

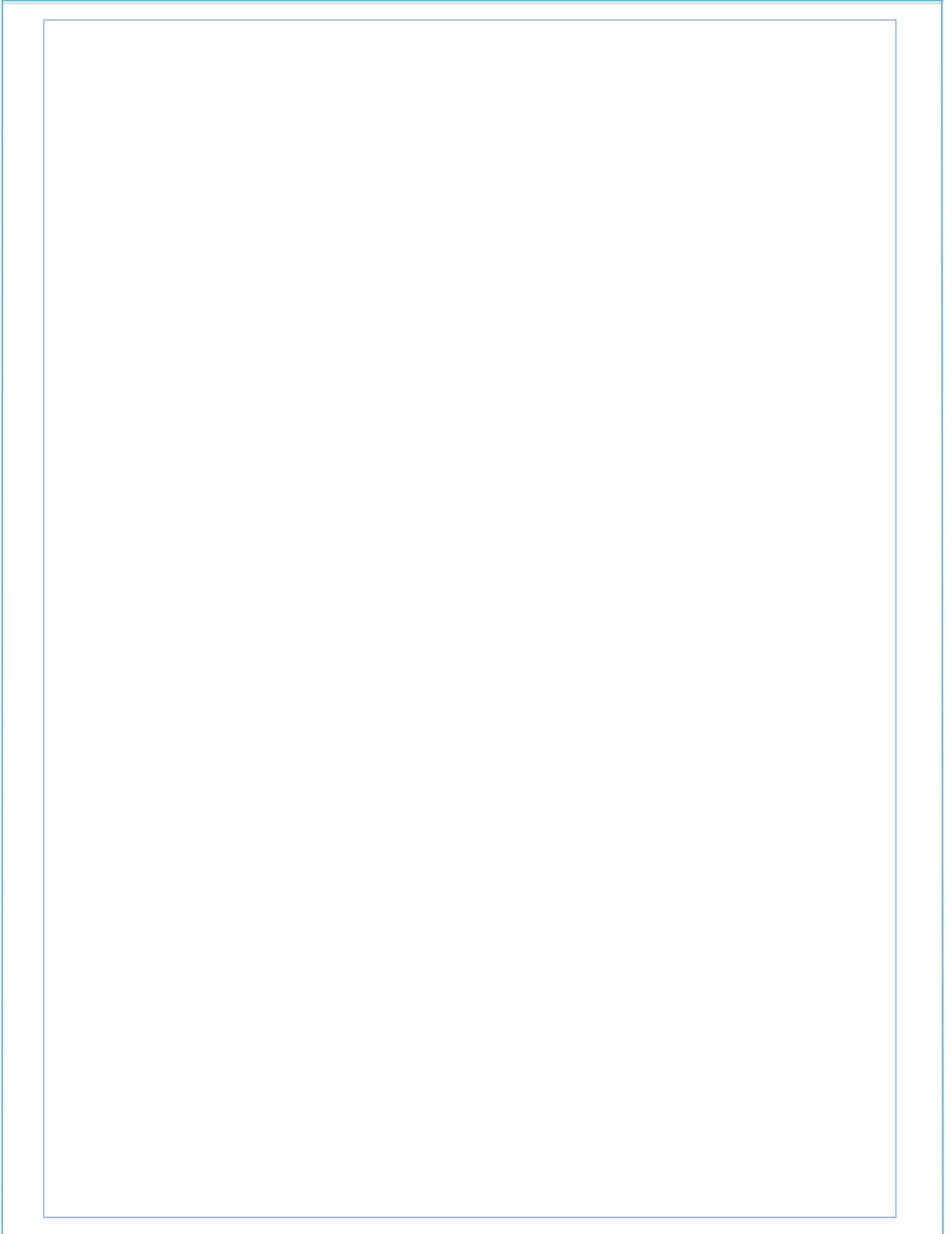
# KNOW YOUR LEGAL RIGHTS:

## A BASIC GUIDE TO LAWS AFFECTING SENIORS

A PROJECT OF THE BAR ASSOCIATION OF BALTIMORE CITY'S YOUNG LAWYERS DIVISION  
4<sup>TH</sup> EDITION



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### INTRODUCTION

**This book is not a substitute for legal advice. If you have a specific problem or question, please contact an attorney.**

Every day we are faced with questions that need answers and decisions to make. It seems that to resolve even the simplest question, it will involve confusing or complicated laws or procedures.

This book is designed to provide basic information and tools to guide you in obtaining answers to your questions. It contains a general overview of several legal topics of interest and a resource directory for services and assistance. It is not a substitute for the advice of a competent attorney or the appropriate agency.

Periodically, laws are changed to implement, modify or eliminate various programs, their benefit levels, and their eligibility requirements. Because each person's situation involves different facts, this book cannot provide definite answers for any specific problem that you may have. If you need advice about a specific problem, you should look at the list of various agencies and organizations at the back of this booklet and consider contacting the appropriate one for your problem. If you need an attorney and do not know how to find one or cannot afford one, you will also find at the back of this booklet the appropriate telephone numbers to call for information about how you can get an attorney to represent you.

### PUBLIC AND SUBSIDIZED HOUSING

In Baltimore City, the Housing Authority of Baltimore City's Public Housing Program and the Housing Choice Voucher Program (also known as "Section 8") were created to assist lower income persons, the elderly, and the disabled in obtaining a decent and safe place to live at a rent they can afford. There are also privately owned developments that contract with the Department of Housing and Urban Development.

The Public Housing Program offers three types of developments: senior buildings, for people 62 years of age and older; mixed-population developments, containing efficiencies and one bedroom apartments for non-elderly persons with a disability, people who are elderly and those who are near elderly; and family developments.

The Housing Choice Voucher Program has two parts. The first is the Tenant-Based Voucher Program, in which program participants receive a voucher they can use to rent an apartment or house on the private rental market. The second is the Project-Based Voucher Program, in which the subsidy is attached to the rental unit and whoever lives in the unit pays reduced rent as long as they are eligible for the program. The Project-Based Voucher Program offers Senior Efficiency Units for individuals who are 62 years of age or older.

#### **How To Apply:**

Eligibility for Public Housing and Subsidized Housing is based on a variety of factors, including:

- (1) annual gross income;
- (2) whether you qualify as elderly, a person with a disability, or as a family; and
- (3) U.S. citizenship or eligible immigration status.

Applicants may also be screened for criminal history, credit history, and debts owed to other housing authorities, etc. If you believe your criminal history or credit history might be a barrier to public housing, speak to an attorney to discuss expungement, bankruptcy proceedings, or other options.

Some eligibility and screening criteria are determined by the federal government, while others are left to the discretion of the public housing authority or subsidized development.

The process for applying for the Public Housing Program or the Housing Choice Voucher Program involves two phases. First, you must submit an application so that you are placed on the waiting list. Sometimes the waiting lists are closed and not accepting applications for all programs. After you submit an application, the Housing Authority will also check your references as well as the criminal background of all possible tenants and credit issues to make sure you and your family will be good tenants. The Housing Authority will deny admission to any applicant whose habits or practices are expected to have a detrimental effect on other tenants or on the project's environment.

Persons who wish to apply can obtain an application in any of the following ways:

1. Pick up an application from one of the following Baltimore Housing locations:
  - a. Public Housing Admissions Office and Leasing Center  
1225 West Pratt Street  
Baltimore, Maryland 21223

- b. Central Office of Housing Operations  
417 E. Fayette Street, Room 266  
Baltimore, Maryland 21202
2. Request an application by mail by calling:
  - a. Public Housing Admissions Office and Leasing Center at (410) 396-3225
  - b. Customer Relations Center at (443) 984-2222
3. Download an application from Baltimore Housing's website at: [www.baltimorehousing.org](http://www.baltimorehousing.org)
4. Specifically for persons wishing to apply to the Project-Based Voucher Program, applications can be picked up from the development where they wish to live.

Second, you must attend an eligibility interview when you reach the top of the waiting list. You will reach the top of the waiting list based on the date and time that your completed application was submitted, local preferences, and the availability of an appropriate-sized unit. During the interview, you must provide all information required to determine if you qualify for Public Housing or Subsidized Housing. Once all of the information is received, your application will be processed, and the housing authority will do a background check for criminal history, prior evictions from subsidized housing, and prior debts to public housing authorities. How long and the effect of these factors varies by program, but if you anticipate difficulties based on criminal or credit history, speak with an attorney before reaching the top of the waiting list.

If your application is accepted for a public housing unit, you will have to sign a lease before you move into your new home. If you are accepted for a Tenant Based Voucher Program, you will have to locate a unit on the private rental market, submit a Request for Tenancy Approval, and have the unit pass inspection before you can sign the lease. You should read the lease and any other written policies VERY carefully before you sign the lease. You should also request a copy of everything that you sign to keep for your own records.

If you have additional questions about how to apply for Public Housing or Subsidized Housing, you can contact the Department of Housing and Urban Development (HUD) office serving Maryland:

**City Crescent Building**  
10 South Howard Street, 5th Floor  
Baltimore, Maryland 21201  
Phone: (410) 962-2520  
TTY: (410) 209-6681

### Know Your Rights

A person residing in public housing or other subsidized housing may usually remain in their unit for as long as they comply with the lease and program rules. This is because, in most cases, a landlord can only seek to evict a person living in Public Housing or other subsidized housing if they have good cause to terminate the tenancy. Examples of good cause include, but are not limited to, serious or repeated violations of lease such as failure to pay rent, failure to report changes in income or to complete recertification, allowing someone to live with you who is not on the lease, or engaging in criminal activity.

If your landlord wants to evict you, they must send you a written notice explaining the specific reasons why you are being evicted and provide you with a specific date by which they want you to vacate your unit. If you receive a letter from your landlord stating that they intend to terminate your lease, you should contact an attorney immediately. If the date specified in the letter expires and you are still living in the unit, your landlord must file a lawsuit against you in court to have you evicted. If your landlord does not send you a termination letter, file a lawsuit and obtain a court order against you, then they are not allowed to evict you. It is illegal for a landlord to change the locks, turn off the utilities, or remove your belongings without a court order, and you should call the police and an attorney if this happens. If you receive a notice from the court stating that your landlord has filed a court case against you, you should contact an attorney immediately.

### Resources

In addition to the information above, the following agencies may be able to assist you:

**Baltimore Neighborhoods, Inc.**

2530 N. Charles Street  
Baltimore, Maryland 21218  
(410) 243-6007  
1(800) 487-6007

**Legal Aid Bureau, Inc.**

500 E. Lexington Street  
Baltimore, Maryland 21202  
(866) 635-2948  
1(800) 999-8904

**Homeless Persons Representation Project**

201 N. Charles Street, Suite 1104  
Baltimore, Maryland 21201  
(410) 685-6589

**The Public Justice Center**

500 E. Lexington Street  
Baltimore, Maryland 21202  
(410) 625-9409

**University of Baltimore School of Law**

Civil Advocacy Clinic  
1420 N. Charles Street  
Baltimore, MD 21201  
(410) 837-4468

**University of Maryland School of Law Clinical Programs**

500 W. Baltimore Street, Suite 360  
Baltimore, MD 21201  
(410) 706-3295

### LANDLORD-TENANT RELATIONS

#### *Application for Lease*

In addition to a security deposit, a landlord is allowed to charge an application fee to cover the costs involved in investigating the accuracy of information in the tenant's application for a lease (this would include things such as credit checks).

If the amount charged is over \$25, then the landlord must return any of the fee that is not spent on investigation within 15 days after the decision is made concerning rental to the tenant.

#### *Security Deposits*

A security deposit is a deposit of money given to a landlord at the beginning of the lease to protect the landlord against damage to the rented property caused by the tenant, or by the failure of the tenant to pay rent.

#### **Tenant's Right to a List of Present Damages Upon Occupancy**

A new tenant is entitled to receive a written list of all present damages to the rented property if the tenant requests such a list via certified mail within 15 days of occupancy. If this list is correctly requested and the landlord fails to give it to the tenant, the landlord may be penalized. The landlord may not get the tenant to agree to give up these rights either verbally or in a written lease.

#### **Amount of Security Deposit and Interest**

The security deposit can be no more than two months' rent. The landlord must give the tenant a receipt for the security deposit, although the receipt may be included within the lease itself. Within 30 days after receiving the security deposit, the landlord is required to deposit it into an interest bearing account. Within 45 days of the end of the tenancy, the tenant is entitled to the return of the security deposit, minus the amount for damages that may rightfully be withheld, plus 3% interest until January 1, 2015, and after January 1, 2015 interest to be calculated at the U.S. treasury yield curve rate or 1.5%, whichever is greater. Interest accrues at a six month rate and is not compounded.

#### **Landlord's Withholding of Security Deposits**

A security deposit, or a part of it, may be withheld for the following reasons:

1. Unpaid rent
2. Damages actually caused by the tenant's violation of the lease
3. Physical damage caused to the rented property by the tenant, the tenant's family, guests, or agents, other than ordinary wear and tear

#### **Tenant's Right to Inspection and Written List of Damages**

In order to withhold part of the security deposit for damage, the landlord must inspect the rented property and send the tenant a written list of all damages with a statement of the costs of repairing the damage. The tenant has the right to be present when the landlord inspects the rented property after the tenant moves out. In order to have this right the tenant must notify the landlord by certified mail, 15 days before the date of moving out that:

1. the tenant intends to move;
2. the date the tenant is moving out; and
3. the tenant's new address.

If the tenant gave proper notice, the landlord must notify the tenant by certified mail of the date and time that the inspection of the premises will take place. The date of this inspection must be within five days before or five days after the tenant's moving date.

If the landlord is going to withhold any part of the security deposit, then the landlord must send the tenant a written list of all damages and a statement of the costs. This must be sent by first class mail to the tenant's last known address within 45 days of the end of the tenancy. If the landlord fails to do this, then they may not keep any of the security deposit.

If the landlord unreasonably withholds any or all of the security deposit plus interest, then the tenant may bring a court action against the landlord for triple the withheld amount plus attorney fees.

The landlord must give the tenant information about the tenant's rights with respect to the security deposit in writing when the tenant pays the security deposit. If the landlord fails to do so, then the landlord cannot withhold any part of the security deposit.

### Quiet Enjoyment of Rented Property

A landlord is required to assure that the rented property is available for the tenant at the beginning of the lease term. If the rented property is not available for the tenant to enter at the beginning of the term, the tenant: (a) may refuse to pay rent until the premises are available; or (b) may, upon written notice to the landlord, cancel or terminate the lease, and obtain the return of the security deposit.

In addition, the tenant is entitled to enjoy peace and quiet in the rented property. If other tenants or the landlord causes excessive noise or disruption on the premises, then the tenant may bring a court action against the landlord for breach of covenant of quiet enjoyment.

### Escrow Accounts

If the leased property has conditions problems that present a substantial and serious threat of a danger to the life, health and safety of an occupant, the tenant may be entitled to place his rental payments in an escrow account managed by the court until the problems are repaired.

Problems that are considered to pose substantial and serious threats of danger to life, health, and safety include, but are not limited to, the following:

1. Lack of heat, light, electricity, or hot or cold running water, unless the tenant is responsible for paying for such utilities and their absence is due to the tenant's failure to pay for them.
2. Lack of adequate sewage disposal facilities.
3. Infestation of rodents (rats, etc.) in two or more dwelling units.
4. Structural defects, which present substantial and serious threats to physical safety (not minor cracks).
5. Any condition which presents a health or fire hazard to the dwelling unit.

If the tenant, her family, or guests cause any of these problems, then the escrow account remedy is unavailable.

In order to use this remedy, the tenant must first notify the landlord that the problem exists, list the problem(s) in writing, and send the list to the landlord by certified mail. Notice may also be given to the landlord by a state, county, municipal, or city agency inspection violation notice. Second, the landlord must be given a reasonable time after notification to repair the listed problems. Third, if the landlord refuses or fails to make repairs within a reasonable time the tenant may:

1. Bring a District Court action requesting to pay rent into a court escrow account because of the problems, or
2. Refuse to pay rent to the landlord and raise the existence of the problems in defense to the landlord's action for the tenant's refusal to pay rent. (Sometimes judges will not allow tenants to bring rent escrow as a defense and will require you to file another action.)

Note that the tenant must remain able to pay the normal rental payments into the escrow account at the time they would normally be due under the lease in order for this remedy to be available.

The court will look into the tenant's case in order to determine whether the facts call for establishing a rent escrow account. If the Court determines that the facts support establishing a rent escrow, then the tenant will be responsible for paying the rent into the Court's escrow account. The Court will set the amount of rent and schedule for payments. Either party may request a hearing to be held to determine if the escrow should be continued, modified, or terminated. The Court has the power to order repairs to be made, terminate leases without penalty to the tenant, and award funds held in escrow. Funds held in escrow can be distributed entirely to the tenant, the landlord, or they can be divided between the tenant and landlord based on the facts of the case

### Eviction

Eviction is a legal remedy available to landlords that allows them to regain possession of leased property when the tenant fails to pay rent or to obey the terms of the lease. No landlord can evict a tenant solely because: (a) the tenant has filed a written complaint with the landlord or with a public agency/agencies against the landlord, (b) the tenant has filed a lawsuit against the landlord, or (c) the tenant is a member or organizer of any tenants' organization. The tenant has the right to file a lawsuit against the landlord if the landlord engages in unlawful retaliation against one of these protected actions.

There are specific steps a landlord must take in order to have a tenant evicted. If the tenant didn't pay all the rent, the landlord must file a written complaint with the District Court of Maryland. The tenant must also be notified about the complaint and the trial date by first class mail, and by a summons from the District Court of Maryland. At the trial, the tenant must be given the opportunity to present evidence to dispute the amount the landlord claims is owed. If the tenant pays the amount of rent that the court determines is due to the landlord, plus the costs of the suit at the time of trial, this can stop the court from entering a judgment that would allow the landlord to evict the tenant.

When the court grants judgment for possession of the property to the landlord in a failure to pay rent case, the tenant has four (4) days to file an appeal to the circuit court. After that time period has passed, the landlord may file a Petition for Warrant of Restitution asking the court to order the Sheriff to evict the tenant. The tenant may voluntarily leave the rented premises or pay the amount of rent that is due. The court may extend this time if the tenant files for a stay of eviction based on medical reasons or other reasons. If the tenant fails to pay rent or to surrender possession of the property to the landlord within this four day period, then the landlord may file for a court order to allow for the eviction of the tenant. After this order is granted, the landlord may proceed with the eviction by scheduling an eviction date with the local sheriff's office. The tenant has the right to redeem the leased premises before eviction. In order to do this, the tenant must pay all past due rent and late fees, plus all court costs and fees. This amount must be paid in cash, certified check, or money order to the landlord before the sheriff comes to perform the eviction.

Before a landlord may evict a tenant for violation of the lease, the landlord must give the tenant at least fourteen days written notice that the tenant is in violation of the lease and that the landlord intends to repossess the premises. Some violations require thirty days written notice. If the tenant does not move out of the unit by the expiration of the notice, the landlord can file a breach of lease complaint in the District Court of Maryland. The court will notify the tenant of the trial date. The court will listen to the facts of the case and determine if the tenant breached or broke the lease agreement, whether the breach was substantial, and whether the breach warrants eviction. If the court determines that the tenant has substantially violated the terms of the lease, it may order that the landlord be given possession of the premises, or it may determine that the tenant is unlikely to breach the lease again in the future. Any tenant facing a Breach of Lease action should bring any additional factors regarding the negative impact of eviction on the family or the unlikelihood of the breach to happen again to the Judge's attention.. If the tenant fails to voluntarily leave the property, then the landlord may obtain an eviction order as stated above.

Any decision of the District Court of Maryland can be appealed, but you must act quickly. If you want to appeal a landlord-tenant case, it is best to ask the Judge how long you have to appeal, and to file an appeal with the Clerk's office immediately. You should consult an attorney for advice about your appeal.

### **Termination of a Lease**

Where a written lease exists, a lease ends or is terminated on the expiration date stated in the lease. A tenant has a right to renew the lease if the lease contains a renewal clause. Where no written lease exists and a tenant has a month-to-month tenancy, the landlord must give the tenant no less than 30 days written notice (60 days in Baltimore City) to terminate the tenancy. Where a tenant pays rent on a periodic basis other than monthly (e.g., weekly or every six months), the tenant is entitled to written notice of termination one rental period in advance. For example, if no written lease exists stating the date the lease ends and the tenant pays rent weekly, the tenant is entitled to written notice of termination no less than one week in advance of the termination date.

If a lease has expired without renewal or been terminated by proper notice and the tenant fails to return possession to the landlord, then the landlord must file a suit called a "tenant hold over action" to have the District Court of Maryland order the tenant to vacate the premises through the eviction process. A Notice to Vacate is not sufficient to evict a tenant. The Landlord would need to obtain a judgment for Tenant Holding Over and then file a Petition for a Warrant of Restitution, then schedule an eviction.

### **FORECLOSURE**

A foreclosure action can proceed once you are 120 consecutive days in default on your mortgage payments (default = missed payments). Once you have missed a payment, you should be contacted by your lender, alerting you of the default and sharing information with you on possible steps you can take. Around 45 days after default, you will receive a Notice of Intent to Foreclose and a loss mitigation application.

Do not ignore or delay in responding to any written communication from your mortgage lender. It is important that during this time you work with your lender to try to resolve the default issues. You should work with a housing counselor, which you can find by calling the Maryland HOPE Hotline at 877-462-7555.

At 120 days after default, your lender can file an Order to Docket with the Circuit Court. This begins the judicial foreclosure process. Before a lender may proceed with scheduling a foreclosure sale, they must complete a final loss mitigation affidavit and submit it to the court. They must also provide you with a mediation request form.

To request mediation, you must submit the mediation request form to the Circuit Court together with the \$50 filing fee within 25 days of when the final loss mitigation affidavit was mailed to you. A mediation will be scheduled for approximately 30-60 days from when you submit the request. Mediation is intended to provide you with an opportunity to meet with your lender and an administrative law judge, acting as a mediator, to discuss both retention (ex. seeking a modification) and non-retention (ex. short sale, cash for keys) options.

If you do not request mediation, the lender may schedule a sale of the property for 30 days or later after the final loss mitigation affidavit has been filed. If you do request mediation, the lender may not schedule a sale until after the mediation has been completed. If no agreement is reached in mediation, the lender can schedule the sale for 15 days after the mediation is held.

When you attend mediation, you can bring your housing counselor and/or legal representation. You may be eligible for free legal services to represent you. HOPE Hotline (877-462-7555) representatives can identify legal service providers that may be able to assist you for free or low cost in your foreclosure matter. In addition to representing you at mediation, an attorney may also be able to assist you if your lender has not met the foreclosure requirements under both state and federal laws. If you believe that your lender has not met these guidelines, you should reach out to an attorney as early in the process as possible. Be sure to keep all documents you receive from your lender and the court.

A bankruptcy filing prior to the sale may “stay” or temporarily stop a foreclosure, however bankruptcy is not always the best option for a homeowner. It is recommended that you speak to an attorney familiar with foreclosure and bankruptcy matters so they can determine if bankruptcy may be right under your circumstances. A reverse mortgage may also be an option to prevent a foreclosure.

If a foreclosure sale does take place, the property will be sold at a public auction, usually held at the courthouse. After a sale has taken place, it takes approximately 30-45 days for the sale to be ratified, however the ratification time can vary significantly. You may remain in the property during this time. You may be entitled to any excess proceeds following payment of the principal, interest, costs and fees to the lender, and any other liens on the property. In order to claim your right to the excess, you must file a request with the court. If the sale proceeds are insufficient to pay off these expenses, you may be subject to a deficiency judgment, in which case you may be personally responsible for the amount remaining due. In both circumstances, it is a good idea to consult with an attorney.

Once the sale has been ratified, the new owner of the property must obtain an order of possession by the court before they can proceed with any eviction process. You must be provided notice of the motion to obtain an order of possession. Once the order has been obtained and the notice provided, the new owner can proceed with evicting you from the property. It is best to have made alternate living arrangements and to move prior to or no later than when you receive the motion to obtain possession so you and your possessions are not evicted from the property.

If you are a tenant living in a property going through foreclosure, you have some specific rights. Generally, your lease survives foreclosure when the purchaser becomes the new landlord,

and the purchaser is then bound by the terms of the lease. If the new owner wants you to leave, they must send you a notice to vacate the property at least 90 days in advance. You do not have to have a written lease for these protections to apply. You can get free legal advice for tenant-related foreclosure issues from the Public Justice Center by calling 410-625-9409.

Call the Maryland HOPE Hotline at 877-462-7555 to learn whether a housing counselor and/or an attorney can help you in navigating the foreclosure process.

### TAX SALE

In Baltimore City, a house may be placed in tax sale if you are delinquent more than \$250 in property taxes (or other municipal liens) or \$350 in water bills.

You will receive a final notice from Baltimore City in February that your home may be placed in tax sale. To avoid the tax sale, you need to pay all past due amounts by April 30. If you are unable to pay the amount you owe, a certificate for the amount of taxes, water bills, and other fines such as environmental fines will be sold at the tax sale that occurs in May every year. Once the certificate sold, you will receive a notice from the City. The tax sale purchaser will also contact you 4 months after the sale. You have at least 6 months to redeem your property by paying off the amount owed on the certificate before the purchaser of your tax certificate can file a lawsuit in the Circuit Court for Baltimore City to foreclose your right to redeem your home. The longer you wait to redeem, the more expensive it becomes. In order to redeem your property, you must pay the past due amount, any current amounts due to the City for any taxes or water bills, 18% interest per year to the tax sale purchaser, and the title costs. At the 4 month mark after the tax sale occurred, legal fees also begin to be added to the amount due, with more legal fees added once a lawsuit is filed in the Circuit Court. If you are unable to pay the full amount and redeem your property, the tax sale purchaser can become the new owner of your home if they file an action in the Circuit Court and the Court signs an Order foreclosing on your right to redeem the property from tax sale.

If you have a reverse mortgage, your home can still go to tax sale. Because reverse mortgages often do not include an escrow account to pay these bills, you need to ensure your property taxes and water bills are paid through direct payment to these agencies.

It is always best to resolve overdue property tax and water bill issues as early in the process as possible. The longer you wait, the harder it can be to save your property.

### **What Can You Do?**

#### *Water bills:*

- If you have received an incorrect water bill, contact the Department of Public Works and request an informal conference.
- If you have had a water leak, contact the Department of Public Works and request a credit.
  - If you are a Baltimore City resident, 65 or older, and have a maximum income of \$25,000, you can qualify for a Low Income Senior Citizens Water Discount, which may reduce your water bill by 35%.
  - For any billing issues, including obtaining credits, call the Department of Public Works at 410-396-5398.

*Energy Bills:*

- If you are having issues paying your electric bill (which does not trigger a tax sale), you can apply for energy assistance. Call BGE at 410-685-2200 or contact the Office of Home Energy Programs at 800-352-1446 (Baltimore City residents should call 410-396-5555). Grants can help with past-due amounts and future payments.

*Property taxes:*

- Apply for the Homeowner's Property Tax Credit through the Maryland Department of Assessment and Taxation. The tax credit is based on income, and you need to apply every year for the credit. Applications are due September 1 of every year. Call Tax Credits Telephone Service at 410-767-4433.
- Apply for the Homestead Tax Credit. The Homestead Tax Credit limits the increase in taxable assessments each year to a fixed percentage. Every county and municipality in Maryland is required to limit taxable assessment increases of 10% or less each year. All homeowners must **submit a one-time application** to establish eligibility for the credit. For questions about the Homestead Tax Credit, call 410-767-2165.

*Home Repairs:*

- If you require housing repairs to help address high water bills, energy efficiency issues, or other housing related problems, call the Baltimore City Housing Department's LIGHT Program at 410-396-3023. LIGHT intake staff will talk with you about your home repair needs and help connect you to any eligible programs and resources.

*Tax Sale Loan:*

- Neighborhood Housing Services has a tax sale loan program. Generally, you must have a stable source of income, owe no more than \$1,500 in delinquent taxes or water bills, and have no current bankruptcy or liens against the property. NHS may be able to loan you the funds with a 2 year repayment plan. Contact NHS at 410-327-1200, ext. 103.

*Legal Issues:*

- If your home has already gone to tax sale, or if you need assistance resolving issues with a City department, you may want to seek legal assistance.
  - Senior Legal Services, 111 North Calvert Street, Suite 631, Baltimore, MD 21202; 410-396-1322. Intake between 10 a.m.- 12 p.m. Monday-Thursday.
  - The Legal Aid Bureau, 500 E. Lexington St., Baltimore, MD; 800-999-8904.
  - Maryland Volunteer Lawyers Service. Call their Foreclosure Intake line at 443-451-4067.
  - Community Law Center, 3355 Keswick Road, Suite 200, Baltimore, MD; 410-366-0922.

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### SOCIAL SECURITY

Social Security is the popular name for the federal Old Age, Survivors and Disability program, which is administered by the Social Security Administration. There are several kinds of benefits under the program. Retirement benefits are payable at age 65 if you were born before 1938 (however, beginning in the year 2003, the age at which full benefits are payable will increase in gradual steps from 65 to 67), or at a reduced rate at age 62 to persons who have worked under Social Security. Dependent benefits may be paid to the spouse and children of workers who are receiving Social Security. Survivor benefits are payable to the widow or widower and children, and sometimes the parent, of the deceased worker (whether or not the deceased worker received benefits prior to his or her death). Disability benefits are paid to workers who become severely (totally) disabled before age 65. In addition to any other benefits due, a small lump sum payment (usually \$255) may be payable to a surviving spouse living with the worker upon his or her death.

#### **Eligibility Requirements**

In general, the benefits payable to workers, their dependents, or their survivors are based upon the earnings record of the worker. In order for any benefit to be payable, the worker must be "fully-insured," which means the worker must have worked under Social Security a certain length of time. Social Security "credit" is measured in units called "quarters of coverage." The number of quarters of coverage needed to be eligible for benefits depends upon your date of birth or your age when you become disabled, or for survivor benefits, your age at death. Generally, anyone who has worked under Social Security for 10 years or more is insured.

#### **Covered Employment**

Almost all employment and self-employment is covered by Social Security. Employees of the federal government and railroad workers, however, have their own retirement systems and are not covered by Social Security. In addition, employees of some nonprofit organizations and of various state and local governments may not be covered. Domestic employees and farm workers are covered, though some additional rules apply. Individuals with any doubts about whether some of their earnings have been covered or properly reported may request a statement of earnings record at any time through any local Social Security office. Self-employed persons must file their own Social Security reports and taxes when they file their annual tax return.

#### **The Size of Your Social Security Check**

Being "insured" simply means that some benefit will be paid. The amount of the payment will depend upon how long you worked and how much you earned while you were working. Many factors can affect the exact amount of a particular person's Social Security benefits. It is best to contact your local Social Security office for an explanation of what is or could be payable based upon your record.

Some people may be eligible for Social Security based upon both their own work record, and their status as a dependent or survivor of a worker. When this happens, you receive the higher amount of the two benefits. You cannot receive both benefits.

If you return to work after you start receiving Social Security retirement benefits, your benefits and any benefits payable to your spouse and children based on your record may be affected. In 1998, persons age 62 to 65 could earn up to \$9,120 and still collect all of their Social Security retirement benefits. For every \$2 of earnings in excess of the Allowed Amount, you will lose \$1 in benefits, and persons age 65 to 69 will lose \$1 in such benefits for every \$3 of earnings in excess of the Allowed Amount, \$14,500.

Some people who get Social Security will have to pay taxes on their benefits. You will probably be affected only if you have substantial income in addition to your Social Security benefits.

If you file a federal tax return as an "individual," and your combined income,<sup>1</sup> is between \$25,000 and \$34,000, you may have to pay taxes on 50 percent of your Social Security benefits. If your combined income, is above \$34,000, up to 85 percent of your Social Security benefits is subject to income tax.

If you file a joint return, you may have to pay taxes on 50 percent of your benefits if you and your spouse have a combined income that is between \$32,000 and \$44,000. If your combined income is more than \$44,000, up to 85 percent of your Social Security benefits is subject to income tax. If you are married, but file a separate return, you will probably pay taxes on your benefits.

### **Applying for Benefits**

Social Security benefits are not paid automatically. You must file an application with a local Social Security Office.

Such offices are located throughout the State, including several in the Baltimore area. To contact a Social Security office in your area, look in the white pages of your telephone directory under "Social Security Administration" or dial, toll free, 1-800-SSA-1213 (1-800-772-1213) from 7 a.m. to 7 p.m. Monday through Friday. You can read about Social Security on the Internet at <http://www.ssa.gov> or "TTY" at 1-800-325-0778.

In fact, you should contact your office two or three months before you turn 65 to check your future Social Security benefits and to register for Medicare.

### **Your Right to Appeal**

If you are dissatisfied with any decision by Social Security about your claim for benefits, you have a right to appeal. The local office must give you information about how to do this. You also have the right to have an attorney or other person assist you with your appeal. Generally, in cases of Social Security Disability and SSI, there will be no attorney fee if there is no recovery.

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<sup>1</sup>Combined income means you and your spouse's adjusted gross income (as reported on your Form 1040), plus nontaxable interest, plus one-half of your Social Security benefits.

## **SUPPLEMENTAL SECURITY INCOME**

Supplemental Security Income (SSI) is a federal program that exists to pay supplemental income to elderly persons, those who are blind or disabled. This money is to meet basic needs for food, clothing, and shelter. SSI is a needs based program. This means that Social Security will count any income that a person may receive whether that income is earned or unearned. This can include money from employment or social services, including social security retirement, worker's compensation, some forms of housing aid, and money you receive from friends or relatives.

SSI is run by the Social Security Administration, but it is not the same as Social Security. Social Security benefits are paid from worker and employer contributions, and Social Security funds are not used for SSI checks. If you meet eligibility requirements, you may get SSI checks even if you get Social Security benefits; however, you do not have to be eligible for Social Security to receive SSI.

If you are 65 years or older, have little or no regular cash income, and have few assets, you may be eligible for SSI.

**The Amount of Your Check**

In 2014 the maximum payment level is \$721 per month for individual and \$1082 for a couple. These numbers are then adjusted based on your countable income. The amount of SSI you will receive, if you are eligible, is determined by taking the maximum payment level and reducing it by the amount of your countable income.

**Things You Own (Your Resources)**

If you are single (or married, but not living with your spouse), you can have resources worth up to \$2,000 and still receive SSI. The amount for a couple is \$3,000. Resources include savings and checking accounts, real estate, cash, stocks, bonds, and other valuables you own. Your home, most of your personal effects, and household goods are not considered resources. Insurance policies with a cash value or cars may affect your SSI eligibility depending upon their value.

**Your Countable Income**

You can receive some money and still be eligible for SSI payments although not necessarily the full amount of SSI. Only part of your income is counted for SSI purposes. Countable income includes earnings, Social Security checks, pensions, veterans' compensation, worker's compensation, annuities, and other cash or checks you receive. Countable income also can mean non-cash items you receive, such as food and shelter. Food stamps, however, do not count as income, and home energy assistance from certain home energy suppliers may not count as income. Generally, the first \$20 per month of income you receive is not counted. Any other income (other than earnings from work) above the first \$20 per month is counted, and this will reduce the amount of SSI you receive.

If you work while you get SSI, you can earn as much as \$85 per month without any reduction in your SSI check. However, if you earn more than \$85 per month, the amount of SSI is generally reduced by \$1 for every \$2 of income.

If you receive SSI and live in someone else's household, a son's or daughter's home for example, and are not paying your fair share of the household expenses, your SSI check may be reduced by up to one third.

**Application**

You may apply for SSI at any Social Security office, online, or by phone by calling 1-800-772-1213 or 1-800-325-0778 for TTY.

**Reporting Requirements**

Your eligibility and the amount of your check are based upon your resources and income, which means you must report any changes in your resources or income to the Social Security office. You must also report changes in your address and/or marital status. Moreover, you must inform the Social Security office if you enter or leave an institution, such as a hospital or nursing home. If you fail to report a change in status, your benefits may be affected. You are not eligible for Social Security benefits if you are incarcerated.

**Right to Question Decisions Made on Your SSI Claim or Social Security Disability Claim**

If you are told by the Social Security Administration that you are not eligible for Social Security Disability, SSI, or that the amount of your check will be reduced, you have a right to appeal this decision.

The first step in the appeal process is reconsideration by the Social Security Administration. You or your attorney, must request reconsideration, in writing, within 60 days after you receive notice of the decision.

If you are not satisfied with the result of the reconsideration, you or your attorney, have a right to ask for a hearing before an Administrative Law Judge of the Office of Hearings and Appeals. The request for hearing must be filed, in writing, within 60 days after you are notified of the results of the reconsideration.

If you disagree with the result of the hearing, you, or your attorney, may request a review of that decision by the Appeals Council, within the time specified in the notice of the result of the hearing.

If you disagree with a decision of the Appeals Council, you can file suit in Federal Court. You have the right to be represented by an attorney or a person of your choice at each step of the appeal. In Federal Court, your representative must be an attorney. Generally, there will be no attorneys fees if there is no recovery.

For more information about SSI, contact your local Social Security office.

### MEDICAID

Medicaid is a benefit program paid for jointly by the federal and state government to provide medical care and services to needy persons. In Maryland, the program is administered by the Department of Health and Mental Hygiene (DHMH). The application process is administered by the Department of Human Resources (DHR) through the local Departments of Social Services (DSS).

#### *Benefits*

Although people on Medicaid can choose their own doctors and hospitals, some doctors and hospitals do not accept Medicaid patients. Be sure to check with your doctor. If the doctor does not accept Medicaid, the individual must either change doctors or pay with their own funds. Some of the services paid for by Medicaid include:

- For children: dental care, eyeglasses, and physical therapy whether or not in the hospital.
- For anyone: clinical service, doctors care, eye examinations, home health services, hospital care, medical equipment, mental health treatment, nursing home care under doctor's order, ostomy supplies, personal care services, physical therapy if received in the hospital, podiatry care, prescription drugs (with a co-payment), limited transportation to medical appointments, x-ray and laboratory tests, and health maintenance organization care.

#### *Eligibility*

There are different types of eligibility requirements for Medicaid:

- 1) **Categorical Eligibility:** Recipients of certain federal and state public assistance programs such as SSI are automatically eligible (subject to available resource levels).
- 2) **Medically Needy Eligibility:** Individuals who are aged, blind, or disabled, but do not qualify for SSI, may be eligible for Medicaid benefits if their income and assets are less than certain levels.

As of 2013, the medically needy income level for an individual is \$350 per month. In Maryland, an individual will be eligible if recurring medical expenses reduce monthly income to below the medically needy income level. The maximum resource limit is \$2,500 for an individual and \$3,000 for a couple. There is no spenddown process for assets. If the asset level is over the limit as of the first of the month, the individual is ineligible for the entire month. Certain assets such as a home and a car are not counted for determining the resource limit.

### Medical Assistance Long Term Care

To qualify for Medical Assistance to pay for the long term care in a nursing home facility, an applicant must require, at a minimum, health-related care and services on a regular basis that are above the level of room and board and can be provided only through institutional facilities.

#### *A. Income:*

In Maryland, an individual will be eligible for Medicaid nursing home coverage so long as the individual's monthly income (not including a spouse's income) is less than the cost of care. Certain items are deducted from monthly income before a determination is made regarding whether it is less than the monthly cost of care rate. A monthly personal needs allowance of \$62 is excluded. The cost of health insurance premiums is subtracted. An allowance may be paid from the individual's monthly income to the spouse if the spouse's income is less than the Basic Maintenance and Shelter allowance of \$1,604 (as of July 2005). This may be increased up to the Maximum Maintenance and Shelter Allowance of 2,489 (as of January 2006) if the spouse's housing costs are high. If minor children, disabled adult children, or siblings live with the spouse, then each member is entitled to an allowance from the individual's income.

#### *B. Resources:*

As of 2006, an individual must have less than \$2,500 in countable assets (\$3,000 per couple) on the first day of the month in which benefits are requested. The following items are not counted assets:

- 1) One car;
- 2) Minimal household goods and personal effects;
- 3) One burial plot including a gravestone, casket, vault liner, or grave opening;
- 4) \$1,500 set aside for burial arrangements, or a prepaid irrevocable funeral account;
- 5) Whole life insurance with a maximum face value of \$1,500 and cash value less than \$1,500;
- 6) Term life insurance (no cash value);
- 7) Personal residence if it was the home of the individual before the transfer to a nursing home and either a spouse or dependent continues to live there, or the individual expresses their intention to return to the home;
- 8) Prepayment of Long Term Care Expenses.

If the individual enters a nursing home and has a spouse, an extra amount may be kept in order to protect the spouse from poverty. This is called Community Spouse Resource Allowance (CSRA). As of 2006, the spouse may keep the greater of \$19,908 or 1/2 of the couples combined resources (in addition to the assets listed above) up to a maximum of \$99,540. These numbers change, so check with the local Department of Social Services for the exact amount of resources and income in effect at the time of application. If the couple or individual's assets exceed eligibility levels, then assets may be spent on medical care and other expenses until they reach eligibility level.

### Liens

If a Medicaid recipient receiving care in a nursing home cannot reasonably expect to ever return home, Medicaid may put a lien against the home. If a lien is placed on the home, the lien equals the amount Medicaid has paid for the recipient's medical care. If the lien has been placed and the individual returns home, the lien will be removed. No lien will be placed against the property if (a) a spouse, minor child, or disabled adult child lives in the home, or (b) a sibling has resided there for at least a year prior to the Medicaid recipient's entry into the nursing home, and has an equity interest in the home.

### Transfer of Assets

If an individual with assets that exceed the eligibility levels gives assets away to someone other than a spouse, a blind child, or a disabled child within 36 months of applying for Medicaid, then the DHMH will disqualify that individual from Medicaid eligibility for one month for each \$4,300 transferred, usually beginning in the month assets were transferred.

### How to Apply

SSI recipients receive Medicaid cards automatically, but will receive these cards much more quickly if they notify the local DSS of their status as a SSI recipient. All other persons must apply in person at the local office of the DSS. Call in advance to schedule an appointment. If not physically capable of applying in person, a substitute guardian or agent may apply, or an application may be taken over the telephone or through the mail. Call the local DSS office to discuss arrangements. You may also apply online via [www.marylandsail.org](http://www.marylandsail.org).

The following information is needed to apply:

- i. birth certificate;
- ii. Social Security card (or number if the card is missing);
- iii. proof of wages and assets (such as bank statements);
- iv. proof of any other government benefits; and
- v. proof of any expenses allowed as deductions.

The DHMH must process the application within 30 days after you submit all the required information.

### The Right to Appeal

If an application is denied, or benefits are terminated or reduced, the individual has a right to a hearing for review of the application. The individual is allowed to be represented by an attorney or other individual. The request for a hearing must be filed within 10 days to continue benefits during the appeal process. A request for hearing can be filed anytime within 90 days after notification is received of denial, reduction, or termination of benefits. Hearing requests must be written filed with the DSS office. If denied at the hearing level, the individual may appeal by filing an Order for Appeal within 30 days to the Secretary of the Board of Review of DHMH. An applicant may appeal the Board of Review's decision to the Circuit Court of the applicable county.

### Maryland Primary Adult Care Program (MPAC)

The Primary Adult Care Program replaced the Maryland Pharmacy Assistance Program in 2006. If an individual does not meet eligibility for full Medicaid benefits, and does not receive Medicare, the individual may qualify for MPAC. MPAC covers pharmacy benefits as well as basic health services. The maximum income levels are \$12,958 for an individual and \$17,551 for a couple. There are no resource limits for MPAC. The Maryland Primary Adult Care Program is administered by the Department of Health and Mental Hygiene. As of January 1, 2014, the MPAC program was ended, with members receiving full Medicaid benefits under the HealthChoice program.

### FOOD STAMPS

The federal Food Supplement Program helps low-income households purchase food. A plastic Electronic Benefits Transfer (EBT) card known as an Independence Card is given to the person eligible for Food Stamps. The card can then be used at the store like a credit card. Money is added to the card on a monthly basis. Food Stamp benefits can be used at supermarkets and most stores that sell food. They may not be used for non-food items. To qualify, a household (of one or more persons, related or unrelated) must have limited income and resources. Some members of the household (between the ages of 16 and 60) may also have to work or register to work if they are able. If you live in certain types of group homes or institutions, you may also qualify for Food Stamps.

Income refers to money coming into the household on a regular basis, such as wages or Social Security benefits. This income is generally required to be less than 200% of the Federal Poverty Level. There are a number of deductions that are permitted when determining eligibility for Food Stamps. A substantial standard deduction is allowed for all households. In addition, deductions for certain medical, shelter, and dependent care expenses may be allowed, such as shelter expenses, utility expenses, and costs of caring for children or disabled adults. The amount of Food Stamps received depends upon the size of the household and the net monthly income after deductions. Maryland has eliminated the cap on the amount of resources a family may have to qualify for Food Stamps. Resources are things that you own, such as savings, investments, real estate, and vehicles. If you have been ineligible for Food Stamps in the past because of resources, you may want to consider re-applying.

It is difficult to determine whether a household will or will not be eligible for Food Stamps without going through the application process because so many factors must be considered. Therefore, if you have a low income and few resources, it would be wise to file an application, which can be done online, although you will have to go in-person with verification of income, expenses, and other deductions. In Maryland, Food Stamp applications are handled by the local offices of the Department of Social Services.

#### **Apply**

To apply, you can go to [www.marylandsail.org](http://www.marylandsail.org), or go to your local public benefits office. The Baltimore City Office is located at the Talmadge Branch Building 1910 N. Broadway Street Baltimore, Maryland 21213.

If a Food Stamp office takes action on your application that you feel is wrong, you should ask for a hearing. This is your right under the law. If this should occur, you may have an attorney or other person represent and assist you at the hearing. Several organizations exist that can assist with public benefits issues.

### REPRESENTATIVE PAYEE OR SUBSTITUTE PAYEE

#### **When a Representative Payee Can Be Appointed**

A person who is receiving benefit checks under a government program, such as Social Security, may be incapable of handling the money. In such a case, the agency involved will select another person to receive the money on behalf of the beneficiary. The checks are then issued in a form that indicates that the payments are made to one person for the benefit of the other.

A representative payee for Social Security benefits is appointed when representative payment is in the best interests of the beneficiary. The relevant factors include the physical and mental health

(including medical evidence of capability), whether anyone is helping the person with financial matters, the ability to handle money received, and how needs are currently being met.

It should be stressed that a decision to appoint a representative payee does not require a finding of legal disability, although when a person has been declared legally disabled, he/she is required to have a representative payee. Even when an individual has been found disabled and a guardian has been appointed by the court, it does not necessarily follow that the legal guardian will be the person named to serve as representative payee.

### **Duties of the Representative Payee**

Any person who is to be named payee for another must file an application with the appropriate agency, must agree to use the payments for the beneficiary's best interest in accordance with any rules of the particular agency, and must be prepared to report to the agency on the use of the funds. The payee must also report any events affecting the beneficiary's condition, which suggest that the individual might now be able to handle his/her own benefits. Consequently, the payee must keep an accurate record of all financial transactions and must be careful not to mix the beneficiary's funds with the payee's personal funds.

A person who has been named a representative payee must use the funds for the good of the beneficiary. Generally, this means using them for the beneficiary's current needs, including care and maintenance (shelter, food, and utilities), clothing, medical and dental expenses, and personal needs (toiletries, pocket money, and recreation). Benefits not needed for the beneficiary's current needs are to be conserved and invested.

### **Termination of the Representative Payee Relationship**

When the representative payee receives notice of the death of the beneficiary, the payee should follow these guidelines:

1. Do not incur new expenses;
2. Do not cash checks;
3. Do not pay any bills;
4. Do not authorize payment for funeral related expenses; and
5. Do not give any funds to heirs.

The payee should also notify the Social Security Administration and the bank handling the representative payee account.

The beneficiary may wish to terminate the representative payee arrangement if the beneficiary becomes able to manage finances again or wants someone else to be appointed representative payee. A new payee will also be appointed under the following circumstances:

1. The current payee dies;
2. The payee becomes incapable of handling funds;
3. The representative payee no longer wishes to be payee;
4. The payee fails to use or account for benefits properly;
5. The payee is no longer responsible for the welfare of the recipient;
6. The payee fails to follow the rules; or
7. The current payee is no longer suitable to act as payee.

## PEACE AND PROTECTIVE ORDERS

### **An Overview**

Peace and Protective Orders are court orders that direct one person to stop abusing or harassing another person. These orders are civil, not criminal, in nature. They are commonly known as “restraining orders.”

If someone in your life is abusing, threatening, or harassing you, you may be eligible for a Peace or Protective Order to make them stop.

Generally, Peace and Protective Orders can order that a person who is hurting you:

- Stop abusing you
- Stop contacting you
- Stay away from your home
- Stay away from your job

### **Am I Eligible to Apply For an Order?**

The determination of whether you are eligible to apply for a Peace or Protective Order is a two-step process:

- I. First, you must determine which order you may be eligible to apply for based upon your relationship with the person from whom you would like protection (this person is called the Respondent);
- II. Second, you must determine if a qualifying act of abuse, under Maryland law, has been committed against you. Not all acts of abuse are covered under the Peace and Protective Order statutes.

#### **I. Does My Relationship Qualify Me For a Peace or a Protective Order?**

Although Peace and Protective Orders are very similar in some ways, they are not identical. In Maryland, you are eligible either for a Peace or Protective Order; you cannot be eligible for both. Your relationship to the person who is hurting you determines the order for which you are eligible to apply.

Protective Orders are for people who are in family or intimate relationships with the Respondent. Peace Orders are generally for people who are not in family or intimate relationships with the Respondent, such as neighbors and friends. If your relationship to the Respondent does not fall into one of the categories covered by the Protective Order statute, then you are eligible for a Peace Order.

#### **II. Is the Abuse that has Occurred Covered Under the Law?**

The second step of the two-step process determines whether the abuse you experienced is covered by either the Maryland Peace or Protective Order statutes. Not all abuse is covered, and the two statutes cover different types of abuse. In addition, if you are filing for a Peace Order, one or more acts of abuse must have occurred within 30 days before you file.

**Qualifying Acts of Abuse Under the Law**

<b>Protective Orders</b>	<b>Peace Orders</b>
1. An act that inflicts serious bodily harm to you	1. An act that inflicts serious bodily harm to you
2. An act that places you in fear of imminent, serious bodily harm (like a threat to hurt you)	2. An act that places you in fear of imminent, serious bodily harm (like a threat to hurt you)
3. Assault in any degree	3. Assault in any degree
4. False Imprisonment – when someone prevents you from leaving a location	4. False Imprisonment – when someone prevents you from leaving a location
5. Rape, sexual assault, or attempted rape or sexual assault	5. Rape, sexual assault, or attempted rape or sexual assault
6. Stalking	6. Stalking
	7. Trespassing
	8. Harassment

Obviously, not all abuse is covered. In Maryland, emotional and verbal abuse are not covered under either the Protective Order or Peace Order statutes. These forms of abuse are serious, and if you are experiencing them, you may want to seek non-legal assistance from a domestic violence or elder law organization. The Maryland Network Against Domestic Violence can put you in touch with your local organization.

**What Relief Can a Peace or Protective Order Give Me?**

Peace and Protective Orders are civil orders, signed by a judge, which can order the Respondent to do a number of things in order to protect you from further abuse. The relief differs depending upon the order for which you are eligible.

You can ask a judge for any, or all, of the following relief:

**Available Relief**

**Peace or Protective Orders can order the Respondent to:**

- Not abuse you
- Not have any contact with you, in person, in writing, or by any other means
- Stay away from your home or temporary residence
- Stay away from your job
- Stay away from your school

**Additionally, for Protective Orders only, the court can:**

- Order the Respondent to stay away from your child’s school or child care provider
- Order the Respondent to vacate your home, if you were living together at the time of the abuse
- Award custody of any children you have in common
- Award of Emergency Family Maintenance (money), if you are married or have children together
- Award use and possession of a jointly titled vehicle
- Award use and possession of your pets
- Order the Respondent to counseling

### **I am Eligible for a Peace or Protective Order – What Next?**

#### *Filing Process*

The process of filing for an order is the same for both Peace and Protective Orders. First, you must file a petition for an order, either with the court directly or with a court commissioner if the court is closed.

In a petition for a Peace or Protective Order, you must describe the abuse that has occurred, your relationship to the Respondent, and what relief you are seeking. You should also bring a current address for the Respondent.

If you file at the courthouse, you will see a judge the same day. After speaking to the judge, the judge will decide whether to grant you a Temporary Protective or Peace Order. If the judge grants a temporary order, it will be in effect for one (1) week. You will be given a court date for the following week for a Final Protective or Peace Order hearing. If you file with a court commissioner, the commissioner will determine whether to grant you an Interim Peace or Protective Order. This order will be in effect until the second day the court re-opens, at which time you will see the judge to have a Temporary Peace or Protective Order hearing. For instance, if you file a petition on a Sunday, your hearing for a temporary order will most likely be the following Tuesday.

If the judge decides to grant you a Final Peace Order at the final hearing, it can be in place for up to six (6) months. Final Protective Orders can be in place for up to one (1) year.

#### *Fees*

You will not be required to pay any fees in order to file for a Protective Order. For a Peace Order you may be required to pay a \$78 fee, however, if you have been in an intimate, dating relationship with the Respondent, this fee is waived. In addition, a judge may waive the fee if the judge determines that you are indigent, i.e. too poor to pay. If you have not been in an intimate, dating relationship with the Respondent, and would like to apply for a waiver of the fee because you are indigent, you must file a waiver of cost form. You can obtain this form from the court or the commissioner when you file your petition.

#### *Service of Your Order*

In order for you to have a Final Peace or Protective Order hearing the week after your temporary order is granted, the police or sheriff's department must locate the Respondent and serve him or her with a copy of your Temporary Peace or Protective Order. Service on the Respondent is required to give the Respondent notice that you have filed an order, as well as an opportunity to attend the hearing for the final order.

If the Respondent is not served by the date and time of your hearing for a final order, you will be unable to proceed to the final hearing. Instead, you may ask the judge to continue your case for another week, to give law enforcement another opportunity to serve the Respondent. Your temporary order will remain in effect until the new date, and you will be given updated paperwork with your new hearing date.

### **What Happens at a Final Hearing?**

At the Final Peace or Protective Order hearing, you will need to prove that an act of abuse occurred by a preponderance of evidence. Accordingly, you should bring any evidence you may have concerning what has happened, or any witnesses to court. Evidence may include pictures, voicemails, text message, or police reports.

You are not required to have an attorney to represent you at your final hearing, however, you may want to consult an attorney, or hire one to be with you at your final hearing. The Respondent may also have an attorney to represent him or her. If the Respondent in your case is someone with whom you have been in an intimate dating relationship, you may be eligible for a free attorney, through a domestic violence organization, to represent you at your final hearing.

If you are going to represent yourself at your final hearing, make sure you prepare ahead of time. Gather and bring of your evidence with you, and ensure that your witnesses are available to come with you. At the hearing, you will get to testify first, since you are the person who filed for protection. This is your opportunity to explain to the judge what has happened and why it made you file for an order. After you and your witnesses (if you have any) testify, the Respondent will have a chance to testify. After this, the judge will determine whether to grant a final order.

**For More Information:**

If you have additional questions about how or whether to file for an order, you can reach out to your local domestic violence organization. For a list of local organizations, you can contact the Maryland Network Against Domestic Violence.

### **GUARDIANSHIP**

In Maryland, a circuit court can appoint a personal and/or property guardian for an individual found to be incapable of managing their personal and/or financial affairs. Due to the fact that this relief impacts an individual's independence and ability to make their most fundamental decisions, the law provides extensive safeguards to ensure that the rights of the subject are protected and that the remedy is only granted upon a high degree of proof. The same individual can serve as both types of guardian, or separate guardians can be appointed.

Guardianship of the property can be granted upon the court's finding that a person is unable to manage their property and affairs effectively because of a physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, or certain other types of compulsory confinement. The appointment shall only continue as long as the person has property or assets that require management. A personal guardian can only be appointed if (a) the court finds that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her welfare due to mental disability or disease, habitual drunkenness, or addiction to drugs, and (b) there is no less restrictive form of intervention available consistent with the person's welfare and safety.

**Procedure**

The person seeking the appointment of a guardian must file a petition that includes specific information about the subject, how their disability affects their functioning, and why alternatives to guardianship are not appropriate. Two physicians, or (1) a physician and (2A) a licensed psychologist or (2B) a licensed, certified clinical social worker, must provide particular information in the form of a written certificate that the person has a mental or physical disability and requires the appointment of a guardian. One of the certificates must indicate that the health care provider has examined the alleged disabled person within 21 days of the filing of the petition. The court is empowered to order an evaluation of the person who is allegedly disabled if a third party is preventing the performance of the evaluations required for the completion of the certificates.

The petition must list the “interested persons” to be provided notice of the petition. “Interested persons” include any current guardian, heirs of the person who is allegedly disabled, any governmental agency paying benefits, and any person or agency eligible to serve as guardian. These individuals, along with the person who is allegedly disabled and their attorney will receive personal service of a show cause order, the pleadings, and have an opportunity to respond to the petition and participate in a hearing.

The subject of the petition may obtain his/her own attorney or the court will appoint counsel. The court may also appoint an investigator to provide objective information about the case. The person who is allegedly disabled is entitled to attend and participate in the hearing and is also entitled to a jury trial solely on the issue of whether they have a mental disability in connection with the appointment of a personal guardian. All other aspects of the decision are to be addressed by the judge.

The law provides that the court may conduct an emergency hearing if the life of the alleged disabled person is in immediate danger or the individual is at risk for immediate, serious harm. An expedited hearing may be conducted if a medical risk is at issue.

The guardianship statute provides a hierarchy of persons and entities to be appointed the personal and property guardians. A person with a priority may be skipped over for good cause. The highest priority is assigned to a person or entity chosen to be guardian by the person who is allegedly disabled when he/she was competent, followed by close relatives and companions. If there are no such parties able or willing to serve as guardian of the person, then the public guardian of last resort is the director of the local department of social services for an individual under 65 or the director of the State or local office of aging for a person 65 or older.

If a guardian of the person is appointed, the court must also determine whether the guardian is within a class of persons and has sufficient connection to the disabled to be granted authority over decisions that involve a substantial risk to life and end-of-life decisions. If the court decides that a guardian of the property should be appointed, it may require the guardian to obtain a bond to ensure the faithful performance of duties. The guardianship order will also require that the guardian(s) of the person and property provide regular reports to the court about the status of the ward, and recommend whether the guardianship shall continue. If a public guardian of the person is appointed, the case will be reviewed by a volunteer panel of the Adult Public Guardianship Review Board every six months.

If the personal guardian is not granted authority over decisions involving a substantial risk to life and end-of-life decisions, these issues must be brought before the court. The court can apply a substitute judgment standard, based on evidence of the subject’s desires when competent or the best interest standard to make end-of-life decisions. Guardianship can be terminated upon the death of the ward, the cessation of the disability (as evidenced by a physician certificate), or for good cause.

### Alternatives

The extraordinary remedy of guardianship may be unnecessary if there is a less restrictive alternative that serves to protect the safety and welfare of the person who is allegedly disabled. Certain legal directives executed when the subject has sufficient mental capacity can provide protection upon the onset of a disability. For example, a durable power of attorney can grant an agent the power to manage financial affairs. If a person has placed assets in a trust, the trustee will handle the property according to the terms set forth in the trust agreement so that a guardian would

not be needed for those assets.

The execution of an advance directive and appointment of a health care agent can provide instructions and a decision-maker in the event the subject becomes mentally incapacitated and faces a medical crisis.

Given that the appointment of a guardian is predicated on the incapacity of the subject and a need to address particular decisions, the appointment of a temporary guardian is sometimes appropriate. A temporary guardian may be appropriate when the incapacity is projected to be short-term or when the decisions that need to be made are time-limited.

Various public agencies, including the department of social services and the commission on aging, provide services to assist with vulnerable and disabled adults, such as in-home aide services, adult protective services, and assistance with adult foster care. Legal assistance may also be available. For information about social and legal services contact the Maryland Office on Aging or the local department of social services.

### **CIVIL COMMITMENT**

A person suffering from a mental disorder may be admitted to an inpatient psychiatric unit of a general hospital or a psychiatric hospital. A “mental disorder” is defined as a behavioral or emotional illness that results from a psychiatric or neurological disorder. “Mental disorder” also includes a mental illness that substantially impairs the mental or emotional functioning of an individual so as to make care or treatment either necessary or advisable for the welfare of the individual, or for the safety of the person or property of another. “Mental disorder” does not include mental retardation or a primary diagnosis of alcohol or drug abuse. Admission may be on a voluntary or involuntary basis.

#### **Emergency Evaluation**

Admission to a psychiatric facility may be initiated through a petition for an emergency evaluation. Any interested person, a peace officer with firsthand knowledge, or a doctor or health officer, who believes a person has a mental disorder and is in clear and imminent danger of doing bodily harm to anyone, may file a written petition for an emergency evaluation. If the petitioner is not a doctor, health officer, or peace officer, the petition is filed with a court. If the court finds probable cause for an emergency evaluation, it will endorse the petition.

Petitions signed by a doctor, health officer or peace officer do not need to be endorsed by a court. A peace officer will then take the evaluatee to the nearest emergency facility. Within six hours, a physician must evaluate the person to determine whether the person meets the requirements for involuntary or voluntary admission or should be released. An evaluatee may not be kept in an emergency facility for more than 30 hours.

#### **Voluntary Admission to a Mental Health Facility**

An individual over the age of 16 may request admission to an inpatient psychiatric facility. The person may submit a formal application with the facility or may informally request admission, which does not require a written agreement. A person may not be admitted unless the individual: (a) has a mental disorder susceptible to treatment, (b) understands the nature of the request for admission, (c) is able to give continuous assent to staying at the facility, and (d) is able to ask for release.

If the person is requesting admission to a State psychiatric facility and is age 65 or older, a geriatric evaluation team of the county health department will review the application. Prior to admission, the geriatric evaluation team must conclude that there is no available, less restrictive way to provide the necessary care and treatment. If the geriatric evaluation team denies admission, it will help the person find less restrictive care.

When a person is admitted, that person (the "admittee") retains specific rights during the stay. Within 12 hours after admission, the admittee must be advised that admission is voluntary, and that the admittee may speak with an attorney. The admittee also has the right to leave. When an individual admitted pursuant to a formal application gives notice of an intention to leave, the hospital has up to three days to decide whether to pursue an involuntary commitment or allow the admittee to leave. An informally admitted individual may leave during regular business hours. In addition, at least once a year, the admittee must be asked and must formally agree to continue residency at the mental health facility.

### **Involuntary Admission to a Mental Health Facility**

Involuntary admission to a mental health facility is used if a person (a) is unable or unwilling to be voluntarily admitted to a facility, (b) has a mental disorder, (c) needs inpatient care or treatment, (d) the individual presents a danger to the life or safety of the individual or of others, and (e) there is no available, less restrictive form of intervention. The procedure balances the rights of the person being admitted, and the safety of the admittee and society.

The procedure works as follows: Any person who has a legitimate interest in the welfare of the person to be admitted may apply in writing to any facility for involuntary admission. The application must be accompanied by certificates from two medical doctors, or from one medical doctor and one licensed psychologist stating that admission is necessary. These two certificates must be based upon recent examinations by the doctors. The facility may then admit the person. If the person is age 65 or older and the admission is to a State psychiatric facility, then, as in a voluntary admission to a mental health facility, the geriatric evaluation team of the county health department must review the application. Again, if admission is denied, the geriatric evaluation team will help find less restrictive care for the person.

Once the person is admitted, a number of actions are required. Within 12 hours, the person must be advised that admission was involuntary and that the admittee has a right to be represented by an attorney. If the person is unable to afford a private attorney, he/she should contact the Office of the Public Defender.

The individual is given notice of an upcoming hearing. Further, the admittee shall be examined by a psychiatrist within 24 hours after admission for a determination as to whether the person meets the admission requirements or should be released. Within 10 days of admission, the admittee shall be given a hearing before an administrative law judge to determine whether he/she should be kept at the mental health facility or released. At the hearing, the admittee has the right to be represented by an attorney, to present evidence, and cross-examine witnesses. The admittee's family will also be told all of this information. The facility bears the burden of proving by clear and convincing evidence that the individual meets the standard for involuntary commitment.

There are additional procedures required to protect the person involuntarily admitted. At least every six months, new doctors' certificates must be filed that state whether the admission should be continued. If continued involuntary admission is sought, the admittee must be given notice of an upcoming hearing, his/her admission status, and other rights.

When someone is admitted without consent, that person or anyone interested in that person's welfare may ask the local court to order a release. Such a request may be made at any time. If the court denies this request, an appeal can be taken to an appellate court. After an appeal, the person may not ask the court again for at least one year unless a sworn statement by a doctor is submitted indicating that the admitted person's condition has improved in the interim.

### **Rights During a Stay at a Mental Health Facility**

During residency at a mental health facility, a person has certain rights, including the right to mail and receive letters, to telephone anyone who wishes to speak with the person, and to receive visitors, including an attorney and clergy. The admittee also has the right to receive treatment and rehabilitation, to be free of unnecessary restraints, and to be free of abuse by anyone.

Medication may not be given to an individual refusing it except:

1. In an emergency, on the order of a physician, when the individual presents a danger to the life or safety of the person or others; or
2. The person has been involuntarily committed and the medication is approved by a clinical review panel whose composition is defined under the law or an admittee's court appointed guardian.

Unless adjudicated separately, the person also has the right to vote, and to hold and dispose of property. The right to leave depends upon whether admission is voluntary or involuntary as described above.

Upon release from a mental health care facility in both voluntary and involuntary cases, the facility shall notify the next of kin and present an aftercare plan to the person leaving.

## **ESTATE PLANNING**

### **WILLS**

#### **Some Basic Facts About Wills**

A Will is a document in which you direct who is to receive your property (called your "estate") after your death. By using a Will, you can give everything you own, including land, automobiles, household items, money, and securities, to anyone you want. It is also advisable to think of some alternatives for distributing your property in the event that your original intentions are impossible to carry out.

In Maryland, a valid Will must meet these requirements:

- 1) The maker of the Will, called the testator (or testatrix, if female), must be at least 18 years old.
- 2) The testator must be of "sound mind" at the time the Will is prepared. This requirement means that you must understand that the Will directs what will happen to your estate upon your death.
- 3) The Will must be written (typed or handwritten) and signed by the testator, or signed by another person for the testator in his presence and by his express direction.
- 4) The Will must be witnessed by at least two people in the presence of the testator.

Your Will should name a Personal Representative to administer your estate upon your death. Wills may be safely kept several places, including in the possession of the testator, the Register of Wills, the testator's attorney, or in a safe deposit box. Regardless, it is important to inform your Personal Representative of the Will's location. Individuals and certain institutions, such as a bank or trust company, may serve as a Personal Representative. According to law, an individual serving as Personal Representative must be at least 18 years of age. The Personal Representative need not be a resident of Maryland, and he/she also need not be an attorney.

After the testator's death, it is the Personal Representative's responsibility to see that the Will is "probated." The administration of the estate includes payment of all debts and taxes of the decedent from assets of the estate and the distribution of the remaining estate as the Will directs.

If the Personal Representative is unable to carry out his or her duties, the court will appoint a successor. It is recommended that you name an alternative choice for Personal Representative in your Will to avoid disputes. If you have no Will or if the Personal Representative and the successor named in your Will are unable to act as such, the Orphans' Court will appoint a Personal Representative. The law provides a list of acceptable persons. Spouses and adult children are given first priority if they apply for appointment.

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### Dying Without a Will

If you die without a Will, a Personal Representative appointed by the Orphans' Court will distribute your property to your heirs in accordance with Maryland Law. The rules for distribution are complicated, but some of the general rules are as follows:

- 1) If you are survived by a spouse and a minor child, the spouse receives one-half of the estate, and the child or children receive the balance. If the children are not minors, the spouse's share is \$15,000 plus one-half of the remainder.
- 2) If you leave a spouse and a parent, but no children, the spouse receives the first \$15,000 plus one-half of the remainder, and the parent receives the balance.
- 3) If you leave children, but no spouse, the property is divided equally among the surviving children.
- 4) If you are survived by a spouse, but no children or parent, the spouse receives the entire estate.

### Changes in Your Will

A Will that meets all of the requirements described earlier is valid until it is changed or revoked. A Will may be revoked by the testator in several ways, if:

- 1) A testator marries, and
- 2) Such marriage is followed by the birth, adoption, or legitimization of a child, and
- 3) The child or the child's descendant survives the testator,
- 4) then any Will executed prior to such marriage is automatically void.
- 5) If a testator obtains an absolute divorce or his marriage is annulled, all provisions of a Will executed prior to the divorce or annulment that relate to the ex-spouse will be automatically revoked unless otherwise provided in the Will or divorce decree.
- 6) A will can also be revoked by burning, canceling, tearing, or obliterating it by the testator or some other person in his presence by his express direction and consent.

Therefore, it is appropriate to review your Will periodically, but particularly when changes occur in your marital status.

Changed circumstances may require an addition or correction by a Codicil (a document amending the original Will). It is important to note that a Codicil must meet all of the legal requirements of a Will as discussed earlier. You may also need to completely re-make the Will if substantial changes occur in your planning. Finally, periodic review by an attorney may be necessary because of frequent changes in the tax laws.

### What to Do When Someone Dies

If someone in your family dies, it is important to ascertain whether the person left a Will. Once this is known, you should contact the Register of Wills in the county or Baltimore City in which the decedent resided. The Register will be helpful in determining what must be done to settle the estate. Depending upon the size and complexity of the estate, it may be necessary to contact an attorney for assistance.

### Life Insurance

Life insurance benefits pass to whomever the policy owner designates as the "beneficiary." Consequently, these benefits usually are not affected by your Will, however, if your life insurance policy is payable to your estate after death, the proceeds of such policy will be distributed according to your Will. Such an arrangement is generally unwise because proceeds payable to your estate are subject to inheritance tax. See the "Life Insurance" Chapter that follows.

### Joint Ownership as a Will Replacement

In many cases, the distribution of jointly held property, whether it be savings accounts, stocks, bonds, or real estate, will not be affected by the writing of a Will. Certain types of jointly held property will pass automatically to the surviving owner upon your death, regardless of the provisions of the Will. See the "Joint Ownership," "Banking," "Stock and Bonds Ownership," and "Real Estate" Chapters that follow.

In order to avoid the costs and delay of court administration, many people attempt to use joint ownership rather than a Will for passing their property to their heirs. It is important to understand that adding someone else's name to your property (real estate, bank accounts, etc.) means that the other person may have equal control over the property during your lifetime and will certainly receive it at your death. Adding names to a title or deed may also make you ineligible for various tax credits and government benefits, as doing so opens the door for creditors of your joint owner to place liens on the jointly held property to satisfy a debt that may be owed.

## TRUSTS

Trusts are treated legally as distinct individuals, much like persons. They are subject to many of the same taxes as individual persons (namely those related to property, gifts, and income), and this is due mostly to the fact that trusts are used as a means of holding legal title to property.

Due to their nature of serving as legal tools in this respect, trusts differ from persons in various ways. They cannot exist or operate on their own, and are instead created when a separate legal entity (called a "settlor" or "grantor") executes a written "trust instrument." In this document, the settlor appoints one or more "trustees" to administrate the trust and, by extension, to control the property held in trust. The trust instrument will direct the trustees in their duties, usually requiring them to distribute, or use the property or the income generated by the trust's assets for the benefit of other individuals (called "beneficiaries").

### When Should Trusts Be Considered?

In order to identify the immense benefits that trusts afford, it is necessary to first understand the probate process. When people pass away, their property and other assets could be subject to probate. “Probate assets” are those items of property that are titled solely to the deceased person. This could include cars, homes, and cash. “Non-probate assets” are any items that are either not titled to the deceased or otherwise titled to both the deceased and another person. This includes assets that designate beneficiaries such as life insurance policies and individual retirement accounts, which will avoid probate “by operation of law,” meaning that they will immediately transfer to the beneficiary or beneficiaries at the time of the original owner or policyholder’s death. This also includes gifts made during a person’s life and bequests made using a Last Will and Testament.

Transferring property to a trust requires that the settlor passes legal title to the trust. As a result, trusts are extremely useful in avoiding probate and expediting estate administration, which can often last two years or more after the person’s death. Most people own at least some probate assets, and probate can sometimes treat them in undesirable ways once their owner deceases—by diminishing their value, passing ownership to a distant heir instead of someone more appropriate, or even allowing the state in which the decedent resided to acquire the assets completely. While trusts are never required, they do offer substantial security in guaranteeing that a person’s probate assets are treated in the way their owner wishes.

Trusts are frequently implemented in income, estate, and gift tax planning (sometimes collectively known as “wealth preservation” or “wealth management”). Most people would receive little or no benefit from such sophisticated planning, because its purpose is to avoid costs and taxes that are only recognized when the person’s property has substantial value—almost always in excess of \$1 million.

Trusts also present other miscellaneous opportunities in certain cases. For example, trust instruments are not kept on public record (while Wills are), so if a person has considerable privacy concerns, or personal disputes and wishes to transfer property without disclosing who the recipient is, trusts can usually accomplish this. Also, with the increase in divorces, remarriages, custody disputes, and adoptions, trusts may provide additional security and protection from particular persons or groups of persons. Trusts also afford protection from creditors and other claims on property, but many regulations have been passed that restrict the abusive “shielding” of trust property and evasion of taxes, making the use of trusts particularly rare.

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### How Is a Trust Created?

There are two ways in which trusts may be created, and both methods result in different kinds of trusts. The first is an “inter vivos” trust (a trust “between the living”), which is created the moment that a settlor executes a trust instrument. The second is a “testamentary trust,” which is planned and described in the settlor’s Last Will and Testament and only goes into effect when the settlor deceases.

In either case, the trust instrument or Will may direct a great deal of actions for the trustees to take and, in this way, they have laws of their own, which the settlor has great liberty in choosing. That being said, all trusts and trust parties (settlors, trustees, and beneficiaries) must abide by the laws of the United States and whatever other jurisdictions have the authority to govern them. Those who believe that they may want to create a trust should, therefore, always seek the advise of a lawyer before doing so.

### Who Should Serve as a Trustee?

Depending on the settlor's purpose in establishing the trust, the appointment of the trustee may be a determining factor in whether the trust will accomplish its goals or not.

Virtually any legal entity may serve as a trustee, from an individual person to a corporation, and there are inherent benefits and issues for each type. For example, appointing close friends as trustees would allow a settlor to work very closely with them in deciding how to administer the trust, however, corporate trustees present a significant advantage over individuals: corporations do not die, so if the settlor intends for the trust to serve a long-term purpose (like contributing to a charity), appointing a corporate trustee may be more appropriate.

Settlors may choose not to appoint only one entity as a trustee, and may then instead appoint multiple co-trustees. Additionally, the settlor can give the co-trustees equal or exclusive powers, or even require both to consent before making decisions. This is particularly useful when a settlor wishes to establish a trust to benefit one or more irresponsible beneficiaries. A common example of this is appointing all of a settlor's three children as both beneficiary and co-trustee, requiring any one of them to obtain the consent of the other two before accessing any of the trust's assets.

Appointing certain people as trustees or co-trustees may result in the trust being treated as a revocable trust when it was intended to be an irrevocable trust. This most frequently occurs when a settlor appoints his or her spouse as sole trustee to an irrevocable trust. Due to the intrinsically intimate relationship of a married couple, having one spouse serve as trustee does little to limit the other's ability to manipulate the trust and its assets.

There are infinite varying purposes for trusts, which makes the choice of whom (or what) to appoint as a trustee will be more important in some cases than others. For this reason, potential settlors to a trust should provide their lawyers with as many details as possible about their wishes and their personal relationships in order to make the best decision.

### What Are Common Types of Trusts?

There are two broad categories of trusts based upon whether they can be changed or terminated after their creation.

A "revocable" trust is one in which the settlor retains a great deal of administrative power, meaning that the settlor may change ("amend") the trust's terms or terminate ("revoke") the trust completely. The clearest example of this is when the settlor appoints him- or herself as sole trustee. In most such cases, although the legal title of the property is held by the trust, the settlor will be taxed as if the settlor owned the property.

An "irrevocable" trust is one that cannot be amended or revoked by the settlor. Any transfer of property that the settlor makes to the trust is considered a completed gift—that is, the settlor forfeits all legal rights and claims associated with the property, and receives no benefit in return. A settlor has deceased by definition in the creation of a testamentary trust, which means all testamentary trusts are irrevocable. Additionally, all revocable trusts convert to irrevocable trusts at the death of the settlor.

These categories are further separated by type depending on what is the specialized purpose of the trust. Legally speaking, the names used to describe these specialized types of trusts have virtually no bearing on the treatment of the trusts—that is, the names are only used for convenience to describe the purpose of the trust. All specialized trusts are either inter vivos or testamentary trusts, and of the inter vivos trusts, all are either revocable or irrevocable.

Listed below are five common examples of specialized trusts:

- A “marital deduction and bypass trust” is a trust through which one spouse transfers his or her assets such that the other spouse may retain ownership of them. This is useful in avoiding negative estate tax treatment at the time of death for either spouse, and is therefore only useful to very wealthy couples.
- A “qualified terminable interest property trust” (sometimes called a “QTIP trust”) allows one spouse to transfer property to the trust, while the other spouse retains the right to collect the income generated by the trust property. After the surviving spouse’s death, the trust’s assets are distributed as the settlor—not the surviving spouse—wishes, making this a particularly useful trust for remarried couples; due to the repeal of the “generation-skipping” tax in 2010, QTIP trusts have been growing in popularity amongst blended families wherein a settlor wishes to pass assets to his or her own children instead of those of his or her current spouse.
- A “qualified personal residence trust” (or “QPRT”) allows a settlor to transfer the title of his or her personal residence to a trust (to be given to a beneficiary later) while retaining the right to live in the home. This is useful when the property in question has appreciated in value because the value of the rent payments that would have been available to the beneficiary if the property were leased is subtracted from the value of the property on the date of its transfer.
- A “special needs trust” can be established to provide for a disabled or minor beneficiary. This is much like establishing a personalized guardianship, since the settlor is able to specifically direct how the trust will be used for the beneficiary. With special needs trusts, it is especially important for the settlor to appoint a trustee whom he or she—for lack of a better term—trusts, because the disabled or minor child will need the trustee’s consent before accessing the trust’s assets.
- “Pet trusts” illustrate the extent to which trusts can serve a very narrow and personal wish for the settlor, as they are created solely to provide for a pet in the event the pet survives the settlor.

Clearly, there are many ways in which trusts can be useful to people of every lifestyle, asset level, and income bracket, however, the use of trusts is a purely personal choice—and no one is ever required to establish a trust. Those who believe they may find a trust useful in accomplishing their goals should consult an attorney knowledgeable in trusts, estates, taxation, and the probate

## POWERS OF ATTORNEY

### **What Is a Power of Attorney?**

A power of attorney is a written statement granting one person (called the “agent” or “attorney-in-fact”) the legal authority to act for another person (called the “principal” or “grantor”) under certain circumstances. Generally, powers of attorney only confer those powers to the agent when the principal is not able to perform the relevant types of actions on his or her own or at the occurrence of a particular event indicated in the written statement (for example, when the principal is deemed incompetent or incapacitated). The principal, however, usually has the freedom to extend these powers to agents even when the principal is able to perform those actions independently.

### **What Kinds of Powers Can Be Granted?**

There are two broad categories of powers of attorney. A “general” power of attorney grants broad authority to the principal, and is often used to enable the principal to make virtually every decision on the principal’s behalf. “Limited” powers of attorney, by contrast, can be construed narrowly, granting only specific powers or classes of powers to the principal (for example, the authority to make withdrawals from the principal’s bank account or the power to make medical decisions on the principal’s behalf).

### Who Should Have a Power of Attorney?

Most professionals recommend that every adult have an up-to-date power of attorney. Powers of attorney are the most effective ways to ensure that a person's wishes will be carried out in the event that that person is disabled or harmed in such a way that he or she cannot act on his or her own. This is because powers of attorney allow people to choose exactly who will make their decisions for them in those events, avoiding "default" rules that would result in a legal determination of who will have the same authority if no power of attorney exists.

### When Should a Power of Attorney Be Executed?

A power of attorney should not only be executed once an individual reaches adulthood, but it should also be updated regularly. Powers of attorney are subject to changes in legislation like any other legal document, which means that both the validity and the effect of a power of attorney can change over time. For example, Maryland adopted the Uniform Power of Attorney Act in 2010, which introduced certain additional requirements for valid powers of attorney and new default rules that now apply to all powers of attorney. Because legislative changes such as these could occur at any time, every adult should consult a professional somewhat regularly—if not to update his or her power of attorney, then at least to ensure that it remains effective in accomplishing what it is intended to.

### When Does a Power of Attorney Become Effective, and When Will It Terminate?

The principal has the freedom to choose when and under what circumstances a power of attorney will become and remain effective, and he or she always retains the right to terminate ("revoke") it. It is generally advised that principals choose to make the power of attorney effective at the moment it is executed. This is because one of the primary purposes that most powers of attorney serve is to protect the principal when he or she becomes incapacitated, which unfortunately cannot be predicted in most cases. Principals, however, may decide to designate a specific time when the power of attorney will come into effect, called a "springing" power. Springing powers can be useful in very limited circumstances. For example, if a principal will be out of the country at a certain determined time, but wishes to have an agent act in a legal capacity during their absence, a springing power may be implemented to accomplish this and terminate when the principal returns.

A power is said to be "durable" when it remains in effect past the time when the principal becomes incapacitated. In Maryland, all powers of attorney are durable by default, but in other states, it is possible that they are not. Additionally, it should be noted that all powers of attorney terminate when the principal deceases.

### Who Should Be Appointed as Agent?

In nearly all cases, the principal should appoint only those persons that he or she trusts in a power of attorney. The agent is given the power to make sometimes very personal decisions for the principal, so the agent should be familiar enough with the principal to predict which choices the principal would make if he or she were able to do so.

Intimacy between the principal and the agent, however, is not the only consideration to make. The principal should also consider who would be most knowledgeable and effective in making the kinds of decisions related to the powers being conferred to them. For example, many people choose to appoint one of their children as their financial power of attorney (because that child is fiscally responsible) and another as their medical power of attorney (because that child is more aware of his or her parent's personal preferences or is more readily available to respond in the event of a medical emergency).

Principals also have the freedom to appoint “joint” agents, in which case they grant more than one agent the same authority. The principal can either require that the joint agents agree before making a decision or instead designate that any of the agents may act at his or her own discretion. There exist certain tradeoffs in making these decisions. For example, requiring agreement between joint agents may bring decisions to a stalemate or otherwise hinder progress at potentially critical moments (as in the case of a medical emergency). That being said, if a principal does not trust any particular agent to act solely on his or her behalf, choosing to require consent among the agents may be advisable.

Absent significant familial disputes, most practitioners recommend that principals extend the power to access medical records and make medical decisions to every close family member without the requirement of consent from any other agent.

## LIFE INSURANCE

### Types of Life Insurance

Life insurance is a complex matter, and it is important to receive sound advice. Not all policies are the same. Some provide coverage for your lifetime, and others cover you for a specific number of years. Some build up cash values and others do not. Some policies combine different kinds of insurance, and others let you change from one kind of insurance to another. Some policies may offer other benefits while you are still living.

Generally, there are two basic types of life insurance you will need to consider:

- 1) term insurance (sometimes referred to as “temporary” insurance), and
- 2) permanent insurance (also known as cash-value or whole life insurance).

#### 1) *Term Insurance*

Under term insurance policies, you pay a premium and are provided coverage for a term of one or more years (as specified in the policy), and must be renewed when that term ends. A death benefit is paid by the insurance company to your beneficiary(ies), as specified in the policy, only if you die during a covered term. Generally, term insurance offers the largest insurance protection for your premium dollar, but usually does not build up cash value to be used in the future.

Premiums for term insurance are usually lower to start, but increase with age. You may combine cash value life insurance with term insurance for the stage of life when you most need to replace income with a life insurance benefit for your survivors.

With most term insurance policies, you can renew the policy for one or more terms, even if your health has changed. Each time you renew the policy for a new time period, however, the premium may be higher. You should ask what the premiums will be if you continue to renew the policy and whether you will lose the right to renew the policy at a certain age. Sometimes, for a higher premium, companies may offer you the right to keep the policy “in force” for a guaranteed period at the same price each year. At the end of that time, however, you may need to pass a physical examination to continue coverage and your premiums may increase.

Under certain circumstances you may be able to trade a term insurance policy for a cash-value policy during what is called a “conversion period” even if you are not in good health. Should you decide to do this, premiums for the new policy will be higher than you had been paying for the term insurance.

## 2) *Permanent Insurance*

There are different types of permanent insurance policies, which include universal life, variable universal life, and whole life. Generally, permanent insurance provides long-term financial protection, by providing both a death benefit and, in some cases, a cash saving component. Because of the savings element, premiums for these policies are higher, but usually remain the same. The cash value amount for such policies is set forth in the policy itself.

Under a permanent insurance policy, the insurance company will pay the death benefit to your beneficiary(ies) as specified in the policy. No matter how much cash value you may have accumulated under the policy the moment before you die, your beneficiary(ies) can collect no more than the stated death benefit. Any loans, including interest, that were taken out against the cash value of the policy during your life and are not repaid at the time of your death, will be subtracted from the death benefit. This may result in your beneficiary(ies) receiving less than the face value amount of the policy. One exception, however, is that some whole life policies pay both the death benefit and the accumulated cash value, if any, when you die.

### **The Amount of Insurance You Need**

In deciding whether to purchase insurance, the first question is usually whether you need insurance at all, and if so, how much. The fundamental questions are how much money your dependents would need if you died tomorrow and what other assets are otherwise available to them. In calculating the amount of insurance needed, take into consideration such factors as future family financial needs, present assets, potential Social Security, potential pension benefits, and inflation.

### **Insurance, Claims of Creditors and Estate Taxes**

Under Maryland law, the proceeds of an insurance policy are exempt from claims of creditors; however, this protection will not apply if an insured pledges the proceeds of any insurance policy as security for a debt.

If your estate will owe federal estate taxes, then life insurance can be considered in your estate planning as a method of paying such taxes. Under current law, an insurance policy can be transferred irrevocably to a qualified trust. If the transferor survives for a certain number of years, the proceeds will be excluded from the taxable estate. Such planning is complex and should be undertaken only with the assistance of an attorney.

### **Existing Life Insurance Policies**

As with a Will, circumstances that change during your life will require you to occasionally review your life insurance policy. In the case of a term insurance policy, you might consider terminating the policy if the premiums increase beyond your needs or means as you get older. The policy itself will terminate automatically after the expiration of its term (as specified in the policy) unless you continue to pay the necessary premiums for the next term in order to keep the policy in force.

On the other hand, in the case of a permanent or cash-value insurance policy, the premiums usually stay the same. Therefore, you may want to maintain payment of premiums or use some of the cash-value that has accumulated under the policy to pay the necessary premiums or other expenses. If you fail to pay the premiums, the insurance company will, at your request, usually apply the cash surrender value of the policy (the "savings" element) to pay the premiums in order to keep the policy in force. Alternatively, if you stop paying the premiums, the insurance company can convert the policy to a "paid-up" policy. A "paid-up" policy means that you no longer have to pay premiums and the amount on the face of the policy (the insurance protection) is reduced to compensate for the lower premium payments.

### Changing the Beneficiary

If you would like to change the beneficiary (the person who will receive the benefits) of your policy, then you should contact your life insurance agent or the life insurance company that sold you the policy in order to complete the necessary change of beneficiary form(s). You must complete the appropriate form(s) through the insurance company in order to change your beneficiary. If you have any questions about your current life insurance protection, you should contact a reliable agent who can assist you in your planning. Again, a periodic review is important to take into account changes during your lifetime.

### Life Insurance Regulation

In Maryland, the Maryland Insurance Administration ("MIA") is the state agency that regulates the business of insurance, including life insurance. If you are having a problem related to your insurance, the MIA may be able to help you resolve it. The MIA may also be able to provide you with educational materials (such as consumer guides) to help you understand the different types of coverages available, and your policy rights and obligations. The MIA can be reached at (410) 468-2000 or (800) 492-6116, and its website is located at [www.mdinsurance.state.md.us](http://www.mdinsurance.state.md.us).

## FUNERALS

Death is something no one wants to think about, let alone plan before it happens, however, with proper planning, much of the stress and costs can be minimized.

A broad range of options exist when planning a funeral, from an elaborate, costly traditional funeral, to cremation, to donating your body to science. It is important to seek information about choices and costs, whether your needs are immediate or you are planning ahead.

### Advance Planning

Contracts prepared in advance for future funeral services, which can include embalming or cremation, are regulated by Maryland law. All such pre-need contracts must contain the names of the parties, including anyone who is to receive benefits under the contract, the total price, the method of payment, and a description of the services, burial merchandise, or vault to be furnished. Also, the money paid on such a contract must be placed in an escrow account in a bank, trust company, or savings and loan association. You may cancel a pre-need contract at any time in writing, and you are entitled to a full refund. If you are contemplating signing a pre-need contract, have it reviewed by your attorney before you sign.

Irrevocable burial trusts are another planning tool that can be used, especially if a spend down is required under Medical Assistance. If you are applying for Medical Assistance, then this may be an option for you, especially if you have too many assets to qualify. Check with your lawyer or a counselor at Social Services for the current law on irrevocable burial trusts, as they cannot be revoked.

Put your funeral plans in writing and keep them where they will be easily found, not in your Will or a safe deposit box. In Maryland, the next-of-kin has control over the body, and, therefore, you must make your wishes known to the person who will be responsible for your plans.

### Costs of a Funeral

Funeral expenses can be paid from your estate before any other creditors, but unless you have a Will that allows for an exception, the limit is only \$10,000 and some funerals are more expensive. This means if you die with a lot of debts that must be paid, and your family members pay for your funeral, then they will only be reimbursed for the legal limit unless you have a Will that allows for an exception, or petition the court for approval. Family members should also keep any and all funeral receipts to be able to seek reimbursement.

A casket is a major purchase. A simple pine box is the least expensive and fulfills Maryland legal requirements. One problem is that this may not be initially shown to you by the funeral home, therefore, you should ask if they are available when inquiring.

Embalming, which gives the body a presentable appearance for viewing, in most cases is not required by Maryland law. It will not preserve the body indefinitely and may only increase expenses.

Among other costs to consider are: use of the funeral facilities, local transportation of the body, additional limousines, a cemetery plot, opening and closing of the grave and a grave liner, and a marker or tombstone. A grave liner will generally satisfy the cemetery requirements, although some funeral directors will only sell the more expensive vault, so be sure to shop around.

Your funeral expenses may be covered by private or public benefits, such as qualifying for financial assistance through Social Security or the Veterans Administration, as well as union pension funds, fraternal orders, or church organizations. Funeral costs can also be paid through special insurance policies or bank trusts.

Pay special attention to cemetery's rules and regulations before purchasing a plot. Check out the cemetery's reputation, their dealings with your funeral home, and be sure to find out if you can sell your plot in the event that you move. As always, contracts should be carefully examined by you or your attorney before signing.

### Cremation

A significant percentage of the bodies in the U.S. are now cremated and the number is steadily rising. Direct cremation services usually charge lower fees than funeral directors. If you choose to place the remains in a simple urn to be kept by your family, or to scatter the ashes in an area of your choice, burial costs can be considerably reduced. Maryland law does not require a casket for a body destined for a crematorium, and allows cremated remains to be transported by anyone or sent by parcel post. After cremation, an informal simple memorial service can be held at any desired time or place.

However, if you decide to be cremated, you should state that specifically in your Will and notify the Personal Representative of your estate.

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### Where to Call for Further Help

Maryland funeral directors are regulated by the State Board of Morticians and must obtain a license before they can perform their services. If you have any problems, you should call the Board.

## PROBATE

### What to Do When Someone Dies?

If someone dies (decedent), it is important to determine whether or not the person left a Will. If a person dies with a Will (testate), the Will identifies who will receive the decedent's property.

When a person dies without a Will (intestate), Maryland law determines who will receive the decedent's property and who will carry out the decedent's wishes (Personal Representative).

If the person dies with a Will, the person who has the original Will must present it to the Office of the Register of Wills in the County or Baltimore City in which the decedent lived. It is then the Personal Representative's responsibility to see that the estate is administered in a timely fashion. The administration of the estate includes payment of debts, claims, and taxes of the decedent from the assets of the estate, and distribution of the remaining estate as the Will or laws of intestacy direct.

Assets subject to estate administration include assets in the decedent's sole name or as tenants in common. Jointly held assets and assets that pass by beneficiary designation (like life insurance) are generally not part of the probate estate. Life insurance proceeds and other assets that pass to whomever the policy owner designates as the "beneficiary" are usually not affected by your Will, however, if your life insurance policy is payable to your estate after death, the proceeds of such policy will be distributed according to your Will.

If you are named as Personal Representative in someone's Will, you will need to take the original Will and death certificate with you to the Office of the Register of Wills. The Office of the Register of Wills will provide you with the necessary probate papers and will usually be able to assist you in completing these papers, however, depending upon the size and complexity of the estate, it may be necessary to contact an attorney for assistance.

The two sizes of estates in Maryland are the "regular estate" and the "small estate." For decedents dying after October 1, 2012, an estate may be administered as a small estate if the total value in the decedent's name alone or as tenants in common is less than \$50,000 (or less than \$100,000 if a surviving spouse is the sole legatee or heir). There is no inheritance tax due or payable on a distribution from a small estate, and the costs and fees of the Register of Wills are much lower.

If the total value of the property owned by the decedent subject to probate administration is greater than \$50,000 (or more than \$100,000 if a surviving spouse is the sole legatee or heir), it must be administered as a regular estate. A Personal Representative must file regular accountings to show how the estate assets are being managed in a regular estate, and it may take longer to make a final distribution from the estate.

Within three months of appointment, a Personal Representative may file for modified administration. This method of administering the estate is quick and does not require all the filings like a regular estate administration. In modified administration, the final distribution of the estate occurs within 12 months from the date of appointment, if all the residuary legatees and heirs-at-law consent to this.

In any of the above types of estate administration, creditors of the decedent have at least six months from the date of death to file claims against the estate. The creditors can only be paid from the estate assets. The Personal Representative cannot be personally liable to pay the claims from his/her own assets, however, if a Personal Representative distributes estate assets prior to the end of the six month claim period and a creditor then seeks payment of a timely claim, then the Personal Representative may have to pay the creditor from his or her own assets.

### Costs of Probate

The Register of Wills is entitled to charge and collect a fee for the performance of its duties. The fees depend upon the size of the estate, and are set by Maryland law.

In addition to the fees charged by the Register of Wills, a Personal Representative is entitled to reasonable compensation for services provided. This is called commission. Maryland law restricts the amount of commissions payable to a Personal Representative. The Personal Representative's commissions cannot exceed a percentage of the value of the property subject to administration. If the property's value is \$20,000 or less, the commission may not exceed 9% of the gross value of the estate. If the value is over \$20,000, the commission may not exceed \$1,800 plus 3.6% of the amount over \$20,000. In addition, if the Personal Representative retains the services of a real estate broker to help in selling real property, the commissions paid to the broker are not deducted from the commission allowed for the Personal Representative, but these commissions are a noted expense of administration. All commissions paid to the Personal Representative are subject to court approval.

If an attorney is involved in the administration process, the attorney's compensation must be reasonable and is subject to court approval. The attorney's fees are paid from estate assets. You should discuss and agree to legal fees with an attorney before hiring one to represent the estate.

## ESTATE AND INHERITANCE TAXES

### Maryland Inheritance Tax

The State of Maryland does not impose an inheritance tax on the value of the property passing to spouses, children, grandchildren, siblings, and parents. A tax of 10% is imposed on the value of the property passing to any other person, including nieces and nephews. All property passing to a qualified charity is exempt from the Maryland inheritance tax.

### Federal Estate Tax

An estate tax is a tax imposed by the federal government on all property owned by the decedent at his death, including cash and securities, real estate, life insurance, trusts, business interests, annuities, and other assets, however, a federal "unified credit" shelters \$5,340,000 of each individual's estate from both gift and estate taxes. This means the property passes to the heirs without being subjected to federal estate tax. In addition, all property that passes to a surviving spouse, qualified trust for the spouse, or to a qualified charity, is exempt from the federal tax. Also, the "unified credit" is "portable" which means the decedent's estate may elect to pass any of the decedent's unused exemption on to the surviving spouse (so the surviving spouse could potentially utilize \$10,680,000 in "unified credit"). Moreover, you are entitled to a credit on your federal estate tax return for State death taxes paid up to a certain maximum.

Gifts of up to \$14,000 per recipient per year are not taxable gifts. Gifts to U.S. citizen spouses, however, are unlimited. For gifts over \$14,000 per recipient, the donor can choose to dip into the \$5,340,000 "unified credit" to avoid paying gift tax on those gifts. If your assets exceed one million dollars, it would be advisable to seek professional help from an attorney or a financial adviser.

**Maryland Estate Tax**

The State of Maryland imposes an estate tax—which is in addition to the inheritance tax—equal to the value of any credit for State death taxes used against the federal estate tax. The Maryland estate tax is reduced by any inheritance tax paid, and is only due for an estate that must file a federal estate tax return. Maryland estate tax cannot exceed 16% of the amount by which the decedent's estate exceeds \$1,000,000. In 2015, only estates in excess of \$1.5 million will be taxed, and the amount will increase to \$2 million in 2016, then rising to \$3 million in 2017, and \$4 million in 2018. Again, if your assets exceed one million dollars, it would be advisable to seek professional help from an attorney or a financial adviser.

**Federal Income Tax:**

Income of the estate is subject to federal income tax. An accountant or attorney may assist in this matter.

**ADVANCE DIRECTIVES****You Have the Right to Decide About Your Health Care**

Adults generally have the right to decide if they want medical treatment, unless they are not competent. This right also includes decisions about treatments that extend life, such as life-supporting machines or feeding tubes. Sometimes, an accident or illness takes away a person's ability to make health care choices; but the decisions still must be made. If you are unable to make them, others will on your behalf. They should make decisions based on your wishes or your best interests if your wishes are unknown.

Maryland law gives you the right to make many health care decisions in advance to ensure your wishes are respected if you are unable to speak for yourself. One way to do this is by using a written or electronic Advance Directive. You can use an Advance Directive to name someone you trust to make your health care decisions if you cannot. This person is known as your health care agent. An Advance Directive also can state your treatment preferences, especially about life-sustaining procedures.

You may obtain a form of an Advance Directive from the Office of the Maryland Attorney General. The document must be signed by the person making the directives and two witnesses; however, the named health care agent may not serve as a witness. You should give a copy of the document to the health care agent and your physician. Copies are equally valid as the original.

Maryland law also lets you make an oral Advance Directive to your doctor, with a witness. Oral Advance Directives can be used to name a health care agent, to make decisions about life-sustaining procedures, or both.

Additionally, in Maryland, many individuals complete a Maryland Medical Orders for Life-Sustaining Treatment ("MOLST") in conjunction with an Advanced Directive. The MOLST is a standardized form used solely by medical professionals to ensure that health care providers follow your wishes regarding your treatment preferences. The MOLST form must be signed by a physician or nurse practitioner. This form is used if you wish to have a Do Not Resuscitate ("DNR") order. During emergency situations, medical professionals have very little time to evaluate the situation and act accordingly. Therefore, the MOLST form allows them to rapidly understand an individual's medical wishes. This form can be obtained at [www.MarylandMOLST.org](http://www.MarylandMOLST.org).

When planning for your future medical needs, it is encouraged that you complete an Advanced Directive and MOLST.

### JOINT OWNERSHIP

Generally, assets properly titled as joint tenants with right of survivorship pass automatically to the survivor upon the death of the first to die. The property would not be part of the decedent's probate estate and would not be subject to the provisions of the decedent's Will, if there is one, nor to the imposition of Personal Representative's Commissions. The surviving joint owner would have immediate access to this property.

If the property is held as joint tenants between spouses, Maryland does not impose any inheritance tax on it. When property is owned jointly between anyone other than a spouse, Maryland imposes an inheritance tax on a portion of the property. This tax is imposed even if the survivor was the original owner of the property. If a federal estate tax return is required to be filed, there is a presumption that the full value of the property will be included in the gross estate of the first to die unless the survivor can show that he or she contributed to the acquisition of the asset.

While there are advantages to holding property as joint tenants with right of survivorship, you should be aware of the consequences. Adding someone's name to your property as a joint tenant generally gives that person an immediate interest in the property. Depending upon the value and nature of the property, a U.S. Gift Tax Return may need to be filed. If the property is owned jointly with anyone other than a spouse, it could be exposed to the creditors of the other person to the extent of his or her interest. Titling property jointly with right of survivorship allows the survivor to dispose of it in any way that he or she wishes after the death of the first to die. Furthermore, holding all assets as joint tenants with right of survivorship does not necessarily eliminate the need for a Will (for example, there may be minor children for whom a guardian should be named). Finally, depending upon the size of the estates of a husband and wife, holding all assets jointly may not be the most efficient estate planning available for a couple.

Before adding someone's name to a property interest, be aware that this action may have an impact on eligibility for various tax credits and government benefits. It could also expose the assets to creditors or result in gift or estate tax consequences. Such changes in titling should be made only after careful consideration. You may wish to consult an attorney for advice and assistance.

### REAL ESTATE

If you own, buy, or sell real property, you may have questions about title. "Real property" includes houses, buildings, vacant lots, and condominiums. "Title" to real property describes the way in which you own real property. As discussed below, there are several ways to own real property.

Many of your questions may deal with how to transfer ownership of real property, what price to pay for it, what price to sell it for, or the tax consequences of such actions. Because it is impossible to answer such questions without knowing the specific facts in each situation, you will need to consult an attorney, real estate agent, or other qualified person on these matters. Some questions can be answered generally, however, and a few of these are set forth below.

### Real Estate Ownership

There is more than one way to own (or "hold title to") real property. You may own real property entirely by yourself or with other people. There are several ways in which you may own real property with other people.

The three most common ways are:

1. "Tenants in Common" means that each of the individuals owns a part of the property. For example, if two people own real property as tenants in common, they may each own one-half of the ownership value of the property (not physically one-half of the property). If one person dies, the other person still only owns one-half of the ownership value of the property; the decedent's one-half passes to the decedent's heirs.
2. "Joint Tenants with Right of Survivorship" means that each person owns a part of the ownership value of the property, just as in "Tenants in Common," but one important difference exists. If one owner dies, the other owner automatically owns all of the property. Thus, if you own real property with another person, as a "joint tenant with right of survivorship," and you die, your interest in the property will not go to your heirs, but will go automatically to the other joint owner, i.e., "joint tenant."
3. "Tenants by the Entirety" is the same as a joint tenancy, but the joint "tenants" must be husband and wife. It should be pointed out that when property is held in this manner, a creditor of only one of the owners has no claim to the property. Conversely, if property is held as tenants-in-common or joint tenants, a creditor of only one of the owners has a claim against the property to the extent of the debtor-owner's interest in the property. See "Banking" and "Stock and Bonds Ownership."

### Real Estate Transfers

The ownership of real property is very important, and names should not be added to deeds without very careful planning. Generally, once you have added someone's name to your property, you have made that person an owner, with a permanent interest, and you cannot remove that name without the person's consent. Also, a co-owner may sell his/her interest in the property, and that interest may be subject to the claims of his/her creditors. Once you add someone's name to your property, you cannot sell or mortgage the property without the co-owner's consent.

One common practice among elderly persons is to add someone's name to their property, transfer the ownership of their property to someone who has promised to take care of them, or has promised to let them live in their house for the rest of their life. If the person breaks their promise to care for you or let you live in the house, it will be very difficult for you to get your ownership back. These transfers of ownership can also have negative impacts on your eligibility for Medicaid coverage for long term care assistance. This type of agreement should never be entered into unless all the terms of the agreement are written down and an attorney has reviewed the agreement for you.

### Transfer of Real Property at Death

You may want to add a relative's name to your deed so that your property will automatically be owned by that relative upon your death, and will not need to pass through a Will, but, as we have discussed above, there are disadvantages to adding other names because it generally means that you no longer have total control of that property.

There is a legal way, often used for small estates, however, in which you can retain control over the property during your lifetime and have it pass automatically on your death to a selected person. It is called a "Life Estate." You are the "Life Tenant" and the person to receive the property at your death is the "Remainderman." With proper wording in the deed, you can keep the right to sell or mortgage the property, or to change the remainderman during your lifetime.

The advantage of this arrangement is that at your death, the property passes immediately to the remainderman. It is not included in the property that passes by your Will. Certain expenses based on the value of your estate, such as legal fees, appraisal fees, and fees to the Personal Representative, will be lower. The inheritance tax paid to the State, however, will be the same when the property passes by deed to the remainderman as when it passes by a Will. Also, at your death, the ownership by the remainderman will already be recorded in the deed at the records office. If the real property passed on by the Will, a deed must be made from the probate estate to the person named in the Will to receive the property.

There are also disadvantages to the use of a life estate, and you should consult an attorney to determine if this is a good alternative for you. Always remember that any agreement for transferring the ownership of real property must be in writing, and recorded in the courthouse for the County where the property is located.

## PROPERTY TAX RELIEF

### Homeowners

As a homeowner, you may be entitled to a tax credit on your property tax bill—or a refund if you have already paid it—if your property taxes are more than a certain percentage of your income. To be eligible, the dwelling must be your principal residence for at least six months of the tax year (July 1 through June 30) unless you are unable to do so because of your health, because you just purchased the home, or because your spouse from whom you are separated is living there instead under a separation agreement or court order. You must apply by September 1 of the year in which the credit is sought; if you apply by May 1, you can get the credit in time to take advantage of the discounts for early tax payment.

### Renters

If you are a tenant and are 60 years of age or older, disabled, or are the surviving spouse of someone who would have met one of those requirements, then you may be entitled to a tax credit on your State income tax. You must have lived in the rented dwelling at least six months of the year, and the dwelling may not be rented from a public housing authority. You must apply by September 1 of the year in which you seek the tax relief.

### How to Apply

Applications for either program can be obtained from the State Department of Assessments and Taxation, Tax Credit Program at 301 W. Preston Street, Room 900, Baltimore, Maryland 21201. Proof of income may be required for both programs. For more information call (410) 767-4433 in the Baltimore area or 1-800-944-7403 in other areas.

INCOME TAXES**Who Must File Return**

For each taxable year, you must file a return if you had a specified minimum amount of gross income. For the 2013 taxable year, the income levels at which individuals must file income tax returns are as follows :

Family Type	Income Cap
Single individual, under 65	\$10,000
Single individual, 65 or older	\$11,500
Married couple, joint return, both under 65	\$20,000
Married couple, joint return, one spouse 65 or older	\$21,200
Married couple, joint return, both 65 or older	\$22,400
Married, filing separately, any age	\$3,900
Head of Household, under 65	\$12,850
Head of Household, 65 or older	\$14,350
Qualifying widow(er) with dependent child, under 65	\$16,100
Qualifying widow(er) with dependent child, 65 or older	\$17,300

If you meet the gross income test, a return must be filed even though your exemptions and deductions are such that no tax will be due. Furthermore, even when you do not meet the gross income test, and therefore no tax is due, a return should be filed in order to receive a refund of any taxes withheld during that year. In order to receive a refund of taxes paid during a particular tax year, your return must be filed within three (3) years from the due date of the return, or within two (2) year of when the tax was paid, whichever is later. For example, if exemptions and deductions are such that you do not owe any tax for 2013 and you had taxes withheld from your income, you must file a return by April 15, 2017, three (3) years after the due date of April 15, 2014, in order to receive your refund.

Even if your income is below certain limits, you may need to file a tax return if any of the five following conditions are met:

- 1) you owe special taxes such as Social Security, Medicare, or alternative minimum tax;
- 2) you (or your spouse, if filing jointly) received HSA or Medicare Advantage MSA distributions.;
- 3) you had self-employment income of at least \$400;
- 4) you had wages of \$108.28 or more from a church organization not subject to Social Security or Medicare taxes; or
- 5) tax on an IRA or retirement plan is due.

**Filing Status**

To qualify for head of household status for a taxable year as of the end of such year, you must not be either married or a qualifying widow(er) with a dependent child. In addition, you must meet the following requirements:

- 1) You paid more than half of the cost of keeping up a home for the year; and
- 2) A qualifying person lived with you in the home for more than half of the year (except for temporary absences). If the qualifying person is your dependent parent, he or she does not have to live with you.

To use qualifying widow(er) with dependent child as your filing status for a taxable year:

- 1) You must have been able to file a joint return with your deceased spouse for the taxable year in which your spouse died;
- 2) Your spouse must have died during either of the two taxable years preceding the current year;
- 3) You must not have married before the close of the taxable year;
- 4) You must have a child or stepchild for whom you can claim an exemption, not including a foster child;
- 5) The child lived in your home all year, except for temporary absences; and
- 6) You paid more than half the cost of keeping up a home during the year.

Example: During the 2013 taxable year, a retired, single person age 66 worked a part-time job and earned wages of \$10,000 from which his/her employer withheld a total of \$200 in income taxes for the year. Although the taxpayer is not legally bound to file a return because he/she did not meet the \$11,500 or more gross income test for a single person 65 or older, he/she should file a return to collect a refund of the \$200 in income tax withheld from his/her wages. It should be noted that certain taxpayers may be exempt from withholding if they owed no taxes for the preceding taxable year and expect to owe none for the current year.

**Individuals' Exemptions**

The exemptions allowed to a taxpayer for 2013 are a "personal" exemption of \$3,900 and an additional \$3,900 exemption for each dependent. The exemption amount for tax year 2013 has been increased from the 2012 exemption amount of \$3,800. No exemption is allowed if the filer fails to provide the dependent's correct Social Security Number.

For a husband and wife filing a joint return, there are at least two "personal" exemptions of \$3,900, because each is regarded as a taxpayer, plus any exemptions for dependents. If a husband and wife file separate returns, each must take his or her own exemptions on his or her own return. If, however, a husband or wife files a separate return, and the other spouse has no gross income and is not the dependent of another taxpayer, all of the exemptions of the spouses may be taken on the separate return. On a separate return, a taxpayer may not claim two exemptions for his/her spouse, even if he/she qualifies both as a spouse and as a dependent. If the husband and wife file a joint return, neither can be claimed as a "dependent" on the return of any other person.

### Increased Standard Deduction for Elderly and Blind

The basic standard deduction for 2013 taxable year is \$12,200 for taxpayers who are married and file a joint return and for qualifying widow(er)s with dependent child, \$6,100 for single taxpayers and married taxpayers filing separate returns, and \$8,950 for a head of household. Additional standard deductions are allowed for taxpayers who are aged and/or blind.

Taxpayers who are married and where both spouses are at least age 65 are allowed an additional standard deduction of \$2,400. In the case of either: 1) married taxpayers filing jointly where only one spouse has is 65, or 2) a qualifying widow(er) with a dependent child who is 65, an additional standard deduction of \$1,200 is allowed. An unmarried taxpayer, including a head of household, is allowed an additional \$1,500 standard deduction. On a separate return filed by a married taxpayer, an additional \$1,200 standard deduction is allowed if the taxpayer is at least 65. To be entitled to this deduction, the taxpayer must be age 65 before the close of the taxable year, and, if the deduction is also claimed for a spouse, then they must be 65 before the close of the taxpayer's taxable year. The additional standard deduction is allowed on the return filed for a deceased taxpayer if s/he died after reaching 65, however, none is allowed if s/he died before s/he reached 65, even if s/he would have attained the age of 65 before the close of the taxable year had he/she lived.

An individual is considered to be age 65 on the first moment of the day before his 65th birthday.

Example: A person born before January 2, 1949 will qualify for the additional standard deduction for the calendar year 2013.

The basic standard deduction for a particular taxable year will also be increased for taxpayers who are blind as of the close of such year. An additional \$1,200 standard deduction is allowed for each blind taxpayer who is either married or is a qualifying widow(er) with a dependent child. An unmarried taxpayer, including a head of household, is allowed an additional \$1,500 deduction. Two additional standard deductions are available for an individual who is both over age 65 and blind.

### Tax Credit for the Elderly or Disabled

For tax year 2013, the credit for the elderly or disabled is available to taxpayers who are either age 65 at the end of 2013, or are retired on permanent and total disability and have taxable disability income. In order to claim the credit, the taxpayer's income cannot exceed certain limits. For taxpayers filing as single, head of household or qualifying widow(er) with dependent child, adjusted gross income must be less than \$17,500, and the total of nontaxable social security and other nontaxable pensions, annuities, or disability income cannot be more than \$5,000. For married taxpayers filing jointly where only one spouse qualifies as elderly or disabled per the above requirements, adjusted gross income must be less than \$20,000 and the total of nontaxable social security and other nontaxable pensions, annuities, or disability income cannot be more than \$5,000. For married taxpayers filing jointly where both spouses qualify as elderly or disabled per the above requirements, adjusted gross income must be less than \$25,000 and the total of nontaxable social security and other nontaxable pensions, annuities, or disability income cannot be more than \$7,500. For a married taxpayer filing separately that lived separately from his or her spouse for all of 2013, adjusted gross income must be less than \$12,500 and the total of nontaxable social security and other nontaxable pensions, annuities, or disability income cannot be more than \$3,750. A taxpayer that is married but filing separately from their spouse cannot claim this credit if s/he did not live apart from the spouse for all of 2013.

The tax credit for the elderly or disabled must be claimed on Form 1040 or Form 1040A, not Form 1040EZ. This credit is claimed using Schedule R. The amount of credit a taxpayer can claim is generally limited to the amount of tax and can be determined using the Credit Limit Worksheet in the instructions for Schedule R. Detailed information about the credit for the elderly or the disabled can

**Sale of a Residence**

On the sale of a personal residence sold after May 6, 1997, there is no tax on \$250,000 of gain if the seller is an individual or \$500,000 of gain if the seller is married and files a joint return. The seller must have owned and used the residence as his or her main home for at least two of the five years prior to the sale.

The sale and purchase of a residence is a major transaction requiring careful analysis. You may wish to discuss the situation with a realtor and/or an attorney to be certain that you are making the best choice.

**Social Security and Equivalent Benefits**

If Social Security benefits, including monthly retirement, survivor and disability benefits, and equivalent tier 1 railroad benefits were your only income in 2013, these benefits are generally not taxable, however, these benefits may be taxable for a particular tax year if you earned other income. If the total of one-half of your benefits plus all other income exceeds your "base amount," then your benefits may be taxable. For tax year 2013, the base amount for a taxpayer who is single, head of household or a qualifying widow(er) is \$25,000. For a taxpayer who is married filing jointly, the base amount for 2013 is \$32,000. For a taxpayer who is married filing separately and lived apart from his or her spouse for all of 2013, the base amount is \$25,000. The base amount for a taxpayer who is married filing separate and lived with his or her spouse at any time during 2013 is zero dollars. If you determine that your benefits may be taxable based on the above formula, then you will need to complete Worksheet 1 in Publication 915 or the Social Security Benefits Worksheet in your tax form instructions. If part of your benefits are taxable, you must use Form 1040 or Form 1040A to file your taxes.

**BANKRUPTCY**

Once considered a scarlet letter, many Americans have turned to Bankruptcy to provide some relief from their creditors and some peace of mind to get out of debt. When problems arise and your bills begin to mount, addressing the situation early could provide you with more options than you may have if you waited, however, if you are a senior citizen whose sole source of income is social security, you may not need to resort to bankruptcy to avoid garnishment.

One option to consider is Consumer Credit Counseling Service (CCCS) 1-800-642-2227, a non-profit organization designed to use your income to help pay your bills. Creditors get paid back over a period of time by agreeing to stop finance charges from accruing in most cases, in exchange for monthly payments to CCCS. Thus, everything that you pay is applied towards the principal. The court will require you to obtain credit counseling within 180 days of filing or your case will be dismissed. For a list of credit counseling agencies that the court deems acceptable, you may call the Department of Justice at (202) 514-2000.

If CCCS provides for payments that are too burdensome due to fixed income, loss of earnings, or other reasons, one of two forms of bankruptcy may be a viable option to consider; Chapter 7 and Chapter 13.

### Chapter 7

Chapter 7 is the liquidation chapter of the Bankruptcy Act. Assets that you own in excess of State exemptions may be liquidated or sold to have money available to pay your creditors a percentage of their total debt. Maryland's basic exemptions allow you to keep a limited amount of personal assets in any form; cash, clothing, furniture, jewelry, automobiles, as well as equity in a house (which falls under the Homestead exemption). A married couple is given \$12,000 of basic exemptions (property they may keep). A bankruptcy attorney can advise you of additional exemptions that you may be able to take advantage of in your case.

If your case has no assets above the allowable exemptions and there are no challenges from creditors, then your debts will be discharged or wiped out completely. Usually the only creditors you have to accommodate are the secured creditors.

Secured creditors, such as a mortgagor or car finance company, usually will allow you to keep the property securing their debt as long as you agree to continue making payments. Creditors whose property you agree to keep and pay back will ask you to sign a reaffirmation agreement, which usually allows you to keep their charge privileges in exchange for your promise to pay despite the bankruptcy. Reaffirmation agreements are not required.

A Chapter 7 case usually lasts six months with one hearing that you must attend before a U.S. Trustee.

#### Automatic Stay

A very powerful creation called the Automatic Stay ("Stay") comes into being the moment a bankruptcy petition is filed. The Stay can stop a foreclosure sale before it happens, stop a wage garnishment, or a civil court action filed against you. A creditor or party to a civil suit must request permission from the Bankruptcy Court to move forward with their case or they face being held in contempt of the Stay.

### Chapter 13

The Reorganization Chapter or Wage Earners Plan, found in Chapter 13 of the Bankruptcy Act, allows a debtor to pay back arrearages on his or her mortgage, home equity loan, car payment, and/or to pay back unsecured creditors a percentage of what they are owed over a three, four, or five year plan. The debtor pays the Trustee each month over the course of the plan once the Bankruptcy Judge confirms the plan, and no creditors have objected to the payback.

This protection is best if you have non-exempt assets, or if you are behind on payments to a secured creditor and you are facing a foreclosure sale or repossession.

You should consult with a bankruptcy lawyer to assess your financial situation and to advise you as to the best course of action as well as the options that are available to you. Another option is the Debtor Assistance Project of the U.S. Bankruptcy Court, (410) 962-3813, which will take appointments at no charge.

### CREDIT

Credit is a convenience that allows you to "buy now and pay later," however, it is often not free. The cost of credit is the interest rate or finance charges that you agree to pay for the privilege of using credit to buy goods, services, or borrow money. There are various types of credit available such as credit cards, installment sales, and loans. The laws discussed below can help you understand, obtain, and get rid of credit.

#### **The Federal Equal Credit Opportunity Act**

The Federal Equal Credit Opportunity Act (the ECOA) prohibits discrimination against applicants for credit.

Under ECOA, a creditor CANNOT:

- 1) consider your age by itself, unless you are under 18;
- 2) consider your sex or marital status;
- 3) consider your race, color, religion, or national origin;
- 4) consider income received from public assistance or Social Security by itself;
- 5) require you to re-apply for credit just because you reach a certain age or you retire;
- 6) close your account because credit life insurance or other credit related insurance is not available due to your age;
- 7) ignore a retirement income.

Furthermore, a creditor CAN:

- 1) consider your willingness and ability to repay a debt;
- 2) consider your age and income from public assistance or Social Security if the creditor uses this for the purpose of assessing your credit worthiness.

Under the ECOA, a creditor must approve or reject your application within 30 days of its completion. If credit is denied, the notice must be in writing and must either (a) state the reasons for the denial or (b) inform you of your right to request an explanation, and the name of the person or office from whom an explanation may be obtained. If denied, you are entitled to a free copy of your credit report from the agency the creditor relied upon for the denial; however, you must contact them directly.

#### **Truth-in-Lending Disclosures**

The cost of using credit is called "interest." The federal Truth-In-Lending Law requires all creditors, including banks, stores, finance companies, credit card companies, and car dealers, to disclose to consumers the cost of buying on credit. This disclosure allows you to comparison shop for credit just as you comparison shop for other purchases.

The law requires all creditors to disclose clearly and conspicuously the finance charge (total dollar amount you pay to use credit) and the annual percentage rate (the relative cost of credit on a yearly basis) to all consumers before a credit contract is signed. If a creditor pressures you to sign an agreement that you do not understand, do not sign it and contact a lawyer to explain it to you BEFORE signing.

If the creditor refuses to allow you this opportunity for review, or if the creditor tells you not to worry about what the agreement says, or there are blanks anywhere on the contract, contact the Attorney General's Consumer Protection Agency at 410-528-8662 to file a complaint. Creditors must allow you the opportunity to read and understand an agreement. Inquire as to whether the contract is for a revolving line of credit, such as a credit card where interest will be assessed according to your balance, or whether this is an installment contract where you will pay a fixed amount of interest over the course of the loan. Finally, ask whether you can pre-pay the obligation without a penalty, thereby

saving yourself finance charges.

### **Unsolicited Credit Cards**

If a credit card you never applied for or requested arrives in the mail, under Maryland law you are not liable for any damages resulting from its loss, theft, or unauthorized use, unless you use it or accept it in writing.

Your best option is to cut it up and destroy it, or contact the company directly to ask about their terms and conditions, including their finance rate and other costs such as an annual fee.

### **Unauthorized Use of Credit Cards**

The federal Truth-In-Lending Law protects you against unauthorized use of your credit card. If your card is lost or stolen, report it immediately to the creditor. The most you will have to pay for charges made by someone else is \$50, and you can only be held liable for up to that amount if the unauthorized charges were made before you notified the card issuer that it was lost or stolen.

Keep your creditors' numbers stored in a safe place that is readily accessible in the event you need to contact them and call immediately, as most creditors provide a toll-free number to assist you and help you minimize your loss. If you cannot find the number to call for your creditor, call information

### **Telephone Solicitations**

Always be wary of solicitations you receive for products and services over the phone, especially if you did not initiate the phone call. This includes solicitations for charity donations. A good rule of thumb is to NEVER give out your credit card number to anyone over the phone.

If an offer sounds too good to be true, it probably is. There are many legitimate businesses that use telephone sales legally and honestly, however, it is usually best to have them send you information in the mail to review first and to check them out beforehand.

Remember free offers and prizes you have won over the phone should never cost you a cent. Be skeptical when these prizes or offers are coupled with products you need to buy. Also be wary of someone not willing to give you their phone number or address in return. When in doubt, contact the Better Business Bureau (BBB) at (410) 685-1600 or 1-800-564-0001. The BBB can only tell you whether any complaints have been filed against them, and not whether they are licensed to do business in Maryland. You may also want to consult the yellow pages to see if the solicitor is listed. This alone will not legitimize a scam, so be careful.

### **Fair Credit Reporting Act**

The Fair Credit Reporting Act (FCRA) governs what is reported about you in credit reports, which are used to determine, among other things, your credit worthiness.

If you are aware of incorrect information that is being reported on your credit report, follow the instructions on the report by writing to the credit reporting agency asking them to re-verify and investigate the item that you are disputing. They are required by law to investigate your contention and reply timely.

If they are unable to substantiate the disputed item, they must remove it, but this does not always ensure accurate reporting in the future because a credit reporting agency receives its information from thousands of creditors. Therefore you may need to contact the creditor to make an investigation as well.

Credit reporting agencies are under fire routinely for inaccurate, obsolete, or misinformation contained in consumer's credit reports, so your inquiry should not be taken lightly.

The agency will explain their own system of reporting as they vary from agency to agency. The three largest agencies utilized on the East Coast are: TRW, Transunion, and Equifax/CBI; and in Maryland, the Credit Bureau of Maryland, Inc.

The Credit Bureau of Maryland can be reached at (410) 987-6070 to obtain your report. Equifax can be reached at 1-800-685-1111.

### DEBT COLLECTION

Both Federal and Maryland law prohibit the use of abusive, deceptive, and harassing debt collection practices. Certainly, debt collectors may attempt to collect valid debts, but the laws deny them the use of unfair or unjust means to do so.

#### *Debts Regulated By Law*

The collection limitations only apply to personal, family, or household debts that arise from the purchase of a house, personal items, services, money, or credit. Debts for furniture, clothing, medical care, and rent are examples of debts covered by the laws. Personal loans are covered as well as debts owed on charge accounts. The laws prohibit illegal collection activities by creditors, their employees, and collection agencies. Business and commercial debts are NOT controlled by these statutes.

#### **Collection Practices Prohibited**

A collector MAY NOT:

- 1) Use or threaten force or violence.
- 2) Contact your employer with respect to an overdue debt.
- 3) Threaten criminal prosecution unless violation of a criminal statute is involved.
- 4) Claim, attempt, or threaten to enforce a right with knowledge that the right does not exist.
- 5) Disclose or threaten to disclose information that affects your reputation for credit worthiness with knowledge that the information is false.
- 6) Disclose or threaten to disclose information that affects your reputation with knowledge that the other persons do not have a legitimate business need for the information.
- 7) Contact you or a person related to you repeatedly, at unusual hours, or in any other manner that reasonably can be expected to abuse or harass you.
- 8) Use obscene or grossly abusive language.
- 9) Use a communication that looks like legal or judicial process when it is not.
- 10) Use a communication that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney when it is not.

The Consumer Protection Division of the Maryland Attorney General's Office handles complaints concerning violations of the collection laws. Complaints can be lodged by calling (410) 528-8662 or by writing to the Division at 200 St. Paul Place-16th Floor, Baltimore, Maryland 21202.

The Office of the Commissioner of Consumer Credit handles complaints concerning violations by loan companies. Such complaints can be made by calling (410) 333-6330 or writing to the Commission at 501 St. Paul Place-13th Floor, Baltimore, Maryland 21202-2272.

Complaints alleging violations by collection agencies should be made by writing to the Maryland Collection Agency Licensing Board, 501 St. Paul Place-13th Floor, Baltimore, Maryland 21202-2272, or calling (410) 333-6630.

The federal law applies to collectors and is enforced by the Federal Trade Commission. These governmental agencies are empowered to stop future illegal debt collection practices, but cannot seek money damages on your behalf. You have the right to sue a creditor or collector, however, in a private action for collection violations. If you wish to seek money damages, we suggest you consult an attorney for representation.

### **Your Credit Problems**

Obviously, the best method of avoiding debt collection difficulties is to stay current with your bills. Should this become impossible, however, do not ignore the situation—this only guarantees to make matters worse.

Most creditors will work with you if you contact them as soon as payment difficulties begin. After all, creditors only want their money, not your sanity. However, a lawfully obtained civil judgment carries a nasty bite. Your bank accounts and property may be attached and wages garnished, unless your sole source of income is your social security. To avoid this unpleasantness, stop problems before they reach court. If you cannot make arrangements with your creditors by yourself, contact a consumer credit counseling group. Should they be unable to help, a bankruptcy consultation with an attorney might be right for you. Follow through with the bankruptcy consultation so you learn all of your options, which will allow you to make your best decision.

## **RETIREMENT PLANS**

### **What Is a Retirement Plan?**

Retirement plans are benefits offered by many employers to their employees as a means of providing the employee income during his or her retirement. Both public and private employers may choose to offer retirement plans to their employees, and the employers have the freedom to choose most of the factors determining exactly how the benefits are earned, and when they will be available to their employees.

It should be noted that all retirement plans are created at the will of the employer, and because there is no requirement that an employer provide a retirement plan for his or her employees, almost all of the terms and conditions within a retirement plan can be determined and changed as the employer desires.

*There are two types of retirement plans:*

- In a “defined benefit plan,” a retired employee receives a monthly benefit every month for the rest of his or her life. This amount is determined using a formula defined by each plan, but most plans consider the employee’s salary amount at the time of his or her retirement, whether the employee has tenure, and the life expectancy of the employee (determined actuarially).
- In a “defined contribution plan,” the amount of the employee’s retirement benefit is based solely on the amount held in an account for the employee. Employers and employees contribute funds to the retirement plan throughout the employee’s career, and these funds are invested in various securities, mutual funds, and stocks. The gains from these investments are then invested in the employee’s personal account. The most common types of defined contribution plans are 401(k)s and “individual retirement accounts” (IRAs). IRAs, however, differ from other defined contribution plans in that they are funded solely by the employee, as well as in various other aspects (in particular, if/when the employee receives distributions from the plan, and what ramifications take effect when he or she does).

### **Is Social Security a Retirement Plan?**

The Social Security system functions much like a defined benefit plan, but it is funded by tax revenues paid by both the employee and the employer throughout the employee’s career. The benefits are later collected by the employee in the form of a monthly pension, beginning at a time the retiree elects and continuing for the rest of his or her life. Because these pensions are paid by the government (whereas defined benefit plans implemented by private employers tend to be paid solely by the employer), Social Security is like a defined benefit plan that is funded and paid through the collective cooperation of the employee, the employer, and the government.

The Social Security system has evolved considerably since its creation in the early 20<sup>th</sup> century, and it will likely continue to change well into the future. Due to the continual changes, it is important to stay informed about the Social Security system and any changes that the government may make to it. Fortunately, an answer is available for almost every possible question one may have about Social Security on the Social Security Administration’s website, [www.ssa.gov](http://www.ssa.gov). Also, anyone may call the Social Security Administration toll-free at 1-800-772-1213 for additional assistance.

### **How Are Retirement Benefits Determined and Earned?**

The manner in which retirement benefits are calculated and later made available to the employee are almost always included in an employment agreement. In any event, an employee may always submit a written request to the plan’s administrator to provide the employee with an explanation of the employee’s retirement benefit plan.

Every year, the plan administrator is required to provide the employee with a free summary, annual report, and plan description, which together will describe the employee’s earned benefits to date as well as a description of the plan itself.

In order to be entitled to a retirement benefit, the employee must meet certain eligibility requirements outlined in the plan. Although plans differ greatly in many respects, most require at least one full year of service before an employee may become a participant in the plan, and many require a certain number of “credits” in order to receive full retirement benefits.

Employees may ask their plan administrator to provide a written explanation as to why the employee has not met the requirements necessary for plan eligibility. Laws protect employees from many forms of discrimination related to retirement plan qualification. For example, an employee cannot be denied eligibility based solely on his or her age.

In the event that an employee feels that he or she has been wrongfully discriminated against in being denied retirement benefits, the employee should contact a lawyer or the U.S. Department of Labor for assistance toll-free at 1-866-487-2365. If the employee instead has questions about his or her rights, the employee should contact the nearest Area Office of Labor-Management Standards. The Washington District Office is responsible for Maryland, the District of Columbia, and Virginia, and can be contacted at (202) 513-7300.

### How and When Can Distributions Be Made to an Employee from a Retirement Plan?

Once contributions have been made to a defined contribution plan, an employee may either borrow funds or receive distributions from the plan. When and under which circumstances the employee or retiree borrows or receives distributions from the plan will have different ramifications. For example, an employee may make withdrawals from an IRA while they are employed and before retirement age, but depending on the plan’s structure, this could—and likely will—result in a penalty fee, as well as an inclusion as taxable income.

If the employee wishes to borrow funds, he or she may typically only borrow the lesser of 50% or \$50,000 of the plan’s value, and he or she must pay that amount back with interest (usually within five years). It is generally recommended that employees not borrow in this way, as the underlying purpose of retirement plans is to ensure long-term financial security and to encourage people not to enter into unnecessary debts.

More commonly, employees will receive distributions from the plan. Penalty-free distributions are allowed when the employee is terminated (either willingly or involuntarily), after reaching age 59 ½, when he or she becomes permanently disabled, or when the employee dies (in which case the deceased’s personal representative will have access to the employee’s retirement plan as an asset). Distributions may be made in a “lump sum” (by taking all of the available funds in one calendar year), by purchasing an annuity (which pays a specific amount to the employee or a beneficiary for the rest of the employee’s life or for a certain number of years), or by “rolling over” the funds from one retirement plan into another qualified plan.

All plans differ and tax consideration relate directly to retirement benefits, which is why it is recommended that those who are unsure of the details and issues related to retirement planning should contact a competent professional for advice. Both attorneys and financial planners can usually provide aid in these areas.

When you buy a car or pay someone to fix the roof of your house, you are a consumer. The best way to make sure that you have a good experience as a consumer is to be knowledgeable about your purchase before you buy. If you encounter a problem, it is important to know your rights and what resources exist to help you resolve the problem. This outline only covers a few key points.

If you have a major problem with a seller, you should contact the Consumer Protection division.

### Before the agreement

Before you make a purchase, and even at the time of purchase, there are steps you can take to prevent problems:

- Don't make a major purchase in a hurry. Never allow yourself to be pressured into a decision. Be wary of high-pressure sales tactics such as claims that the offer is only good for that day.
- Make sure any document you sign accurately describes the goods and services, and includes precise dates for delivery, installation, and completion. Pay careful attention to the amount of money you must pay and when payments are due.
- Never sign a document you don't understand. Ask questions—and continue asking—until all terms are clear. If you are at all unsure, take at least 24 hours to think things over before making a final decision.
- Carefully review every term of an agreement before signing it. Make sure everything you and the seller agreed upon is written into the contract. If you have expressed specific needs to the salesperson—who has assured you the product or services will meet those needs—get those assurances in writing. A written statement clarifies your exact understanding with the salesperson. If the salesperson refuses to put the promise in writing, perhaps the claim was exaggerated.
- Even if you have no formal written agreement, if you relied upon the salesperson's oral representations in making your decisions, ask to have those promises put in writing on the sales receipt or a separate piece of paper.
- Before you make the purchase, find out what you will need to do in the event that a problem later arises. Do not wait for a problem to develop before getting this information.
- Before you sign a contract or make a major purchase, call the Consumer Protection Division of the Office of the Attorney General at (410) 528-8662 to check the track record of the business, find out if any complaints have been filed, and how the business resolved them. You can also contact the Better Business Bureau at (410) 347-3990 for similar information.

**Making an agreement**

A contract is an agreement that the law will enforce. The written document is the best evidence of the contract, but it can leave out terms that are critical or include terms that are not legal.

Until the seller signs the document you do not have an agreement. Never sign a document unless the seller indicates that your signature is the last step in making the agreement.

Sales are different from contracts. If you pay money and get an object or service, then the law creates your contractual rights for you. You have rights even if there is nothing in writing.

Even in small transactions, look over your sales receipt carefully before you leave the store. That way, if there's an error such as an overcharge, you can have it corrected easily.

Always keep all records relating to your purchase. This information provides evidence to back up any future complaint and it helps the company resolve the problem. It helps to keep these documents in a file folder:

- Sales receipts
- Instruction booklets or manuals
- Repair orders
- Warranties
- Canceled checks
- Contracts
- Correspondence with the company
- Ads describing the product
- The name of the person who sold you the item or performed the service

**Your Rights as a Consumer**

Maryland provides special protection for consumers in many transactions

The Maryland Consumer Protection Act prohibits a wide variety of unfair or deceptive business practices in the marketplace. The law has two primary principles:

- 1) It is unlawful for a business to mislead consumers.
- 2) It is unlawful for a business to withhold information from consumers if the information would be important to the consumer in making a purchasing decision.

**How to Contact the Consumer Protection Division**

Office of the Attorney General  
Consumer Protection Division  
200 St. Paul Place, 16th Floor  
Baltimore, Maryland 21202

**Complaints**

General: The consumer hotline is available Monday through Friday, 9 a.m. to 3 p.m.  
(410) 528-8662.

Health Billing: The health advocacy hotline is available Monday through Friday, 9 a.m. to 4:30 p.m.  
(410) 528-1840.

D.C. Metro Area: (301) 470-7534

TDD for hearing impaired persons: (410) 576-6372

If you feel you have been misled or not provided with important information before you made your purchase, then there are several things you can do to try and resolve the problem.

**Dealing directly with the seller**

In order to make an effective complaint, it helps to be well-prepared, persistent, and calm. Some strategies that have worked for other consumers are:

- Let the seller know as soon as trouble starts so there is no question about when the problem began.
- Be reasonable and stay calm, even if you have to tell your story more than once as you go up the chain of command.
- Tell the seller exactly what you want, such as a refund, a store credit, an exchange unit, or a repair.
- When you talk to the seller, be prepared. Have copies of relevant documents at hand.
- Keep a written log that documents your efforts to resolve the problem. Note names, dates, times, and outcomes.
- If you are not able to resolve the problem in person or by phone, send a brief written complaint letter to the business. Your typed or clearly-written letter should contain copies of relevant documents and your contact information. Keep a copy.
- If the company operates nationally and has a toll-free number, try calling its national headquarters.

If you paid by credit card, you have substantial rights under the fair Credit Billing Act. These rights can be found at <http://www.consumer.ftc.gov/articles/0219-disputing-credit-card-charges>

**The Consumer Protection Division**

If you are not successful after trying to resolve the problem on your own, you can contact the Consumer Protection Division of the Office of the Attorney General for assistance.

The Consumer Protection Division within the Office of the Attorney General protects Marylanders from unfair or deceptive business practices, and assists consumers in their dealings with stores, telemarketers, car dealers and repair facilities, home builders, home repair contractors, and most other businesses that sell or rent consumer goods, realty, credit, or services. The general Consumer Hotline provides consumers with a starting point for addressing their problems. If, after talking with the hotline, you decide to file a written complaint, the Mediation Unit will try to negotiate a resolution with the business. If mediation efforts are unsuccessful, the Division offers a free binding arbitration service, designed to cut red tape and resolve disputes quickly.

**Health care**

If you have a complaint relating to your medical bills or claims, contact the Health Education and Advocacy Unit at 410- 528-1840 (telephone). This unit may be able to help you resolve billing and claims disputes with hospitals, doctors, insurance companies, HMOs, nursing homes, and other health care providers and payers. It may also be able to help you negotiate refunds for medical equipment that is defective or was never delivered, or seek repairs for medical equipment and other health care products, including hearing aids and wheelchairs.

### Specific Consumer Scams

The elderly have the same types of consumer problems as other people, with a few exceptions or differences. For one thing, the elderly are often at home more often, making them more susceptible to in-person or telephone scams, and deceptive sales. Some of the more common complaints the Consumer Protection Division receives from senior citizens include complaints about the following:

#### 1. *Door-to-Door Sales Act*

Door-to-door sales take place when you and the seller negotiate, and make an agreement in person anywhere other than the seller's fixed place of business. The goods and services involved must cost more than \$25 and cover a wide variety of things, ranging from home improvements, carpets and upholstery, to cosmetics, brushes, and books. Real estate, insurance, or securities sales are not covered by this act, nor are offers by telephone or mail.

Under the Maryland Door-to-Door Sales Act, the salespeople must identify themselves, the company they represent, and the product being offered before entering your home. They must give you a written receipt or contract showing the date of the sale, the name and address of the seller, and a statement of your right to cancel the agreement. When you sign the contract, the salesperson must also tell you that you have three business days from the date of sale to cancel. The seller cannot force you waive this right, and you should be wary of anyone who asks you to waive your right to cancel. Finally, the salesperson must give you a separate form called a "Notice of Cancellation," which explains how you can cancel a sale. If the seller fails to do any of these things, you can cancel the contract whenever you want. If you cancel, the seller must refund all payment already made. If you have already received the goods, you have to make them available at your home for the seller to pick up.

#### 2. *Home Improvement Problems*

Substandard home improvement and repair services/products are among the leading causes of consumer complaints nationwide. Senior citizens are often the target of high pressure sales tactics, resulting in expensive, unneeded home repairs. Some of the things you can do to avoid becoming a victim are:

- Deal only with licensed contractors and learn more about the company. Ask to see the worker's Home Improvement Commission license and check to see if it is current. Call the Home Improvement Commission at (410) 333-6309 to verify a license, and check with the Commission and the Consumer Protection Division to find out about complaints filed against a company. If a contractor you hire fails to do the job, or does it poorly, you may be able to recover your losses from the Commission's Guaranty Fund, but only if the contractor is licensed. One of the best ways to find a good contractor is to get recommendations from satisfied friends and neighbors. Ask for and check references.
- Be especially wary of contractors who: come to your door unsolicited, no matter how sincere or helpful they seem; offer reduced prices if you have the work done that day only or say they have "just done a job for your neighbors and have leftover materials;" offer a "special" percentage off the repair without clearly stating what the bottom-line price will be; or give a P.O. Box without a street address or a telephone number that is just an answering service.
- Make sure you only buy repairs you actually need. Find out exactly what work the repair involves and get at least three price estimates, especially on big jobs. Get a second opinion if you are told expensive repairs are needed. Beware of scare tactics and threats that "your furnace will blow up" or your ceiling will collapse if you do not immediately repair or replace them.

- Always have a written contract including a description of the work to be done, materials used, labor cost, timetable, payment schedule, completion date, names of subcontractors, warranties, clean up, and financing arrangements. Make sure you know if the contractor charges by the job or by the day.
- In Maryland, it is against the law for a contractor to ask for or accept more than one third of the total contract price in advance. Try to make the final payment 30 days after the work is completed so you have a chance to live with the improvement and make sure it was done right.

### 3. *Telemarketing and Investment Scams*

From magazines and vitamin pills to investments and vacation deals, from bogus contests to phony charitable solicitations, an amazing variety of merchandise is peddled over the phone. Unfortunately, some of these callers are telemarketing swindlers who misrepresent the quality of their goods and services, or who disappear without sending you anything after you pay. Some consumers are talked into making a purchase because they are promised a prize that generally turns out to be of little value. You can end up spending hundreds of dollars more than the goods or services are worth, and there are often hidden costs not disclosed in the initial call. Often, you cannot even locate the company later on if there is a problem.

Senior citizens are often targeted by investment scams. You do not have to be rich to capture the attention of a con artist. Many of their prime targets are older consumers with little or no experience investing money. In only a few minutes, an unscrupulous con artist can swindle you out of a nest egg that took a lifetime to build.

Maryland has a telemarketing law in place to protect consumers in certain situations. The law requires that a seller who initiates a phone call to a consumer who agrees to make a purchase send the consumer a written contract specifying the seller's name, address, telephone number, the total contract price, and a detailed description of the goods and services. There must be a conspicuous statement in the contract disclosing that no payments will be required unless the consumer signs and returns the contract. The seller may not charge anything to a consumer's credit card account unless the consumer signs and sends back the contract. All representations made by the seller must be included in the contract; the contract may not exclude from its terms any oral or written representations made by the seller to the consumer.

Many telephone transactions, however, are not covered by Maryland's telemarketing law. For example, the law does not apply if: the seller is offering financial services or investments; the consumer initiates the call or initially visits the seller's store; the consumer has made a previous purchase from the seller or has had previous dealings with the business (for example, if a credit card company called a cardholder to solicit the sale of goods or services, the cardholder would not be protected by the law because there is a preexisting business relationship between the company and the cardholder); the seller has a 7-day return policy; or the required contract information is available in a printed or media advertisement.

**Steps you can take to avoid being swindled by a telemarketing or investment scam include:**

- **Just say "NO."** Tell the caller that you do not speak with unsolicited callers. Or, if you want, ask the caller for the name, address, and phone number of the company he or she represents, and request written information about the offer before you make a decision.
- Be very cautious about revealing personal or financial information. Do not give your credit card number to a telemarketer until after you are satisfied you are dealing with a reputable company.
- **Never give your checking account number or send your signature to a telemarketer.** Fraudulent telemarketers who claim they need such information for identification, verification, or to send you a gift can then use the information to withdraw money from your checking account.
- Swindlers often like to develop a false bond of friendship or trust. They may offer gifts or unsolicited financial advice to gain your trust. Never feel pressured to buy or invest out of courtesy. No matter how much time and effort a salesperson has taken with you, you are under no obligation to buy or even stay on the phone.
- **Be wary of high-pressure tactics, or if a salesperson says, "You are one of a select few people we're calling," or "You must act today in order to take advantage of this once-in-a-lifetime offer." Do not be pressured into making a quick decision. Take time to consult with friends, particularly if you are asked to invest substantial savings.**
- If you are considering buying or investing, ask for a written copy of all sales terms before you commit to anything. Make sure all written information confirms everything you were told by phone.
- **Watch out for bargain-basement prices. Most reputable businesses cannot afford to give away merchandise. IF AN OFFER SOUNDS TOO GOOD TO BE TRUE, IT PROBABLY IS.**
- Do not be afraid to ask lots of questions. A legitimate seller should be able to give detailed answers.
- **Be wary if the caller wants cash or immediate payment. Never send cash, and be suspicious if the caller sends a courier, messenger, or overnight delivery service to pick up your payment.**
- Check out the company with government and private organizations, such as the Consumer Protection Division or the Better Business Bureau at (410) 347-3990.
- **Maryland law prohibits a seller from offering a gift or prize if the consumer is required to purchase anything, pay any money, or submit to a sales promotion to receive the prize. Be wary of making a purchase because you are promised a prize. Maryland law requires that if a prize is offered, it must be given whether or not you make the purchase.**
- Never invest in a business opportunity unless you know enough about it. Be suspicious of investment pitches from someone you do not know or who claims that there is no risk involved. There is no such thing as a risk-free investment. If you are thinking about doing business with an investment operation, call the Securities Division of the Attorney General's Office at (410) 576-6360 to see if the company is registered and if any complaints have been filed. The National Association of Securities Dealers at 800-289-9999 can also provide information on brokers and financial advisers.
- **If you are asked to make a charitable donation by telephone, ask the caller what services the charity provides, for what purpose your contribution will be used, and what percentage of your donation goes to the charity's mission as opposed to administration or fund-raising. Do not make a donation while you are on the phone. Ask for written materials and read them before making a decision. If you decide to donate, you can mail in your donation. Check with the Charitable Organizations Division of the Maryland Secretary of State's Office before donating to see if a charity (and paid fund-raiser, if one is used) is registered. You can contact them at 800-825-4510.**

#### 4. Telephone Billing Frauds

##### **Cramming and Slamming**

"Cramming" is the term used when unordered, unwanted telephone services, such as voice mail and paging, are added to your phone bill. The services are provided by third-party companies and billed through your local phone carrier. The charges for these services may have confusing names such as "Enhanced Services" that sound as if they are coming from your carrier. According to the National Consumers League, Maryland ranks third in the nation for complaints about cramming.

"Slamming" is a sudden, unauthorized switch in your long distance phone service. You may only discover that your long distance carrier has been changed when you get your phone bill and notice that charges are higher than normal.

In some cases, consumers unknowingly sign up for the unwanted services from companies when they fill out a sweepstakes or raffle entry, or even by just accepting an unwanted collect call or by responding to prompts when placing a call. If you discover that you have been crammed or slammed, call your local phone company right away. Ask for the phone company to remove the charges and/or switch you back to your chosen long distance carrier. You should not be charged for the cost to switch back. If you are unable to resolve a dispute, contact the Consumer Protection Division. You should also file a complaint with or the Federal Communications Commission, which tracks the complaints for future regulatory action. Send your complaint to FCC, Consumer Protection Branch, Mail Stop 160OA2, Washington, D.C. 20006.

##### **Some tips to avoid and correct unwanted services and changes to your phone service include:**

- Always review your phone bill carefully each month.
- If you have questions about your bill, call your local phone company for an explanation.
- Be wary of calling unfamiliar area codes, which may be part of a scam.
- Listen carefully to any instructions at the beginning of a call and be careful not to say "yes" to anything that might inadvertently authorize an unwanted phone service.
- Avoid entering contests, drawings, or sweepstakes that require you to sign the entry form; or, before signing, read the form carefully to make sure the fine print does not relate to phone services.
- Similarly, be careful of signing rebate or other checks without reading the fine print.
- If a charity asks about your long distance service, be suspicious.
- If you are called by a telemarketer about switching or adding phone services, check your next bill to make sure your "no" did not somehow become a "yes."

##### **Other Telephone Billing Frauds**

If you receive a notice that you are a prizewinner, or see an advertisement saying you can get a loan quickly, pay special attention to the telephone number you are asked to call. If it is a "900" or other "pay-per-call" number, the charge may be determined by the business you call and could be very costly. You could be charged a flat rate, say \$50, just for making the call, no matter how long the call lasts. Alternatively, it could be a very high fee of, say, \$10 per minute. While many reputable businesses use such numbers, if you do not know the business, be careful.

Pay close attention to the information provided when you first call the number to find out billing rates. You have just three seconds after the billing information message to hang up to avoid being charged for the call.

Also be careful about unfamiliar long-distance numbers. Before you make or return a long distance call, find out the location of the area code. There is a list in your phone book or call the phone company. Many pay-per-call scams use Caribbean locations.

Similarly, never accept a collect call unless you are sure of the caller's identity. Such charges can be extremely high. Telephone companies and law enforcement agencies never ask customers to accept collect calls or reveal their PIN (personal identification number) as part of an investigation.

When using a pay phone, be aware that some phones are connected to companies that charge high rates and add surcharges. To avoid this, get a calling card that allows you to access your chosen long distance company by dialing a toll-free number. Be careful of certain pre-paid phone cards that do not work, are difficult to use, or have hidden charges.

### *5. Junk Mail Ripoffs*

You receive what looks like a check for \$ 10,000 in the mail. Or an envelope that looks very much like an official government envelope arrives, notifying you of unclaimed property that is yours for a fee. Sad to say, those too-good-to-be-true offers you get in the mail, just like the ones pitched by phone, are most likely nothing more than junk mail. And, by responding, you could lose more than just the cost of a stamp to send in your reply. A "free" vacation offer may end up costing you a bundle in undisclosed costs or require you to sit through a high-pressure timeshare or vacation club membership sales pitch. Prizes you have "won" turn out to be either no prize at all or something of little to no value. Or when you call the phone number to claim your prize, you find out later that you spent \$40 on a 900-number or long distance call to receive a new \$1 bill. And once you pay money in an attempt to get one prize, your name becomes part of a mailing list that is sold to other companies looking to make money off of you.

The Consumer Protection Division receives countless complaints from consumers who were lured into making unneeded or expensive purchases from prize offers, sweepstakes, and the like. If you are interested in a particular promotion, contact the Division or the Better Business Bureau to see if any complaints have been filed. Read all disclosures carefully. By law, promoters of prizes, giveaways, sweepstakes, or other promotions must make certain disclosures to help you decide whether to participate. The disclosures include the retail value of each prize (but beware of inflated "retail values" that no one would ever pay if they knew what the prize actually looked like), the odds against winning each prize, the exact number of prizes offered, when and where the prizes will be awarded, and what conditions must be met in order to receive the prize (including going somewhere at a specific time, being a certain age, being married, or belonging to a specific income bracket). Remember, if it sounds too good to be true, it usually is!

### *6. Hearing Aid Problems*

For the average consumer, hearing aids and batteries can be expensive. Some can cost thousands of dollars, and if fitted improperly, you could end up with a costly device that winds up in your bureau drawer instead of your ear. Based on the experience of the Health Education and Advocacy Unit of the Consumer Protection Division, here are some tips for making sure that does not happen:

- First, make sure your problem is diagnosed properly. Federal law requires a hearing aid seller to inform you that it is in your best interests to have your hearing evaluated by a physician. In fact, your hearing must be evaluated by a doctor before you buy a hearing aid, unless you sign a statement saying you have waived that protection. You should not sign the statement. Have an ear, nose, and throat specialist (otolaryngologist), ear specialist (otologist), or other licensed physician perform a medical exam to find out what is causing your hearing loss and what your needs are.
- Next, you will need a fitting. Several adjustments may be needed so it is important to find a seller who will promptly respond to your concerns and work with you to resolve any problems. The seller should also be available for answering questions and service.
- Under Maryland law, audiologists, hearing aid dispensers, and physicians may fit hearing aids. Contact the Maryland Board of Audiologists, Hearing Aid Dispensers and Speech-Language Pathologists to verify a seller's license. The number is (410) 764-4725.
- Make sure you know exactly what is included in the price of the aid, and get it in writing. Find out if there are extra charges for molds, accessories, or adjustments. Also find out if the purchase price includes maintenance service, follow-up checks, and free periodic inspections.
- Beware of extraordinary claims. Government agencies have warned several hearing aid manufacturers to stop making unsubstantiated claims that their hearing aids reduce background noise and improve speech recognition in noisy environments.
- Under Maryland law, you may cancel your contract for any reason within 30 days of delivery and receive a full refund, less 10%. In situations where sellers document actual expenses greater than 10%, they may withhold their actual expenses up to 20% of the sales price.
- It is illegal in Maryland for a hearing aid seller to come to your house without an appointment. If a seller comes to your house with an appointment, you have three days from the sale to cancel the purchase and get a 100% refund.
- If you experience problems, contact the seller immediately. If the seller is unable to fix the problems in the first 30 days, it is best to cancel the sale.
- If the seller agrees to extend your return privileges and/or continue adjustments beyond the 30 days, get the agreement in writing.
- If the sale was in your home, the seller has to come to your home to pick up the aid and give you your refund if you cancel.
- Beware of free bogus hearing tests and other gimmicks to make you buy. Also, be careful of sales pitches in which you are told that your insurance or medical plan will pay for all of the cost of the aid and exam. Check with your insurance company before buying to avoid uncovered expenses.
- Never pay cash. Use a check payable to the company (not the salesperson) or credit card so you can stop payment if necessary.
- Pay as small a deposit as possible, and get a receipt.
- Get a second opinion on any recommended repair not covered by your warranty.
- Contact the Health Advocacy Unit of the Consumer Protection Division to see if any complaints have been filed against a hearing aid seller, or to file a complaint if you have a problem you cannot solve on your own.

The information in this chapter is based on educational materials prepared by the Consumer Protection Division.

**Maryland commercial code**

Maryland also provides substantial protection to consumers in other laws as just one example: Maryland Commercial Law Section 2-316.1

(2) Any oral or written language used by a seller of consumer goods and services, which attempts to exclude or modify any implied warranties of merchantability and fitness for a particular purpose or to exclude or modify the consumer's remedies for breach of those warranties, is unenforceable. However, the seller may recover from the manufacturer any damages resulting from breach of the implied warranty of merchantability or fitness for a particular purpose.

(3) Any oral or written language used by a manufacturer of consumer goods, which attempts to limit or modify a consumer's remedies for breach of the manufacturer's express warranties, is unenforceable, unless the manufacturer provides reasonable and expeditious means of performing the warranty obligations. The inapplicability of this section on the form prescribed under § 13-119 of the Transportation Article.

This law means that any seller of consumer goods in Maryland is directly responsible to the consumer for defective goods. You cannot be required to try to deal with the manufacturer. That is the seller's job.

**NURSING HOMES****NO LONGER ABLE TO LIVE AT HOME SAFELY?****– NURSING HOMES, ASSISTED LIVING, AND HOME AND COMMUNITY-BASED CARE OPTIONS**

There was a time when a person who could not live safely at home anymore either moved in with family or into a nursing home. The good news is there are many more choices today. Government and private agencies are emphasizing the provision of services and supports in a person's home or community so that he or she does not have to move into an institution like a nursing home. Many of these options did not really exist 20 years ago. Options include, but are not limited to, adult day care, home health aides, residential services agencies, congregate housing, nursing staff agencies, assisted living, nursing referral service agencies, etc. There are so many options that it can be hard to sort through all of them, especially if your time and funds are limited. Not only is there a wide range of potential services and supports to choose from, the financing for each option can be different and complicated.

How is one to decide? Contact Maryland Access Point.

Maryland Access Point (MAP) provides information and assistance about available long-term services and supports, particularly for older adults and individuals with disabilities. MAP's partners include the Departments of Aging, Disabilities, and Health and Mental Hygiene, as well as the regional Centers for Independent Living. MAP is part of the national Aging and Disability Resource Center initiative that provides a visible and trusted place to access information and assistance. If you or someone you know needs community services to avoid a nursing home stay or needs help with shopping, chores or personal assistance because of a disability, MAP is a guide to service providers in their local area.

For more information:

1. Access the wide realm of information on MAP's website by visiting <http://www.marylandaccesspoint.info/>
2. For the nearest MAP site in your community, visit <http://www.aging.maryland.gov/SeniorInformationAssistance.html>
3. In Baltimore City, call (410) 396-2273.

### 1. Selecting a Nursing or Assisted Living Home

There is a great deal of good information for consumers on the internet about nursing homes, but not as much about assisted living. You can also contact the local Long Term Care Ombudsman's Office for information on selecting a nursing or assisted living home option to fit you or your family member's needs. In Baltimore City, call (410) 396-3144.

#### *Assisted Living*

Perhaps the best place to start learning about assisted living in Maryland is the assisted living page of the online People's Law Library: <http://www.peoples-law.org/node/392>. As noted there, the University of Maryland Law School publishes "Assisted Living in Maryland: What You Need to Know," which can be found at <http://www.aging.maryland.gov/documents/ALGuide.pdf> and it is a great resource despite the fact that it has some dated information.

#### *Nursing Homes*

The Maryland Attorney General's Office publishes "Nursing Homes: What You Need to Know," which can be found at <http://www.oag.state.md.us/Consumer/nurshome.htm>. The federal government also publishes a useful resource entitled, "Your Guide to Choosing a Nursing Home or Other Long Term Care," which is at <http://www.medicare.gov/Pubs/pdf/02174.pdf>.

The federal government's most famous effort in this area is "Nursing Home Compare," which allows you to compare nursing homes located in the same state against each other. This resource is available at <http://www.medicare.gov/Pubs/pdf/02174.pdf>. Maryland's Health Care Commission also has its own nursing home comparison website available at: <https://mhcc.maryland.gov/consumerinfo/longtermcare/NursingHomeRehabilitation.aspx>.

If you do not have access to the internet, take this information to you local librarian or MAP site. They can help you access the information.

The websites listed above are all government websites. There is also a lot of information available on private websites. Keep in mind, however, that private websites often contain a marketing slant.

If you do not have access to the internet or a library and cannot contact your local MAP office, here is very short version of some things to do when selecting an assisted living or nursing home:

1. Call your local ombudsman program to get a list of nearby homes. In Baltimore City, the number is (410) 396-3144. Nearby is important. Residents who have lots of visits from family and friends tend to get better care.
2. Visit the potential homes and take along a notebook so you can take notes during your visit. This will allow you to keep straight what you saw, heard, and smelled during each visit.

3. Ask the home to see its most recent survey from the Office of Health Care Quality, which is the Maryland governmental agency responsible for licensing and inspecting assisted living and nursing homes. If it cannot or will not provide you with a copy, you should probably look for another home.
4. Get a copy of the rate sheet, and if it is an assisted living home, the disclosure statement. Look closely at what is included in the monthly or daily rate and what is not included, but provided for additional fees. Those additional fees can add up fast.
5. Determine how long your funds will last at the rates quoted and, when doing so, assume the rates will increase at least 3 or 4% every year.
6. Find out if the facility or home participates in Medicaid because most people end up on Medicaid if they spend more than a year in an assisted living or nursing home. If your funds will not last 9 months or more, do not move into a place that does not accept Medicaid, and do not spend all your funds before applying for Medicaid. Apply well in advance. Keep in mind that there are a limited number of people for whom Medicaid will pay for assisted living. Do not assume you will be able to get one of the slots any time soon.
7. Ask for a copy of the contract to be signed. Read it very carefully. If you are considering a nursing home, see the more detailed information below on nursing home contracts. If you have any questions about what any of the language in the contract means, contact an attorney to help you. You may call the Maryland Senior Legal Helpline at 800-367-7563 to obtain free legal advice if you cannot afford a lawyer.
8. Before signing the contract and committing, visit once more, preferably on a different day of the week and at different time than your first visit.
9. There should be no blank spaces left in a contract when it is signed. If the assisted living or nursing home says that a section "does not apply," physically mark the section in writing as "N/A" or "not applicable." Every person signing the contract should initial and date each handwritten mark, change, or addition to the contract.
10. After committing and signing the contract, make sure the other party signs and gives you a copy of the fully executed contract along with all the exhibits and attachments.

## 2. Nursing Home Contracts and Resident Rights

Many nursing homes use the Department of Health and Mental Hygiene's model: the "Resident Admission Contract" and the "Resident's Agent Financial Agreement." The Resident's Agent Financial Agreement is used if the person being admitted is not capable of entering into a contract. Of course, a nursing home can use its own form contract if it has submitted the contract to the Department for approval.

You can get copies of the model contracts by calling the Department's Office of Health Care Quality at (410) 402-8000. Compare the language in the contract of a nursing home you are considering against the model contracts. If the nursing home contract is different, ask the nursing home to explain why. Beware of a contract that differs a lot from the model. Even if a nursing home does not generally use one of the model contracts, you can ask if it will use one for you.

Nursing homes are much more regulated than assisted living facilities so there are a number of requirements that nursing home contracts must meet. A nursing home contract must describe what services the home will provide for the basic rate. The basic rate is usually a monthly or daily fee. The basic rate must include at least: room and board; social services; nursing care; skin care, cleaning, and grooming; protection from accidents and infections; and social and rehabilitative activities.

Extra fees may be charged for services not included in the basic rate. Rates and fees may not be increased without at least 45 days written notice. The contract must also provide information about late fees.

The contract should explain how to apply for Medicare, Medical Assistance (Medicaid), or both. If the home accepts Medicaid, it cannot discriminate against you because Medicaid is paying for your care. It is also illegal for a nursing home to require you to pay privately for a period before the nursing home will accept Medicaid on your behalf. A deposit cannot be required if you are being admitted from a hospital under Medicare coverage.

The grievance or complaint policy of the nursing home must be explained in the contract, along with how to make complaints to one or more of the following: anyone working at the nursing home, the Long-Term Care Ombudsman, and the Department of Health and Mental Hygiene. The nursing home and state agencies have a duty to investigate complaints and attempt to resolve them. It is illegal for anyone at the nursing home to retaliate against someone for making a complaint.

The nursing home's bed-hold policy must also be included in the contract. This policy explains how and when you can return to the nursing home after a hospital stay. The nursing home must also give you a copy of the policy when you are admitted and when you go to a hospital. Even if Medicaid or Medicare is paying for your stay in a nursing home, the home can charge you personally to hold your bed while you are in a hospital. If you do not pay, you may not be able to return to your room when you are discharged from the hospital. Regardless of whether you pay the bed-hold charge, if you are on Medicaid, you have a right to return to the first available bed at the nursing home.

If a resident is competent to sign a contract, a nursing home may not require another person to sign the admissions contract. Only when the resident has a court appointed guardian, or a doctor has certified that the resident is not competent to sign a contract, may a nursing home require a third party to sign the contract. If another person is signing, the contract should clearly list the duties of the person who signs. Unless the other person (such as a family member) voluntarily agrees to be personally liable, the contract should state that: (1) the resident and the other person are only required to pay from the money and assets of the resident, and (2) the other person is not required to use his or her own funds to pay nursing home bills.

The contract must include an explanation of the Nursing Home Residents' Bill of Rights. Among the numerous stated rights, the following are most important:

- 1) The right to be treated with consideration and respect, including the right to be free from mental and physical abuse. If a patient is being abused or neglected, a family member or friend should contact the local police, or the Office of Health Care Quality at (410) 402-8000, or the Attorney General's Office Medicaid Unit at (410) 576-6521, or the local Nursing Home Ombudsman in Baltimore City at (410) 396-3144.
- 2) The right to be free from chemical and physical restraint except as ordered by a physician for the patient's health and safety. Restraints should only be used after less restrictive methods to treat the patient's problem have been attempted and failed. Restraints may not be used for staff convenience or disciplinary purposes.
- 3) The right to privacy in all aspects of medical care, consultation, examination, and treatment, as well as the right to privacy in one's own room.

- 4) The right to a written explanation of the services provided by the facility prior to being admitted and during the stay.
- 5) The right to receive, "unless medically inadvisable," accurate and up-to-date information concerning diagnosis, treatment and prognosis, and the right to refuse medication and treatment.
- 6) The right to associate privately with persons and groups of the patient's choice at any reasonable hour, to send or receive mail without it having been opened, and to have access at all reasonable hours to a telephone for private conversation.
- 7) The right to manage his/her own funds and, if the facility manages the funds, a monthly accounting.
- 8) The right to present grievances and recommend changes in policies and services of the facility to the administrator, the Maryland Department of Aging, or other groups without fear of reprisal, restraint, or interference.
- 9) The right not to be transferred or discharged except for medical reasons, the patient's welfare, the welfare of other patients, or nonpayment. If one of those reasons is reasonably believed to exist, the patient and the guardian or next of kin shall be given at least 30 days written notice with reasons for the decision to discharge or transfer, and information regarding the patient's right to a hearing to challenge the discharge or transfer. If the patient is discharged or transferred, the decision may be appealed.

### 3. Paying for Long-Term Care Services and Supports

Paying for long-term care services and supports can be very expensive. The typical methods of payment are private pay, out-of-pocket, Medicaid, Medicare, Veteran's Benefits, Long-Term Care Insurance, or some combination of the above.

See the earlier sections on Medicaid and Medicare to understand the limitations of what they will pay for and when. People are frequently surprised to learn that Medicare does not pay for long term care. It only pays for care in a nursing home that is rehabilitative care, and then for a limited time at a reduced rate.

Medicaid and the Veterans Administration are working on ways to pay for more care in the home or community as opposed to in a nursing home. Things are constantly evolving so call your local MAP office to see what payment resources might be available for you or your loved one. In Baltimore, the number is (410) 396-2273.

## AGE AND HANDICAP DISCRIMINATION

### AGE AND HANDICAP DISCRIMINATION

"Age discrimination" is a term used to describe decisions others make about you based upon your age. Some forms of age discrimination can benefit you. For example, if you are 60 or older, some businesses will give you a discount that is not available to younger people. Most forms of age discrimination injure you by refusing to consider you because of your age. Some types of age discrimination violate federal, state, and local law. The most common form of illegal age discrimination is employment discrimination.

Generally speaking, negative employment decisions cannot be made based on age. This applies to all aspects of employment, including hiring, job assignments, pay, promotions, termination, and retirement. For example, if you were passed over for a promotion solely because of your age, your employer's decision may have violated federal, state, and local law.

Age is a permissible factor when it can be shown that it bears a substantial relationship to the performance of necessary job tasks. For example, involuntary retirement of airline pilots at a relatively early age is not illegal because of the hazards of the job.

Years ago, the federal age discrimination laws protected only individuals between 40 and 70 years of age. Thus, a company could force a 70 year old employee to retire solely because of his or her age. In 1986, Congress changed the law and removed the age 70 restriction. Currently, an employee cannot be made to retire solely because of his or her age. If the employee can continue to perform his or her job duties, then the employee can continue to work as long as he or she cares to work.

If you think that you have been the victim of employment discrimination based upon your age, you should contact one of the agencies responsible for enforcing anti-discrimination laws. Baltimore City and several counties have their own local agencies. The federal Equal Employment Opportunity Commission (EEOC) and the Maryland Commission on Civil Rights (MCCR) also investigate charges brought against Maryland employers. You may call EEOC at 1-800-669-4000 or the MCCR at (410) 767-8600. If you believe that you have been the victim of age discrimination, you must contact an agency promptly. The applicable law may give you limited time, such as 180 days from the date of the alleged discrimination, to file a complaint.

Other types of age discrimination decisions may also be illegal. For example, it is illegal in Maryland to refuse someone service in a place of public accommodation such as a hotel, restaurant, theater, or stadium, because of age. In addition, decisions concerning whether credit may be extended generally cannot be based upon age. See "Credit-The Federal Equal Credit Opportunity Act."

Federal and state law also make it illegal for certain employers to discriminate against an employee who has a disability, has a history of a disability, or is believed to have a major, long-term physical or mental impairment. A disability has been defined as a physical or mental impairment that substantially limits one or more major life activities. Major life activities are basic functions such as walking, seeing, learning, lifting, or working. The term does not include a condition that is only temporary in nature.

An employer is required to make a "reasonable accommodation" to the needs of the disabled person who might otherwise be unable to obtain employment unless the employer can show that such an accommodation would constitute an "undue hardship" to the business. The decision whether an employer's attempt at accommodation was reasonable is determined on a case-by-case basis. Reasonable accommodation can include installing wheelchair ramps, widening bathroom stalls, initiating alternative tests for individuals who cannot take traditional tests, restructuring job duties, and creating opportunities for job sharing, part-time work, and work at home.

If you have a physical or mental condition that you think is limiting your opportunities for employment or advancement, you should attempt to discuss alternative methods of accommodating that disability with your employer to reach an arrangement acceptable to both you and your employer. If an employer refuses to consider you for employment or promotion because of a disability or is unwilling to arrange accommodations for your condition, you can file a complaint with a state or local anti-

discrimination agency. Again, the applicable law may require that you file a complaint within 180 days of the events that give rise to the complaint.

Some adverse decisions are not age or disability-related, but may be motivated by other illegal reasons such as race, color, sex, national origin, or religion. If you need assistance in deciding whether you have been the victim of illegal discrimination, you should contact the EEOC or the MCCR.

## **GOING TO COURT**

### **IF YOU RECEIVE COURT PAPERS IN THE MAIL**

If you receive paperwork from a courthouse or from an attorney in the mail, you should immediately contact an attorney. Many attorneys will do free consultations or at least tell you what the paperwork you have received means. If you cannot afford an attorney, contact your local Legal Aid Bureau or courthouse to obtain a list of free legal service providers to see if anyone in your area provides free legal services. Many courthouses also have a *pro se* or Self Represented Litigants Clinic that can assist you with paperwork.

If you are facing criminal charges, and have either been arrested or received a summons, contact the Public Defender's office immediately. If you wait until the last minute, it is unlikely that anyone will be able to represent you or help you prepare for court.

### **HOW TO FIND AN ATTORNEY**

You can find an attorney by asking your friends, your relatives, or other persons, such as your doctor, for a reference. There are also agencies that will give you local referrals. Some of the agencies are listed at the end of this Chapter along with their phone numbers. Remember that attorneys specialize in different areas of law, so the lawyer who helped your friend with a divorce might not be able to help you with your spouse's estate. If you have received a court summons or paperwork that indicates you are being sued or facing criminal charges, you must contact an attorney immediately. Most attorneys need as much time as possible to prepare for a case.

#### **Call First**

Start by calling the attorney. Most attorneys do not accept walk-in visits from potential clients. You should ask questions to find out whether the attorney can assist you and whether he or she has the expertise needed to deal with your legal matter. You may want to ask whether the attorney's practice is limited to a particular area of law and how long the attorney has been in practice. In addition, you may want to find out if there is a fee for the initial consultation and the amount of the fee.

#### **Make An Appointment**

You will probably need to make an appointment for an initial consultation so that the attorney can discuss your legal problem and give you his or her recommendations.

You should find out how long your legal matter will take to resolve and whether the attorney has handled a legal matter such as yours in the past. In addition, you should discuss your other options, and the "pros" and "cons" in choosing any one of the options. You should discuss how the legal fees will be computed and who will be handling your case.

**If you cannot find an attorney, you are allowed to represent yourself in court. Here are some Dos and Don'ts for representing yourself:**

Do:

- Do dress formally, as if you were going to a religious or special event.
- Do bring all documents that are relevant to your case with you. Depending on your case, this includes bills, police reports, letters, etc. Keep in mind that the court often keeps these items as evidence, so make copies of everything you want the judge to look at.
- Do tell the story of what has happened from beginning to end. Imagine you are describing a movie to the judge.
- Do plan out what you are going to say, and any questions you might ask witnesses.
- Do be formal. Address the judge as “your honor.” Address the Respondent and any other parties as “Mr. Smith” rather than as “John.”
- Do talk to the attorney for the other side. Sometimes you are able to come to an agreement without having to go to trial.

Do Not:

- Do not miss court for any reason. If you have to miss court, you must file a motion to postpone with the court.
- Do not bring letters from family or friends who are unable to come to court to act as your witnesses – these are considered hearsay. Instead, bring your family member or friend with you.
- Do not interrupt anyone – *especially* the judge.
- Do not attempt to show the judge that the other party is lying or stupid. Focus on telling your version of the story.
- Do not make faces while the other party is speaking.
- Do not chew gum or have anything in your mouth when talking to the judge.
- Do not react too emotionally. It is okay to be upset during your hearing, but you need to be able to explain what has happened to the judge. It is okay to ask the judge if you need to take a moment to gather yourself, or if you need a tissue.
- Do not come to court under the influence of drugs or alcohol.
- Do not be late. Assume that court starts at the time it says on the paper, and go to the courthouse early in case you have to wait in line. Sometimes the line for court can be 15-30 minutes long, so be sure to be early.

**IMPORTANT TELEPHONE NUMBERS****Legal Services for Senior Citizens**

Anne Arundel County	
Legal Aid for Senior Citizens	(410) 269-0846
Baltimore City	
Legal Services to the Elderly Program	(410) 396-1322
Legal Aid Bureau, Inc.	(410) 539-5340
Nursing Home Program	(410) 296-6705
Lawyer Referral & Information Service	(410) 539-3112
60+ Legal Program	(410) 539-3112
Baltimore County	
Legal Services for Senior Citizens	(410) 296-6705
Lawyer Referral Service	(410) 337-9100
60+ Program	(410) 337-9100

To obtain current information regarding Area Agencies on Aging and local Senior Information and Assistance Offices, contact:

**Maryland Office on Aging**  
301 West Preston Street Room 1004  
Baltimore, Maryland 21201  
(410) 767-1095



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