

LEGAL HANDBOOK FOR OLDER DELAWAREANS

Delaware Bar Foundation
Division of Services for Aging and Adults with Physical Disabilities
Elder Law Section of the Delaware State Bar Association

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Disclaimer

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

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I. INTRODUCTION

This Handbook has been prepared to help older people in Delaware, their families, caregivers, and concerned others, be aware of their rights and responsibilities under certain federal and state laws. The internet version may be more up to date than the printed version. Since laws change from time to time, when you need to apply the information in this Handbook, whether from the printed or the on-line version, information should be verified with an attorney or with the agency which administers the law or the benefits that you or a person acting on your behalf is seeking to obtain. For example, questions about Social Security benefits, eligibility, and consequences of applying for Social Security at different ages should be directed to the Social Security Administration. In some cases, issues relating to benefits like Social Security can also be addressed by an accountant or a financial advisor.

A. Protect Yourself

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

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

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

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

- b. Bank statements should be saved for several years and documentation supporting deductions on your income tax returns should be saved until the expiration of the period when your income tax returns could be audited. You can find out the general rules for how long to keep records relating to income, deductions, and income tax returns by going to <http://www.irs.gov> and searching "How Long Do I Keep Records."

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

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

e. Originals of the following documents should be kept together in a fireproof safe or other fireproof place: deeds to real property or documentation showing that you inherited property when real property is not transferred by deed; titles to cars, boats, mobile homes, and other state registered property; mortgages, promissory notes, and other loan documentation; wills and codicils to wills; trust agreements and amendments of trust agreements; stock certificates and certificates representing ownership interests in partnerships, limited liability companies, and other types of entities; military discharge papers; birth, marriage, and death certificates; divorce decrees; pre-nuptial (pre-marital) and post-nuptial agreements; property division and separation agreements; property division, separation, or support stipulations and orders relating to a divorce or separation; passports, citizenship papers; and insurance policies; beneficiary documentation that will control distributions of insurance, annuities, retirement benefits, qualified and non-qualified employee benefit plans, IRAs, and similar property interests.

f. If such documents are organized and in order where they can be found, you or the person who handles your affairs upon your death or earlier incapacity will be able to easily access the information necessary to take required actions on your behalf during your lifetime or on behalf of the beneficiaries of your property after your death. In Delaware, a safe deposit box can be used for this purpose. A fireproof safe in your home can also be used. You should tell the persons whom you have appointed to take care of your affairs upon your death or incapacity where such documents are kept. You may also consider giving the person who will handle your affairs if you become incapacitated access to your safe deposit box or to any safe that you keep at your home. Note that in some states, including Pennsylvania, a safe deposit box is frozen upon any owner's death, even if the safe deposit box is titled in the joint names of a decedent and another person.

g. A durable power of attorney appointing agents to take care of financial and other non-medical and health-care matters on your behalf should be kept in a fireproof place where the persons you have appointed as your agents can find it, if you become incapacitated, either temporarily or permanently. You should also consider giving a copy of such power to the agents you have appointed in such power. In some powers of attorney, agents that you appoint are referred to as "attorneys in fact" who are agents, as compared to "attorneys at law," who are attorneys who are licensed to practice law.

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

3. If you receive any kind of notice, court papers, or other legal document requiring you to take some action within a certain time limit, be sure you meet the deadline. Failure

to do so can mean that you give up important rights that are available to you. For example, by failing to appeal a Social Security decision before the deadline specified in a decision or notice that you receive, you usually will be legally bound by the decision, even if you believe the decision is wrong. In most legal matters, it is prudent to consult with an attorney to ensure that you do not forfeit your legal rights by failing to respond by a deadline. You may be able to request and be granted an extension of time to appeal the decision giving you more time to evaluate your options, if you make the request before the stated deadline.

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

B. If You Need an Attorney

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

1. Professional Qualifications

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

In addition, you should determine if the attorney maintains legal malpractice insurance. In Delaware attorneys are not required to carry malpractice insurance, which would compensate you for damages that might be caused if an attorney fails to handle your claim in a reasonable manner under all of the circumstances. An attorney cannot be expected to succeed in every

lawsuit. However, an attorney could be considered to have committed malpractice: (i) if the attorney fails to file a lawsuit before the time limit for filing the lawsuit (the statute of limitations) expires, or (ii) the attorney fails to answer a claim in a law suit filed against you by the deadline set for filing the answer to the complaint. Malpractice could be found if the attorney's failure prevented you from obtaining damages or other benefits that you may have been able to obtain if your lawsuit had been timely filed (filed before the statute of limitations expired) or you are exposed to liability that could have been avoided by filing an answer with the court. If an attorney failed to represent you properly, and the attorney has no malpractice insurance, you could only obtain damages for the attorney's failure from the attorney's personal assets, which may or may not be sufficient to satisfy the damages awarded to you in a lawsuit against the attorney.

An attorney's credentials are also available on websites for the attorney or the attorney's law firm and through the Martindale-Hubbell Law Directory, a national legal registry which maintains attorney ratings, and which attorneys use to register their credentials and information about their areas of practice. See www.martindale.com. Finally, to find an attorney, you may look in the business pages of your local phone book and contact lawyer referral programs such as the Lawyer Referral Service, a service of the Delaware State Bar Association, and Legal Help Link. Contact information for lawyer referral programs in Delaware is listed in Paragraphs 3 and 4 below.

NOTE: If you have a personal injury case, a medical malpractice case, or a similar type of case which you believe entitles you to sue for damages and receive money for an injury to you or a family member, you will not be eligible for free legal services described later in this Handbook. However, attorneys who handle personal injury cases, medical malpractice cases, or similar types of cases are generally paid on a contingent fee basis, meaning attorney compensation is based on a percentage of any money you are eventually paid or awarded as damages. Attorneys who handle these types of cases generally will meet with potential clients at no charge and will be compensated only if you are paid or awarded money as damages. However, even if you are not required to pay attorney fees, you may have to pay costs relating to your lawsuit. Even if you do not have to pay attorney fees, you should review the qualifications of such attorneys just as carefully as you would if you were paying such attorneys for legal services on an hourly or other non-contingent basis because an attorney's qualifications are likely to indicate if he or she has successfully litigated lawsuits similar to the claim you wish to pursue in a lawsuit.

2. Initial Consultation

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

3. Contact Information: Paid Legal Services (Revised 10/08/2018)

To obtain a private attorney go to the Delaware Bar Association website at www.dsba.org.

4. Contact Information: Free Legal Services (Revised 2/09/2023)

To be considered for free legal services, you may contact Legal Help Link, a centralized intake system that enables a person seeking free legal services to go online at <https://delegalhelplink.org/> and answer a series of questions to request services from Delaware Volunteer Legal Services, Inc., Delaware Community Legal Aid Society, Inc. (CLASI), or Legal Services Corporation of Delaware. The services offered by the three entities are described below. Except for the Elder Law Program of CLASI, each of the free legal services programs requires that your income and assets not exceed certain levels tied to poverty guidelines set by the federal government. As explained earlier in this section of the Handbook, if you have a personal injury case, a medical malpractice case, or any case which you believe entitles you to sue for damages and receive money for an injury to you or a family member, you will not be eligible for any of the free legal services described below.

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

The following section includes contact information and descriptions of the types of matters that may be available through the four organizations connected to the Legal Help Link referral service or the types of matters that may be available by contacting the ACLU.

Community Legal Aid Society (CLASI) and Elder Law Program (ELP) (www.declasi.org)

New Castle County	Kent County	Sussex County
(302) 575-0666/0660 (800) 292-7980	(302) 674-8500 (800) 537-8383	(302) 856-0038 (800) 462-7070

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

Delaware Volunteer Legal Services, Inc. (DVLS) (www.dvls.org)

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

DVLS provides free services provided by volunteer attorneys for persons who have non-criminal cases, also known as civil cases, in any issue an older Delawarean may have, including among other issues, the following: guardianships; the preparation of wills, powers of attorney for financial matters, powers of attorney for health-care decisions, and advance health-care directives; housing issues when there is a legal excuse for not paying rent; and protection from abuse and other family law matters for victims of domestic violence.

DVLS also operates the Senior Legal Help Line at 478-8680 extension 205. Any senior seeking simple advice but not representation may call the Senior Legal Help Line.

Legal Services Corporation of Delaware, Inc. (LSCD) (www.lscd.com)

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

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

Widener University Delaware Law School (delawarelaw.widener.edu)

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

American Civil Liberties Union (ACLU) of Delaware (www.aclu-de.org) (302) 654-5326

The ACLU is a non-profit, non-partisan organization devoted exclusively to the defense and promotion of individual rights and liberties guaranteed to every person in the United States by the Constitution and laws of the United States. The ACLU represents all people, including older people, on all ACLU issues, including among other issues, the following: prison conditions; free speech; religious freedom; immigrants' rights; racial justice; discrimination; and privacy issues.

If you think that your legal issue or the legal issue of a family member may be the type of issue that the ACLU handles, you must contact the ACLU directly. The ACLU is not one of the organizations to which Legal Help Link makes referrals.

II. HEALTH CARE

A. Medicare (Revised 2/09/2023)

Medicare is a federal health insurance program. Enrollment is administered by the Social Security Administration and health benefits are administered by the Centers for Medicare and Medicaid Services. The program was designed to help meet the medical expenses of people who are at least 65 years of age or disabled. The Delaware Medicare Assistance Bureau offers counseling about Medicare issues. For information and assistance, visit the website at <https://insurance.delaware.gov/divisions/dmab/> or call 800-336-9500.

1. Eligibility

- The potential beneficiary is at least 65; or
- The potential beneficiary is under 65, disabled and has been receiving Social Security disability benefits or certain Railroad disability benefits for 24 months; or
- The potential beneficiary has ALS and has begun receiving disability benefits; or
- The potential beneficiary has end stage renal disease, which is defined as permanent kidney failure requiring ongoing dialysis or a kidney transplant.

2. Enrollment (Revised 2/09/2023)

Now that the age for full Social Security benefits is older than 65, enrollment in Medicare is automatic only for those who are receiving Social Security benefits when they turn age 65. To enroll, when enrollment is not automatic, the potential beneficiary should contact the local Social Security office or go online at www.ssa.gov. A retired railroad potential beneficiary should contact the local Railroad Retirement Board office or call 1-877-772-5772. The beneficiary can sign up for Medicare benefits as soon as three months before the beneficiary's 65th birthday and should sign up no later than three months after the month of that birthday (the "Initial Enrollment Period"). Enrollment in Part B can be delayed if the beneficiary (or the beneficiary's spouse) is currently employed by an employer that provides the beneficiary's health insurance. However, in order to avoid having a penalty imposed, the beneficiary must enroll in Part B within eight months after the beneficiary (or the beneficiary's spouse) leaves employment or otherwise loses benefits, whichever occurs first (a "Special Enrollment Period"). The penalty for late enrollment is discussed further under "Part B Costs". When the beneficiary has missed the Initial Enrollment Period or Special Enrollment Periods, they may only enroll during the General Enrollment Period (January 1 to March 31) and coverage will begin the first day of the month after enrollment.

When an individual first signs up for Medicare, they will have two choices (or if there is employer health plan coverage due to current employment, the third option of postponing enrollment). The first choice is original Medicare with a Medicare Supplemental Insurance Plan (sometimes called "Medigap Plan") and a prescription drug plan. The second choice is a Medicare Health Plan (sometimes called a Medicare Advantage Plan). Both options are discussed in more detail below.

3. Original Medicare Benefits and Costs, Supplemental Insurance Plans and Prescription Drug Plans

a. Medicare Benefits and Costs

Part A Benefits

- Medically necessary inpatient hospital care;
- Full coverage of 20 days of skilled care in a nursing home and 80 days of partial coverage but only if the beneficiary has had a qualifying three (3) day inpatient stay in a hospital prior to admission to the skilled nursing care facility; and
- Temporary full-time or permanent intermittent home health care if the beneficiary requires some skilled care.

Part A Costs

The Part A premium is usually covered by the payments that the beneficiary or the beneficiary's spouse made while employed. The Part A deductible for hospitalization varies from year to year but in 2023, the deductible will be \$1,600 per "period of illness." A subsequent hospitalization more than 60 days after discharge will result in a new period of illness and a new deductible. Co-payments are required for hospitalizations exceeding 60 days. Medicare will not cover any costs for hospitalizations exceeding 150 days. In 2023, the Part A co-payment for skilled nursing facilities will be \$200.00 per day for skilled care exceeding 20 days.

Part B Benefits

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

Part B Costs

Most beneficiaries will have to pay a premium for Part B. Medicare will send a bill until the beneficiary starts receiving Social Security benefits. Thereafter, the premium will be withheld from the Social Security benefit payment. The Medicare Part B premium and deductible vary from year to year. In 2023, the standard monthly premium for Part B is \$164.90. The Part B deductible is \$226.00 per year in 2023.

The premium may be increased over the minimum if the beneficiary's income is above certain limits. Also, there is a permanent penalty for late enrollment equal to 10% for every twelve months that enrollment is delayed beyond the Initial Enrollment Period or Special Enrollment Period discussed above. However, the beneficiary may be able to appeal an increased premium and may request a review the imposition of a penalty.

b. CMS Statements

Whether a claim is under Part A or Part B the beneficiary will receive a written notice from CMS reflecting what Medicare has covered and what the beneficiary may be responsible for. Medicare generally forwards the information to the Medigap carrier (discussed below). What

is not covered by Medicare or the Medigap policy is the beneficiary's responsibility. If Medicare denies a claim, appeal rights will be described in the Notice.

c. Supplemental Insurance (Medigap Insurance)

Anyone enrolling in original Medicare Parts A and B, may wish to purchase a Medigap plan. If the beneficiary signs up for a Medigap policy within six months of the date that the beneficiary first became eligible for Part B or within eight months after the beneficiary or the beneficiary's spouse is no longer employed and covered by employee insurance, the insurance company must accept the beneficiary and cannot impose a waiting period or a higher premium because of a pre-existing condition. The initial enrollment period and special enrollment periods are the only times when the Medigap carriers are prohibited from taking pre-existing conditions into account.

What the different types of plans (designated by letters) cover is defined by the federal government. Every company offering an A plan, for example, is offering the same benefits. So the beneficiary first chooses a plan and then chooses a provider based on the plan's method of determining premiums (rate structure) and the beneficiary's comfort with the company's reputation or rating. For a list of the companies offering Medigap plans in Delaware and a listing of premiums, the Delaware Department of Insurance publishes a guide each May. The guide is available at: https://insurance.delaware.gov/wp-content/uploads/sites/15/2022/02/MedicareSup_Guide.pdf. The Guide is published once a year in May and is updated at that time to show not only the providers authorized to offer Medigap policies in Delaware but to show premiums for male smokers under the various types of policies. Therefore, the premiums shown are for comparison or illustrative purposes.

In the Guide, there is also an indication of how a company structures its premiums. Policy rates are determined in three ways. Premiums may be based on the current age of the beneficiary and will increase as the beneficiary ages. Premiums may be based on the age of the beneficiary at issuance, which may be higher at earlier ages, but should not increase over time. Premiums may also be determined by the community of beneficiaries instead of using age. Recently the one company using a community-based rating for premiums has been discounting for under age 75 so premiums go up as the discount disappears; however, after age 75, premiums do not go up due to age.

d. Part D Prescription Drug Benefit

Part D Medicare is a voluntary prescription drug benefit provided by private insurance companies. The beneficiary is eligible for Part D if the beneficiary is enrolled in either Part A or Part B Medicare. The beneficiary is subject to a penalty if the beneficiary delays enrollment unless the beneficiary has other prescription drug coverage that is at least as good as Part D. This is called "creditable coverage." The beneficiary should retain the "creditable coverage" letter as proof of coverage. An employer prescription drug plan for retirees can be considered "creditable coverage" so that enrollment in a Medicare prescription drug plan is not required. Since the penalty increases with every month the beneficiary delays enrollment and, after the beneficiary enrolls, is added to the beneficiary's monthly Part D premium for as long as the beneficiary is a participant, the penalty can be extremely costly. Most people can change plans only once a year, during the period between October 15 and December 7 (Referred to as the annual "Open Enrollment Period").

There are many prescription drug plans offered in Delaware. Some have no deductibles or lower co-pays. A few may offer some coverage of generics while the beneficiary is in the "donut hole". How drugs are priced differs from company to company. If the beneficiary goes to the Medicare web site (www.medicare.gov), the beneficiary will be able to enter the beneficiary's current medications, dosages and favored pharmacy in order to locate plans that cover the beneficiary's drugs at the least annual cost. The beneficiary can also obtain counseling by contacting the Delaware Medicare Assistance Bureau at the Delaware Insurance Department at [800-336-9500](tel:800-336-9500).

In the standard prescription drug plan, the beneficiary pays a monthly premium and may have an annual deductible. In addition, the beneficiary may pay a portion of the cost of the drugs until the total cost of the drugs, (what the beneficiary paid plus what the insurance company paid), total \$4,660 in 2023. Then there is a coverage gap, sometimes called the "donut hole," until the beneficiary personally has spent a total of \$7,400 in 2023. The rules for how out-of-pocket payments are calculated are fairly complex. For more information, visit www.Medicare.gov.

e. Co-ordination with TriCare

Military retirees and eligible family members are eligible for the free program, Tricare for Life, which provides benefits that are quite similar to a Medigap plan. However, they might be required to enroll in Part B Medicare to maintain their VA health care. Moreover, Tricare does not cover emergency care in other countries. For further information, the beneficiary may go to the Tricare website: www.tricare.mil. **A VA prescription drug program generally does qualify as creditable coverage for purposes of the prescription drug coverage.**

4. Medicare Health (sometimes called "Advantage") Plans (Also called Part C for "choice") (Revised 2/09/2023)

Medicare contracts with private insurance companies that sell what are sometimes called Medicare Health Plans or Medicare Advantage Plans. Medicare Advantage Plans must offer benefits that otherwise would be offered by Medicare Parts A and B and may also offer some benefits that a Medicare supplemental insurance plan might offer and, in Delaware, all also offer a prescription drug plan - all in one plan. Although the beneficiary must have enrolled in both Part A and Part B to enroll in a Medicare Advantage Plan, following enrollment in a Medicare Advantage Plan the beneficiary will receive all benefits through the Medicare Advantage Plan.

There are two primary types of Medicare Advantage Plans: Health Maintenance Organizations (HMOs) where the beneficiary must use plan doctors and Preferred Provider Organizations (PPOs) in which the beneficiary is not restricted to only using doctors and other service providers affiliated with the plan. However, a beneficiary of a PPO who goes to a doctor who is not affiliated with the plan will be charged a significant co-pay. In addition, there are also two other variations in the available Medicare Advantage Plans. A few are special needs plans that only accept beneficiaries who suffer from specific chronic conditions or who are residents of a nursing home and there is one that is a form of health savings plan. With a health savings plan, money is deposited into an account for the beneficiary to draw on for medical expenses and when those funds have been spent, the beneficiary is responsible for costs.

All the Medicare Advantage Plans are listed on the Medicare (www.medicare.gov) and the Delaware Insurance Commissioner (insurance.delaware.gov) websites. The plans vary in their premiums and in how they provide coverage. In most cases, the beneficiary will pay a premium each month as well as co-pays when the beneficiary receives services.

Primary Differences Between Medicare Advantage & Original Medicare with Medigap Plan and RxPlan

Advantage Plans generally have lower monthly premiums (Some have no premium.) but higher co-pays when a beneficiary becomes ill.	Premiums are higher under original Medicare plus a supplement but options exist to cover all deductibles and co-pays.
Either must use plan doctors or pay a higher fee for non-affiliated doctors. May be limited geographically.	May use any Medicare doctor or service provider in any state in the United States.
Frequently offer dental and vision plans with a small additional premium.	Dental and vision plans have to be found with non-affiliated providers.

If a beneficiary signs up for a Medicare Advantage Plan during the initial enrollment period or at any time that the beneficiary signs up for a Medicare Advantage Plan for the first time, during the first 12 months following enrollment, the beneficiary may opt out and upon re-enrollment in original Medicare, the beneficiary will be entitled to subscribe to a Medigap Plan regardless of the status of the beneficiary's health. Thereafter, during the end of the year open enrollment period or the beginning of the year Medicare Advantage Enrollment period, the beneficiary may switch Medicare Advantage plans or disenroll and return to original Medicare and a prescription drug plan. *However*, in that instance there is no guaranteed right to subscribe to a Medigap Plan without underwriting. The Medigap carrier may refuse coverage or charge a higher premium due to the beneficiary's health issues.

5. Assistance for Low-Income Beneficiaries (Revised 2/09/2023)

a. Medicare Beneficiary Programs

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

Federal law requires that state Medicaid agencies pay the Part B Medicare premium, deductibles, and the 20% co-insurance expenses for financially qualified individuals known as Qualified Medicare Beneficiaries (QMBs). Thus, Medicaid becomes supplemental insurance for QMB's. The beneficiary may be a QMB if the beneficiary is entitled to Medicare Part A and the beneficiary's income is at or below 100% of the Federal Poverty Level (FPL). If the beneficiary qualifies, Medicaid also pays for the Part A Medicare premium, in the unlikely case that it is not free for the beneficiary. The beneficiary should note that Medicare beneficiary programs do not provide any foreign coverage (including trips to Canada and Mexico).

If the beneficiary's gross monthly income does not exceed 120% of the FPL, the beneficiary is a Specified Low Income Medicare Beneficiary (SLMB), and Medicaid pays only the beneficiary's

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

To apply for a Medicare beneficiary program, the beneficiary must first apply for "Extra Help" as discussed below even though the beneficiary's asset level may disqualify the beneficiary from help under that program. More information on the income thresholds and benefits is available on the Delaware state website at: www.dhss.delaware.gov/dhss/dmma/.

b. Extra Help with Prescription Costs - Federal Low Income Subsidy - "Extra Help"

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

The local Social Security Administration office can assist with applications for the LIS program or the beneficiary may apply online through the Social Security Administration at: <https://secure.ssa.gov/i1020/start>. The government will send the beneficiary a letter that requires the beneficiary to verify the beneficiary's eligibility for the LIS program each year. The beneficiary MUST answer that letter to continue qualifying for extra help. If the beneficiary qualifies for extra help, the beneficiary can change the beneficiary's prescription drug plan as often as once a month.

c. Delaware Prescription Assistance Program

The Delaware Prescription Assistance Program (DPAP) had been discontinued due to budgetary constraints effective September 1, 2017, but was reinstated effective January 1, 2019. The call center number is 1-800-996-9969. As in the past, DPAP applicants will first need to apply for Extra Help/Low-Income Subsidy (LIS) benefits (discussed above). If they were approved previously, applicants can call DPAP to see if their LIS information is still showing on the DPAP system. If it is, they would not need to show proof of LIS determination. They do not need to qualify for LIS, just apply for it. To qualify for DPAP you must be 65 years of age or receive Social Security Disability benefits. Your income must either be at or below 200% of the Federal Poverty Level or your prescription costs exceed 40% of your annual income. In 2023 the income threshold is \$2,430 per month or \$29,160 per year for an individual. DPAP looks only at each person's income not a couple's joint income. Assets are also not considered.

B. Long-Term Care Medicaid

1. Introduction

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

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

2. Asset Limitation (Revised 2/09/2023)

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

If the applicant is married, the spouse remaining in the community may retain at least \$25,000 in countable assets and may retain up to 50% of the couple's total countable assets up to a maximum of \$123,600 in 2023. The community spouse's solely-held retirement funds are unaffected. The community spouse can also have an irrevocable funeral arrangement and keep the home as a residence.

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

3. Income Limitations (Revised 2/09/2023)

Delaware is what is called an "income cap state" and limits the applicant's available income to \$2,285 in 2023 (250% of the Supplemental Security Income (SSI) Level plus \$20). However, the limitation can be overcome by depositing the income into an irrevocable income trust commonly known as a "Miller Trust" and using the funds in the trust to pay the nursing home or other health care provider. These Qualified Income or Miller Trusts are generally prepared by experienced Elder Law attorneys. The community spouse is not required to contribute any income toward the care of the Medicaid beneficiary and may have his or her income supplemented by a share of the beneficiary's income or may retain additional assets to maintain a living standard required by Medicaid law called the "minimum monthly maintenance needs allowance." In 2023, this is \$2,288.75. If certain basic household expenses are more, the community spouse may be entitled to keep extra income up to \$3,715.50 (the Maximum Monthly Maintenance Needs Allowance) of the married couple's total income. If even more income is needed, the community spouse can request more which may require a hearing before an administrative law judge to prove the need for a higher amount.

4. Home Based Waiver Services

The Delaware Home & Community Based Waiver and Assisted Living Waiver Services are intended to allow the elderly and disabled to remain in their homes or in assisted living if they can do so safely with a package of services. However, the cost of such services cannot exceed the cost of a nursing home. Effective in April, 2012, all applications will be handled by the Department of Medicaid & Medical Assistance (DMMA). More information is available by calling 866-940-8963, or at: www.dhss.delaware.gov/dss/homeandc.html.

C. Nursing Homes and Other Residential Facilities (Revised 2/09/2023)

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

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

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

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

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

Medicaid covers all expenses related to the resident's care. Medicaid is not insurance and is a welfare program of last resort. It does not cover certain personal needs (e.g. haircuts), but each Medicaid recipient receives a monthly personal needs allowance (2023: \$50.00), which must be set aside for that individual. If you are a veteran or a surviving spouse of a veteran, you may also be eligible for a VA benefit allowance (2023: \$90.00 in a long-term care facility). If you are receiving Medicaid benefits, your income pays part of the cost of care, and Medicaid pays the remainder.

A list of nursing home residents' rights under Federal law can be found on the Internet on the Medicare.gov site at [https://downloads.cms.gov/medicare/Your Resident Rights and Protections section.pdf](https://downloads.cms.gov/medicare/Your%20Resident%20Rights%20and%20Protections%20section.pdf). Titl

e 16 of the Delaware Code, Chapter 11 discusses Long-term Care Residents Rights under Delaware law including the law dealing with discharge and transfer and is available on the internet at <http://delcode.delaware.gov/title16/c011/sc05/index.shtml>.

D. Advance Health-Care Directive (Living Will) (Revised 2/09/2023)

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

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

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

1. "Permanently unconscious" or "permanent unconsciousness" means a medical condition that has existed for at least 4 weeks and that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.
2. "Terminal condition" means any disease, illness or condition sustained by any human being for which there is no reasonable medical expectation of recovery and which, as a medical probability, will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.
3. "Serious illness or frailty" means a condition based on which the health-care practitioner would not be surprised if the patient died within the next year.

For a Directive form developed by the Elder Law Section of the Delaware Bar Association in January 2017 go to for downloadable forms in both English and Spanish:

<https://dhss.delaware.gov/dhss/dsaapd/advance1.html>

The Section Form has three parts. Part 1 is a power of attorney for health care. You can name one or more persons as your agent(s) for health-care decisions and several alternates, if the primary person you designate is unable to serve or is not available. This part allows the agent to obtain medical information about you under the Health Insurance Portability and Accountability Act, generally referred to as HIPAA. Part 2 provides you with the ability to give specific

instructions regarding whether or not you wish to receive life-sustaining medical measures if you are ever declared “terminally ill” or “permanently unconscious.” Before deciding on your specific instructions, you may want to consult with a doctor for guidance. Part 3 lets you express an intention to donate your body, organs and/or tissues following your death, if you so choose.

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

1. Cannot be related to the declarant by blood, marriage, or adoption;
2. Cannot be entitled to any portion of the estate of the declarant under any will of the declarant or codicil thereto then existing nor, at the time of the executing of the advance health-care Directive, be so entitled by operation of law then existing;
3. Cannot have, at the time of the execution of the advance health-care Directive, a present or inchoate claim against any portion of the estate of the declarant;
4. Cannot have a direct financial responsibility for the declarant’s medical care;
5. Cannot have a controlling interest in or be an operator or an employee of a health-care institution in which the declarant is a patient or resident; or
6. Cannot be under eighteen years of age.

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

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

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

If You Have Not Executed an Advance Health-Care Directive

If an adult patient does not have a directive, medical power of attorney, or court-approved guardian, or if the directive does not address the specific issue, a surrogate may make a health-care decision to treat an adult patient if the patient has been determined by the attending physician to lack capacity. This determination of a lack of capacity shall be confirmed in writing in the patient's medical record by the attending physician. The surrogate may also order the

withdrawal of life sustaining treatment if the patient has a requisite "qualifying condition" discussed above. A surrogate is selected in the following order of preference:

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

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

E. Delaware Medical Order for Scope of Treatment (DMOST) (Revised 2/09/2023)

Beginning April 1, 2016, DMOST, a new form of medical order, is available for patients whose health-care practitioners would not be surprised if the patient died in the next year. The form is voluntary and cannot be required for admission to a health-care facility. DMOST is a single document that will function as an actionable medical order and transition with a patient through all health-care settings. To create a DMOST, the patient (and if the patient desires, anyone the patient wishes to be present) will meet with a health-care practitioner to discuss the patient's wishes for treatment and those wishes will then be documented on the DMOST form which is then signed by the health-care practitioner and the patient. The DMOST form can be completed by any licensed physician or by an advance practice registered nurse or physician's assistant if those providers have taken the training required by the statute and regulations. If the patient lacks decisional capacity, a legally authorized agent or guardian may meet with the health-care practitioner to complete the DMOST form. The law requires any health-care provider to honor the DMOST form, if the patient is unable to communicate. The DMOST is not intended to replace a Directive but rather to supplement it, except that there is a section of the DMOST, which when signed by the patient, will limit the ability of an agent for health-care to alter the DMOST. For a pdf version of the DMOST form, go to: <https://dhn.org/healthcare-providers/dmost-registry/>.

The regulations can be found at:

[http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Emergency%20Medical%20Services%20\(EMS\)/4304.shtml](http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Emergency%20Medical%20Services%20(EMS)/4304.shtml)

III. GUARDIANSHIPS AND OTHER PROTECTIVE SERVICES

A. Representative Payee for Social Security Payments

Social Security (old age, survivors and disability insurance benefits - "OASDI") and Supplemental Security Income ("SSI") recipients can have their benefits deposited directly into their bank accounts by filling out a form at their bank. Recipients who began receiving benefits after March 1, 2013 are required to receive benefits electronically.

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

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

Procedural standards for the appointment process do not require advance notice of the names of the persons under consideration to be payee, of the right to counsel, or of the right to a face-to-face interview with an SSA representative, nor do they require that the beneficiary be notified that an appointment is being considered. After the determination, SSA notifies the beneficiary and gives him 10 days from receipt of the notice to appeal the decision to provide a representative payee or to appeal the designation of the particular person as representative payee. 20 CFR §404.2030. Again - prior notice to the social security recipient that the representative payee process has begun is not required.

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

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

B. Personal Power of Attorney (Revised 2/09/2023)

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

limited to a specific purpose, such as selling your home, or limited to a specific period of time, such as six months.

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

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

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

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

Delaware adopted a statutory form of durable personal power of attorney set forth in new Chapter 49A of Title 12 of the Delaware Code (<https://delcode.delaware.gov/title12/c049a/sc03/index.html>) in 2010 with slight modifications since then. The statutory form is not mandatory. The law is designed not only to make the form more accessible but also to provide additional protections for the principal from abuse of the personal power of attorney by the agent. For example, the law allows the filing of a petition to compel an accounting (among other things) with the Court of Chancery. The petition may be filed by the principal or the agent; the spouse, child or parent of the principal; a guardian, trustee or other fiduciary acting for the principal; a representative, trustee or beneficiary of the principal's estate; or any other person who is interested and can demonstrate to the Court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that the principal is incapacitated and the Court's intervention is necessary.

In addition, if a third party such as a financial institution refuses to honor an acknowledged personal power of attorney, the institution may be compelled by court order to accept it, and also be liable for damages including reasonable attorney's fees and costs incurred in the procedure to confirm the validity of the document, the authority of the agent or to compel acceptance, 12 Del. C. § 49A-120.

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

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

C. Guardianship (Revised 2/09/2023)

Delaware has provided a method for the appointment of a person to manage the property and/or make personal (health care, etc.) decisions for an incapacitated adult when that person has failed to execute a power of attorney.

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

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

A guardian of the property may become necessary when someone is not able to manage his or her financial affairs. Property includes assets such as bank and other financial accounts, real estate, personal property, income and expenses. Managing financial affairs include such things as paying bills, depositing funds, and taking care of real estate and motor vehicles. A guardian of the property may also be appointed when there is a risk that the disabled person may be exploited. A guardian of the property must post a bond, usually without surety, maintain a guardianship bank account, and use the disabled person's income and property exclusively for the benefit of the disabled person. The guardian must file financial reports with the Court, beginning with an inventory within 30 days of the appointment as guardian and, followed, generally, by an initial accounting for the first six (6) month period after the date of the appointment of the guardian and each year thereafter.

The guardianship process is begun when a person seeking the guardianship files a petition in the Court of Chancery. The alleged disabled person ("ADP") must be represented by an attorney known as an attorney "*ad litem*" (AAL) who is appointed by the Court of Chancery. The ADP may also retain separate counsel to advocate for his or her wishes. If the AAL is in disagreement with the ADP about the need for or the identity of the guardian, the Court will appoint an advocate if the ADP does not hire one.

The petition for guardianship must include an affidavit from the ADP's doctor stating the diagnosis of the person and the opinion of the doctor as to whether the diagnosis interferes with the person's ability to manage his or her affairs. The doctor is also asked to opine about whether the patient has sufficient capacity to understand and consent to the appointment of a guardian. Notice of the petition for guardianship must be provided to, among others, the alleged disabled person (unless it would be meaningless or harmful), his or her spouse, his/her adult next of kin, named fiduciaries (such as executors, trustees and attorneys in fact), beneficiaries, and the director of any facility having provided care to the patient in the six (6) months preceding the filing of the petition for guardianship.

A number of different people may file a petition for guardianship. Until the mid-90's, the person him/herself could, by statute, ask the Court to appoint a guardian. More often, a relative or close friend will file a petition to become guardian of a person when necessary. In other cases,

Adult Protective Services, a unit of the Division of Services for Aging and Adults with Physical Disabilities, or a facility in which the disabled person resides may file a petition for the appointment of a guardian. The Court may appoint a guardian different from the guardian proposed in the petition.

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

Unless the Court limits the authority of the guardian, a guardian may make all decisions regarding the disabled person's affairs. Because the Court has determined that a person is not capable of caring for him/herself when a guardian is appointed, the disabled person is deprived of almost all of his or her civil rights. Therefore, guardianship is an action which should be taken only when absolutely necessary. One right reserved to the disabled person and not given to the Court of Chancery is the right to execute a will, so long as the person has sufficient capacity to do so.

The Court of Chancery oversees the actions of the guardian during the term of the guardianship. The guardian must obtain approval of the Court before undertaking a major transaction on behalf of the disabled person. Most minor transactions can be accumulated into a general authorization to expend funds. For example, the guardian may be given the authority to spend a monthly amount of money (called an "allowance") to pay the expense(s) of the disabled person's day-to-day care. For other transactions, such as the sale of real estate, the Court imposes greater safeguards by requiring an independent appraisal, then notice to interested parties of a purchase contract and Court review of the proposed contract before approving the sale.

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

Forms to petition for guardianship may be obtained from the Delaware state court website at <https://courts.delaware.gov/forms/>.

D. Adult Protective Services (Revised 2/09/2023)

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

In other instances, if you have reasonable cause to believe an adult person is impaired or incapacitated and needs protective services, Delaware law requires you to report such information to the Department of Health and Social Services. Under Section 3910 of Title 31 of the Delaware Code, any person with reasonable cause to believe that an adult is infirm or incapacitated and in need of protective services has a duty to report his or her concern to the Department. Delaware law applies the reporting requirement to everyone, including financial institutions which are now empowered to freeze a transaction, such as a withdrawal from an account. Anyone making a good faith report is immune from criminal and civil liability for making the report. When a report is made, Adult Protective Services (APS), created by statute in 1983, investigates the complaint, assesses risk, makes referrals and develops a case plan for

services. APS is also authorized to seek court orders for the protection of persons not able to protect themselves. The staff is represented in court by a deputy attorney general from the Delaware Department of Justice.

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

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

If you have reasonable cause to believe that a resident of a long-term care facility, who is impaired or incapacitated, needs protective services, your report should be made to the Division of Health Care Quality at the Delaware Department of Health and Social Services by calling 877-453-0012.

IV. OLDER ADULTS AS VICTIMS

A. Elder Abuse and Exploitation

Delaware law criminalizes elder abuse and exploitation in the Adult Protective Services statute, located in Title 31, Chapter 39. Pursuant to section 3913 of the Adult Protective Services statute:

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

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

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

When an older person needs assistance with such things as grocery shopping, getting to doctor appointments, or paying bills, section 3913 makes it is a punishable crime to use the person's resources improperly. Physical mistreatment is a crime no matter what the capacity and age of the victim, but this statute also criminalizes neglect of impaired adults and adults with a disability. If you believe a dependent elder is being harmed or could be harmed through neglect or abuse, or if you believe that an older adult is the victim of exploitation, call the police so that they may investigate.

B. Crime Against a Vulnerable Adult (Revised 2/09/2023)

Delaware law provides for a criminal offense called "crime against a vulnerable adult," located in Title 11, section 1105 of the Delaware Code. The law defines a "vulnerable adult" as a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental, or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. "Crime against a vulnerable adult" is an additional charge that functions as a sentence enhancer when a person commits certain enumerated crimes against a vulnerable adult.

Pursuant to the statute, any person who commits, or attempts to commit, any of the crimes set forth in section (f) of the statute, against a vulnerable adult is guilty of a crime against a vulnerable adult. If the underlying offense is an unclassified misdemeanor or class B misdemeanor, the crime against a vulnerable adult is a class A misdemeanor. If the underlying offense is a class A misdemeanor, the crime against a vulnerable adult is a class G felony. If the underlying offense is a class D, E, F, or G felony, the crime against a vulnerable adult is one class higher than the underlying offense. For example, offensive touching is an unclassified

misdemeanor, carrying up to 30 days in jail and a \$575.00 fine. Crime against a vulnerable adult for the commission of offensive touching is a class A misdemeanor, carrying up to 1 year in jail and a fine of \$2,300.00. A perpetrator cannot, however, be sentenced for both the underlying crime and crime against a vulnerable adult.

Additional Enhanced Penalties:

The criminal code (Title 11) provides for enhanced penalties in many instances where the victim is 62 years of age or older. For instance, while theft under \$1,500.00 is typically a misdemeanor offense, theft of any amount of money from a victim over the age of 62 is a felony offense – even theft of \$1.00. Similar enhanced penalties operate in cases of assault, terroristic threatening, and unlawful use of a payment card.

C. Programs for the Victims of Crimes

1. Victim's Compensation Assistance Program (Revised 2/09/2023)

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

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

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

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

If you wish to file a claim, you may obtain a form from the Victim's Compensation Assistance Program, 900 N. King St., 4th Floor, Wilmington, Delaware 19801, [302-255-1770](tel:302-255-1770) or police agencies, or the Department of Justice ([800-464-4357](tel:800-464-4357)), or online at <https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2017/03/Application.pdf>.

After investigation of your claim, you will receive the VCAP's decision in writing. If you are dissatisfied with the VCAP's decision, you may ask for reconsideration from VCAP within 15 days

of receiving the letter. If you are not satisfied with that result, you may appeal to the VCAP Appeals Board within 15 days of receiving this result. You will have a hearing, in which you will have the opportunity to tell the Board about your case and will receive the VCAP's decision in writing. If you are not satisfied with the Appeals Board's decision, you may appeal to Superior Court within 30 days of receiving the decision.

2. Victim/Witness Assistance Program

The Victim/Witness Assistance Program assists victims and those who have witnessed crimes. The Program is available through the Delaware Department of Justice, the New Castle County Police, the Delaware State Police, the Dover Police, the Wilmington Police, and Delaware Victim Services ([800-VICTIM1](tel:800-VICTIM1)). The program provides information on the status of the case, explanation of court procedures, and preparation for trial. In serious cases or where otherwise warranted, it also provides someone to accompany the victim/witness to court. Victims of violent crimes are also offered social service information and referral.

Delaware Department of Justice:

New Castle County: [302-577-8500](tel:302-577-8500)

Statewide: [800-870-1790](tel:800-870-1790)

3. Elderly Victim Service

The Delaware Center for Justice has an Elderly Victim Service that assists crime victims aged 50 and over, who have experienced any of a variety of crimes. The Center's **Project Target** specializes in assisting victims of domestic violence. If you or someone you know is 50 years of age or older and is the victim of one or more of a variety of crimes, you may contact the Elderly Victim Service's Project Target Coordinator at [302-658-7174](tel:302-658-7174), Ext. 15, Monday through Friday 8:30 a.m. to 4:30 p.m.

4. Senior Protection Initiative

The Delaware Department of Justice formed the Senior Protection Initiative ("SPI") in 2008. Initially led by founder, Deputy Attorney General Marsha White, the SPI is now led by Deputy Attorney General Regina S. Schoenberg and is housed in the Fraud Division's Consumer Protection Unit.

Today, more than ever, older adults are targeted: by telemarketers, fraudsters, and even their own family members. According to the National Council on Aging, defrauding older adults is the crime of the 21st century. The SPI works to educate older adults about how to avoid becoming a victim. The SPI also works with law enforcement personnel to detect and investigate abuse, neglect, and exploitation so that investigations and prosecutions will be more effective.

The SPI will send a representative to speak on fraud, scams, and senior vulnerabilities to community, faith-based, or social organizations. Please email SeniorProtection@state.de.us or call [302-577-8600](tel:302-577-8600) to schedule a presentation.

Elder abuse, neglect, and/or exploitation - even if just a suspicion - needs to be reported to local police and/or Adult Protective Services ([1-800-223-9074](tel:1-800-223-9074)). Always call 911 in the case of an emergency.

D. Age and Disability Discrimination in Employment

(Revised 2/09/2023)

If you are 40 years of age or older, and/or suffer from one or more physical or psychological impairments, both Delaware and federal law may provide you with protections against discrimination in employment based on your age and/or disability. Such discrimination can involve an employer's decision not to hire you or your employer's decision to discharge you from your job. It may also involve such matters as pay, fringe benefits and/or other conditions of your employment, including severe harassment based on your age or disability.

With respect to disabilities, illegal discrimination may also occur if the employer is not willing to make reasonable accommodations to your working conditions so that you can do your job safely and effectively. In order to make a claim of age or disability discrimination against an employer, the claim (also commonly referred to as a "charge of discrimination") must be filed initially with a governmental agency given the responsibility for investigating these types of claims. In Delaware, the Office of Labor Law Enforcement of the State Department of Labor is often the best choice for filing a charge of discrimination. If you believe that you may have been the victim of employment-related age or disability discrimination, you should contact the Office of Labor Law Enforcement directly for instructions on how to file a charge of discrimination. For those living in New Castle County, the Department of Labor can be reached at 302-761-8200. For those living in Kent and Sussex Counties, the Department of Labor can be reached at 302-422-1134. Additional information is available on the Office of Labor Law website: <https://labor.delaware.gov/divisions/industrial-affairs/discrimination/>.

The Federal Equal Employment Opportunity Commission ("EEOC") also performs this investigation function, although its nearest offices are in Philadelphia and Baltimore. You do not need to file a charge of discrimination with both the state and federal agencies in order to pursue a claim of discrimination. Representatives of either agency can explain to you how the two agencies work together in allocating their resources in investigating these types of complaint.

When trying to decide whether to pursue a claim of age or disability discrimination in employment, it is important to keep in mind at least two additional considerations. First, the time period in which you can make such a claim (also referred to as a statute of limitations) is usually much shorter than the time periods when a person can bring other types of lawsuits with which you may be familiar. Therefore, you should not delay in contacting the Department of Labor (or the EEOC or a private attorney) if you believe you may have been the victim of age or disability discrimination in employment. Second, the filing of a charge of discrimination with the Department of Labor (or the EEOC) is a prerequisite that must be complied with before you will be given a "right to sue." In other words, the charge of discrimination is not itself a lawsuit, but rather, an administrative requirement that must be fulfilled in order to be allowed to file a lawsuit alleging age or disability discrimination in employment.

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

Castle County (302-478-8850) or in Kent and Sussex Counties (800-773-0606) for the names of attorneys in Delaware who may be able to assist you.

V. HOUSING ISSUES

A. State and County Assistance in Delaware

1. For Renters (Revised 2/09/2023)

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

Delaware State Housing Authority

18 The Green
Dover, DE 19901
Phone: (302) 739-4263
Fax: (302) 739-6122
820 North French Street
Wilmington, DE 19801
Phone: (302) 577-5001
<http://www.destatehousing.com/index.php>

New Castle Housing Authority

77 Read's Way
Government Center for New Castle County
New Castle, DE 19720-9720
Phone: (302) 395-5600
Fax: (302) 395-5591
<http://housing.nccde.org>

Wilmington Housing Authority

400 North Walnut Street
Wilmington, DE 19801-9801
Phone: (302) 429-6700
Fax: (302) 429-6815
<http://www.whadelaware.org>

Dover Housing Authority

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

Newark Housing Authority

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

The Delaware State Housing Authority provides information regarding emergency shelters and emergency assistance. It also contains information about affordable rental properties throughout the State. <http://www.destatehousing.com/Renters/renters.php>.

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

2. For Homeowners (Revised 2/09/2023)

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

Delaware has an Emergency Mortgage Assistance Program administered by the Delaware State Housing Authority to help low-income homeowners avoid foreclosure by loaning the homeowner funds to bring mortgage payments up to date in exchange for a second or third mortgage. Income limits for qualification are \$110,700 in New Castle County and \$90,000 in Kent and Sussex Counties as of 2022 but are subject to change annually. For more information go to: <https://kissyourlandlordgoodbye.com/>

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

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

B. Home Equity Conversion Mortgage (HECM) (Revised 2/09/2023) **(Commonly referred to as a Reverse Mortgage)**

When an older individual has built up significant equity in his home and none of the programs discussed above are available or sufficient, a reverse mortgage allows the individual to access the equity and eliminate the monthly mortgage payments. The best place to find current information on government-sponsored reverse mortgages is on the Department of Housing and Urban Development Home Equity Conversion Mortgages for Seniors website. For up-to-date explanations and answers to "Frequently Asked Questions" and for links to find reputable lenders and counselors visit: www.hud.gov/program_offices/housing/sfh/hecm/hecmhome

Older individuals are advised never to pay someone for advice related to a reverse mortgage, but instead to seek lenders and advisors that have been vetted by the federal government.

The Consumer Financial Protection Bureau has information about reverse mortgages available at: <https://www.consumerfinance.gov/consumer-tools/reverse-mortgages/> and a downloadable discussion guide for consumers available at: <https://pueblo.gpo.gov/CFBPBpubs/CFBPBpubs.php>.

The following is an example of how an HECM works:

Mr. and Mrs. Smith have lived in their home for 20 years, but, because of a decrease in the value of their IRA investments and a discontinuation of part-time employment, their income has been reduced significantly. They wish to remain in their home; and they foresee no physical

difficulties – the house has a first-floor bedroom and bath with a walk-in shower. So, even if they develop mobility issues, they should not be required to seek other accommodations. The house has a current value of \$250,000. They are paying \$650 a month on a mortgage that currently has a principal balance of approximately \$50,000. Mr. Smith is 70 and Mrs. Smith is 66. Mr. and Mrs. Smith considered refinancing their mortgage conventionally to reduce their monthly costs, but a 30-year conventional mortgage on \$50,000 would not reduce their monthly payments sufficiently, and they need \$8,000 for a new roof.

For this example, we assume that the Principal Limit based on Mrs. Smith's age as the younger homeowner would be about \$125,000. (The principal limit factors vary, and generally the amount that may be borrowed (the Principal Limit) rises with the borrowers' age, and lowers as interest rates rise.)

The Smiths are deemed to have sufficient income to pay future real estate taxes and home repair costs and are deemed qualified for the HECM. So, the Smiths could take a \$58,000 advance to pay off the original mortgage and the new roof, and appear to have a \$67,000 cushion. The initial FHA Mortgage Insurance Premium, however, would be 2 percent of the Principal Limit or \$2,500; the origination fee, if charged, could be as high as \$4,500 and closing costs could also be several thousands of dollars.

We will assume the closing costs total \$10,000. As a result, the initial principal balance owed to the lender will be \$68,000 with the closing costs. The principal balance of \$68,000 will continue to grow at the annual interest rate plus the FHA insurance premium. As of 2023, the FHA annual insurance premium ranges from 0.45% to 1.05%, depending on the size of the loan and down payment.

The lender has "recourse" only to the home and only after neither of the Smiths are residing in it. The Smiths will have a line of credit for \$57,000 and can draw on the line of credit to meet future needs. Until drawn, the line of credit would grow at the same interest rate as the rate of interest accruing on the amount borrowed. The Smiths also have the option of taking an annuity to provide monthly income. If Mr. and Mrs. Smith were to die in a car accident or one were to die and the other need to move to assisted living, the house would be sold and the principal balance on the mortgage would be paid first; any remaining proceeds would be paid to the surviving spouse or to the beneficiaries of Mr. and Mrs. Smith's estate.

If Mr. and Mrs. Smith were to remain in their home into their 90's, or if their home were to decrease in value, the mortgage balance owned could exceed the value of the home. In such case, there would be nothing left to distribute as part of their estate, but Mr. and Mrs. Smith would have been able to remain in their home and independent as they desired.

C. Landlord Tenant Law (Revised 2/09/2023)

The Delaware Residential Landlord Tenant Law sets forth the rights and responsibilities of Landlords and Tenants in Delaware. It also establishes the procedures that must be followed in the event either party wishes to go to court to enforce their legal rights. The law is codified in Part III of Title 25 of the Delaware Code, or 25 Del. C. §5101 *et seq.*

To obtain a copy of the Landlord Tenant Code or to ask a general question about the Code, you may contact the Consumer Protection Unit (CPU) of the Attorney General's Office (New Castle

County: 302-577-8600; Kent and Sussex Counties 800-220-5424). If you are having a problem with your landlord, the CPU may be able to provide assistance with your problem.

There is a special provision in the Code that allows a tenant to terminate his or her rental agreement early if the tenant is accepted for admission to a senior citizen facility, a group facility or retirement home. A tenant may also terminate early if the tenant is accepted for admission into subsidized private housing or public housing, if illness forces the tenant to move on a permanent basis or if the tenant dies. In order to terminate a lease early, however, proper written notice must be given to the landlord. This notice must provide a minimum of 30 days and the 30-day period must begin on the first of the month following the notice.

If you would like to apply for senior citizen housing, a list of apartment complexes is available at: <https://delawarehousingsearch.org/>.

If you live in senior citizen housing which is subsidized with federal funds, you have rights in addition to the rights you have under State law. You should receive a copy of the rules covering your rights and responsibilities when you sign your lease.

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

D. Mobile Homes

Mobile home rentals are governed by Delaware's Manufactured Home Owners and Community Owners Act, which took effect on August 23, 2003. To obtain a copy of the act you may contact the Consumer Protection Unit of the Attorney General's Office as described above. Anyone offering a mobile home or lot in a mobile home park for rent must provide a written rental agreement. Before the tenant signs the agreement or occupies the premises, the landlord must deliver to the tenant a copy of the rules or regulations and fee schedule of the mobile home community, a copy of the Manufactured Home Owners and Community Owners Act, and a copy of the rental agreement which contains specifics such as the term of the lease, the services to be provided, the amount of rent, and the options for termination and renewal.

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

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

Upon expiration of the initial term, the rental agreement shall convert to or continue on a month-to-month basis, subject to modification of the rent amount, unless: A) either party delivers written notice at least 60 days prior to expiration of the term under the rental agreement, or B) a shorter or longer term is agreed upon by the parties.

E. Property Tax Exemptions (Revised 2/09/2023)

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

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

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

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

A credit on the School tax of 50% of the school tax line item, not to exceed \$400 is available for Seniors 65 years of age before July 1. Seniors of all income levels qualify for this credit; however, you must also have been domiciled in Delaware at least three (3) consecutive years if became a resident before January 1, 2018 or for ten (10) consecutive years if you became a resident after January 1, 2018. See the instructions in the link below. For New Castle County call 323-2600; for Kent County 744-2341; and for Sussex County 855-7824.

New Castle County

Application for real estate or mobile home exemption: <http://www.nccde.org/DocumentCenter/View/233>

Kent County

<https://www.co.kent.de.us/media/886569/application-for-exemption-from-property-taxes.pdf> -- Application for Exemption from Property Tax.

<https://www.co.kent.de.us/media/1046697/Elderly-and-Disability-Tax-ExemptionCorrected.pdf> -- Elderly/Disability Tax Exemption Application

Sussex County

Tax Assistance program

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

City of Wilmington

Application for Property Tax Exemption for Citizens over the Age of 65 or Disabled:

http://www.destatehousing.com/HomeOwnership/hb_wstap.php

Senior School tax credit, all three counties:

Please note phone numbers for each County above.

https://financefiles.delaware.gov/docs/ssptc_app.pdf

VI. CONSUMER LAW

There are many state and federal laws designed to protect consumers. The topics discussed below are highlighted as particularly important areas for older consumers.

A. Equal Credit Opportunity

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

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

When you apply for credit or a loan, one major indicator of your ability to repay is your current income. Creditors who consider income must consider types of income likely to be received by older Americans such as Social Security, pensions, and other retirement benefits. The creditor will also evaluate your debts, assets, credit history and reliability.

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

If you believe you have been discriminated against in applying for credit, you should discuss your belief with the creditor and try to convince him/her that you are credit worthy. The creditor must provide the name and address of the appropriate agency to contact to resolve your beliefs. If this fails and you still believe you have been discriminated against, you should file a complaint with the Delaware Attorney General's Consumer Protection Unit. You may call the Consumer Protection Unit from anywhere in Delaware at 800-220-5424 or 302-577-8600. Consumer information and complaint forms are also on-line at <http://attorneygeneral.delaware.gov/fraud/cpu/>.

If you're denied credit, you may have a private cause of action for damages. In addition, complaints against all kinds of creditors can be referred to the U. S. Department of Justice, Civil Rights Division, Washington, DC, 20530, at 877-382-4357 or online at www.ftc.gov.

B. Home Solicitations and Door-to-Door Sales

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

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

Delaware and federal laws also apply to sales made at a location which is not the seller's usual place of business. This means you may cancel a contract within three business days if you signed it at a special exhibit at a mall or a fair, for example. To get further information, discuss a problem, or make a complaint, call the Attorney General's Consumer Protection Unit from anywhere in Delaware at 800-220-5424. Consumer information and complaint forms are also online at <http://attorneygeneral.delaware.gov/fraud/cpu/>.

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

C. Unordered Merchandise

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

D. Debt Collection (Revised 2/09/2023)

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

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

If you are having problems paying your bills, you should contact your creditors and try to work out an agreeable payment plan. More information is available at <https://consumer.ftc.gov/articles/debt-collection-faqs>.

E. Telemarketing

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

- A telemarketer may not call you if you have asked not to be called.

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

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

If you want to stop telemarketing calls, you can register on the National Do Not Call registry online at **donotcall.gov** or by calling 1-888-382-1222 from the telephone number you want to register. Registration is free. **Keep in mind that this will not stop all unsolicited calls, particularly calls from disreputable groups, but it will stop many calls. The National Do Not Call Registry excludes charities and political groups.**

F. Phone Scams

Every year, thousands of people are victimized by phone scams, shelling out hundreds, or even thousands, of dollars. Scam artists will say anything to cheat people of money and can be very convincing. Some scammers may be very friendly and sound trustworthy. Others may become aggressive or threatening. Some red flag indicators that you have a scam artist on the line include:

- “You’ve been specially selected . . .”
- “You’ve won a prize.”
- “You’ve won a foreign lottery.”
- “The investment risk is low, and the return is higher than you can get anywhere else.”
- “You must ACT NOW.”
- “You trust me, right?”
- “You don’t need to check our company with anyone” or “you don’t have time.”
- “We’ll just put the shipping and handling charges on your credit card.”

Conning seniors out of their money has been called the crime of the 21st century. Some common phone scams include:

- The Grandparent Scam: the scam artist will call in the middle of night and/or be in a very noisy location so it is difficult to hear. The scammer will claim to be your grandchild and tell you that he/she is in trouble and needs you to wire money. If you get a call like this, hang up and call your loved one immediately. Most often, he will answer the phone and confirm that he is perfectly fine.

- The IRS scam: the scam artist will threaten you by claiming you have a tax debt that needs to be immediately settled over the phone or the sheriff will come arrest you. Some victims have also been threatened with physical violence. The IRS will not threaten to bring police or other agencies to arrest you. The IRS will not call and demand immediate payment and will never call without first sending you a bill in the mail. Finally, the IRS will not ask for your credit or debit card information over the phone or require that you pay with a prepaid card.
- Computer Scams: the scam artist will tell you that your computer has a virus or that your computer security has been compromised. The scammer will ask you for information about your computer and internet, so she can “remote in” to “resolve” the issue and demand payment from you. If you get a call about your computer’s security, HANG UP. Call a reputable company for assistance if you need help updating anti-virus software or have other computer issues.

Bottom line: **Never give your personal information out over the phone** and when in doubt, hang up the phone. No deal is so good that it cannot wait for you to do some homework.

G. Charity Scams

According to the Federal Trade Commission, most charities and fundraisers use the phone, face-to-face contact, email, and the internet to solicit and obtain donations. Scammers use the same methods to take advantage of your goodwill. Regardless of how you are contacted, avoid any charity or fundraiser that:

- Refuses to provide detailed information about its identity, mission, costs, and how the donation will be used.
- Will not provide proof that your contribution is tax deductible.
- Uses a name that closely resembles that of a better-known, reputable organization.
- Thanks you for a pledge you do not remember making.
- Uses high-pressure tactics to get you to donate immediately, without giving you time to think about it and do your research.
- Asks for donations in cash or asks you to wire money.
- Offers to send a courier or overnight delivery service to collect the donation immediately.
- Guarantees sweepstake winnings in exchange for a contribution.

Before giving to any charity, take the following precautions to protect yourself:

- Ask for detailed information about the charity, including the name, address, and phone number.
- Get the exact name of the organization and then do some research.
- Call the charity. Find out if the organization is aware of the solicitation and has authorized the use of its name.
- Never send cash.

- Never wire money.
- Never provide your credit, debit, or bank account number.
- Be extra cautious in the wake of natural disasters or local tragedies. Scam artists exploit such events.

If you think you have been contacted or victimized by a scam charity, contact the Attorney General's Consumer Protection Unit from anywhere in Delaware at 800-220-5424 or 302-577-8600.

H. Warranties (Revised 2/09/2023)

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

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

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

I. Home Repair

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

Make sure that the contractor provides you with a written and signed contract, which includes:

- The contractor's full name, address and telephone number
- The total cost of the work
- The start date and estimated completion date
- A detailed description of the work to be performed
- The schedule and method of payment including the first payment, intermediate payments, and the final payment
- Provisions for canceling the contract by either party
- A list of the materials to be used
- Provisions for obtaining any local permits

- Any warranty of workmanship or materials.

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

If you believe that you've been the victim of contractor fraud, call the Attorney General's Consumer Protection Unit at [800-220-5424](tel:800-220-5424) or file a complaint in person at 820 N. French Street, Fifth Floor, Wilmington, DE, 19801 or 114 E. Market Street, Georgetown, DE 19947; or, by email to consumer.protection@state.de.us. The complaint form is on-line at <http://attorneygeneral.delaware.gov/fraud/cpu/>

J. Consumer Pitfalls to Avoid

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

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

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

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

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

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

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

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

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

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

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

DON'T wait to get help. If you believe you have been victimized, contact the Attorney General's Consumer Protection Unit ("CPU") immediately. The CPU has many tools to assist you, even if prosecution is ultimately not viable. You can reach the CPU by calling [800-220-5424](tel:800-220-5424).

K. Protecting Your Identity and Your Credit

There are a few simple steps that consumers can take to protect themselves against identity theft and against someone using their identity and their credit to open unauthorized

accounts and make unauthorized expenditures. There is an excellent Guide published by the Wall Street Journal and available on-line at <https://www.wsj.com/articles/identity-theft-how-to-protect-yourself> that discusses ways to protect your credit, including:

- **Guard your information online**
- **Monitor your bank and credit card statements**
- **Monitor your credit report.** By law, you're entitled to a free report every year from each of the three bureaus
- **Shred sensitive documents.**
- **Consider identity theft protection if you do a great deal of on-line financial transactions or do not feel you can monitor your credit accurately.**
- **Consider a credit freeze**

For more details go to the link in the Guide.

There is one area in which there has been a recent development. In May 2018, the President signed new Federal legislation that preempts all State laws governing credit freezes and establishes the right of all consumers nationwide to request a free credit freeze. The legislation also extends initial fraud alerts from 90 days to one year. A fraud alert notifies users of the credit report that the consumer has been or may become a victim of fraud or identity theft.

A freeze on one's credit (also sometimes known as a "security freeze") allows a consumer to prohibit the release of their credit report. When the freeze is in place, if a thief applies for credit in the consumer's name and the intended creditor attempts to obtain the victim's credit report or score, the credit reporting agency will reply with no information or a notice that the consumer has frozen the file. As a result, the creditor will deny the thief's application and the consumer's credit will be protected. Of course, this does not eliminate the need for a consumer to review monthly credit card statements. Review of monthly credit card statements ensures that the card number itself has not been compromised and unauthorized charges have not been made.

So, how does the Federal freeze work? It is fairly simple: The consumer first calls the credit bureau or goes on to the credit bureau webpage and requests a permanent or temporary freeze. Once the bureau has confirmed the consumer's identity, the freeze will become effective. If temporary, the freeze will expire when the consumer specifies. Whether temporary or permanent, the freeze can be lifted with a similar request and similarly effective upon confirmation of the consumer's identity. The security freezes do not apply to parties who seek the credit report for employment, insurance, or tenant-screening purposes nor do they apply to existing creditors or to a potential creditor prescreening for the purpose of extending a "firm offer of credit." Consumers should be aware that a credit freeze will also block their ability to obtain authorized lines of credit. Therefore, when taking advantage of this security measure, consumers need to be mindful of whether they will need to seek a line of credit in the near future.

VII. END OF LIFE PLANNING

A. Estate Planning

1. What is Estate Planning?

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

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

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

2. Wills

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

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

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

A so called “simple Will” usually does the same thing as the intestacy laws. Beware that a “simple Will” is not merely a “feel good” Will that does nothing for you or your family. Even if you are satisfied with the intestacy laws, you should have a Will to select a personal representative to administer your estate. The personal representative named in a Will is commonly referred to as the “executor.” The executor collects estate assets, pays the estate debts and taxes, and makes distributions to the beneficiaries you have designated in your Will. Even if all of your assets were to pass outside of probate, your estate needs to have a personal representative to tie up your affairs (e.g. file your final personal income tax returns).

A brochure containing information on Wills and the probate process as well as additional forms are available on the internet on the website for the New Castle County Register of Wills at www.nccde.org/152/Register-of-Wills.

Whenever there is a death in Delaware, the Register of Wills must be involved if the decedent (the person who died): 1) had a Will, or 2) did not have a Will, but did own (a) an interest in real estate in Delaware either titled in the name of the decedent alone, or as a tenant in common, or (b) probate assets valued at more than \$30,000.

If the decedent did not own real estate, but did own other probate assets worth less than \$30,000 a formal probate estate need not be opened, but someone needs authority to use the

decedent's assets to pay bills, etc. A "Small Estate Affidavit" provides the authority needed. Whether a Small Estate Affidavit can be used is fact specific. For example, the person using the Small Estate Affidavit must pledge to pay or provide for all known debts of the decedent, the surviving spouse's allowance, etc. Whether a Small Estate Affidavit can be used is fact specific; the provisions for distribution of a small estate using a Small Estate Affidavit are found in Section 2306 of Title 12 of the Delaware Code.

An estate needs to be probated in the county in which the decedent was a resident when he or she died. If real estate is owned in another county or another state, then there will need to be some form of probate proceeding in the other county or state.

3. Non-Probate Property

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

4. Joint Property

People often transfer property into joint ownership with family members or friends in the mistaken belief that this will reduce estate administration costs and/or avoid probate and taxes. While joint ownership may be appropriate in some situations, it often results in unexpected outcomes, disappointments and hardships. When you transfer your property so that you own it jointly with another, you make an immediate gift to that person of the property, which could adversely affect your estate plan and your lifetime rights in the property. There also may be income tax, federal estate and gift tax, and inheritance tax consequences. If the joint owner is sued or subject to adverse circumstances, your property can be attached. Remember, when you put someone else's name on your property you lose control over it. You need that person's consent (signature) to sell the property, refinance or lease it.

There are several ways of owning property with another. The most common ways are "tenants in common," "tenants by the entireties," and "joint tenants with right of survivorship." You should obtain legal advice from an attorney who is able to explain the tax and other consequences to you.

Adding a child to a deed is rarely appropriate. The negative consequences outweigh the benefits. Adding your children to the deed is a gift, which can have tax consequences and may prevent you from receiving Medicaid benefits if you enter a nursing home. Once the property is held jointly (see the section on long term care), you lose control over the property, and the property is subject to claims by your children's creditors. The same problems can arise if you add joint owners other than a child or children.

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

If you want certain property to go to a particular person you should discuss with your lawyer whether this should be done by putting the property in joint names, by passing it to the intended person through the Will, or making some other arrangement. If your goal is to provide for the management of your affairs in the event you become incapacitated, an attorney can advise you of the merits of a general power of attorney or a revocable living trust.

5. Trusts

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

Trusts can have several important advantages, including professional management, protection against overspending, avoiding probate fees, and caring for young and/or disabled beneficiaries. Trusts can be used to manage property during one's incapacity. Some types of trusts can provide asset protection for you and for your beneficiaries. Although trusts minimize estate taxes, the named non-tax advantages far outweigh the tax benefits.

Trusts can be created by Will (testamentary trusts) or during the life of the person creating the trust (living trusts) by a trust document. Living trusts and Wills that contain testamentary trusts cost more money than simple Wills because they are more complicated and are designed for each individual. Trusts can be complicated, but can provide great flexibility and solutions to many common problems.

B. Anatomical Gifts (Revised 2/09/2023)

A gift of all or part of the body may be made by executing an advance health-care directive, a document or card designed to be carried on the person and signed by the donor in the presence of two witnesses, or by indicating consent on your driver's license.

You may obtain the form and instructions by contacting the Division of Motor Vehicles in your county. You may also sign up on-line at: https://dmv.de.gov/DriverServices/other/index.shtml?dc=dr_oth_organ. Your family may not revoke your designation as a donor after your death.

C. Funerals

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

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

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

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

The FTC rules provide other protections which can be read in more detail in the Consumer Guide to the FTC Funeral Rule. A free copy is available from the Federal Trade Commission, Washington, DC 20580 or at www.ftc.gov.

Since it is the personal representative of the estate who will control the decedent's money, it is recommended that the personal representative make the funeral arrangements. If family members pay for the funeral, they can be reimbursed from the decedent's estate, if the estate has sufficient assets. If there are not sufficient assets in the decedent's estate to pay for his or her funeral, then the person making the arrangements will be responsible to pay for the portion that is not covered.

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

D. Disposition of Last Remains

Delaware law allows an adult, 18 years or older, to specify what is to become of his or her body or cremains, if you direct your body to be cremated rather than buried. See, 12 Del. C. § 262. The direction must be in a written document, signed by the declarant and notarized. You may also authorize a specific individual to handle the disposition and ceremonial arrangements after your death. The form authorized by statute also allows the declarant to make an organ or tissue donation, as discussed above.