



Seniors & the Law:

A Guide For Maturing Texans



Now that you or someone you love has finally reached the “Golden Years,” your legal rights are significantly different than they were just a few years ago. As you become a Senior you will face new challenges, including finding a way to make ends meet without employment, avoiding consumer scams that often target the elderly, planning for your retirement and ensuring that you receive proper medical care. Therefore, it is important to plan ahead and know your legal rights.

The Texas Young Lawyers Association has prepared this Guide in order to help you understand the laws that affect your daily life and become familiar with the benefits, special services and resources available to Seniors. This Guide is intended to provide general information and is not a substitute for legal counsel. The laws outlined in the Guide are constantly subject to change. If you have a specific legal problem, we suggest that you consult an attorney.

- MAKING ENDS MEET 2
- CHOOSING WHERE TO LIVE 5
- OBTAINING HEALTH CARE AND BENEFITS 7
- PLANNING AHEAD 9
- ESTATE PLANNING 10
- STAYING ON THE JOB 12
- GETTING AROUND 12
- HANDLING ELDER ABUSE 14
- AVOIDING CONSUMER SCAMS 15
- GETTING DIVORCED OR REMARRIED 17
- RAISING YOUR GRANDCHILDREN 18
- FINDING A CAREGIVER OR NURSING HOME 19
- LOSING A SPOUSE OR A PARENT 21
- GETTING LEGAL ASSISTANCE 21
- COMMUNITY RESOURCES 22

MAKING ENDS MEET

You may be living on your retirement or receiving social security. You may be house rich but cash poor. Or you may be struggling just to keep your electricity on. How you make ends meet will depend on your particular circumstances. But in your senior years it will likely involve new types of income such as a pension, Social Security, Supplemental Security Income or maybe a reverse mortgage.



What is Social Security? – the basics

Social Security is a governmental benefit supplied to eligible workers and/or their family. When you work, you pay Social Security taxes and earn social security credits. Your employer matches the amount you pay in taxes. (If you are self-employed, you pay that portion of the tax as well.) Also, during your work life you earn social security credits. You can earn up to 4 credits per year. If you were born in 1929 or later, you need to have 40 credits to be eligible to draw social security benefits. People born before 1929 will need fewer credits to be eligible (1928 = 39 credits, 1927 = 38 credits, etc.). Most people who work full time will accrue the 40 credits in 10 years. The majority of people will accrue far more credits than necessary to be eligible for benefits. Though the accrual of excess credits will not increase the benefit you receive, the income you earn in those years will.

How are my benefits calculated?

The amount of your monthly benefit is essentially determined by your age at the time you start receiving benefits and your earnings (i.e. the amount you have paid into the system) over your work-life. Your benefits are based on your earnings averaged over most of your work-life. First, your actual earnings are adjusted or “indexed” to account for changes in average wages since the year the earnings were received. Then social security takes your 35 most productive years and averages them. This number is what determines your “basic benefit,” the amount you will receive if you start drawing at “full retirement age.” Hence, if you work less than 35 years, there will be earnings of \$0.00 for those years not worked that can drastically affect your average.

When can I start drawing social security benefits?

Assuming you have the necessary credits, you could start drawing benefits as early as age 62 years old. However, at 62 years of age, you would not be at “full retirement age” and as a result you would receive a reduced benefit. So, what is full retirement age? Between the ages of 65 and 67, depending on your date of birth.

Again, if you start drawing your benefits before your full retirement age, the benefits will be permanently reduced. For example, if your full retirement age is 67, but you start drawing at 62, your monthly “basic benefit,” the amount of your monthly benefit calculated based on your best 35 years of work, will be reduced by about 30%; at age 63 it is reduced about 25%; at 64, about 20%; at 65, about 13.333%; and at 66 about 6.66%.

Can I choose to wait until after full retirement age to draw my benefit and does that affect how much I will receive?

Yes – you do not have to draw your benefits at “full retirement age” but you must start drawing them by 70 years of age. This is known as “delayed retirement.” If you start drawing after “full retirement age” your monthly benefit will increase. Again, the amount of the increase is a factor of how long after “full retirement age” you start drawing the benefits.

How can I find out what my monthly benefit will be?

Every year, about 3 months before your birthday, you should receive a statement from Social Security. This statement will tell you if you have enough credits to be eligible to receive benefits. Assuming you do, the state-

ment will then look at your past earnings, your age and your projected earnings to give you an estimated monthly benefit. Remember, this is only an estimate. If you are many years from retirement then drastic changes in your earnings can affect the estimate. For more information about your particular benefits you can contact social security at 1-800-772-1213 or go to their website at www.ssa.gov.

If I continue to work will my benefits be reduced?

Maybe – If you work and are at “full retirement age” – you may keep all of your benefits no matter how much you earn. However, if you started receiving benefits before your “full retirement age” and continued to work, then there is a limit to how much you can earn before your benefits may be reduced.

Can I receive social security if I was a stay at home spouse and I am now a widow(er)?

Yes – even if you are not individually eligible for benefits (i.e. did not earn 40 credits), you can still receive benefits based on your deceased spouse’s eligibility. As a widow(er) you can receive benefits at age 60 (50 if you are disabled). Be aware, if you remarry before you are 60 years old you will not be eligible for these widow(er) benefits.

If you independently qualify for social security benefits and are also a widow(er), you may be able to receive benefits as a widow(er) and then switch to your own benefits at a later time such as when you obtain “full retirement age” if those benefits are greater. The rules vary depending on the situation so it is recommended that you speak to a Social Security representative about your options.

Is my social security benefit affected by my pension?

Generally not. If you worked for a company that has a pension plan and you still paid social security taxes, then your social security benefits are not affected by your pension. (However, please do note that if you have substantial income from another source, that may make your social security benefit subject to income taxation) But, if you get a pension for work not covered by social security – for example the federal civil service, some state and local governmental entities or work in a foreign country – your social security benefit may be lowered or offset.

How do I apply for social security benefits?

You can call the toll free number for the Social Security Administration at 1-800-772-1213 to apply for benefits or make an appointment with a local Social Security Office. Either way, you should apply about 3 months before you want to start receiving the benefits. The office can tell you what documentation you will need to bring with you.

What is a representative payee?

A representative payee is a person that is authorized to receive your social security checks on your behalf. If you have trouble managing your money, the Social Security Administration can appoint a friend or relative of yours to receive the checks. That person is then supposed to use those funds for your benefit and can be charged and convicted if they use them for some other purpose.



What is a Reverse Mortgage?

If you are 62 years of age or older and own a home, you may be able to get a Reverse Mortgage. A Reverse Mortgage is a loan against your home that, typically, you do not have to pay back as long as you live there. As the name indicates, it works in reverse from a traditional mortgage. In this instance, the mortgage company will pay you money, either in lump sum or in monthly increments, for your home. As long as you continue to live in the home you do not have to pay them back. However, if you move or sell your home the loan must be paid off at that time. In the event that you pass away, your heirs will have to make sure the loan is paid from the Estate.

There are several types of Reverse Mortgages. All of them have common characteristics in that there is a cost associated in obtaining the mortgage, interest accrues on the loan and the lender will not allow the mortgage (with costs and interest) to exceed the value of the home. The amount of money you may obtain through a Reverse Mortgage will depend upon your age at the time you get the mortgage, the value of the home, the interest rate and whether or not you will receive the money in lump sum or monthly payments. Also, in most, if not all cases, the lender will require that the Reverse Mortgage be the only lien on the home. So if your home is currently not paid off, you have to pay it off or use the proceeds from the Reverse Mortgage to pay off the remaining balance. In all instances you will still be responsible for the property taxes on the home, maintaining insurance on the home and upkeep and maintenance.

The most common, and the only one that is insured by the Federal Government (through the Federal Housing

Authority), is the Home Equity Conversion Mortgage (HECM). The HECM generally has some of the lowest fees in obtaining the mortgage and is the most flexible in what you may use the funds for. Before you can get an HECM Reverse Mortgage you will have to meet with a counselor approved by the Department of Housing and Urban Development (HUD), as this is a big decision that should not be entered into lightly. Obviously, the advantage to obtaining a Reverse Mortgage is that it allows you to generate funds from what is likely one of your most valuable assets, your home. The disadvantage is that by borrowing this money, you are decreasing the value of your Estate. Also, please be aware that if you are currently receiving Supplemental Security Income (SSI) or any other assistance that is based on financial status/need, you need to make sure that getting a Reverse Mortgage will not jeopardize those benefits.

More information on Reverse Mortgages is available through AARP, online at www.aarp.org.

Special Tax Relief For Seniors

- Property taxes may be locked-in at age 65
- An extra standard deduction is allowed for persons over 65 years of age
- A gift of \$11,000 per year or a one-time gift of \$55,000 may be given tax-free to children and grandchildren. This is a great way to create an education legacy for your children and grandchildren.
- Income from the sale of a residence is tax-free - at any age.
- To “catch-up” on retirement contributions, the yearly amount you can contribute towards an IRA or Roth IRA once you turn 50 years of age jumps to \$3500. Also, if you are still employed at age 50, a \$16,000 per year contribution may be made towards a 401(k).
- Any payment that you receive from your IRA or qualified retirement plan before you reach age 59½ is normally called an “early” or “premature” distribution. As such, these funds are subject to an additional 10 percent tax. But there are a number of exceptions to the age 59½ rule that you should investigate if you make such a withdrawal.
- The Tax Counseling for the Elderly (TCE) Program provides free tax help to people age 60 and older. Trained volunteers from non-profit organizations provide free tax counseling and basic income tax return preparation for senior citizens. As part of the IRS-sponsored TCE Program, AARP offers the Tax-Aide counseling program during the filing season where trained and certified volunteer counselors help people of low-to-middle income, with special attention to those age 60 and older. For more information on TCE call 1-800-829-1040. To locate the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit <http://www.aarp.org>.

**Please remember, these amounts are subject to change from year to year.*

Can I get help paying my electric bill?

There is a program through The Public Utility Commission called LITE-UP Texas that provides a discount on utility prices from your retail electric provider. Only qualified customers in areas of competition are eligible for the LITE-UP Texas discount. There are some

areas in Texas where electric competition is not yet available. You may automatically qualify if you already receive certain benefits from the Texas Department of Human Services. To see if you qualify or to obtain an application, call 1-866-4-LITE-UP (1-866-454-8387).

What can I do if I can't afford to eat?

For many senior citizens living on a fixed or limited income, money for nutritional food is often overshadowed by other expenses such as rent, utilities and much needed medications. Through funding from the Older Americans Act, all Area Agencies on Aging in Texas provide a Nutritional Program, which serves nutritionally balanced meals to seniors who are 60+ years of age, and their spouses, regardless of age, through a network of congregate meal sites. You may make a donation, however the meals are free. The Nutrition Program in your area may provide transportation as well. Also, for seniors who are eligible,

home delivered meals are available. Contact your county's local Area Agency on Aging for more details. Call 1-800-252-9240 for automatic referral by phone to the Area Agency on Aging in your area.

CHOOSING WHERE TO LIVE

Most people prefer to remain self-sufficient for as long as possible. However, changes in your finances or health during your senior years may call for a new living arrangement. It is important to know that there are several options depending on your circumstances and needs.

Housing Options

There are many housing options available to seniors in Texas. In choosing what option is the best fit for you will depend upon your level of independence and your financial situation. At one time there were nursing homes and not much else for seniors that had varying levels of independence. Times have changed and there are more choices available.

Do you and your child(ren) wish you could live "together" but not in the same house? An **ECHO (elder cottage housing opportunity)** may be the answer. These are typically small manufactured homes that can be placed on the same property as your child's house. There may be zoning restrictions that have to be addressed before you can actually place such a structure on the property but it is certainly worth investigating if you and your child (or family member) feel this would offer independence while being close enough that assistance is available if necessary.

For seniors who are independent but need help making ends meet, have you ever considered a roommate? Having a roommate is not just for young people. **Home sharing** is a situation where you and another person(s) share a home and the costs associated with it. Obviously, you would want to be very careful in screening the person(s) who will be your housemate(s).

If a roommate is not an option you want to pursue but you still need help making ends meet, there may be another option. There are grants and governmental programs that may offer financial assistance for home maintenance. Information on such grants is available through the Texas Department on Aging at 1-800-252-9240 or www.tdoa.state.tx.us. The TDoA can provide you with information relating to availability and requirements of these grants.

There are more and more **assisted living facilities** in Texas. These facilities are geared towards senior citizens that may need some assistance but still want to maintain their own space and as much independence as possible. Assisted living facilities vary greatly in the services they offer and the living arrangements. In some you may have a room while others provide you a small apartment. Assisted living facilities generally will provide meals, personal care, support services, social activities and 24-hour supervision (meaning someone is generally available at all times if there is a problem). Some facilities will offer limited health related services as well.

For individuals that require greater help and/or skilled nursing care a **nursing home** may be the most appropriate option. Typically, a nursing home will provide for the basic needs of an individual and will also have nursing care available. In addition, a doctor typically will come to the nursing home to check on the residents in varying intervals.

A **continuing care retirement community (CCRC)** offers multiple levels of care and services as well as several different housing options which allows you to select the option that best fits your lifestyle and level of independence. The agreement as to what services are to be provided and at what cost are covered in a contract you sign with the CCRC. Assuming the option is provided for in the contract, one important benefit is that the CCRC usually will allow you to

change your living arrangement (i.e. from a home to an assisted living set-up to a skilled nursing facility) as your needs change. Again, this is typically negotiated in the original contract so be sure and get financial and legal advice before signing the final papers.

Whatever option you choose, whether it be one listed above or some other arrangement, be sure and investigate the costs and benefits for you. If you are entering into a contract, be sure to have an attorney review the documents before you sign them to ensure the services promised to you are actually addressed in the paperwork.

For additional information you may want to contact your local Area Agency on Aging, or check out the websites for the Texas Department on Aging, the U.S. Department of Housing and Urban Development and AARP.

Are there any tax exemptions or benefits I can claim on my residential homestead if I am age 65 or older?

Lawmakers have provided several types of property tax relief for older homeowners. Generally, you qualify for them if you are 65 years of age or older, or if you are over 55 and you are the surviving spouse of a person who died at the age of 65 or older. Exemptions specifically for homeowners age 65 and older (and over-55 survivors) are given in addition to the general homestead exemptions. As with the general exemptions, over-65 exemptions will vary depending on the jurisdictions in which your home is located. All school districts by law must grant an additional exemption of \$10,000 to over-65 homeowners. Some school districts offer greater exemption amounts. Added to the \$15,000 general homestead exemption, this means you will have at least a \$25,000 exemption from school taxes when you qualify.

Can I defer payment of real property taxes on my residential homestead?

If you are 65 or older and you are having trouble paying your taxes, a tax deferral may be of interest to you. Texas residents over the age of 65 can defer the payment of real property taxes on their residential homestead until the property loses its homestead character. Tax deferral only postpones the payment of the taxes owed. It does not cancel them. During the deferral period, taxes are still due, interest on the taxes accrue, and a tax lien may be imposed on the property, but the tax lien cannot be enforced and a penalty may not be imposed. If you cease to own the home or live in it, all taxes, penalties, and interest become due immediately. The taxing units may proceed with delinquent tax suits if the taxes are not paid promptly. The new homeowner or your estate must pay the tax liabilities to retain the property. The deferral provisions do not apply to over-55 survivors and may not be permitted by the lender if your home is mortgaged. You

can obtain an application for an over-65 tax deferral from your local tax appraisal district.

Can my landlord evict me for any reason at all?

No. You can only be evicted for non-payment of rent, lease violations, if the lease has expired or if no lease exists. Further, a landlord who just “throws out” a tenant may be liable for both civil and criminal penalties. Before you are evicted you will receive notice of the proceedings and an opportunity to be heard in court. An eviction suit, (also called a “forcible detainer”) is the process by which a landlord tries to regain possession of the premises.

Can I install grab bars, lower my countertops or make other needed modifications against my landlord’s objections?

Yes. According to the Federal and Texas Fair Housing Acts, if you have a physical or mental disability (including hearing, mobility and visual impairments, and chronic mental illness) that substantially limits one or more major life activities, your landlord may not refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for you to use the housing. Where reasonable, the landlord may permit changes only if you agree to restore the property to its original condition when you move. The landlord also cannot refuse to make reasonable accommodations to rules, policies, practices or services if necessary for the disabled person to use the housing. For example, an apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment. Another example is that a building with a “no pets” policy must allow a visually impaired tenant to keep a guide dog.

OBTAINING HEALTH CARE AND BENEFITS

Understanding your health care rights, sorting through insurance policies and finding ways to pay your medical bills can be overwhelming. However, there are resources available to educate you about your rights and help you weigh your options. What is right for you will depend on your personal needs.

Can I get Health Insurance after I retire?

If you are lucky, part of your retirement package may include the continuation of health insurance coverage. If not, after you retire, you may be entitled by law to continue the health insurance you had with your employer for a short period of time at your own cost. Though the expense may be great, by doing so you would, at least for that period of time, have the coverage.

Finding private health insurance on your own may be quite difficult and cost prohibitive. On new policies, many health insurance companies will not cover pre-existing conditions. Even if you find coverage, rates are typically based on age and health risks—two factors that tend to work against us as we get older. There are other options such as Medicare, Medigap and Medicaid. In addition, if you are a veteran, you may have additional options through the Veterans Administration.

What is Medicare?

Medicare is a federal health insurance program that primarily covers Social Security eligible persons who are at least 65 years of age. You may qualify sooner if you have certain long-term disabilities.

The program currently has 2 components: Part A – referred to as hospital insurance – which covers in-patient hospital care, some skilled nursing and home health care and hospice care. Part B- that has a premium of \$58.70 (current as of 2003 but subject to change) helps pay additional expenses such as the doctor's charges. It may also cover physical therapy, occupational therapy and speech therapy.

Under Medicare you can choose from the Original Medicare Plan or a Medicare + Choice Plan. Under the Medicare + Choice Plans you can opt for an HMO type of plan or a Medicare Private Fee-for-Service Plan. These Medicare + Choice Plans may have additional coverage not offered by the Original Medicare Plan but may also have fees associated with maintaining that coverage. What is right for you will depend on your personal needs. Details as to the costs and benefits are found in a hand-

book entitled Medicare & You. This book is typically sent to all people with Medicare each fall. However, you can request a copy by calling Medicare at 1-800-633-4227. Then select option 4 (to order a free copy). The CMS publication number for this handbook is 10050. Also, you can download the handbook at www.medicare.gov.



What are the new developments for drug benefits under Medicare?

In December of 2003, President Bush signed a new law that affected Medicare. The primary push of the law was to allow for a drug benefit, which is currently not covered under Medicare, for Medicare recipients. Though the law passed, it should be noted that new questions have been

raised about the cost of the plan and whether or not it needs to be re-worked. We are providing information about the drug plan as it exists today but would encourage you to keep abreast of any new developments or alterations to the plan. Also, please be aware that some of the details of the plans were not available at the time this guide was printed.

Under the new plan, Medicare recipients are eligible to enroll for a Medicare-Approved Drug Discount Card and, starting in 2006, will be eligible to be part of a Prescription Drug Benefit Plan.

The Medicare-Approved Drug Discount Card

The Medicare-Approved Drug Discount Card will be available in 2004. Medicare will contract with private companies to offer new drug discount cards until the Medicare prescription drug benefits (discussed below) start in 2006. Enrolling is your option and you may enroll from May 2004 through December 31, 2005. The cards are supposed to offer savings of 10-25% on prescription drugs. You may be eligible for a credit up to \$600 to help you pay for your prescription drugs. To be eligible for the credit you cannot have income of more than \$12,123 (\$16,362 if married). Other factors may also affect your eligibility.

The Medicare Prescription Drug Benefits Plan(s)

The Medicare Prescription Drug Benefits Plan is set to start January 1, 2006. Any person receiving Medicare is eligible for the plan unless you are receiving outpatient drug coverage through Medicaid. Actually, multiple plans will be offered and the exact details of them are not yet available. However, in general the Plans will work as follows:

- You choose a prescription drug plan and will pay a premium of about \$35 per month.
- The plan will have a \$250 deductible.
- Medicare then pays 75% of the cost between \$250 and \$2,250.
- You will have to pay 100% of the costs for drug spending between \$2,250 through \$3,600
- Medicare will pay approximately 95% of the drug costs above \$3,600.

There may be additional governmental assistance for those who are unable to pay the above premiums and deductibles. The guidelines for eligibility have not been published but are set to be determined in 2005. You can get more information on the new plan at www.medicare.gov.

What is Medigap?

A Medigap policy is an insurance policy sold by private insurance companies. It gets its name because this policy typically fills the “gaps” in the Original Medicare Plan coverage. These policies must follow state and federal laws. As with all private plans, there is a cost involved. Look at all options and costs to determine what is right for you.

What is Medicaid?

Medicaid is a broad based medical assistance program serving certain individuals who are unable to pay for healthcare. In Texas, the Texas Department of Human Services (www.dhs.state.tx.us) determines eligibility for the program. Though Medicaid has many applications, for the purposes of this guide we will briefly cover Medicaid’s role in Long Term Care Programs.

The costs of long-term care, such as nursing homes, are rising. People sometimes find they are unable to afford this long-term care. Medicaid can help in that instance. However, in order to be eligible for Long-Term Care Medicaid in a nursing home, you must be at least 65 years of age or blind or disabled, be a U.S. citizen or permanent resident, have a medical condition requiring nursing care, and meet certain financial requirements.

Since Medicaid is a need-based program, there are financial guidelines. These guidelines are subject to adjustments from year to year, but basically as of 2003, to be eligible for Medicaid, your income must be no more than \$1,656 per month for an individual or \$3,312 for a couple. In addition, you must have countable resources of no more than \$2,000 for an individual or \$3,000 for a couple if both are applying. Some assets are excluded from consideration as a countable asset. These include but may not be limited to the following:

- A homestead where the individual intends to return;
- Life insurance with a face value of \$1,500 or less;
- Burial funds of \$1,000 or less;
- A car worth \$4,500 or less (possibly more if needed for medical transportation);
- Burial plots for you and your spouse;
- Wedding rings

As you can imagine, determining what assets can be counted and how to handle them can be important and a bit confusing. When faced with the prospect of all their assets being liquidated and used to pay for nursing home care, people would try to give away everything to their children in order to qualify for Medicaid. Before you embark on such a path, an attorney should be consulted to deter-

mine the validity and legality of such transfers as there has been much effort put forth in discouraging such conduct.

Do I need long-term insurance?

As discussed above, long-term care for an individual can be quite expensive. Medicare, as it stands now, will not cover nursing home care in many situations and Medicaid will cover it only if you meet certain criteria. Therefore, some private insurance companies sell long-term insurance policies. Each policy will have its own terms and conditions but essentially it is a policy that will pay a certain amount towards your long-term care. This may include items such as providing coverage for costs incurred in an assisted living setting, adult day-care, a nursing home setting, home health care and/or respite care. Before you purchase such a plan, be sure you are clear as to the cost of the plan and the exact coverage it provides. Whether or not such a plan will be to your benefit depends on your own situation, including your health and financial resources.

PLANNING AHEAD

The law allows you to prepare written instructions regarding medical treatment in the event you become incapacitated and it allows you to appoint someone to make decisions for you if it becomes necessary. It also allows you to decide who will inherit your property someday. But the right to have your wishes carried out later is worthless unless you act now. Therefore, in order to be in charge of your future you must plan ahead.

Planning in the event of incapacity

As we grow older, we face the possibility of becoming unable to take care of our own financial affairs or to make our own health care decisions. Planning ahead can ensure that the people you trust will have the authority to look after you without the need for court involvement. Following are two legal options in Texas: powers of attorney and living trusts.

What are general powers of attorney?

This document enables you to appoint an agent to manage your financial and personal business affairs. Most powers of attorney are “durable,” meaning that they are valid even after you are no longer competent.

What are medical powers of attorney?

This document allows you to appoint an agent to make your healthcare decisions in the event you are no longer able to do so.

What about a living trust?

Another way to manage your affairs without ongoing court supervision is the revocable trust or “living trust.” A trust allows you to appoint a trustee to manage your assets. For purposes of taxes and eligibility for governmental assistance, you are still the owner of the trust assets.

In conclusion, these private forms of financial and personal management can replace the need for guardianship and promote individual dignity and flexibility in preserving assets and making decisions for the incapacitated person.



Why avoid guardianship?

Guardianship is an ongoing and court-controlled proceeding by which the court appoints someone, usually next of kin, to take care of the incapacitated person's financial and personal affairs. Without planning ahead, a guardianship may be the only legal means by which even a family member can take care of you. With attorneys' fees, bond premiums, and court costs, a guardianship is likely to be the most expensive manner of property and personal management.

What is a Living Will?

A Living Will, also sometimes referred to as a Physician's Directive, is a legal document that is meant to express your wishes with regard to the use of life-sustaining treatment in the event that you become terminally ill due to injury, disease or illness. Many people do not want to be placed on life support if doing so offers no real hope of improving their situation and really only prolongs the event of their death. Though this may be your intent and wish, there are times when you may not be able to convey this information to the doctors yourself. For example, you

may be unconscious or, due to mental incapacity, unable to tell the doctors what you want. In these situations having a Living Will not only informs the doctor as to your wishes, but, frankly, also relieves your family of having to make a very difficult decision.

If you are a resident at a facility such as a nursing home, it is a good idea to make sure the proper persons are aware of your Living Will and have a copy of it. Likewise, if you are going in to the hospital for any reason such as surgery, you should make sure the hospital has a copy as well. However, since we cannot always foresee our incapacity, the Living Will also designates a person who has the authority to provide your doctor with a copy of the document in the event that you are unable to give it to the doctor yourself. Whoever you designate needs to have a copy of the Living Will or, in the very least, have access to a copy of it.

It should be noted, a Living Will is different than a Medical Power of Attorney. A Medical Power of Attorney authorizes a person to make all medical decisions on your behalf if you are physically or mentally unable to make those decisions. By contrast, a Living Will deals with your wishes with regard to life support issues when your condition is terminal. If you have a Medical Power of Attorney but also want a Living Will, you need to make sure the documents are drafted so that they do not conflict with each other.



ESTATE PLANNING

It's unfortunate that so many seniors don't consider estate planning because planning your estate is really about caring for your loved ones, seeing that they are provided for and making sure your property is distributed according to your wishes. Through the use of wills and trusts you can transfer most of your property at or before your death quickly and inexpensively.

The simplest way to ensure that your property will be distributed according to your wishes after death is to prepare a will. A will is a legal document that designates how your property and assets will transfer after your death.

Do I need a will?

Although wills are simple to create, many seniors in Texas never prepare a will. Without a will to indicate your wishes, Texas state law determines how your property will pass to family members. However, you may want your property to go to certain family members other than those the state requires to inherit your property. A will ensures that your property, assets and keepsakes go to family members, loved ones and other beneficiaries as you wish. Further, wills are not just for the rich; the amount of property you own is irrelevant.

What property is not controlled by my will?

There are certain types of property that are not controlled by your will and pass outside the will. This property includes property held in joint tenancy with someone else, property you have transferred to a living trust, and certain bank and stock accounts, depending on how they are styled. Life insurance proceeds and retirement benefits will pass to the beneficiary named in the insurance policy or retirement agreement.

Should I put funeral and burial instructions in my will?

Although there is nothing to prohibit you from stating such wishes, wills are typically not read or even found until days or weeks after a death. That's too late to be of help to the people who must make immediate decisions about your funeral and burial arrangements. Instead, make a separate document stating your wishes and inform your executor, attorney or loved ones where to find it when the time comes.

For more detailed information about wills and your legal rights in Texas, visit www.tyla.org and download a copy of "To Will or Not to Will" or request a free copy by calling 800-204-2222, ext. 2610.

What is a trust?

A trust is created when a property owner (Trustor/Grantor/Settlor) transfers legal title to an asset to a person (Trustee) who has the duty to hold and manage the asset for the benefit of one or more persons (Beneficiaries). The terms and provisions of the trust are contained in a document called a Trust Agreement or in the property owner's will. Like a will, a trust is a useful instrument in estate planning.

What are the various kinds of trusts?

Trusts can be divided into two major categories based on when and how they are created. The first type of trust is a testamentary trust, which is created in a will and comes into being at death (or some future time). Testamentary

trusts are often created to in order to provide for the management and disposition of assets, creditor protection and tax benefits. Providing for assets to pass in trust, rather than outright, may be appropriate for minors, adults suffering from disability, persons who are spendthrifts, or those perceived by the Trustor to lack management skills and judgment.

The second type of trust is an inter vivos trust, which is created during the life of the Trustor and can be revocable or irrevocable. Revocable inter vivos trusts sometimes called "living trusts" provide for asset management during the lifetime of the Trustor and can provide for the disposition of assets held in trust after the death of the Trustor.

Myths of the Living Trust

The living trust is a written trust agreement between the trustee (the manager of the trust property) and the settlor (the person who creates the trust arrangement). Because the trust is created during the settlor's life, the living trust is a twofold plan—one plan directs the administration of assets during the settlor's lifetime and the other directs the disposition of his or her estate at death. Out of this simple arrangement come many myths about the efficacy of the living trust.

Myth 1: "Living trusts will reduce your taxes"

Because a living trust is usually revocable and amendable during your lifetime, all of the income realized by the trust is recognized by you and reported on your individual income tax return. Likewise at your death, the assets of the trust are subject to estate tax.

Myth 2: "A living trust will avoid probate"

This would be true if all of your assets are in the trust. However, people seldom transfer all of their assets to the living trust. Assets outside the trust may still be subject to probate.

Myth 3: "A living trust will avoid the high costs of settling my estate"

Legal fees for probate are typically based on an hourly charge and are often no different than the charges for administering the estate plan within the living trust. Texas permits "independent administration" of estates which avoids costly probate court procedures.

Myth 4: "All I have to do is create a living trust and nothing else"

In order for the trust to be effective, you must transfer your property to the trust by changing the title of the property to the name of the trust. Failure to do this will result in the non-transferred property remaining subject to probate and possibly being subject to an estate plan different than the one set out in your trust.

Myth 5: "The assets of my living trust are protected from my creditors"

Texas law does not permit you to transfer assets into a revocable living trust and protect the property from your creditor's claims.

Myth 6: "My living trust cannot be contested by my heirs"

A trust, like a will, is subject to contest on the basis of lack of mental capacity, undue influence, and fraud.

Myth 7: "A living trust is the only way to avoid a guardianship"

A living trust may avoid guardianship of assets if the trust is created and the assets are transferred to the trust prior to incapacity. If an asset is "outside" of the trust at the time incapacity occurs, the asset may be subject to a guardianship.

Advantages of Estate Planning

- You are able to provide for the disposition of all of your assets—oftentimes, people do not clearly understand the consequences of dying without a will and without further estate planning;
- You can avoid the passing of assets to persons you do not wish to benefit;
- You may designate a guardian for a minor or disabled adult child and provide for management of assets on behalf of a minor or disabled heir—whether to place the assets in trust for the beneficiary and the terms of the trust;
- You may provide for management of assets on behalf of an heir who lacks financial responsibility or who has creditor risks—many potential problems can be avoided by placing all or part of the assets in trust for these beneficiaries instead of giving them the assets outright;
- You may reduce the likelihood of a will contest;
- You are in charge of appointing capable representatives of the estate (executors and trustees);
- You can provide for charitable gifts; and
- You are able to coordinate the will or trust with beneficiary designations for life insurance, retirement benefits, etc.
- The estate planning process should begin with articulating what you want to happen to your assets during lifetime and at death and then contacting an attorney to explore the different ways in which to accomplish those goals.

STAYING ON THE JOB

Due to the increase in the cost of living and shrinking retirement plans, many seniors in recent years have migrated back to the workplace – or simply stayed on the job. In fact, the number of workers age 65 and older has jumped more than 20 percent in the last decade.

Can I be fired or turned down for a job because of my age?

No, it is illegal for an employer to fire you, refuse to hire you or discriminate against you because of your age. There are both federal and state laws that protect people 40 years or older from being discriminated against because of their age. The federal law is the Age Discrimination in Employment Act while the Texas counterpart is the Texas Commission on Human Rights Act.

If you feel you have been discriminated against because of your age, you will need to file a complaint with the Equal Employment Opportunities Commission (EEOC) and/or the Texas Commission on Human Rights (TCHR). The TCHR can be contacted at 1-888-452-4778 or their website is www.tchr.state.tx.us. There are time constraints in filing a complaint with these entities as well as bringing

suit against the person/entity that has discriminated against you. You should contact a lawyer who handles discrimination claims should you have specific questions regarding your rights and legal options.

If I continue to work will I lose my Social Security benefits?

Maybe for a while— Once you reach “full retirement age” your social security benefits will not be lost or reduced regardless of how much money you make if you continue to work. However, if you are receiving social security benefits before reaching “full retirement age” and you continue to work, your benefits may be reduced if you make more than a certain amount. For a more in depth review of this issue please see the Social Security section of this newsletter.

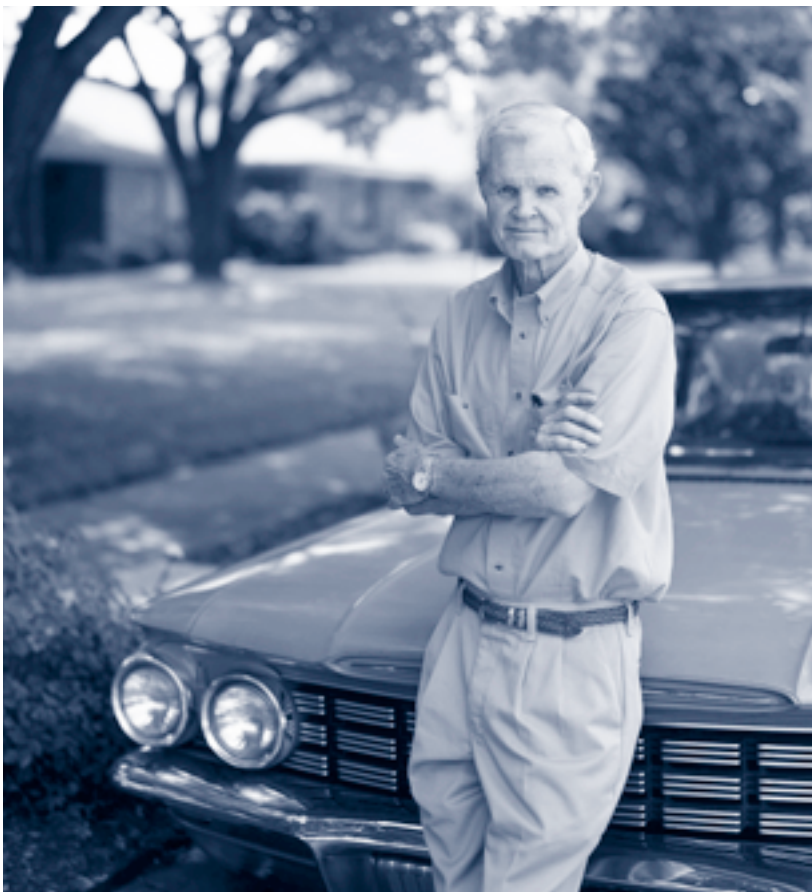
GETTING AROUND

Simply getting around can be a challenge in your senior years. While your age alone is not reason enough to limit or take away your driver’s license, you can lose your driving rights or have them restricted based on traffic violations, failed written or driving tests, poor vision or other various medical conditions.

Are the driving requirements different for Seniors?

No, in Texas the driving requirements are the same for everyone over the age of 18. There are no special provisions for elderly drivers. Your driver's license must be renewed every six years and a vision test is required to renew your license. If your driver's license has been expired for more than two years, you must take a written exam as well as a driving exam in order to renew your license. You may also renew your license online by visiting the Texas Department of Public Safety at www.txdps.state.tx.us.

However, under Texas law, the Department of Public Safety has the authority to maintain records on licensed drivers. These records consist of any convictions for traffic law violation charges, incidents of accident involvement, and violations creating a hazard to other persons or property. Through the use of such records, the Department of Public Safety has the authority to identify those drivers that are experiencing difficulty in the operation of a motor vehicle involving the safety and welfare of others and may consider these factors in withholding or withdrawing an individual's driving privileges as provided by statute.



Will the Department of Public Safety evaluate any physical or mental conditions I might have in deciding whether to renew or revoke my license?

Under Texas law, the Department of Public Safety may evaluate anyone who holds a driver's license or is applying

for a driver's license for physical and/or mental conditions. If the department cannot adequately determine the extent of the physical or mental condition that affects you, you may be referred to the Medical Advisory Board for further evaluation. Physical conditions that may qualify you to be referred include eye disorders, cardiovascular diseases (including heart attack, hypertension, blood vessel disorders, any loss of consciousness due to cardiovascular problems), diabetes, chronic renal failure, respiratory conditions, and neurological disorders. Other disorders may also be referred to the Board, if the applicant is under the care of a physician and has taken a road test that shows the applicant lacks the ability to drive safely.

Can the Department of Public Safety simply limit my driving rights rather than revoke my license?

Yes, the Department of Public Safety may issue driver's licenses with several different restrictions based on the condition of the applicant. For example, certain drivers may be restricted to driving exclusively during daytime hours. Another possible restriction is only being allowed to drive to and from work, school, or other necessary destinations. A driver might also be restricted to driving in only certain designated areas, or restricted to driving with certain speed limits.

Are there any special accommodations to assist me with driving if I am disabled?

Accessible parking for disabled drivers must be made available at businesses and government offices. To park in a designated disabled space, your vehicle must display one of the following items: a special license plate, a red or blue placard that hangs from the rearview mirror of your car, or a disabled veteran license plate.

Individuals that qualify for accessible parking are generally afflicted by one of the following conditions; a mobility disability (a device or devices are needed to assist with walking), legal blindness, severe cardiac or respiratory impairments, or the individual requires the use of portable oxygen. Temporary disabilities might also qualify a person for disabled person parking placard that would expire after 6 months. If you have such a condition and wish to apply for access to disabled parking, a helpful website is the website for the office of the governor at www.governor.state.tx.us/divisions/disabilities.

In addition, communities provide various means of assistance to those who cannot drive or use public transportation. Contact your local Area Agency on Aging by calling

the Texas Department of Aging at 1-800-252-9240, and ask about transportation services for seniors in your area.

Are there any refresher programs to help me improve my driving skills?

Yes, there are several such programs that refresh and teach seniors how to be better and safer drivers. One such program is the 55 Alive/Driving Safety Program sponsored by the AARP. In Texas, all drivers that complete a driver safety course are qualified to receive a 10% discount off their automobile insurance premiums. For more information about this program go to the AARP website at www.aarp.org/drive/discount.html or contact the AARP at 1-888-OUR-AARP. You can also contact your local Texas Driver License Office for more information on such programs.

HANDLING ELDER ABUSE

Texas has more than 2 million residents age 65 or older and an estimated 2.6 million people with disabilities. In 2002, the Texas Department of Adult Protective Services completed 56,906 investigations of abuse, neglect or exploitation involving adults living at home. Of these, 41,154 were confirmed. In the last decade, the number of in-home cases investigated by Adult Protective Services has more than doubled. More than 80% of the allegations of maltreatment that are validated in APS in-home cases

include neglect. Surprisingly, many of the neglect cases are from one's own personal neglect. But help is available. Turn your situation around before it gets worse.

What is elder abuse?

Elder abuse includes many types of abuse. The following are common types of abuse inflicted on the elderly or disabled:

- **Injury to an Elderly Individual**: It is the act or omission that causes a person 65 years or older serious bodily injury, serious mental deficiency, impairment or injury and any kind of bodily injury.
- **Neglect**: It is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.
- **Exploitation**: It is the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person. Exploitation often comes from family members.

Possible indicators of abuse, neglect or exploitation

- Physical signs
 - Injury that has not been cared for properly
 - Injury that is inconsistent with explanation for its cause
 - Pain from touching
 - Cuts, puncture wounds, burns, bruises, welts
 - Inappropriate administration of medication
 - Soiled clothing or bed
 - Lack of necessities such as food, water or utilities
 - Forced isolation
- Behavioral signs
 - Fear, anxiety, agitation, anger
 - Isolation, withdrawal, depression
 - Contradictory statements, implausible stories
 - Hesitation to talk openly
- Signs by Caregiver
 - Prevents elder from speaking to or seeing visitors
 - Anger, indifference, aggressive behavior toward elder
 - History of substance abuse, mental illness, criminal behavior or family violence
 - Flirtation or coyness as possible indicator of inappropriate sexual relationship
 - Conflicting accounts of incidents
 - Lack of affection toward elder or talks of elder as a burden

- Signs of Financial Abuse
 - Frequent expensive gifts from elder to caregiver
 - Elder's personal belonging, papers, credit cards missing
 - Numerous unpaid bills
 - A recent will when elder seems incapable of writing will
 - Caregiver's name added to bank account
 - Elder signs on loan
 - Frequent checks made out to "cash"
 - Unusual activity in bank account
 - Caregiver's refusal to spend money on elder
 - Signatures on checks or legal documents that do not resemble elder's signature

What should I do if I suspect someone is abusing or exploiting an elderly friend?

If you feel your situation is an emergency, contact 911 or your local emergency hotline. Reports of alleged abuse, neglect or exploitation of the elderly should be made by contacting the Texas Department of Family and Protective Services Statewide Intake Program (SWI) 24 hours a day, 7 days a week by calling toll free 1-800-252-5400. States that do not border on Texas may call 512-834-3784.

Am I required to report suspected elder abuse?

Yes. The law requires any person who believes that an elderly person is being abused, neglected or exploited to report the circumstance to the Texas Department of Family and Protective Services Statewide Intake (SWI). Any person suspecting abuse and not reporting it can be held liable for a Class B misdemeanor.

Is domestic violence the same as elder abuse?

It can be, however, the law provides many laws specifically addressing elder abuse that most often have more severe penalties. In addition, many crimes such as Assault, Robbery, Theft, Securing Execution of Document by Deception and Misapplication of Fiduciary Property have more severe penalties when committed against a person 65 years of age or older.

How can I help?

Form a Home Improvement Alliance within your organization or congregation to repair homes of the elderly. Assist elders with pet care. Deliver Meals on Wheels. Provide transportation. Call your local Area Agency on Aging to inquire about specific volunteer needs. Organize a "Caregivers" group within your church. Get to know your elderly neighbors.

AVOIDING CONSUMER SCAMS

Americans lose billions of dollars each year as the victim of scams. Of particular concern is the manner in which con artists prey upon older Texans. It is important to know your rights and how you might be vulnerable. Any time you get a "once in a lifetime" offer, you should be suspicious.

What types of scams should I be aware of?

- **Door-to-door solicitation:** Products frequently misrepresented by door-to-door salespeople include home improvements such as siding and storm windows, funeral service contracts, living trusts, books and magazines. Be suspicious of the following: anyone who tries to sell by playing on your emotions, of salespeople who tell you they are selling their service or product at the lowest price or tell you that their competitors do poor quality work, and of salespeople who say they have done other work in your city or neighborhood but refuse to give you the names of some past customers.
- **Identity Theft:** Identity theft occurs when someone uses your personal identifying information without your permission. This information includes your name, address, driver's license number, Social Security number, mother's maiden name, birth date or financial information such as your bank account, credit card or PIN number. An identity thief may use your information to obtain new credit cards, open checking accounts, get a fake driver's license or Social Security card, make long distance phone calls or make purchases using your bank account or credit card.

Warning signs include: Receiving bills from a credit account you did not open, discovering unauthorized

charges on your credit, long distance or bank accounts, being contacted by a collection agency regarding a debt you did not incur and having checks disappear from your checkbook.

- **Telephone Fraud:** The most common telephone solicitation scams to watch out for are:
 - *Free gift offers.* These often require you to pay shipping and handling charges, redemption fees or gift taxes before delivery. The gift may be worth less than the extra charges.
 - *A very low priced offer.* Few legitimate businesses can afford to give away things of real value or substantially undercut everyone else's price.
 - *Get rich quick schemes.* These are offers that promise "high-profit, no risk" investments. No high-profit investment is risk free.
 - *Buy one, get one free deals.* These often involve travel or vacation offers. The one you pay for may cost more than the entire package is worth.
 - *Donations to fake charities.* Some telephone solicitation callers will use a name that sounds like that of a well-known charity, but in reality the charity does not exist. Be wary of emotional pleas for disaster relief, families of soldiers, war victims, law enforcement personnel and so on.
 - *Phony contests offering prizes.* To claim your "prize," you may be asked to provide your credit card or bank account number for "verification purposes." The prize may have very little value and the caller may use your credit card or bank account information to bill you for merchandise that you did not order or to steal your identity.
 - *Foreign lotteries.* Although it is illegal to purchase tickets in a foreign lottery, scam artists sell such tickets under the pretense that you are part of a pool of ticket purchasers sure to win and split the proceeds. In another version of the scam, the caller will say you have already won, but that you must send money to cover the tax on your winnings. The caller may ask for a bank account number so your winnings can be deposited directly, or for a credit card number for verification purposes.
 - *Calls requesting your personal identifying information* (date of birth, social security number). This information can be used by identity thieves to obtain new credit cards or make purchases in your name.

Tip: To protect yourself, beware of high-pressure sales tactics, be reluctant to answer questions and never provide personal financial information to an unsolicited caller.

- **Home Improvement:** Home improvement scams often occur when a salesperson comes to your door saying that he or she was in your neighborhood and noticed that you needed siding, storm windows, or some other improvement. Be leery of a salesperson that appears at your door uninvited and always compare prices by shopping around.

Mail Order Sales: Under federal law, you must receive mail-order merchandise within a reasonable time after placing your order. If the seller cannot ship on time, you have the right to cancel. For more help, check with your local Better Business Bureau and Attorney General's Consumer Protection Office to find out if any complaints have been filed against the company. You can also check with the post office about complaints they have received about a company.

- * *For more information about these and other schemes, or if you feel you have been a victim of a scam, contact the Attorney General's Office at 1-800-621-0508 or log onto their website at <http://www.oag.state.tx.us>.*

How Do I Avoid Telemarketing Calls?

- The National Do Not Call Registry gives you a choice about whether to receive telemarketing calls at home. The Federal government created the national registry to make it easier and more efficient for you to stop getting telemarketing calls you don't want. You can register your home or mobile phone online at WWW.DONOTCALL.GOV or call toll-free, 1-888-382-1222 (TTY 1-866-290-4236), from the number you wish to register. Registration is free and lasts for five years. Placing your number on the registry will stop most, but not all, telemarketing calls. Political organizations, charities, telephone surveyors or companies with which you have an existing business relationship may continue to call. If you give a company your written permission to call you, they may do so even if you have placed your number on the National Do Not Call Registry.

How Can I Avoid Releasing My Social Security Number?

Some government agencies, including tax authorities, welfare offices and state Departments of Motor Vehicles, can require your Social Security number (SSN) as mandated by federal law. Usually you are not legally compelled to provide your Social Security number to private businesses — including private health care providers and insurers — unless you are involved in a transaction in

which the Internal Revenue Service requires notification (including Medicare and Medicaid).

Below are some strategies to protect your Social Security number from being released unnecessarily:

1. Adopt an active policy of not giving out your SSN unless you are convinced it is required or is to your benefit.
2. Never print your Social Security number on your checks, address labels or other identifying information.
3. Do not carry your SSN card or other cards containing the SSN in your wallet. Your wallet could be lost or stolen. Attempt to resist merchants' requests to write your SSN onto your checks.
4. Pay attention to your Social Security Personal Earnings and Benefit Estimate Statement, which is mailed each year about three months before your birthday by the Social Security Administration. Be certain the information in the file is correct. You can also contact the SSA at 1-800-772-1213 to learn how to obtain this free report. If incorrect information is recorded, contact the SSA immediately.
5. Order a copy of your credit report each year. If you are a victim of identity theft, the credit report will contain evidence of credit or banking fraud committed using your name and SSN. It will also show other SSNs associated with your name.
6. If a private business requests your Social Security number:
 - Leave the space for the SSN on the form blank or write "refused" or N/A in that space.
 - Speak to someone in authority or write to the business and explain why you do not want your SSN used to identify you. If you do not receive satisfaction from the first person you contact, go to a person in the organization with more authority.
 - If the company insists on having your Social Security number, tell it you will take your business elsewhere. If the company persists, follow through on your promise.
7. If your bank, credit union or other financial service provider uses your Social Security number as a personal identification number (PIN) or as the identifier for banking by phone or the Internet, write a letter of

complaint. Request a different PIN and/or identification number assigned. Do not replace it with a common number such as your birth date.

What Do I Do if Someone Steals My Identity?

If someone is using your identity (name, social security number, driver's license number) without your permission, you will need to take the following actions quickly:

- Notify the police, your banks, and your creditors immediately. Obtain a copy of your police report as evidence that you have been a victim of fraud.
- Cancel all existing credit cards, accounts, passwords and PINs, and replace them with entirely new ones.

Call the credit bureaus and ask each to attach a fraud alert and victim's statement to your report. The following are the three largest credit-reporting agencies:

Equifax: 1- 800-685-1111

Experian 1- 888-397-3742

TransUnion 1- 800-916-8800

- Ask creditors to call you prior to adding any new items to your report.
- Have all corrections forwarded to anyone who has received your credit report within the past two years. Ask for a free copy of your report after three months.
- Contact the post office if you suspect that an identity thief has filed a change of address form for your name, and is diverting your mail to another address.
- Alert all utility companies that someone has been using your identity fraudulently and inform the appropriate authorities that someone may be abusing your SSN and/or driver's license number,
- Contact a lawyer to have any criminal or civil judgments against you that may have resulted from your identity thief's actions permanently removed.
- Keep a log of all your contacts and make copies of all documents.

GETTING DIVORCED OR REMARRIED

Changes to our marital status in our later years can have a more profound financial impact than one would think. Your marital status can affect your eligibility for certain social security benefits. This is true whether you are a widow(er) who is planning to remarry or someone who is getting divorced.

If I get divorced can I still get Social Security benefits on my spouse's record?

Maybe – If your ex-spouse is currently receiving benefits or is deceased, you may be able to apply for and receive social security benefits under his/her work record. However, you must have been married at least 10 years and you must remain single. Also, if your ex-spouse is 62 years or older and has not applied for social security benefits, you can actually apply for them as long as you are at least 62 years old. In this situation you must be divorced and single for at least two years before seeking such benefits.

Will I continue to receive Social Security benefits as a widow (or widower) if I remarry?

Not if you remarry before you are 60 years old. As a widow(er) you can receive benefits at age 60 (50 if you are disabled). Be aware, if you remarry before you are 60 years old you will not be eligible for these widow(er) benefits throughout the marriage.

For further information on both these topics you should contact a Social Security office near you.

How Does Divorce affect my Will?

In Texas, if after making a will, you get divorced or the marriage is annulled, then any provisions that are to the benefit of your former “spouse” are null and void unless the will specifically states otherwise. For example, if in your will you left “everything to my spouse, and, in the event that my spouse predeceased me or did not survive me, then all my property passes to my children” then, after the divorce that provision would just be read to leave everything to your children.

Regardless of this, it is suggested that whenever you have a significant change to your life such as divorce, having another child, (either naturally, adopting a child or if you find yourself essentially serving as the parent of your grandchild), or death of a family member, you should review your Will and make the necessary changes. By doing so you will ensure that your estate is distributed the way you want it when the time comes.

RAISING YOUR GRANDCHILDREN

Are you parenting a second generation of your children? More and more grandparents in America are faced with the challenge of raising their grandchildren. According to the 2000 census, over 4.5 million Americans have

grandchildren living in their households. If you are in this situation, you need to know what your rights and legal options are.

As a grandparent, do I have legal authority to make decisions or take actions for my grandchild?

In short, without further legal action, the answer is no. However you may find that many people (especially those who have a personal relationship with you or your grandchild) will extend authority to you to make decisions for the child without requiring legal documentation of such authority.

What situations may arise in which I would need legal authority?

Many schools require enrollment forms to be completed only by a parent or legal guardian. Some doctors or hospitals may require proof of your right to make treatment decisions for the children. If you need to collect insurance proceeds or other type of financial support for the child, you may need to show proof of your authority to act. If you need to add the child to your health insurance, many employers and/or insurance companies require that you be appointed the legal guardian of the child. Sadly, some grandparents feel the need to protect their grandchild from an abusive parent and may need to seek legal authority to do so.

Does a letter from the grandchild's parent give me the authority I need?

A letter signed by the parent and giving you authority to care for the child will sometimes suffice as proof of your authority. However, such a letter has no legal effect and cannot guarantee that the person you present it to will recognize your authority.

Should I seek a guardianship over my grandchild?

A guardianship is one method for obtaining authority to care for your grandchild. Guardianships are expensive (costing anywhere from \$1,000 - \$4,000) to establish, therefore consider carefully your need before acting. Will your situation continue long-term? Are the parents unavailable to make decisions and sign documents when necessary? Is a parent likely to show up to remove the child from your care against your wishes? Is a guardianship necessary for the child to receive health insurance benefits? Does the child have property or assets that need to be invested or managed? If you answered yes to any of these questions, you should consider meeting with an attorney to discuss getting

a guardianship. Be aware that establishing a guardianship takes several weeks in the smoothest situations, so please don't wait until you absolutely need one to start the process.

Should I be managing conservator of my grandchild?

Conservator rights (derived from the Texas Family Code) give you almost the exact same authority to care for the child as being appointed the child's legal guardian (derived from the Texas Probate Code.) While the family code process differs from the probate code process, you end up with basically the same authority to act for the child. Seeking appointment as managing conservator is usually a little less expensive than seeking a guardianship; however, be certain that you won't need a legal guardianship before you proceed with a conservatorship. Many insurance companies now require the guardianship route before they will cover the child with health benefits. It is very unlikely that you would ever need to be both guardian and managing conservator.

Does seeking a guardianship or appointment of managing conservator terminate the parents' rights?

Neither of these actions in themselves will terminate the parental relationship of the natural parents; however, it does impact the rights of the parents to make decisions for the child as you will now have authority to make decisions about where the child lives, goes to school, what medical treatment he receives, etc.

Is my grandchild entitled to social security benefits?

If the child has a parent who is deceased or disabled, or if the child himself is disabled, you should contact Social Security to determine if the child qualifies for financial assistance. (Contact the Social Security Administration General Information line at 1-800-772-1213 or go in person to the Social Security office located nearest to you.) Many times a grandparent acting as caregiver can receive such benefits for the child as the child's "designated payee" and use the funds to pay the child's living expenses, including groceries, clothing, rent and other necessities.

How do I go about collecting child support for my grandchild?

If both parents are living, and neither parent has had his or her rights terminated, then you could seek to receive child support from both parents (assuming they can be located and they are working.) You will likely need to be appointed the guardian or managing conservator before

seeking to receive child support. You can hire a lawyer to pursue your claim, or you could file a claim with the Texas Office of Attorney General. The Office of the Attorney General is responsible for: locating absent parents, establishing paternity, establishing, enforcing and modifying child support orders, and collecting and distributing child support monies. For more information, you can visit the Office of the Attorney General's website at www.oag.state.tx.us/child/index.shtml

What are my rights as a grandparent to visit my grandchild if his parents take him away?

Under the Texas Family Code (Section 153.433), a grandparent has limited rights of access to grandchildren:

- Your child must be the biological or adoptive parent of the child
- A judge must find that the "best interest" of your grandchild will be met by granting your request for visitation. If the parents can prove that visitation would be harmful to the child, then the court may deny you access.
- One of the following circumstances must exist: your child (the parent) is in jail, is incompetent or has died; the parents (if married) have been separated for three months or more; the parents are abusing the grandchild; a court has declared the grandchild to be delinquent or in need of supervision; your child's parental rights have been terminated; or the grandchild has resided with you for six out of the last 24 months.

Remember to consider what happens to your grandchild in the event of your death or incapacity.

In the event of your death, it is important for you to have a will that provides for the care of the grandchild, usually by setting aside a portion of your estate in trust for the child. In the situation of your incapacity, you have less control about what happens to the child as the court will ultimately decide what is in the child's best interest in appointing a new guardian or conservator. However, you can give the court guidance by executing written recommendations for the care of the child and should do so.

FINDING A CAREGIVER OR NURSING HOME

There comes a time in most elders' lives when they are no longer able to care for themselves or live completely independent lives. It often starts with the need for occasional help around the house such as housecleaning, help with

daily grooming, preparing meals or just getting around, but it can steadily increase as the elder's age and limita-

tions increase. Later on, around-the-clock care in a nursing home may be required. There are options available.

Signs Your Aging Parent Needs Help:

- Mail and bills are left to pile up
- The house is cluttered or unkempt
- Food in the refrigerator is uneaten or spoiled
- Signs of scorching on the bottoms of pots and pans
- Wearing the same clothing over and over again
- Personal hygiene issues
- Missed doctor's appointments
- Repeated phone calls at odd hours
- Forgetting to take medication
- Inappropriate behavior, clothing or speech
- Symptoms of depression

How do I find help for my elderly mother who wants to continue living in her home?

One option might be an Adult Day Care/Day Activity and Health Services facility. Adult Day Cares/Day Activity facilities provide health, social and related support services in a structured program on a daily or regular basis, but not overnight. Health service includes personal care, nursing or therapy services, as well as monitoring a participant's health conditions. Another option is Home Health Agencies, which provide nursing care, dialysis, medical social service, or physical, occupational, speech, respiratory or intravenous therapy. Local community agencies or religious groups also offer home delivered meals such as Meals on Wheels. Contact your local Area Agency on Aging or the United Way for such facilities in your area.

What is an Assisted Living Facility?

It is an establishment that furnishes food and shelter and provides personal care services, such as assistance with meals, dressing, bathing, administration or supervision of medication or general supervision and oversight. Assisted living is often a transition facility. It primarily cares for those elders that cannot adequately take care of themselves at home but are still independent and in good enough health not to require living in a nursing home.

Where can I find information on nursing homes?

Your local Area Agency on Aging is a good place to start. You might also check the with the following agencies:

- AARP Elder Care Locator 1-800-677-1116

- Texas Attorney General's Consumer Help line 1-800-621-0508
- Ombudsman, Texas Department of Aging, Long Term Care 1-800-252-2412

Will Medicare pay for home health care or nursing home expenses?

Medicare, the government's health care program for those 65 years and over, does not cover long-term care or help with personal or household services. However, it will pay for home care services related to acute, short-term health problems if a person is homebound, under a physician's care and needs part-time or intermittent skilled nursing services or physical or speech therapy. Medicare assistance for nursing home care is also very limited.

What is hospice?

Hospice care is a comprehensive and specific type of medical, supportive, social, emotional and spiritual care to the terminally ill and their families. Hospice care is not intended to cure illnesses. Rather the goal is to help end or ease pain and other troubling symptoms of an illness as well as providing comfort and support. For more information on hospice care, contact the National Hospice Foundation at 703-516-4928 or at www.nationalhospicefoundation.org.

Will Medicare pay for hospice care?

Medicare certifies more than 90% of hospices in the United States. The Medicare Hospice Benefit is covered under Medicare Part A (hospital insurance). Medicare beneficiaries who choose hospice care receive a full scope of non-curative medical and support services for their terminal illness.

LOSING A SPOUSE OR A PARENT

Understandably, you are overwhelmed with grief right now and you may want to leave the administrative matters for another day. However, there are certain notifications and legal matters that should not be postponed.

- Begin funeral and burial arrangements.
- Obtain several copies of the death certificate. You can obtain copies from the Texas Bureau of Vital Statistics. For information and questions call 1-888-963-7111.
- Locate and gather important documents pertaining to the will, trusts, stocks, bank accounts and insurance policies.
- Contact the Social Security Administration (if the deceased was an eligible recipient). For information and questions call 1-800-772-1213.
- Notify any life insurance companies of the death.
- Contact the executor of the will and/or any attorney who prepared it.
- Contact the trustee of any trust and/or the attorney who prepared it.
- Call the administrator of the decedent's pension plan.
- Notify the decedent's banks and financial institutions.
- Notify credit card companies.
- Be sure that insurance or Medicare claims have been processed before paying any medical bills.

GETTING LEGAL ASSISTANCE

How Do I Find a Lawyer?

You may contact the State Bar of Texas, toll free at 1-800-204-2222 and request a lawyer referral. Also, the following counties also offer local lawyer referral services.

Bexar County

San Antonio Bar Association (210) 227-1853

Brazoria County

Houston Bar Association low-fee panel
1-800-289-4577 or (713) 237-9429

Collin County

Plano Bar Association (972) 424-6113

Dallas County

Dallas Bar Association. (214) 220-7444
Criminal Defense Lawyers Association (214) 747-0986
North Dallas Bar Association (972) 980-0472

El Paso County

El Paso Bar Association (915) 532-7052

Harris County

Houston Bar Association
Harris County Criminal Lawyers Association
(713) 224-4864
Houston Bar Association., low-fee panel
1-800-289-4577 or 713-237-9429

Fort Bend County

Houston Bar Association, low-fee panel
1-800-289-4577 or 713-237-9429

Galveston County

Houston Bar Association, low-fee panel
1-800-289-4577 or 713-237-9429

Jefferson County

Jefferson County Bar Association (409) 835-8438

Montgomery County

Houston Bar Association, low-fee panel
1-800-289-4577 or 713-237-9429

Nueces County

Corpus Christi Bar Association (361) 883-3971

Tarrant County

Tarrant County Bar Association (817) 336-4101
Arlington Bar Association 1-800-252-9690

Travis County

Travis County Bar Association (512) 472-8303
Attorney Referral Line 1-800-252-9690

Who Can I Call for Free Legal Advice?

Dallas Bar Association Legal Advice Telephone Line

2nd & 3rd Wednesday of each month
5:15 pm – 8:00 p.m.
214-220-7476

Legal Services of North Texas

Legal Aid Line: Mon/Wed/Fri 2:00 p.m. – 5:00 p.m.
and Tues/Thurs 9:00 a.m. – noon
1-888-529-5277 Toll Free
Dallas Office: 214-748-1234
McKinney Office: 972-424-1283 Metro
Waxahachie Office: 972-923-3344

Lone Star Legal Aid

1-800-354-1889
<http://www.etls.org/>

Texas Legal Services Center

Legal hotline for older Texans
1- 800-622-2520
www.tlsc.org.

Texas Rural Legal Aid Inc.

1-800-369-0574
<http://www.trla.org/>

West Texas Legal Services, Inc.

1-800- 955-3959
<http://www.wtxls.org/>

COMMUNITY RESOURCES

ADULT PROTECTIVE SERVICES 1-800-252-5400

ADVOCACY, INC.

Mental Health-Mental Retardation
and Developmental Disabilities 1-800-252-9108

AGING

Area Agency on Aging 1-888-622-9111
Texas Department on Aging 1-800-252-9240

ALZHEIMER ASSOCIATION

<http://www.alz.org> 1-800-272-3900

**ALZHEIMER'S DISEASE EDUCATION
& REFERRAL CENTER**

<http://www.alzheimers.com> 1-800-438-4380

**AMERICAN ASSOCIATION OF RETIRED
PERSONS (AARP)**

<http://www.aarp.org> 1-800-OUR-AARP
AARP Tax-Aide 1-888-227-7669
AARP Elder Care Locator 1-800-677-1116

AMERICAN BAR ASSOCIATION

<http://www.abanet.org>

AMERICAN CANCER SOCIETY

<http://www.cancer.org> 1-800-227-2345

AMERICAN DIABETES ASSOCIATION

<http://www.diabetes.org> 1-800-232-3472

AMERICAN HEART ASSOCIATION

<http://www.americanheart.org> 1-800-242-8781

AMERICAN LUNG ASSOCIATION

<http://www.texaslung.org> 1-800-252-5864

AMERICAN PSYCHOLOGICAL ASSOCIATION

<http://www.apa.org> 1-800-964-2000

AMERICAN SOCIETY ON AGING

<http://www.asaging.org> 1-415-974-9600

ARTHRITIS FOUNDATION

1-800-442-6653

**ARTHRITIS FOUNDATION
INFORMATION LINE**

<http://www.arthritis.org> 1-800-283-7800

ASSISTANCE FOR THE BLIND

1-800-252-5204

**ASTHMA AND ALLERGY FOUNDATION
HOTLINE**

<http://www.aafa.org> 1-800-7ASTHMA

ATTORNEY GENERAL OF TEXAS

Public Information and Assistance 1-800-252-8011
Consumer Help Line 1-800-621-0508
Elder Law / Nursing Home Complaints 1-800-458-9858
<http://www.oag.state.tx.us>
Medicaid Fraud Control Unit 1-512-463-2011

COALITION OF TEXANS WITH DISABILITIES

<http://www.cotwd.org> 1-512-478-3366

DIABETES HOTLINE

1-800-342-2383

EQUIFAX

1-800-685-1111

EXPERIAN

1-888-397-3742

FREEDOM OF INFORMATION

1-800-580-6651

**GOVERNOR'S OFFICE
OMBUDSMAN**

1-800-843-5789

INTERNAL REVENUE SERVICE

1-800-829-1040

KNOW FRAUD http://www.consumer.gov	1-877-987-3728	NATIONAL STROKE ASSOCIATION http://www.stroke.org	1-800-STROKES
LEGAL HOTLINE FOR OLDER TEXANS http://www.tlsc.org	1-800-622-2520	NURSING HOME ADVOCACY PROJECT http://www.tlsc.org/NHAP.html	1-888-343-4414
MEDICAID HOTLINE	1-800-252-8263	OFFICE OF THE GOVERNOR http://www.governor.state.tx.us/divisions/disabilities	
MEDICARE HOTLINE http://www.medicare.gov	1-800-442-2620	OLDER WOMEN'S LEAGUE http://www.owl-national.org	1-800-825-3695
NATIONAL ASSOCIATION OF ADULT PROTECTIVE SERVICES ADMINISTRATORS	1-720-565-0906	RECORDING FOR THE BLIND AND DYSLEXIC http://www.rfbd.org	1-512-323-9390
NATIONAL ASSOCIATION OF CONTINENCE http://www.nafc.org	1-800-BLADDER	SOCIAL SECURITY ADMINISTRATION http://www.ssa.gov	1-800-772-1213
NATIONAL ASSOCIATION OF STATE UNITS ON AGING http://www.nasua.org	1-202-898-2586	STATE BAR OF TEXAS http://www.texasbar.com	
NATIONAL CENTER ON ELDER ABUSE http://www.elderabusecenter.org	1-202-898-2578	STATE BAR OF TEXAS LAWYER REFERRAL SERVICE	1-877-983-9227
NATIONAL CLEARINGHOUSE ON ALCOHOL & DRUG INFORMATION HOTLINE http://www.health.org	1-800-729-6686	STATE OF TEXAS (TEXAS ONLINE) http://www.texasbar.com	
NATIONAL COMMITTEE FOR THE PREVENTION OF ELDER ABUSE (NCPEA) http://www.preventelderabuse.org	1-202-682-4140	SUSAN B. KOMEN FOUNDATION (Breast Cancer Information) http://www.komen.org	1-800-462-9273
NATIONAL COUNCIL ON THE AGING http://www.ncoa.org	1-800-424-9046	TEXAS BUREAU OF VITAL STATISTICS	1-888-963-7111
NATIONAL DO NOT CALL REGISTRY http://www.donotcall.gov	1-888-382-1222	TEXAS COMMISSION FOR THE BLIND http://www.tcb.state.tx.us	1-800-252-5204
NATIONAL FRAUD INFORMATION CENTER http://www.fraud.org	1-800-876-7060	TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING http://www.tcdhh.state.tx.us	1-512-407-3250
NATIONAL INSTITUTE ON DEAFNESS & OTHER COMMUNICATION DISORDERS http://www.nih.gov	1-800-241-1044	TEXAS COMMISSION ON HUMAN RIGHTS http://www.tchr.state.tx.us	1-888-452-4778
NATIONAL KIDNEY FOUNDATION http://www.kidney.org	1-800-622-9010	TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES / ABUSE HOTLINE http://www.dfps.state.tx.us/hotlines	1-800-252-5400
NATIONAL MENTAL HEALTH ASSOCIATION http://www.nmha.org	1-800-969-6642	TEXAS DEPARTMENT OF HEALTH MEDICAID HOTLINE http://www.tdh.state.tx.us	1-800-252-8263

TEXAS DEPARTMENT OF HUMAN SERVICES

Consumer Advocate
 for Nursing Home Residents 1-800-252-8016
 Nursing Home Complaints 1-800-458-9858
 and Investigations
<http://www.dhs.state.tx.us>

TEXAS DEPARTMENT OF INSURANCE

1-800-252-3439

TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

<http://www.mhmr.state.tx.us> 1-512-454-3761

TEXAS DEPARTMENT OF PROTECTIVE & REGULATORY

1-800-252-5400

TEXAS DEPARTMENT OF PUBLIC SAFETY<http://www.txdps.state.tx.us>**TEXAS DEPARTMENT ON AGING**<http://www.tdoa.state.tx.us> 1-800-252-9240**TEXAS ELDER ABUSE AND MISTREATMENT (TEAM) INSTITUTE**<http://www.teaminstitute.org/> 1-713-873-4823**TEXAS LEGISLATURE ONLINE**<http://www.capitol.state.tx.us>**TEXAS MEDICAL ASSOCIATION**

Living Will & Durable Power
 of Attorney Forms 1-800-880-1300

TEXAS REHABILITATION COMMISSION<http://www.rehab.state.tx.us/> 1-800-628-5115**TEXAS SECRETARY OF STATE**<http://www.sos.state.tx.us>**TEXAS YOUNG LAWYERS ASSOCIATION**

<http://www.tyla.org> 1-800-204-2222
 ext. 6429

THE ELDER LOCATOR<http://www.eldercare.gov> 1-800-677-1116**THE PUBLIC UTILITY COMMISSION (LITE-UP Texas)**

1-866-454-8387

THE RETIRED SENIOR VOLUNTEER PROGRAM (RSVP)<http://www.seniorcorps.org> 1-800-424-8867**TRANSUNION**

1-800-916-8800

U.S. ADMINISTRATION ON AGING<http://www.aoa.dhhs.gov> 1-202-619-0724**UNITED SENIORS HEALTH COOPERATIVE**<http://www.ushc-online.org>**Y-ME BREAST CANCER SUPPORT**<http://www.y-me.org> 1-800-221-2141

A project of the Seniors Citizens Outreach Committee of the Texas Young Lawyers Association

Special thanks to:

Members of the Senior Citizens Outreach Committee and Texas Young Lawyers Association
 Kara Farrell Berry • Karin R. Crump • Tal Hammock • D'Layne Peebles • Marshall Wood

And

Shyla R. Buckner
 Sprouse, Shrader, Smith, P.C.
 Amarillo, Texas

Charles E. King
 Sprouse, Shrader, Smith, P.C.
 Amarillo, Texas

DeDe Kirby
 Attorney at Law
 Houston

Ginger Nelson
 Nelson & Nelson
 Amarillo, Texas

Donna Z. Peck
 Sprouse, Shrader, Smith, P.C.
 Amarillo, Texas

31953 5/04