, feeding and toileting.)

In addition to licensed nurses, SNFs will have physical, occupational, recreational, and speech therapists who help residents maintain their physical and functional status.

All such facilities will have at least one social worker who helps residents cope with emotional and psychological issues and who assist with discharge or ongoing care planning. Social workers are also responsible for assisting nursing home residents with finding and utilizing resources and outside services for eyeglasses and dental treatment.

The Activities or Recreation staff ensure that all residents have recreational programs designed to meet their needs.

Selecting a Nursing Home

Multiple factors come to bear when choosing a nursing home. Do the facility services and capabilities meet the individual's needs? Does the facility participate in Medicare and Medicaid? Are the residents well cared for? Is the facility clean? Are residents' rooms comfortable with adequate light and ventilation? Are meals appetizing? Is there an activities program that is stimulating and varied? Are the buildings and grounds well maintained? Are there any problems? The list of questions can be long, and finding answers is not easy.

All nursing homes in Virginia are required to be licensed. The Virginia Department of Health, through its Office of Licensure and Certification, licenses nursing facilities in the Commonwealth and enforces state licensing standards. The Virginia Department of Health also serves as the State Survey Agency for the U.S. Department of Health and Human Services, the federal agency that oversees the Medicare and Medicaid programs. As the State Survey Agency, the Virginia Department of Health Office of Licensure and Certification conducts annual surveys and complaint inspections to verify that Virginia nursing homes meet the conditions for participation in the Medicare and Medicaid programs. *See* https://www.vdh.virginia.gov/epidemiology/licensure-and-certification/ (Virginia Department of Health, Office of Licensure and Certification).

Approximately 95 percent of nursing homes in Virginia participate in the Medicare or Medicaid programs, or both. Those that do must meet federal standards, which include requirements relating to quality of care, quality of life and residents' rights.

- The Medicare *Guide to Choosing a Nursing Home* can be accessed at https://www.medicare.gov/Pubs/pdf/02174-Nursing-Home-Other-Long-Term-Services.pdf or may be obtained by calling 1-800-MEDICARE (1-800-633-4227). It contains a *Nursing Home Checklist* and is among the best resources the Federal Government has produced about finding and comparing nursing homes, paying for nursing home care, identifying alternatives to nursing home care, and finding help.

The Medicare Program has instituted a 5-Star Quality Rating System, which ranks Medicare-participating nursing homes on a scale of 1 to 5 stars, with 1 star being the lowest ranking ("much below average") and 5 stars being the highest ranking ("much above average"). Do not just use the star system because statistical anomalies make the awarding of stars inconsistent at times. The 5-star system can be useful for narrowing the list of potential nursing homes, but check the underlying data that

is reported and goes into the calculation of the star system. The reports are easily accessed on the 5-Star Nursing Home Compare website: https://www.medicare.gov/nursinghomecompare/search.html.

There is one overall rating for each nursing home and a separate rating for each of the following sources of information: health inspection results, quality measures and staffing levels. There has been controversy regarding the limitations, design and methodology of the 5-Star Quality Rating System (*e.g.,* data may not be accurate or up-to-date). Medicare suggests making an informed decision about selecting a nursing home by using the 5-Star Quality Rating System together with talking to one's doctor, visiting the nursing home and talking to its staff, and contacting the state Long-Term Care Ombudsman or State Survey Agency.

Paying for Nursing Home Care

The cost of nursing home care depends on a number of factors: the kind of care an individual needs, the level of services provided and where one lives. Sources of payment for nursing home care may include Medicare, Medicaid, Veterans Benefits, long-term care insurance, personal resources, or some combination of all of these. Advance planning with competent elder law attorneys and financial advisors may be able to help you and your family afford the care you need, but start the process early. Be aware that there is a five-year look back at your financial resources in the application process for Medicaid and certain Veterans Benefits that could cause ineligibility for benefits. It is important not to give away your assets just to meet the eligibility criteria.

Medicare

Medicare is a federal program of insurance that provides for medical insurance and skilled medical care for people who are 65 and older, some persons with disabilities, and individuals with end-stage renal disease. The Medicare benefit for nursing home care is very limited: Medicare Part A only pays for a certain number of days of care in a skilled nursing facility per period of illness if you qualify for Medicare benefits. Usually a minimum three-night hospital admission is a prerequisite. Deductibles and coinsurance amounts must be paid, and there may be conditions to qualify for payments.

Medicare Part B covers charges for physicians, labs and testing such as x-rays, even if you are in a facility, but you must sign up for this coverage separately and pay the monthly premiums. It does not cover overall inpatient care.

Some Medicare Advantage Plans (Medicare Part C plans) offer limited skilled nursing facility care if the care is medically necessary. You may have to pay some of the costs.

The official Medicare website contains useful information about paying for nursing home care. *See* www.medicare.gov, or call 1 (800) MEDICARE (1 (800) 633-4227); TTY/TTD (877) 486-2048.

Medicaid

Medicaid is jointly administered by the federal government and the state to pay for certain health services and nursing home care for people who meet the strict medical and financial need criteria. Generally, eligibility for Medicaid is limited to persons with low income and few available assets.

Not all Virginia nursing homes accept Medicaid patients, but most do. You should confirm that the nursing home you select will continue to serve you if your funding source switches from private or Medicare funds to Medicaid funds.

Information about the Medicaid program in Virginia can be found at www.dmas.virginia.gov or your local department of social services. Because of Medicaid's complicated eligibility criteria, you should consult an attorney who practices in Elder Law/Medicaid. You can find an elder law attorney in your community through the Virginia Academy of Elder Law Attorneys: www.vaela.org.

Veterans Benefits

The Veterans Administration (VA) may provide assistance to some veterans for nursing home expenses. Assistance also may be available to some children and surviving spouses of veterans. In order to receive these benefits, one must choose a nursing home that is under contract with the Veterans Administration. Contact the local VA office for more information. The Veterans Administration operates Veterans Care Centers (nursing homes) in Roanoke and Richmond.

The VA Aid and Attendance program is a pension supplement available to some veterans or their surviving spouses. There also are limited benefits for dependents. The veteran must have served active

duty for at least 90 days during a wartime period. The VA Aid and Attendance program provides cash benefits, so it can assist with the cost of home care, adult day, assisted living, or nursing home care. More information is available from the Veterans Administration at www.benefits.va.gov/pension/aid_attendance_housebound.asp. In some cases, veterans service organizations can assist with the claim process. Attorneys accredited by the VA also can assist with the claim process, though they are not permitted to charge the veteran for their services. However, family members frequently agree to pay to have an attorney represent the veteran through the process.

Private Health and Long-Term Care Insurance

Some private health insurance plans provide for limited nursing home coverage. If an individual is covered by private insurance policies, talk with the carrier or insurance agent to find out whether the policy covers nursing home care. Most private insurance policy coverage is contingent upon the physician's documentation of the need for skilled nursing care.

Long-term care insurance policies can help pay for many types of long-term care, including nursing home care. Coverage and costs vary widely across policies, so careful shopping is a must. Importantly, the price of long-term care policies has skyrocketed in recent years and long-term care policies do not have fixed premiums. During the past five years, all long-term insurance carriers have increased annual premiums without any guarantees against future price increases.

The Medicare program website contains useful information about long-term care insurance (www.medicare.gov). Contact the Virginia Bureau of Insurance at (804) 371-9741 for helpful information about buying long-term care insurance. Ask for *A Shopper's Guide to Long Term Care Insurance.*

Personal Resources

You may also use personal resources to fund nursing home care. Any agreement between a nursing home and a prospective resident (or the resident's family) for the provision of care in return for payment is a contract, and you should read and understand all written agreements before signing them. The facility may ask for guarantors or cosigners to sign a nursing home contract to guarantee the payment of costs if you are unable to pay. Any person who is considering becoming a guarantor or cosigner should take special care to understand exactly what obligations he or she is accepting because these could include significant continuing costs.

CONTINUING CARE RETIREMENT COMMUNITIES (CCRC)

Continuing care retirement communities (CCRCs) offer independent, assisted living, and nursing facility care to their residents, frequently on one campus. Residents choose a facility with the intention of remaining on that campus as they age.

CCRCs typically require an entrance fee and offer a residential and services contract to residents. The contract is for at least one year and may last for the resident's lifetime. The contract states how much of the entrance fee is refundable if the resident moves out or dies. In addition to entrance fees, residents pay a monthly fee for housing and services. Monthly fees typically increase year to year to adjust for inflation and other costs.

Type A (Extensive) contracts generally provide stability in the annual fee (other than annual increases) as the resident moves to a higher level of care. These contracts are typically found with higher entrance deposits.

Type B (Modified) contracts offer less cost stability as the resident moves through higher levels of care. After a certain base level of services, the monthly fee may increase as the level of care increases. The increase may still reflect a discounted rate. The entrance deposit will likely be lower than for a Type A contract.

Type C (Fee for Service) contracts may not require an entrance fee and may not offer any reduced rate as the resident uses higher levels of care.

CCRCs are regulated by the State Corporation Commission Bureau of Insurance. The Bureau of Insurance is responsible for collecting and analyzing annual disclosure statements from CCRCs. The emphasis is on ensuring that proper disclosures are made and monitoring the CCRC's financial condition. A listing of licensed CCRCs, and their disclosure statements, are available on the State

Corporation Commission website at https://scc.virginia.gov/pages/CCRC-Disclosure-Statements.

The assisted living portion of a CCRC is licensed and regulated by the Department of Social Services as described in the assisted living section of this *Handbook*. Likewise, the nursing home portion of a CCRC is regulated by the Department of Health, as described in the nursing home section of this *Handbook*.

In some areas of Virginia, CCRCs offer community based services and agreements. These Community-Based Continuing Care communities initially provide services in the resident's own home rather than on the community's campus.

The Commission on Accreditation of Rehabilitation Facilities (CARF) offers voluntary certification to CCRC providers who meet specific standards. A guide to understanding financial performance and reporting in CCRCs and a guide to selecting a CCRC can be found at http://www.carf.org/Resources/ConsumerResources/.

CCRCs offer the promise of lifetime care. It is critical to thoroughly read and understand the resident contract and disclosure statement to know what the CCRC does and does not guarantee to residents. Consider reviewing the contract with an attorney familiar with CCRCs.

Complaints about Nursing Homes

If a problem with a nursing home cannot be resolved through its regular grievance procedures and/or if you need information, contact:

Complaint Intake
Office of Licensure and Certification
Virginia Department of Health
9960 Mayland Drive, Suite 401
Richmond, VA 23233-1463

A complaint may be filed by telephone or sent by fax to (804) 527-4503. The toll free number for reporting a complaint is (800) 955-1819. The number for the metro Richmond is (804) 367-2106. Callers may remain anonymous.

If a resident is being transferred or discharged involuntarily from a nursing home (this applies even if the resident is self-pay and is not a Medicaid recipient—as long as the facility accepts Medicare/Medicaid), the resident may appeal the transfer/discharge, but it must be done in writing to:

Department of Medical Assistance Services
Division of Client Appeals
600 East Broad Street, Suite 1300
Richmond, VA 23219

A facility's complaint history may be found by contacting the Long-Term Care Ombudsman for your area.

Long-Term Care Ombudsman Program

The Long-Term Care Ombudsman Program was established in 1979 as a requirement of the Federal Older Americans Act to improve the quality of care in America's long-term care facilities. The program serves as a focal point for the receipt, investigation, and resolution of complaints made by or on behalf of older individuals in long-term facilities or those receiving long-term care services in the community. Additionally, the Long-Term Care Ombudsman Program identifies problems and concerns of older persons receiving long-term services and recommends changes in the long-term care system that will benefit these individual consumers.

A major component of the program includes educating consumers about their rights and how to advocate on their own behalf when they have a problem or concern. The program also provides information and counseling regarding long-term care services and aging-related issues. The ombudsman program disseminates information about long-term care services, including options for paying for services, how to choose a long-term care provider, and consumer rights.

The Long-Term Care Ombudsman Program works closely with other consumer advocacy programs, regulatory agencies, and providers to promote the empowerment and autonomy of older persons and the resolution of complaints. The goal of this coordination is to help people understand their rights, exercise choices, and ensure quality long-term care services.

The Virginia Office of the State Long-Term Care Ombudsman is operated by the Virginia Association of Area Agencies on Aging. Its mission is to serve as an advocate for older persons who receive long-term care services.

Originally established in 1979, the Virginia program was expanded in 1983 by the General Assembly to

include community-based long-term care services, as well. Currently, there are 20 local ombudsman programs in Area Agencies on the Aging throughout the Commonwealth. These local ombudsman programs provide an advocacy presence in their communities which can efficiently respond to consumers' requests for information and concerns about quality of care. *See* "Helpful Contacts" section for listing.

The Office of the State Long-Term Care Ombudsman is located at 24 East Cary Street, 1st Floor, Richmond, VA 23219-3796; telephone: (804) 565-1600 or (800) 552-3402.

Resident Rights

When a person enters a nursing home, he or she must comply with reasonable rules of the facility and respect the rights of staff and other residents. A person does not, however, surrender his basic civil rights upon being admitted to a nursing home. While institutional care may place limitations on a nursing home resident's privacy and lifestyle, the resident should expect care that is compassionate, dignified, and of high quality.

Federal law includes specific and extensive "Resident's Rights" for people receiving care in Medicare- or Medicaid-funded facilities. If a nursing home is not complying with your federally-protected rights, the consequences can be very serious, including steep fines and other remedies. If you need help advocating for yourself or a loved one in long-term care, you should immediately contact your Area Ombudsman (the contact information for your local Ombudsman MUST be provided by licensed facilities). The ombudsman should be very familiar with federally-protected resident's rights and government regulation of nursing homes and other LTC facilities.

Virginia law also requires nursing facilities to develop and implement policies and procedures that ensure residents' rights.

Financial Controls and Resident Funds

Virginia places strict financial controls on nursing homes. Nursing facilities must maintain their financial records according to generally accepted accounting principles (GAAP). In addition, nursing facilities that choose to handle resident funds must comply with Virginia law regarding resident funds and must purchase a surety bond or otherwise provide assurance for the security of all personal funds deposited with the facility.

Importantly, federal and state law prohibit nursing homes from offering or entering into any agreement with a resident or prospective resident that would restrict or limit the ability of a resident to apply for and receive Medicaid, or which would require a specific period of residency prior to applying for Medicaid. However, the facility may require a resident to notify the facility when an application for Medicaid has been made.

A Medicare- or Medicaid-participating nursing home may not require a third-party guarantee of payment to the facility as a condition of admission, expedited admission, or continued stay in the facility. A nursing home may, however, require an individual who has legal access to a resident's income or resources to sign a contract to pay for the resident's care in the facility, without incurring personal liability (except for breach of the duty) to provide payment for such care.

PART 5 – RENTAL HOUSING

Landlord-Tenant Issues

As you make the transition into senior status (and assuming you will not desire or need long–term care facilities), the housing accommodations that once met your needs may no longer serve your best interest. Some people prefer to avoid the physical and financial requirements of home ownership and instead rent a residence or apartment. There are several rights afforded to, and duties owed of, both a landlord and a tenant in Virginia. Here are some guidelines for tenants and landlords.

Obtain Necessary Information About Rental Property

After deciding the amount of rent you can afford and the type of house or apartment you want, you should shop around thoroughly. Carefully inspect the rental property you are considering and note any problem areas or damage. It may be helpful to ask other tenants about the property and landlord relations. You should also consider the housing's insulation, heating and cooling systems, security, parking, quality of construction, and proximity to public transportation and shopping. Other important factors to consider include the cost and availability of utilities, the demographic of your neighbors (seniors, families, students, transients, etc.), and handicapped accessibility.

Understand Your Lease

A "lease" is an agreement between the owner of property, the "landlord," and a person who wants to use the property for a period of time, the "tenant." The lease may be oral or written; however, a written lease is much better and safer. Oral leases are not preferred because they are only as good as the recollection of the parties who enter into them. If either a landlord or a tenant fails to remember any term of an oral lease or disagrees with the other party's recollection of the terms of the lease, there is nothing in writing to consult in which to resolve such a matter.

An example of an oral lease is a tenant telling a landlord that he or she will pay $500 a month for the apartment, the landlord saying, "Fine, it's yours," and accepting the first rent payment and delivering the keys to the property. Generally, the term of an oral lease is the same as the period of time for which the tenant pays the rent, up to one year. For example, if the tenant pays rent each month under an oral agreement, the term of the lease is only one month. This is called a month-to-month tenancy. If the tenant pays rent once every three months, the term of the lease is three months.

A written lease is a contract signed by both the landlord and the tenant which spells out the rights and responsibilities of both the landlord and the tenant. Although there are no special terms needed to create a lease, a standard lease should include the names of the parties, a description of the premises, the length of the lease, the amount of rent and security deposits due, if any, including when those monies are due, and the signatures of the landlord and tenant. Any oral promises and agreements must be written into the lease, or they will not be binding. Any subsequent change to the written lease must also be in writing and signed or initialed by both the landlord and the tenant. Although the landlord must provide the tenant a copy of the written lease within one month, it is best to insist on a copy signed by the landlord prior to paying rent and before moving in. Before signing a lease, you should read it carefully, fully understand the contents, and agree with the contents. If you are not satisfied with the terms of your lease, it may be wise to consult an attorney.

Virginia Residential Landlord and Tenant Act (§§ 55.1-1200 to 55.1-1262 of the Code of Virginia)

The Virginia Residential Landlord and Tenant Act (VRLTA) governs most landlord and tenant affairs. The VRLTA, however, does not apply to all landlord and tenant affairs. Some specific exceptions are:

- public housing, if applicable HUD regulations are inconsistent with the VRLTA; and
- occupying a campsite as defined in §35.1-1.

Even if your leasing situation is among those not generally covered by the VRLTA, you and the landlord can agree to have the VRLTA govern your lease. If the landlord specifically provides in the rental agreement for the VRLTA to govern your lease, then it will apply. Simply ask your landlord to include such a provision in your lease.

Security Deposits (§ 55.1-1226)

The landlord can, and probably will, request a security deposit before renting property to you. The purpose of the deposit is to guarantee that you will take good care of the property while you are renting.

If the VRLTA applies, the security deposit may not exceed the total value of two months' rent. When you move out or the tenancy is otherwise terminated, the security deposit can be used by the landlord to pay for rent due and for damages to the unit (other than damages caused by normal wear and tear).

If the VRLTA applies, the landlord must give you an itemized, written list of any claimed damage to the property, the dollar amount of the claimed damage, and any rent due, and the landlord must return the remainder of your security deposit within 45 days after termination of the tenancy.

During the tenancy, the landlord has 30 days in which to notify a tenant in writing of any deductions. Thus, a tenant does not normally have a right to use the security deposit as the last month's rent.

If you desire to be present when the landlord inspects the apartment at the termination of the lease, you may so do so by written request. The landlord must then notify you of the date and time of the inspection. Inspection must be made during business hours and normally within 72 hours of your moving out.

To ensure the return of the full security deposit upon move out, any tenant should take certain protective steps upon first move in. If the VRLTA applies, the landlord is required, within five days of the beginning of your tenancy, to submit to you an itemized list of damages to the unit already existing at the time you moved in. The list is deemed correct, unless you object to it in writing within five days after receipt of the report. If the landlord does not submit such a list to you, then you should thoroughly inspect the apartment and submit an itemized list of your own to the landlord. The list is deemed correct, unless the landlord objects within five days of receipt of this list. Both the landlord and tenant may agree to a joint inspection and prepare an itemized list. Remember to keep a copy for yourself.

Rental Application (§ 55.1-1203)

When you want to lease property, the landlord may require that you first file an application and pay a fee. If you decide not to rent the property, or if the landlord rejects your application, then, under the VRLTA, the Landlord shall refund all sums in excess of the landlord's actual expenses and damages. The landlord must provide an itemized list of said expenses and damages. Generally, the refund must be made within twenty (20) days (ten days if this fee was paid by cash, certified check, cashier's check, or money order).

It is against the law, and it is a discriminatory housing practice, for any person to refuse to rent, or to represent to a person, that an otherwise available dwelling is not available due to an individual's age, if fifty-five years or older. If you believe you have been discriminated against on the basis of your age, you should file a complaint with the Virginia Real Estate Board, in writing, within one year after the alleged discriminatory housing practice occurred.

Duties of the Tenant (§§ 55.1-1227 to 55.1-1233)

The tenant must comply with all provisions of the rental agreement, and must:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
2. Keep that part of the dwelling unit and the part of the premises occupied and used as clean and safe as the condition of the premises permit;
3. Keep that part of the dwelling unit and the part of the premises occupied free from insects and pests, as those terms are defined in § 3.2-3900, and promptly notify the landlord of the existence of any insects or pests;

4. Remove from the dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord;

5. Keep all plumbing fixtures in the dwelling unit or used as clean as their condition permits;

6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;

7. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so, whether known by the tenant or not;

8. Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative and maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.);

9. Not remove or tamper with a properly functioning carbon monoxide detector installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative;

10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises in such a condition as to prevent accumulation of moisture and the growth of mold, and promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;

12. Be responsible for your conduct and the conduct of other persons on the premises with your consent whether known by the tenant or not, to ensure that neighbors' can peacefully enjoy of the premises and will not be disturbed;

13. Abide by all reasonable rules and regulations imposed by the landlord;

14. Be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests, and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied; and

15. Use reasonable care to prevent any dog or other animal in possession of the tenant, authorized occupants, or guests or invitees from causing personal injuries to a third party in the dwelling unit or on the premises, or property damage to the dwelling unit or the premises.

Tenants must permit the landlord to enter the property at a reasonable time and after reasonable notice (§ 55.1-1229) so that the landlord may inspect the property, make necessary repairs or improvements, supply necessary or agreed-upon services, or show the property to prospective tenants or purchasers, except in emergency situations.

Tenants must give the landlord duplicate keys to all burglary and fire protection devices installed and get the landlord's permission before installing these devices.

Tenants should NEVER withhold rent without first consulting a lawyer. If this is not affordable, check with the local legal aid office.

Tenants must give proper written notice before moving out. Look to the terms of the lease for the proper notice requirements. If the tenancy is month-to-month, 30 days' advance written notice is required from the beginning of the next tenancy period.

Tenants must follow the rules and regulations established for the property. This includes controlling the conduct of all authorized tenants and guests.

Duties of the Landlord (§§ 55.1-1214 to 55.1-1226)

The landlord must (§ 55.1-1220):

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;
2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
3. Keep all common areas shared by two or more dwelling units of the premises in a clean and structurally safe condition;
4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;
5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and promptly respond to any notices from a tenant as provided in subdivision A(10) of § 55.1-1227;
6. Provide and maintain appropriate receptacles and conveniences, in common areas, for the collection, storage, and removal of ashes, garbage, rubbish and other waste incidental to the occupancy of two or more dwelling units and arrange for the removal of same;
7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and
8. Provide a certificate to the tenant stating that all smoke alarms are present, have been inspected, and are in good working order no more than once every 12 months. The landlord, his employee, or an independent contractor may perform the inspection to determine that the smoke alarm is in good working order.

B. The landlord must perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

C. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision 1 of subsection A.

D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions 3, 6, and 7 of subsection A above and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

E. The landlord may not demand payment from a provider of cable, satellite, and other television services in return for granting tenants access to such services or for granting service providers access to tenants. The landlord, however, may require payment from tenants if the landlord is the provider of such services. (Va. Code § 55.1-1222).

Any county, city, or town may require, by ordinance, that landlords who rent five or more units in one building shall install:

- deadbolt locks and peepholes in any exterior swinging door not made of glass;
- manufacturer's locks and removable pins or Charlie bars on exterior sliding glass doors; and
- locks on all exterior windows. (Va. Code § 55.1-1221).

Tenant Remedies/Defenses (§§ 55.1-1234 to 55.1-1244)

Tenants can defend a lawsuit brought against them by a landlord for possession of the unit for unpaid rent by asserting that the landlord failed to comply with the lease or his/her duties under the VRLTA, as follows (**§55.1-1241**):

In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises, a condition which constitutes or will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof, including but not limited to a lack of heat or running water or of light or of electricity or adequate sewage disposal facilities or an infestation of rodents, or a condition which constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:

1. Prior to the commencement of the action for rent or possession, the landlord or his agent was served a written notice of the aforesaid condition or conditions by the tenant or was notified by a violation or condemnation notice from an appropriate state or municipal agency, but that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable; and

2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.

It shall be a sufficient answer to such a defense provided for in this section if the landlord establishes the conditions alleged in the defense do not in fact exist; or such conditions have been removed or remedied; or such conditions have been caused by the tenant or members of the family of such tenant or of his or their guests; or the tenant has unreasonably refused entry to the landlord to the premises for the purposes of correcting such conditions.

The court shall make findings of fact upon any defense raised under this section or the answer to any defense and, thereafter, shall issue any order as may be required including any one or more of the following:

1. Reducing rent in such amount as the court determines to be equitable to represent the existence of any condition set forth in subsection A;

2. Terminating the rental agreement or ordering the surrender of the premises to the landlord;

3. Referring any matter before the court to the proper state or local agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court any rents that will become due during the period of continuance, to be held by the court pending its further order, or, in its discretion, the court may use such funds to (i) pay a mortgage on the property in order to stay a foreclosure, (ii) pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or (iii) remedy any condition set forth in subsection A that is found by the court to exist.

D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the violation or has unreasonably refused entry to the landlord for the purpose of correcting the condition giving rise to the violation, the court, in its discretion, may impose upon the tenant the reasonable costs of the landlord, including court costs, the costs of repair where the court finds the tenant has caused the violation, and reasonable attorney's fees.

E. If the court finds that the tenant has successfully raised a defense under this section and enters judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs of the tenant, including court costs, and reasonable attorney fees.

Tenants may sue the landlord in general district court for the city or county where the rental unit is located if the landlord violates either the terms of the lease, or the provisions of VRLTA (§55.1-1244)

A. The tenant may assert that there exists upon the leased premises a condition that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law or that, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of occupants of the premises, including (i) a lack of heat or hot or cold running water,

except where the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; (ii) a lack of light, electricity, or adequate sewage disposal facilities; (iii) an infestation of rodents; or (iv) the existence of paint containing lead pigments on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court in which the premises is located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection D.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such conditions by a violation or condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable; and

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter.

C. It shall be sufficient answer or rejoinder to such a declaration if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

D. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:

1. Terminating the rental agreement or ordering the premises surrendered to the landlord;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rents within five days of date due under the rental agreement, subject to any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;

7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure;

8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

E. Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.

F. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within fifteen calendar days from the date of service of process on the landlord as authorized by § 55-248.12, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

Important Things for Tenants to Remember

- You can NEVER successfully use the remedies/defenses listed above if you, your authorized agent, or your guest caused the damages.
- You can NEVER properly withhold rent money on your own; you must always pay the money to the court or to the landlord.
- You should ALWAYS make written and dated complaints to the landlord and be sure to keep a copy.
- Keep receipts/cancelled checks of rent payments, copies of lease agreements, records of damages, and any correspondence between yourself and the landlord.
- The landlord may keep a security deposit only in the amount of rent owed or for the costs of repairs or cleaning after you move.
- If you suspect or find that the rental unit is substandard, you should:

a. call the landlord and ask that the repairs be made;

b. give written notice of the problems to the landlord by certified mail;

c. call the health department or local housing inspector if the landlord refuses to make the repairs;

d. contact a lawyer if the problem still exists; and

e. consider filing a tenants assertion (Va. Code § 55.1-1244).

Landlord Remedies/Eviction (§§ 55.1-1245 to 55.1-1257)

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the

contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees, shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 based upon information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1, 16.1-279.1, or subsection B of § 20-103, the lease shall not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the tenancy pursuant to the lease and this chapter.

E. If the tenant has been served with a prior written notice which required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice (Notice to Pay or Quit) is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-

day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for rent is delivered to the landlord drawn on an account with insufficient funds and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check or certified check within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorneys' fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided the landlord has given notice in accordance with § 55.1-1202, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as provided in the Virginia Residential Landlord and Tenant Act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. The landlord shall be entitled to recover reasonable attorneys' fees unless the tenant proves by a preponderance of the evidence that the failure of the tenant to pay rent or vacate the premises was reasonable. If the rental agreement provides for the payment of reasonable attorneys' fees in the event of a breach of the agreement or noncompliance by the tenant, the landlord shall be entitled to recover and the court shall award reasonable attorneys' fees in any action based upon the tenancy in which the landlord prevails, including but not limited to actions for damages to the dwelling unit or premises, or additional rent, regardless of any previous action to obtain possession or rent, unless in any such action, the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable.

If you are on a month-to-month lease, your landlord needs no reason to evict you. All your landlord has to do is give you 30 days' written notice, beginning on the day your usual rent is due. As mentioned before, however, the landlord may not evict you solely on the basis of your age, if fifty-five years or older.

If the court orders you to move out, and you still refuse to move, the landlord can have you evicted, usually by the sheriff. Both you and your possessions will be removed from the premises.

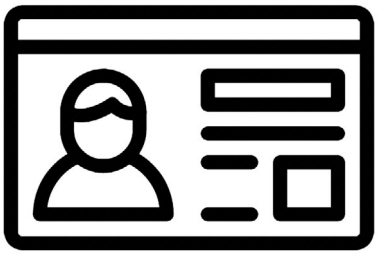
Under the VRLTA, a landlord may not act on his own to remove you or your possessions physically from the premises, to lock you out, or to cut off your utilities in order to force you out. The landlord must use only the proper court procedures to evict you.

Retaliatory Action by Landlord

If a tenant complains to the landlord, the health department, or some other government agency about the condition of the building, brings a lawsuit against the landlord, or joins a tenant organization, the landlord may not, because of such action, raise the rent, reduce services, terminate the lease, or threaten to terminate the lease. (Va. Code § 55.1-1258).

PART 6 – DRIVING AND AUTOMOBILES

DRIVING PRIVILEGES



Simply stated, driving is a privilege, not a right. Most of us are tied to our cars to perform activities that are part of our identity like shopping, going to work, visiting with friends or family, attending social activities, or taking vacations. The privilege to drive can be revoked, however, so it is important to protect yourself and loved ones as you enjoy that privilege.

According to the Virginia Department of Motor Vehicles (DMV) website:

> Self-awareness is vital for safe driving at any age, but especially as we get older. Be aware of any changes in eyesight, physical fitness and reflexes, and any medications that impact driving ability. Be willing to compensate by making changes in driving habits or choosing alternative transportation.

Drivers age 75 or older must appear in person at a DMV customer service center to renew their driver's license. Find out more by reading "Shifting Gears: Keeping the Drive at 75!" at: https://www.dmv.virginia.gov/webdoc/pdf/dmv53.pdf

Driving and Age

Drivers may be safe or unsafe at any age. In general, young, inexperienced drivers tend to have the worst driving records, and experienced, middle-age drivers tend to have the best ones. But driving skills tend to decline as drivers age, especially for mature drivers who take certain medications or have conditions associated with the aging process such as vision problems, arthritis or Parkinson's disease. Be sure to talk with your physician about any medications you are taking and any concerns you may have about your ability to respond quickly in an emergency.

GrandDriver

The GrandDriver Program helps drivers recognize the signs of declining driving skills and assists caregivers and healthcare providers with how to communicate and assess mature drivers. CarFit tests, professional evaluation centers, and an online driver safety quiz are some of the resources available from GrandDriver at: www.GrandDriver.net.

Safe Driving Courses

Online and classroom mature driver safety courses may help refresh driving skills and reveal new traffic laws. A driver may be required to take one of these courses as a result of a traffic infraction, and successful completion may be accepted in lieu of a conviction. In addition, some insurance companies offer discounts to drivers who successfully complete a mature operator's safety course. However, drivers cannot earn safe driving points by completing a mature operator's safety course.

Mature Operator Safety Course Listing

- AAA - RoadWise
- AARP - Driver Safety
- American Safety Council - Mature Driver Course
- Traffic School Online – Mature Driver Safety Course

Medical Fitness for Safe Driving

The DMV's goal is for all drivers to operate motor vehicles safely. This doesn't necessarily mean you will be denied privileges if you get sick or have a physical impairment, but you have an obligation to report to the DMV any impairment or condition that might affect your ability to drive safely.

In addition to self-reporting, the DMV receives reports from licensed medical professionals, law enforcement, judges, relatives, concerned citizens and others to help identify drivers who may pose safety risks. Each case is reviewed on its own merits and reviews are handled promptly. Drivers usually are asked to provide medical evidence that they can drive safely, and they will have to pass the driver's license exam and the road skills test before their license can be reinstated.

Learn more about this process and your rights at: https://www.dmv.virginia.gov/webdoc/pdf/med80.pdf

What Happens if My License Expires or is Revoked?

A driver who is under medical review (but whose license has not been revoked or suspended) may apply for an ID card without proof of legal presence, if the license was suspended for medical reasons.

Anyone who holds a valid Virginia Driver's License may exchange that license for an ID card at the DMV. Any Virginia resident may apply for an ID card. Learn more at: https://www.dmv.virginia.gov/drivers/#id/get_id.asp.

What is REAL ID?

The REAL ID Act is a federal law that affects how states issue driver's licenses and ID cards if they are going to be accepted for federal purposes, such as boarding domestic flights or entering secure military installations or federal facilities that require ID. Beginning October 1, 2020, the federal government will require you to present a REAL ID compliant credential, or another federally approved form of ID, in order to board a domestic flight or enter a secure federal facility.

Virginians can continue to use their standard Virginia Driver's License, the Virginia ID card, or apply for the new REAL ID license in Virginia, except as regulated above. Issuing the REAL license requires you to apply in person and present several forms of proof of your identity. Learn more at: https://www.dmv.virginia.gov/drivers/#real_id.asp

INSURANCE COVERAGE

Most of us appreciate the need for adequate insurance coverage for accidents that we cause. It is equally important to anticipate the risk of being injured by a driver with inadequate insurance or no insurance at all.

Ten percent of all drivers in Virginia are uninsured. A larger percentage of drivers, while insured, carry policy limits inadequate to fully compensate a seriously injured accident victim. It is, therefore, essential to have uninsured/underinsured (UM/UIM) motorist coverage. If a driver who has no or inadequate insurance **hurts you** and you have UM/UIM coverage, then your insurance company will pay you damages for **your personal injury** (and for the personal injuries of your family members) up to the limits of the coverage you bought. UM/UIM coverage also protects you if you are the victim of a hit-and-run and the driver is never caught.

Insurance companies are required by law to provide UM/UIM coverage in the same amount as your liability coverage. The key is getting it in an adequate amount. You have heard the insurance companies advertising "…only buy what you need." But how do you decide what you do need? Here are a few simple suggestions:

1. Single limit coverage.

The "per person, per accident" or "split limit" form of coverage, often expressed as 25/50, 50/100, 100/300, 250/500, etc., largely benefits the insurance company at your expense. By making the "per person" and the "per accident" amount the same (i.e. "single limit coverage), you double or triple your coverage. Seniors, due to age-related vulnerabilities, are more susceptible to injury or death as the result of an automobile accident and should strongly consider paying what is typically only an additional $30 to $40 per year for "single limit" coverage.

2. Consider increasing your coverage as much as you can afford.

We all hope disaster does not strike in the form of a serious auto accident. Unfortunately, we all average five accidents, most very minor, over the course of a lifetime. If a major accident does happen, we can take steps beforehand to ensure that hardship is not aggravated by inadequate compensation, or, should we cause the accident, by exposing our most valuable assets to a judgment against us. Seniors should be aware that while real estate owned jointly with a spouse is largely protected from creditors, the death of a spouse will expose the remaining spouse's interest in the real estate.

3. Consider an umbrella policy, but make sure it covers UM/UIM.

Insurance agents often recommend purchasing an umbrella policy instead of increasing your liability and UM/UIM limits. Proceed with caution. While umbrella policies are cheap, more than 95% of them do not provide UM/UIM coverage. Some insurance companies will allow an endorsement to add the UM/UIM coverage. Be certain to check carefully.

DIVORCE AND OLDER CITIZENS

When an older person divorces, all the same laws apply to that case as to any other person's marriage. All the issues set forth in this handbook must be considered, as well as other factors unique to each marital relationship. Before you make any decisions - such as whether to move out of your marital home, how to divide your property, and maybe even whether to tell your spouse that you are thinking of a divorce - you should consult with, and perhaps retain, a lawyer. A domestic relations, family law or divorce lawyer should be selected, using the criteria provided elsewhere in this handbook for selecting a lawyer.

Before you make an appointment with a lawyer, you should first find out whether he or she charges for the initial consultation (most do) and whether the consultation will be substantive in nature (rather than being limited to introductions and/or only minimal fact gathering). Obviously, and if you can find a lawyer who works this way, you will want a no-cost or flat-fee initial consultation that is allowed to take whatever time it takes, rather than being limited to a specific and very short period of time. If you cannot find a lawyer whose initial consultation fee you can afford, you should contact your local legal aid office. You might also want to check with the local lawyer/bar association -- some have lists of lawyers willing to consult with people at lower costs.

In advance of your meeting with the lawyer, you will also need to gather information about your monthly living expenses; your, and your spouse's, income from all sources; social security or other retirement benefits and whether or not those are in pay status; all assets and how each is titled; all credit card balances and any other debts, as well as how each of those is titled; existing medical insurance; and any agreements that have already been made between you and your spouse. If you do not have all this information, take as much as you do have, and your lawyer will help you obtain the rest.

If you think you might become upset or overwrought during the meeting, or if you just feel the need for moral support, you may want to have a relative or friend accompany you to the lawyer's office. However, in order to preserve attorney-client privilege, you will need to meet the lawyer in private.

When you meet with the lawyer, you must be completely honest with him or her about your facts and circumstances. Otherwise, he or she will not be able to give you full, and informed, legal advice.

To learn more about divorce, go to the Virginia State Bar website at http://www.vsb.org/site/publications/divorce-in-virginia/.

ESTATE PLANNING

The term "estate planning" refers to organizing and ordering an individual's property, called an "estate," so that it is transferred at death to the beneficiaries of an individual's choice in the most efficient manner.

Estate planning should also involve laying the groundwork for possible disability or incapacity, planning for lifetime care needs, minimizing potential taxes and the expenses related to death and funeral arrangements in a coordinated effort with your professional advisors (attorney, accountant, insurance agent, financial advisor, certified financial planner, and others). Such planning allows you to choose the individual(s) who will make decisions for you if you cannot do so yourself, and protect and provide for your beneficiaries in the way that you intend. An effective estate plan is accomplished through the preparation of certain legal documents and devices such as wills, trusts, powers of attorney, and advance medical directives.

WILLS

A Last Will and Testament (usually called a "will") is a written, signed document in which an individual (known as a testator) states directions for the distribution of assets at death. A valid will can avoid Virginia's intestacy laws, which may be contrary to one's intentions. The will appoints an executor who will be responsible for administering the estate and can significantly reduce estate administration

costs by waiving costly surety bonds and giving the executor powers they need to administer your assets without obtaining court orders. The will also may provide for the appointment of guardians for minor children and trust(s) for the protection of beneficiaries as well as opportunities to minimize taxes.

TRUSTS

At its most basic, a trust is a fiduciary relationship created by an individual, called the "grantor" or "trustor," who gives to another party, known as the "trustee," the right to hold and manage certain property or assets of the grantor for the benefit of a beneficiary. The trustee is a fiduciary who owes the grantor and beneficiary the duties of good faith and trust and is bound ethically to act in their best interests.

Trusts can provide legal protection for the trustor's assets, ensure those assets are distributed according to the wishes of the grantor, reduce paperwork and, in some cases, avoid or reduce inheritance or estate taxes, all while protecting beneficiaries. Comprehensive estate planning increasingly includes trusts that can be revoked or amended during the lifetime of the grantor but also may include trusts that are irrevocable to meet specific purposes.

Revocable Living Trusts

A revocable trust is created by a trust agreement during the lifetime of the grantor for the purpose of managing the grantor's assets. The trust agreement appoints a trustee to hold title to the trust property and manage the trust and gives them specific powers. The grantor, alone or with another trusted individual, typically serves as trustee of the trust as long as he or she is competent to do so. Since the trust is revocable, the grantor can change any of the trust terms or revoke the trust during his or her lifetime.

At the grantor's death the trust becomes irrevocable. If the grantor was serving alone as trustee, then upon their death or incapacity a successor trustee is appointed according to the terms of the trust agreement. The successor trustee then is responsible for distributing the trust assets, or retaining the assets in trust, as directed by the trust agreement. The assets that are held or received by the trust can remain in trust indefinitely, subject to certain limitations. Therefore, the grantor can keep a trust in place for the benefit of their beneficiaries over a specified time period with distributions made according to the grantor's instructions.

One of the advantages of a properly funded trust is that the assets in the name of the trust do not go through the probate process to transfer them to the beneficiaries. Consequently, if you have a revocable trust-based plan, it is essential you fund the trust properly. This could involve transferring your house and other non-retirement assets to your trust or naming the trust as a beneficiary on certain accounts. It is important to consult with your attorney and public accountant when making these trust funding decisions.

In addition to having a revocable trust, you should still have a certain type of will referred to as a "pour-over will." The will provides that any personal (non-trust) assets would "pour over" to the trust for distribution. It is used as a safety net to catch any assets not properly transferred to your trust. Unfortunately, such assets first are subject to probate before distribution to the trust.

Many people choose to create living trusts for a variety of reasons. The assets held in the living trust do not pass through probate, which saves your beneficiaries time and money. Additionally, having a revocable trust is beneficial if you have real property in various states; if the trust holds title to the property, you avoid separate probate proceedings in each state where you own property. Further, the terms of the trust and the assets do not become public at the grantor's death (unlike a will which is put to record with the court). A trust also allows you to protect or hold assets for your beneficiaries. For example, you may wish to protect minor or incapacitated beneficiaries by appointing someone else to manage the funds on their behalf. Finally, a trust allows your successor trustee to manage the assets in your trust for you if you become unable to do so yourself. This can avoid costly and time-consuming conservatorship proceedings and court oversight. If you are interested in using a living trust in your estate plan you should seek the advice of an attorney to draft a trust instrument that suits your particular needs and circumstances.

Testamentary Trusts

Additionally, a will can contain provisions to create a trust upon your death. This is referred to as a testamentary trust. A testamentary trust is similar to a revocable trust except that it is created upon your death through your will. This does require a probate proceeding and court oversight of the trust. However, some filings and accountings can be waived if the terms of the trust waive the requirement.

SPECIAL/SUPPLEMENTAL NEEDS TRUSTS

Special needs trusts, sometimes referred to as supplemental needs trusts, are created to help preserve potential government benefits an individual may be entitled to receive, such as Medicaid and Supplemental Security Income ("SSI"), while also supplementing those benefits with trust assets. There are different types of special needs trusts.

A "first party" special needs trust, available to individuals who are disabled and under the age of 65 years, must be funded with the beneficiary's own assets and must be created for the sole benefit of the individual who is disabled by a parent, grandparent, legal guardian of the individual, or a court. The trust may continue after the beneficiary reaches 65, but additional assets added to the trust after that time will not be protected in the same way.

In order to receive funds from the trust and continue the beneficiary's eligibility for government benefits such as Medicaid, a first party special needs trust is used to hold the beneficiary's money. When a first party special needs trust is established for an individual using the individual's own funds, it is frequently the result of a lawsuit recovery, settlement, or inheritance. Upon the death of the beneficiary, the trust must reimburse Medicaid expenditures made on behalf of the beneficiary before the trust can be disbursed to any other surviving beneficiaries or any heirs of the decedent. Based on the federal law that permits the use of special needs trusts, first party special needs trusts are also called "(d)(4)(A) trusts."

A "third-party" special needs trust can be established by a parent, family member or friend to protect a beneficiary's eligibility to receive government benefits. This provides a way for family members and others to put aside money to care for a beneficiary with special needs who is currently receiving or may subsequently receive government benefits. Since many government benefits are paid only to needy recipients, one benefit of the third party special needs trust is that it can provide funds to supplement (but not to supplant) the care provided by government benefits for the individual, and yet does not hinder the ability of the individual to receive government benefits.

Third party special needs trusts do not contain payback provisions for Medicaid, and anyone can make gifts or bequests to the trust, including life insurance benefits. Upon the death of the beneficiary, the trust is not required to reimburse Medicaid expenditures before remaining trust assets are distributed as dictated by the trust agreement. In addition, such trusts provide for continued asset management and oversight for the disabled beneficiary that the beneficiary may not be able to handle alone.

A special needs trust can be established in a will or in a revocable living trust. Because special elements are required to establish a special needs trust, it is critical to consult with an estate planning attorney experienced in this very unique area of the law.

ADVANCE MEDICAL DIRECTIVES

While you have capacity to make decisions for yourself, it is important to consider the medical care and treatment you would or would not like to have and plan for a time when you might be unable to make or communicate decisions. Many people do not want life-sustaining treatment, such as a respirator, while others prefer all available treatment. It is equally important to discuss and document your ideas in an advance directive to ensure your loved ones understand your preferences and can communicate them to your doctor if you are unable to do so.

The Patient Self-Determination Act is a federal law that requires hospitals, nursing homes, home health agencies, and HMOs to provide information on advance directives at the time of admission, but you should not wait until you need health care to consider your choices and make them known.

An advance directive is a way to communicate your wishes about health care presently, before you cannot speak for yourself. It may be used to designate another person to make medical decisions for you as well as to authorize or refuse certain treatments. It also can authorize your designated agent to have access to your medical records, allow

your medical provider to discuss options for your care with your agent, and terminate life support if you cannot make those decisions. Written advance directives may be made at any time, but oral advance directives may only be made if a person has been diagnosed with a terminal condition. Oral advance directives generally are reserved for people who are physically incapacitated and unable to make a written document.

Advance directives may be revoked at any time and only apply when you cannot speak for yourself as determined by your doctors. If you can speak for yourself and understand any proposed course of treatment, your doctor will speak directly to you about your health care choices.

The Commonwealth of Virginia has established an Advance Health Care Directive Registry on which Virginians can securely store copies of their Advance Health Care Directives and certain other documents. Go to www.vdh.state.va.us/administration/ahcdr/index.htm for more information.

Advance directive forms are available in both official state law forms and in unofficial forms created by state medical and bar associations and national organizations such as the AARP, American Bar Association, and the American Medical Association. Virginia advance directives should be properly notarized. Elder law attorneys can also help create detailed advance directives to meet your specific needs and ensure they are executed correctly.

Having a well-drawn and properly executed medical power of attorney may eliminate the need for a court to appoint a guardian for you to make decisions about your medical care, saving the expense and the possibility that the person so appointed may not be the one you would have chosen.

Types of Advance Directives

There are two types of advance directives: a health care power of attorney and a living will. In Virginia, a written advance directive may contain either type or combine both documents in one.

Health Care Power of Attorney

The health care power of attorney, or health care proxy, tells your physicians that you have designated someone else to express your medical care wishes when you are unable to do so. The person you designate should be someone you can trust to convey your wishes to the doctor. When choosing an agent, you should consider how well the person knows you and whether that person will carry out your wishes. For example, if you do not want life-sustaining treatment, carefully consider whether there are personal attachments or religious beliefs that may undermine your choices. Even if you also create a living will, you should discuss your wishes with your health care agent to ensure that your agent's directions to your physicians are consistent with your living will.

In other states, the health care power of attorney may be referred to as a health care proxy, a health care surrogate, or "health care agent."

Living Will

A living will can express your wishes for end-of-life care in case you are unable to communicate your decision. You should consider addressing the following in your living will:

- Under what conditions would you want or not want life-sustaining treatment? Consider different levels of functioning and prognoses.
- Are there particular types of life-sustaining treatment that you prefer or don't want? Consider artificially administered nutrition and hydration (a feeding tube) and intubation for breathing.
- In light of your personal and family medical history, do you have instructions about any other specific medical procedure that may be expected?
- What are your wishes regarding organ and tissue donation?
- Do you have any preferences regarding pain control and comfort care? Are there particular medications or pain control methods that you prefer or don't want?
- What are your preferences regarding other aspects of end-of-life care? Consider whether you want to die at home and if you prefer certain environmental conditions.
- Do you want your physician or agent to consult with any family members, friends, or religious leaders before making health care decisions on your behalf?

Even if you also have a health care power of attorney, you should document your wishes in case your agent is unavailable or wants to review your living will before making a decision on your behalf.

Do Not Resuscitate and POST Orders

Virginia residents may choose, in consultation with their physicians, to refuse resuscitation by emergency medical personnel if they execute specific orders in advance. According to the Virginia Department of Health (VDH), "Durable Do Not Resuscitate Order" (DDNR) means a written physician's order to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this program, cardiopulmonary resuscitation includes cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, defibrillation and related procedures. http://www.vdh.virginia.gov/emergency-medical-services/other-ems-programs-and-links/durable-do-not-resuscitate-program/.

Persons desiring to have a DDNR order in place need to speak with a physician with whom they have a "bonafide" patient-physician relationship, such as your primary care physician. A nurse practitioner (NP) may also write a DDNR order following the same rules that apply when prescribing other treatments. If the person for whom a DDNR order is sought is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, the person authorized to consent on the person's behalf may initiate a DDNR order with the person's physician. VDH has published a fact sheet explaining the program and how to obtain physician consent for these orders. The appropriate form may be downloaded through a link on the fact sheet, along with other information about bracelets or necklaces that will advise emergency personnel of your decision at: http://www.vdh.virginia.gov/content/uploads/sites/23/2017/12/DDNR-FACT-SHEET-2017.pdf.

POST Orders

Capital Caring Health serves as the organizational home for POST Orders in Virginia. According to the website at: https://www.virginiapost.org/, "a POST (Physician Orders for Scope of Treatment) form is a physician-signed order form which communicates and puts into action treatment preferences for patients who are nearing the end of their lives. POST is based on the ethical principle of respect and patient autonomy and the legal principle of patient self-determination. All competent adults have the right to make their own healthcare decisions. POST is designed to help healthcare professionals know and honor the treatment wishes of their patients."

The POST Order is NOT the same as Advance Medical Directives that appoint an agent to make medical decisions for you if you cannot do so yourself and give general direction for your care in an unknown emergency setting. Both are important, but for patients who are seriously ill or frail toward the end of life, the POST Order allows for expanded information about treatment based upon the current medical status of the patient. Speak to your physician about the desirability and scope of a POST Order.

FINANCIAL POWERS OF ATTORNEY

In simple terms, a power of attorney is a written document by which you (as principal) appoint someone as your agent (sometimes referred to as an attorney in fact) to act on your behalf. Powers of attorney can be limited to specific powers and authority or they can be very general, authorizing the agent to perform a broad range of actions on your behalf. As you live longer, possibly in declining health, it is important to consider having a well-drafted general financial power of attorney among your estate planning documents. Through this document you grant power and authority to your appointed agent to manage your property and financial affairs, which may include authority over your bank and investment accounts and the right to sell your real estate and personal property.

In Virginia, a power of attorney that does not state otherwise remains in force even upon the disability or incapacity of the principal. To be effective, the power of attorney must be prepared and executed by the principal while he is competent. Therefore, it is important to have prepared and execute a power of attorney while you can do so. If you should become incapacitated and not have the mental ability to execute a power of attorney, the only alternative may be the appointment of a conservator by the court to manage your property and financial affairs, which can be an expensive and cumbersome process. Please remember that powers of attorney are valid only while the principal is still alive. After the death an executor or administrator of the estate takes over to handle financial affairs.

Extreme care should be taken in choosing an agent under a power of attorney. The person should be trusted and capable. He or she should be aware of the appointment and be willing to accept the duties and responsibilities as agent or attorney in fact under your power of attorney. Agents should clearly understand that they must keep careful and complete records of all transactions and may be required by members of your family to account for all actions taken as your agent. As an additional precaution you may consider having two people designated as co-agents, both of whom must act and agree jointly. This will give added assurance that decisions made for you are both sound and in your best interests.

It is recommended that the power of attorney be carefully prepared by a knowledgeable attorney. If properly drafted and executed it will be valid and effective not only in Virginia, but also in other states and jurisdictions where your property may be located, managed or controlled. Not having a power of attorney can result in the appointment of a conservator to handle your property and financial assets. Again, this is a court proceeding that is expensive and limits your choice as to who may be appointed.

YOUR ESTATE PLAN

Preparing Your Will

With some minimal advance organization, having a will prepared is not difficult. If you are at least 18 years old and of sound mind, you may make a will. You must possess what is called "testamentary capacity;" you must be capable of recollecting your property, the natural objects of your bounty and their claims upon you, and you must know the business about which you are engaged and how you wish to dispose of your property. In Virginia, the signing of a will generally must be witnessed by two competent persons, who must sign the will in front of the testator. Virginia law allows you to prepare your own handwritten will, known as a "holographic" will, but there are specific requirements to make this type of document valid. It is recommended that you consult an attorney to help you prepare your will because mistakes can cause needless expense and may result in your will being invalid.

The following steps will help you prepare for your meeting with an attorney to develop a coordinated estate plan:

1. List the family, friends and/or organizations to whom you wish to leave property. The list should include the full names and, preferably, addresses and phone numbers of each recipient.

2. List all the properties you own and how they are titled, including all beneficiaries named on every asset. Make the list according to categories of property:

   a. real property, such as land or home;

   b. tangible personal property, such as cars, household furniture, jewelry, art, etc.;

   c. intangible personal property, such as bank accounts, stocks, and bonds;

   d. digital assets including online music, pictures, domain names, etc.; and

   e. all other assets that you own, such as life insurance, jointly titled property, IRAs, annuities, pension plans, etc.

3. Decide how your property will be divided among your chosen recipients. For example, you may want to have your property split equally among your children. There are restrictions on disinheriting your spouse. Unless you have a valid marital agreement, your surviving spouse may elect a share of your "augmented estate," which includes probate assets, other assets you owned at your death, and even some assets you transferred before your death. The surviving spouse's share is based on many factors, including the length of the marriage. This can be an issue for many couples, especially in blended families. It is important to consult an attorney if you are considering leaving substantial assets to somebody other than your spouse.

4. Consider how you would like to distribute property to your beneficiaries. Property could be distributed outright to them or held in a trust managed by a trustee for their benefit. This could be especially important if any of your intended beneficiaries are minors, have disabilities, may face divorce, or have substance abuse or gambling problems.

5. Think about whom you would like to serve as executor and/or trustee to administer your estate and distribute your assets. You may choose a

surviving spouse, another family member, a friend, or perhaps a bank or other corporate fiduciary, such as a trust company or attorney. These fiduciary positions are important jobs and your executor and/or trustee should understand the business aspects of administering an estate, the required reporting and the time commitment required.

Changing Your Will

Just as important as making an estate plan is reviewing your plan on a regular basis. This is especially true if your circumstances change significantly. For example, you may need to change your will if you move to a new state, marry, remarry, or divorce, if a named beneficiary or fiduciary dies or becomes incapable of serving, or if there is any other major change in your personal or financial situation. Periodic changes in the law also may impact your plan and necessitate modifications.

You can change your will by making a new will or signing an amendment, known as a "codicil," to your existing will. If you wish to revoke your previous will, you should destroy it after execution of the new one in order to avoid the confusion produced by the existence of more than one will. Additionally, if you make a new will, it should state in the beginning of the document that you are revoking any previous wills. Be very careful not to write on a current or existing will. Erasing or marking through parts of a will may invalidate the entire will or have other undesirable consequences. If you need to amend the will, use a codicil or have a new will drafted.

Dying Without a Will

If you die without a will, you are said to have died "intestate." If you die owning property that cannot be transferred under a valid will, trust, or non-probate transfer, state law will determine how your property will be distributed. An administrator will be appointed to collect the assets, to pay funeral and other expenses, debts, and taxes collectible against you and your estate, and to distribute the remainder of your property to persons specified by state law. Intestate estate administration may be significantly more expensive than if you had executed valid planning documents.

If the decedent is survived by a spouse only, or by a spouse and descendants who are also descendants of the spouse, the surviving spouse is entitled to the entire estate. If the decedent is survived by both a spouse and one or more descendants who are not descendants of the surviving spouse, then the spouse is entitled to one-third of the estate, and the descendants are entitled to the balance. Other circumstances are also addressed by state law.

There is a common misperception that married couples do not need to create wills. When one spouse dies, property owned jointly, with the right of survivorship, with the surviving spouse will pass to the survivor outside of probate. Nevertheless, there may be unintended consequences due to unknown heirs or circumstances. Also, when the surviving spouse dies, problems arise because there is no longer a joint owner of the property. Additionally, the lack of waivers that can be added to a will makes administration without a will more expensive than it would have been with a will.

Non-probate Transfers

The provisions of a will only affect the disposition of the individual's probate estate, which includes personal and real property in the individual's sole name. However, many assets are transferred at death outside of the probate estate and without regard to the terms of the will. Therefore, it is important to consider all your assets and map out a plan before drafting your will. Assets owned jointly, with right of survivorship by two or more individuals, are automatically owned by the surviving individual(s) at the death of one owner. Bank accounts and certificates of deposit may be designated "POD" (payable on death) to a specified named beneficiary. Similarly, investment accounts may include a "TOD" (transfer on death) direction naming an owner at death. Life insurance and annuity policies provide for named beneficiaries, as do most retirement accounts (pension, profit-sharing accounts, 401(k)s, and IRAs). In addition, Virginia offers the option of a transfer on death deed which allows you to name a successor owner of your real property. Assets transferred in any of these ways are not subject to probate, which makes probate easier and less expensive.

Life Insurance

As previously discussed, life insurance with a named beneficiary is a non-probate asset; nevertheless, if your policy is payable to your estate after death, the proceeds will be a probate asset and will be

distributed according to your will, or the laws of intestacy, if you have no will. If the policy benefits are payable to a beneficiary other than your estate, such as a spouse or child, your will has no effect on the distribution.

REAL ESTATE TRANSFERS

It is possible to transfer the title to real estate to your intended beneficiaries by a deed which allows real property to pass upon death outside of the estate administration process. The most common forms of deed transfer to accomplish this purpose are (i) joint tenancy with right of survivorship; (ii) a transfer with a life estate reserved; and (iii) transfer on death.

Joint Tenancy with Right of Survivorship

Joint tenancy ownership is where two or more people hold title to an asset together. However, unlike other forms of ownership, upon the death of one of the owners, the entire interest passes automatically to the surviving joint tenants. Technically, the full name for joint tenancy is Joint Tenancy with Right of Survivorship (often abbreviated JTWROS, especially on banking documents.) Right of survivorship means that whoever dies last ends up owning the whole property. In Virginia, the instrument creating the joint tenancy must clearly state that it is with right of survivorship.

In the case of real property, the deed creating a joint tenancy must clearly indicate by its terms an intent for the property to pass by survivorship to the other joint tenants upon the death of a joint tenant. When there are multiple joint owners the last living joint tenant will become the sole owner of the property. Joint tenancies have appeal because the property subject to the joint tenancy passes to the other joint tenants upon the death of a joint tenant automatically, or by operation of law according to the terms of the deed, avoiding the cost and delay of a probate process or an estate administration.

Care should be taken when considering transferring property at death by a joint tenancy with right of survivorship. The joint tenancy form of ownership can complicate your affairs while the joint owners are living, and control over the property is spread equally between or among the joint owners. Once established, it is difficult to change without complete cooperation of all the joint owners.

Joint ownership can also create unintended tax or credit consequences for persons named as co-owners and adding names to a title can negatively affect your eligibility for tax credits, tax relief, and government benefits. In addition, it may lead to a result that contradicts your overall plan for distribution of your estate at death. This is an issue that can be of special importance for those in blended families. Before considering joint ownership as a part of your estate plan, it is strongly advised that you contact an attorney well versed in estate planning and/or elder law for advice and assistance.

Tenants by the Entireties

There is a special form of joint ownership reserved to married couples called “Tenants by the Entirety” that continues so long as the couple remain married to each other. Virginia Code §55-20.2 provides that this applies to both real property and personal property, and it means that each of the parties owns all of the asset. Neither one can sell real estate without the signature of the other on a deed. The property passes to the sole ownership of the survivor upon the death of the first spouse.

Perhaps the most important reason to hold property as Tenants by the Entirety is that the property is protected from claims of creditors of *either* of the parties alone, so if one spouse incurred a significant judgment against them, the other spouse’s interest in the property remains protected from any claim. This is a significant protection that continues to apply even if the couple transfer title to their real or personal property (or the proceeds of any sale) to their two revocable trusts, so long as they continue to be married to each other and the property continues to belong to them through their trusts.

Transfer by Deed with a Life Estate Reserved.

Life estates can be created in several different ways and are common in estate planning documents. Most often, a life estate is created by a deed in which the owner transfers the real estate to one or more individuals (referred to as a remainderman or remaindermen) but reserves from the conveyance a life estate to himself. When the conveyance is complete, the owner is referred to as a life tenant.

The life estate continues while the life tenant is alive. Upon his death the life estate is extinguished, and the remainderman becomes the owner, free and

clear of the life estate. During the term of the life estate, the life tenant has the right to use, occupy and enjoy the property. Any rents or profits derived from the property during the life estate belong to the life tenant. The life tenant has the duty to maintain the property in the same condition as at the commencement of the life estate and to pay real estate taxes. However, the life tenant has no duty to purchase insurance for any improvements to the property to protect the remainderman's interest, but it is recommended that the life tenant do so to protect his interest in the property during the life tenancy.

The transfer of real estate with a reserved life estate is popular because it is not expensive to prepare and record the deed, the life tenant cannot be displaced by the remainderman or his creditors, a life estate preserves certain tax advantages at death, and the life estate is not recognized as a resource in determining Medicaid eligibility.

A knowledgeable attorney should be consulted before considering this form of transfer. If the property is sold during the life tenant's lifetime, the value of the life tenancy is commuted according to certain rules relating to the age of the life tenant and other factors. The life tenant will be entitled to this commuted value from the proceeds, which may not be a desired result in a Medicaid context. It is also prudent to consider having a good power of attorney in place, in the event it becomes necessary to transfer the life estate interest upon the incapacity of the life tenant.

Transfer on Death Deeds

The "Transfer on Death Deed" (also known as "TOD deed") is a relatively new form of deed transfer, first approved in Virginia as of July 1. 2013. Because the form of deed is relatively new, the use and the law applicable to this type of deed is evolving.

TOD deeds apply to property located in Virginia. The capacity required to make a TOD deed is the same as that required to make a will. Transfer on death deeds can be made by multiple or joint owners, provided all transferors join in the deed, and the property can be transferred to one or more beneficiaries or alternate beneficiaries. TOD deeds do not transfer property when they are made or recorded. The transfer of the property becomes effective, or vested, in the beneficiary when the transferor dies.

To be effective, the TOD deed must be properly executed, acknowledged by a notary and recorded in the clerk's office of the circuit court in the jurisdiction where the property is located during the lifetime of the transferor. Neither a notice to the beneficiary of the transfer on death deed nor a delivery of the recorded transfer on death deed to the beneficiary is required for the transfer on death to be valid. No consideration or payment is required.

Transfer on death deeds can be revoked by an effective instrument of revocation during the life of the transferor; provided the instrument of revocation is properly prepared and recorded in the clerk's office of the circuit court prior to the death of the transferor. TOD deeds cannot be revoked by destroying the original TOD, deed or by marking up the original deed or a copy.

Consultation with a knowledgeable attorney regarding conveyance of property at death by a transfer on death deed is recommended. The statutes provide strict rules regarding the disposition of the property upon the occurrence of certain events, unless the terms of the TOD deed provide otherwise. The transfer on death deed must be drafted carefully to ensure the intent of the transferor is met. Likewise, revocation instruments must be carefully drafted and properly recorded to be effective. The cost of preparing and recording TOD deeds is relatively inexpensive. The property transferred by a TOD deed is not part of the estate of the transferor. Instead, upon the death of the transferor, the property becomes the property of the designated beneficiary under the deed outside of estate administration, avoiding probate cost and expense.

ESTATE AND TRUST ADMINISTRATION

Probate

The term "probate" is often used to generally refer to the process of administering an estate. Probate is the legal process of proving before the proper court that a document offered as the last will and testament of a deceased person is authentic. The original will must be presented to the clerk, who reviews the document to confirm that it meets the requirements under Virginia law for a properly executed and proven will. If valid, the will is approved for recordation by the clerk. A personal representative ("executor") qualifies before the circuit court or the circuit court clerk to handle the administration of

the decedent's estate. During administration, assets are gathered and applied to pay debts, taxes, and the expenses of the estate. The remaining assets are distributed to the deceased person's beneficiaries under the will.

Only "probate" assets will pass under the decedent's probate estate. Probate assets generally include those assets that are owned solely in the decedent's name or jointly with another and are not transferred to another at death by contract or operation of law. Non-probate assets include such assets as life insurance payable to another, pensions and other retirement accounts payable to another, accounts payable on death to a named beneficiary, and any property owned with another who has survivorship rights. Real estate located outside of Virginia is not a Virginia probate asset. It is important to note that a decedent's ownership of real property in another state may require probate proceedings in multiple states. As discussed above, a living trust, created and funded before death, is useful in those situations to avoid the need to probate a will in all states where real property is owned.

If a probate estate is worth more than $15,000, the clerk of the court will assess a tax based on the estimated value of the decedent's probate estate, including real estate in Virginia and personal property owned by the decedent, such as cash, bank accounts, furniture, stocks, bonds, etc. This is a probate tax and is different from the estate tax discussed below. The tax must be paid at the time of probate, when the will is presented to the probate clerk.

The Virginia Small Estates Act provides procedures for a decedent's assets to be transferred without the necessity of qualifying a personal representative when the decedent's entire personal probate estate is $50,000 or less.

You should consult with a qualified attorney if you have questions about probate costs and whether those costs can be avoided as part of your estate plan.

Serving as an Executor or Administrator of an Estate

When you qualify as an executor of a testate estate, or as an administrator of an intestate estate, the clerk of the circuit court will provide you with a set of instructions and forms regarding your duties.

As a public service, the Virginia Bar Association has prepared *A Guide To the Administration of Decedents' Estates in Virginia*, which is available at https://www.vba.org/page/guide_estates.

After qualification, you will be required to file various documents with the court, through the court clerk or the court's commissioner of accounts. Many commissioners of accounts provide informational websites as a public service. For example, the website of the commissioner of accounts of the Fairfax County Circuit Court may be found at https://fairfaxcommissionerofaccounts.org.

The following is a summarized list of the typical duties of personal representative, whether qualified as executor or administrator. Every estate is different, so some may not apply to the estate that you are administering. Also, the duties of an administrator of an intestate estate differ somewhat, but the instructions and forms provided by the clerk or commissioner of accounts will guide you. When administering an intestate estate, be very careful to identify correctly all of the persons who are the decedent's heirs under state law.

Make an appointment with the probate clerk at the appropriate circuit court. Determine from the clerk whether witnesses to the will must attend the probate and whether surety is required on your bond as executor. At the appointment, probate the will and qualify as executor. Obtain certificates of qualification, which evidence your authority as executor. You will probably need multiple certificates to gather the decedent's assets.

Apply to the Internal Revenue Service (IRS) for a taxpayer identification number (EIN) for the estate and use it on all estate accounts and on the estate's federal and state fiduciary income tax returns. Go to the IRS website at https://www.irs.gov for instructions on obtaining the EIN.

Open an estate account with a bank that will provide copies of cancelled checks.

Gather and safeguard all assets of the estate and ensure that the assets are accounted for. Review all fire and casualty insurance policies on any real estate in the probate estate to determine whether the limits of coverage are adequate and in force. Prudently invest estate funds during the period of administration.

Provide notice of probate to all those on the list of heirs filed with the court and to all beneficiaries

under the will. This must be done within 30 days of probate and qualification in the circuit court.

Prepare and file an accurate estate inventory with the commissioner of accounts. This is due four 4 months after the date of probate and qualification in the circuit court.

Before paying bills, be sure to determine that the estate is not insolvent (an insolvent estate is one in which the obligations exceed the value of the assets). If the estate is insolvent, consult with an experienced estate attorney to avoid personal liability for any payments outside the order of priority.

Maintain a continuous account of all receipts and disbursements of the probate estate. Keep all original invoices and receipts. Keep copies of cancelled checks. The first account covers the period from death to one year after probate and qualification in the circuit court. It is due to the commissioner of accounts 16 months after probate and qualification in the circuit court.

File federal (Form 1040) and state (Form 760) individual income tax returns for the decedent. The ending date of these returns is the date of death.

File federal (Form 1041) and state (Form 770) fiduciary income tax returns for the estate. You may elect for the estate to be on a fiscal year basis; otherwise, it will be on a calendar year basis.

File the estate's federal and state estate tax returns (Form 706) if the gross estate for estate tax purposes exceeds the exemption amount for the year of death (in 2020 the exemption is $11.58 million, but the law will sunset in 2026 and the exemption will revert to $5.9 million unless changed by Congress). The tax returns, if due, must be filed and the taxes must be paid within nine months after the date of death.

Request a hearing for debts and demands against the estate. This may be done after you have prepared and submitted an interim account to the commissioner of accounts. This is the first step toward protecting yourself against unknown claims against the estate and against you personally.

Request a hearing in the circuit court to show cause against distribution. This may be done after the commissioner of accounts has taken debts and demands against the estate and after six months have elapsed since probate and qualification in the circuit court. This is another step in protecting yourself against unknown claims against the estate and against you personally.

Request an order of distribution from the circuit court. This may be done approximately 30 days after the show cause is entered and when you are prepared to make the final distribution. This is the final step in protecting yourself against claims against the estate and against you personally.

Make complete distribution of the estate to the beneficiaries and obtain proper notarized receipts for all distributions.

File your final account with the commissioner of accounts.

It is important that executors follow the terms of the will, and that all personal representatives are careful not to engage in any unauthorized deals between the estate and the personal representative, keep estate assets separate from personal assets, and that properly maintain fiduciary records.

Serving as a Trustee

If you are serving as trustee of testamentary trust (a trust created under a will), you must qualify before the clerk of the circuit court with jurisdiction over the estate. Follow the forms and instructions provided to you by the clerk.

If you are serving as trustee of a living trust that was funded by the grantor, you need not qualify before the clerk of the circuit court. Often, the grantor of the trust also created a will as part of an overall estate plan. Part of the purpose of the trust may be to avoid probate and to accomplish estate tax savings. You should consult with an experienced attorney regarding your duties and responsibilities, which include many of the same responsibilities as those for the executor of an estate.

It is important for trustees of either a testamentary or living trust to follow the terms of the trust agreement, not engage in any unauthorized deals between the trust and trustee, keep trust assets separate from personal assets, and properly maintain fiduciary records.

GUARDIANSHIP AND CONSERVATORSHIP

Guardianship and conservatorship involve the court appointment of a person to have care and custody of someone (the incapacitated person) who is incapacitated and unable to provide for his own personal needs or to manage his financial affairs. This is a court proceeding and the costs, including attorneys' fees, may be charged against the assets of the incapacitated person if the court appoints a guardian or conservator.

The guardian and conservator may or may not be the same person. The **guardian** decides where the incapacitated person will live, how his personal care, transportation, and recreation will be provided, and makes health care decisions. The **conservator** takes control of the person's assets, manages and invests the person's property, and reports to the court. The guardian and conservator consider the incapacitated person's express wishes and personal values when making decisions. The person's personal autonomy should be preserved as much as possible.

Under Virginia law, any adult person may petition the city or county circuit court to obtain guardianship or conservatorship of another person. The person filing the petition is not necessarily the person who will be appointed the guardian or conservator. The individual for whom guardianship is sought (the respondent) has the right to a notice of the proceeding and the right to a hearing or a jury trial on the question of his or her capacity. The court will appoint a specially trained individual to serve as guardian *ad litem* to represent the interests of the alleged incapacitated person in the proceeding. The guardian ad litem must visit the respondent, advise him or her on specific legal rights, and recommend whether the respondent should have independent counsel. Also, the report of a physician will be a part of the evidence. If the court finds the person to be incapacitated based on the evidence of functional disability, it will appoint a guardian and/or conservator. The respondent has the right to appeal this decision to a higher court. In some cases, the court may appoint a limited guardian or limited conservator for a person who suffers only from partial incapacity. This appointment can preserve many of the person's legal rights.

The Office of the Secretary of the Supreme Court of Virginia has an extensive discussion of guardian and conservator procedures available, entitled "Guardianship and Conservatorship Proceedings Regarding Incapacitated Adults at: http://www.courts.state.va.us/courts/circuit/resources/guardian_conservator_pamphlet.pdf.

Who Needs a Guardian or Conservator?

Guardianship deprives the incapacitated person of many civil rights. Thus, before you begin guardianship proceedings, you should be certain such steps are absolutely necessary. You should carefully consider whether the individual is able to make decisions concerning his or her personal or business affairs.

Under Virginia law, someone may need:

> (i) a **guardian** when he or she is: incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to meet the essential requirements for health, care, safety, or therapeutic needs without the assistance or protection of a guardian. [*See* Virginia Code Sections 64.2-2000 and following].
>
> (ii) a **conservator** when he or she cannot: manage property or financial affairs or provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. [*See* Virginia Code Sections 64.2-2000 and following].

Remember that the fact that a person displays poor judgment alone shall not be considered sufficient evidence that the person is incapacitated.

If the person who needs assistance with financial and health decisions has well-crafted powers of attorney and advance medical directives, it may be reasonable for those individuals to step in to provide the needed assistance without resorting to guardian and conservator appointments. However, those agents can only be successful if the individual trusts the agents appointed in their documents and is cooperative in their efforts.

For more information on guardianship or conservatorship contact the Office for Aging Services of the Division for Community Living, by dialing 804-662-9333, toll-free at 800-552-3402, or online at https://vda.virginia.gov/, or your local Area Agency on Aging, which may be found in the back of this Handbook.

FUNERAL SERVICES

The Federal Trade Commission (FTC) provides regulatory oversight of funeral services. The text and links in the next paragraph are to information on the FTC website.

When a loved one dies, grieving family members and friends often are confronted with dozens of decisions about the funeral – all of which must be made quickly and under great emotional duress (https://www.consumer.ftc.gov/articles/0070-shopping-funeral-services).What kind of funeral should it be? What funeral provider should be used? Should the body be buried, cremated, or donated to science? What are consumers legally required to buy? What other arrangements should be planned? And what is it going to cost?

Under the FTC's Funeral Rule (https://www.ftc.gov/tips-advice/business-center/guidance/complying-funeral-rule), consumers have the right to get a general price list from a funeral provider when they ask about funeral arrangements. They also have the right to choose the funeral goods and services they want (with some exceptions), and funeral providers must state this right on the general price list. If state or local law requires purchase of any particular item, the funeral provider must disclose it on the price list, with a reference to the specific law. The funeral provider may not refuse, or charge a fee, to handle a casket bought elsewhere, and a provider offering cremations must make alternative containers available. The Funeral Rule applies anytime a consumer seeks information from a funeral provider, whether the consumer is asking about pre-need or at-need arrangements.

The State of Virginia also has procedures to be followed by providers of funeral services. The legal requirements governing cemeteries and crematoriums vary, and the funeral director is obligated by law to give you the correct information about your particular case. For example, because embalming is not required by law, the funeral director can require that the casket be kept closed. If cremation is desired, an expensive casket is not required, though the medical examiners will require an appropriate container. You do not have to purchase any goods or services you do not want. You may direct questions to the membership organization for funeral directors (the Virginia Funeral Directors Association), P.O. Box 395, Hanover, VA 23069, (804) 264-0505. They have a resource center with information at: https://www.vfda.net/resource-center/. You may file a complaint with the Virginia Board of Funeral Directors & Embalmers, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463, (800) 533-1560, or the website at: www.dhp.virginia.gov/funeral/.

Planning Ahead

Planning before the time of need or before the funeral has many advantages. Your wishes concerning your funeral can be specified to eliminate confusion and differences of opinion among survivors. The funeral expenses can be paid in advance, either in full or in installments, to eliminate financial burden at the time of need. Many funeral homes will agree to furnish goods and services at a set price, no matter when you die. These arrangements can be funded through a trust or by specially designed insurance policies. Cemetery property can be purchased in advance and an appropriate monument can be secured. Any directions you have made regarding the use of your body for medical research or for organ donations can be given to the funeral establishment of your choice. Individuals who will be responsible for arrangements should be made aware that you have completed these details. If arrangements have been made with one funeral home, but you move or change your wishes for care, the prearrangement plan can be transferred to another funeral home upon request. You can always change or cancel the arrangements.

Funeral Service Consumer Guidance

Be aware of prearranged funeral plans that do not specify exactly what you will receive. The FTC Funeral Rules and laws in some states enable you to get the information you need to make decisions. You have the right to information regarding the costs of individual items and services, and if you inquire in person, the funeral home must provide a written price list of goods and services. Be sure to shop around and note whether the various plans guarantee a fixed price.

Be aware of claims delivered by dishonest salespersons. Especially be aware of salespersons who claim that the decedent ordered additional goods or items that you must now pay for. Always insist on proof that the decedent did order the goods.

Planning at Time of Need

When making funeral arrangements at the time of need, your funeral director will need certain information, such as the following:

- full name
- date and place of birth
- social security number
- occupation
- father's name and mother's maiden name
- marital status
- education level
- attending physician
- newspapers for obituary insert
- place service is to be held
- minister's name and church affiliation
- cemetery plot information
- military discharge information and service number
- pallbearers
- services and merchandise to be furnished

Be sure that this information is also given to the individuals who will make the arrangements and/or the funeral home of your choice. You may also appoint an agent to make funeral arrangements for you. This is especially important if you have no close family, or if you do not have confidence that your wishes will be carried out by your next of kin. If you plan on cremation, the medical examiner will request confirmation from your nearest relatives, so appointing one agent to make these decisions may save your family from disagreements later. Your attorney or the funeral director can provide more information about this.

Veterans

Anyone who was a member of the military at the time of death or honorably discharged from the military is eligible for benefits. You should inquire about the following items:

- pension to widow or minor children
- burial in a National Cemetery
- burial flag to drape casket
- grave marker to mark grave of a veteran. (After 1980, a veteran must have served at least 24 months of active service or have been a Persian Gulf War veteran to be eligible for a marker.)

Other benefits such as retirement and life insurance will vary. Information on such items should be obtained directly from the source paying the retirement or insurance benefits. Be sure to check with the decedent's employer for any death benefits that may be available.

Social Security Benefits

The funeral home will notify the Social Security Administration of the death once a death certificate is available. If eligible, claims by the executor or heirs should be filed as soon as possible with the nearest Social Security office. Remember to inquire about the following items:

- lumpsum death benefit payment for surviving spouse
- life pension to widow over 60 years of age
- pension to widow with dependent children
- pension for widows, widowers, divorced wives, and divorced husbands age 50 and older, if they are disabled
- pension to decedent's minor children
- Medicare coverage

Social Security payments cease at death, so any deposits made after the date of death may have to be returned to Social Security. You can ask about any checks when calling about the claims above. If direct deposits continue for some reason, know that the amounts overpaid will be reclaimed by Social Security directly from the bank account. If funds have been withdrawn before Social Security reclaims, the executor or whomever is responsible for the estate will be notified.

PART 8 – PROTECTING YOUR LEGAL RIGHTS

HOW TO FIND A LAWYER

If you do not have a lawyer, you may wish to consult friends and relatives for recommendations. The lists in the Helpful Contacts section at the back of this *Handbook* may be useful in your area. Otherwise, you can also check with the following local agencies, support groups, and professional organizations:

- Area Agency on Aging
- local bar association
- National Academy of Elder Law Attorneys
- American College of Trust and Estate Counsel
- Membership organizations such as the American Association of Retired Persons
- Alzheimer's Association

If you cannot afford an attorney, the Virginia State Bar (VSB) and local bar associations have information about pro bono programs, which operate for the good of the public and do not charge lawyers' fees. One special resource is the VSB's Free Legal Answers website. This is a free, fast, and easy service for Virginians who cannot afford a lawyer. You post a question on the website and a licensed lawyer will respond to your question – at no cost to you! Sign up at: https://virginia.freelegalanswers.org.

The VSB also has a free legal resources pamphlet entitled "Access to Justice: Free and Low Cost Legal Resources in Virginia," available for download at: https://www.vsb.org/docs/probono/access-guide.pdf.

The Virginia Military and Veteran Legal Resource Guide is a new tool to help Virginia service members, military families, and veterans understand the unique legal protections, rights, and resources available to them under the law. Go to: https://www.oag.state.va.us/Vamilguide/Veterans_legal_resource_guide_final_plusheaders.pdf.

Virginia Legal Aid Societies provide legal services to clients who qualify financially with cases in the following areas:

- **Education**
  Special Education Rights, Student Discipline
- **Housing**
  Landlord Disputes and Evictions, Subsidized and Public Housing, Mortgage Foreclosures, Hazardous Conditions, Utilities
- **Health Care**
  Medicaid, Medicare, Health Insurance, FAMIS (Family Access and Medical Insurance Security)
- **Public Benefits**
  Social Security Disability, SSI, Food Stamps (SNAP), WIC, Unemployment Compensation, TANF (Temporary Assistance for Needy Families)
- **Family**
  Uncontested Divorce, Child Custody Interstate Disputes, Child Support involving Disabled Parents, Simple and Living Wills, General Powers of Attorney, Guardianships
- **Consumer**
  Collections and Repossessions, Garnishment Exemptions, Illegal or Unfair Sales Practices, Consumer Credit Violations, Payday and Car Title Lending, Car Warranties.

For more information on Legal Aid, go to: http://vlas.org/get-legal-help/, or see "Legal Assistance" in the Helpful Contacts section for a partial listing.

There is a statewide Senior Legal Helpline available toll-free at (844) 802-5910 for Virginians age 60 and older. Topics covered include long term care, public benefits, guardianship and conservatorship alternatives, age discrimination, financial exploitation, abuse and neglect, and some consumer issues. The Senior Helpline is a collaboration between the Virginia Poverty Law Center and the Virginia Department for Aging and Rehabilitative Services.

The Virginia Lawyer Referral Service maintains a list of attorneys who have agreed to provide an initial office consultation for a nominal fee. The Virginia Lawyer Referral Service will connect you to a lawyer in your area for $35. You receive a consultation

of up to a half hour with him or her – no strings attached. Learn more under the VSB's frequently asked questions, see the website at:https://vlrs.community.lawyer/, or call toll-free (800) 552-7977 (in Richmond (804) 775-0808).

SELECTING AND WORKING WITH A LAWYER

Why do you need a lawyer?

Do you need a lawyer to help plan your estate and write a will, or do you need a lawyer to represent you in court on a driving-under-the-influence charge or on a criminal charge? Knowing what type of legal help you need will make the process of finding a lawyer easier.

Finding a lawyer with the background and experience your specific legal matter requires is critical. The "right lawyer" is the person who has experience handling matters similar to yours, and who is prepared to take action at once. An experienced lawyer knows how to act immediately, effectively and efficiently. Hiring a lawyer based on price alone may result in wasted expense and time.

What kind of lawyer do you need?

Do you need ongoing, regular legal advice from someone who has experience advising people with your type of questions or needs? Or do you need a lawyer to appear in court with you one time on one matter? Lawyers have different focuses in their practice. Some, for example, have more experience drafting contracts or wills, representing estates, or handling personal injury cases, such as car accidents. Many lawyers practice law for an entire career and never set foot in a courtroom because their work is primarily giving advice. Other lawyers focus on trial work and therefore are comfortable and experienced in appearing before judges and juries.

How do I find a lawyer?

Finding the right lawyer requires some research. But be aware that your legal issue might call for prompt action. Some legal claims have a statute of limitations—the time within which a lawsuit must be filed—or other deadlines that may be critical. In this case you may only have a limited time to take legal action, so don't delay.

You might start by consulting the telephone directory or various online legal directories; talking with friends, neighbors and coworkers who may have used a lawyer for a legal matter similar to yours; or contacting one of the lawyer referral services noted above. If you already know and trust a lawyer, you can ask that lawyer to assist you or to refer you to another lawyer who has the background and experience you need.

Remember that phone book and internet listings are paid advertising, and even though there are restrictions on the claims and statements lawyers can make in their ads, advertising in general often involves hype and self-promotion. Helpful ads will tell you what types of services the lawyer provides and where the lawyer is located.

Most law firms have websites that advertise their services and fees. However, web searches may turn up too many choices, so narrow your search to lawyers licensed in your state. In most cases, you will want to choose a lawyer who is familiar with the courts and legal community in your geographic area. To access Martindale Hubbell ratings of lawyers, go to www.martindale.com/Find-Lawyers-and-Law-Firms.aspx. Martindale Hubbell's ratings are for ethics and legal ability. Not all lawyers are listed in Martindale Hubbell, however.

How to choose the right lawyer

Once you've made a list of lawyers who may be suitable for your legal issue, contact the Virginia State Bar Clerk's Office at (804) 775-0539 (between 8:15 a.m. and 4:45 p.m.) or the Virginia State Bar, to check each lawyer's public disciplinary record. If you call the clerk's office, ask if the lawyer has ever had any public disciplinary action taken, when and why. Also, ask if the lawyer has reported that he or she has malpractice insurance. A search on the bar's Web site will provide the same information.

Select from your list one lawyer with whom you want to meet. Call the lawyer's office and ask for an initial consultation. At the outset, before disclosing any confidential information, be sure to determine that the lawyer does not have a conflict of interest regarding your case. If this is not a VLRS referral, find out if there is an initial consultation fee involved. Some lawyers offer a free initial consultation; others do not. If your initial consultation does not meet your needs, you can schedule another meeting with a different lawyer.

Prepare for the meeting

Prepare for your first meeting with the lawyer. If a lawyer asks to see the papers involved in your case before meeting with you, send or fax the papers as quickly as possible so the lawyer has time to review them before your meeting. Write a short summary of your case, including facts and dates and a list of questions you want answered. During the consultation, ask if the lawyer has handled matters similar to yours before. Is he or she willing to take your case, what services will be provided, and what will the fee and other costs be? Will the lawyer personally handle your case or will other members of the firm be involved? A lawyer should be able to explain the strengths and weaknesses of your case but be wary of any lawyer who guarantees results. If you don't understand everything the lawyer tells you, ask for an explanation in simpler terms. Find out how long the lawyer expects your case to take and what may be involved (for example is there trial preparation?). Last, do you feel comfortable working with this lawyer?

Fees

Lawyers consider several factors in setting their fees. Experienced lawyers in specific areas of law may charge more than lawyers who are not. A higher fee might be preferable if you feel the lawyer's special skills and experience will yield better and faster results. Lawyers also consider how complicated a case is and the amount of time it will take. A trial may take only a half day, but background research, interviewing witnesses and other trial preparation can take many days. Sometimes unexpected things occur that complicate the case further and end up resulting in higher legal fees.

There are several different kinds of legal fees:

Hourly fee—The lawyer charges a dollar amount for each hour worked. Hourly fees may vary significantly from lawyer to lawyer and are not always indicative of the experience a lawyer has in an area of law. A lawyer with more experience who charges a higher fee might save you money in the long run, because the lawyer can produce the same result in a shorter amount of time.

Fixed or Flat fee—This is usually charged for routine, legal matters such as real estate closings or uncontested divorces. If you agree to a fixed-fee service, make sure you find out if there are extra costs for additional services such as clerical assistance or copying.

Contingency fee—This is commonly charged in personal injury, medical malpractice, workers' compensation and other cases involving a lawsuit for money damages. A contingent fee means that you will pay the lawyer a certain percentage of the money you receive if you win the case or if you settle out of court. If you lose, the lawyer does not receive a contingency fee. However, win or lose, you likely will be required to pay costs of preparing and trying the case, which can be quite high. Sometimes the lawyer may pay those additional costs out of your portion of any settlement or award. Therefore, you need to get an estimate of what the lawyer thinks the court costs and other expenses may be and establish whether the lawyer's share is paid before or after the other expenses are deducted. Make sure all these obligations are set out in a written fee agreement.

Fee Agreements

Regardless of the type of fee charged, the fee agreement, or "employment agreement," is a contract between you and the lawyer, and it should be in writing. The agreement should specify exactly what legal services the lawyer is providing for you, as well as the fees and expenses you will be expected to pay. The agreement should also spell out your obligations as a client (for example, you agree to be truthful and cooperative, to abide by the agreement, and to pay your bills on time). The agreement also should explain the lawyer's billing practices and state whether the lawyer is going to add interest or other charges to unpaid amounts.

Even if your case is unsuccessful and you do not recover any money in a contingent fee case, some lawyers might require you to pay miscellaneous costs, such as a court reporter's charges for recording testimony at depositions and trial, word processing charges, copying and facsimile charges, expert or consultant fees, filing fees and other court costs, investigator's fees, postage and courier fees, service of process fees, travel expenses for the lawyer while traveling on your behalf, and witness fees and mileage charges for witnesses who appear at trial or depositions. These are just some examples. You need to find out clearly what expenses the lawyer anticipates will be associated with your legal matter and whether the lawyer expects you to pay these costs directly in advance or if the lawyer will

be willing to deduct them from any settlement or verdict in the case. You should ask for an itemized receipt of all fees you pay your lawyer. You can tell your lawyer that all costs over a certain amount you must approve in advance. Also, make sure your lawyer agrees to consult with you before committing to any large expenses or costs, such as hiring an expert witness or consultant.

The agreement should also spell out how the fees are going to be paid. Most clients choose to be billed monthly. Your lawyer may ask you to post a certain amount of money in his or her trust account to start work on your case. Funds held in trust remain your property until the lawyer works on the case and can draw against these funds. The lawyer should provide you monthly statements that itemize time spent on your case and money withdrawn from your account. The lawyer may require you to advance more fees, to be held in trust, as the case progresses.

If you have a billing dispute with your lawyer or you cannot afford to pay your legal bill, contact your lawyer to discuss the problem and try to resolve the issues. Hopefully you can reach agreement or set up an alternative payment arrangement. However, if you cannot resolve the fee dispute with the lawyer, you and the lawyer may submit the dispute to the Fee Dispute Resolution Program of the Virginia State Bar.

VIRGINIA'S JUDICIAL SYSTEM

The mission of Virginia's judicial system is to assure that disputes are resolved justly, promptly, and economically. To ensure that, Virginia's court system is unified in its structure and administration, with competent, honest judges and court personnel, and uniform rules of practice and procedure.

The present system consists of four levels of courts: the Supreme Court, the Court of Appeals, the circuit courts, and the district courts. In addition, magistrates serve as judicial officers with authority to issue certain types of processes.

Magistrates

In limited instances, a citizen's first contact with the judicial system of the Commonwealth comes through the office of the **Magistrate.** A principal function of the magistrate is to provide an independent review of complaints brought to the office by police officers, sheriffs, deputies, and citizens. Magistrates can issue arrest warrants, court summonses, bonds, search warrants, subpoenas, emergency mental and medical custody orders, temporary mental and medical detention orders and emergency protective orders. One of the chief duties of the magistrate is conducting bond hearings to set bail in instances in which an individual is charged with a criminal offense.

District Courts

Virginia's unified district court system consists of the **General District** and the **Juvenile and Domestic Relations District** courts. There are general district courts and juvenile and domestic relations district courts in every city and county.

The **General District Court** hears all criminal cases involving misdemeanors under state law and offenses that are violations of ordinances, laws, and by-laws of the county or city where it is located. A misdemeanor is any charge which carries a penalty of up to one year in jail or a fine of up to $2,500, or both. The district courts do not conduct jury trials. All cases are heard by a judge. Each defendant in a criminal case is presumed innocent until proven guilty beyond a "reasonable doubt." Upon consideration of evidence, the judge decides the question of guilt or innocence and on a finding of guilt determines which penalty, if any, is proper and lawful.

The general district court holds preliminary hearings in felony cases, that is, any offense which may be punishable by imprisonment of more than one year. At a preliminary hearing, the court determines whether there is sufficient evidence to justify holding the defendant for a grand jury hearing. The grand jury determines whether the accused will be indicted and held for trial in the circuit court.

The general district court decides civil cases where the amount claimed does not exceed $25,000. Claims for less than $4,500 can be initiated <u>only</u> in general district courts. A separate small claims division has jurisdiction over civil actions when the amount claimed does not exceed $5,000.

The general district court also hears cases in which a person is charged with a traffic infraction. If convicted of certain traffic violations, the Virginia Department of Motor Vehicles will assess points against the person's driver's license, in addition to any fine imposed by the judge.

The **Juvenile and Domestic Relations District Court** handles cases involving juveniles, persons under the age of 18, for example:

- A juvenile is adjudicated "delinquent" when a court finds that the juvenile has committed an act that would be a crime if committed by an adult;
- A "status offender" is a juvenile who has committed a certain action that if committed by an adult would not be considered a criminal offense - such as a curfew violation;
- A "child in need of supervision" is one who habitually and unjustifiably is absent from school or runs away from home;
- A "child in need of services" needs treatment, rehabilitation or services to keep the child or his family safe, and the intervention of the court is required;
- "Child abuse and neglect" cases involve the improper care or injurious treatment of juveniles;
- Abandonment and lack of parental guardianship, or termination of parental rights;
- Custody, visitation, and support of a child or spousal support;
- Minors seeking emancipation or work permits;
- Court-ordered rehabilitation services; and
- Court consent for certain medical treatments.

Juvenile and domestic relations district courts differ from other courts in their duty to protect the confidentiality and privacy of juveniles and their families who have legal matters before the court. In addition to protecting the public and holding delinquent juveniles accountable, the court considers services needed to provide for rehabilitation. As a district court, this court does not conduct jury trials.

As with the general district courts, all parties subject to a juvenile and domestic relations district court order or judgment may appeal the decision to the circuit court. Cases appealed to the circuit court are reheard *de novo* (as completely new cases).

Circuit Courts

The only trial court of general jurisdiction in Virginia is the **Circuit Court**. The circuit court has jurisdiction over the following:

Civil Actions:

- concurrent civil jurisdiction with general district courts of monetary claims over $4,500 but not exceeding $25,000
- exclusive original jurisdiction of monetary claims exceeding $25,000
- attachments
- validity of a county or municipal ordinance or corporate bylaw
- divorce proceedings
- wills, trusts, estate matters, and guardianships and conservatorships
- property disputes
- adoption proceedings

Criminal Cases:

- all felonies, defined as offenses that may be punished by imprisonment of more than one year
- misdemeanor offenses that were appealed from district court or originated from a grand jury indictment
- transfer or certification of felony offenses committed by juveniles

Appeals:

- appeals from the general district court or juvenile and domestic relations district court (heard de novo)
- appeals from administrative agencies

At the beginning of each term of the circuit court a grand jury is convened. These juries consider bills of indictment offered by prosecutors to determine whether there is sufficient probable cause to believe that a person accused of having committed a serious crime did commit such crime and should stand trial. The grand jury does not determine the guilt or innocence of the accused.

Drug Courts

Certain localities in Virginia have a specialized court within the judicial branch known as **Drug Treatment Court**, or drug court. Drug courts, which can deal with both adults and juveniles, typically focus on alternative methods of treating an offender, though they can still charge individuals with crimes and issue sentences.

Each drug court may decide its own eligibility criteria, although any offender found guilty of a violent offense within the past ten years will be disqualified from participating. While each drug court can rely on different treatment processes, all share the goal of providing personalized and comprehensive treatment to individuals with addiction to reduce recidivism and drug dependency.

Court of Appeals

The Court of Appeals of Virginia provides appellate review of final decisions of the circuit courts in:

- domestic relations matters;
- decisions of an administrative agency;
- traffic infractions; and
- criminal cases (except where a sentence of death has been imposed).

It also hears appeals of final decisions of the Virginia Workers' Compensation Commission. Except for appeals of criminal, traffic, concealed weapons permit, and certain preliminary rulings in felony cases that are presented by a petition for appeal, all other appeals to the Court of Appeals are a matter of right. Typically, civil decisions of the circuit courts are appealed directly to the Supreme Court of Virginia by petition for appeal.

The decisions of the Court of Appeals are final in traffic infraction and misdemeanor cases where no incarceration is imposed, domestic relations matters, and cases originating before administrative agencies or the Virginia Workers' Compensation Commission. Except in these cases where the decision of the Court of Appeals is final, any party aggrieved by a decision of the Court of Appeals may petition the Supreme Court for an appeal.

Supreme Court

The primary function of the **Supreme Court of Virginia** is to review decisions of lower courts, including the Court of Appeals, from which appeals have been allowed. Virginia does not allow an appeal to the Supreme Court as a matter of right except in cases involving the State Corporation Commission, certain disciplinary actions against an attorney, and review of the death penalty.

The Court's original jurisdiction is limited to cases of habeas corpus (ordering one holding custody to produce the detained person before the Court for the purpose of determining whether such custody is proper), mandamus (ordering the holder of an office to perform his duty), prohibition (ordering a public official to stop an action), and actual innocence (based on biological testing).

Law Enforcement and Prosecution of Criminal Cases

Even though there are many state and federal law enforcement agencies in Virginia, most law enforcement is done by local police and/or sheriff's departments and by the Virginia State Police. **For emergency needs ONLY, you should call 911**. In all other cases calls should go to the regular non-emergency law enforcement telephone number for your jurisdiction. Prosecution of criminal cases is done mostly by local Commonwealth's Attorneys and their assistants. The Commonwealth's Attorney is a constitutional officer who is popularly elected for a four-year term of office.

FEE DISPUTE RESOLUTION PROGRAM

A public service of the Virginia State Bar and local bar associations

What is the Fee Dispute Resolution Program (FDRP)?

The FDRP was created as a voluntary program to help attorneys and clients resolve disputes over fees and costs paid, charged, or claimed for legal services provided by a member of the Virginia State Bar. The program achieves this goal by providing two options—mediation and binding arbitration. Parties who choose the mediation process but who do not reach a satisfactory conclusion may still utilize the binding arbitration process. However, you may not move from binding arbitration to mediation.

What is mediation?

Mediation is a voluntary, confidential process in which a neutral third party facilitates communication between the parties to help them understand and resolve their dispute. Mediators do not decide the issues in the dispute or impose solutions. If the parties choose to resolve their dispute with a written agreement, that agreement is enforceable in the same manner as any other written contract.

What is binding arbitration?

When you agree to arbitration, you are consenting to submit your case to a neutral third party who will hear all sides of your dispute and then issue a binding award. Unlike a court hearing, arbitration is informal and is conducted without strict observance of rules of civil procedure or evidence. The award of the arbitrator is enforceable by the court and cannot be revised or revoked except under certain limited circumstances, such as the fraud, corruption, or evident partiality of an arbitrator.

GENERAL PROGRAM INFORMATION

How do you participate in the program?

The process can be initiated by either the client or the attorney. The first step is to call the Virginia State Bar's Fee Dispute Hotline at (804) 775-9423. You will need to leave your name, address, phone number, locality where the dispute took place and the name of the person(s) with whom you have a dispute. If you wish to receive the information via e-mail, please leave your e-mail address as well. The VSB Coordinator will provide you with the "Agreement to Participate" that you must fill out and sign to get your case started, as well as the program rules and guidelines. If you choose to mediate, this form becomes the "Agreement to Mediate". If you choose to arbitrate, this form becomes the "Agreement to Arbitrate". Please note that the VSB cannot advise you as to whether you have a valid fee dispute.

How much does it cost to participate in the FDRP?

The Petitioner — the party who contacts the program first — pays a one-time non-refundable fee of $20.00. This is the only administrative fee charged, whether you choose to mediate your case, arbitrate your case, or mediate first, then arbitrate. Both parties are expected to cover their own costs, including copies of documents and correspondence, legal representation, or court reporter, if necessary.

What if an attorney has already filed a lawsuit to collect the fee?

The CCRFD (Circuit Committee for the Resolution of Fee Disputes) cannot handle a fee dispute that has already been decided by a court. Also, the CCRFD cannot handle a dispute that is pending before a court. Therefore, if both parties sign an agreement to participate in the program, either by mediation or arbitration, and nonsuit or dismiss the case, or ask the court for a stay in the proceedings, the FDRP can handle your case. You should continue to prepare for the court case unless and until there is a mutual understanding to participate in the FDRP in writing.

Do I have to hire an attorney to represent me in a fee dispute resolution proceeding?

No. You do not need to hire an attorney to participate in mediation or arbitration, but you have the right to bring an attorney with you, should you decide to do so.

What if either the client or attorney refuses to participate?

This is a voluntary program. If there is no mutual Agreement to Mediate or arbitrate through the FDRP, the CCRFD cannot resolve the dispute. The CCRFD chair will usually give each party about two weeks to decide. The Virginia State Bar strongly encourages all attorneys and clients involved in a fee dispute to consider using the FDRP instead of resorting to court.

What if I think my attorney has been unethical in representing me?

The CCRFDs are not part of the disciplinary system of the Virginia State Bar (VSB). Therefore, allegations of unethical conduct must first be reported to the VSB through the complaint process. (You may call (804) 775-0570 for information about filing a misconduct inquiry. Outside Virginia call toll-free at 1(866) 548-0873.) If the VSB determines that no disciplinary rule has been violated, the matter may be referred back to the CCRFD for resolution of the fee dispute. However, in general the VSB disciplinary process does not address complaints about a lawyer's fee.

MORE INFORMATION ABOUT THE MEDIATION PROCESS

Who are the mediators?

Cases are mediated by volunteer lawyers and nonlawyers who are certified by the Supreme Court of Virginia and have participated in a training program for resolving fee disputes.

How do you start the mediation process?

If you wish to mediate your dispute you must sign an Agreement to Mediate. On that form you will state the amount of the fee in controversy and provide a summary of your views about the dispute. Once the other party has agreed to participate, and also signed the Agreement to Mediate, the CCRFD chair will identify the mediator, who will schedule the mediation session. The Agreement to Mediate form may be obtained from a CCRFD chair.

When will a mediation session be scheduled?

Once the Agreement to Mediate has been signed by all parties to the dispute, they choose their mediator from a list maintained by the Virginia State Bar. The mediator will then work with the parties to schedule the mediation at a mutually agreeable time, within thirty days of the mediator's appointment.

Do I have to attend the mediation hearing in person?

The process is most successful when the parties meet face to face and the parties are expected to attend all sessions. If, however, both parties cannot physically be present, they may be able to arrange to mediate by telephone.

MORE INFORMATION ABOUT THE ARBITRATION PROCESS

Who are the arbitrators?

The arbitrators are lawyers and nonlawyers who volunteer their time to hear and decide these disputes. All volunteers have participated in a training program focused on resolving fee disputes.

How do you start the arbitration process?

If you want to arbitrate your fee dispute, you must sign an Agreement to Arbitrate. On that form you will state the amount of the fee in controversy and explain your position in the dispute. The Agreement to Arbitrate form may be obtained from the Virginia State Bar.

When will an arbitration hearing be scheduled?

Once the Agreement to Arbitrate has been signed by all parties to the dispute, the CCRFD chair will assign the case to one arbitrator, or to an arbitration panel. The arbitrators will then schedule a hearing within forty-five days of their appointment.

How many arbitrators will handle your case?

In arbitration, if the amount in controversy is $25,000 or less, the case is usually assigned to a single arbitrator who is usually a lawyer-arbitrator. You may request a panel of three arbitrators, but that decision is within the discretion of the CCRFD chair. For matters in excess of $25,000, the CCRFD chair will assemble a three-arbitrator panel consisting of at least one lawyer and at least one nonlawyer.

Can you object to the appointment of a certain arbitrator?

Yes, if you question the arbitrator's impartiality. However, once a hearing begins, such objections are waived. Removal of an arbitrator, for good cause shown, is within the discretion of the CCRFD chair.

Do you have to attend the arbitration hearing in person?

If you are unable to attend the arbitration hearing in person, the hearing may be held by teleconference, or you may waive the evidentiary hearing. If you do not appear at the hearing, and do not give a reasonable explanation for your absence, the arbitration will proceed without you. Once a hearing date has been agreed upon, it is unlikely that the hearing will be rescheduled unless there are extraordinary circumstances.

What if you decide not to arbitrate after you have signed the Agreement to Arbitrate?

Once you sign the Agreement to Arbitrate form, your consent to arbitration is irrevocable, and the arbitration award may be enforced against you in court.

How do the arbitrators decide?

All arbitrators have been trained and sworn to conduct the arbitration hearing in an impartial and neutral manner. When resolving a fee dispute, the arbitrators may consider all pertinent factors, including the intention and understanding of the parties at the time the representation was undertaken. Expert testimony supporting the reasonableness or unreasonableness of the fee is not necessary but is permitted. The factors to be considered are:

- The time and labor required, the novelty, complexity and difficulty of the questions involved, and the skill required for proper legal representation;
- The likelihood that the acceptance of the engagement would preclude other employment by the lawyer;
- The customary fee or rate charged in the community;
- The monetary or other stakes involved in the matter;
- The time constraints of the representation;
- The nature and length of the professional relationship with the client;
- The experience, reputation, diligence, and ability of the lawyer, as well as the skill, expertise, or efficiency of effort reflected in the actual services rendered;
- Whether the fee agreement was fixed or contingent;
- Whether the lawyer provided an adequate explanation to the client of the fee arrangement at the outset of the representation;
- Whether the fee arrangement was in writing;
- The promptness of the billing;
- The experience of the client in obtaining legal services;
- The extent to which estimates of the total fee were given, and if an estimate was given, how closely the final bill related to the estimate;
- The results obtained by the lawyer.

When will you know the decision?

Arbitrators will deliberate in private after the formal closing of the arbitration hearing. They will issue a written award within ten business days after the hearing.

How do you decide whether to use mediation or arbitration?

Mediation is often appropriate when parties hope to continue a business relationship or to end that relationship without hard feelings. Mediators help the parties work together to reach a resolution that both find acceptable. If the parties do not resolve their case in mediation, they can still pursue resolution through arbitration.

Arbitration is appropriate when the parties are willing to accept the decision of a neutral third party, the arbitrator. This means that even if a party objects to the decision they are still required to implement its terms. However, arbitration does guarantee a final decision.

Best Strategy for Choosing a Lawyer to Represent You

- Choose a lawyer you are comfortable with, and make sure you agree on goals, since you will be working closely together throughout your case.
- Establish approximately how long your case will take and how often the lawyer intends to contact you with updates on your case.
- Provide the lawyer in a timely fashion all the information and documents the lawyer needs or requests.
- Have a written agreement that sets out the fees you will pay, the anticipated costs and a schedule for payment, as well as what services the lawyer will provide.
- Contact your lawyer promptly with questions about your legal matter or any change in circumstances that occurs during the case.

- Be sure that your lawyer communicates with you, keeps you reasonably informed about the status of your matter and responds to your questions.

ALTERNATIVE DISPUTE RESOLUTION

When a legal dispute arises, the party who has been injured or damaged (the "plaintiff") files his or her lawsuit against the alleged wrongdoer (the "defendant") in a state or federal court. These lawsuits are tried before a judge in the ordinary course, which often means lengthy delays and can also result in significant expenses of the litigation. Court dockets are often crowded, and each suit must wait its turn before trial occurs. Each case must be prepared thoroughly before being heard by a judge and that also adds considerably to the expense.

Parties to civil disputes increasingly are turning to alternative dispute resolution outside the court system, most often either arbitration or mediation. Both resolution options are more informal and generally less expensive than that of a trial in court. The settlements may remain confidential.

Several commercial services are available to help the parties resolve disputes involving larger amounts of money where all parties are represented by lawyers. These services generally employ either experienced trial lawyers or retired judges who serve as arbitrators or mediators. The parties' lawyers can pick a trusted arbitrator or mediator. The service provided by these lawyers or judges is generally excellent, but it is also expensive.

For disputes involving smaller amounts of money, which generally would be tried in district courts, many communities have alternative dispute resolution organizations that can help resolve disputes for smaller or no fees. If you become involved in such a dispute, contact the clerk's office of the court where the case is pending to ask about available alternative dispute resolution resources, which vary by locality.

Arbitration

Arbitration is a process that uses a decision maker outside the judicial system to make a decision that is binding on the parties. Generally, the parties either agree upon an arbitrator or each side picks an arbitrator and those arbitrators mutually pick a third. The arbitrators then hear and decide the case, just as a judge would do. Arbitrators usually are retired judges or experienced lawyers specially trained in arbitration.

The advantage of arbitration is that it is quicker and less expensive than a full court trial. The disadvantage is that a decision is imposed on the parties by the arbitrator, so the parties lose their right to control what happens. Those decisions bind the parties and there generally is either no or a very limited right of appeal from an arbitrator's decision.

Be aware that many contracts, including credit card, employment, and consumer related contracts, contain mandatory arbitration clauses. They require the parties to the contract give up their right to a trial in the court system and agree to submit any dispute to "mandatory arbitration". These clauses can result in consumers giving up legal rights with little ability to negotiate away the mandatory arbitration requirement.

Mediation

Most cases that go to alternative dispute resolution now are resolved by mediation rather than arbitration. The mediator is a "neutral" third party whose job is to help the parties, with or without attorneys, reach a mutually acceptable settlement. The mediator cannot impose an outcome. While mediation has a high success rate, there is no obligation on the parties to settle their case and if they are unsuccessful the case can proceed to trial.

There are essentially two forms of mediation. The first is where the mediator remains neutral and does not give any opinion about a reasonable settlement or the probable outcome of the case. Alternatively, the parties can agree that the mediator can evaluate the case and give an opinion of its probable outcome. The second option can be helpful for the parties to compare a second opinion from the neutral mediator to the opinion of their attorney.

In mediation, the parties agree that they can discuss the case frankly and no statement made in mediation can be used against a party if they do not reach agreement and the case goes to trial.

Collaborative Family Law

Domestic disputes, particularly those involving child custody and visitation, are among the most difficult and emotional cases to resolve. Full litigation of a

divorce case often heightens rather than resolves the negative feelings of the parties towards one another and can be very expensive and slow. In recent years specially trained lawyers are offering services in collaborative family law.

In collaborative family law cases, the parties generally have lawyers, however, they agree that they will resolve their issues without resort to the court system. The case often involves experts or coaches to advise the parties and is designed to get parties and children through the process without increasing alienation. Check with your local Bar Association or search the internet for the names of lawyers who are qualified in the collaborative process. It is a process worth considering for those facing domestic difficulties.

CONSUMER GUIDE

Consumers of all ages, particularly seniors, are vulnerable to the fast pitch and hard sell of the professional salesperson. Today, we also face the impersonal, but no less effective, pitch of the television or radio advertiser. With such pressures being exerted against us, it is very difficult to make intelligent buying decisions.

Even though consumer protection legislation and court decisions in favor of consumer rights are on the increase, your best protection is for you to be a well-informed, careful buyer. Smart consumers know their legal rights, are cautious of product exaggerations, and are unafraid to demand satisfaction for the price of their purchase. This section is designed to help you be an alert consumer who is less likely to be taken advantage of by fast-talking salespeople or misleading advertising.

Contracts and Credit Buying

Almost every purchase you make as a consumer involves entering into a contract between you, the buyer, and a merchant, the seller. If you have ever bought a car, hired a workman to do repairs, or purchased a pair of shoes using a credit card, you have entered into a contract.

Contracts most often come into the picture for consumers when the seller extends credit for purchase of an item or service, with payment delayed or spread out over time. This arrangement is commonly known as “buying on time” or “buying on credit.” In effect, the store, dealer, or company from which you are buying extends a loan in the amount needed to purchase the item or service. You, in turn, agree to pay back that money, plus a finance charge of some kind.

Whenever you buy on credit, make sure you know how much your total cost will be. Know how long you will have to make payments and be sure you can meet them. The Federal Truth-in-Lending Act requires persons and businesses who extend credit to tell consumers what that credit will cost in the long run. When you buy on credit, the seller must tell you the actual finance charge (the price you pay for the privilege of paying in installments, which is added to the cash price) and the annual percentage rate of interest on the purchase you wish to make. Lenders who fail to disclose this information may be sued by their customers for twice the amount of the finance charge—from a minimum of $100 to a maximum of $1,000—plus court costs and attorney’s fees. If lenders are convicted of willfully or knowingly disobeying the law, they can be fined up to $5,000 or be imprisoned for one year, or both.

Federal truth-in-lending laws also grant the right to cancel any contract in writing within three days, if the contract requires that the consumer’s home be used as collateral or if a lien on the home could result from the contract, as in a home improvement or home repair agreement. Consult with an attorney before signing such a contract.

Before signing any sales contract, ask yourself these questions:

- Do I know what I’m buying?
- Do I understand to my satisfaction what the contract says and what my obligations will be under it?
- Can I get just about the same item elsewhere at a better price?
- If the purchase is for credit, am I satisfied with the price I am paying for the loan?
- What kind of protection do I have in the way of guarantees and warranties? (Buying something “as is” means no warranty or guarantee about the product at all.)
- Should I have the contract reviewed by an attorney?

Basic Contract Dos and Don'ts

DO insist that the salesperson let you take home a copy of the contract before you sign it.

DO show the contract to a lawyer if you have *any* questions about *any* provision of the contract.

DO insist that all promises (guarantees and warranties) be put in writing; otherwise, they may not be enforceable.

DO keep copies of all contracts, payment records, and complaint letters in a safe place.

DO ask your agent or the seller to include the following provision in the document if you have any questions about contract terms:

> "This contract is contingent upon the approval of my attorney, and the contingency shall continue in effect until ___(DATE)___."

DON'T deal with any salesperson who refuses to let you take home a filled-in contract before you sign it.

DON'T sign anything unless you have had time to read it carefully or have it read to you, and you fully understand what it says.

DON'T ever sign a contract with blank spaces that are to be filled in later by the salesperson.

Credit Card Finance Charges

If you have a credit card from a department store, bank, oil company, or financial institution, you are normally required to pay a monthly finance charge based on the unpaid balance of your account. The effective annual percentage rate for credit card transactions is not limited by Virginia law and may be imposed at the rate set by the issuer of the card and agreed to by you. All issuers of credit cards give a period of time within which, if they receive payment in full, no finance charge will apply (unless used for a cash advance). If charges are not paid in full before the due date, interest charges may be assessed on new purchases as well as the last balance-due amount.

Unsolicited Credit Cards

It is illegal for a card issuer to send you a credit card unless you ask or apply for one. A card issuer, however, may send you an application for a card or a new card to replace an expired one without your request.

Lost or Stolen Credit Cards

The most you will have to pay for unauthorized charges is $50 on each card, even if someone runs up several hundred dollars' worth of charges before you report a card missing. In any event, your risk on lost or stolen credit cards is limited. You do not have to pay for any unauthorized charges made after you notify the card company of loss or theft of your card, so keep a list of your credit card numbers and notify card issuers immediately if a card is lost or stolen.

Bad Credit Ratings

If you learn that your credit has been damaged, you are authorized under the Fair Credit Reporting Act to request from the credit reporting agency an accurate report showing any information transmitted about your credit standing. If you challenge the information, the agency must reinvestigate, and if it still is not resolved, you may file a protest which will remain in the report. You are entitled to sue for damages, attorney's fees, and investigation costs if the agency does not comply.

You are entitled to receive one free credit report every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian, and TransUnion. This free credit report can be requested at AnnualCreditReport.com, or by calling 1 (877) 322-8228. It is good planning to request a free annual credit report from a different one of these agencies each four months throughout the year. Be wary of Internet or telemarketing programs that purport to provide a "free" credit report but require a fee.

Error in Billing

If you think your bill is wrong or you want more information about it, notify the creditor, in writing, within 60 days after the bill was mailed and keep a copy of your letter. Be sure to include:

- your name and account number,
- a statement that you believe the bill contains an error and an explanation of why you believe there is an error, and
- the suspected amount of the error.

While you are waiting for an answer, you do not have to pay the disputed amount or any minimum payments or finance charges that apply to it. You are

still obligated to pay all parts of the bill that are not in dispute.

The creditor must acknowledge your letter within 30 days unless your bill is corrected before then. Within two billing periods, but in no case more than 90 days, the creditor must correct your account or explain why the bill is correct.

If the creditor made a mistake, you do not have to pay any finance charges on the disputed amount. The creditor must credit your account for the full amount in dispute or partially correct your account and explain what you still owe. You then have the time usually allowed on the account to pay any balance. If no error is found, the creditor must promptly send you a statement of what you owe. In this situation, the creditor may include any accumulated finance charges and any minimum payments you missed while you were questioning the bill.

If you still are not satisfied, you should notify the creditor within the time you have to pay your bill (and keep a copy of your letter); however, the creditor's obligations have now been fulfilled, except for requirements regarding your credit rating.

Once you have written about a possible error, the creditor may not give out information to other creditors or credit bureaus or threaten to damage your credit rating. Before answering your letter, the creditor may not take any collection action on the disputed amount or restrict your account because of the dispute. A creditor can, however, apply the disputed amount against your credit limit.

After your bill has been explained and you do not pay within the time allowed for payment, and even if you still disagree and have expressed your disagreement in writing, the creditor can report your account as delinquent and begin collection proceedings. (Keep copies of all correspondence with your creditor.) If this is done, the creditor also must report that you have challenged your bill and provide you, in writing, the name and address of each person and/or organization to whom your credit information has been given. When the matter is settled, the creditor must advise each person or organization given credit information of the outcome.

The federal law applies to personal, family, and household debts, such as money owed for the purchase of a car, for medical care, or for charge accounts.

Collection Agencies

When you are paying for a product or service on time and get behind on your payments, the loan company or bank may refer your debt to a collection agency. Federal law prohibits abusive, deceptive, and unfair debt collection practices, and its purpose is to ensure fairness. The law does not, however, cancel legitimate debts. The Federal Trade Commission (FTC), the nation's consumer protection agency, enforces the Fair Debt Collection Practices Act (FDCPA), which prohibits debt collectors from using abusive, unfair, or deceptive practices to collect from you.

Under the FDCPA, a debt collector is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy delinquent debts and then try to collect them.

Here are some questions and answers about your rights under the Act:

What types of debts are covered?

The Act covers personal, family, and household debts, including money owed on personal credit card accounts, auto loans, medical bills, and mortgages. The FDCPA doesn't cover debts incurred to run a business.

Can a debt collector contact me any time or any place?

No. A debt collector may not contact you at inconvenient times or places, such as before 8 in the morning or after 9 at night, unless you agree to it. And collectors may not contact you at work if they're told (orally or in writing) that you're not allowed to get calls there.

How can someone stop a debt collector from making contact?

If a collector contacts you about a debt, you may want to talk to them at least once to see if you can resolve the matter – even if you don't think you owe the debt, can't repay it immediately, or think that the collector is contacting you by mistake. If you decide after contacting the debt collector that you don't want the collector to contact you again, tell the collector – in writing – to stop contacting you. Here's how to do that:

Make a copy of your letter. Send the original by certified mail and pay for a "return receipt" so you'll be able to document what the collector received. Once the collector receives your letter, they may not contact you again, with two exceptions: a collector can contact you to tell you there will be no further contact or to let you know that they or the creditor intend to take a specific action, like filing a lawsuit. Sending such a letter to a debt collector you owe money to does not get rid of the debt, but it should stop the contact. The creditor or the debt collector still can sue you to collect the debt.

Can a debt collector contact anyone else about my debt?

If an attorney is representing you about the debt, the debt collector must contact the attorney, rather than you. If you don't have an attorney, a collector may contact other people – but only to find out your address, your home phone number, and where you work. Collectors usually are prohibited from contacting third parties more than once. Other than to obtain this location information about you, a debt collector generally is not permitted to discuss your debt with anyone other than you, your spouse, or your attorney.

What does the debt collector have to disclose about the debt?

Every collector must send you a written "validation notice" telling you how much money you owe within five days after they first contact you. This notice also must include the name of the creditor to whom you owe the money, and how to proceed if you don't think you owe the money.

Can a debt collector keep contacting me if I don't think I owe any money?

If you send the debt collector a letter stating that you don't owe any or all the money, or asking for verification of the debt, that collector must stop contacting you. You must send that letter within 30 days after you receive the validation notice. But a collector can begin contacting you again if it sends you written verification of the debt, like a copy of a bill for the amount you owe.

What practices are off limits for debt collectors?

Harassment. Debt collectors may not harass, oppress, or abuse you or any third parties they contact. For example, they may not:

- use threats of violence or harm;
- publish a list of names of people who refuse to pay their debts (but they can give this information to the credit reporting companies);
- use obscene or profane language; or
- repeatedly use the telephone to annoy someone.

False statements. Debt collectors may not lie when they are trying to collect a debt. For example, they may not:

- falsely claim that they are attorneys or government representatives;
- falsely claim that you have committed a crime;
- falsely represent that they operate or work for a credit reporting company;
- misrepresent the amount you owe;
- indicate that papers they send you are legal forms if they aren't; or
- indicate that papers they send to you aren't legal forms if they are.
- Debt collectors also are prohibited from saying that:
- you will be arrested if you don't pay your debt;
- they'll seize, garnish, attach, or sell your property or wages unless they are permitted by law to take the action and intend to do so; or
- legal action will be taken against you, if doing so would be illegal or if they don't intend to take the action.
- Debt collectors may not:
- give false credit information about you to anyone, including a credit reporting company;
- send you anything that looks like an official document from a court or government agency if it isn't; or
- use a false company name.

Unfair practices. Debt collectors may not engage in unfair practices when they try to collect a debt. For example, they may not:

- try to collect any interest, fee, or other charge on top of the amount you owe unless the contract that created your debt – or your state law – allows the charge;
- deposit a post-dated check early;
- take or threaten to take your property unless it can be done legally; or
- contact you by postcard.
- Can you control to which debts your payments apply?

Yes. If a debt collector is trying to collect more than one debt from you, the collector must apply any payment you make to the debt you select. Equally important, a debt collector may not apply a payment to a debt you don't think you owe.

Can a debt collector garnish my bank account or wages?

If you don't pay a debt, a creditor or its debt collector generally can sue you to collect. If they win, the court will enter a judgment against you. The judgment states the amount of money you owe and allows the creditor or collector to get a garnishment order against you, directing a third party, like your bank, to turn over funds from your account to pay the debt.

Wage garnishment happens when your employer withholds part of your compensation to pay your debts. Your wages usually can be garnished only as the result of a court order. Don't ignore a lawsuit summons. If you do, you lose the opportunity to fight a wage garnishment.

Can federal benefits be garnished? Many federal benefits are exempt from garnishment, including:

- Social Security Benefits
- Supplemental Security Income (SSI) Benefits
- Veterans' Benefits
- Civil Service and Federal Retirement and Disability Benefits
- Service Members' Pay
- Military Annuities and Survivors' Benefits
- Student Assistance
- Railroad Retirement Benefits
- Merchant Seamen Wages
- Longshoremen's and Harbor Workers' Death and Disability Benefits
- Foreign Service Retirement and Disability Benefits
- Compensation for Injury, Death, or Detention of Employees of U.S. Contractors Outside the U.S.
- Federal Emergency Management Agency Federal Disaster Assistance

But federal benefits may be garnisheed under certain circumstances, including to pay delinquent taxes, alimony, child support, or student loans.

Do you have any recourse if you think a debt collector has violated the law?

You have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, the judge can require the collector to pay you for any damages you can prove you suffered because of the illegal collection practices, like lost wages and medical bills. The judge can require the debt collector to pay you up to $1,000, even if you can't prove that you suffered actual damages. You also can be reimbursed for your attorney's fees and court costs. Even if a debt collector violates the FDCPA in trying to collect a debt, the debt does not go away if you owe it.

What should you do if a debt collector sues you?

If a debt collector files a lawsuit against you to collect a debt, respond to the lawsuit, either personally or through your lawyer, by the date specified in the court papers to preserve your rights.

Where do you report a debt collector for an alleged violation?

Report any problems you have with a debt collector to your state Attorney General's office (naag.org) and the Federal Trade Commission at www.ftc.gov, or call 1 (877) 382-4357.

For More Information

To learn more about credit-related issues, go to www.mymoney.gov, the U.S. government's portal to financial education.

Door-to-Door Sales

Even the most strong-willed customer occasionally falls prey to an enterprising door-to-door salesperson. But if the "magic spell" cast by the salesperson wears off as soon as he is away from your door with your money or a sales contract, there is something you can do about it.

Virginia law and Federal Trade Commission (FTC) rules allow you a three-day cooling-off period to decide whether to cancel your purchase of goods or services. If you do decide to cancel the sale or to rescind the contract, you must send or deliver a written notice to the company or business before midnight of the third business day after the date of the transaction. Virginia law does not require you to follow any particular format in sending your notice to cancel your purchase of goods or services. The FTC rules require you to sign and date one copy of a notice of cancellation form, which you should receive from the salesperson, along with copies of the sales contract or receipt of sale. You should consider sending the notice of cancellation or written letter of cancellation by certified mail, return receipt requested. Keep a copy of the notice for your records and as proof that you sent it.

Once the merchant receives the notice letter of cancellation, he or she has 10 days to refund any money received, return any documents that you have signed, return any goods or property that you have traded in, and inform you whether he or she will pick up or let you keep any items that were left with you. Products left with you must be available to the seller in the same condition as you received them. It is not your responsibility, though, to ship the items back to the dealer or pay postage expenses for such shipping. The seller must either pick up items left with you, or if you agree to ship them, the seller must pay the return postage expenses. If the seller fails to demand possession of the items within 20 days after cancellation or revocation, the goods become the property of the buyer without any obligation to pay for them. Virginia law and the FTC rules do not cover cash purchases under $25.

Mail-Order Merchandise

If you order merchandise by mail, federal regulations require the seller to ship the merchandise to you within the time limits stated in its ad or brochure, or within 30 days if the seller has not specified a delivery period. If the merchandise is not so shipped, e.g., because it is temporarily out of stock, you have the right to cancel your order and have your money refunded within seven days of your cancellation. In a credit transaction, the seller has one billing cycle to adjust your account. If the seller notifies you that he or she cannot ship the merchandise in the stated time or within 30 days, you may cancel the order and get your money back, agree to the new shipping date, or not answer, in which case the seller can assume you agree to the shipping delay. If you do not give your express consent to a shipping delay of more than 30 days, the seller must return your money at the end of the first 30 days of the delay. These regulations do not apply to magazine subscriptions, serial deliveries (except for the initial shipment), mail-order seeds and growing plants, cash on delivery, or credit orders for which your account is not charged prior to shipment.

Unordered Merchandise

You do not have to pay for merchandise that you have not ordered or otherwise requested, and it is illegal for the sender to pressure you to return it or to send you a bill. It is illegal for a merchant to send unordered merchandise other than free samples and merchandise mailed by charitable organizations requesting contributions.

Any problems relating to mail order dealers or unordered merchandise should be referred in writing to your Postmaster (or local Postal Inspector) and to: Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (or www.ftc.gov/bcp/index.shtml).

Telemarketing Sales

Just about everyone who owns a telephone has received calls promoting products, services, investment opportunities, or contests. Although many telephone offers are legitimate, telemarketing fraud costs consumers billions of dollars a year. Federal rules and common sense can protect you from telephone scams and overly intrusive sales calls.

Under FTC rules, telemarketers may call only between 8 a.m. and 9 p.m. They must tell you immediately who they are and what they are selling—before they make their pitch. You can stop unwanted calls from telemarketers by telling them not to call back. If they do, they are breaking the law.

Before you pay anything, a telemarketer must tell you the total cost of the products or services offered and any restrictions on getting or using them, and whether a sale is final or nonrefundable. A telemarketer may never withdraw money from your checking account without your express, verifiable authorization. It is also illegal for telemarketers to misrepresent information about whatever they are selling, including prize-promotion schemes.

Telephone scam artists may cold-call individuals listed in a directory or on a mailing list. In more elaborate schemes, advertisements or direct mail pieces invite you to call a certain phone number to claim a prize or to make a purchase. Be skeptical of any deal that sounds too good to be true, and make sure sellers are trustworthy before you hand them your money.

Here are some ways to avoid being victimized by telephone fraud:

- Resist high-pressure sales tactics. Legitimate businesses respect the fact that you are not interested.
- Do not send money—cash, check, or money order—to anyone who insists on immediate payment.
- Keep information about your bank accounts and credit cards to yourself unless you know with whom you are dealing.
- Hang up if you are asked to pay for a prize. Free is free.
- Take your time. Ask for written information about the product, services, investment opportunity, or charity that is the subject of the call.
- Before you respond to a phone solicitation, talk to a friend, family member, or financial advisor. Your financial investments may have unexpected consequences for people you care about.

You can fight telephone fraud by reporting scam artists to the Virginia Office of Consumer Affairs at (804) 786-2042 for the Richmond area, or 1 (800) 552-9963. You can also register your phone number with The National Do Not Call Registry (www.donotcall.gov or 1 (888) 382-1222). Once you register your phone number, telemarketers covered by the National Do Not Call Registry have up to 31 days from the date you register to stop calling you.

For more information about consumer protection under the Telemarketing Sales Rule, write: Bureau of Consumer Protection, Federal Trade Commission, Public Reference, Room 130, Washington, DC 20580, or go to www.ftc.gov/bcp/index.shtml

Robocalls

According to the FTC website above,

If you answer the phone and hear a recorded message instead of a live person, it's a robocall. We've seen a significant increase in the number of illegal robocalls because internet-powered phone systems have made it cheap and easy for scammers to make illegal calls from anywhere in the world, and to hide from law enforcement by displaying fake caller ID information.

To date, the FTC has brought more than a hundred lawsuits against over 600 companies and individuals responsible for billions of illegal robocalls and other Do Not Call violations.

The FTC also is leading several initiatives to develop technology-based solutions. Those initiatives include a series of robocall contests that challenge tech gurus to design tools that block robocalls and help investigators track down and stop robocallers. We're also encouraging industry efforts to combat caller ID spoofing. Here's the FTC's game plan to combat robocalls:

- continue aggressive law enforcement
- build better tools for investigating robocalls
- coordinate with law enforcement, industry, and other stakeholders
- stimulate and pursue technological solutions.

Unscrupulous Practices

Unscrupulous dealers and businesses have many ways of getting you to part with your hard-earned cash. If not careful, you could find yourself paying

unreasonably high interest rates for a credit purchase, or you may be stuck with a piece of shoddy merchandise that you were told was "a steal" at the price you paid for it. Unfortunately, bargains and deals that sound too good to be true usually are, and unwary buyers can end up paying for a costly lesson in consumer education.

Scam artists use dozens of cons to fleece unsuspecting individuals. Some of these schemes involve products and services that are commonly purchased by seniors. The following are a couple of the more common schemes that you should guard against.

Bait and Switch

The store or business employing the bait-and-switch technique usually advertises some attractive bargain that is "available in limited quantities" to get you into the store. Once you are there, the salespeople try to get you to buy a more expensive item in the same line of merchandise, often by downgrading the bargain model that drew you to the store in the first place. Frequently, the more expensive item is overpriced.

Pigeon Drop

The pigeon drop is a technique used to rob people—particularly elderly persons—of their savings. Usually a pleasant person introduces himself or herself and says that he or she has recently found a large amount of money. The person offers to share the found money with you if you will put up some of your own money to show good faith. After you deliver the agreed-upon amount in an envelope, the "nice" person then distracts you and switches the envelope containing your money with one containing paper or takes the envelope and promises to deliver your windfall "later" or "tomorrow." Tomorrow never comes. These cons sometimes sound believable, but they never are. When in doubt, call your local police or sheriff's department to see whether they know of a scheme that is being used to victimize others in the community.

Home Repairs

Whenever you need to hire someone to work on your home, use caution and shop around. You do not have to hire the first contractor that you find. Get two or three written estimates to see who is offering the best bargain. Also, check references before you hire. Inquire about past complaints or potential problems with a business by contacting the Better Business Bureau in your locality.

After you decide on a contractor, insist that your agreement be put in writing. If you do not get all the important things in writing, you are asking for trouble later. Items such as price and guarantees of the work to be done should be on paper and signed so that you can avoid arguments after the work is completed. Agree in advance that full payment is not due until the work is completed.

If you plan to pay for the work in installments and the contractor or loan company requires a deed of trust (mortgage) on your home as collateral, remember: you have three business days after you make the agreement in which to cancel it, if the work has not begun during that time; and if you get behind on your payments, the contractor or loan company can foreclose on the deed of trust, which may result in the loss of your home .

If the contractor is not paid after completion of his work, he can file a document known as a "mechanic's lien." If you receive notice that a lien has been filed against your property, consult an attorney.

If you have a dispute with your contractor regarding payment for his work, be certain to obtain a release of all liens placed on your property before you make the final payment. If the contractor refuses, consult an attorney before making any further payments. If you do not have an attorney, the state and local bars can help through lawyer referral services or by directing you to the nearest Legal Aid office.

Health Quackery

If you have ever been tempted to spend money on products advertised as miracle cures, do not feel embarrassed. Each year, Americans spend billions of dollars on bogus health products and treatments. Tragically, some people are persuaded to buy the useless products rather than to seek effective, proven medical treatment. In order to avoid being a victim of "health quackery," beware of the following:

- promises of a "quick and painless" cure;
- extraordinary promises such as a claim that a single remedy will cure all diseases;
- testimonials of "satisfied users" which lack any substantive medical support;

- products which are described as "alternatives" (some alternative therapists and healers do not follow accepted scientific protocol);
- "Scientific breakthroughs" which the promoter claims have been overlooked by the medical community.

If medical science has not found a cure for an ailment, then you should not buy a product advertised to cure it. Remember, if it sounds too good to be true, it probably is.

Consumer Remedies

When something goes wrong with a product you have bought, or a repair job is poorly done (on a house, car, or anything else), you may seek satisfaction in several ways. A thoughtfully prepared complaint made either in person or in writing (keep a copy) can be an extremely effective way of solving a consumer problem—especially when that complaint is made to the proper authority. You can successfully resolve many problems by this method alone.

Complaints are most effective when accompanied by receipts and other documents that help explain your case. If you are contacting the store or business by mail, send your complaint letter by certified or registered mail, return receipt requested, and keep a copy for your records. Never send originals of any receipt, contract, or documentation. If you are making your complaint in person, try to remain calm, but be firm and make sure what you are told makes sense to you.

If taking your complaint directly to the store or business does not produce the satisfaction you are seeking, bring the matter to the attention of the Better Business Bureau in your community or contact the Office of Consumer Affairs (1 (800) 552-9963.

In some areas, law schools and radio and television stations handle consumer complaints at no charge to you as a public service to the community. These services can be extremely helpful.

Consumer protection laws may give you additional remedies, such as the ability to cancel certain types of contracts on your own. In Virginia, general district courts are also available to consumers who believe they have been treated unfairly and when the amount in controversy is $25,000 or less. All general district courts also have small claims courts when the amount does not exceed $5,000. (Attorneys are not permitted in small claims courts.)

The Department of Social Services Adult Protective Services also investigates suspected financial exploitation of seniors. For information, call the toll-free hotline 1 (888) 832-3858.

Virginians also can file complaints with the Attorney General's Office. Check the website at: https://www.oag.state.va.us/consumer-protection/.

Suits in General District Courts

If you feel that court action is necessary, you may wish to obtain the services of an attorney, although it is not required. One major reason to consult an attorney at this stage is that you may be subject to a countersuit brought by the person you are suing. If you cannot afford an attorney, contact your local Legal Aid office for assistance. To initiate the suit, go to the general district court clerk in the city or county where you believe the suit should be brought. If you have any doubts, a local clerk of the court will assist you.

The clerk will provide you with a filing form to complete and will help you should you need assistance. You (the plaintiff) should have with you the exact name and address of the person or business whom you are suing (the defendant), along with the amount of the claim, the basis of the claim, and a stamped envelope addressed to the defendant. The clerk will answer questions you may have about court procedures or the filing form, but it is not the clerk's duty to help you determine the amount for which you are going to sue and they cannot offer legal advice.

When you fill out the form to file your case, the clerk will ask you to pay a filing fee and may require an additional service fee per defendant. The clerk will then deliver your pleading to the sheriff for service on the defendant.

When you leave the courthouse, be certain you know the return date for your case. The return date is the day you are to appear in court. IT IS NOT NECESSARILY THE DATE YOUR CASE WILL BE DECIDED. If the defendant is represented by an attorney, he or she will be entitled to time to prepare the case. Do not be disturbed if the trial date is set for several months after the return date. Court calendars are full, and a delay is not unusual.

If you know that your complaint will be contested, try to talk with the defendant or the defendant's attorney prior to the return date. You may be able to agree upon a trial date and save yourself at least one trip to the courthouse.

Here are some important points to remember when preparing a suit:

- Organize relevant materials (bills, receipts, letters, etc.) so that you can make a complete and orderly presentation of your case at the hearing;
- Think over and make some notes on what you want to say so that you can make a full, but brief, statement of the facts in your case;
- Determine what witnesses, if any, you need to testify for you at the trial. Witnesses important to the case may be subpoenaed (compelled) if they are reluctant to appear voluntarily; and
- Check with the court before the hearing to find out whether the defendant has been served successfully with the summons. If no successful service has been made, the clerk can advise you of your options. For example, you may want to change the date of your hearing. You may seek one continuance (postponement) of the court date for this or a similar good reason.

If you appear in court by yourself, do not be disturbed if the business or person you are suing is represented by an attorney. The judge has a responsibility to make sure the proceedings remain informal, so your lack of legal knowledge will not work against you.

If you receive an unfavorable ruling by the court, you may either petition (ask) the court for a rehearing in general district court or appeal the ruling to the circuit court. A rehearing must occur within 30 days of the court's ruling and may be granted if you have discovered new evidence which would change the result. An appeal to the circuit court must be granted if the amount involved in the dispute is more than $50 and the appeal is made within 10 days of the court's ruling. If you want to pursue a dispute beyond the general district court because you are dissatisfied with the decision, you will likely need the aid of an attorney.

If you win the amount that you are seeking, the next task is getting the defendant to pay you. If the defendant voluntarily agrees to pay you in a certain way—all at once or in installments—you are home free. Occasionally, a defendant who has lost in court will not pay the judgment that you received. Legal proceedings may be instituted to collect the judgment; however, you should seek the services of an attorney before proceeding further.

If you have a chance to settle the suit before the court hearing, try to do so by either receiving full payment or entering into a written agreement about payment. Inform the court if this occurs and be ready to have the case heard just in case your settlement offer falls through.

The general district court may also provide opportunities for your case to be mediated by an independent party (not a judge), with the possibility of an agreed settlement outside of the judicial system (i.e., a contractual compromise by the disputants).

As an alternative to the foregoing, Va. Code Ann. §16.1-122.1 requires each general district court to have a small claims division, called a small claims court. The small claims court has concurrent jurisdiction with the general district court over civil actions in which the amount of the claim does not exceed $5,000. Actions in the small claims court must be commenced by the plaintiff filing a small claims civil warrant. All parties in small claims court represent themselves and are not represented by attorneys. The judge in small claims court conducts the trial in an informal manner and the rules of evidence may be relaxed. The object of the small claims court trial is to determine the rights of the litigants on the merits and to dispense expeditious justice between the parties. Appeals from the small claims court are handled in the same manner as in other cases from the general district court.

DISCRIMINATION

Employment Discrimination

Introduction

Federal and state laws prohibit discrimination in employment. For example, Title VII of the federal Civil Rights Act of 1964, as amended, prohibits discrimination because of race, color, religion, national origin and sex by employers with at least 15 employees. The federal Age Discrimination in Employment Act (ADEA) prohibits age

discrimination and applies to employers with at least 20 employees. The federal Americans with Disabilities Act (ADA) prohibits discrimination against individuals with physical and mental disabilities by employers with at least 15 employees.

Age Discrimination in Employment Act

The ADEA prohibits workplace age discrimination against individuals who are at least 40 years old. While there is no upper age limit, employers may set mandatory retirement policies for top level executives 65 and older who are entitled to pensions of $44,000 or more.

Discrimination in employment can take many forms, for example, in job advertisements, recruitment, application and hiring, termination, demotion, or denial of employment. If you believe you are being discriminated against because of your age, you should file a charge with the Equal Employment Opportunity Commission (EEOC). The Richmond office is located at 400 N. Eighth Street, Suite 350, Richmond, Virginia 23219, 1 (800) 669-4000. A charge generally must be filed within 180 days of the discriminatory conduct. However, because Virginia also has a state agency (the Virginia Council of Human Rights) that enforces employment discrimination laws, the EEOC considers Virginia a "deferral state" and the time to file in Virginia is 300 days from the date of the discriminatory act.

To assist in determining whether or not the EEOC is the correct agency to assist you, you may use its EEOC Assessment System at www.eeoc.gov/employees/howtofile.cfm. If you file a complaint, the matter will be investigated, then discussed and settled, or, if necessary, a lawsuit may be filed in federal district court by the EEOC or by a private lawyer representing the complainant. Federal employees should file complaints with the Office of Personnel Management.

Employees of Federal Contractors and Subcontractors

Employees of, and applicants for employment with, employers that have federal contracts or subcontracts meeting minimum jurisdictional requirements have additional employment protections against employment discrimination based on race, color, religion, national origin and sex under federal Executive Order 11246; discrimination against protected military veterans under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), as amended; and disability discrimination under the Rehabilitation Act of 1973, as amended. These requirements are subject to detailed federal regulations. VEVRAA is not limited to Vietnam veterans, and provides non-discrimination and affirmative action obligations for disabled veterans, active duty wartime or campaign badge veterans, armed forces service medal veterans, and recently separated veterans. Age discrimination is not covered by E.O. 11246, VEVRAA or the Rehabilitation Act.

In addition to non-discrimination obligations, covered federal contractors and subcontractors are required to have written "affirmative action plans" that comply with detailed federal regulations to ensure equal employment opportunities for protected individuals who are not sufficiently represented in the employer's workforce. Applicable regulations also have specific affirmative action requirements for hiring, promoting and retaining individuals with disabilities and covered military service veterans. The regulations are enforced by the federal Office of Federal Contract Compliance Programs (OFCCP). OFCCP's Richmond Area Office is at 400 N. Eighth Street Room 466 Richmond, Virginia 23219. Phone 1-800-397-6251. Fax: 804-888-6715. OFCCP will receive and investigate complaints brought by individuals who believe they have been discriminated against and will also audit covered employers to evaluate their compliance with non-discrimination and affirmative action regulations.

Virginia State Laws prohibiting Employment Discrimination

Virginia has its own laws against employment discrimination. The Virginia Human Rights Act (VHRA), provides that it is against the policy of Virginia for employers to discriminate in employment on the basis of race, color, religion, national origin, sex, childbirth and related medical conditions, age (40 and older), marital status, or disability. The act applies to employers with more than 5 but fewer than 15 employees. The VHRA is enforced by the Virginia Council of Human Rights (VCHR).

The VCHR is located at 1100 Bank Street, Richmond Virginia 23219, telephone (804) 225-2292. The VCHR will receive complaints of discrimination filed within 180 days of the act of discrimination. The

only private right of action is an action for discharge from employment. The action must be filed within 300 days of the act of discrimination, including age discrimination.

Some localities, such as Alexandria, Arlington and Fairfax County, have their own equal employment opportunity (EEO) agencies that investigate charges of employment discrimination, including but not limited to age discrimination. Alexandria Office of Human Rights, 110 N. Royal Street, Suite 201, Alexandria, VA 22314, (703) 838-6390; Arlington Human Rights Commission, 2100 Clarendon Boulevard, Suite 318, Arlington, VA 22201, (703) 228-3929; Fairfax County Human Rights Commission, 12000 Government Center Parkway, Suite 318, Fairfax, VA 22035-0093, (703) 324-2953.

Virginia law also forbids employers from terminating the employment of individuals for reasons that violate a public policy of the Commonwealth, such as a policy expressed in a statute. However, the policies of the VHRA may not be used for a public policy violation wrongful discharge claim because the statute has its own procedures, remedies and limitations that must be followed.

Programs that Receive Federal Financial Assistance

If you believe you are being discriminated against because of your age in any program receiving financial assistance from the United States government, you must contact in person or complain in writing to the federal agency that is financing the program. This is an administrative proceeding, and the agency must reply in 180 days. If the agency does not reply within 180 days, you may bring suit in federal court to stop the prohibited action once you have given 30 days' advance notice to the Secretary of Health and Human Services, the U.S. Attorney General, and the person or party you are taking action against. It probably will be necessary to obtain assistance in making the complaint. These matters can be complicated, and thus, you may wish to consult a person skilled in the field of age discrimination or an attorney who handles this type of case.

Discrimination Based on Disability

There are federal and state laws that prohibit discrimination against individuals based on disability. The federal Americans With Disabilities Act (ADA) defines an "individual with a disability" in three ways. An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

The ADA was modified by the Americans with Disabilities Amendments Act (ADAAA) in 2008 to avoid court decisions that Congress considered unduly restrictive in defining "disability," and to expand significantly the range of physical and mental conditions that will be treated as covered disabilities requiring nondiscrimination and reasonable accommodation.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities. Reasonable accommodations may include, but are not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

Accommodations necessarily vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:

- A deaf applicant may need a sign language interpreter during the job interview.
- An employee with diabetes may need regularly scheduled breaks during the workday to eat

properly and monitor blood sugar and insulin levels.

- A blind employee may need someone to read information posted on a bulletin board.
- An employee with cancer may need leave to have radiation or chemotherapy treatments.

An employer does not have to provide a reasonable accommodation if the accommodation would impose an "undue hardship" on the employer. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation and workforce.

Employers are not required to lower quality or production standards to make an accommodation; nor are employers obligated to provide personal use items such as eyeglasses or hearing aids.

An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. If an employer believes that a medical condition is causing a performance or conduct problem, it may ask the employee how to solve the problem and if the employee needs a reasonable accommodation.

Once a reasonable accommodation is requested, the employer and the individual should engage in an "interactive process" in which they discuss the individual's needs and make good faith efforts to identify an appropriate reasonable accommodation. The employee does not have the right to demand the accommodation that he or she prefers. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Title I of the ADA also covers Medical Examinations and Inquiries. Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Medical records are confidential. The basic rule is that with limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

Drug and Alcohol Abuse

Employees and applicants actively engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on disability or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

If you believe you have been discriminated against because of a disability, you should contact the Equal Employment Opportunity Commission (EEOC), 1801 L Street, NW, Washington, DC 20507, (202) 663-4900 (voice) or (202) 663-4494 (TDD) or contact your local EEOC office. The Richmond local office is at 400 N. Eighth Street, Suite 350, Richmond, Virginia 23219, 1 (800) 669-4000.

An information kit issued by the EEOC that describes the rights of an individual with a disability is available. Contact the Publication Distribution Center at 1 (800) 669-3362 (voice) to request the kit or go to www.eeoc.gov.

Virginia Law Prohibiting Disability Discrimination

The Virginians with Disabilities Act (VDA), Virginia Code Title 51.5, at Section 51.5-41, prohibits employment discrimination on the basis of physical or mental disability, and has discrimination prohibitions and accommodation requirements comparable to those of the federal ADA. Rights under the VDA are enforceable in a Virginia circuit court, with potential remedies that include affirmative relief, compensatory damages and attorney fees.

Virginia Code Section 51.5-45 prohibits disability discrimination in housing and has requires

reasonable accommodations for service dogs for individuals with hearing and mobility-related disabilities.

Further information regarding the laws protecting individuals with disabilities may be obtained from the Virginia Board for People with Disabilities (VBPD) at 1100 Bank Street, 7th Floor, 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. Main office 1910 Byrd Avenue, Suite 5, Richmond VA 23230, call toll-free at 1 (800) 552-3962 or (804) 225-2042 in the Richmond area.

Credit

The Equal Credit Opportunity Act forbids discrimination against an applicant for credit, not only on the basis of age, but also on the basis of sex, marital status, receipt of public assistance benefits, race, color, national origin, or religion.

A creditor wants to make sure that individuals are both willing and able to repay their debts. Normal items of inquiry include personal income, expenses, outstanding debts, and credit history. A creditor may also ask age, but the use of this information is controlled under the Equal Credit Opportunity Act. Your age may not be used as the basis for a decision to deny or decrease credit if you otherwise qualify. A creditor may ask you about your income, but continually denying credit to applicants without good cause or arbitrarily discounting income is forbidden.

You have a right to know whether an application is accepted or rejected within 30 days of filing. If you have suffered adverse credit actions, such as a denial or revocation of credit, a change in terms of an existing credit arrangement, or a refusal to grant credit in substantially the terms requested, you have 60 days from the time the creditor notifies you of adverse action to request the reason in writing. The creditor must give you a statement of reason within 30 days of the receipt of your request.

If credit has been denied either wholly or partly because of information contained in a consumer credit report, you may request a free copy in writing within 60 days of the initial action. Try to renegotiate the terms or otherwise solve the problem. If the problem has not been resolved to your satisfaction, and you believe the adverse action was taken for a non-permissible reason, you may bring suit to recover actual damages, attorneys' fees, court costs, and punitive damages in an amount not greater than $10,000.

If you believe you are being discriminated against because of your age or other protected category by denial of an application for credit in a loan or a purchase, or for more detailed information or help, you should contact the Federal Trade Commission, Division of Consumer Response and Operations, Consumer Response Center, Suite 240, 600 Pennsylvania Avenue, NW, Washington, DC 20580. www.ftccomplaintassistant.gov.
Toll-free 1 (877) 382-4357.

GRANDPARENT RIGHTS

Grandparent Rights to Visitation and Custody

Virginia law allows any person having a legitimate interest in a minor (grandparents and step-grandparents are specifically included in that group) to petition the juvenile and domestic relations district court of the city or county where the child lives, for custody of, or visitation with, the minor child. However, Virginia law also presumes that a child's best interests will normally be served by their parents having custody of, and being able to make decisions with regard to, the child -- including as to who has a right to care for or visit with the children. In addition, and as a practical matter, it can become somewhat problematic when a court tries to allocate a child's time between, for example, one parent with primary physical custody, the other parent who seeks visitation time, and a grandparent, step-grandparent, or grandparents who also want visitation time. For these reasons, third party custody and visitation cases can be complicated, and sometimes uphill, battles.

It is well established in the law that parents have an inherent constitutional right to have and to rear their children. Accordingly, in a custody contest between a parent and any non-parent (even a grandparent), the non-parent must first rebut the legal presumption in favor of the parent. Further, this must be done by "clear and convincing evidence" that there is (1) parental unfitness, (2) a previous order of divestiture of parental rights, (3) a voluntary relinquishment, (4) abandonment or (5) special facts

and circumstances constituting an extraordinary reason for taking a child from its parents. In addition, it must be shown (by the appropriate level of evidence) that the best interests of the child will be promoted by granting custody to the non-parent. If you are petitioning for custody as a grandparent this may include an investigation and evaluation of you and your home as part of the process to ensure the best interest of the child can be met.

In an effort to have the court order visitation rights for any non-parent (again, even a grandparent) over the objection of both parents, the non-parent must prove that "actual harm" will come to the child's health or welfare without such visitation. On the other hand, where only one parent objects to the non-parent's visitation and the other parent supports it, the Court does not need to consider "actual harm." Instead, it only needs to find (and, again, by the appropriate level of evidence) that the best interests of the child would be served by granting visitation to the non-parent.

Your area agency on aging or your local legal aid office may be able to give you further assistance or referrals on custody and/or visitation issues. Because the levels of proof on the various aspects of these cases are critical to the successful presentation of your case, it is strongly recommended that you engage an attorney experienced in custody and visitation rights for third parties before you actually file a case in this regard.

The first Sunday after Labor Day is National Grandparents Day. This purpose of this day, according to a proclamation signed by then-President Jimmy Carter on August 3, 1978, is "... to honor grandparents, to give grandparents an opportunity to show love for their children's children, and to help children become aware of strength, information, and guidance older people can offer". According to "GRANDFACTS" (a joint online report which is sponsored by the AARP, the ABA Center on Children and the Law, the Children's Defense Fund, The Brookdale Foundation Group, Generations United, Casey Family Programs, Child Trends, and the Dave Thomas Foundation for Adoption), in the Commonwealth of Virginia:

- 133,887 children under the age of 18 (7.2%) live with their grandparents;
- 67,534 households have grandparents who are responsible for the grandchildren living with them;
- Of those households, 23,293 (34.5%) do not have the children's parents living with them;
- Over 60% of the grandparents in those households are under age 69;
- Almost all of them are still in the workforce; and
- Just short of 15% of them live in poverty.

GRANDFACTS also provides information on programs that offer support, resources and assistance to grandfamilies. Each of the programs has specific eligibility criteria. To obtain more information on these and other programs as well as eligibility requirements and the application process, contact your local department of social services or go to https://www.grandfamilies.org/.

Foster Care and Grandparents

When a child is placed in foster care, time is of the essence. The foster care system operates on strict timelines that require the court to implement a permanent plan for the child's custody within approximately one year - although sometimes sooner depending on the circumstances. At all stages of the court process, the judges are obligated to consider placing the child with relatives. Additionally, it is possible for a relative to become a certified foster parent (kinship foster care) and receive the same services from the Commonwealth as any other foster parent would receive in caring for the child. If the child is placed with a foster parent, the court has the authority to grant grandparents, or other blood relatives, visitation rights upon a showing that they had an ongoing relationship with the child prior to entering foster care and that it is in the child's best interest for the relationship to continue.

In most instances, the foster care laws mandate that the local social services agencies provide reasonable efforts to the parents to reunite them with their children. If reasonable efforts fail for reunifying the parent and child within the mandated time period, the court will then determine an alternative permanent placement for the child. Again, under those circumstances, the local department of social services has a duty to investigate placing the foster child with blood relatives as a permanent placement. To be eligible for custody of the child, the relatives must demonstrate that they are willing and qualified to receive and care for the child; that they are willing to have a positive, continuous relationship with

the child; that they are committed to providing a permanent, suitable home for the child; and that they are willing and have the ability to protect the child from abuse and neglect. In many instances, the last factor is the most difficult for the grandparents or other relatives to demonstrate because of their relationship to the parent.

Grandparents may wish to retain their own counsel to assist them through the foster care system and the court proceedings. The child will be appointed an attorney, known as guardian *ad litem,* to advocate for the child's best interests. Generally, relatives should waste no time expressing their intentions to assist the child to the social worker, the guardian *ad litem* and to the court. In addition, grandparents and other relatives are entitled to file a custody petition for the child while the foster care case is pending before the court.

PERSONAL SAFETY AND SECURITY

Because of their age, older residents are often the target of crimes because they seem so vulnerable. Be especially alert and take steps to protect yourself and your property so you are not an easy target for would-be criminals.

A good starting point is contacting your local sheriff, police department, or TRIAD organization. TRIAD is a cooperative effort of law enforcement agencies (police/fire/sheriff), and senior organizations, focused on reducing crimes against seniors by increasing awareness of scams and frauds targeting them, strengthening communication between the law enforcement and senior communities, and educating seniors on local and state resources available in their community. There are over 200 Virginia counties, cities, and towns that participate in TRIAD. For more information, go to: https://oag.state.va.us/programs-initiatives/triad-seniors.

Crime prevention is everyone's responsibility, not just a job for law enforcement. Seniors can protect themselves by following these simple, common-sense suggestions. Share these tips with your neighbors and friends to make it tough for criminals to work in your neighborhood:

At Home

- Never open your door without thinking about who is at the door. Install and use a peephole.
- Lock your doors and windows. (Three quarters of the burglaries involving older persons involved unlocked doors and windows, and less than one half of these robberies are reported.) Keep garage doors closed and locked.
- Vary your daily routine.
- Use "Neighbor Watch" to keep an eye on your neighborhood. A concerned neighbor is often the best protection against crime because suspicious persons and activities are noticed and reported to police promptly.
- Leave lights on when going out at night.
- Notify trusted neighbors and the police when going away on a trip. Cancel deliveries, including newspapers, and arrange for someone to mow the lawn if necessary. Arrange for mail to be held by the Post Office or ask a trusted neighbor to collect it for you.
- Be wary of unsolicited offers to make home repairs. Deal only with reputable businesses and check references or get recommendations.
- Keep an inventory with serial numbers and photographs of resaleable appliances, antiques, and furniture. Leave copies in a safe place.
- Don't hesitate to report crime or suspicious activities to your local police or sheriff's department.
- Install deadbolt locks on all your doors.
- Keep your home well-lit at night, inside and out; keep curtains closed.
- Ask for proper identification from delivery persons or strangers. Don't be afraid to ask . . . if they are legitimate, they won't mind.
- If a stranger asks to use your telephone, do not allow that person to come inside your home; if you believe that there is an actual emergency, offer to place the call for him or her yourself.
- Never let a stranger into your home.
- Do not leave notes on your door when you are gone, and do not hide your keys under the doormat, under a potted plant, or in other conspicuous places.

- Never give out information over the phone indicating you are alone or that you won't be home at a certain time.
- When you are gone for more than a day, make sure your home looks and sounds occupied. Consider using automatic timers to turn on lights, radio or TV.
- If you arrive at home and suspect a stranger may be inside, DON'T GO IN. Leave quietly and call 911 to ask for assistance.

Walking

- If you are attacked on the street, make as much noise as possible by calling for help or blowing a whistle. Do not pursue your attacker. Call 911 and report the crime as soon as possible.
- Avoid walking alone at night. Try to have a friend accompany you in high risk areas, even during the daytime.
- Always plan your route and stay alert to your surroundings. Walk confidently.
- Stay away from isolated buildings and doorways; walk in well-lighted areas.
- Have your key ready when approaching your front door.
- Don't dangle your purse away from your body. (Many crimes are purse snatchings and street robberies.)
- Don't carry large, bulky shoulder bags; carry only what you need. Better yet, sew a small pocket inside your jacket or coat. If you don't have a purse, no one will try to snatch it.

While Shopping

- Never leave your purse in a shopping cart. Never leave your purse unattended.
- Don't carry any more cash than is necessary. Most retail stores accept checks and debit and credit cards which are safer.
- Don't ever display large sums of cash.

In Your Car

- Always keep car doors locked, whether you are in or out of your car. But be sure to take your keys with you before you lock your car!
- Keep your gas tank full and your engine properly maintained to avoid breakdowns.
- If your car breaks down, pull over to the right as far as possible, call 911 or your roadside assistance provider, raise the hood, and wait INSIDE the locked car for help. Avoid getting out of the car and making yourself a target before help arrives.
- At stop signs and traffic lights, keep the car in gear.
- Travel well-lit and busy streets. Plan your route.
- Don't leave your purse on the seat beside you; put it on the floor where it is more difficult for someone to grab it, or keep it locked in the trunk.
- Lock bundles or bags in the trunk. If interesting packages are out of sight, a thief will be less tempted to break in to steal them.
- When returning to your car, look around the car, and check the front and back seats before entering.
- Never pick up hitchhikers.

Banking

Many criminals know exactly when government checks arrive each month and they may pick that day to attack. Avoid this by using Direct Deposit, which sends your money directly to the bank of your choice. Many banks offer free checking accounts for seniors, particularly with Direct Deposit. Your bank can provide all the information to make this work.

- Never withdraw money from your bank accounts for anyone except YOURSELF. Be wary of con artists and get-rich-quick schemes.
- You should store valuables in a bank safe deposit box.
- Never give money or personal account information or passwords to someone who calls on you, even if they identify themselves as a bank or government official. Government agencies and banks will never ask for information or for you to withdraw money.

- If someone approaches you with a get-rich-quick-scheme involving some or all YOUR savings, recognize that it is HIS get-rich-quick-scheme.

If you have been swindled or conned, or if someone has attempted to swindle or con you, report the crime to your local police or sheriff's department or Commonwealth Attorney's office. Con-artists count on their victim's reluctance to admit they've been duped, but if you delay, you help them get away. Remember, if you never report the crime, they are free to cheat others again and again and you have no chance of ever getting your money back.

One other tool that will remain available to consumers is an online collection of complaints filed with the Consumer Financial Protection Bureau against financial companies. You can use the database to check on firms, banks or lenders before you do business with them or, if you are dissatisfied with the results of your complaints to them about services, to submit a complaint to the CFPB yourself. The website is at: https://www.consumerfinance.gov/data-research/consumer-complaints/.

ELDER ABUSE

Older residents may be reluctant to report abuse because of fear of abandonment or embarrassment or other concerns. 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 includes "adult abuse," "adult exploitation" and "adult neglect," and it 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.

Signs of Elder Abuse:

Elder abuse is often evident by the following signs:

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

These caregiver behaviors may indicate that a person is abusing or neglecting an older person:

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

Financial exploitation may be indicated by:

- unusual activity in bank accounts, such as the withdrawal of large sums of money.
- an exploiter having a power of attorney, when the older person was not competent to give one.
- a refusal by the exploiter to spend money on the older person for health or welfare.
- signatures on checks and other documents, when the older person is unable to write.
- an older person's loan 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 individual caregivers if you feel vulnerable to exploitation.
- Put your wishes regarding finances and personal care in writing.
- Do not sign anything that you don't understand. Get help from a lawyer, social worker, or other trusted adviser.

Reporting Abuse

There are laws to 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. Adult Protective Services accepts reports of suspected abuse, neglect, or exploitation across all care settings for all adults 60 years of age and over and adults who have a disability and are 18 years of age and over. Reports may be made anonymously.

SCAMS, FRAUD, IDENTITY THEFT

Every day there are reports of new, clever traps for people of all ages, but they seem to focus disproportionally on older residents. So much of our personal information has been compromised through "hacks" of systems of companies and government agencies that it is more likely than ever you or a family member will be the target of some scam or identity theft. Thousands of people lose money every year to these cheats, sometimes all their life savings. If you find you are a victim, or think that something just is not right, speak up! Contact your bank, local law enforcement authorities, or a trusted advisor who can help immediately! The scams are constantly evolving, so we all need to be vigilant.

Telephone and Email Scams

Telephone scammers sometimes seem very friendly, engaging you in small talk and asking about your family. Perhaps they say they work for a company you trust. They may want to sell you something or advise you won a wonderful, "free" vacation. Whatever the ruse, if you did not place the call do not ever give out personal information. The Social Security Inspector General recently identified a new scam where thieves are sending fake documents by emails that look like they come from the Social Security Administration. These emails and their attached letters look sufficiently realistic to convince victims to respond to their requests for personal information. Don't be fooled!

According to the Federal Trade Commission there are a few red flags to help you spot telemarketing scams. If you hear a line that sounds like this, say 'no, thank you,' hang up, and file a complaint with the FTC at www.ftc.gov/complaint:

- You've been specially selected (for this offer).
- You'll get a free bonus if you buy our product.
- You've won one of five valuable prizes.
- You've won big money in a foreign lottery.

AARP reports that the latest phone scams target concerns that:

- Someone is using your Social Security number and it is subject to an enforcement action against you. They ask for private information to clear your name.
- The Internal Revenue Service is seizing your property because of unpaid taxes and penalties, but you can clear this up…for a fee.
- Open enrollment for Medicare or the Affordable Care Act has passed, but we can still get a great plan at a low price you can afford.
- A warrant has been issued for your arrest because you failed to show up for jury duty.

NO GOVERNMENT OR BANK OFFICER WILL EVER CALL YOU WITH SOMETHING LIKE THIS! Just hang up!

Protect Yourself:

- Add your name to the "National Do Not Call Registry" with the Federal Trade Commission. Call the FTC toll free at 1-888-382-1222 from the phone you want to register, or go to www.donotcall.gov to sign up.
- Don't answer calls from numbers you don't recognize. If the call is important, they will leave a message.
- Check with your telephone carrier to see if they support plans that block spam calls so your phone doesn't ring, or only rings once. If one is available, use it.
- If you do answer and hear a robocall, just hang up. Don't respond, and don't hit any button. If there is a live person on the other end you do not know and you did not place the call, don't fall prey to their sales pitch. Just say "no, thank you" and hang up.
- AARP set up a Fraud Watch Network in 2013 to track the growing threat from telephone and internet scams and frauds. For more information on the program go to: aarp.org/fraudwatchnetwork or attend one of their fraud seminars or webinars. You also can download a podcast entitled The Perfect Scam at: https://www.aarp.org/podcasts/the-perfect-scam/.

Identity Theft

Identity theft can happen to anyone, at any time. Most cases involve financial fraud where someone opens new accounts, takes out loans, or obtains credit cards in the name of someone who has good credit. Drivers licenses are prime targets for criminals who need good driving records, stolen Social Security numbers can let criminals steal benefits and falsify other documents, and stolen medical insurance cards allow false claims on insurance companies.

Protect yourself and your loved ones by keeping important documents at home. Don't carry them with you. Don't give out any personal information over the telephone unless you initiated the call. Shred sensitive information such as receipts, bank statements, and credit card statements when you are ready to throw them away.

Check your bank and credit card account statements monthly and look carefully at all of the transactions. Opt for electronic statements if available to avoid paper records.

Request free copies of your credit reports annually from each of the three credit bureaus (Equifax, Experian and Transunion) and look them over carefully to spot mistakes that could be the result of identity theft. New names or misspellings could be an indication of misuse. Report any concerns to the credit reporting agency immediately. Freeze your credit report unless you plan to apply for a new loan or account. This will keep criminals from using your information.

Be careful online. Use strong passwords and opt for 2-factor authentication where available (the bank or other company you are accessing will email or text you a security code to enter before you can access their site).

Be sure to keep your computer updated, especially your security software. Don't share your passwords with anyone.

For more information on scam alerts and online security you can go to:

- https://www.consumer.ftc.gov/features/feature-0038-onguardonline (OnGuardOnline)
- https://www.consumer.ftc.gov/featues/scam-alerts (FTC Scam Alerts)
- https://www.consumer.ftc.gov.features.feature-0030-pass-it (FTC "Pass it on" campaign information to protect family and friends)
- https://www.aarp.org/money/scams-fraud/ (AARP's Fraud Watch Network)

HELPFUL CONTACTS

Editor's Note:
The following is a list of numerous agencies and organizations that provide services and programs for older Virginians as of 2019. If you cannot locate an agency or number you need, the Information and Referral Center (dial 211) may be able to help.

LOCAL AGENCIES ON AGING:

For information related to nutrition programs, transportation, day care, in-home services, winterization, home repair, senior center activities, senior employment and volunteer programs, law-related services, senior discount programs, and other community services for the elderly, your local Area Agencies on Aging can usually assist. If not listed herein, check your local listings or contact the Virginia Association of Area Agencies on Aging, 24 East Cary Street, Suite 100, Richmond, Virginia, 23219, (804) 545-1644, or visit their website at http://vaaaa.org/.

Alexandria Division of Aging and Adult Services
4480 King Street
Alexandria, VA 22302
Phone: (703) 746-5999
Agency email: DAAS@alexandriava.gov
Website: https://www.alexandriava.gov/Aging
City of Alexandria

Appalachian Agency for Senior Citizens, Inc.
216 College Ridge Road
P.O. Box 765
Cedar Bluff, VA 24609-0765
Phone: (276) 964-4915
Toll-free: 1 (800) 656-2272
Agency e-mail: aasc@aasc.org
Website: www.aasc.org
Counties of Buchanan, Dickenson, Russell and Tazewell

Arlington Aging and Disability Services
c/o Department of Human Services
2100 Washington Blvd, 4th Floor
Arlington, VA 22204
Phone: (703) 228-1700
Agency e-mail: arlaaa@arlingtonva.us
Website: https://aging-disability.arlingtonva.us/

Bay Aging
5306 Old Virginia Street
P.O. Box 610
Urbanna, VA 23175
Phone: (804) 758-2386
Toll-free: (800) 493-0238
Fax: (804) 758-5773
Agency e-mail: field@bayaging.org
Website: www.bayaging.org
Counties of Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland.

Central Virginia Alliance for Community Living, Inc.
501 12th Street
Lynchburg, VA 24504
Phone: (434) 385-9070
Fax: (434) 385-9209
Agency e-mail: cvacl@cvcl.org
Website: www.cvacl.org
Counties of Amherst, Appomattox, Bedford, and Campbell. Cities of Bedford and Lynchburg.

Crater District Area Agency on Aging
23 Seyler Drive
Petersburg, VA 23805
Phone: (804) 732-7020
Fax: (804) 732-7232
Agency e-mail: craterdist@aol.com
Website: https://www.princegeorgecountyva.gov/government/citizen_boards_and_commissions/crater_district_area_agency_on_aging.php
Counties of Dinwiddie, Greensville, Prince George, Surry, and Sussex. Cities of Colonial Heights, Emporia, Hopewell, and Petersburg

District Three Senior Services
4453 Lee Highway
Marion, VA 24354-4269
Phone: (276) 783-8157
Toll-free: 1 (800) 541-0933
Fax: (276) 783-3003
Agency e-mail: info@district-three.org
Website: www.district-three.org
Counties of Bland, Carroll, Grayson, Smyth, Washington, and Wythe. Cities of Bristol, Galax, Marion, and Wytheville.

Eastern Shore Area Agency on Aging/ Community Action Agency, Inc.
5432 Bayside Road
Exmore, VA 23350
Phone: (757) 442-9652
Fax: (757) 442-9303
Counties of Accomack and Northampton

Fairfax Department of Family Services – Older Adults
12011 Government Center Parkway, Suite 708
Fairfax, VA 22035-1104
Phone: (703) 324-7948
Email: FairfaxAAA@fairfaxcounty.gov
Website: https://www.fairfaxcounty.gov/familyservices/older-adults
County of Fairfax. Cities of Fairfax and Falls Church

Jefferson Area Board for Aging
674 Hillsdale Drive, Suite 9
Charlottesville, VA 22901-1799
Phone: (434) 817-5222
Agency e-mail: info@jabacares.org
Website: www.jabacares.org
Counties of Albemarle, Fluvanna, Greene, Louisa, and Nelson. City of Charlottesville

Lake Country Area Agency on Aging
1105 W. Danville Street
South Hill, VA 23970-3501
Phone: (434) 447-7661
Toll-free: 1 (800) 252-4464
Agency e-mail: lakecaaa@lcaaa.org
Website: www.lcaaa.org
Counties of Brunswick, Halifax, and Mecklenburg

LOA–Area Agency on Aging, Inc.
4932 Frontage Road NW
Roanoke, VA 24016
Mailing Address:
P.O. Box 14205
Roanoke, VA 24038-4205
Phone: (540) 962-0465 (Alleghany Highlands)
(540) 966-1094 (Botetourt County)
(540) 864-6031 (Craig County)
(540) 345-0451 (Roanoke Valley/Main Office)
Fax: (540) 981-1487
Agency e-mail: info@loaa.org
Website: www.loaa.org
Counties of Allegheny, Botetourt, Craig, and Roanoke. Cities of Covington, Roanoke and Salem

Loudoun County Area Agency on Aging
742 Miller Drive SE
Leesburg, VA 20175
Phone: (703) 777-0257
Agency e-mail: aaa@loudoun.gov
Website: www.loudoun.gov/aaa
County of Loudoun

Mountain Empire Older Citizens, Inc.
1501 Third Avenue, East
P.O. Box 888
Big Stone Gap, VA 24219-0888
Phone: (276) 523-4202
Toll-free: 1 (800) 252-6362
Fax: (276) 523-4208
Agency e-mail: info@meoc.org
Website: www.meoc.org
Counties of Lee, Scott and Wise. City of Norton

New River Valley Agency on Aging
141 E. Main Street, Suite 500
Pulaski, VA 24301-5029
Phone: (540) 980-7720
Phone (Floyd and Giles): (866) 260-7724
Fax: (540) 980-7724
Agency e-mail: nrvaoa@nrvaoa.org
Website: www.nrvaoa.org
Counties of Floyd, Giles, Montgomery, and Pulaski. City of Radford. Towns of Blacksburg, Christiansburg, and Pulaski.

Peninsula Agency on Aging
739 Thimble Shoals Boulevard, Suite 1006
Executive Center Building 1000
Newport News, VA 23606-3585
Phone: (757) 873-0541
Fax: (757) 873-1437
Agency e-mail: information@paainc.org
Website: www.paainc.org
Counties of James City and York. Cities of Hampton, Newport News, Poquoson, and Williamsburg

Piedmont Senior Resources Area Agency on Aging, Inc.
1413 South Main Street
Farmville, VA 23901
Phone: (434) 767-5588
Toll-free: 1 (800) 995-6918
Fax: (434) 767-2529
Website: www.psraaa.org
Agency e-mail: psr@psraaa.org
Counties of Amelia, Buckingham, Charlotte, Cumberland, Lunenburg, Nottoway, and Prince Edward

Prince William Area Agency on Aging
5 County Complex, Suite 240
Prince William, VA 22192
Phone: (703) 792-6374
Email: pwaaa@pwcgov.org
Website: www.pwcgov.org/aoa
County of Prince William. Cities of Manassas and Manassas Park

Healthy Generations Agency on Aging, Inc.
460 Lendall Lane
Fredericksburg, VA 22405
Phone: (540) 371-3375
Fax: (540) 371-3384
Agency e-mail: info@raaa16.org
Website: www.healthygenerations.org
Counties of Caroline, King George, Spotsylvania, and Stafford. City of Fredericksburg

Rappahannock Rapidan Community Services Board
15361 Bradford Road
P.O. Box 1568
Culpeper, VA 22701-1568
Phone: (540) 825-3100
Fax: (540) 825-6245
Website: www.rrcsb.org
Counties of Culpeper, Fauquier, Madison, Orange, and Rappahannock

Senior Connections
The Capital Area Agency on Aging, Inc.
24 E. Cary Street
Richmond, VA 23219-3796
Phone: (804) 343-3000
Toll-free: 1 (800) 989-2286
Email: seniorconnections@youraaa.org
Website: www.seniorconnections-va.org
Counties of Charles City, Chesterfield, Goochland, Hanover, Henrico, New Kent, and Powhatan. City of Richmond

Senior Services of Southeastern Virginia
Interstate Corporate Center
6350 Center Drive
Building 5, Suite 101
Norfolk, VA 23502
Phone: (757) 461-9481 (Central Office, Chesapeake, Norfolk, Portsmouth & Virginia Beach)
(757) 569-8206 (Franklin)
(757) 357-4050 (Isle of Wight)
(757) 925-1449 (Suffolk)
Toll-free: 1 (800) 766-8059 (Ombudsman)
Fax: (757) 461-1068 (Central Office)
Agency e-mail: ssseva.org/page/contact-us/#form
Website: www.ssseva.org
Counties of Isle of Wight and Southampton. Cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk, and Virginia Beach

Shenandoah Area Agency on Aging, Inc.
207 Mosby Lane
Front Royal, VA 22630
Phone: (540) 635-7141
Toll-free: 1 (800) 883-4122
Fax: (540) 636-7810
Website: www.shenandoahaaa.com
Counties of Clarke, Frederick, Page, Shenandoah, and Warren. City of Winchester

Southern Area Agency on Aging, Inc.
204 Cleveland Avenue
Martinsville, VA 24112
Phone: (276) 632-6442
Toll-free: 1 (800) 468-4571
Agency e-mail: info@southernaaa.org
Website: www.southernaaa.org
Counties of Franklin, Henry, Patrick, and Pittsylvania. Cities of Danville and Martinsville

Valley Program for Aging Services, Inc.
325 Pine Avenue
P.O. Box 817
Waynesboro, VA 22980
Phone: (540) 949-7141
Toll-free: 1 (800) 868-8727
Website: www.vpas.info
Counties of Augusta, Bath, Highland, Rockbridge, and Rockingham. Cities of Buena Vista, Harrisonburg, Lexington, Staunton, and Waynesboro

STATEWIDE AGENCIES AND ORGANIZATIONS:

The Office for Aging Services of the Division for Community Living (Formerly Virginia Office on Aging)
1610 Forest Avenue, Suite 100
Henrico, VA 23229
Phone: (804) 662-9333
Toll-free: 1 (800) 552-3402 (Voice/TTY)
Fax: (804) 662-9354
Email: aging@dars.virginia.gov
Website: www.vda.virginia.gov

Alzheimer's Association (National)
24/7 Helpline: 1 (800) 272-3900

Alzheimer's Association - Central and Western Virginia Chapter
355 Rio Road West, Suite 102
Charlottesville, VA 22901
Phone:(434) 973-6122 (Main Office, Charlottesville)
(434) 792-3700 (Danville)

(540) 437-7444 (Harrisonburg)
(540) 345-7600 (Roanoke)
(540) 949-0348 (Waynesboro)
Email: alzcwva@alz.org
Website: www.alz.org/cwva

Alzheimer's Association - Greater Richmond Chapter
4600 Cox Road, Suite 130
Glen Allen, Virginia 23060
Phone:(804) 967-2580 (Main Office, Richmond)
(540) 228-1502 (Fredericksburg)
(800) 272-3900 (Middle Peninsula/Northern Neck)
(800) 272-3900 (Tri-Cities)
Website: www.alz.org/grva

Alzheimer's Association - National Capital Area Chapter
8180 Greensboro Drive, Suite 400
McLean, VA 22102
Phone: (703) 359-4440
Website: www.alz.org/nca

Alzheimer's Association - Southeastern Virginia Chapter
6350 Center Drive, Suite 102
Norfolk, VA 23502
Phone: (757) 459-2405
Fax: (757) 461-7902
Email: InfoSEVA@alz.org
Website: www.alz.org/seva

CITIZEN HELP LINES:

Virginia Adult Abuse Hotline
1 (888) 832-3858

Alcoholics Anonymous
(800) 839-1686

Virginia Consumer Protection Hotline
1 (800) 552-9963 and (804) 786-2042

Information & Referral Services of Virginia
211

Medicare Hotline
1 (800) 633-4227

National Suicide Prevention Lifeline
1 (800) 273-TALK, provides access to trained telephone counselors, 24 hours a day, 7 days a week.

SAMHSA (Substance Abuse and Mental Health Services Administration) National Mental Health Information Center
1 (800) 662-4357

Small Business Administration
1 (800) 827-5722

Social Security
1 (800) 772-1213

CONSUMER PROTECTION

Office of Attorney General of Virginia Consumer Protection Section
202 North Ninth Street
Richmond, VA 23219
Website: www.oag.state.va.us/consumer-protection/
Phone: 1 (800) 552-9963

Department of Agriculture & Consumer Services
102 Governor Street
Richmond, VA 23219
Website: https://www.vdacs.virginia.gov/
Email: consumer-protection@vadacs.virginia.gov
Phone: (804) 786-3523 and (800) 552-9963

Better Business Bureau of Central Virginia
100 Eastshore Drive
Glen Allen, VA 23059
Phone: (804) 648-0016
Website: https://www.bbb.org/local-bbb/bbb-serving-central-virginia

DISCRIMINATION

Equal Employment Opportunity Commission (EEOC)
400 N. 8th Street, Suite 350
Richmond, VA 23219
Website: www.eeoc.gov/field/richmond/index.cfm
Email: info@eeoc.gov
Toll-free: 1 (800) 669-4000

U.S. Department of Justice Coordination and Review Section
U. S. Department of Justice
Civil Rights Division
Coordination and Review Section – NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530
Website: www.justice.gov/crt/fcs
Toll-free: 1 (888) 848-5306

Virginia Office of Protection and Advocacy
1910 Byrd Avenue, Suite 5
Richmond, VA 23230
Phone: (804) 225-2042 and (800) 552-3962

EMPLOYMENT INFORMATION

Virginia Employment Commission

State Central Office
703 E. Main Street
Richmond, VA 23219
Website: www.vec.virginia.gov
Phone: 1 (866) 832-2363
Note: Virginia Employment Commission (Unemployment Office) offices are located throughout the state.

FUNERAL SERVICES

Virginia Board of Funeral Directors and Embalmers
Perimeter Center
9960 Mayland Drive, Suite 300
Richmond, VA 23233-1463
Website: www.dhp.virginia.gov/funeral
Email: fandb@dhp.virginia.gov
Phone: (804) 367-4479

HEALTH CARE INFORMATION:

Medicare
1 (800) 633-4227, or https://www.medicare.gov/

Virginia Association for Hospices and Palliative Care
P.O. Box 70025
Henrico, VA 23255-0025
Phone: (804) 740-1344
www.virginiahospices.org

Virginia Department of Behavioral Health and Developmental Services
1220 Bank Street
Richmond, VA 23219
Phone: (804) 786-3921
www.dbhds.virginia.gov

Virginia Department of Social Services
Adult Services
801 East Main Street
Richmond, VA 23219
Phone: (804) 726-1904
Website: https://www.dss.virginia.gov/printer/family/as/servtoadult.cgi

Virginia Public Guardianship Programs
1610 Forest Avenue, Suite 100
Henrico, VA 23229
Phone: (804) 588-3989
Website: www.vda.virginia.gov/publicguardianship.htm

HOUSING INFORMATION

U.S. Department of Housing & Urban Development
600 E. Broad Street
Richmond, VA 23219-4920
Phone: 1 (800) 842-2610
Website: https://www.hud.gov/states/virginia

Virginia Department of Housing and Community Development
600 Eat Main Street, Suite 300
Richmond, Virginia 23219
Phone: (804) 371-7006
Website: www.dhcd.virginia.gov
Email: amanda.love@dhd.virginia.gov

Virginia Housing Development Authority
601 S. Belvidere Street
Richmond, VA 23220
Phone: (804) 782-1986
1 (877) 843-2123
www.vhda.com

INFORMATION AND REFERRAL SERVICES:

DIAL 211 (THIS IS A STATEWIDE NUMBER)

Legal Assistance and Referral Services

Alexandria Bar Association
520 King Street, Suite 202
Alexandria, VA 22314
Phone: (703) 548-1105
Website: www.alexandriabarva.org
Email: alexbar@alexandriabarva.org

Arlington County Bar Association
1425 N. Courthouse Road, Suite 1800
Arlington, VA 22201
Phone: (703) 228-3390
Website: www.arlingtonbar.org
Email: arlingtoncountybar@gmail.com

Blue Ridge Legal Services, Inc. (BLRS)
Website: www.brls.org
Phone: (540) 433-1830 (Harrisonburg office)
(540) 463-7334 (Lexington office)
(540) 344-2080 (Roanoke office)
(540) 662-5021 (Winchester office)

Central Virginia Legal Aid Society (CVLAS)
Website: www.cvlas.org
Phone: (804) 648-1012 and (800) 868-1012 (Richmond office)
(434) 296-8851 and (800) 390-9982 (Charlottesville office)
(804) 862-1100 and (800) 868-1012 (Petersburg office)

Fairfax Bar Association
4110 Chain Bridge Road, Suite 216
Fairfax, VA 22030
Phone: (703) 246-2740
Website: www.fairfaxbar.og
Email: fba@fairfaxbar.org

Legal Aid Justice Center
Website: www.justice4all.org/contact-us/contact-information/
Phone: (434) 977-0553 (Charlottesville office)
(703) 778-3450 (Falls Church office)
(804) 643-1086 (Richmond office)
(804) 862-2205 (Petersburg office)

Legal Aid Society of Eastern Virginia (LASEVA)
Website: www.laseva.org
Phone: (757) 627-5423 (Norfolk office)
(757) 552-0026 (Virginia Beach)
(757) 275-0080 (Hampton)
(757) 442-3014 (Williamsburg)

Legal Aid Society of Roanoke Valley (LASRV)
Website: www.lasrv.org
132 Campbell Avenue, SW, Suite 200
Roanoke, VA 24011-1206
Phone: (540) 344-2088

Legal Services of Northern Virginia (LSNV)
Website: www.lsnv.org
Main Office: 10700 Page Avenue, Suite 100
Fairfax, VA 22030
Phone: (703) 778-6800
Other offices in Alexandria, Arlington, Fredericksburg, Loudoun, and Manassas

Legal Aid Works
Website: www.legalaidworks.org
Phone: (540) 371-1105 (Fredericksburg office)
(540) 825-3131 (Culpeper office)
(804) 443-9393 (Tappahanock office)

Legal Services Corporation of Virginia
919 E. Main Street, Suite 615
Richmond, VA 23219
Phone: (804) 782-9438
Website: lscv@mindspringcom

Southwest Virginia Legal Aid Society (SVLAS)
Website: www.swvalegalaid.org
Phone: (888) 201-2772 (Centralized Intake Unit)
(276) 783-8300 and (800) 277-6754 (Marion office)
(276) 762-9354 and (866) 455-8716 (Castlewood office)
(540) 382-6157 and (800) 468-1366 (Christiansburg office)

Virginia Legal Aid Society (VLAS)
Website: http://vlas.org/
Phone: (866) 534-5243 (Statewide Toll-free Client Access)
(434) 528-4722 (Administrative Office)
(434) 799-3550 (Danville Office)
(434) 846-1326 (Lynchburg Office)
(757) 539-3441 (Suffolk Office)
(434) 392-8108 (Farmville Office)

Virginia State Bar Lawyer Referral Service (VLRS)
(Statewide Assistance)
1111 E. Main Street, Suite 700
Richmond, VA 23219-2800
Phone: (804) 775-0808
Phone: 1 (800) 552-7977
Website: lawyerreferral@vsb.org

Senior Attorneys

American College of Trust and Estate Counsel
901 15th Street, NW Suite 525
Washington, DC 20005
Phone: (202) 684-8460
www.actec.org

National Academy of Elder Law Attorneys
1577 Spring Hill Road, Suite 310
Vienna, VA 22182
Phone: (703) 942-5711
Website: www.naela.org

LONG-TERM CARE INSURANCE

Virginia Bureau of Insurance
1300 E. Main Street
Richmond, VA 23219
Mailing address:
P.O. Box 1157
Richmond, VA 23218
Phone: (804) 371-9741
Toll-free: (800) 552-7945

LONG-TERM CARE

Ombudsman Programs
You can contact this office to locate the ombudsman for your local area:

Office of the State Long-Term Care Ombudsman

Virginia Association of Area Agencies on Aging
8004 Franklin Farms Drive
Henrico, VA 23219
Phone: (804) 565-1600
1 (800) 552-3402
www.elderrightsva.org, then look under Find Your Ombudsman.

NATIONAL ORGANIZATIONS

American Association of Retired Persons
601 E Street, N.W.
Washington, DC 20049
To join: 1 (888) 687-2277
www.aarp.org for free access to materials on issues of interest to the elderly

American Bar Association Commission on Legal Problems of the Elderly
1050 Connecticut Avenue, NW
Suite 400
Washington, DC 20036
Phone: (202) 662-8690
Website: www.americanbar.org/aging
(Materials on medical care decision making for the elderly)

Department of Health and Human Services Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244
Phone: (800) 633-4227
1 (877) 267-2323

National Consumer Voice for Quality Long Term Care, formerly NCCNHR
1001 Connecticut Avenue, NW, Suite 632
Washington, DC 20036
Phone: (202) 332-2275
Website: www.theconsumervoice.org

National Council on Aging
251 18th Street South
Suite 500
Washington, DC 20036
Phone: (202) 479-1200
Website: www.ncoa.org

Social Security Administration Office of Public Inquiries
1100 West High Rise
6401 Security Boulevard
Baltimore, MD 21235-6401
1 (800) 772-1213
Website: www.ssa.gov

NURSING HOMES, ADULT HOMES & DAY CARE:

Virginia Office of Licensure and Certification
801 East Main Street
Richmond, VA 23219
Phone: (800) 543-7545

Virginia Department of Health Professions Enforcement Division
9960 Mayland Drive, Suite 300
Henrico, VA 23233
Phone: (804) 367-4400
Toll-free: 1 (800) 533-1560

Virginia Department of Social Services Division of Licensing Programs
801 East Main Street
Richmond, VA 23219
Phone: (800) 543-7545
Website: https://www.dss.virginia.gov/files/division/licensing/cdc/intro_page/code_regulations/regulations/final_cdc_reg.pdf

RAILROAD RETIREMENT ACT BENEFITS

Railroad Retirement Helpline
1 (877) 772-5772

SOCIAL SERVICES

(For list of local social service departments, go to www.dss.virginia.gov and look under local departments or dial 1 (800) 552-3431)

VETERANS' AFFAIRS

United States Department of Veterans Affairs
Poff Federal Building
210 Franklin Road, SW
Roanoke, VA 24011
Phone: (800) 827-1000
Website: www.va.gov

Virginia Department of Veterans' Services
101 North 14th Street, 17th Floor
Richmond, VA 23219
Phone: (804) 786-1286
Website: www. www.dvs.virginia.gov

DARS

Virginia Department for Aging and Rehabilitative Services

Our Mission

To improve the employment, quality of life, security, and independence of older Virginians, Virginians with disabilities, and their families.

The **Division of Rehabilitative Services** offers vocational rehabilitation to assist people with disabilities to prepare for, secure, retain or regain employment. You may be eligible for these services if you have a physical, mental or emotional disability; this disability keeps you from working; you live, work or attend school in Virginia; and DRS certifies that there is a good chance that these services will result in your employment.

Vocational rehabilitation counselors may provide or assist with:

- Physical and mental restoration
- Vocational evaluation/career exploration
- Vocational/job training
- Job placement assistance
- Situational assessment
- Job development/job coaching

Assistive technology devices, services or accommodations may help consumers live and work independently. Services and supports are also available to businesses to improve workplace accessibility. DARS can help identify potential resources for obtaining equipment through the Virginia Assistive Technology System, the Assistive Technology Loan Fund Authority and Centers for Independent Living.

DARS works with many **Community Partners** and businesses to assist individuals with disabilities in achieving their goals of employment and/or independence.

- Brain Injury Services
- Centers for Independent Living
- Employment Services Organizations
- Virginia Assistive Technology System
- ATLFA
- One-Stop Workforce Centers
- Ticket to Work/Employment Networks
- High schools and higher education

The **Wilson Workforce and Rehabilitation Center** provides comprehensive, integrated medical and vocational rehabilitation services to enhance an individual's independence and employability. Its on-campus staff provide counseling, vocational evaluation and training, medical rehabilitation/ clinical therapy services, driver education and life skills training.

DARS | Virginia Department for Aging and Rehabilitative Services

The **Division for Community Living** administers programs that support older or vulnerable adults and individuals with significant disabilities to maximize their independence, employment and inclusion into society.

Our *Disability Programs* services include:

- Brain Injury Services Coordination
- Community Rehabilitation Case Management Services
- Dementia Services Coordination
- Independent Living Services
- Personal Assistant Services

Our *Aging Programs* serve older Virginians. DARS is committed to having livable communities for those who want to age in place or transition from facilities to community settings with long-term supports and services. They include:

- Information and referral
- Caregiver support
- Congregate and home-delivered meals
- Chronic disease self-management
- Virginia Insurance Counseling and Assistance Program (VICAP)
- Virginia GrandDriver
- Public guardianship and conservator program
- Councils on Aging, Alzheimer's Disease and Public Guardianship

No Wrong Door is a virtual system and statewide network of shared resources designed to streamline access to long term services and supports – connecting individuals, providers and communities across the Commonwealth.

The **Adult Protective Services Division** oversees local programs that investigate reports of abuse, neglect and exploitation of older or incapacitated adults. A variety of health, housing, social and legal services may be arranged to stop or prevent mistreatment. Services may include home-based care, transportation, adult day services, adult foster care, nutrition services and legal intervention.

The **Office of the State Long-Term Care Ombudsman** advocates for older persons receiving long-term care services. Local ombudsmen provide information, advocacy, complaint counseling and assistance in resolving care problems.

Disability Determination Services

DDS processes claims for federal benefits under the Social Security Disability Insurance and Supplemental Security Income Disability Programs. Virginia's DDS offices process approximately 85,000 in-state claims for benefits and about 15,000 claims for residents of other states each year.

For more information about DARS, visit www.vadars.org
8004 Franklin Farms Dr., Henrico, VA 23229
800-552-5019 | TTY dial 711

Connect with us

Virginia Free Legal Answers

AMERICAN BAR ASSOCIATION
FREE LEGAL ANSWERS™

Need a Lawyer? Can't afford one?
Virginia.freelegalanswers.org provides fast, free help.

virginia.freelegalanswers.org is a free, fast, and easy service for Virginians who cannot afford a lawyer, and you can access the site from any device anywhere, even your public library. Post your legal question on the website, and a licensed lawyer in good standing will respond to your question. There is no cost to you to post your question or to receive an answer. Virginia Free Legal Answers is sponsored by the American Bar Association.

It's simple:

1. Sign up at https://virginia.freelegalanswers.org
2. Sign in to ask a question on the website
3. A lawyer will reply on the website

For more information about Virginia.freelegalanswers.org and other free and low cost legal resources go to http://www.vsb.org/site/pro_bono/resources-for-the-public

virginia.freelegalanswers.org

Virginia Lawyer Referral Service

Need to talk to a lawyer?

Since 1977, the Virginia Lawyer Referral Service has helped people find a Virginia lawyer in their area and in their area of need.

Today, the we make thousands of referrals each year, and give you the opportunity to discuss your legal issues with a lawyer for up to half an hour for only $35 — no strings attached.

Visit us on the internet at www.vlrs.net, or call
(804) 775-0808 (metro Richmond) or
(800) 552-7977 (toll-free)

You may also email lawyerreferral@vsb.org.
Please do not send personal information regarding your case.

VIRGINIA STATE BAR
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Let us help you find a Virginia lawyer today.

Senior Virginians Handbook

We know your lifestyle doesn't slow down at age fifty-five. Today, Virginians are working well into their 70s and beyond. You are as busy as ever, with more challenges and opportunities and little time to research them all. While not intended to replace the legal advice of a lawyer, this book is intended to assist you in making informed choices.

The *Senior Virginians Handbook* was written by lawyers for older Virginians, families, and caregivers, and provides an overview of the issues and choices facing senior Virginians today. Packed with contact information and resources, this book can help you make educated choices about your lifestyle, financial, and health decisions, and help you find experts to support you when needed.

Programs presented by the Senior Lawyers Conference of the Virginia State Bar using the *Senior Virginians Handbook* are available to the public. For more information, to schedule a program, or to order copies of the *Senior Virginians Handbook*, please use the form found at www.vsb.org/docs/orderform.pdf or call the Virginia State Bar at (804) 775-0500.