

3. LEGAL ISSUES

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It is important to know your legal rights and to take the necessary steps to protect yourself and your interests. Therefore, putting your legal affairs in order will give you peace of mind and make sure that your wishes are known and followed.

Elder Law

Elder law deals with specific legal issues faced by senior citizens. It combines elements of estate planning, trusts, wills, conservatorships, guardianships and other issues that confront older adults such as Social Security and Medicare. In addition, elder law attorneys focus on disability planning including use of durable powers of attorney, living trusts, advance directives (including treatment directives and proxy directives), and guardianship.

Disability Law

Disability law is an area of law that overlaps with many other areas of law. Individuals with disabilities are a protected class under civil rights laws.

Americans with Disabilities Act (ADA)

Signed into law on July 26, 1990, the ADA is a comprehensive civil rights law. It prohibits discrimination on the basis of disability in employment, state and local government programs, public accommodations, commercial facilities, transportation, and telecommunications. For more in-depth information, visit www.ada.gov.

Finding Legal Services

Don't wait until a crisis to find a lawyer who specializes in legal planning for seniors. If your income falls within certain guidelines, you may be able to receive legal help through the Legal Services program at your local Area Agency on Aging or through the local bar association.

Legal services are provided under a number of existing programs. They include programs funded under the Legal Services Corporation Act, the Older Americans Act, and Title XX of the Social Security Act. Legal resources you may find useful include:

- ❑ **Lawyer Referral Service in New Jersey**, a service of county bar associations, can often recommend an attorney near your home. To find the phone number for the bar association in your county, call the New Jersey Bar Association at **732-249-5000**, or visit www.njsba.com.
- ❑ **Legal Services of New Jersey** is an independent nonprofit organization that coordinates a statewide legal assistance service. They provide free legal help to low-income individuals in civil matters. Call **1-888-576-5529**, or visit their website at www.lsnj.org.

- ❑ **The National Academy of Elder Law Attorneys (NAELA)** will help you locate an attorney. Visit its website at www.naela.org and click on “Public,” then “Directory,” and enter your city or Zip Code. NAELA also offers a guide to help choose an attorney. Call **520-881-4005** or visit its website and click on “Public,” then “Questions and Answers When Looking for an Elder Law Attorney.”
- ❑ **The AARP Legal Services Network** is a complimentary member benefit for AARP members and their spouses/partners and provides easy access to a large directory of attorneys. Where available these attorneys have agreed to provide specific benefits to AARP members and their spouses/partners at discounted rates. Visit their website at www.aarpls.com.

Legal Aid

Below are the **Legal Services Offices and Legal Aid Offices** that provide free legal assistance and have expertise in areas of the law that affect seniors:

Edison	732-572-9100	Freehold	732-866-0020
Atlantic City	609-348-4200	Toms River	732-341-2727
Bergen County	201-487-2166	Trenton	609-695-6249
Mount Holly	609-261-1088	Morristown	973-285-6911
Camden	856-964-2010	Somerville	908-231-0840
Newark	973-824-3000	Newton	973-383-7400
Jersey City	201-792-6363	Elizabeth	908-354-4340
New Brunswick	732-249-7600	Belvidere	908-475-2010

Additionally, the **Community Health Law Project** provides free legal and advocacy services on civil matters for low-income people with physical and mental disabilities. The Community Health Law Project offices are listed below. Their website is www.chlp.org.

Bloomfield	973-680-5599	Elizabeth	908-355-8282
South Orange	973-275-1175	Williamstown	856-858-9500
Trenton	609-392-5553	Eatontown	732-380-1012

Important Legal Documents

Many important decisions concerning finances, health care, and end-of-life care require legal documents. Preparing these documents in advance can save you and your loved ones a lot of time, money, and stress.

The following is a basic introduction to the important legal documents you should consider preparing for yourself and your family – it is NOT intended to substitute for professional legal advice.

Advance Directives

An Advance Directive is a legal document that you can complete on your own that can help ensure your preferences for various medical treatments are followed if you become unable to make your own healthcare decisions. The New Jersey Advance Directives for Health Care Act states that your advance directive only goes into effect if your physician has evaluated you and determined that you are unable to understand your diagnosis, treatment options or the possible benefits and harms of the treatment options. New Jersey has two kinds of Advance Directives, a "Proxy Directive" (a.k.a. Power of Attorney for Healthcare) and an "Instruction Directive" (a.k.a. Living Will). It is your decision whether to have both kinds or to just have one of them.

Additional information and resources on Advance Directives are available on-line:

- ❑ New Jersey Department of Health & Senior Services' website at www.nj.gov/health/advancedirective and the
- ❑ National Library of Medicine's website at www.nlm.nih.gov/medlineplus/advancedirectives.html.

Durable Power of Attorney (DPOA)

DPOA is a document that grants a person or persons ("Attorney-in-fact") the legal powers to perform on your behalf ("Grantor") certain acts and functions specifically outlined in the document. This power is effective immediately and continues even if the grantor becomes disabled or incompetent. The powers usually granted include real estate, banking and financial transactions, personal and family maintenance, government benefits, estate trust and beneficiary transactions. This type of document does not authorize the "Attorney-in-fact" to make healthcare decisions.

Proxy Directive (a.k.a. Durable Power of Attorney for Health Care)

A Proxy Directive is a document you use to appoint a person to make healthcare decisions for you in the event you become unable to make them yourself. This document goes into effect whether your inability to make healthcare decisions is temporary because of an accident or permanent because of a disease. The person that you appoint is known as your "healthcare representative" and they are responsible for making the same decisions you would have made under the circumstances. If they are unable to determine what you would want in a specific situation they are to base their decision on what they think is in your best interest.

Things to consider:

- ❑ You can appoint your spouse/domestic partner, parent, adult child, family member, friend, religious/spiritual advisor or any other adult.
- ❑ Your healthcare representative should be someone who knows your values, beliefs and preferences well enough to know what treatment decisions you would want them to make for various medical conditions. The person should be someone with good judgment and who will be a

strong advocate on your behalf. They should also be someone you believe will respect your wishes even if they disagree with them, especially when it comes to your preferences about the use of life-sustaining treatment.

Your healthcare representative should also be someone you trust as they will have access to all of your confidential medical records.

- ❑ Establish open communication.
- ❑ You should give your healthcare representative a copy of your Proxy Directive (and Instruction Directive if you have one).

Instruction Directive (a.k.a. Living Will)

An instruction directive is a document you use to tell your physician and family about the kinds of situations you would want or not want to have life-sustaining treatment in the event you are unable to make your own healthcare decisions. You can also include a description of your beliefs, values and preferences for general care and treatment. This will guide your physician and family when they have to make healthcare decisions for you in situations not specifically covered by your advance directive.

Do Not Resuscitate/Do Not Intubate (DNR/DNI) Order

If you do not want cardiopulmonary resuscitation (CPR) or to have a breathing tube inserted, ask the doctor to write a “Do Not Resuscitate Order” (DNR), and/or “Do Not Intubate Order” (DNI). It is also essential to keep your DNR/DNI Order visible and accessible at all times so that emergency medical personnel, such as EMTs and paramedics, know that you do not want them to attempt to resuscitate you. It is important to know that emergency medical personnel in New Jersey are not required to honor DNR orders, so you should have your doctor call the local ambulance service to ensure your wishes are honored. If you are in a nursing home or other healthcare facility have your doctor make sure the facility will not call emergency medical personnel if you do not want to be resuscitated.

Guardianship

Guardianship (or conservatorship) is a legal process used when a person can no longer make sound decisions to protect his or her person or property, or when the court establishes that an individual has become susceptible to fraud or undue influence. Because establishing a guardianship removes considerable rights from the individual, it should only be used after other alternatives have been ineffective or are unavailable. The court decides who the guardian (sometimes called a conservator) will be, whether that is a family member, friend, professional certified guardian, public guardian (such as a state agency), a bank, a volunteer, or a nonprofit agency.

The court also decides how much authority to give to the guardian. A guardian might be appointed only to make decisions about living arrangements, personal needs, and medical care or a guardian might be appointed only to make decisions about finances and property. If full guardianship is not necessary, you may want to consider having a Power of Attorney document created that would

allow someone to make decisions based on an individual's best interest (see previous section – Legal Documents).

Families can pursue guardianship in three different ways: by representing themselves (pro se); through an attorney; or with the assistance of a State Agency – The Office of the Public Guardian for Elderly Adults or the Bureau of Guardianship Services.

Office of the Public Guardian for Elderly Adults (OPG)

The OPG is appointed guardian by the New Jersey Superior Court when there is no willing or appropriate family or friend to become the guardian of an incapacitated person 60 years of age or older. The OPG is usually appointed plenary guardian of both person and property. In this capacity, OPG addresses all the physical and mental health and property issues of the ward.

Bureau of Guardianship Services (BGS)

Part of the Department of Human Services' Office of Legal, Regulatory and Guardian Services, the BGS exists solely to provide guardianship services to people with developmental disabilities who are DDD-eligible. Guardianship may be considered only when it is clearly necessary and only to the extent that it is required. The BGS' authority is limited to guardianship of the person only, not of his or her property. BGS maintains a waiting list of individuals who have requested assistance with guardianship.

Additional information on guardianships can be found at:

- ❑ The **NJ Office of the Public Guardian** website describes its services and has information on alternatives. Go to **www.state.nj.us/health/senior/sa_opg.shtml**.
- ❑ The **Bureau of Guardianship Services** provides additional resources, FAQs and a Fact Sheet about their services on their website. Visit **www.state.nj.us/humanservices/ddd/services/guardianship/**.
- ❑ **The National Guardianship Association, Inc. (NGA)** provides standards for guardians. On its website at **www.guardianship.org**, each standard is explained in detail and provides guidance to guardians in the private and public sectors.

Wills and Trusts

It is essential to have an up-to-date will and/or trust that designates financial, estate, and legal control and distribution. You may have few assets, but even with simple estates it is generally advisable to have an attorney create a document that will protect your wishes about your estate. Check with your union or call Legal Services in your area to see if you can get assistance paying for legal help.

Protecting the Rights of Elders

Although many individuals are quite savvy when it comes to being consumers and in standing up for their rights, others can be vulnerable because of diminished capabilities, lack of knowledge about financial matters, or trouble in navigating complex voicemail and/or on-line instructions.

Protection from Abuse

Sometime the frailty and dependence of seniors and individuals with disabilities can make them targets for abuse, neglect or exploitation. There are programs to help, whether the individual is living in the community or is residing in a nursing home or other long-term care institution.

Adult Protective Services

Adult Protective Services (APS) is a program that helps state residents, aged 18 or older, who lack the capacity to understand their circumstances and cannot protect themselves. Trained workers from APS programs in each county respond to requests for help by making a personal visit and finding ways to reduce the risk of harm. APS workers make every effort to help individuals remain in their homes.

APS investigates all complaints of suspected abuse, neglect, and/or exploitation of adults. A complaint to APS generates a thorough assessment, which includes a private face-to-face interview with the potentially at-risk adult to determine if intervention is warranted. All information generated by the investigation is confidential. A report of suspected abuse may be made to the Aging and Community Services Information and Referral toll-free number or to the APS office in the county where the individual lives.

- ❑ To find the **Adult Protective Services Provider** in your county, see **Appendix A**, go to www.state.nj.us/health/senior/aps.shtml, or call **1-800-792-8820**.
- ❑ **The National Center on Elder Abuse** also provides information and assistance on its website at www.ncea.aoa.gov. Their information desk telephone number is **302-831-3525**.
- ❑ If the victim of abuse, neglect or exploitation is under age 18, call the **Department of Children and Families'** hotline at **1-877-652-2873**. Their website is www.state.nj.us/dcf.

Office of the Ombudsman for the Institutionalized Elderly

The New Jersey Office of the Ombudsman for the Institutionalized Elderly investigates allegations of abuse and exploitation of residents of long-term care facilities who are 60 years of age and older. The office is charged with serving as an advocate for residents who are unable, because of illness or vulnerability, to advocate for them. The office investigates, resolves and/or refers complaints to the appropriate agency. By law, callers may remain anonymous and case files are closed to the public.

To file a complaint or for more information contact:

- **The Office of the Ombudsman at 1-877-582-6995**, or visit their website at **www.state.nj.us/publicadvocate/seniors/elder**.

NJ Division of Health Facilities Evaluation and Licensing

This division is responsible for ensuring that nursing facilities comply fully with mandatory state and federal regulations. The division conducts both annual facility surveys and complaint investigations, including complaints for individuals under the age of 60 who reside in a nursing facility.

- For further information, or to file a complaint regarding services, please contact the **Division of Health Facilities Evaluation and Licensing at 1-800-792-9770**. To file an on-line complaint go to **<http://web.doh.state.nj.us/fc/search.aspx>**.

Advocacy

Disability Rights New Jersey (DRNJ)

Formerly known as New Jersey Protection & Advocacy, Inc., DRNJ is our state's designated protection and advocacy system for people with disabilities. Their mission is to advocate and advance the human, civil, and legal rights of persons with disabilities.

- Visit their website at **www.drnj.org** or call **1-800-922-7233 (TTY 609-633-7106)** for more information.

Consumer Protection

Seniors and individuals with disabilities have often been the target of unethical business practices, such as abuse of guardianship and powers of attorney, lending scams, and Medicare and Medicaid fraud. The following organizations are working to prevent and/or investigate and prosecute fraud:

General Assistance

- **AARP** provides extensive information to help seniors on a range of consumer issues, including scams, investment fraud, fixing homes, financing homes, utilities, and smart shopping. Visit their website at **www.aarp.org** and click on "Money," then "Consumer Information."
- The **New Jersey Division of Consumer Affairs** is charged with protecting the public from fraud, deceit and misrepresentation in the sale of goods and services. Report allegations to **1-800-242-5846** or visit their website at **www.njconsumeraffairs.gov**.

- ❑ The **U.S. Federal Trade Commission (FTC)** works to prevent fraudulent, deceptive, and unfair business practices and to help consumers spot, stop, and avoid them. To find information or file a complaint, visit their website at **www.ftc.gov**, or call **1-877-382-4357 (TTY 866-653-4261)**.
- ❑ **National Consumer League's Fraud Center** has a website where you can file a complaint on-line at **www.fraud.org**.

Specialized Assistance

- ❑ **Medicaid Fraud and Abuse Hotline: 1-888-937-2835 or 1-888-692-2140.**
- ❑ **Medicare Fraud, Office of the Inspector General: 1-800-447-8477**, or website: **www.medicare.gov/fraudabuse/HowtoReport.asp**.
- ❑ **Social Security Fraud, Office of the Inspector General: 1-800-269-0271 (TTY 1-866-501-2101)**, or website **www.ssa.gov/oig/hotline**.

National Do Not Call Registry

The National Do Not Call Registry gives you an opportunity to limit the telemarketing calls you receive on both your home and cell phone. Once you register your phone number, telemarketers covered by the National Do Not Call Registry have up to 31 days from the date you register to stop calling you. The Federal Trade Commission manages the National Do Not Call Registry.

- ❑ To register call **1-888-382-1222 (TTY 1-866-290-4236)**, or visit their website at **www.donotcall.gov**.

Identity Theft - Information and Assistance

The federal government reports that identity theft is the fastest-growing financial crime. The crime usually involves the interception of personal financial data or the fraudulent acquisition of credit cards or other financial products in another person's name.

If you believe you are the victim of identify theft, report the crime to your local police department. For additional information on how to file a complaint and what to do if you believe you are the victim of identity theft, contact the **New Jersey Division of Consumer Affairs at 1-800-242-5846**.

Rights of Grandparents

Visitation Rights

Under the law, grandparents have the right to visit with their grandchildren. Should this right be denied, a grandparent or any sibling of a child residing in this State may make application before the Superior Court, in accordance with the Rules of the Court, for an order for visitation. To make application to the court for visitation, the grandparent(s) should have the assistance of an attorney. For

additional information, persons 60 or over should contact his/her **Area Agency on Aging** at **1-877-222-3737**.

Kinship Navigator

The NJ Department of Human Services has available information for grandparents who take on a parenting role or have issues regarding child visitations. To request information, please contact the Kinship Navigator Program toll-free at **1-877-816-3211**, or visit their website at **www.state.nj.us/humanservices/dfd/programs/knp/index.html**.

Age Discrimination

Age discrimination is illegal and there are steps you can take to protect yourself and others from this practice. Reporting age discrimination is important and should be done in a timely manner. The following is a list of resources and information on where to file a grievance if you experience discrimination first hand.

The Age Discrimination in Employment Act (ADEA)

The Act protects most persons 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. The ADEA specifically prohibits an age limit except in the rare circumstances where age has proven to be a bona fide occupational qualification.

The Older Workers Benefit Protection Act of 1990 (OWBPA)

The OWBPA is an amendment to the ADEA to prohibit employers from withholding benefits from older employees. It protects the employee from signing any agreements that would inappropriately cause them to surrender their right to file a discrimination claim.

Equal Employment Opportunity Commission (EEOC)

Charges of unlawful discrimination due to age must be filed with the U.S. Equal Opportunity Employment Commission (EEOC). Every effort should be made to act on a discriminatory action as soon as possible given the strict time limits under the ADEA. You must file a charge within 180 days of the discriminatory act. You should also attempt to file a timely charge under applicable state law.

Complaints of age discrimination may also be filed with the following agencies:

- ❑ **EEOC New Jersey Office**, 1 Newark Center, 21st Floor, Newark, NJ 07102; telephone: **1-800-669-4000 (TTY 1-800-669-4000)**; website: **www.eeoc.gov**.
- ❑ **NJ Dept. of Law and Public Safety, Division on Civil Rights**, PO Box 090, Trenton, NJ 08625-0090; telephone: **609-292-4605 (TTY 609-292-1785)**; website: **www.state.nj.us/lps**.

□ **US Dept. of Labor**, Frances Perkins Bldg., 200 Constitution Ave. NW, Washington, DC 20210; telephone: **1-866-4-USA-DOL**; (TTY **1-877-889-5627**); website: **www.dol.gov**.

HIPAA Privacy Rule

A federal law, the Health Insurance Portability & Accountability Act of 1996 (HIPAA) gives you rights over your personal health information and sets rules and limits on who can look at and receive your health information. To learn more about your health information privacy rights, including how to file a complaint, please visit **www.hhs.gov/ocr/hipaa** or call **1-866-627-7748**.

Open Public Records Act (OPRA)

Government records in New Jersey, with certain exceptions, are accessible to the public for inspection, examination, and copying. If you would like to see a public record, contact the agency you believe has the record using their on-line form at **www.nj.gov/opra**.