Senior Virginians Handbook

Legal Information and Resources

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

Laws do change.
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Senior Virginians Handbook

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

Virginia State Bar

An Agency of the Supreme Court of Virginia

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of the Virginia State Bar

PREFACE

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

The SLS assisted in the implementation of the revised guardianship laws for adults, and prepares and publishes this *Senior Virginians Handbook*, formerly called the ***Senior Citizens Handbook***. The SLS also provides education and encouragement to lawyers to do proper planning for their own disability or death and is interested in receiving input from senior lawyers and citizens on issues of concern to them. Your input can help the SLS study issues, present programs and activities, produce publications of interest, and advocate appropriately. With your feedback we can work to be sure this publication is accurate and up to date. If you have suggestions for additional content, find links that are broken, or just want to comment on the book, please contact the VSB at (804) 775-0519 and ask for the SLS's staff liaison, or email: seniorlawyers@vsb.org.

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

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

The latest version of this Handbook can be found online at vsb.org.

Senior Virginians Handbook

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

INTRODUCTION

Martin D. Wegbreit, Esq.
Emeritus Pro Bono Attorney
Editor

This Handbook provides summaries and references to various laws and programs affecting Virginia's older residents, as well as practical guidance to address our concerns. The Handbook also is a guide for identifying and locating public and private organizations that provide services to older Virginians. We hope you find it helpful and welcome your comments and thoughts about the content. Please contact the VSB at (804) 775-0519 and ask for the SLS's staff liaison, or email: seniorlawyers@vsb.org with your suggestions or comments.

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

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

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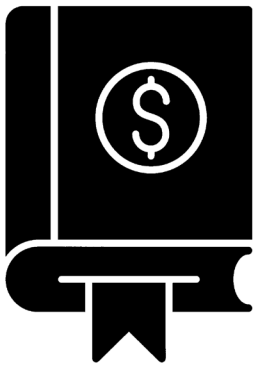


CONTRACTS AND CREDIT BUYING

A contract is an agreement between two or more persons, or between persons and companies, to do a particular thing. Usually, a seller agrees to deliver a product or do a service, and you agree to pay money. A contract may be oral or in writing. Some contracts must be in writing. A written contract may look very formal and official, or it may be handwritten on a plain sheet of paper. A contract states the rights and duties of you and the seller.

When you sign a contract, it means you read it, understood it, and agreed with it. If you do not understand a contract, get individual legal advice before you sign.

If you want to change a contract, you need to do that before you sign it. You should not rely on the seller's explanation. You may ask to add or remove terms to a contract. You and the seller should initial each change before anyone signs. After a contract has been signed, it cannot be changed unless you and the seller sign and date the changes.

Never sign a contract with blank spaces. You should never depend on an oral promise made by the seller. Oral promises usually don't affect the written contract. You must insist all promises be written into the contract. If you are writing your own contract, use simple language that all parties can easily understand. If the contract is written by someone else, make certain you understand exactly what has been written. This is your last chance to ask any questions, make any changes, or change your mind about agreeing to the contract. If you don't understand the document, don't sign it.

Make certain that the document has a title clearly showing that it is a "CONTRACT." Make certain the names of all the parties involved in the contract, and all of their contact information, are clearly listed and correctly spelled. Make certain the date is clearly written and correct. Each page should be initialed by all parties, and signed in blue or black ink so the signatures will copy clearly. Always get a signed copy of the contract and save it. This is your only proof of the terms of your agreement. Always get a signed and dated receipt for any payment, and save it. This may be your only proof that you have paid.

Money orders are hard to trace. Cash payments cannot be proved without a receipt.

You can pay for things two ways. You can pay in full. You also can finance over time. When you buy on time, the seller is giving you credit – a loan. In return, you promise to pay the amount of the loan plus interest. If you finance over time, the total cost increases. This is because you also are paying for the cost of credit. If you finance over time, be sure you read, understand, and agree with everything on all of the papers, before you sign.

The papers should tell you the following things: the exact price you are paying, any down payment or trade in, the amount you are financing, the finance charge (the dollar amount the credit will cost you), the annual percentage rate (APR), which is the rate of interest stated as a yearly rate, the number and amount of payments, the date the payments are due, the total sales price (the sum of the monthly payments, plus any down payment or trade in).

CREDIT CARDS

If you have a credit card, you are normally required to pay a monthly finance charge based on the unpaid balance of your account. The effective annual percentage rate for credit cards is not limited by Virginia law and may be imposed at the rate set by the issuer of the card and agreed to by you. All credit cards give a period of time within which, if they receive payment in full, no finance charge will apply. If charges are not paid in full before the due date, interest charges may be assessed on new purchases as well as the last balance-due amount.

Credit billing errors occur for many reasons. For example: charges that were unauthorized, charges for the wrong amount, charges for goods or services you did not accept or that you returned, math errors, failure to show a payment or credit, failure to send the bill to your current address.

If you think your bill is wrong, or want more information about it, follow these steps. Write the

creditor within 60 days after the first bill that showed the error, including your name and account number, the date and amount of the error, and why you think the bill is wrong.

Pay all parts of the bill that are not in question. While you wait for an answer, you do not have to pay the amount in question. You also do not have to pay any minimum payment or finance charge which applies to the amount in question.

Within 30 days after getting your letter, the creditor must tell you in writing they received it. Within 90 days after getting your letter, the creditor must correct the error or tell you in writing why the bill is correct and give you papers showing that.

If the creditor made a mistake, you do not have to pay any finance charges on the disputed amount. The creditor must credit your account for the full amount in dispute or partially correct your account and explain what you still owe. You then have the time usually allowed on the account to pay any balance. If no error is found, the creditor must promptly send you a statement of what you owe. In this situation, the creditor may include any accumulated finance charges and any minimum payments you missed while you were questioning the bill.

While you question a billing error, the creditor may not threaten your credit record. The creditor must not give information that would hurt your credit report. The creditor also can't take any action to collect the amount in question.

The most you will have to pay for unauthorized charges is $50 on each card, even if someone runs up several hundred dollars' worth of charges before you report a card missing. You do not have to pay for any unauthorized charges made after you notify the card company of loss or theft of your card, so keep a list of your credit card numbers, and notify card issuers immediately if a card is lost or stolen.

It is illegal for a card issuer to send you a credit card unless you ask or apply for one. A card issuer, however, may send you an application for a card or a new card to replace an expired one without your request.

CREDIT DISCRIMINATION

The federal Equal Credit Opportunity Act (ECOA) forbids discrimination against an applicant for credit on the basis of age, sex, marital status, receipt of public assistance benefits, race, color, national origin, religion, or because the applicant in good faith exercised any right under the Consumer Credit Protection Act.

A creditor may make sure that individuals are both willing and able to repay their debts. Normal items of inquiry include personal income, expenses, outstanding debts, and credit history. A creditor may also ask age, but the use of this information is controlled under the Equal Credit Opportunity Act. Age may not be used as the basis for a decision to deny or decrease credit if the applicant otherwise qualifies. A creditor may ask about income, but continually denying credit to applicants without good cause or arbitrarily discounting income is forbidden.

An applicant has a right to know whether an application is accepted or rejected within 30 days of filing. If an applicant has suffered an adverse credit action, such as a denial or revocation of credit, a change in terms of an existing credit arrangement, or a refusal to grant credit in substantially the terms requested, the applicant has 60 days from the time the creditor notifies you of adverse action to request the reason in writing. The creditor must provide the reason within 30 days of the receipt of the request.

If credit has been denied either wholly or partly because of information contained in a consumer credit report, a free copy of the report may be requested within 60 days of the initial action. If the problem is not resolved satisfactorily, and the applicant believes the adverse action was taken for a non-permissible reason, the applicant may bring suit to recover actual damages, attorneys' fees, court costs, and punitive damages in an amount not greater than $10,000.

The Department of Justice may file a lawsuit under the ECOA where there is a "pattern or practice" of unlawful discrimination. If the discrimination involves a home mortgage or home improvement loan, the Department of Justice may file suit under the Fair Housing Act (FHA) as well as the ECOA.

Individuals who believe they have been discriminated against in a credit transaction involving residential property may file a complaint

with the federal Department of Housing and Urban Development (HUD) or may file their own lawsuit.

Individuals who believe they are being discriminated against because of their age or other protected category by denial of an application for credit in a loan or a purchase, or for more detailed information or help, should contact the Federal Trade Commission, Suite 240, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2222 or (877) 382-4357 or www.ftc.gov.

CREDIT REPORTING

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). This is a summary of your major rights under FCRA.

You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:

- a person has taken adverse action against you because of information in your credit report
- you are the victim of identity theft and place a fraud alert in your file
- your file contains inaccurate information as a result of fraud
- you are on public assistance
- you are unemployed but expect to apply for employment within 60 days

You are entitled to receive one free credit report every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian, and TransUnion. This free credit report can be requested at https://www.annualcreditreport.com or by calling 877-322-8228. It is good planning to request a free annual credit report from a different one of these agencies each four months throughout the year. Be wary of internet or telemarketing programs that purport to provide a "free" credit report but require a fee.

You have the right to ask for a credit score (which may be a FICO® score). Credit scores are numerical summaries of your creditworthiness based on information reported to credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. To learn about dispute procedures, go to https://www.consumerfinance.gov/ask-cfpb/how-do-i-dispute-an-error-on-my-credit-report-en-314.

Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information. Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

Consumer reporting agencies may not report outdated negative information. In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

Access to your file is limited. A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

- You must give your consent for reports to be provided to employers. A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer.
- You may limit "prescreened" offers of credit and insurance you get based on information in your credit report. Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out with the nationwide credit bureaus at (888) 567-8688.

For information about additional rights, go to https://www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

DOOR-TO-DOOR SALES

Even the most strong-willed customer occasionally falls prey to an enterprising door-to-door salesperson. But if the "magic spell" cast by the salesperson wears off as soon as he is away from your door with your money or a sales contract, there is something you can do about it.

Virginia law and Federal Trade Commission (FTC) rules allow you a three-day cooling-off period to decide whether to cancel your purchase of goods or services. If you do decide to cancel the sale or to rescind the contract, you must send or deliver a written notice to the company or business before midnight of the third business day after the date of the transaction.

Under Virginia law, the three-day cooling-off period does not start until the company or business has given you two papers. The first paper is a Statement of the Buyer's Right to Cancel the Transaction. The second paper is a Notice of Cancellation Form which you can use to cancel the transaction. Until the company or business has given you these two papers, you still have the right to cancel beyond the three-day cooling-off period.

Virginia law does not require you to follow any particular format in sending your notice to cancel your purchase of goods or services. The FTC rules require you to sign and date one copy of a notice of cancellation form, which you should receive from the salesperson, along with copies of the sales contract or receipt of sale. You should consider sending the notice of cancellation or written letter of cancellation by first class mail and by certified mail, return receipt requested. Keep a copy of the notice for your records and as proof that you sent it.

The merchant has 10 days after receiving the notice of cancellation letter to refund any money received, return any documents that you have signed, return any goods or property that you have traded in, and inform you whether he or she will pick up or let you keep any items that were left with you.

Products left with you must be available to the seller in the same condition as you received them. It is not your responsibility, though, to ship the items back to the dealer or pay postage expenses for such shipping. The seller must either pick up items left with you, or if you agree to ship them, the seller must pay the return postage expenses.

If the seller fails to demand possession of the items within 20 days after cancellation or revocation, the goods become the property of the buyer without any obligation to pay for them. Virginia law and the FTC rules do not cover cash purchases under $25.

EFFECTIVE CONSUMER COMPLAINTS

You often can solve problems by going to the business where you made the purchase. The seller may want to make a fair settlement. Here are some steps you should follow.

You should have a specific complaint. Make your complaint as soon as you can. The faster you complain, the better your chances are to solve the problem. You should avoid complaining over the phone. If you must complain over the phone, take notes. Write down the name of everyone you speak with, the date and time of the call, and what was said.

You should complain in person and be prepared. When you go to complain in person, take copies of receipts and all the papers you got when you made the purchase. Leave originals at home. Talk with a salesperson or customer service person, explain the problem, and say what action you would like taken. If the salesperson or customer service person is not helpful, ask to speak with a supervisor, manager, or higher person in authority, and repeat

your complaint. Do not be put off by "pass the buck" tactics. Write down the name of everyone you speak with, the date, time and place where you complained, and what was said.

If your problem is not solved in a few days, complain by writing a letter. When you complain by letter, be specific. Put the business name and address in your letter, and your name and return address. Tell the business the date you purchased the product or service, what the problem is, and when you first noticed it. Tell the business what action you would like taken, and by what date. You should allow 2 or 3 weeks. Enclose copies, not originals, of all your papers about the complaint. Sign and date your letter.

Copy your letter and save it. You may want to send your letter by certified mail, return receipt requested. Save the certified mail receipt and the green return receipt. Keep track on a calendar of the deadline you gave the business to solve your problem. If it is not solved by then, send a second complaint in writing.

Your second letter should repeat the first letter's message, with a few additions. Tell the business when you last wrote. Point out that the problem still has not been solved. Tell the business that if you don't get action within 2 or 3 weeks this time, you will seek outside help.

Again, enclose copies, not originals, of all your papers about the complaint. Also enclose a copy of your first complaint letter. Copy your second complaint letter and save it. You should send your second complaint letter by certified mail, return receipt requested. Save the certified mail receipt and the green return receipt.

If you have complained in writing and still are not satisfied, you should get outside help. The Office of the Attorney General of Virginia has a Consumer Protection Section. You may call their Consumer Protection Hotline toll-free at (800) 552-9963 or (804) 786-2042, if calling from the Richmond area or from outside Virginia.

The Consumer Protection Section handles problems between individuals and businesses. They do not handle problems between individuals where no business or merchant is involved. They also do not handle problems about products or services intended for business use.

The Consumer Protection Section does not give legal advice or representation. They do not file lawsuits for individuals. However, they will look into your complaint and try to solve your problem. To get their help, you need to send them an Official Consumer Complaint Form. You can find the form at https://www.oag.state.va.us/consumercomplaintform.

FAIR DEBT COLLECTION

A debt collector may not harass, abuse, mislead, deceive, or be unfair to you. The federal Fair Debt Collection Practices Act (FDCPA) makes this illegal. This law covers personal, family and household debts. This law does not cover business or commercial debts.

A debt collector is anyone, other than the creditor to whom you owe money, who collects debts for others. An attorney who regularly collects debts for others is a debt collector. The FDCPA doesn't apply to creditors who collect their own debts.

A debt collector may contact you in person, by mail, telephone, telegram, fax, or email. A debt collector may not contact you an excessive number of times. A debt collector may not contact you at unreasonable times or places, such as before 8:00 a.m. or after 9:00 p.m. A debt collector also may not contact you at work if the collector knows that your employer objects to this.

If you have an attorney, the debt collector may not contact anyone other than your attorney. If you don't have an attorney, a debt collector may contact other people, but only to find out where you live and work. A debt collector can't contact other people to get location information more than once. A debt collector can't tell or suggest to anyone other than you and your attorney that you owe money.

Within five days after you first are contacted, the debt collector must send you a written notice. This must tell you the amount of money you owe, the name of the creditor, and what to do if you believe you don't owe the money. A debt collector must stop collection action if you send the collector a letter, within 30 days after you first are contacted, saying you don't owe the money. If you are sent proof of the debt, such as a copy of a bill, a debt collector may contact you again.

Debt collectors may not harass or abuse anyone. Debt collectors may not use misleading or deceptive (false) statements. Debt collectors may not be unfair.

You don't have to talk with a debt collector on the phone. In most cases, you have nothing to gain by talking with a debt collector on the phone. The debt collector is not interested in why you haven't paid or can't pay. The debt collector only wants you to pay a certain debt, even if you have more important debts or bills to pay first. Remember that it's your money, and you have the right to decide which debts and bills to pay first. You can't be arrested or jailed for not paying a debt. You have not committed a crime by not paying a debt, bill, or judgment. If you don't want to talk with a debt collector on the phone, hang up the phone.

You don't have to answer letters you get from a debt collector. However, if you don't owe the debt, you should send the debt collector a letter, within 30 days after you first are contacted, explaining why you don't owe the money. Also, if you don't want to be contacted by the debt collector any more, you should send the debt collector a letter saying that. You may send this letter at any time.

If a debt collector breaks the law, you may sue the debt collector in state or federal court within one year from the date you believe the law was broken.

FILING A LAWSUIT IN GENERAL DISTRICT COURT

Virginia has a system of General District Courts. To sue for money, fill out a "Warrant in Debt." To sue for return of property, fill out a "Warrant in Detinue." Although these court forms are called "warrants," they are not used in criminal cases. They are used in civil, non-criminal, cases.

You can file a lawsuit for up to $25,000. You can learn more about this by going to this web site: https://www.courts.state.va.us/static/courts/gd/gdinfo.pdf. The General District Court also has a Small Claims Division, where attorneys are not allowed. You can file a lawsuit in the Small Claims Division for up to $5,000. You can learn more about this by going to this web site: https://www.vacourts.gov/static/resources/small_claims_court_procedures.pdf

You must file in one of two places. One place is the county or city where the business or person you want to sue is located. The other place is the county or city where you bought the product or service. You can file this lawsuit by yourself without an attorney. The filing fee is about $64. If you win, the judgment includes your filing fee. If you can't afford the filing and service fees, ask for Form DC-409, the "Petition for Proceeding in Civil Case Without Payment of Fees or Costs." The form also is on this web site: https://www.courts.state.va.us/static/forms/district/dc409.pdf

If your case is simple, you may not need an attorney in General District Court. If your case is complicated, or if the other side has an attorney, it will help if you have an attorney.

You must have the complete name and address of the business or person you want to sue. The address must be a physical address, not a post office box. The name of the business or person must be correct. Sometimes, a business or person will not use their real name. This is an "assumed or fictitious" name. The Circuit Court Clerk has a list of these names. If you are suing a corporation, you need the name and address of its registered agent. You can get this by calling the State Corporation Commission toll-free at 866-722-2551, if calling from Virginia. You also may call at 804-371-9733, if calling from the Richmond area or from outside Virginia.

Write on the warrant your name and address, the name and address of the business or person you want to sue, name and address of the registered agent (if suing a business), the amount of your claim, and the reason for your lawsuit. After your warrant is filed, the clerk should give you two copies. Mail one copy to the business or person you're suing, at least 10 days before trial. The warrant says when and where to appear for court. The clerk gives a copy of the warrant to the Sheriff's Department to deliver (or serve) on the business or person you're suing. Your lawsuit can't be heard unless the other side is served.

You should ask any witnesses who know something that might help your case to come to court. If a witness will not come, ask the clerk for a subpoena to make the witness come. This costs $12.00 and must be done at least 10 days before trial. You must have the complete name and physical address of the witness.

If you do not come to court on your trial date, the court will dismiss your lawsuit. If you come to court and the other side does not, you should get a judgment. If both sides come to court, the judge will hear both sides and decide who wins. Sometimes the judge sets a new date for trial.

FILING BANKRUPTCY

Bankruptcy means you ask the court to excuse you from your duty to repay your creditors. It allows you to discharge (get rid of) most of your debts, but also keep a certain amount of property. Two kinds of bankruptcy apply to individuals and married couples not in business. These are a Chapter 7 bankruptcy and a Chapter 13 bankruptcy. All bankruptcies are filed with your local United States Bankruptcy Court.

Under Chapter 7, you may not have to repay any of your debts before they are discharged. Under Chapter 13, you must repay your debts – at least in part – before they are discharged. Before you can file bankruptcy, you must get individual or group counseling from an approved consumer credit counseling agency within 180 days before you file bankruptcy.

In a Chapter 7 bankruptcy, you must list all your debts, no matter the size or to whom you owe them. You also must list all your property. Virginia law lets you keep a certain amount of property you own free and clear. The rest of your property is sold. The money is used to pay your creditors. They may get only a few cents (or nothing) for a dollar of debt. The court discharges (or forgives) most of your debts, and you get a fresh start. Some debts can't be discharged in either a Chapter 7 or Chapter 13 bankruptcy, such as court fines, some tax debts, child support, and spousal support (alimony).

If you're buying property on credit, you may have to give it back to the creditor. In a Chapter 7, you may keep property you're buying on credit under certain conditions. If you are current on your payments, you may "reaffirm" the debt by agreeing to keep the debt even though you filed bankruptcy. However, if you are behind in your payments, you may have to file a Chapter 13 to keep property you're buying on credit. A final way to keep property is to redeem it. This means you pay the creditor what the property is now worth, not what you still owe on it.

In a Chapter 7, property you can't protect from your creditors is sold and the money is used to pay your creditors. If property you own free and clear is worth more than you can protect from your creditors, a Chapter 7 can be the worst possible thing you can do. If you have property you can't protect from your creditors, you may want to think about a Chapter 13.

A Chapter 13 bankruptcy requires you to have a steady source of income. In Chapter 13, you make payments to an attorney called a Bankruptcy Trustee. Usually, you do this for three to five years. The Trustee uses the money to pay your creditors. In a Chapter 13, you also list all your debts and property. Virginia law lets you keep a certain amount of property you own free and clear. This is the same property protected from your creditors in a Chapter 7 bankruptcy.

In a Chapter 13 bankruptcy, you may not have to give back, reaffirm, or redeem property you're buying on credit. Instead, you may be able to keep property you're buying on credit even if you're behind on payments. To keep the house where you live, you must make current payments. You get three to five years to catch up missed payments.

You may be able to file bankruptcy without an attorney, but it is not recommended. Bankruptcy is difficult. You may lose income, property, or other rights if you don't know the law.

GETTING SUED

If a creditor wants to force you to pay a debt, they first must get a judgment. To get a judgment, a creditor must file a lawsuit in court, serve (legally deliver) you a copy of the court papers in a manner allowed by law, go to court at the hearing date and time, and get a judgment from court.

Many people feel that having a judgment against them is the worst possible thing. A judgment simply is a piece of paper at the local courthouse that says you owe someone a certain sum of money. This allows the creditor to use legal actions to collect the judgment.

If a creditor wants a judgment of $4,500 or less, the lawsuit must be filed in General District Court (GDC). A creditor who wants a judgment of $25,000 or more must file in Circuit Court. If a creditor wants

a judgment between $4,500 and $25,000, the lawsuit may be filed in either court. Lawsuits between $4,500 and $25,000 usually are filed in GDC.

You should be sued in one of three different places: i) the county or city where you now live, or ii) where you incurred (took on) the debt, or iii) where you agreed in writing you could be sued. However, under Virginia law, you can be sued anywhere in the state, even if you don't live there and had no dealings there. If this happens, you should ask the court to move, or transfer, the lawsuit. Do this even if you agree on the debt you owe. If the lawsuit is heard and judgment granted far away, any legal action to collect the judgment also will be far away.

Papers from GDC will tell you the date, time, and place of your court hearing. This hearing may be your only chance to dispute or oppose the claim against you. If you do not agree with the claim, go to the hearing. Get there early so you can find your courtroom and watch how the court handles other cases.

Papers from Circuit Court will not give you a date, time, or place of your court hearing. Instead, the papers say you have 21 days after getting them to file a written Answer with the Circuit Court. This must reply to, and admit or deny, each numbered paragraph of the Complaint. Although you can file your own Answer in Circuit Court, you probably will need a lawyer to help with the case. Procedures in the Circuit Court are more complicated.

GDC court papers are not very detailed. If you want more information, you can ask the judge at the first hearing to order "pleadings." This means a Bill of Particulars to be filed by the Plaintiff, and a Grounds of Defense to be filed by you.

A "Bill of Particulars" is a written statement giving details why the lawsuit should win. If the Judge orders a Bill of Particulars, the Plaintiff will have a date by which to file it. If the Plaintiff does not file by this date, the Plaintiff may lose automatically. A "Grounds of Defense" is a written statement giving details why the lawsuit should not win. If the Judge orders a Grounds of Defense, you will have a date by which to file it. If you do not file by this date, you may lose automatically.

If you appear at the first hearing date, or the trial date, to try the case, get prepared for your hearing in advance. Bring papers, receipts and witnesses that support your case.

HOW CREDITORS COLLECT JUDGMENTS

If a creditor wants to force you to pay a debt, they first must get a judgment. A creditor with a judgment is called a "judgment-creditor," and may use court process to collect a judgment.

A judgment-creditor may have the court issue a Summons to Answer Interrogatories. This requires you to come to a court hearing at a certain date, time and place. The hearing allows the judgment-creditor to ask you questions (interrogatories) about your income and property. You are under oath when you answer these questions.

A judgment-creditor may garnish wages, bank accounts, and other money payable to you. Some money cannot be garnished. This includes government benefits, most pensions and retirement benefits, disability benefits, group life insurance benefits, servicemembers' pay, student assistance, personal injury awards, FEMA federal disaster assistance, child support, and spousal support (alimony).

A judgment creditor may garnish up to 25% of your after-tax pay, or the amount exceeding minimum wage, whichever is less. As of January 2025, the Virginia minimum wage is $12.41 per hour. Your employer is supposed to do a calculation to determine how much (if any) you can be garnished.

If your weekly after-tax pay is $496.40 or less, no garnishment is allowed. If your weekly after-tax pay is between $496.40 and $661.87, only the amount above $496.40 can be garnished. If your weekly after-tax pay is $661.87 or more, up to 25% of your income can be garnished.

A judgment-creditor may levy or attach your personal property. A levy instructs a Sheriff or Deputy to go to your home and make a list of property that can be sold to pay the judgment. A judgment-creditor can levy on only some of your personal property. Because the judgment-creditor must post a bond to sell your personal property, a levy is very seldom used.

A judgment creditor may docket the judgment. This puts a lien (or a claim) on any real property (house or land) you may own in that county or city. This alone does not mean that your real property will be sold to pay the judgment. It does mean that you can't sell or give away your real property, and turn

over a clear title to the real property to someone else, without paying the judgment.

A judgment creditor may file a Creditor's Bill in Equity. This is a separate lawsuit which must be filed in Circuit Court. The lawsuit asks for an order to sell your real property (house or land) to pay the judgment. As with the first lawsuit that got the judgment, the creditor must file the lawsuit, serve the court papers, and get an order for the sale.

A Creditor's Bill in Equity cannot be used to collect small judgments by selling a debtor's primary residence. As of March 12, 2021, if the judgment is $25,000 or less – not including interest and costs – a Creditor's Bill in Equity cannot be filed to sell your primary residence. Due to this limitation, a Creditor's Bill in Equity is very seldom used.

IDENTITY THEFT

Most identity theft is to set up accounts, obtain credit, and make fraudulent purchases. Using items such as a driver's license or Social Security number, a skilled identity thief can: open a new account and write bad checks, establish new credit card accounts and not pay the bills, obtain personal or car loans, get cash advances, set up a cell phone or utility service and run up bills, change credit card mailing addresses and charge on other accounts, obtain employment, and rent an apartment but not pay the rent.

There are several actions you can take to protect your personal information. To help minimize your risk of identity theft, shred everything! All personal information such as bills, ATM receipts, and credit card offers should go in the shredder before being thrown away. Keep personal documentation in a secure place.

Call the post office immediately if you are not receiving your mail. To get personal information needed to steal your identity, a thief can forge your signature and have your mail forwarded.

Be aware of your surroundings when entering your Personal Identification Number (PIN) at an ATM or retail check out. Limit the number of credit cards and other personal information that you carry in your wallet or purse.

Report lost or stolen credit cards immediately and cancel all inactive credit card accounts. Keep track of all credit cards applied for and if the card is not received in a timely manner, immediately notify the issuer. Closely monitor the expiration dates on your credit cards. Contact the credit issuer if the replacement card is not received prior to your credit card's expiration date. Sign all credit cards upon receipt.

Review your credit reports annually. Use passwords on your credit cards, bank accounts and phone cards. Avoid using obvious passwords. Match your credit card receipts against monthly bills to make sure there are no unauthorized charges.

Do not volunteer any personal information when you use your credit card. Do not give your Social Security number, credit card number, or any account details over the phone unless you have placed the call and know the business you are dealing with is reputable Do not disclose bank account numbers, credit card account numbers, or other personal financial data on any web site or on-line unless you receive a secured authentication key from your provider.

If you believe you might be a victim of identity theft, contact the three national credit bureaus to report the identity theft and request a "fraud alert" on your account. You also should request copies of credit reports and pay particular attention to the section of the report that lists "inquiries" from new companies. If there are companies you do not recognize, you should contact these companies.

Equifax: 800-525-6285; P.O. Box 74024, Atlanta, GA. 30374; www.equifax.com.

Experian: 888-397-3742, P.O. Box 9532, Allen, TX. 75013; www.experian.com.

TransUnion: 800-680-7289; P.O. Box 6790, Fullerton, CA. 92834; www.transunion.com.

ORDERED AND UNORDERED MERCHANDISE

If you order merchandise by mail, federal regulations require the seller to ship the merchandise to you within the time limits stated in its ad or brochure, or within 30 days if the seller has not specified a delivery period. If the merchandise is not so shipped, for example, because it is temporarily out of stock, you have the right to cancel your order and

have your money refunded within seven days of your cancellation.

In a credit transaction, the seller has one billing cycle to adjust your account. If the seller notifies you that he or she cannot ship the merchandise in the stated time or within 30 days, you may cancel the order and get your money back, agree to the new shipping date, or not answer, in which case the seller can assume you agree to the shipping delay.

If you do not give your express consent to a shipping delay of more than 30 days, the seller must return your money at the end of the first 30 days of the delay. These regulations do not apply to magazine subscriptions, serial deliveries (except for the initial shipment), mail-order seeds and growing plants, cash on delivery, or credit orders for which your account is not charged prior to shipment.

You do not have to pay for merchandise that you have not ordered or otherwise requested, and it is illegal for the sender to pressure you to return it or to send you a bill. It is illegal for a merchant to send unordered merchandise other than free samples and merchandise mailed by charitable organizations requesting contributions.

For more information about the Mail, Internet, or Telephone Order Merchandise Rule, call the Federal Trade Commission toll-free: 1-877-FTC-HELP; or write: Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue, N.W., Washington, DC 20580; or visit https://www.ftc.gov/business-guidance/resources/business-guide-ftcs-mail-internet-or-telephone-order-merchandise-rule.

ROBOCALLS AND TELEMARKETING SALES

If you answer the phone and hear a recorded message instead of a live person, it's a robocall. A robocall trying to sell you something is illegal unless the company trying to sell you something got written permission, directly from you, to call you that way. To get your permission, the company has to be clear it's asking to call you with robocalls. The company also can't make you agree to the calls to get a product or service.

Scammers make robocalls that say they're from government agencies calling about your Social Security number, taxes, or Medicare. They say that if you don't pay or you refuse to give them your personal information, something bad will happen or you'll miss out on some government benefit. **It's a scam.**

If someone calls you out of the blue and insists you hand over personal information, wire money, put money on a gift card, use a payment app, or send cryptocurrency, it's a scam whether the caller says they're from the government or a business. Many people report getting robocalls about extended car warranties, debt relief, or credit repair, too.

Don't rely on your caller ID. It's helpful when your caller ID labels a call as a potential scam, but not all scam calls get flagged. And scammers can fake the name and number that shows up, making it look like a call is from a government agency like the Social Security Administration or a local number.

Not all robocalls are illegal. Messages that are purely informational or calls to collect a debt aren't illegal, although robocalls that try to sell you services to lower your debt are illegal and are almost always scams.

The best thing to do if you get an illegal robocall is hang up. If you hear a recorded message from someone trying to sell you something, the call is almost always illegal. It's also probably a scam. Hang up. Pressing numbers to speak to someone or remove you from the list will probably only lead to more robocalls. And the number on your caller ID probably isn't real. Caller ID is easy to fake, so even if it shows that a call is coming from nearby or a company you know, you can't trust it.

You also can report it to the Federal Trade Commission (FTC) at https://www.donotcall.gov. Report the number that received the call, the number on your caller ID, and any number you're told to call back. Also report the exact date and time of the call, if you know it. Knowing all of this information helps the FTC track down the scammers behind the call. Even if you think the number on your caller ID is fake, report it. The FTC analyzes report data and trends to identify illegal callers based on calling patterns.

Just about everyone who owns a telephone has received calls promoting products, services, investment opportunities, or contests. Although many telephone offers are legitimate, telemarketing fraud costs consumers billions of dollars a year. Federal rules and common sense can protect you from telephone scams and overly intrusive sales calls.

Under FTC rules, telemarketers may call only between 8 a.m. and 9 p.m. They must tell you immediately who they are and what they are selling. Stop unwanted calls from telemarketers by telling them not to call back. If they do, they are breaking the law.

Before you pay anything, a telemarketer must tell you the total cost of the products or services offered and any restrictions on getting or using them, and whether a sale is final or nonrefundable. A telemarketer may never withdraw money from your checking account without your express, verifiable authorization. It is also illegal for telemarketers to misrepresent information about whatever they are selling, including prize-promotion schemes.

Telephone scam artists may cold-call individuals listed in a directory or on a mailing list. In more elaborate schemes, advertisements or direct mail pieces invite you to call a certain phone number to claim a prize or to make a purchase. Be skeptical of any deal that sounds too good to be true, and make sure sellers are trustworthy before you hand them your money

SCAMS

Bait-and-Switch: This usually advertises some attractive bargain that is "available in limited quantities" to get you into the store. Once you are there, the salespeople try to get you to buy a more expensive item in the same line of merchandise, often by downgrading the bargain model that drew you to the store in the first place. Frequently, the more expensive item is overpriced.

Health Quackery: Each year, Americans spend billions of dollars on bogus health products and treatments. Tragically, some people are persuaded to buy the useless products rather than to seek effective, proven medical treatment. In order to avoid being a victim of "health quackery," beware of the following: promises of a "quick and painless" cure; extraordinary promises such as a claim that a single remedy will cure all diseases; testimonials of "satisfied users" which lack any substantive medical support; products which are described as "alternatives," and "scientific breakthroughs" which the promoter claims have been overlooked by the medical community. If medical science has not found a cure for an ailment, then you should not buy a product advertised to cure it. If it sounds too good to be true, it probably is.

Home Repairs: Whenever you need to hire someone to work on your home, use caution and shop around. You do not have to hire the first contractor that you find. Get two or three written estimates to see who is offering the best bargain. Also, check references before you hire. Inquire about past complaints or potential problems with a business by contacting the Better Business Bureau in your locality.

After you decide on a contractor, insist that your agreement be put in writing. If you do not get all the important things in writing, you are asking for trouble later. Items such as price and guarantees of the work to be done should be on paper and signed so that you can avoid arguments after the work is completed. Agree in advance that full payment is not due until the work is completed.

If you plan to pay for the work in installments and the contractor or loan company requires a deed of trust (mortgage) on your home as collateral, you have three business days after you make the agreement in which to cancel it, if the work has not begun during that time.

If you have a dispute with your contractor regarding payment for his work, be certain to obtain a release of all liens placed on your property before you make the final payment. If the contractor refuses, consult an attorney before making any further payments.

If you do not have an attorney, the state and local bars can help through lawyer referral services or by directing you to the nearest Legal Aid office.

Pigeon Drop: This is a technique used to rob people of their savings. Usually a pleasant person introduces himself or herself and says that he or she has recently found a large amount of money. The person offers to share the found money with you if you will put up some of your own money to show good faith. After you deliver the agreed-upon amount in an envelope, the "nice" person then distracts you and switches the envelope containing your money with one containing paper or takes the envelope and promises to deliver your windfall "later" or "tomorrow." Tomorrow never comes. These cons sometimes sound believable, but they never are.

Social Security Scams: Scammers may impersonate the Social Security Administration (SSA) in an

attempt to obtain your personal information or money. These scammers may call, text, write, or message you on social media – often claiming to be from SSA or the Office of the Inspector General. They may even use the name and photo of an actual employee of SSA.

DO NOT BE FOOLED. SSA will not allow their employees to contact the public by phone or social media. These scammers may try to pressure you, gain your trust, and request that you pay or act in a certain way. SSA will never threaten you because you don't agree to pay immediately nor will they suspend your Social Security Number (SSN).

If you are scammed immediately stop contact with the scammer, notify the three credit bureaus, Equifax, Experian and TransUnion and request a new SSN. You should also report the scam to the Office of the Inspector General at https://oig.ssa.gov/report.

UNFAIR SALES AND CONSUMER FRAUD

When you buy something, the seller must tell the truth. The seller can't use any trick or falsehood. The Virginia Consumer Protection Act says certain practices are fraudulent and unlawful. Among other practices, a seller may not do these things.

- Falsely state the type, source or quality of a product or service.
- Fail to state that a used, secondhand, repossessed or defective product is used, secondhand, repossessed, or defective.
- Fail to sell at an advertised price.
- Falsely state that a product costs a certain price somewhere else, or previously had a certain price.
- Falsely state that a repair or service was done, or a part was installed.
- Fail to state all conditions and charges for returning goods for refund, exchange or credit.
- Fail to state all conditions and charges for a layaway agreement.
- Use any deception, fraud, false pretense, false promise, or misrepresentation.
- Violating any of more than 40 other consumer protection laws.

If a seller does an unlawful act, you may sue the seller for your damages, or $500, whichever is greater. If the seller's act was done on purpose, you may sue the seller for three times your damages or $1,000, whichever is greater.

Sellers can't make false and material (important) statements of fact, with the intent that you rely on them. A sale may be fraudulent if all the following are true.

- The seller made a false statement of fact (not an expression of opinion).
- The seller knew the statement of fact was false.
- The seller knew you relied on the false statement of fact.
- You relied on the false statement of fact.
- You were injured because you relied on the false statement of fact

If you are harmed by fraud, you can sue for your damages. However, it is harder to prove fraud than it is to prove that a consumer protection law was violated.

WARRANTIES

When you buy something, you expect it will work. You also expect it will last for some period of time. A warranty is the seller's legal promise or guarantee about the quality of the goods. There are two kinds or warranties: implied (or statutory) and express (or contractual).

An implied warranty is one required by law. Almost every purchase you make from a merchant is covered by an implied warranty. This means that if you buy something from a merchant, you can assume it has certain warranties. These warranties are implied because they don't have to be spoken or written down by anyone. However, you can give up (or waive) your implied warranties. There are two important implied warranties. One is the warranty of merchantability. The other is the warranty of fitness for a purpose.

The warranty of merchantability means the seller promises the product will do what it is supposed to do. It applies to used goods as well as new goods. It means the goods are fit to be sold, and are fit for the

usual purpose for which such goods are sold. The goods must be as described on the package or label. The goods must be of fair or average quality. This warranty exists whether or not the seller says it or puts it in writing, unless you give up this warranty.

The warranty of fitness for a purpose applies when you buy a product on the seller's advice it is suitable for a specific use. If the seller knows that the goods are to be used for a particular purpose, there is warranty the goods are fit for that purpose. This is especially true if you are relying on the seller's knowledge in selecting the goods. If you do rely on the seller's knowledge, this warranty exists whether or not the seller puts it in writing.

There is no set length of time for how long a warranty of merchantability or a warranty of fitness for a purpose lasts. However, it can't last longer than four years.

You can give up your implied warranties. If a seller wants you to give up your implied warranties, the seller must clearly say so in writing. This writing must be conspicuous. This means it must readily attract notice. In this case, the product is sold "as is." An "as is - no warranty" sale means exactly what it says. You accept the product in the condition in which it exists at the time of sale. The seller has no duty to fix the product or to take it back after the sale.

If you don't give up implied warranties, you get the implied warranty of merchantability. You also may get the implied warranty of fitness for a purpose if you relied on the seller's knowledge.

An express warranty is a specific promise made to you by the seller, in addition to the implied warranties. If the seller gives you any written warranty, you also get the implied warranty of merchantability. When you get a warranty in writing, you should make sure you understand what it means: it should state exactly what the seller will and will not do when the product fails to work.

An oral promise can be an express warranty. You have a legal right to get what the seller promises, but beware: if there is an oral warranty and a written warranty, the oral warranty doesn't count. You get only the written warranty. If you are given an oral warranty, and also are given a writing that says there are no warranties, again the oral warranty doesn't count. Due to this, you should insist that any oral warranty be put in writing. If the seller won't do this, then the warranty probably is no good.

There are two types of express warranties. A full warranty means a faulty product will be fixed or replaced free. A full warranty does not have to cover the whole product. It may only cover part of the product. A limited or partial warranty means you will have to pay something to fix or replace a faulty product.

Like other contracts, you should read warranties carefully. Full warranties are the exception rather than the rule. If you have problems with a product or with getting the promised warranty service, see the section in this Handbook on "Effective Consumer Complaints."

PART 2 – DRIVING AND AUTOMOBILES

DRIVING PRIVILEGES

Simply stated, driving is a privilege, not a right. Most of us are tied to our cars to perform activities like shopping, going to work, visiting with friends or family, attending social activities, or taking vacations. The privilege to drive can be revoked, however, so it is important to protect yourself and loved ones as you enjoy that privilege. According to the Virginia Department of Motor Vehicles (DMV) website:

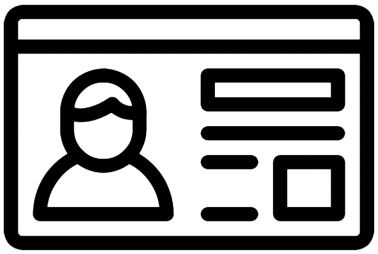
"Self-awareness is vital for safe driving at any age, but especially as we get older. Be aware of any changes in eyesight, physical fitness and reflexes, and any medications that impact driving ability. Be willing to compensate by making changes in driving habits or choosing alternative transportation.

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

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

The GrandDriver helps drivers recognize the signs of declining driving skills and assists caregivers and healthcare providers with how to communicate and assess mature drivers. CarFit tests, professional evaluation centers, and an online driver safety quiz are some of the resources available from GrandDriver at: https://granddriver.net. The AARP also offers a SmartDriver online and in-person which could make you eligible for a multi-year discount on auto insurance. More information is available at https://www.aarp.org/auto/driver-safety.

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



In addition to self-reporting, the DMV receives reports from licensed medical professionals, law enforcement, judges, relatives, concerned citizens, and others to help identify drivers who may pose safety risks. Each case is reviewed on its own merits and reviews are handled promptly. Drivers usually are asked to provide medical evidence that they can drive safely, and they will have to pass the driver's license exam and the road skills test before their license can be reinstated. Learn more at https://www.dmv.virginia.gov/sites/default/files/forms/med80.pdf

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

Anyone who holds a valid Virginia Driver's License may exchange that license for an ID card at the DMV. Learn more at: https://www.dmv.virginia.gov/licenses-ids/id-cards/license-exchange.

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

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

INSURANCE COVERAGE

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

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

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

1. Single limit coverage.

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

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

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

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

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

PART 3 – EMPLOYMENT

EMPLOYMENT DISCRIMINATION

Laws prohibiting discrimination in employment may be of particular interest to seniors, especially those requiring equal opportunity in the areas of age and disability. Federal and state laws prohibit discrimination in all types of work situations, including hiring, firing, promotions, discipline, training, compensation, and benefits. In addition, harassment on the basis of age or disability (or any other protected category) and retaliation for complaints about discrimination or harassment are prohibited.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces a range of federal employment discrimination laws: Title VII of the federal Civil Rights Act of 1964, as amended (Title VII), the Pregnancy Discrimination Act, the Equal Pay Act, the Age Discrimination in Employment Act (ADEA) (age 40 or older), Title I of the Americans With Disabilities Act (ADA), the Civil Rights Act of 1991, the Rehabilitation Act of 1973, the Genetic Information Non-Discrimination Act (GINA), and the Pregnant Workers Fairness Act of 2022 (PWFA).

Together, these laws prohibit discrimination in the areas of age, compensation, disability, equal pay, genetic information, national origin, pregnancy (and related conditions), race, color, religion, and sex (and related claims including sexual harassment, sexual orientation, and gender identity). Harassment related to these protected categories and retaliation for making complaints about discrimination are also unlawful. Most employers with at least 15 employees are covered by the laws enforced by the EEOC, except for the ADEA, which requires a minimum of 20 employees for coverage.

Title VII prohibits discrimination based on race, color, national origin, religion, and sex. Sex discrimination includes discrimination based on gender identity or sexual orientation. Title VII applies to discrimination in any aspect of employment, including applications, hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Harassment based on any of the protected categories is also prohibited. Harassment can include, for example, offensive or derogatory remarks about a person's race, color, national origin, religion, sex, gender identity or sexual orientation. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment action. If it is sufficiently severe, a single incident of abusive or discriminatory remarks or conduct may constitute harassment and a hostile work environment. Harassment is prohibited whether by a supervisor, a co-worker or, if tolerated by the employer, someone who is not an employee of the employer, such as a client or customer. Employers must take reasonable steps to prevent harassment and investigate and resolve complaints of harassment.

Employers are required to provide reasonable accommodations for an employee's sincerely held religious beliefs. Reasonable accommodations may include adjusting work schedules to allow the employee to participate in religious observances and practices.

Age discrimination occurs when an employer treats an applicant or employee less favorably because of his or her age. The federal Age Discrimination in Employment Act (ADEA) forbids age discrimination by employers against people who are age 40 or older. The ADEA does not protect workers under the age of 40. Discrimination can occur even if the person who is treated more favorably is over 40, so long as the older employee is treated less favorably because of age. For example, if a 65-year-old is treated less favorably than a 45-year-old, the significant difference in ages may indicate age discrimination.

An employment policy or practice that applies to everyone, regardless of age, can be illegal if it has a negative impact on applicants or employees over age 40 and is not based on a reasonable factor other

than age.

The law prohibits age discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, benefits, and any other term or condition of employment. Harassment and retaliation because of age are also prohibited.

The federal Americans with Disabilities Act (ADA) prohibits discrimination against applicants and employees because of an actual or perceived physical or mental disability. The protection from discrimination applies to all aspects of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and other terms and conditions of employment. Harassment because of an actual or perceived disability is also prohibited, as is retaliation against someone who complains about age discrimination.

The ADA defines an "individual with a disability" as a person who: (1) has a physical or mental impairment that substantially limits one or more major life activities, such as walking, talking, seeing, hearing, learning, and major bodily functions, such as brain, musculoskeletal, respiratory, circulatory, or endocrine functions); (2) has a record of such an impairment; or (3) is regarded as having such an impairment. The impairment is not a covered disability if it is transitory (lasting or expected to last six months or less) and is minor.

The applicant or employee with a disability must still be qualified for the job. An employee or applicant with a disability who, with or without reasonable accommodation, can perform the essential functions of the job is considered qualified. Reasonable accommodations are adjustments or modifications provided by an employer to enable individuals with disabilities to have equal employment opportunities. Reasonable accommodations may include but are not limited to: (a) making existing facilities used by employees readily accessible to and usable by persons with disabilities; (b) job restructuring, modifying work schedules, or reassignment; (c) acquiring or modifying equipment or devices, revising training materials, and providing qualified readers or interpreters.

An employer is *not* required to make an accommodation that would be an "undue hardship" on the employer. Undue hardship involves a significant burden or expense to the employer, considering factors such as an employer's size, financial resources, the nature of its operation, and the structure of its workforce. Employers do not have to alter the essential functions of the job or lower quality or production standards to make an accommodation. Employers do not have to provide personal use items such as eyeglasses or hearing aids.

Once accommodation is requested, the employer and the individual with the disability should engage in an "interactive process" in which they discuss the individual's needs and make good faith efforts to identify an appropriate reasonable accommodation. The employee does not have a right to choose the accommodation – where more than one accommodation would be effective, the employer may choose the accommodation.

A prospective employer may not ask a job applicant about the existence, nature, or severity of a disability or require them to take a pre-offer medical exam. Applicants may be asked about their ability to perform specific job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job-related and consistent with the employer's business needs. The employer may revoke the job offer only if the examination reveals the individual cannot safely perform the job with reasonable accommodation.

Once an employee is hired and has started work, an employer generally can ask disability-related questions and/or require a medical exam only if the employer needs medical information to support an employee's request for an accommodation or if the employer has objective evidence that an employee is not able to perform a job successfully or safely because of a medical condition.

Drug and alcohol addiction can be protected disabilities under the ADA, but employees and applicants actively engaging in the illegal use of drugs are not protected when an employer takes an employment action because of such active use. Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations. Employers

may hold illegal drug users and alcoholics to the same performance standards as other employees.

Job applicants and current and former employees are protected from retaliation or interference with asserting their rights under Title VII, the ADEA, the ADA and any of the other federal equal employment opportunity laws. Employers may not intimidate, threaten, or otherwise interfere with an applicant's or current or former employee's exercise of their legal rights. The law also protects witnesses or others who assist individuals affected by discrimination from retaliation.

If you believe you are being discriminated against, harassed or a victim of retaliation because of one of the federally protected categories, you should file a charge with the Equal Employment Opportunity Commission (EEOC). The Richmond office is located at 400 N. Eighth Street, Suite 350, Richmond, VA 23219, 800-669-4000. A charge generally must be filed within 180 days of the discriminatory conduct. However, because Virginia also has a state agency that enforces employment discrimination laws, the EEOC considers Virginia a "deferral state" and the time to file in Virginia is 300 days from the date of the discriminatory act.

To assist in determining whether the EEOC is the correct agency to assist you, you may use its EEOC Assessment System at www.eeoc.gov/employees/howtofile.cfm. An information kit issued by the EEOC that describes the rights of an individual with a disability is available. Contact the Publication Distribution Center at 800-669-3362 (voice) to request the kit or go to www.eeoc.gov.

If you file a complaint, it will be evaluated by the EEOC and the EEOC will determine whether to propose mediation to resolve the complaint of proceed with a full investigation. If necessary, a lawsuit may be filed in federal district court by the EEOC or the EEOC may issue a "right to sue" and a private lawyer representing the complainant may file a lawsuit in federal district court. Federal employees should file complaints with the Office of Personnel Management.

Remedies available to employees and applicants who are victims of discrimination in violation of federal law generally include back pay, front pay, reinstatement, damages (subject to certain limitations), attorney fees, and injunctive relief.

UNEMPLOYMENT COMPENSATION

Unemployment compensation is a state program to help workers who are unemployed through no fault of their own. The program is designed to assist workers temporarily between jobs. Workers do not get benefits unless they have enough recent earnings and actively look for work. You must have earned at least $3,000 in wages in the two highest "calendar quarters" in a recent one-year period called the "base period." The program is run by the Virginia Employment Commission (VEC).

You must be unemployed. You are unemployed if you're not working and not earning any money. You are partially unemployed if you're working less than full time and earning less money than your weekly unemployment compensation would be.

You must file an initial application and file a weekly claim each week after that. You must report all work and money as you earn it. You must be able to work and available for work. You must make an active search for work each week. You must report all job offers and job referrals. You must not be on strike, on vacation, or retired. You must wait for one week after you apply.

You can't get unemployment compensation if you voluntarily left your job without good cause, if you're discharged for work-related misconduct, or if you don't apply for or accept suitable work. Any of these reasons disqualify you from getting unemployment compensation. If you're disqualified, you can't get unemployment compensation until you get another job, work at it for at least 30 days for one employer and then lose the job through no fault of your own.

You can get unemployment compensation for anywhere between 12 and 26 weeks. The number of weeks depends on your prior earnings. You also may get it for more weeks if you are eligible for extensions. Your benefits can be between $60 and $378 per week. The amount of your benefits also depends on your prior earnings.

There are four steps in an unemployment

compensation case. These are the Deputy's Decision, a hearing before an Appeals Examiner, a review before a Special Examiner, and an appeal to state Circuit Court. There is no new hearing, evidence or testimony before the Special Examiner or Circuit Court. You must present your entire case before the Appeals Examiner. The VEC must give you a written decision at each step. You can appeal a denial at each step. You must do this within 30 days of the date of the decision. You may be represented by anyone you choose at any step, except you must have a lawyer to go to Court.

Throughout this entire process, you must continue to file weekly claims. You must do this even if you are denied benefits at any step. Usually, you enter weekly claims on Sunday, Monday, or Tuesday for the prior week of unemployment. You do not get benefits for any week unless you file a weekly claim for them.

You have 21 days from the end of a week (Saturday) to file a weekly claim. If you do not file a weekly claim for more than 21 days, the VEC will close your claim. This means filing weekly claims is very important.

WAGE CLAIMS

Your employer must set up regular pay periods and rates of pay. Hourly employees must be paid at least once every two weeks or twice a month. Salaried employees must be paid at least once a month. Wages must be paid in money or by a check payable in money.

Your employer may not withhold any wages – except for taxes, garnishments, and payments to a bankruptcy court – unless you freely and voluntarily say so in writing.

When employment stops, you must be paid all wages for work done. Your employer must pay your wages to you no later than the date of payment if your employment had not stopped. However, your employer is not required to pay non-wage benefits such as accrued sick leave or vacation time.

If your employer violates this law, you may complain to the Virginia Department of Labor and Industry. This office looks into wage claims, collects unpaid wages, and enforces the Payment of Wage law. Learn more at https://www.doli.virginia.gov/wp-content/uploads/2022/02/2022-Updated-POW-Claim-Form-and-Instructions-English.pdf.

You also can file a Warrant in Debt against your employer in the General District Court. You can file a lawsuit in the Small Claims Division, where attorneys are not allowed, for up to $5,000. You can file a lawsuit in the regular division, where attorneys are allowed, for up to $25,000. You may file in either division on your own, by yourself, without an attorney. To learn more, see the section in this Handbook on "Filing a Lawsuit in General District Court."

Your employer can reduce your pay as long as it is not below the minimum wage. Your employer must notify you before you are allowed or required to work at the reduced rate. You have the right to accept the lower rate or quit.

However, if you quit your job without good cause, you may not be able to get unemployment compensation. A better choice might be to accept the lower pay and file for partial unemployment compensation.

As of January 1, 2025, the state minimum wage in Virginia is $12.41 per hour. Tips may be credited toward the minimum wage, except you must be paid at least $2.13 per hour regardless of any tips you receive. If lodging and meals usually are furnished by your employer, the reasonable value of these items also can be credited toward the minimum wage.

Generally, time-and-a-half must be paid for all hours over 40 hours in a week. Virginia law does not require added pay for night shift work.

If your employer violates these laws, you may complain to the Wage and Hour Division (WHD) of the U.S. Department of Labor which enforces minimum wage and overtime wage laws. Learn more at https://www.dol.gov/agencies/whd.

COLLABORATIVE FAMILY LAW

Collaborative Family Law allows families to resolve legal disputes without the fighting. Each party has a separate and specially-trained attorney. The lawyers' only job is to help the parties settle the case. All parties agree to work together with respect, honesty and good faith. They try to find "win-win" solutions to the reasonable needs of both parties. Both sides sign a binding agreement to disclose all documents and information that relate to the issues early, fully and voluntarily. Both lawyers must work to assure complete disclosure of needed information.

If anyone decides they want to take the matter to court, the collaborative process ends: the attorneys cannot represent either client against the other and each party must find a new attorney.

While a "settlement" means reaching a legal agreement between parties, there is a big difference between a settlement during a lawsuit and a settlement when there are no court proceedings or the threat of court. Many family lawsuits settle after a lot of money has been spent, and a lot of emotional damage has happened. Those settlements are reached under much tension and anxiety. In contrast, the collaborative law process fosters creative and respectful collective problem solving.

Collaborative lawyers still owe a primary duty to their own clients. However, they cannot succeed as collaborative lawyers unless they also can find solutions to the other party's problems that both clients find satisfactory.

Even if the parties get emotionally upset or angry, the collaborative lawyer levels the playing field. The lawyers also work with their own clients if they are being unreasonable. This ensures the process stays positive and productive. It is quicker, less costly, more creative, more individualized and less stressful. Overall, it is more satisfying in its results than what occurs in usual law practice.

Collaborative lawyers use mediation as part of their process. But not everyone can afford an attorney. Those who can't afford to hire attorneys to negotiate their settlement -- even collaboratively -- can work out things themselves with a mediator, if they don't have complicated issues of highly-valuable property and income. Working directly with a mediator to reach an agreement is the next best thing to collaborative law.

In mediation, one or two neutral persons will help the parties in settling their case themselves. Mediation can be challenging where the parties are not on a level playing field with each other, so if there is abuse in a relationship, mediation is not appropriate. Also, a mediator cannot give either party legal advice or help either side advocate a position. If one or both parties have been federal employees or in the military, federal laws govern how a person's retirement and pension must be divided, so be sure to get expert advice for drawing up the documents relating to these accounts.

Parties who use mediation outside of the collaborative law process should each have their final agreements reviewed by an attorney separately before signing them, to be sure they are not leaving anything important on the table, such as a right to share in property that may be partly or wholly marital property, including retirement accounts and pensions. That is less costly than hiring attorneys to direct the entire process.

DIVORCE

In Virginia, you can get a divorce for six reasons. Some of these require a waiting period. The two reasons that two do not are adultery and your spouse's conviction of a felony and sentence to more than one year in prison.

The other four reasons require a waiting period of one year: (1) physical cruelty, (2) desertion (your spouse left without a good reason), (3) constructive desertion (your spouse forced you to leave) and (4) an uncontested "no fault" divorce based on one year's separation.

There is also a shorter "no fault" divorce that requires a separation of only six months. Under this exception, you must have no minor children of the marriage. You also must have a separation agreement signed by both parties.

There is no such thing as a "legal separation" or "legal separation proceedings" in Virginia. Separation is simply not living together. You don't need any papers to live separate and apart from your spouse. However, the signed separation agreement or a temporary court order may govern the terms under which the parties separate including who gets to use what property, and how the parties will divide finances. This can include spousal support, child support, who will pay the mortgage, and other matters. A mediator can also help with these agreements, or you can go to court to get an order called "pendente lite" (or "while waiting for the litigation"), that decides these matters.

If one or both parties have been in the military, federal laws govern how a person's retirement and pension must be divided, so be sure to seek expert guidance on these matters and to draw up that aspect of the agreement prior to filing for divorce.

To file for a divorce, you or your spouse must live in Virginia for at least six months before the divorce is filed. You must be at least 18 years old to get a divorce. A divorce is filed in the Circuit Court. The divorce must be filed where you last lived together or where the defendant lives. The person filing the divorce is called the "plaintiff" or the "complainant" -- the "defendant" or "respondent" is the person against whom the divorce is filed.

Generally, there are five steps in a divorce: (1) divorce papers are filed with the court, (2) divorce papers are served (legally delivered) on the defendant, (3) evidence is taken, usually in a lawyer's office, (4) the evidence, a proposed Final Decree of Divorce, and other papers are sent to the judge for review, (5) if everything is in order, the judge signs the Final Decree of Divorce.

However, in an uncontested no-fault divorce, evidence may be submitted by affidavits. Many people choose this form of divorce—even if the breakdown of the marriage is the "fault" of one of the parties—because it is the easiest and least costly form of divorce, and usually does not require the parties to have a hearing. In an uncontested no-fault divorce where the respondent spouse agrees to "waive" (give up the right to) service, it is possible for all the divorce papers to be filed at once, making the process quicker.

When the divorce papers have been properly filed, served to your spouse, and the required evidence taken and submitted to the judge, the divorce can be granted.

While your spouse doesn't have to sign anything for you to get a divorce, in an uncontested divorce where your spouse has waived service, they will need to sign the waiver of service and the proposed final decree, to ensure they have read it and are not contesting it. They will also have to sign any separation or property settlement agreements you have agreed to.

If you receive divorce papers from the plaintiff that have been served upon you by the Circuit Court, there will not be a date, time, or place of a court hearing as there is in most lawsuits. Instead, the papers will say you have 21 days after getting them to file a written answer with the Circuit Court. If you wish to contest the divorce, your Answer must give a reply to each numbered paragraph of the Complaint. The Answer must admit or deny each numbered paragraph. Although you can file your own Answer in Circuit Court, you probably will need a lawyer to help with the case. Procedures in Circuit Court are complicated!

The divorce court also can hear and decide other issues about the marriage. These issues include: spousal support (alimony), equitable distribution (fair division) of marital property and pensions, division and responsibility for marital debts, protective order, child custody, child visitation, and child support. However, you can also come to an agreement about these matters on your own, with a mediator, or through the collaborative law process. Then, the court will usually simply accept the signed agreement with the divorce paperwork.

You may be able to file for divorce without a lawyer, but except for an uncontested no-fault divorce, this is not recommended. Divorce is difficult. You may lose income, property, or other rights if you don't know the law. You probably will need a lawyer to file your divorce. Procedures in the Circuit Court are complicated. Even if you do file an uncontested divorce on your own, it is highly advisable to have an attorney review your documents before filing it, or before finalizing any agreements.

If there are no problems, it usually takes at least three months from the time the divorce is filed until it is granted. If contested, a divorce can last much longer, sometimes several years.

GRANDPARENT RIGHTS TO CUSTODY AND VISITATION

Relationships among different generations of a family can be special and rewarding. If parents deny contact between a grandparent and his or her grandchild, it can be devastating. If a grandparent wants to spend time with a grandchild, the first step should always be to seek approval from one or both parents -- and to maintain a good relationship with the parents.

Grandparents who recognize and support the parents' role as parents fare much better in their relationship with the parents than grandparents who ignore the parents' wishes, or think they "know better" than the parents. But if efforts to have supportive and friendly relationships with your grandchildren's parents fail, you may consider engaging the court system.

Virginia law allows any person with a "legitimate interest" in a minor child to petition the local Juvenile and Domestic Relations (J&DR) District Court for custody or visitation. Persons with a legitimate interest include grandparents and step-grandparents.

However, both federal and state law give great deference to parents. Federal law holds that fit parents have a constitutional right to rear their children as they deem best. Virginia law presumes that it is in a child's best interests for parents to make decisions regarding their well-being. This includes deciding with whom the children have contact.

In a legal contest between a parent and non-parent, the non-parent must rebut a legal presumption in favor of the parent. This generally requires the non-parent to convince a court that special circumstances exist, such as a lack of parental fitness, abandonment of the child, or that significant harm will come to the child if contact is denied.

If you are not allowed to see your grandchild, remember that the laws concerning grandparents' rights are still evolving. Because the non-parent bears the burden of proof to demonstrate that contact is warranted, you should strongly consider consulting an attorney with experience in these matters before filing a petition with the courts.

Sometimes, circumstances are such that a child may end up living with grandparents because the parents are unable to care for them for a time, perhaps even permanently. Special financial supports for such grandparents, which may be called "KinGAP," "Child-only TANF," "Payee TANF," and "Relative Maintenance Payment" exist. Eligibility for each type of assistance depends on the specific circumstances of the child and why they are living with the grandparents. Grandparents may get a "Power of Attorney" from the parent in order to enroll the child in school, or to get medical care for the child.

The child may be eligible for Medicaid or FAMIS so their healthcare needs can be met. Sometimes, grandparents seek legal custody from a court temporarily or permanently. Or, grandparents may share legal custody with the parent. It is best for children to maintain a relationship with their parents while in custody of the grandparent. Regular visitation—supervised if necessary—with the parent will help children know they are loved and not feel abandoned.

SPOUSAL SUPPORT (ALIMONY)

If you are married but living separate and apart from your spouse, and if your spouse earns more or has more assets than you, you may be able to get what is often called alimony, but in Virginia simply called spousal support. Upon separation, you may file a Petition for Spousal Support with the Court Services Unit of the Juvenile and Domestic Relations (J&DR) Court. You can do this by yourself, without an attorney, and without a filing fee. The Petition must be filed in the County or City where your spouse lives. Your Petition usually will be heard within a few weeks.

The judge hears evidence about your income and expenses, and about your spouse's income and expenses. The judge may issue a Spousal Support Order. Unlike child support, spousal support is not automatically owed. It depends on many factors.

One important factor is how long your marriage has lasted. Another is the contributions (both monetary and non-monetary) of each of you to your marriage, and whether either of you was placed at an

economic disadvantage because of your marriage—for example, if one spouse stayed home and cared for children while the other earned the income for the household.

When deciding spousal support as part of a divorce, the judge also will look at the reasons your marriage ended. Almost always, if the divorce was based on your fault, you will not be able to get spousal support.

You do not need a "legal separation." Separation in Virginia is simply not living together. You don't need any papers to live separate and apart from your spouse.

Spousal support usually is ordered for an indefinite length of time, until the person being paid remarries or dies. But, it may be ordered for a set length of time. The court can order spousal support to stop if the person being paid lives with a romantic partner for a year. Spousal support may be ordered to be paid monthly, or in one lump sum.

Once spousal support has been set, it can't be changed unless there has been a "material" change in circumstances since the last Spousal Support Order. You must pay your spousal support debts. These debts won't go away and you can't get rid of them through bankruptcy. Unlike most other debts, you can be jailed if you intentionally fail to pay spousal support.

Virginia is not a "Pal-imony" state. Unmarried people who live with each other, even for many years, don't owe each other any legal duty of support when they separate, unless they have entered into a contract to do so.

Unlike spousal support, which can be done in either the J&DR Court or the Circuit Court, division of marital property can be done only in Circuit Court as part of a divorce.

Even if you don't file for divorce, if you are separated, you still can file a Petition for Spousal Support in the J&DR Court. When deciding who gets spousal support and the amount, the judge can look at who has items of marital property. If your spouse has the marital home or car, the judge can order a higher amount of spousal support. If you have the marital home or car, the judge can order lower (or no) spousal support.

PART 5 – FINANCIAL ASSISTANCE

PENSIONS

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

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

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

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

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

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

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

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

In 1974, the Employees Retirement Income Security Act (ERISA) was enacted to increase protection for workers' pension plans. ERISA sets minimum standards for pension plans and guarantees that pension rights cannot be unfairly denied or taken from the worker. If you work for a private employer that offers a retirement plan, ERISA requires that pension plan rules be in writing in the Summary Plan Description (SPD). The summary should include the following: who is eligible to participate; how benefits are determined; the age at which you can start receiving benefits; who administers the plan; and claims procedures. You have the right to receive this information from the plan office within 30 days of requesting it.

In addition to your right to the SPD, you are entitled to receive a statement of your "personal benefit account," which explains how many benefits you have and what benefits you have vested. To be "vested" means that you have a legal right to collect the pension when you retire. Usually, it takes between five and seven years of service with your employer to become fully vested. If you leave your

place of employment after you are fully vested, all the benefits are still yours. If, however, you leave before becoming fully vested, you lose the unvested portion of your pension benefits.

Under ERISA, employers may not discharge an employee to prevent the employee from receiving a pension. If this happens to you, you have the right to file suit in federal court. You will have to prove that the motivating factor for the discharge was the employer's intention to prevent paying your pension benefits. You could recover lost wages and benefits, plus attorneys' fees.

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

Most pension plans must provide for a "joint and survivor annuity" – meaning that the employee may elect to have higher benefits that stop at his or her death or a lesser benefit that continues for as long as either the worker or his/her spouse is alive. The amount paid to the surviving spouse can be as low as one-half of the amount the couple received while both were living.

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

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

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

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

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

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

RAILROAD RETIREMENT ACT BENEFITS

The Federal Railroad Retirement Act offers retirement and disability annuities for qualified railroad employees, spousal annuities for their wives and husbands, and survivor benefits for the families of deceased employees who were insured under the Act. These programs are administered by the United States Railroad Retirement Board and are very similar to Social Security benefits; eligibility is determined in much the same manner. If both railroad and Social Security benefits are payable, however, the railroad benefits may be reduced.

Also available upon request from the United States Railroad Retirement Board offices is an information pamphlet entitled Railroad Retirement and Survivor Benefits. Download your personal copy at https://rrb.gov/sites/default/files/2019-03/2019_IB2.pdf.

This pamphlet describes the retirement and disability annuities provided for employees under the Railroad Retirement Act and the benefits available to their spouses and survivors. Medicare, unemployment and sickness insurance payments, and other benefits paid by the Railroad Retirement Board are described in separate pamphlets.

SOCIAL SECURITY BENEFITS (OASDI)

We will refer to the common programs within the Social Security Administration (SSA) as: Retirement, Survivors', and Disability (OASDI) and Supplemental Security Income (SSI). There are additional complexities within each category of coverage (including old age benefits within SSI) which can cause confusion.

SSA has several federal programs that pay monthly payments to aged, blind and disabled people. These include: Old Age, Survivors', and Disability Insurance (OASDI) (retirement or "old age" benefits survivor's benefits, and disability benefits), and Supplemental Security Income (SSI). Dependents also may get OASDI benefits. The Social Security Administration (SSA) runs these programs. Unlike SSI, OASDI is more like an insurance program. You must have worked and paid enough Social Security taxes to get benefits.

You can apply for Social Security over the phone, online, or at your local SSA District Office. You may be required to go in person to provide proof of identity. If you believe you are eligible, you also can apply for SSI at the same time. Do this by telling the worker at the SSA office you want to apply for SSI.

If you disagree with a Social Security decision you can appeal that decision. There are five levels of appeal in a Social Security case: initial decision, reconsideration, hearing before an Administrative Law Judge (ALJ), Appeals Council review, and Federal Court review. SSA will give you a written decision and you can appeal at each level. Typically, you must appeal within 60 days of getting the decision. If you pursue your appeal all the way to the Federal Court, it is advised that you obtain a lawyer.

Getting Social Security disability can be a complicated process, and you may find it helpful to have an attorney or other authorized representative help you earlier in the process. Your attorney may claim a fee that will be taken out of any past due benefits that you are owed but you should never be required to pay upfront for representation. Also, your attorney may claim no greater than 25 percent of your past due benefits or $9,200, whichever is less. You may be able to get Social Security disability without a lawyer, but some cases become complicated and may require legal assistance. However, you should apply as soon as you believe you are eligible because you may not be able to get retroactive benefits and it can be difficult to get an attorney.

RETIREMENT, SURVIVORS', AND DISABILITY (OASDI) BENEFITS

Retirement Benefits

To get retirement (old age) benefits, you must have worked for 40 calendar quarters. A calendar quarter is 3 months. This is called "fully insured." To get disability benefits, you must have worked in 20 of the last 40 quarters before you apply. This is called "currently insured."

If you are fully insured, you can get unreduced benefits when you reach "full retirement age," which can vary based on your birthyear. For example, for those born after 1959, full benefits start at age 67. Though you can receive benefits as early as age 62, depending on when you were born, your benefit will be reduced up to 30% compared to what you would have received if you had waited until your full retirement age.

Survivors' Benefits

Your widow, widower, child, or parent can get survivors' benefits if you were insured at the time of your death. The amount of monthly benefits depends on how much you made while working. The more you made, the higher your benefit. This is called the "primary insurance amount." SSA also sets a maximum benefit based on the number of people in your family. This is called the "family maximum." You reach the family maximum when several people are paid on your account. Generally, this happens when more than three people get benefits off your account.

Disability Benefits

You can get disability benefits if you satisfy SSA's definition of disability. One program referred to

as Social Security Disability Insurance or "SSDI" requires that you have sufficient quarters of coverage and that you meet SSA's definition of "disability" prior to your "date last insured." SSA will calculate your "date last insured" based off of your quarters of coverage, as described above relating to OASDI. If you stopped working a long time ago, your date last insured may be in the past.

Some disabled adults can also get disability benefits off of their parent's work record. Their disability must have started before age 22, this is called a Disabled Adult Child benefit.

Also, as referenced above, if you are not insured as of the date your disability started but you meet specific income and asset requirements, you may be eligible for SSI, which is a needs-based program.

Your disability can be physical or mental or both. You must show with medical evidence that your impairment(s) keeps you from working at your old job or any other job. You cannot be earning "substantial gainful activity," this means that you cannot be receiving wages from work activity that are in excess of the limits set by SSA; these limits change every year. You also must show your disability has lasted or will last for at least 12 months in a row or that your disability is likely to result in death. Even if you are no longer considered disabled, you may be eligible for a closed period of disability if you were unable to work for at least a year. You can apply for disability benefits at any age but it can be harder for people under the age of 50 to get disability benefits

SUPPLEMENTAL SECURITY INCOME (SSI) BENEFITS

SSI is a federal program that pays monthly payments to aged, blind and disabled people. You must have low income and low resources or property. The Social Security Administration (SSA) runs the program. Unlike Retirement, Survivors', and Disability (OASDI) benefits, SSI is a public benefit program. You don't need to have worked or paid Social Security taxes to get SSI.

To get SSI, you must have low income and resources. This means less than $2,000 in countable resources for one person. This means less than $3,000 in countable resources for a couple. Your home and all property next to it, a motor vehicle, household goods, furniture, and clothing are not counted. You must be aged, blind or disabled.

If you have too many resources to get SSI, you may become eligible for SSI by reducing your resources below the limit. However, if you give away or sell resources for less than what they are worth, you will be found ineligible for SSI for a long period of time. You will be asked about any resources you transferred in the last 36 months. Transfers that you make after you are eligible for SSI also can result in you being ineligible for SSI for a long period of time.

If you need SSI before you reach the age of 65, you must qualify based on disability. This is different than Retirement benefits which can pay out at 62 without someone having to prove they have a disability.

To be considered blind by SSA standards you must demonstrate 20/200 vision or worse in the better eye despite best correction (i.e. even while wearing glasses with an up-to-date prescription). Also be aware that for disability recipients that are blind, SSA will apply a higher earnings limit when determining if an individual is earning substantial gainful activity.

To get disability benefits, you must have a serious physical or mental impairment, or combination of impairments. You must show with medical evidence that your impairment(s) keeps you from working at your old job or any other job. You also must show your disability has lasted or will last for at least 12 months in a row. You can apply for disability benefits at any age. It is harder for people under the age of 50 to get disability benefits unless they are very severely disabled.

Children can get SSI benefits based on disability. In a Child's SSI disability case, SSA looks at how a child functions in six domains. These are: (1) acquiring and using information, (2) attending and completing tasks, (3) interacting and relating to others, (4) moving about and manipulating objects, (5) caring for self, and (6) health and physical well-being. To be disabled, a child must have marked limitation in two of these domains or extreme limitation in one of these domains.

Because SSI is based on need, you must apply for all other benefits for which you might be eligible.

This includes Social Security, Veterans' benefits, and private pensions. You must live in the United States. You also must be a citizen, a legal permanent resident, or in the country under color of law. If you leave the U.S. (the 50 states, District of Columbia, or Northern Mariana Islands) for more than 30 days, you can no longer get SSI. People who live in American Samoa, Guam, Puerto Rico, or the U.S. Virgin Islands cannot receive SSI.

You can get both Social Security and SSI if your Retirement, Survivors', or Disability benefit is very low. Your check must be less than the SSI amount. In this case, SSA will supplement your income to raise your total check to the SSI amount plus $20.

When you apply for SSI, you also can apply for Supplemental Nutrition Assistance Program (SNAP) benefits at the same time. Do this by telling the worker at the SSA office you want to apply for SNAP benefits.

Prior to Medicaid Expansion, if you were under 65, you often would not be eligible for Medicaid until you were found eligible for SSI (or SSDI if your income and resources were under the limit). However, since Virginia has expanded Medicaid, if you are low income, and not on Medicare, you can apply for Medicaid without needing to meet SSA's disability criteria. Please refer to the Medicaid section on how to apply for Medicaid. In Virigina, you have to apply individually as SSA does not enroll SSI recipients in Medicaid.

SSA OVERPAYMENTS FOR ALL PROGRAMS

An overpayment occurs when you receive more benefits than you should have received for one or more months. While getting an overpayment notice may be unsettling you have the right to appeal or request a lower payment. No matter how you respond, it is important to do so as soon as possible to preserve your rights and to stall any overpayment collection. SSA will wait at least 30 days (plus five mail days) from the date of the overpayment notice before they start collection of the overpayment.

If you believe you were not overpaid, you have only 60 days to contest or challenge the overpayment. You do this by filing a written "Request for Reconsideration." Should you not file this appeal, you cannot later claim the overpayment is incorrect. If you miss this deadline, you must show "good cause" for doing so. You may be able to establish "good cause" by showing that you did not receive your notice timely due to reasons outside your control or that an illness or disability kept you from responding.

Another way to avoid repaying an overpayment is to ask SSA to forgive (or waive) the overpayment. As long as SSA still is recovering the overpayment, you may do this at any time. However, any money SSA recovers before you file the Request for Waiver cannot be given back to you. You can request a waiver of an overpayment that is $2,000 or less over the phone but for higher overpayment amounts you must file a "the "Request for Waiver of Overpayment Recovery" form and you must show that you were "without fault" in causing the overpayment and you can't afford to repay the overpayment, or it would be unfair for SSA to collect the overpayment.

It is not enough to show you can't afford to repay the overpayment. You also must show the overpayment was not your fault. If you were working and earning more than the allowed amount, it will be very hard to show you were not at fault in causing the overpayment.

After you file the Request for Waiver, you must go to a "personal conference." This is before a Claims Representative at your local SSA office. This is your first chance to explain why the overpayment should not have to be repaid. After this meeting, the Claims Representative will decide if the waiver will be granted. A written decision will be issued.

If the waiver is denied, your next step is to file a written "Request for Hearing by Administrative Law Judge" (ALJ). You must file this written appeal within 60 days. At this step, you have a chance to present evidence. If the ALJ denies the waiver, your next step is to file a written "Request for Review of Hearing Decision/Order" to the Appeals Council. You must file this written appeal within 60 days. At this step, you generally may not present any more evidence. Instead, you argue why the ALJ's decision is wrong. If the Appeals Council refuses to review the ALJ's decision, you have 60 days to appeal to the United States District Court.

You can also request a flexible repayment plan by submitting a "Request for Change in Overpayment

Recovery Rate." This can be done at any time. How the repayment plan is calculated is based on the type of benefit you receive and your financial circumstances.

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) BENEFITS

This is a federal program that gives households benefits that can be used just like money to buy food. Benefits are given in a card by electronic benefit transfer (EBT). Benefits are given to a household – a group of people who buy and prepare food together. They do not have to be related to each other or share their income. Spouses and parents and their children under age 22 who live together always will be a household.

Households must have low income to get SNAP benefits. The income limit for most SNAP households is 200% of the federal poverty level. The amount of income this is depends on household size. The more people in the household, the higher the income limit. In general, there no longer is a resource limit to receive SNAP benefits in Virginia.

However, if a household has a member who is 60 or older or who has a disability, and does not meet the gross income limit of 200% of the federal poverty level, they can still get benefits if their net income is below 100% of the federal poverty level. They also must meet an asset limit of $4,500 in countable resources. A home you live in, household goods, furniture, clothing, burial plots, life insurance policies, money in pension or retirement plans, and motor vehicles are not counted.

To figure monthly net income, households add up income and subtract deductions. There are five possible deductions: standard, earned income for work (20% of wages from a job), medical expenses for individuals at least 60 years of age or with disabilities, childcare, and shelter (housing and utility expenses greater than 50% of income after all other deductions).. The deduction amounts change over time. The Virginia Poverty Law Center (VPLC) has a SNAP calculator at https://vplc.org/snap-calculator.

You can use SNAP benefits to buy food or seeds and plants to grow food in your home garden. You cannot use SNAP benefits to buy alcoholic beverages or tobacco, hot foods ready for immediate consumption or foods to be eaten on the store premises, pet foods, soap, paper products or other non-food items. Individuals who are 60 or older or seniors may use their benefits at participating restaurants.

You apply for SNAP benefits at your county or city's Department of Social Services (DSS), online at commonhelp.virginia.gov, or by telephone by calling 855-635-4370 . You have the right to apply the same day you go into the office. DSS may ask for written proof (verification) only about your income, liquid resources (checking or savings account), medical costs, utility costs and Social Security numbers. DSS may not ask for written proof of anything else unless they have a good reason to question it. People eligible for SNAP benefits must get them within 30 days after application.

If SNAP benefits are denied, reduced, or ended, or if you disagree with any action taken on your SNAP benefits case, you may file an appeal by asking DSS for a fair hearing. You may ask for this orally, but it is better if you to do it in writing. You must file an appeal within 90 days of the action. In a SNAP benefits termination case, if you appeal within 10 days, you may be able to keep getting SNAP benefits on appeal.

TELEPHONE ASSISTANCE PROGRAMS

The Lifeline Assistance program helps qualifying low-income households by providing them with FREE wireless service, all so they can stay connected to what matters most – healthcare, loved ones, government services and more.

The program is implemented jointly with the Federal Communications Commission (FCC) and the Virginia State Corporation Commission to assist eligible consumers with purchasing more affordable telephone service. A consumer may choose Lifeline service from a wireless company that participates in the program.

You qualify for Lifeline if you participate in or meet one of the following: Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI). federal public housing assistance, Veterans Pension, or Survivors Pension. If your household has an income at or below 135%

of the Federal Poverty Guidelines, you also may be eligible for Lifeline service.

You will save a minimum of $9.25 per month on your service. For wireline service, you may be able to choose to have your long distance service blocked at no charge. A deposit may also be waived if you agree to a long distance block.

Only wireline and wireless companies designated as Eligible Telecommunications Carriers (ETCs) are required to provide this assistance. If you have access to more than one local telephone provider or wireless company in your area, you should contact each company to verify which ones offer Lifeline support. Only a single Lifeline service subscription per household is available for Lifeline support. The consumer may select a single wireline or wireless service option for Lifeline support, but not both.

Below is a list of the free Lifeline cellphones in Virginia.

- Access Wireless, 888-900-5899, https://www.accesswireless.com.
- Assurance Wireless, 888-321-5880, https://www.assurancewireless.com.
- Life Wireless, 888-543-3620, https://lifewireless.com.
- Safelink Wireless, 800-378-1684), https://www.safelinkwireless.com.

For additional information, contact the Universal Service Administrative Company (USAC) at http://www.lifelinesupport.org.

VETERANS BENEFITS

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

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

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

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

Housebound Pension for Veterans/Surviving Spouses: This benefit is a cash "add on" to the Basic Veterans/Survivors Pension.

Eligibility for Service-Connected Compensation: To be eligible for service-connected compensation benefits, a wartime veteran who was not dishonorably discharged must meet certain age or disability requirements and have income and net worth within certain limits set by Congress.

If you meet the VA pension eligibility requirements listed below, you may be eligible for the Veterans Pension program. Both of these must be true:

- You didn't receive a dishonorable discharge, and
- Your yearly family income and net worth meet certain limits set by Congress. Your net worth includes all personal property you own (except your house, your car, and most home furnishings), minus any debt you owe. Your net worth includes the net worth of your spouse.

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

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

And at least one of these must be true:

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

Eligibility for VA Aid and Attendance Benefits: If you get a VA pension and you meet at least one of the requirements listed below, you may be eligible for VA Aid and Attendance benefits. At least one of these must be true:

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

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

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

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

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

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

Fill out VA Form 21-2680 (Examination for Housebound Status or Permanent Need for Regular Aid and Attendance) and mail it to the VA Regional Office (VARO) closest to you. You can have your doctor fill out the examination information section. Download the form at: https://www.vba.va.gov/pubs/forms/VBA-21-2680-ARE.pdf.

Locate the closest VA Regional Office at https://www.va.gov/find-locations.

You can also include with your VA form:

- Other evidence, like a doctor's report, that shows you need Aid and Attendance or Housebound care.
- Details about what you normally do during the day and how you get to places.
- Details that help show what kind of illness, injury, or mental or physical disability affects your ability to do things, like take a bath, on your own.
- If you're in a nursing home, you'll also need to fill out a Request for Nursing Home Information in Connection with Claim for Aid and

Attendance (VA Form 21-0779). Download the form at: https://www.vba.va.gov/pubs/forms/VBA-21-0779-ARE.pdf.

2. Apply in person.

You can bring your information to a VA Regional Office near you. Find the closest VA Regional Office at: https://www.va.gov/find-locations

Learn more at https://www.va.gov/pension/how-to-apply.

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

A good general source of information is the VA's annual publication, Federal Benefits for Veterans and Dependents. The most recent copy of the publication in English and Spanish can be downloaded from the VA's website at https://department.va.gov/get-started.

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

Representation: Most major service organizations, such as The American Legion, Disabled American Veterans, Veterans of Foreign Wars, and Vietnam Veterans of America, have offices co-located at the VARO. In addition, some service organizations have service representatives located throughout the state to assist veterans and their dependents.

The State of Virginia provides service to veterans through the Virginia Department of Veterans Services, (804) 786-0286 or www.dvs.virginia.gov. Finally, attorneys may be of assistance, and an attorney is now permitted to charge a fee to assist a claimant with his or her VA appeal, if the claimant's NOD was filed with the VARO on or after June 22, 2007.

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

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

VA Pensions and Medicaid: Medicaid has strict income and resource rules which can be impacted by VA pensions and benefits. You should consult with a VA benefit expert, Elder Law attorney, or financial planner who is an expert in both areas when determining what benefits you are eligible for.

Virginia Veterans Programs:

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

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

VIRGINIA ENERGY ASSISTANCE PROGRAM (EAP) BENEFITS

The Virginia Energy Assistance Program (EAP) assists low-income households in meeting their immediate home energy needs. The EAP consists of three components: Crisis Assistance, Fuel Assistance, and Cooling Assistance.

To be eligible for Crisis, Fuel, or Cooling Assistance, households must have a heating or cooling expense and gross monthly income may not exceed 150 percent of the federal poverty level. Applications for Crisis, Fuel, and Cooling Assistance are accepted at the local Departments of Social Services and can be submitted in-person, by mail, or by fax.

Crisis Assistance applies only to heating emergencies. Applications for equipment-related assistance and security deposits are accepted from November 1 through March 15. Applications for heating fuel assistance, and utility bills for the primary heat expense, are accepted from the first workday in January through March 15.

Available assistance includes repair or replacement of heating equipment, supplemental heating equipment (for example, fuel tanks), a security deposit for the primary heat expense, and heating fuel or utility bills for the primary heat expense.

There must be a heating emergency, such as: lack of heat, an imminent utility cut-off, or inoperable or unsafe heating equipment.

Fuel Assistance offsets heating fuel costs. Applications are accepted from the second Tuesday in October until the second Friday in November. (When the second Friday in November is a holiday, the application period is extended to the next business day.) The household applying must be responsible for heating costs.

Cooling Assistance applies to cooling utility bills & equipment. Applications are accepted June 15 through August 15. Available assistance includes purchase and installation of a window air conditioning unit, repair of a central air conditioning unit, repair of a heat pump, an electric bill that operates cooling equipment, and a security deposit for the primary electric expense.

The household applying must be responsible for cooling costs. The household must include one vulnerable individual age 60 or older, an individual living with a disability, or a child under age six.

DEMENTIA AND ALZHEIMER'S DISEASE

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

Alzheimer's disease is the most common form of dementia: other common causes include vascular dementia, frontotemporal lobar degeneration, dementia with Lewy bodies, and Parkinson's disease dementia. Mixed dementia refers to a combination of diseases, often Alzheimer's disease and vascular dementia, and may affect a majority of those living with dementia. Throughout this section, dementia includes Alzheimer's disease and related disorders that cause dementia.

Several prescription drugs are approved by the U.S. Food and Drug Administration (FDA) to help manage symptoms in people with Alzheimer's, and other medications have recently emerged to treat the progression of the disease. Most FDA-approved drugs work best for people in the early or middle stages of Alzheimer's. There are currently no known interventions that will cure Alzheimer's.

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

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

There is growing evidence that people who adopt healthy lifestyle habits – such as regular exercise, blood pressure management, and abstinence from smoking – can lower their risk of dementia. These healthy behaviors, which have also been shown to prevent cancer, diabetes, and heart disease, may also reduce risk for subjective cognitive decline.

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

Caregivers for Alzheimer's patients will need support and assistance in giving that care. Although a wide variety of care options exist, according to the Centers for Medicare and Medicaid Services How Dementia Affects Virginia (Alzheimer's Association, 2019), for people living with dementia, the vast majority of care is provided by family or other informal care partners in the home. Supporting these care partners is a vital component of dementia capability. In

2024, an estimated 342,000 Virginians provided 662 million hours of unpaid care worth $12.5 billion for 164,000 Virginians aged 65 or older living with Alzheimer's.

There are many people who can help care for someone living with Alzheimer's – family and friends, health care professionals, the Alzheimer's Association Chapter, and others. Specialized programs and services can make life easier and more enjoyable for the caregiver and the person with Alzheimer's. For example, individuals with Alzheimer's may forget or refuse to eat. Meals on Wheels is a helpful program, but someone may have to be at home to accept delivery and supervise the eating. It is important that an individual with Alzheimer's receives help from people who are trained to help those with Alzheimer's.

If you suspect that someone you know has Alzheimer's, it is important to contact their family physician or nearby teaching hospital for a physician referral. A comprehensive evaluation involving physicians, nurses, neurologists, and social workers can assist families in developing comprehensive plans of care for patients and family. Medical professionals also can evaluate the patient for other medical problems that may be causing or contributing to dementia. When needed, the caregiver may seek a second opinion from a physician specially trained in managing Alzheimer's disease. A physician may also suggest that you consult a geriatric psychiatrist to help manage the behavior, depression and personality changes that often accompany the disease. Nurses involved with Alzheimer's patients or Alzheimer's support group members can teach family members the ongoing practical care of a person with Alzheimer's.

A family may also want to consult the local Department of Social Services to provide information on government financial support through Medicare, Medicaid, Social Security, disability, or Veterans benefits. It is also important to contact an Elder Law attorney to review the documents the patient will need to have in place to permit someone to make appropriate medical and financial decisions as the disease progresses. Elder Law attorneys also can provide referrals to care managers, care providers, and care facilities to ensure that the patient's needs are met. You can find an Elder Law attorney by going to the website of the National Academy of Elder Law Attorneys and clicking on "Find a Lawyer" at https://naela.org/FindALawyer.

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

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

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

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

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

Alzheimer's affects families physically, emotionally, financially, and socially. Many families find that other problems become magnified under the stress

of caregiving and that they need help, support, or advice in areas not directly related to the illness. The Alzheimer's Association has chapter and peer support groups in cities across the country and provides the support families need. In addition to providing support and guidance, chapters offer educational literature, consumer information and workshops for caregivers and professionals.

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

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

MEDICAID

Medicaid is a cooperative federal-state program which provides health care services to the poor of all ages. The program is administered by state agencies, and thus the regulations governing Medicaid include both federal regulations and state-based regulations that vary by state. In Virginia, the Department of Medical Assistance Services (DMAS) administers the program and the Department of Social Services assists with eligibility determinations. At the federal level, Medicaid is administered by the Centers for Medicare and Medicaid Services (CMS).

Medicare and Medicaid frequently are mistaken for one another and have overlap in who is covered, but the programs are administered and function differently. Note the following differences between Medicaid and Medicare:

- Medicaid is a joint state and federal program for public assistance recipients and other medically indigent adults and children. Medicaid was designed to meet the medical needs of low-income individuals, and therefore, the elderly often must spend down a major part of their assets before they are eligible for Medicaid benefits. Medicaid covers long-term care in a nursing home or through a state option for home and community-based services.
- Medicare is a federal medical benefits insurance program that is financed through the Social Security system and is primarily for the elderly but also covers certain disabled persons. Medicare covers a limited time period of nursing home or home care for rehabilitation (often with co-pays) but does not cover long-term care in a nursing home or at home.

Among those people eligible for full Medicaid benefits are Supplemental Security Income (SSI) recipients and other persons who are age 65 or greater, are blind or disabled (according to Social Security disability standards) and who meet certain income and resource limitations. Medicaid expansion in 2019 extended Medicaid health care benefits to Virginian adults between the ages of 19 and 64 who are not receiving or eligible to receive Medicare and meet income eligibility rules (no resource rule). Medicaid benefits may include payment of:

- Medicare Part B premiums, deductibles, and coinsurance (not for Expansion);
- inpatient hospital services with limitations and deductibles;
- outpatient hospital and rural health clinic services;
- nursing home care;
- physician services;
- transportation;
- long-term care alternatives, such as personal care services;

- x-ray and laboratory services;
- home health care services;
- clinic services;
- prescription drugs;
- medical supplies and equipment in limited circumstances;
- physical therapy and related services; and
- emergency hospital services.

Over 900,000 adult Medicaid members in Virginia obtained access to comprehensive dental services in 2021. New dental services are available to adult Medicaid members, including three annual cleanings, preventive care, x-rays, fillings, dentures and oral surgery.

Medicare Savings Program: Among those people eligible for limited Medicaid benefits (not full coverage) are:

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

Since 2023, Virginia Medicaid members are part of Cardinal Care - a single system of care for Medicaid's two million members. All managed care and fee-for-service Medicaid members are part of the Cardinal Care program. Members in managed care can keep their health plan and do not need to take any action to enroll in Cardinal Care Managed Care. Care coordination will be available to all managed care members, as needed. Your transition to Cardinal Care is automatic, as long as you are a current, eligible Medicaid member. You can help ensure a smooth transition by making sure your contact information is current with Virginia Medicaid. Update your phone number and mailing address by going to https://commonhelp.virginia.gov, calling Cover Virginia at 855-242-8282, or calling your local DSS. Visit https://www.dss.virginia.gov/localagency/index.cgi to search for your local agency's number. Contact your managed care organization to update your contact information as well.

When choosing a managed care organization (MCO), you should consider:

- Do you want to keep your doctor/clinic, or do you want a new one?
- Does the MCO have the doctors, hospitals, and specialists you need?
- What extra services does the MCO provide?

To compare plans, visit https://www.virginiamanagedcare.com/en/choose/compare-plans or call the Managed Care Help Line at 800-643-2273.

There are three ways to apply for Medicaid in Virginia. Residents can apply online through the state's CommonHelp website, found at https://commonhelp.virginia.gov/. Individuals can also apply over the phone by calling CoverVA, the state's central Medicaid agency, at 1-855-242-8282. Alternatively, Virginians can go in person to their local DSS office to obtain a paper application, to be returned to that same office. A list of local DSS offices for each city and county can be found at https://www.dss.virginia.gov/localagency/index.cgi.

The DSS processing the application requires personal information about the applicant, as well as information about property owned, bank account balances, stocks and bonds, income, immigration status, and medical bills. Medicaid has both financial and non-financial rules that determine who is eligible for Medicaid. In addition to residency requirements, individuals seeking long-term care coverage must meet certain criteria relating to their level of need for the service—this is determined through a Uniform Assessment Instrument that evaluates how much assistance they need with activities of daily living and instrumental activities

of daily living. The criteria is the same whether someone wants care in a nursing home or in a home setting.

In determining Medicaid eligibility (besides Medicaid Expansion, which does not have resource limits), resources are categorized as either countable or noncountable. Countable assets are used to determine Medicaid eligibility and include those assets for which there is a meaningful possibility that they could be sold or otherwise converted into cash. Among countable assets are bank accounts, stocks, Individual Retirement Accounts, deeds of trust, or real property other than the home. Noncountable assets are those assets which are not counted in determining the resources available to a person for purposes of qualifying for Medicaid treatment. Noncountable assets include the following: • your home (while you live in it); • personal effects, including clothing, jewelry, and photographs; • household furnishings, such as furniture, paintings, appliances, and electronics that are exempt only while being used in the applicant's home; • one automobile; • certain rental property essential to your self-support; • some life insurance policies; • some burial funds and cemetery plots; • some irrevocable trusts and purchases. The rules change if and when you need long-term care coverage.

In addition to evaluating income and resources, DSS offices will evaluate an applicant's immigration or citizenship status eligibility for Medicaid. A select number of lawful immigration statuses can qualify a nonpregnant adult in Virginia for full benefits Medicaid. Noncitizens who do not have one of these statuses may be able to qualify for Emergency Medicaid to cover hospital bills for life-threatening emergency treatment. For more information on Medicaid and immigration status, please see https://coverva.dmas.virginia.gov/learn/health-coverage-for-noncitizens.

Applicants who are applying for long-term care coverage (a more complicated program) are strongly advised to seek professional guidance from Medicaid experts or elder law attorneys familiar with the process before moving forward, particularly if you are considering transferring assets to someone else in an effort to qualify for benefits. When you apply for Medicaid long-term care, you will be asked to disclose any property transfers made within the last 60 months prior to application. Intentional reduction of assets in order to qualify for Medicaid long-term care — by putting assets into a trust, giving them away, or otherwise disposing of them without receiving fair market value — can cause a penalty period, which is ineligibility for Medicaid coverage of long-term care services for a period of time. The penalty period depends on the value of the asset transferred, how long ago the transfer occurred, whether you received compensation, plus other factors. Therefore, before you make any transfer of assets, consultation with an attorney knowledgeable about Medicaid eligibility matters is suggested. If you receive a penalty, you can contact an attorney to determine if there is a way to eliminate or reduce the penalty.

Medicaid is the largest single payer for long-term care services. Many individuals of substantial means eventually spend their money and then seek coverage through the Medicaid program. Medicaid covers care in nursing facilities and in home and community-based settings.

It is important for you to advise a nursing home if you expect to apply for Medicaid within six months of entering, because preadmission screening must be conducted in order to verify that the intended care is medically appropriate. If you are single and require long-term care, you most likely will be expected to pay a portion of your income toward your cost of care, retaining a small amount for personal needs, with Medicaid making up the difference each month. If you are married and your spouse is living in the community (not a LTSS setting) when you go to a nursing home, income and assets are treated differently in order to prevent your spouse living in the community from becoming impoverished. Even though some income and assets can go to the community spouse, you may still owe money to the facility. The amount of money you have to pay for your care each month is called patient pay.

You may request a Medicaid resource assessment before you file an application for Medicaid if you have not done so previously. At the time you file a Medicaid application, a resource assessment will be performed. Although the income of your spouse is not deemed to be yours, married persons are considered to have available to them all resources held by their spouses. For Medicaid to assess your resources, you must list all your assets, which will be categorized as either countable or noncountable. Noncountable assets are assets which you may retain. Some noncountable assets are your home (at least as long as one spouse is living in it), automobile, personal furnishings, cemetery plots,

some funds set aside for burial, and some life insurance policies. Countable assets are assets which are legally available to you.

If you are not married, you must spend all but $2,000 of your countable assets before you will be eligible for Medicaid (except Expansion) under current law. If you are married and require institutional care, you will be referred to as the "institutionalized spouse," and your spouse will be referred to as the "community spouse." The community spouse will receive a notice of Medicaid resource assessment which will state the protected resource amount for the community spouse. The protected resource amount is the minimum value of assets that the community spouse may retain and protect from the necessary resource reduction before the institutionalized spouse achieves eligibility. In general, you may transfer half of your resources (within a minimum and maximum that change yearly) to a spouse before you must spend the remaining resources down to $2,000. This amount may be raised by a court order.

There is no strict income limit for individuals receiving long-term care if the individual's income is less than the average monthly private pay rate for care in a nursing home. since you can qualify with a spenddown if you are above the limit. Once eligible for Medicaid long-term care, you will be entitled to maintain a small amount of income for personal needs. The amount is different depending on if you are in nursing home care or home and community-based services. If you are married, your spouse will be entitled to keep all of his or her income and may be entitled to keep a portion of your income as well.

If you are a Medicaid applicant to whom an income limit applies, depending on what type of coverage you have, and your income is above the Medicaid limit, you may be placed on a spend-down until your income falls below the Medicaid threshold in a given month. The "spend-down" requirement is similar to an insurance deductible. It means that if you are over the income limit for full Medicaid coverage, you will need to have medical expenses that bring you under the limit to retain Medicaid eligibility for that month. Medicaid Expansion does not have spend-downs.

If you feel you have been unfairly denied Medicaid eligibility or your coverage was calculated incorrectly, you have the right to appeal the decision within 30 days. Contact the Department of Medical Assistance Services, Appeals Division, 600 East Broad Street, Richmond, Virginia 23219, 804-371-8488. If you have access, appeals should be filed on the Appeals Information Management System (AIMS) online portal at: https://www.dmas.virginia.gov/appeals. In making the choice to appeal, you may wish to obtain the advice of legal counsel as the eligibility rules are complex and timelines for appeals must be met.

Medicaid rules are complex. Detailed rules determine what are countable income and resources, when property transfer is a potential bar to receipt of services, and whose income and resources will be used against what financial standards. For specific guidance, particularly regarding estate planning and long-term care, you should contact an attorney who practices in the area of elder law. For more information about Medicaid eligibility rules, visit https://www.dmas.virginia.gov/for-applicants/eligibility-guidance/eligibility-manual/ or call Virginia's Department of Medical Assistance Services at (804) 786-7933.

MEDICARE

Medicare is health insurance for people aged 65 or older, under age 65 with certain disabilities, and any age with End-Stage Renal Disease (ESRD) (permanent kidney failure requiring dialysis or a kidney transplant). Medicare publishes an annual handbook, titled "Medicare & You." It is comprehensive and is available in print and on-line. To download a digital copy, go to www.medicare.gov/publications. This new download option is available for your personal computer and for the iPad, Nook, Sony e-reader, Kindle, and all other e-Reader devices. Additional information may be obtained by calling 800-633-4227 and following the prompts. In addition, the U.S. Department of Health & Human Services is beginning to provide data and comparisons regarding hospitals, nursing homes, physicians, home health care providers, dialysis facilities, and Medicare Plans. These may be found at https://www.medicare.gov/care-compare.

Medicare and Medicaid frequently are mistaken for one another and have overlap in who is covered, but the programs are administered and function differently. Note the following differences between Medicaid and Medicare:

- Medicaid is a joint state and federal program for public assistance recipients and other medically indigent adults and children. Medicaid was designed to meet the medical needs of low-income individuals, and therefore, the elderly often must spend down a major part of their assets before they are eligible for Medicaid benefits. Medicaid covers long-term care in a nursing home or through a state option for home and community-based services.
- Medicare is a federal medical benefits insurance program that is financed through the Social Security system and is primarily for the elderly, but also covers certain disabled persons. Medicare covers limited nursing home care if it is for rehabilitation (often with co-pays) but does not cover long-term care in a nursing home.

As of January 1, 2025, the Medicare Part D coverage gap (commonly known as the "donut hole") is gone. This major change, a result of the Inflation Reduction Act, simplifies prescription drug coverage by removing the coverage gap phase and establishing a $2,000 annual cap on out-of-pocket spending for covered drugs.

The Part D phases below determine how much beneficiaries will pay in out-of-pocket costs throughout the year:

- Deductible period: During this phase, beneficiaries pay 100% of the cost of their prescription medications until the deductible has been reached. The standard deductible for Part D plans in 2025 is $590. However, some plans have a lower (or zero-dollar) deductible with a higher premium. Once beneficiaries reach their deductible, they enter the initial coverage period.
- Initial coverage period: In this phase, beneficiaries pay 25% of their prescription drug costs – typically in the form of coinsurance or copayments. The Part D plan pays 65% of costs, while the drug manufacturer is responsible for 10%. Out-of-pocket costs (including the Part D deductible, copayments, and coinsurance) are capped at $2,000 in 2025. After beneficiaries reach this limit, they enter the catastrophic coverage phase.
- Catastrophic coverage: In this phase, the Part D plan pays 60% of drug costs, the drug manufacturer pays 20%, and Medicare pays 20%. Beneficiaries pay nothing for covered medications for the rest of the calendar year.

Definitions

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

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

The various parts of Medicare help cover specific services if you meet certain conditions.

Medicare Part A and B are often referred to as Original Medicare. They do not use the private health insurance industry to manage people's coverage. In contrast, Medicare Part C, or Medicare Advantage, operates through a private public partnership where Medicare is managed by private health insurance companies.

Medicare has the following parts:

Medicare Part A (Hospital Insurance)

- You usually do not pay a premium for Medicare Part A coverage if you or your spouse paid Medicare taxes while working. This is sometimes called "premium-free Part A":
- If you are not eligible for premium-free Part A, you may be able to buy Part A. You will pay up to $518 each month in 2025 (Medicaid can sometimes pay this if you are low-income).

Part A:

- Helps cover inpatient care in hospitals
- Helps cover skilled nursing facility, hospice, and home health care

Medicare Part B (Medical Insurance)

- If you elect to have Medicare Part B, you pay a premium each month. Most people pay the standard premium amount (which for 2025 is $185.00). However, if your modified adjusted gross income is above a certain amount or enroll in Part B late, you may pay more. (Medicaid can sometimes pay this if you are low-income).
- Helps cover doctors' services and outpatient care.
- Helps cover some preventive services to help maintain your health and to keep certain illnesses from getting worse.

Medicare Advantage/Medicare Part C (Medicare Health Plans)

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

Free, unbiased VICAP counseling is available at almost all senior centers (Area Agencies on Aging). It is a good idea to seek counseling prior to signing up for a Medicare Part C plan.

Medicare Part D (Prescription Drug Coverage)

- Most Medicare Part D plans charge a monthly premium, which varies from plan to plan.
- Helps cover the cost of prescription drugs.
- May help lower your prescription drug costs and help protect against higher costs in the future.
- The cost of a one-month supply of each Part D-covered insulin is now capped at $35 and you do not have to pay a deductible. If you get a 60- or 90-day supply of insulin, your costs cannot be more than $35 for each month's supply of insulin.

If you struggle to afford Medicare Part D, prescription drug coverage, the "Low Income Subsidy" ("LIS"), sometimes referred to as "Extra Help," program may be able to help. LIS is a program administered by the Social Security Administration that helps pay for the premiums and cost sharing of Part D prescription insurance for low-income enrollees. Medicare enrollees who are also enrolled in Medicaid, including a Medicare Savings Program, are automatically enrolled in LIS. That means they are eligible for a zero-premium, zero-deductible Part D plan with the lowest, fixed copays. Other Medicare enrollees who are not dually enrolled in Medicaid can also qualify for the LIS. LIS has higher income and asset rules than the other programs. If you qualify for LIS based on your enrollment in Medicaid, including a Medicare Savings program, apply at DSS. If you *only* qualify for LIS, then you apply at Social Security.

Free, unbiased VICAP counseling is available at almost every senior center run by an Area Agency on Aging ("AAA"). A free VICAP counselor can help you pick the best Part D plan for your needs, often resulting in significant savings. Plan to check in with a VICAP counselor a few months before you enroll in Medicare, and then again in the fall of each year. Find your local AAA at https://vaaaa.org/25-area-agencies-on-aging.

Other Medicare Health Plans

- Plans that are not Medicare Advantage Plans but are still part of Medicare.
- Include Medicare Cost Plans, Demonstration/ Pilot Programs, and Programs of All-Inclusive Care for the Elderly (PACE).
- Some plans provide Part A and Part B coverage, and some also provide prescription drug coverage (Part D). Note: You might also have health and/or prescription drug coverage from a former or current employer or union.

Virginia Insurance Counseling Assistance Program (VICAP)

You can use VICAP to get free personalized health insurance counseling, including help making health care decisions, information on programs for people with limited income and resources, and help with claims, billing, and appeals. Call the Virginia Department for the Aging and Rehabilitative Services at 804-662-9333 or 800-552-5019 or 804-325-1316 (Videophone).

To get a replacement Medicare card, change your address or name, get information about Part A and/or Part B eligibility, entitlement, and enrollment, apply for "extra help" with Medicare prescription drug costs, and report a death, call Social Security at 800-772-1213.

To get information on whether Medicare or your other insurance pays first, call the Coordination of Benefits Call Center at 800-999-1118.

To get information about TRICARE for Life, call the Department of Defense at 866-773-0404.

If you suspect fraud, call the Office of the Inspector General at 800-447-8477 or you can contact the Virginia Senior Medicare Patrol at 800-938-8885.

If you think you have been discriminated against by a health care entity or regarding HIPAA, call the Office for Civil Rights at 800-368-1019.

If you are a veteran or have served in the U.S. military, call the Department of Veterans Affairs at 800-827-1000.

To get information about the Federal Employee Health Benefits Program for current and retired Federal employees, call the Office of Personnel Management (OPM) at 888-767-6738.

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

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

NURSING HOME DISCHARGES

Federal law limits the reasons a person can be transferred or discharged from a nursing home which accepts any Medicaid or Medicare patients. Most facilities in Virginia accept these patients and facilities that don't must still follow state law on discharges. Under federal law, there are only six valid reasons a nursing home resident can be forced to move to another nursing home or institutional setting (a "transfer") or sent to a non-institutional setting such as his home or the home of an adult child (a "discharge"). The only allowable reasons for an involuntary transfer or discharge are:

1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
2. The resident's health has improved enough that the facility's services are no longer needed;
3. The safety of individuals in the facility is endangered;
4. The health of individuals in the facility would otherwise be endangered;
5. The resident has failed to pay despite reasonable and appropriate notice; or
6. The facility ceases to operate.

These are the only legitimate reasons for an involuntary transfer or discharge under federal law.

Federal law also requires the facility to give the resident and a family member or legal representative advance written notice of the planned transfer or discharge. The notice must be in a language that the resident and family can understand. Normally, the nursing home must give at least 30 days' notice of the transfer or discharge, but there are some exceptions to the 30-day requirement, and in those cases the notice must be given "as soon as practicable."

The notice must include specific information, including the reason for the discharge or transfer, the effective date of the transfer or discharge, the location to which the resident is to be transferred or discharged, a statement of the resident's right to appeal the action, the name, address and phone number of the State Long Term Care Ombudsman, the mailing address and phone number of the agency responsible for the protection and advocacy of the developmentally disabled if the resident has a developmental disability, and the mailing address and phone number of the agency responsible for the protection and advocacy of the mentally ill if the resident has a mental illness.

If you or your loved one receives a notice from the facility threatening a transfer or discharge, you should immediately contact the local Long Term Care Ombudsman who covers the area in which the nursing home is located. The ombudsman's job is to help residents resolve problems in the nursing home. Sometimes, the ombudsman can talk to the administrator and convince him or her that the discharge or transfer is not appropriate.

You also have the right to file an appeal with the Department of Medical Assistance Services ("DMAS"). You have a right to appeal an involuntary transfer or discharge to DMAS even if you are not on Medicaid. You must file an appeal before the date the transfer/discharge is scheduled. Filing an appeal will stop the threatened transfer or discharge until the hearing is held and a written decision is issued. Normally, the hearing will be held at the nursing home so that the resident can attend. You have the right to review the file, to have witnesses, to question the facility's witnesses, etc. Because the hearing is very important to whether you have the right to stay in the facility, it is a good idea to be represented by a lawyer or paralegal. At times, ombudsman may also assist with the appeal process. You may want to contact legal aid to see if a lawyer or paralegal can represent you, or you can contact a private attorney familiar with nursing home issues. Do not delay seeking representation, because your representative will need plenty of time to obtain records and prepare your case.

You do not have the right to appeal simply because the facility wants to change your roommate or change your room assignment. But you do have the right to an appeal if you are being asked to move from one distinct part of the facility to another part which is separately certified under Medicare or Medicaid. If the transfer is between two units which are separately certified, you are entitled to all the notice and appeal protections that are available for any other involuntary transfer or discharge. The majority of Virginia facilities do not have distinct parts; in those facilities all beds are certified for both Medicaid and Medicare.

It is very important that you contact your, or your loved one's, doctor to see if he or she agrees with the facility's decision to transfer or discharge you, and to ask your doctor to help fight the transfer/discharge if he or she does not agree with it. Under state law, the facility is required to consult with the resident's attending physician (and with the resident and family or responsible party) before the discharge or transfer. In addition, the attending physician or medical director of the facility, under state law, is supposed to make a written notation in the clinical record approving the discharge or transfer "after consideration of the effects of the transfer or discharge, appropriate actions to minimize the effects of the transfer or discharge, and the care and kind of service the patient needs upon transfer or discharge."

In addition, federal law also requires that the resident's clinical record be documented by the resident's doctor if the reason for the transfer or discharge is that the facility cannot meet the resident's needs, it is necessary for the resident's welfare or that the resident's health has improved sufficiently that he no longer needs the facility's services. When the allegation is that the resident's needs cannot be met, the physician must document the specific needs that cannot be met, attempts to meet them, and services at the receiving facility that will supposedly meet the needs. However, facilities do not always obtain the legally required documentation. Failure to properly document the clinical record or to obtain the attending physician's approval is one basis for challenging the transfer/discharge.

Federal and state law requires that the discharging facility provide sufficient preparation and orientation to residents to "ensure safe and orderly transfer or discharge from the facility." At a minimum, this obligation requires that the resident be sent to a place which can provide the care the resident needs. Sending a quadriplegic resident home to live with his disabled daughter, without any plan for in-home services, for example, would not be an appropriate discharge plan and would be grounds to challenge the discharge.

There are a number of arguments which can be made at a hearing which might successfully stop a threatened transfer or discharge. The notice itself may be defective – it may not have all the necessary information or may include erroneous or misleading information. The facility may not have obtained the documentation of the clinical record which is required by federal and state law. The facility may not have done appropriate discharge planning and may plan to send the resident to a place which is unable to care for him appropriately. Or, the facility may not have valid legal grounds for the transfer or discharge.

For example, the facility may claim that a resident is a danger to the safety of others, but the resident's behavior consists merely of cursing or other irritating, but not dangerous, behaviors. In that case, the hearing officer may find that the discharge is not justified because the resident is not truly a danger to the safety of others. All relevant and valid arguments should be made at the hearing – don't rely on just one – since you don't know which argument or arguments the hearing officer may find persuasive.

The hearing officer could sustain (or agree with) the facility's action to transfer or discharge the resident. If so, the facility could go ahead with the plan to transfer or discharge the resident as set out in the original letter, although they would probably send a new notice with the new discharge date. The hearing officer could reverse the action of the facility and tell the facility that it cannot transfer or discharge the resident, either because the facility did not have valid legal grounds for the transfer/discharge or because the facility had not followed the legally-required procedures prior to transferring or discharging the resident. A hearing officer could also remand or send the case back to the facility to take further actions before transferring or discharging the resident. Although this allows the facility to go ahead with the transfer or discharge once those additional steps have been taken, the facility may decide not to go ahead with the transfer or discharge after all. Sometimes, conditions have changed or the relationship between the resident and staff has improved to the point that the facility is no longer as anxious to "get rid" of the resident.

If the hearing decision is unfavorable to the resident, there are additional appeals which might be taken under certain circumstances. A lawyer should immediately assess the case to decide whether an appeal is justified. You should consult a lawyer quickly before the resident is actually moved from the facility.

It is a good idea to be represented at the transfer/discharge hearing by an attorney or trained paralegal. Ombudsman can also sometimes assist with these cases if you cannot obtain an attorney. These cases are complicated. There are many different kinds of arguments that can be made and there are records which need to be reviewed. Failure to put on a persuasive compelling case at the hearing may result in the resident being transferred or discharged from his or her home. Further appeals from the hearing officer's decision are usually based on the hearing record, so there may be little that can be done on appeal if a thorough record was not made at the hearing. If the resident has limited income, he or she may qualify for legal aid representation at no cost.

It is very important to contact legal aid or a private lawyer as early as possible and certainly as soon as you have requested a Medicaid hearing. It is also important to contact the local Long Term Care Ombudsman immediately when you first receive the notice of the transfer or discharge so that the ombudsman can attempt to resolve the problem before a hearing becomes necessary. Often these cases can be won if someone simply stands up for the resident and advocates for his or her rights under federal and state law. See Justice in Aging's guide on common nursing home problems for more information on your rights in a nursing home: https://justiceinaging.org/25-common-nursing-home-problems.

Assisted Living Facility (ALF) Discharge Hearings

Virginia passed a law creating discharge hearings for ALFs in 2022. The law has been going through the regulatory process since then and will be published in the register and open for comment in June of 2025, after this Handbook goes into circulation. Since the regulations are not yet final, you should read Virginia's code to see the requirements for ALF discharge hearings. See: https://law.lis.virginia.gov/vacode/title63.2/chapter18/section63.2-1805/at (A)(5).

PART 7 – HOUSING

EVICTIONS

No matter what the reason, a landlord must give you a written notice to start the eviction process. A landlord's oral notice to move is no good and does not allow the landlord to start the eviction process. You do not have to move just because a landlord has given a written or oral notice.

Although there are exceptions, if a landlord wants to evict you for not paying rent, the landlord must give you a written nonpayment notice to either move or pay rent in 5 days. If you pay the rent in 5 days, you get to stay. If you do not pay, the landlord can file an eviction lawsuit (called a Summons for Unlawful Detainer) in General District Court (GDC).

If the landlord wants to evict for a reason other than nonpayment of rent, the landlord must give you a written notice to vacate saying that if the problem is not corrected within 21 days, the lease will terminate in 30 days. This notice must explain the problem. If you correct the problem in 21 days, you get to stay. If not, the landlord can file an eviction lawsuit in GDC after 30 days.

Even if you correct the problem, if the same problem happens again, the landlord does not have to give you another 21 days to fix the problem. Instead, the landlord can simply give you a written notice to vacate in 30 days. In addition, if the initial problem cannot be corrected, then then landlord can give you a written notice to vacate. If you do not move by the end of the 30 days, the landlord can file an eviction lawsuit in GDC after the 30 day period.

If you commit a criminal or willful act that is a threat to health or safety, the landlord can give you a written notice to vacate in less than 30 days.

You do not have to move just because the landlord has given a written notice or filed an eviction lawsuit.

A landlord must follow these steps in an eviction lawsuit: file a lawsuit in court, serve (legally deliver) a copy of the court papers to you in a manner allowed by law, go to court at the date and time of your hearing, get a judgment of possession from the court and get a Writ of Eviction from the court. This allows the Sheriff to evict you.

Eviction lawsuit papers tell you the date, time, and place of your court hearing. The papers also tell you amount of money the landlord is claiming, such as rent, interest, late fees, damages, court costs, and attorney's fees. The hearing may be your only chance to dispute or oppose the eviction and the claim for money. In all eviction cases, go to the hearing. Get there early so you can find your courtroom and watch how the court handles other cases.

If you can't go to GDC on the date of your unlawful detainer hearing, you must ask the court for a new hearing date. This is called a "continuance." Different GDCs have different rules for getting a continuance. To find out the rule for your court, call the Clerk's Office as soon as you know you can't go to court on the date of your court hearing. Ask to be told the rule to get a continuance, and follow that rule.

If you go to GDC to dispute or oppose the eviction, get prepared for your hearing in advance. Bring papers, receipts and witnesses that support your case. Do not rely on a cell phone. Print the papers. If a witness doesn't want to come to court, you can ask the Clerk to subpoena the witness.

A subpoena is a court order that says a witness must come to court. You must pay $12.00 for the subpoena, and you must ask for it at least 10 days before your hearing date. If you don't have enough money to pay this (or any other) fee, ask the Clerk for the "Petition for Proceeding in Civil Case without Payment of Fees or Costs." This also is called "Form DC-409."

You don't need a lawyer in General District Court, but a lawyer can help you. You may have defenses to the eviction.

If the only reason the landlord has for evicting is non-payment of rent, you may stay in the rental unit if you pay everything owed on or before the court date. This is called a redemption (pay and stay), or a redemption tender (an offer to pay and stay).

A redemption means the eviction lawsuit must be dismissed as paid if you pay the landlord, the landlord's attorney, or the court all amounts owed as of the court date. All amounts owed means all rent (including a new month's rent if that has come due), all late fees set forth in a written lease (including a new month's late fee if that has come due), court costs, and reasonable attorney's fees (if a landlord's attorney is involved). If there is a redemption, always get a receipt and come to court with the receipt to make sure the case is dismissed as paid.

A redemption tender means you come to court on the first court date and show the judge a written commitment from a local government or non-profit agency to pay all or part of the redemption amount. If so, the judge must postpone the case ten days and allow you to come back with the full redemption amount on that day. Again, get receipts and come to court with them to be sure the case is dismissed as paid. If not, the landlord gets an order of possession.

Tenants also have an extended right of redemption (extended right to pay and stay). If the landlord wins the lawsuit, the judge will issue a judgment of possession. After that, the landlord may ask the court to issue a Writ of Eviction. This goes from the clerk to the Sheriff to the tenant, and authorizes the Sheriff to evict on a specific date. The Sheriff must give you at least 72 hours advance notice of the eviction and usually gives about a week to 10 days.

Under the extended right of redemption, you can pay the landlord, the landlord's attorney, or the court all amounts owed up to 48 hours before the Sheriff's scheduled eviction date. All amounts owed means all rent (including additional rent if that has come due), all late fees set forth in a written lease (including additional late fees if that has come due), court costs, Sheriff's fees, and reasonable attorney's fees (if a landlord's attorney is involved). Payment must be by cashier's check, certified check, or money order. If so, the Sheriff's eviction is cancelled. Confirm with both the landlord and the Sheriff to be sure.

If your landlord has five or more rentals, you may use these rights at any time. Otherwise, you may use these rights only once in a 12-month period.

EXPUNGING DISMISSED AND NONSUITED EVICTIONS

Affordable housing can be difficult to find, especially for people who have retired from full-time employment or have limited income. A person's rental history may be extremely important in the search for affordable housing. Potential landlords may check to determine if there have been one or more eviction lawsuits (called a Summons for Unlawful Detainer) filed against a person seeking to rent residential property.

Sometimes, these cases are *dismissed or nonsuited* and do not move forward and there is no eviction. Unfortunately, the record stays in the Virginia Court Case Information (VCCI) system, usually for 10 years. Someone looking at a tenant's record may see multiple eviction lawsuits filed over many years. However, many did not result in an eviction or possession to the landlord.

The law in Virginia changed in 2020 and changed again in 2024. The 2020 law allows an eviction case that was dismissed or non-suited, and no possession was granted, to be removed from public court records (expunged). The 2024 law requires the court to automatically expunge a dismissed or nonsuited eviction lawsuit that was filed on or after July 1, 2024. Dismissed eviction lawsuits are expunged after 30 days. Nonsuited lawsuits are expunged after six months. Expungements are for prior court cases and do not impact any current pending eviction matter in the court or money owed to a landlord. A cleaner rental history may make it easier to obtain future affordable housing.

If you wish to check VCCI for your information listed in the General District Court case system, please follow these steps. Go to the General District Court Online Case Information System at https://www.courts.state.va.us. Once you have accepted the terms of use, select the court you wish to search. At bottom under "Civil," click "Name Search." Enter your last name and your first name in the correct boxes and click "Search." This will show a list of your cases.

Go the General District Court and file a Petition for Expungement of Unlawful Detainer (Form DC-425) – https://www.vacourts.gov/forms/district/dc425.pdf. You need a separate Petition for each eviction lawsuit you want expunged. There is no filing fee to file this Petition.

Upon a finding that an unlawful detainer was dismissed or nonsuited, the court shall – without a hearing – enter an order requiring expungement of the court record.

For additional information, please contact your local legal aid program if you qualify for legal services.

FAIR HOUSING

Generally, a landlord may rent or refuse to rent for any reason at all – good reason, bad reason, or no reason – as long as it is not a prohibited reason. There are exceptions to this rule. Exceptions apply if you are in a protected class covered by the Fair Housing Law.

No one may be denied housing due to: Race, Color, Religion, National Origin, Sex, Family Status (having children under 18 or being pregnant), Elderliness (55 or older), Disability, Source of Funds, Sexual Orientation, Gender Identity, or Military Status. Source of funds means where your money comes from.

Several groups are not protected under fair housing law. For example: students, smokers, income status, poor credit, unmarried couples, and those under age 55 are not protected groups.

Landlords can also refuse to rent to people who have gotten evicted in the past.

Fair Housing Law applies to more than rentals. Fair housing applies to home sales, home financing, homeowners and rental insurance, and advertising about rentals and homes for sale. Fair housing prohibits landlords from refusing to rent to people in protected classes. Fair housing also makes it illegal for a landlord to discriminate against a tenant in the terms and conditions of the lease.

Housing providers may use occupancy standards. These standards should allow at least two people per bedroom. Housing providers should also not dictate in which bedrooms younger children of different genders sleep. This is a parental matter.

Landlords are now prohibited from refusing to rent to individuals because they receive assistance from nonprofits or the government to pay their rent. This prevents discrimination against individuals looking for housing using a Housing Choice Voucher. It also prohibits landlords from refusing rent payments from onetime assistance grants, like rent relief, or discriminating because someone is receiving short-term benefits like unemployment benefits.

If you are renting an apartment built after March 13, 1991, it must be wheelchair accessible. If the apartment is older or is a single family dwelling, you can ask that the building be modified. The landlord may not deny this request. However, unless the housing is federally subsidized, you must pay for the changes yourself.

In addition, if you have a disability that causes you to violate your lease, you should ask the landlord in writing for a reasonable accommodation that would alleviate or modify the behavior which caused the lease violation. If you make this request, the landlord first must respond to it, and should not automatically try to evict you.

Landlords cannot refuse to allow a tenant with a disability to have an assistance animal in the rental unit. An assistance animal is not a "pet." An assistance animal provides therapeutic benefit to a person with a disability. If a landlord has a "no pets" policy, a tenant with a disability can request a reasonable accommodation to that policy. This is because the assistance animal is necessary for the tenant to have "equal use and enjoyment" of the rental property.

To have a legal right to housing with an emotional support animal you need proper documentation. This means documentation from a medical provider with whom you have an ongoing treatment relationship.

If your documentation is from a provider with whom you do not have an ongoing treatment relationship – particularly from a provider who issues these letters for a fee after an online questionnaire or a brief one-time interview – then your documentation is not adequate.

Landlords cannot require a tenant with a disability to pay a pet fee or deposit or any additional rent to keep an assistance animal. However, tenants can be held responsible for any physical damages to the dwelling caused by the assistance animal.

If you've been subjected to housing discrimination, you have one year to file a complaint with Virginia's Fair Housing Office: 804-367-8530 (V) and www.dpor.virginia.gov/FairHousing. You also can contact Housing Opportunities Made Equal (H.O.M.E.)

for free counseling and assistance with housing discrimination: 804-354-0641 (Voice) and help@homeofva.org.

FEDERALLY SUBSIDIZED HOUSING ASSISTANCE

Federally subsidized housing means that the government pays part or all of your rent. The part of your rent the government pays is called the "subsidy." Unlike private rental housing, landlords in federally subsidized housing have many more rules to follow about who gets into the housing (admissions), rents, leases, grievances, and evictions. If you live in federally subsidized housing, you have more legal rights than tenants in private rental housing. These rights include the following things.

- The landlord must follow certain rules about who gets admitted to the housing.
- Your rent is limited – usually you pay no more than 30% of your income for rent and utilities.
- Your tenancy usually is not time limited – as long as you don't break the lease or the law, you are allowed to stay.
- You may be evicted only for good cause.
- Usually you must be given notice and a chance to contest a denial of admission.
- Before your subsidy may be ended, you must be given notice and a chance to contest.

There are two types of federally subsidized housing. In one type, the subsidy is tied to the housing unit. This is called "unit-based assistance" and also is known as Project Based Assistance. In the other type, the subsidy is tied to the tenant. This is called "tenant-based assistance" and also is known as a Housing Choice Voucher.

In unit-based assisted housing, you apply at the management office for the project. In tenant-based assistance, you apply with the local agency that runs the voucher program. Your application must be accepted, unless the waiting list is so long there is no reasonable chance you can get housing within a year. You can apply at more than one place. Once your application is accepted, your name is put on a waiting list. You must be told about preferences for admission. You may be required from time to time to say you are interested in admission. If you fail to do so, your name may be removed from the waiting list.

Usually, your income can be no more than 80% of area median (average) income. Income limits vary from area to area. There is no resource limit. If you have more than $5,000 in assets, part of that can be counted as income. There is no minimum income requirement. However, the landlord may look at your ability to pay basic subsidized rent. Both single individuals and families may be admitted. Some units are reserved for elderly and handicapped families. Only U.S. citizens and eligible immigrants may be admitted.

In federally subsidized housing, your rent is less than it would be without the subsidy. Usually you pay 30% of your adjusted monthly income for your housing costs. Your housing costs means both rent and utilities. Your adjusted monthly income means your total income minus certain deductions. There are deductions for dependents, elderly and disabled families, high medical expenses, and costs of child care needed to go to work or school.

If all utilities except telephone are included in the rent, your rent is 30% of your adjusted monthly income. If all utilities except telephone are not included in your rent, your rent is 30% of your adjusted monthly income minus a "utility allowance." A utility allowance is the reasonable cost of a modest amount of utilities.

If the utility allowance is more than 30% of your adjusted monthly income, you pay no rent. You also get a monthly utility allowance check equal to the difference.

To be sure you pay the right amount of rent, you must report your income at least once a year. You also must report changes in income and family size right away.

All federally subsidized housing landlords must have a good reason to evict you. This means breaking the lease in a major way or many times, breaking the law in a major way or many times, or some other good reason. A good reason would be not paying rent, not obeying the lease, damaging property, or causing a danger to health or safety.

FORECLOSURE

When you buy a house or land on time, or borrow money to buy a house or land, the creditor usually takes a security interest in the property. If you don't pay, the creditor can foreclose upon (or take back) that property. However, you have important legal rights that protect you.

In Virginia, a creditor may not foreclose unless you're more than 10 days late with a payment. If you make all missed payments and pay any late fees, within 10 days of the due date, a creditor may not foreclose. If you are more than 10 days late with all or part of a payment, a creditor may foreclose. However, if your creditor has agreed to accept your late payments or to change your due date, foreclosure may not be allowed. A change in your due date may happen orally or in writing, or by your creditor repeatedly taking late payments without complaint.

If your mortgage is accelerated, all the money you owe is due all at once, right now. In this case, you no longer have the right to make payments over time. In Virginia, a creditor may not accelerate a mortgage unless you're more than 10 days late with a payment. If you make all missed payments and any late fees within 10 days of the due date, a creditor may not accelerate.

If a creditor has *not* accelerated your mortgage and you make all missed payments and any late fees, the creditor may not foreclose. Even after you're more than 10 days late with a payment, a creditor can't refuse your payment and foreclose if the creditor hasn't accelerated.

If a creditor *has* accelerated your mortgage, you can't simply make all missed payments and any late fees – all the money you owe is due all at once, right now.

Your alternatives to foreclosure depend on how past due the payment is, the amount that is delinquent or behind, and your loan type (for example, FHA, VA, conventional). When you are 30 to 60 days past due, your alternatives are limited to those offered through the collection department of your mortgage servicer. These options are reinstatement or repayment.

If you are 60 or more days past due and unable to bring your mortgage current, you should contact the Loss Mitigation Department at your mortgage servicer. Ask for a loan workout package. If you can afford to pay your mortgage, you may be able to keep your house through a loss mitigation option. All loss mitigation options must be selected and approved by your mortgage servicer. These include the following.

- Repayment Plan – This involves making up the amount past due over a period of months by making a full payment plus an extra partial payment until the amount past due is paid.
- Forbearance Plan – This is the reduction or suspension of payments for a period, followed by a period, during which the deferred payments are made up, similar to the repayment plan.
- Loan Modification – This changes the original terms of your mortgage by an adjustment of the interest rate, addition of the delinquent interest amount to the current principal balance, and/or an extension of the term (life) of the mortgage. A loan modification fee will be charged, and a cash contribution toward any loss to the loan servicer may be required.
- Partial Claim – This is when money is advanced or loaned to you by the Federal Housing Administration (FHA) or whoever holds your private mortgage insurance. This money is used to bring your mortgage current.

If you don't qualify for a loss mitigation option, you may need to give up ownership of your home. You still have a couple alternatives to foreclosure.

- Pre-foreclosure Sale – This means selling your property before a foreclosure sale at fair market value. In some cases, this may be less than the amount you owe on the mortgage.
- Deed in lieu of foreclosure – This involves returning the property to the lender before a foreclosure sale. This usually is granted only if you can't sell the property

Almost all mortgages in Virginia are secured by a Deed of Trust. A Deed of Trust is a deed of the property from you to a Trustee, who usually is a lawyer. The Trustee has the power to sell your property if you don't keep the promises in the Deed of Trust. This includes your promise to pay the mortgage payments on time, in full, every month.

Under Virginia law, foreclosures are done outside of court, rather than through the court system. The

Trustee simply sells your property. This usually happens at a public auction to the highest bidder. Before doing this, the Trustee must follow the rules set forth in your Deed of Trust and the Real Property Foreclosure Act that was in effect when you signed your Deed of Trust.

If you have not kept all your promises in your Deed of Trust, the Trustee may accelerate the mortgage, and sell your home. Usually, mortgages that are federally insured or guaranteed must be at least three months behind before foreclosure.

The Trustee must give you a written notice at least 60 days before the sale, by certified or registered mail, telling you the time and place of the sale. However, if your property is sold to an innocent third party for value, a sale is valid even if the notice was not sent.

The Trustee must advertise the foreclosure sale in a newspaper of general circulation before the foreclosure sale. The Trustee must strictly follow the advertising requirements. If the Trustee does not do this, a court may set aside or void a foreclosure sale. The ad must state the location of your property, the location of the foreclosure sale, and the terms of the sale.

The Trustee must hold the foreclosure sale in a manner to get a fair sales price. A low sale price alone is not enough to set aside a sale. However, where the sales price is very low (usually less than 50% of assessed value) and evidence exists that the Trustee was not trying to get a fair sales price, a court may set aside the sale.

A foreclosure only affects who owns the property. A foreclosure does not affect who has the right to use or occupy the property. The former owner does not have to vacate just because the sale took place. If the new owner wants possession of the property, the new owner must file an unlawful detainer (eviction) action in court.

LEASES

Starting July 1, 2019, landlords must offer written leases. A lease is a contract stating what the landlord will do and what you as the renter will have to do. The law generally will make you follow all the terms of lease, so make sure you clearly understand what you have agreed to do. Pay careful attention to the following items:

1. How much the rent will be per month.
2. How much the security deposit will be if there is one.
3. What day is the rent due and when is it considered late.
4. How much is the late fee if you are late with the payment.
5. How long the lease runs: month-to-month, six months, one year.
6. How many days advance notice do you have to give if you wish to move.
7. Whether the electric, heat, water and sewer are included in the rent.
8. Whether a refrigerator and stove are provided by the landlord.
9. What you must do to get repairs made.
10. Any specific rules or other charges.

Before you sign a lease, you should read it carefully, fully understand it, and completely agree with it. If you and the landlord agree to something that is not written in the lease, add it to the lease and have both you and the landlord initial and date it. You also can write the agreement on a piece of paper, have both you and the landlord sign and date it, and keep a copy for yourself.

Any oral promises and agreements must be written into the lease, or they will not be binding. Any subsequent change to the written lease must also be in writing and signed or initialed by both the landlord and the tenant.

Before you sign a lease, you also should carefully inspect the rental property you are considering and note any problem areas or damage. It may be helpful to ask other tenants about the property and landlord relations. You should also consider the housing's insulation, heating and cooling systems, security, parking, quality of construction, and proximity to public transportation and shopping. Other important factors to consider include the cost and availability of utilities, the demographic of your neighbors (seniors, families, students, transients, etc.), and handicapped accessibility.

If the landlord does not offer a written lease, the law sets out a specific lease that will apply. This lease has these rules:

- The lease is 12 months with no automatic renewal.
- Rent is paid in 12 monthly payments.
- Rent is at the fair market rent if no amount is agreed upon.
- Rent is due on the first of the month and late after the fifth of the month.
- A reasonable late fee may be charged. This is 10% of the periodic (monthly or weekly) rent, or 10% of the remaining balance due and owed, whichever is less.
- The security deposit can be no more than two months' rent.
- The landlord and tenant still may enter into a written lease.

RENTAL APPLICATIONS

When you apply for rental housing, the landlord may ask about, and may make decisions based on, these factors: student, smoker, illegal drug user, registered sex offender, unmarried couple, pet owner (but service animals are not pets), poor credit (but must consider whether due to domestic or family abuse), not enough income to pay rent, rent paying history (but see exception below), court judgments for possession and/or rent (but see exception below), violating leases at other rentals, a criminal conviction if it was within the past six years and was for a crime related to being a good tenant, and other factors related to being a good tenant.

When you apply for rental housing, the landlord should not ask about, and may not make decisions based on, these factors: race, color, religion, national origin, sex, family status (having children under age 18), disability, source of funds, sexual orientation, gender identity, military status, citizenship status, fluency in English, prior eviction lawsuits which were dismissed or nonsuited, arrests, criminal convictions more than six years old, criminal convictions for crimes not related to being a good tenant, and other factors not related to being a good tenant

When you apply for rental housing, the landlord may charge a nonrefundable application fee. This fee may be charged only for two expenses: (1) actual costs paid by the landlord to a third party for background, credit, criminal, or other pre-occupancy checks, and (2) an additional fee of no more than $50 (no more than $32 in HUD subsidized housing).

When you apply for rental housing, all other charges paid to the landlord must be held as a refundable application deposit. If you do not rent the unit due to your decision, the landlord must refund your deposit, minus any actual expenses and damages, within 20 days (or within 10 days if you paid by cash, money order, certified check, or cashier's check).

If you do not rent the unit due to the landlord's decision, the landlord must refund your deposit, minus any actual expenses and damages, within 10 days.

When you apply for rental housing, your former landlord may release only the following information about you: information that is public record, the amount of your periodic rent payment, a summary of your rent payment record, a notice of non-rent breach that you did not fix, a notice of termination of tenancy, any other information you agree in writing to release.

If your rental housing application is denied due to nonpayment of rent or eviction based on nonpayment, you may have additional rights. The nonpayment or eviction based on nonpayment must have occurred beginning on March 12, 2020 and ending on June 10, 2023. If so, and if the landlord owns five or more rental units, these rules apply:

- You must be given a written denial, and the right to dispute the denial.
- The notice must contain the statewide legal aid telephone number & website address.
- If the denial was mailed, you must dispute the denial within seven days.
- If the denial also was by email or phone, you must dispute by the next business day.
- If the landlord does not follow these rules, you may sue for damages by law of $1,000.

If your rental housing application is denied for some other reason, the landlord does not have to give you a written denial. However, if the landlord based

the denial on information from a third party, the landlord must give you contact information about the third party. You then have the right to contact the third party to get the information provided to the landlord and dispute it.

RENTAL HOUSING REPAIRS

You have the legal right to live in a home that is healthy and safe. You must follow the law to get bad rental housing repaired. To fix problems that make a home unhealthy or unsafe, the law divides the duties between the landlord and the tenant. Under Virginia law, all landlords must follow building and housing codes affecting health and safety, make all repairs needed to keep the place fit and habitable, and keep in good and safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances that the landlord supplies or must supply.

Under Virginia law, all tenants must keep the rental unit as clean and safe as conditions permit, use all utilities and appliances reasonably, get rid of trash, not damage the rental unit or allow anyone else to, not disturb your neighbors or allow anyone else to, and follow the lease and reasonable rules of your landlord.

Some tenants just stop paying rent when something needs to be fixed. This is a bad idea that can get you evicted. There are two legal and effective ways to get bad conditions fixed: (1) Repair and Deduct not done through court action, and (2) Tenant's Assertion done through court action.

To repair and deduct, you give a written notice to the landlord of needed repairs and wait 14 days. Send a letter by 1st class mail or an email or a text message. In addition, you can use certified mail, return receipt requested, so you will have proof of it being sent and received. Always make a copy for your records of each notice you send.

If repairs are not started within the 14 days, you can contract with a licensed contractor or pesticide business to get the needed work done. The cost cannot be more than $1,500, or one month's rent, whichever is higher. You can deduct the cost of the repairs from the rent by giving the landlord an itemized statement of the work and a receipt for the work.

Repair and deduct is not available if you caused the condition, denied access to the premises, or the condition was remedied by landlord prior to tenant's contract with a third party. You do not have to be current in your rent to use repair and deduct. However, you do have to pay the cost of the repair, which you then can deduct from future rent payments

A Tenant's Assertion is a lawsuit you file against your landlord because your landlord did not fulfill a duty under the lease or under the law. To use this, you must be current in your rent and stay current. You also must give written notice to your landlord.

Before filing a Tenant's Assertion, you give a written notice to the landlord of needed repairs and wait a reasonable amount of time. If it is an emergency, such as lack of heat or water, your landlord should fix it within 1-3 days. Other repairs must be made within a reasonable time, usually 14-21 days. Send a letter by 1st class mail or an email or a text message. In addition, you can use certified mail, return receipt requested, so you will have proof of it being sent and received. Always make a copy for your records of each notice you send.

You also must give the landlord access to your home to make the repairs. If it is not an emergency, the landlord will need your permission to come into your home to make repairs. You should make this as easy as possible by giving permission in your notice. You also may tell your landlord, in your notice, what times of day are best, or how to reach you for permission. Don't give the landlord any excuse to say you wouldn't cooperate with repairs.

If repairs aren't made in a reasonable time, you can take your landlord to court with a Tenant's Assertion or a "rent escrow" case. At this point, it probably is best to get legal help. To do this, you must be completely current in payments to your landlord, and you must pay your next month's rent into court within 5 days of the due date.

You fill out a "Tenant's Assertion and Complaint" (Form DC-429) at the General District Court for the County or Independent City where you live. You can attach to the Tenant's Assertion a copy of your notice to the landlord. You also can list the bad conditions on the form.

When you fill out the Tenant's Assertion, you need to decide what you want the judge to do. You can ask the judge for any of these things: to order

repairs completed before your rent is released to the landlord; to order repairs and return of some (or all) of the rent money to you for having to put up with the bad conditions; to order your lease ended so you can move out without paying future rent.

REVERSE MORTGAGES

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

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

The FHA requires that the borrower be a homeowner: (a) who is 62 years of age or older; (b) who owns his or her home outright (or who has an existing mortgage balance which is low enough that it can be paid off at closing with the proceeds from the reverse mortgage); (c) who resides in the home as a principal residence, (d) is not delinquent on any federal debt, and (e) has financial resources to continue to meet ongoing property obligations.

Before obtaining a reverse mortgage under HECM, you are required to obtain consumer information from a HUD-approved counseling source. To find a HUD-certified counselor, go to https://entp.hud.gov/idapp/html/hecm_agency_look.cfm

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

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

The homeowner may use the proceeds of the HECM for any legitimate purpose, such as to supplement Social Security or retirement benefits, maintenance of the property, payment of real estate taxes and insurance, medical bills, living expenses, etc.

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

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

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

HECM loans are non-recourse loans. This means the homeowner is not personally liable to repay the HECM loan. Liability is limited to the net sales

proceeds from the property. No deficiency judgment may be taken against the homeowner or the homeowner's estate.

The borrower has the continuing obligations to maintain the property in good repair, keep the property properly insured, pay real estate taxes when they are due, and be sure the property is not used for any illegal purposes.

The due date for repayment of the HECM is when one of the following occurs: (a) the last borrower dies; (b) all borrowers have conveyed their title to the property; (c) the property is no longer any borrower's principal residence; (d) because of physical or mental illness, a borrower fails to occupy the property as his or her principal residence for a period of more than 12 consecutive months, and the property is not the principal residence of another borrower; (e) a HECM loan obligation of the borrower is not performed (for example, real estate taxes are not paid, the property is not maintained in good repair, etc.)

A homeowner does not need to pay a fee to a planner or loan finder to obtain an HECM loan. There have been abusive instances reported in which "loan finders" or "estate planners" have contacted homeowners and have offered to find a reverse mortgage for the homeowners for a percentage fee (such as 5% to 10% of the loan amount). This is not necessary and should not be done.

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

HUD requires that a homeowner obtain consumer information from a HUD-approved counseling source. In addition, because reverse mortgage documents are complex and can be confusing, anyone contemplating a reverse mortgage should consult an experienced attorney who is completely independent of the mortgage lender. It is essential that the homeowner understands the contract and its disadvantages, as well as its advantages, before signing.

Information about reverse mortgages in Virginia is available from the Virginia Care Planning Council at https://www.carevirginia.org/list12_virginia_reverse_mortgage_specialist.htm

SECURITY DEPOSITS

A security deposit is money that the landlord collects from the tenant and holds to use to pay for unpaid rent, late fees, other charges in a written lease, and the expense of making repairs beyond reasonable wear and tear. The security deposit cannot be used for any other purpose. The security deposit may not exceed two months' rent.

Your landlord must give you a written report within five days after you move into the rental unit. The report must list all damages that exist when you move in. You must submit any changes to that list to the landlord, in writing, within five days after you receive the list.

As soon as you move in, you should make a list of everything wrong with the rental unit. You also may want to take photographs and date them. You should be sure your list includes any damage the landlord might later think you caused. You should give this list to the landlord within five days of moving in. Keep a copy of the list. This can avoid many problems when you move out.

Right before you move out, you also should make a list of everything wrong with the rental unit. Again, you may want to take photographs and date them. You should be sure your list includes any damage that exists when you move out. Keep a copy of the list.

The landlord must do an inspection within three days after you move out to see if there are damages beyond reasonable wear and tear. A move-out inspection helps determine how much of the security deposit should be returned. The landlord must tell you when the inspection will be held and let you be there.

The landlord may keep the security deposit for unpaid rent, late fees, other charges in a written lease, and the expense of making repairs beyond reasonable wear and tear. As long as you were not at fault or careless, the security deposit can't be used to pay for normal wear and tear on the property. The landlord must give you a list of all deductions from the security deposit within 45 days after you move out.

The landlord is required to return the security deposit, minus any deductions, within 45 days after you move out. You should be sure to give the landlord your new address, in writing.

If the landlord fails to give you a list of deductions and/or return the security deposit within 45 days after you move out, you can take the landlord to General District Court to recover your deposit. If you're successful, the court can make the landlord pay your courts costs. To learn more, see the section in this Handbook on "Filing a Lawsuit in General District Court."

PART 8 – LONG-TERM CARE

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

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

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

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

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

- Your local Area Agency on Aging offers information on care and other resources. There is a statewide Department for Aging and Rehabilitative Services, Division for Aging Services at https://www.vda.virginia.gov. Each planning district in the Commonwealth has a local agency on aging. You can find the one that serves your area at the Virginia Division for Aging Services website shown above.
- Consumer-based information about LTC can be found at The National Consumer Voice for Quality Long-Term Care at https://theconsumervoice.org.
- The Virginia Health Care Association website provides basic information about its member nursing homes and assisted living facilities as well as a useful list of links to other relevant resources. See https://www.vhca.org.
- National Care Planning Council at: https://www.longtermcarelink.net/a13information.htm.
- The Mid-Atlantic Aging Life Care Association (ALCA) (formerly the Mid-Atlantic Professional Geriatric Care Managers Inc.) is an organization of private practitioners who advance the dignified social, psychological, and health care for patients with chronic needs and their families. https://www.midatlanticalca.org.
- The Virginia Academy of Elder Law Attorneys has resources and a library on its website at https://www.vaela.org.

ADULT DAY CENTERS

Adult day center programs are a popular non-residential option for older adults who need supervision during the day. Adult day centers work to help older adults remain living in the community at the highest possible level of independence. Many participants and family caregivers may delay or avoid costly in-home or nursing home care by using adult day centers. Adult day centers may also complement in-home care.

These programs provide health and social services for older adults who may be physically or cognitively impaired but who do not need the program to

provide them with 24-hour supervision. Individuals in adult day center programs typically attend on a regular, planned basis on weekdays, and some centers also offer weekend services. Admission requirements and procedures vary somewhat across centers, but all centers require that the applicant have a personal physician or clinic for coordination of care.

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

Adult day center services are designed to assist both the participant and the family. Adult day centers provide health maintenance services, therapeutic activities, personal care, and emotional support to participants. Older persons may benefit from the special care if they are: physically impaired, socially isolated, in need of personal care help, mentally confused, limited in their ability to function independently in the community, or in need of supervision.

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

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

The Program for All Inclusive Care (PACE) includes a form of adult day center that provides more services than other programs. It is only available in certain areas of the state. Participation in PACE typically requires that the members are dually eligible for both Medicare and Medicaid. PACE provides all medical care such as one might receive in a nursing facility – physical therapy, occupational therapy, pharmacy, a doctor, nurses, social workers – coupled with practical assistance and support with meals, transportation, and recreation. PACE permits an individual who might otherwise need and qualify for nursing home care to remain in their home as long as care may safely be provided both at home and during the day at PACE centers. It also covers some nursing home care. PACE programs contract with other area providers, dentists, medical specialists, and hospitals to provide the full spectrum of care to members. More information is available at https://www.dmas.virginia.gov/for-members/benefits-and-services/other-programs-and-guidelines/pace.

ASSISTED LIVING FACILITIES

An assisted living facility (ALF) is for adults who need personal care and support services. Residents are individuals who need help with daily living activities as a result of physical or cognitive impairment. ALFs are not licensed as a nursing home or for delivery of any type of healthcare; therefore, neither Medicare nor Medicaid are available to pay for ALF services. In rare and restricted circumstances, Medicaid may provide payment through an “Auxiliary Grant” (AG) for indigent adults, but very few ALFs accept Auxiliary Grants.

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

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

other common areas such as libraries and recreation rooms. Some also have gardens or other outdoor areas.

Individuals needing assistance because of dementia or other cognitive dysfunction will typically find "Memory Care" units – locked or otherwise restrictive units – in ALFs.

Unlike nursing care, the federal government does not regulate ALFs; therefore, services and levels of care vary at these facilities In Virginia, ALFs are licensed and regulated by the Virginia Department of Social Services Division of Licensing (VDSS). Information about every licensed ALF in Virginia, including ownership, number of units, and inspection reports is available online at https://www.dss.virginia.gov/facility/search/alf.cgi.VDSS is located at 5600 Cox Road, Glen Allen, VA 23060. To file a complaint against an Adult Day Center or an Assisted Living Facility, go to https://www.dss.virginia.gov/about/email_licensing_complaint.cgi.

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

Most residents living in ALFs pay for services from private sources or long-term care insurance. Medicare does not cover assisted living expenses under any circumstances. Local social services departments may offer auxiliary grants for some assisted living services. For more information about auxiliary grants, to go https://www.dss.virginia.gov/printer/family/as/auxgrant.cgi.

Choosing an ALF can be difficult. It is important to visit several communities and to talk with residents and staff. An unannounced visit may be very helpful. Compare the fees and services offered by different facilities carefully.

AARP has created a useful checklist of the questions to ask when considering an ALF, and is at https://assets.aarp.org/external_sites/caregiving/checklists/checklist_assistedLiving.html.

A Consumer's Guide to Long Term Care in Virginia is available on the Virginia Health Information website: https://vhi.org/LTC-Guide/default.asp,

CONTINUING CARE RETIREMENT COMMUNITIES

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

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

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

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

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

CCRCs are regulated by the State Corporation Commission Bureau of Insurance. The Bureau of Insurance is responsible for collecting and analyzing annual disclosure statements from CCRCs. The emphasis is on ensuring that proper disclosures are made and monitoring the CCRC's financial condition. A listing of licensed CCRCs, and their disclosure statements, are available at https://www.scc.virginia.gov/consumers/insurance/health-insurance-consumer/senior-resources/ccrc-disclosure-statements.

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

as described in the nursing home section of this Handbook.

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

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

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

HOME BASED CARE

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

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

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

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

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

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

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

Companion caregivers may provide company, assist with games or other activities, run errands, do light housekeeping and prepare meals. They cannot provide any care that requires physical contact (such as bathing, dressing, shaving). They are not permitted to fill pill boxes or administer medication.

Personal Care Attendants (PCA) or Certified Nursing Assistants may make physical contact to assist in bathing, dressing, toileting, shaving, or other needs. They may remind the client to take medications, but they are not permitted to administer medicines or fill pill boxes.

Most home care – companion or personal care – is private pay or paid by long-term care insurance. Medicaid or Department of Veterans Affairs may pay for such care, or a portion of such care, in certain cases, usually due to a specific diagnosis

such as Dementia or Spina Bifida or based on severe financial need.

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

SKILLED NURSING FACILITIES

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

SNFs provide care on a 24-hour basis, 365 days per year. Their services include rehabilitative care, including both skilled nursing care (physical, occupational and speech therapy, wound care and other nursing services) as well as unskilled, custodial care (rooms, laundry, dining, security). Nursing facilities also provide all their residents with social workers and recreational and spiritual activities. It is important to distinguish between skilled care and unskilled care. Skilled care is medical care and is typically paid for by Medicare. Unskilled, custodial care is not paid for by Medicare.

Jimmo Settlement: Improvement is no longer the standard to keep or end Medicare coverage for a SNF stay. Under Jimmo, Medicare covers skilled nursing care and skilled therapy services under skilled nursing facility, home health, and outpatient therapy benefits when a beneficiary meets other requirements but also needs skilled care to improve, maintain function, or to prevent or slow decline, as long as:

- The beneficiary requires skilled care for the services to be provided safely and effectively.
- An individualized assessment of the patient's condition demonstrates that the specialized judgment, knowledge, and skills of a qualified therapist are needed for a safe and effective maintenance program.

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

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

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

In addition to licensed nurses, SNFs will have physical, occupational, recreational, and speech therapists who help residents maintain their physical and functional status. All such facilities will have at least one social worker who helps residents cope with emotional and psychological issues and who assists with discharge or ongoing care planning. Social workers are also responsible for assisting nursing home residents with finding and utilizing resources and outside services for eyeglasses and dental treatment.

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

Multiple factors come to bear when choosing a nursing home. Do the facility services and capabilities meet the individual's needs? Does the facility participate in Medicare and Medicaid? Are the residents well cared for? Is the facility clean? Are residents' rooms comfortable with adequate light

and ventilation? Are meals appetizing? Is there an activities program that is stimulating and varied? Are the buildings and grounds well maintained? Are there any problems? The list of questions can be long, and finding answers is not easy.

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

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

The Medicare Guide to Choosing a Nursing Home contains a nursing home checklist and is at https://www.medicare.gov/publications/02174-your-guide-to-choosing-a-nursing-home. It is among the best resources the Federal Government has produced about finding and comparing nursing homes, paying for nursing home care, identifying alternatives to nursing home care, and finding help.

The Medicare Program has instituted a 5-Star Quality Rating System, which ranks Medicare-participating nursing homes on a scale of 1 to 5 stars, with 1 star being the lowest ranking ("much below average") and 5 stars being the highest ranking ("much above average"). Do not just use the star system because statistical anomalies make the awarding of stars inconsistent at times. The 5-star system can be useful for narrowing the list of potential nursing homes, but check the underlying data that is reported and goes into the calculation of the star system. The reports are easily accessed at https://www.medicare.gov/care-compare.

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

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

Medicare is a federal program of insurance that provides for medical insurance and skilled medical care for people who are 65 and older, some persons with disabilities, and individuals with end-stage renal disease. The Medicare benefit for nursing home care is very limited:

- Medicare Part A pays for only a certain number of days of care in a skilled nursing facility per period of illness if you qualify for Medicare benefits. Usually a minimum three-night hospital admission is a prerequisite. Deductibles and coinsurance amounts must be paid, and there may be conditions to qualify for payments.
- Medicare Part B covers charges for physicians, labs and testing such as x-rays, even if you are in a facility, but you must sign up for this coverage separately and pay the monthly premiums. It can also cover services such as physical therapy and occupational therapy, even if you are no longer receiving skilled level nursing home care under Part A. It does not cover overall inpatient care.

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

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

Not all Virginia nursing homes accept Medicaid Long-Term Care patients, but most do. Nursing homes are no longer allowed to discharge a patient for switching from private funds to Medicaid Long-Term Care.

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

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

The VA Aid and Attendance program is a pension supplement available to some veterans or their surviving spouses. There also are limited benefits for dependents. The veteran must have served active duty for at least 90 days during a wartime period.

The VA Aid and Attendance program provides cash benefits, so it can assist with the cost of home care, adult day, assisted living, or nursing home care. More information is available the section in this Handbook on "Veterans Benefits."

Private Health and Long-Term Care Insurance: Some private health insurance plans provide for limited nursing home coverage. If an individual is covered by private insurance policies, talk with the carrier or insurance agent to find out whether the policy covers nursing home care. Most private insurance policy coverage depends on the physician's documentation of the need for skilled nursing care.

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

Contact the Virginia Bureau of Insurance at 804-371-9741 for helpful information about buying long-term care insurance. Ask for A Shopper's Guide to Long Term Care Insurance.

You may also use personal resources to fund nursing home care. Any agreement between a nursing home and a prospective resident (or the resident's family) for providing care in return for payment is a contract, and you should read and understand all written agreements before signing them. A SNF may not ask for guarantors or cosigners to sign a nursing home contract to guarantee the payment of costs. Even asking a family to co-sign "voluntarily" to be liable for the bill is forbidden. Generally a family member should not agree to sign to be liable for the bill, but should instead have the older adult being placed sign. Someone signing using a Power of Attorney (POA) should sign in a way that clearly shows that he or she is signing in his or her capacity as POA to ensure the POA's personal funds are never on the line.

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

Federal law includes specific and extensive "Residents' Rights" for people receiving care in Medicare- or Medicaid-funded facilities. Residents' Rights include:

- The right to be fully informed
- The right to complain
- The right to participate in one's own care
- The right to privacy and confidentiality
- Rights during transfers and discharges
- Right to Dignity, Respect, and Freedom
- Right to Visits
- Right to Make Independent Choices

Further information on Residents' Rights can be found at https://theconsumervoice.org/residents-rights. A detailed list specific to Virginia can be found at Virginia Code Section 32.1-138, found online at https://law.lis.virginia.gov/vacodefull/title32.1/chapter5/article2.

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

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

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

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

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

If a problem with a nursing home cannot be resolved through its regular grievance procedures, you may file a complaint on line with the Virginia Department of Health, Office of Licensure and Certification at https://www.vdh.virginia.gov/licensure-and-certification/complaint-unit.

PART 9 – PLANNING FOR THE FUTURE

ADVANCE DIRECTIVES

All adults in Virginia have a right to prepare a document called an "Advance Directive" to put their wishes about medical care in writing. An Advance Directive states the types of medical care you do and do not want in the event you are unable to express your wishes on your own. There are two kinds of Advance Directives.

You may appoint another person to be your agent to make health care decisions for you if you become incapable of making health care decisions for yourself. This is called a "Power of Attorney for Health Care."

You also may state what kinds of life-prolonging treatment you want or do not want if you are diagnosed as having a terminal condition and you are unable to express your own wishes. This is called a "Living Will." Your Advance Directive also can provide instructions even if you are not in a terminal condition.

An Advance Directive allows you to state your choices for health care or to name someone to make those choices for you, if you become unable to make decisions about your medical treatment. It allows you to say "yes" to treatment you want, and "no" to treatment you do not want.

You may execute a "Power of Attorney for Health Care," a "Living Will," or both. Of the two kinds of Advance Directives, a Power of Attorney for Health Care is broader. A Living Will is helpful in stating your wishes, but it may not be possible to anticipate all possible medical situations for which your Living Will might apply. The best way to protect yourself, however, is to execute both.

Advance Directives are not only for "end-of-life" care. They may address any types of care in situations in which you cannot make decisions for yourself. For example, an Advance Directive may address chronic disease issues, mental health issues, and wishes about admissions to certain types of health care facilities.

You can share your health care wishes orally with your loved ones and your doctors. However, you may create an Oral Advance Directive only if you have a terminal condition and tell your wishes directly to your doctor. Putting your wishes in writing reduces confusion about your wishes, since people often forget or misunderstand what was said orally.

If you are unsure of what health care you might want or not want, you still should execute an Advance Directive to describe the important values and beliefs you have. You also can indicate your religious beliefs. Often, these types of statements will help others make appropriate health care choices for you when you cannot make them yourself.

You can and should put your wishes in your own words. You do not need to know medical terms. Just describe as best you can what medical care you do and do not want.

Even if you are in good health, no one knows what the future might bring. For example, you might need someone to make medical decisions for you in the event that you suffer a sudden injury or illness (such as a car accident). It is better to choose this person in advance and tell him or her about your health care wishes. If you do not choose someone in advance, the law will assign a decision maker who must guess about your wishes.

You may appoint any adult (18 years of age or older) as your Health Care Power of Attorney. This person needs to be accessible, but he or she does not need to live in Virginia. When you choose your agent, make sure that you have chosen someone who will be able to make potentially difficult decisions about your care, is willing to serve as your agent, and is aware of your wishes. You should choose an alternate in case your first choice is unavailable (for example, your first choice may not be found or may not be willing to be your agent).

You really should pick just one person as your agent, even if you have to choose among several children. Picking more than one person can cause conflict, delay decision-making, or result in an inability to make any decision at all. You can include your other children by letting them know your choices. You

also may require your one agent to talk with your other children before making any decisions.

If you appoint an agent, you do not automatically lose your ability to make your own decisions. Your agent gets to make health care decisions for you only if your doctor, and another doctor or licensed clinical psychologist, examine you and determine you cannot make decisions for yourself. (In some rare situations, this can also happen if you have no meaningful way to communicate, even with appropriate technological assistance). Furthermore, as soon as regain competence (or the ability to communicate, if that was the barrier) again, then decision-making authority returns to you.

You may cancel or modify your Advance Directive at any time. However, it is important that you tell others that you have cancelled or changed your Advance Directive.

Having a terminal condition means your doctor has determined that you are likely to die soon or that you are in a persistent vegetative state, which is when you have no awareness of your surroundings and your doctors have determined you will not recover.

Life-prolonging treatment means using machines, medicines, and other artificial means to help you breathe, eat, get fluids in your body, have a heartbeat, and otherwise stay alive when your body cannot do these things on its own. Life-prolonging treatment will not help you recover. It does not include drugs to keep you comfortable.

If you do not want to limit care if you have a terminal condition, your Advance Directive allows your doctors and family to know this is your wish. No matter what you choose about life-prolonging treatment, you will be treated for pain and kept comfortable. Your doctors and nurses may not discriminate against you based on your health care choices. You will get whatever care is appropriate, but you will not get any treatment that you have stated you do not want.

Just as important as creating an Advance Directive is making sure that other people know you have it and know where it is located. Specifically, you should give a copy or the original to your agent, give a copy to your doctors, to family and to friends, and bring a copy to the hospital with you. In addition, you should keep a copy of your Advance Directive in a safe place where it can be found easily. Do not keep your only copy in a lock box or safe.

A Do Not Resuscitate (DNR) order is a doctor's order saying you will not get CPR, drugs, or electric shock to restart your heart or breathing if your heart stops or you stop breathing. A Durable Do Not Resuscitate (DDNR) order is a special DNR order that your doctor can provide you so that EMS, fire, rescue, and any health care provider will know your wishes about resuscitation.

A Physician Order for Scope of Treatment (POST) form is a physician-signed order form which communicates and puts into action treatment preferences for patients who are nearing the end of their lives. POST is based on the ethical principle of respect and patient autonomy and the legal principle of patient self-determination. All competent adults have the right to make their own healthcare decisions. POST is designed to help healthcare professionals know and honor the treatment wishes of their patients.

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

ESTATE AND TRUST ADMINISTRATION

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

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

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

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

The Virginia Small Estates Act provides procedures for a decedent's assets to be transferred without the necessity of qualifying a personal representative when the decedent's entire personal probate estate is $50,000 or less. You should consult with a qualified attorney if you have questions about probate costs and whether those costs can be avoided as part of your estate plan.

When you qualify as an executor of a testate estate, or as an administrator of an intestate estate, the clerk of the circuit court will provide you with a set of instructions and forms regarding your duties. The Virginia Bar Association has prepared A Guide To the Administration of Decedents' Estates in Virginia, which is available at https://www.vba.org/page/guide_estates.

After qualification, you will be required to file various documents with the court, through the court clerk or the court's commissioner of accounts. Many commissioners of accounts provide informational websites as a public service.

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

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

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

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

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

Provide notice of probate to all those on the list of heirs filed with the court and to all beneficiaries under the will. This must be done within 30 days of probate and qualification in the circuit court.

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

Before paying bills, be sure to determine that the estate is not insolvent (an insolvent estate is one in

which the obligations exceed the value of the assets). If the estate is insolvent, consult with an experienced estate attorney to avoid personal liability for any payments outside the order of priority.

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

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

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

File the estate's federal and state estate tax returns (Form 706) if the gross estate for estate tax purposes exceeds the exemption amount for the year of death (in 2025 the exemption is $13.99 million, but the law will sunset in 2026 and the exemption will revert to $5.9 million unless changed by Congress). The tax returns, if due, must be filed and the taxes must be paid within nine months after the date of death.

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

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

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

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

File your final account with the commissioner of accounts.

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

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

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

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

FUNERAL SERVICES

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

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

are consumers legally required to buy? What other arrangements should be planned? And what is it going to cost?

Under the FTC's Funeral Rule, consumers have the right to get a general price list from a funeral provider when they ask about funeral arrangements. They also have the right to choose the funeral goods and services they want (with some exceptions), and funeral providers must state this right on the general price list. If state or local law requires purchase of any particular item, the funeral provider must disclose it on the price list, with a reference to the specific law. The funeral provider may not refuse, or charge a fee, to handle a casket bought elsewhere, and a provider offering cremations must make alternative containers available.

The Funeral Rule applies anytime a consumer seeks information from a funeral provider, whether the consumer is asking about pre-need or at-need arrangements. Find more information at https://www.ftc.gov/business-guidance/resources/complying-funeral-rule.

Virginia also has procedures to be followed by providers of funeral services. The legal requirements governing cemeteries and crematoriums vary, and the funeral director is obligated by law to give you the correct information about your particular case. For example, because embalming is not required by law, the funeral director can require that the casket be kept closed if the deceased is not embalmed.

If cremation is desired, an expensive casket is not required, though the medical examiners will require an appropriate container. You do not have to purchase any goods or services you do not want. You may direct questions to the membership organization for funeral directors (the Virginia Funeral Directors Association), P.O. Box 395, Hanover, VA 23069, (804) 264-0505. They have a resource center with information at: https://vfda.net/resource-center. You may file a complaint with the Virginia Board of Funeral Directors & Embalmers, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233-1463, (800) 533-1560, or the website at: https://www.dhp.virginia.gov/Boards/Funeral/

Planning before the time of need or before the funeral has many advantages. Your wishes concerning your funeral can be specified to eliminate confusion and differences of opinion among survivors. The funeral expenses can be paid in advance, either in full or in installments, to eliminate financial burden at the time of need. Many funeral homes will agree to furnish goods and services at a set price, no matter when you die. These arrangements can be funded through a trust or by specially designed insurance policies.

Cemetery property can be purchased in advance and an appropriate monument can be secured. Any directions you have made regarding the use of your body for medical research or for organ donations can be given to the funeral establishment of your choice. Individuals who will be responsible for arrangements should be made aware that you have completed these details. If arrangements have been made with one funeral home, but you move or change your wishes for care, the prearrangement plan can be transferred to another funeral home upon request. You can always change or cancel the arrangements.

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

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

When making funeral arrangements at the time of need, your funeral director will need certain information, such as the following: full name, date and place of birth, social security number, occupation, father's name and mother's maiden name, marital status, education level, attending physician, newspapers for obituary insert, place service is to be held, officiant's name and religious affiliation, cemetery plot information, military discharge information and service number, pallbearers, services, and merchandise to be furnished

Be sure that this information is also given to the individuals who will make the arrangements and/or the funeral home of your choice. You may also appoint an agent to make funeral arrangements

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

Anyone who was a member of the military at the time of death or honorably discharged from the military is eligible for benefits. You should inquire about the following items: pension to widow or minor children, burial in a National Cemetery, burial flag to drape casket, grave marker to mark grave of a veteran. (After 1980, a veteran must have served at least 24 months of active service or have been a Persian Gulf War veteran to be eligible for a marker.)

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

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

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

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

A prepaid burial arrangement can be an excellent Medicaid Long-Term Care planning device, particularly for seniors with more modest finances. Early in your discussions with your funeral home, explain that you want your arrangements to be compliant with Medicaid Long-Term Care rules. If you have any questions about how burial arrangements work with Medicaid Long-Term Care rules, consult an elder law attorney familiar with Medicaid Long-Term Care planning.

GUARDIANSHIP AND CONSERVATORSHIP

An adult guardianship or conservatorship is created when a Virginia Circuit Court determines that a person is unable to manage his or her own personal or financial affairs and appoints a guardian and/or conservator for that person. A guardian is the person appointed to handle the personal affairs of the incapacitated person. A conservator handles the financial affairs of the incapacitated person. A respondent is the incapacitated person. One person can be appointed to be both the guardian and the conservator.

If you need to have a guardian or conservator appointed for someone unable to handle their own affairs you must follow these steps:

- You must file a petition with a Circuit Court alleging that there is an incapacitated Virginia resident in need of a guardian or conservator.
- The petition must be filed in the Circuit Court for the city or county in which the respondent lives or lived immediately prior to moving to a nursing home, assisted living facility or other institution.
- After the petition is filed, a hearing will be scheduled for the court to hear evidence as to why a guardianship and/or conservatorship is necessary. You should attend this hearing.

The respondent has the right to:

- Receive a copy of the petition that has been filed, be notified of the hearing, and be advised of his or her legal rights. This information must also be sent to the respondent's spouse, adult children, parents, and adult siblings, or at least three other known relatives if none of these relatives are known.

- Be present at the hearing, a jury trial, and to subpoena and cross-examine witnesses.
- Hire a lawyer to represent him or her and if the respondent cannot afford to pay a lawyer, the respondent may ask the court to appoint a lawyer for him or her to be paid as part of the costs of the proceeding.

The court must appoint a guardian ad litem. This is an attorney who represents the interests of the respondent. The guardian ad litem must visit the respondent, advise the respondent of his or her rights, and investigate the facts stated in the petition. The guardian ad litem must file a report and come to the hearing to advise the court whether or not the respondent needs a guardian or conservator, and what powers the guardian or conservator should have. A report evaluating the medical condition of the respondent must be filed with the court.

The court will appoint a guardian or conservator if the respondent cannot either:

- Meet the essential requirements for his or her health, care, and safety without the assistance or protection of a guardian, or
- Manage property or financial affairs or provide for his or her support without the assistance or protection of a conservator.

A finding that a person displays poor judgment alone is not enough to show that the person is incapacitated and needs a guardian or conservator.

A guardian or conservator is not liable for the acts of the incapacitated person unless the guardian or conservator is personally negligent. Guardians and conservators are not required to spend their own funds to care for the incapacitated person. The guardian must:

- Visit the incapacitated person as often as necessary to know of his or her capabilities, limitations, and needs.
- Encourage the incapacitated person to participate in decisions.
- File annual reports with the local Department of Social Services regarding the incapacitated person's medical condition, living arrangements, and the guardian's recommendations.

The conservator must:

- Take care of and preserve the assets and income of the incapacitated person.
- File annual accountings with the Commissioner of Accounts showing all money and property received and disbursed on behalf of the incapacitated person.

Guardianship and conservatorship always should be looked upon as the last resort. The person placed under guardianship loses many rights and loses agency in his or her own life. The legal process can be a difficult and costly experience for the individual and his or her family. Both the lawyer representing the petitioner and the guardian ad litem must be paid. This will cost several thousand dollars. Here are some alternatives to having a guardian or conservator appointed which maximize personal autonomy and independence:

- Practical steps to automate regular bills. For example, automatic bill pay for utilities on a budget plan has been shown to dramatically decrease the need for senior citizens to have someone else take over their finances. Always use automated bill pay where your bank sends out the money to a prearranged list of service providers like utilities. This is far preferable than giving companies permission to auto-debit your account, which is something to be avoided.
- A supported decision-making arrangement is a decision-making model in which an individual makes decisions with the support of trusted individuals. It can be formalized in writing or a more informal arrangement.
- A durable power of attorney. The incapacitated person must have planned ahead and signed the power of attorney while he or she was able to understand what he or she was doing.
- An advance medical directive. This allows you to appoint someone to make medical decisions for you if you ever become unable to make those decisions for yourself. Even if you have not signed an advance medical directive, Virginia law gives your spouse, or your children, or other relatives authority to make medical decisions for you.

- A representative payee. If an adult needs help managing his or her income and paying his or her bills, there are voluntary bill payer programs, where a trained volunteer helps. If the only income is Social Security or Supplemental Security Income (SSI), a friend or relative could apply to the Social Security Administration to be appointed as the representative payee. Some other government benefits also have representative payee programs.
- A court will not appoint a guardian and/or conservator for a person who has appointed an agent under a durable Power of Attorney or advance medical directive or who already has a representative payee, unless the court determines that the agent is not acting in the best interests of the incapacitated person or there is a need for decision-making outside the scope of the agent.

LIFE INSURANCE

Life insurance with a named beneficiary is a non-probate asset. However, if your policy is payable to your estate after death, the proceeds will be a probate asset and will be distributed according to your will, or the laws of intestacy, if you have no will. If the policy benefits are payable to a beneficiary other than your estate, such as a spouse or child, your will has no effect on the distribution.

POWER OF ATTORNEY

You have the ability to name someone as your spokesperson and to handle your affairs. You do this by giving them a Power of Attorney. A Power of Attorney is a written document that authorizes one person to act on behalf of another.

There are two reasons to have a Power of Attorney. First, if you become incapacitated (for instance, you are in a coma), your agent (the person with the Power of Attorney) could handle your personal affairs and business without delay.

Second, a Power of Attorney may avoid the need for a guardianship. With a Power of Attorney, you select your own substitute decision-maker for times when you cannot act on your own. If you have not signed a Power of Attorney, then if you become incapacitated you may have a guardian and/or conservator appointed for you. This would mean that a judge selects who makes your decisions. Guardianship and conservatorship typically involve a greater loss of rights and agency than POA. A guardianship and/or conservatorship proceeding can also be an expensive, unpleasant and slow process for you, your family, and your friends. It is expensive because you will have to pay lawyers, court fees, and other fees. It can be unpleasant because a hearing must be held in open court. It can be slow because it takes time to get a date for the hearing. After the hearing, the Court will decide who should be your guardian or conservator and it may not be someone you would want handling your affairs.

You do not lose rights if you have a Power of Attorney. You can and should make specific guidelines for when your agent should act for you in your Power of Attorney. Under Virginia law, the agent you name must act only in your best interests.

To make a Power of Attorney you must be able to understand the nature and consequences of the Power of Attorney at the time you sign it in order for the Power of Attorney to be legally valid. A lawyer should write a Power of Attorney for you because for it to work the language must be very specific. For instance, banks and other institutions may reject a Power of Attorney because it may not have the exact wording necessary.

Your local legal aid office may prepare one for you if you are eligible. Most private lawyers charge only a small fee for preparing a Power of Attorney, particularly if you also have a Will prepared.

If you had a Power of Attorney prepared while you were living in another state or country and you have now moved to Virginia, so long as that document was valid in the state where it was created it should be valid under Virginia law. You could have an attorney look at it for you or have a new one written if you are uncertain or want to make changes.

You may appoint any competent adult as your agent. It is important that you appoint someone you completely trust.

It is a good idea to name an alternate agent in case your agent is unable to assist you when the time comes. You can appoint an agent who lives outside Virginia; however, it may be more convenient if your agent lives near you.

Make sure your agent knows where your Power of Attorney is kept, so he or she will have access to it if you become incapacitated. If you keep it in a safe deposit box, make sure your agent will be able to get into the box if need be. You may want to let your agent keep it for you.

Your agent should keep records and papers showing what he or she has done for you. You have the right to ask the agent for these records.

You can revoke or change the Power of Attorney if you still are able to understand what you are doing. If you are no longer able to understand what you are doing, a court could revoke the Power of Attorney if it is necessary. A Power of Attorney ends at your death, and your agent must stop acting under its authority once the agent knows of your death.

There are different types of Power of Attorney.

- Durable – This means that the Power of Attorney will remain in effect if you later became mentally incapacitated. Virginia law no longer requires language indicating that you intend for the Power of Attorney to remain in effect upon your disability or the Power of Attorney would automatically terminate. Rather, a POA is now durable unless it expresses provides otherwise.
- Springing – A Power of Attorney is effective as soon as you sign it unless it contains language stating that it will not go into effect until a specified time in the future (for example, if you become unable to handle your own affairs). A Power of Attorney with this language is called a springing Power of Attorney.
- General – The general Power of Attorney gives the agent broad power to do almost anything for you, except for medical decisions. (Medical decision-making authority generally is granted separately in an advance medical directive for health care.) An agent cannot make a Will for you. An agent also cannot sign a Deed for you unless the Power of Attorney is sealed.
- Limited – A limited Power of Attorney gives the agent authority to do only certain specific things spelled out in the document.

REAL ESTATE TRANSFERS

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

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

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

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

Joint ownership can also create unintended tax or credit consequences for persons named as co-owners, and adding names to a title can negatively affect your eligibility for tax credits, tax relief, and government benefits. Eligibility for Medicaid Long-Term Care is a particular concern. In addition, it may lead to a result that contradicts your overall plan for distribution of your estate at death. This is an issue that can be of special importance for those in blended families. Before considering joint ownership as a part of your estate plan, it is strongly

advised that you contact an attorney well versed in estate planning and/or elder law for advice and assistance.

Tenants by the Entireties is a special form of joint ownership reserved to married couples that continues so long as the couple remain married to each other. Virginia Code §55.1-136 provides that this applies to both real property and personal property, and it means that each of the parties owns all of the asset. Neither one can sell real estate without the signature of the other on a deed. The property passes to the sole ownership of the survivor upon the death of the first spouse.

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

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

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

The transfer of real estate with a reserved life estate is popular because it is not expensive to prepare and record the deed, the life tenant cannot be displaced by the remainderman or his creditors, a life estate preserves certain tax advantages at death, and the life estate is not recognized as a resource in determining Medicaid eligibility. The transfer of the remainder interest, though, is a transfer that, if not fully compensated, could present an issue if Medicaid LTC was needed within the next five years.

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

Transfer on Death Deed (TOD) is a relatively new form of deed transfer, and the use and law applicable to this type of deed is evolving.

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

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

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

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

SPECIAL/SUPPLEMENTAL NEEDS TRUSTS

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

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

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

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

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

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

TRUSTS

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

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

lifetime of the grantor but also may include trusts that are irrevocable to meet specific purposes.

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

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

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

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

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

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

WILLS

A Will is a written document that gives instructions on how you want your property distributed when you die. If you die without a Will, Virginia law divides your property as follows:

If you are married, your spouse gets all of your property, unless you have children with someone other than your spouse. If you have children with someone other than your surviving spouse, your surviving spouse gets one-third and all your children share the other two-thirds.

- Example 1: John dies without a Will. His wife, Sue, and their two children, Steve and Jill, survive him. Sue inherits everything.
- Example 2: Andy dies without a Will. Andy is survived by his second wife, Becky, Chris (Andy's and Becky's son), and Dana (Andy's daughter by his first wife). Becky inherits one-third of Andy's property and Chris and Dana each receive one-half of the remaining two-thirds.

If your spouse does not outlive you, all of your property will go to your children or their descendants (such as your grandchildren).

If you have no surviving spouse, children, or descendants of children, your Estate will go to your mother and/or father if they outlive you.

More distant relatives may receive your property if none of your immediate family survives you.

You need to have a Will to make sure your property will go to the people you want. Other reasons for having a Will:

- You may leave property to a friend or charity that would otherwise receive nothing under Virginia law (for instance, without a Will, a friend or partner will not receive any of your property).
- You may leave specific property to a certain person (special artwork or jewelry to Aunt Susie).
- To make sure your property will be divided quickly and easily. A Will could also prevent your family from fighting with each other over your property.
- If a child under 18-years old inherits property from someone who did not have a Will, a court will have to appoint a guardian to manage the property. This is an expensive and inconvenient process. A properly drafted Will avoids this.
- You can name the person you want to handle the distribution of your property (your Executor) in your Will; otherwise a court will determine who handles your Estate.

Several websites advertise creating Wills for very low prices, and those may be valid. However, a lawyer can analyze your specific assets and preferences to design a plan that can save you and your beneficiaries time, money, and taxes in the administration of your Estate. Your lawyer also can prepare a clear Will that meets legal requirements and ensure it is property executed (signed and Notarized) so it is acceptable to the Probate Court.

Handwritten Wills are legal, but may not be a good idea. There are several legal requirements that must be followed. The Will must be entirely in your handwriting, signed by you at the end, with nothing following your signature.

Before meeting with a lawyer to write your Will, decide who should receive your property at your death (your "beneficiaries"). Do you want to leave all your property to one person, or do you want it divided? Do you want to leave certain items of property to specified people (my baseball cards to Aunt Susie)? If so, make a list. It is a good idea to name an alternate beneficiary in case you outlive a beneficiary.

You should also decide who should be your Executor. The Executor's duties include collecting your property, paying any debts, and distributing your property according to your Will. The person you name should be someone you trust. It also is a good idea to name an alternate Executor in case your Executor is unable to serve.

If you leave your spouse and children out of your Will, a surviving spouse has a right to claim at least one-third (if there are no surviving children) of your property. If the Will gives the surviving spouse less than one-third, the spouse will likely receive some amount anyway.

Property that is owned jointly with a spouse that has a "right of survivorship" is automatically owned by the surviving spouse, regardless of the Will. Typically, this includes joint bank accounts or jointly owned vehicles or a jointly owned home.

It is a good idea to at least mention all of your children in the Will, even if they inherit nothing. This lessens the chance that an omitted child will challenge the Will because he or she was "forgotten."

Proceeds from a life insurance policy will not be part of the Will or your Estate. The person who receives the proceeds of your policy will not be required to use the money to pay for funeral expenses unless your Estate is named as the beneficiary of the policy.

You can change or revoke your Will because it is not effective until your death. If you want to make changes to your Will, you should contact a lawyer.

PART 10 – PROTECTING YOUR LEGAL RIGHTS

ACCESSIBLE VOTING

All Virginia polling places, including early voting locations, must meet state and federal accessibility standards. These include:

- Accessible parking spaces and an accessible entrance to the building.
- Within the building, an accessible voting booth with a chair, seating for those waiting to vote, and space for voters in wheelchairs.
- Equipment such as a magnifier for election material and the ballot, notepads to communicate in writing with election officials, and a ballot-marking machine with a touchpad screen.

If you need help in reading, translating, or completing forms to vote, an election official should provide help, or you may bring your own assistant. You will need to complete a Request for Assistance form if the person helping you is over 15 years old.

Whether voting in person or using an absentee ballot, the voter must be the person casting the ballot: an agent under a Power of Attorney cannot vote for the principal.

If you are 65 or older or have a disability (a temporary or permanent disability or an injury), you may vote on Election Day from your vehicle using curbside voting. You will vote either on a paper ballot or using a portable electronic machine brought by two election officials. The parking area for curbside voting will be clearly marked, with signs explaining how to notify an election officer of your request to vote outside. You do not have to enter the building to request curbside voting.

For additional information, please contact the Virginia Department of Elections at 800-552-9745 (Virginia Relay Service at 711 for TTY Phone Access for Hearing Impaired) or email to info@elections.virginia.gov.

ALTERNATIVE DISPUTE RESOLUTION

When a legal dispute arises, the party who has been injured or damaged (the "plaintiff") files his or her lawsuit against the alleged wrongdoer (the "defendant") in a state or federal court. These lawsuits are tried before a judge in the ordinary course, which often means lengthy delays and can also result in significant expenses of the litigation. Court dockets are often crowded, and each suit must wait its turn before trial occurs. Each case must be prepared thoroughly before being heard by a judge and that also adds considerably to the expense.

Parties to civil disputes increasingly are turning to alternative dispute resolution outside the court system, most often either arbitration or mediation. Both resolution options are more informal and generally less expensive than that of a trial in court. The settlements may remain confidential.

Several commercial services are available to help the parties resolve disputes involving larger amounts of money where all parties are represented by lawyers. These services generally employ either experienced trial lawyers or retired judges who serve as arbitrators or mediators. The parties' lawyers can pick a trusted arbitrator or mediator. The service provided by these lawyers or judges is generally excellent, but it is also expensive.

For disputes involving smaller amounts of money, which generally would be tried in district courts, many communities have alternative dispute resolution organizations that can help resolve disputes for smaller or no fees. If you become involved in such a dispute, contact the clerk's office of the court where the case is pending to ask about available alternative dispute resolution resources, which vary by locality.

Arbitration is a process that uses a decision maker outside the judicial system to make a decision that

is binding on the parties. Generally, the parties either agree upon an arbitrator or each side picks an arbitrator and those arbitrators mutually pick a third. The arbitrators then hear and decide the case, just as a judge would do. Arbitrators usually are retired judges or experienced lawyers specially trained in arbitration.

The advantage of arbitration is that it is quicker and less expensive than a full court trial. The disadvantage is that a decision is imposed on the parties by the arbitrator, so the parties lose their right to control what happens. Those decisions bind the parties and there generally is either no or a very limited right of appeal from an arbitrator's decision.

Be aware that many contracts, including credit card, employment, and consumer related contracts, contain mandatory arbitration clauses. They require the parties to the contract to give up their right to a trial in the court system and agree to submit any dispute to "mandatory arbitration." These clauses can result in consumers giving up legal rights with little ability to negotiate away the mandatory arbitration requirement.

Mediation is now used in most cases that go to alternative dispute resolution, rather than by arbitration. The mediator is a "neutral" third party whose job is to help the parties, with or without attorneys, reach a mutually acceptable settlement. The mediator cannot impose an outcome. While mediation has a high success rate, there is no obligation on the parties to settle their case and if they are unsuccessful the case can proceed to trial.

There are essentially two forms of mediation. The first is where the mediator remains neutral and does not give any opinion about a reasonable settlement or the probable outcome of the case. Alternatively, the parties can agree that the mediator can evaluate the case and give an opinion of its probable outcome. The second option can be helpful for the parties to compare a second opinion from the neutral mediator to the opinion of their attorney.

In mediation, the parties agree that they can discuss the case frankly and no statement made in mediation can be used against a party if they do not reach agreement and the case goes to trial. Mediation offers the parties an opportunity to create a unique solution to their problem.

ELDER ABUSE

Older residents may be reluctant to report abuse because of fear of abandonment or embarrassment or other concerns. The problem is complicated because elder abuse, neglect, and exploitation are sometimes hidden problems which are difficult to address.

The term "abuse" is used to describe the act of intentionally hurting someone. Elder abuse includes "adult abuse," "adult exploitation," and "adult neglect," and it can take many forms. It may be sexual abuse, financial exploitation, emotional abuse, or confinement. Elder abuse may involve physical violence against an older person. It may also involve the deliberate neglect by a caregiver of the medical, health, and nutritional needs of a vulnerable older person.

Elder abuse is often evident by the following signs: unusual or unexplained bruises and injuries, signs of confinement, poor hygiene, dehydration, fear, withdrawal, anxiety, or hesitation to talk openly.

These caregiver behaviors may indicate that a person is abusing or neglecting an older person: not permitting seniors to speak for themselves, indifference or anger toward an older person, previous history of alcohol or drug problems, threatening or insulting the older person, or isolating the senior from family and friends.

Financial exploitation may be indicated by:

- unusual activity in bank accounts, such as the withdrawal of large sums of money.
- an exploiter having a Power of Attorney from someone who was not competent to give one.
- a refusal by the exploiter to spend money on the older person for health or welfare, even though funds are available.
- signatures on checks and other documents when the older person is unable to write.
- an older person's loan of a large sum of money without adequate documentation.
- hiding the older person from view.

Seniors can help protect themselves from abuse by taking the following precautions:

- Become aware of resources for seniors in your community.
- Don't be isolated; stay in touch with as wide a range of people as possible.
- Make regular visits to a trusted physician and let him or her know your concerns and desires regarding possible health or social problems.
- Consider using community resources rather than individual caregivers if you feel vulnerable to exploitation.
- Put your wishes regarding finances and personal care in writing.
- Do not sign anything that you don't understand. Get help from a lawyer, social worker, or other trusted adviser.

There are laws to protect the elderly from abuse, neglect, and exploitation. These laws, however, are of little use if incidents of abuse remain unreported. If you are aware of any signs of abuse to a neighbor, friend, or relative, or suspect abuse in a nursing home or other long-term care facility, you should immediately contact your local Adult Protective Services Office or the Adult Abuse Hotline at (888) 832-3858. Adult Protective Services accepts reports of suspected abuse, neglect, or exploitation across all care settings for all adults 60 years of age and over, and adults who have a disability and are 18 years of age and over. Reports may be made anonymously.

FEE DISPUTE RESOLUTION PROGRAM

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

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

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

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

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

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

a mutual agreement in writing to participate in the FDRP.

You do not need to hire an attorney to participate in mediation or arbitration, but you have the right to bring an attorney with you, should you decide to do so.

This is a voluntary program. If there is no mutual Agreement to Mediate or arbitrate through the FDRP, the CCRFD cannot resolve the dispute. The CCRFD chair will usually give each party about two weeks to decide. The Virginia State Bar strongly encourages all attorneys and clients involved in a fee dispute to consider using the FDRP instead of resorting to court.

The CCRFDs are not part of the disciplinary system of the Virginia State Bar (VSB). Therefore, allegations of unethical conduct must first be reported to the VSB through the complaint process. You may call (804) 775-0570 for information about filing a misconduct inquiry. Outside Virginia call (866) 548-0873. If the VSB determines that no disciplinary rule has been violated, the matter may be referred back to the CCRFD for resolution of the fee dispute. However, in general the VSB disciplinary process does not address complaints about a lawyer's fee.

More information about the FDRP is at https://vsb.org/Site/03_Legal-Help/fee-dispute.aspx.

FINDING AND WORKING WITH A LAWYER

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

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

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

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

You might start by consulting the telephone directory or various online legal directories; talking with friends, neighbors and coworkers who may have used a lawyer for a legal matter similar to yours; or contacting the Virginia Lawyer Referral Service (https://vlrs.community.lawyer), or a referral service of a local bar association (e.g., https://www.alexandriabarva.org/Find-a-Lawyer, https://arlington.barlrs.com, https://www.fairfaxbar.org/page/LRS.) If you already know and trust a lawyer, ask them to refer you to another lawyer with the background and experience you need.

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

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

Once you've made a list of lawyers who may be suitable for your legal issue, contact the Virginia

State Bar Clerk of the Disciplinary System at (804) 775-0573 to check each lawyer's public disciplinary record. Ask if the lawyer has ever had any public disciplinary action taken, when and why. Also, ask if the lawyer has reported that he or she has malpractice insurance. A search on the bar's Web site will provide the same information. https://www.vsb.org/Shared_Content/Directory/va-lawyer-directory.aspx.

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

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

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

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

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

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

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

Even if your case is unsuccessful and you do not recover any money in a contingent fee case, some lawyers might require you to pay miscellaneous costs, such as a court reporter's charges for recording testimony at depositions and trial, word processing charges, copying and facsimile charges, expert or consultant fees, filing fees and other court costs, investigator's fees, postage and courier fees, service of process fees, travel expenses for the lawyer while traveling on your behalf, and witness fees and mileage charges for witnesses who appear at trial or depositions. These are just some examples. You need to find out clearly what expenses the lawyer anticipates will be associated with your legal matter and whether the lawyer expects you to pay these costs directly in advance or if the lawyer will be willing to deduct them from any settlement or verdict in the case. You should ask for an itemized receipt of all fees you pay your lawyer. You can tell your lawyer that you must approve all costs over a certain amount in advance. Also, make sure your lawyer agrees to consult with you before committing to any large expenses or costs, such as hiring an expert witness or consultant.

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

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

PERSONAL SAFETY AND SECURITY

Because of their age, older residents are often the target of crimes because they seem so vulnerable. Be especially alert and take steps to protect yourself and your property so you are not an easy target for would-be criminals.

A good starting point is contacting your local sheriff, police department, or TRIAD organization. TRIAD is a cooperative effort of law enforcement agencies (police/fire/sheriff), and senior organizations, focused on reducing crimes against seniors by increasing awareness of scams and frauds targeting them, strengthening communication between the law enforcement and senior communities, and educating seniors on local and state resources available in their community. There are over 200 Virginia counties, cities, and towns that participate in TRIAD. For more information, go to: https://oag.state.va.us/programs-outreach/triad-seniors.

Crime prevention is everyone's responsibility, not just a job for law enforcement. Seniors can protect themselves by following these simple, common-sense suggestions. Share these tips with your neighbors and friends to make it tough for criminals to work in your neighborhood:

At Home:

- Never open your door without thinking about who is at the door. Install and use a peephole.
- Lock your doors and windows. (Three quarters of the burglaries involving older persons involved unlocked doors and windows, and less than one half of these thefts are reported.) Keep garage doors closed and locked.
- Vary your daily routine.
- Use "Neighborhood Watch" to keep an eye on your neighborhood. A concerned neighbor is often the best protection against crime because suspicious persons and activities are noticed and reported to police promptly.
- Leave lights on when going out at night.
- Notify trusted neighbors and the police when going away on a trip. Cancel deliveries, including newspapers, and arrange for someone to mow the lawn if necessary. Arrange for mail to be held by the Post Office or ask a trusted neighbor to collect it for you.
- Be wary of unsolicited offers to make home repairs. Deal only with reputable businesses and check references or get recommendations.
- Keep an inventory with serial numbers and photographs of resaleable appliances, antiques, and furniture. Leave copies in a safe place.

- Don't hesitate to report crime or suspicious activities to your local police or sheriff's department.
- Install deadbolt locks on all your doors.
- Keep your home well-lit at night, inside and out; keep curtains closed.
- Ask for proper identification from delivery persons or strangers. Don't be afraid to ask . . . if they are legitimate, they won't mind.
- If a stranger asks to use your telephone, do not allow that person to come inside your home. If you believe that there is an actual emergency, offer to place the call for him or her yourself.
- Never let a stranger into your home.
- Do not leave notes on your door when you are gone, and do not hide your keys under the doormat, under a potted plant, or in other conspicuous places.
- Never give out information over the phone indicating you are alone or that you won't be home at a certain time.
- When you are gone for more than a day, make sure your home looks and sounds occupied. Consider using automatic timers to turn on lights, radio or TV.
- If you arrive at home and suspect a stranger may be inside, DON'T GO IN. Leave quietly and call 911 to ask for assistance.

Walking:

- If you are attacked on the street, make as much noise as possible by calling for help or blowing a whistle. Do not pursue your attacker. Call 911 and report the crime as soon as possible.
- Avoid walking alone at night. Try to have a friend accompany you in high-risk areas, even during the daytime.
- Always plan your route and stay alert to your surroundings. Walk confidently.
- Stay away from isolated buildings and doorways; walk in well-lighted areas.
- Have your key ready when approaching your front door.
- Don't dangle your purse away from your body. (Many crimes are purse snatchings and street robberies.)
- Don't carry large, bulky shoulder bags; carry only what you need. Better yet, sew a small pocket inside your jacket or coat. If you don't have a purse, no one will try to snatch it.

While Shopping:

- Never leave your purse in a shopping cart. Never leave your purse unattended.
- Don't carry any more cash than is necessary. Most retail stores accept checks and debit and credit cards which are safer.
- Don't ever display large sums of cash.

In Your Car:

- Always keep car doors locked, whether you are in or out of your car. But be sure to take your keys with you before you lock your car!
- Keep your gas tank full and your engine properly maintained to avoid breakdowns.
- If your car breaks down, pull over to the right as far as possible, call 911 or your roadside assistance provider, raise the hood, and wait INSIDE the locked car for help. Avoid getting out of the car and making yourself a target before help arrives.
- At stop signs and traffic lights, keep the car in gear.
- Travel well-lit and busy streets. Plan your route.
- Don't leave your purse on the seat beside you; put it on the floor where it is more difficult for someone to grab it, or keep it locked in the trunk.
- Lock bundles or bags in the trunk. If interesting packages are out of sight, a thief will be less tempted to break in to steal them.
- When returning to your car, look around the car, and check the front and back seats before entering.
- Never pick up hitchhikers.

Banking:

Many criminals know exactly when government checks arrive each month and they may pick that day to attack. Avoid this by using Direct Deposit, which sends your money directly to the bank of your choice. Many banks offer free checking accounts for seniors, particularly with Direct Deposit. Your bank can provide all the information to make this work.

- Never withdraw money from your bank accounts for anyone except YOURSELF. Be wary of con artists and get-rich-quick schemes.
- You should store valuables in a bank safe deposit box.
- Never give money or personal account information or passwords to someone who calls you, even if they identify themselves as a bank or government official. Government agencies and banks will never ask for information or for you to withdraw money.
- If someone approaches you with a get-rich-quick-scheme involving some or all your savings, recognize that it is his get-rich-quick-scheme.

If you have been swindled or conned, or if someone has attempted to swindle or con you, report the crime to your local police or sheriff's department or Commonwealth Attorney's office. Con-artists count on their victim's reluctance to admit they've been duped, but if you delay, you help them get away. Remember, if you never report the crime, they are free to cheat others again and again and you have no chance of ever getting your money back.

One other tool is an online collection of complaints filed with the Consumer Financial Protection Bureau (CFPB) against financial companies. You can use the database to check on firms, banks or lenders before you do business with them. If you are dissatisfied with the results of your complaints to them about services, you can submit a complaint to the CFPB yourself at https://www.consumerfinance.gov/complaint.

Using the Internet:

- Don't click on links in emails from unfamiliar senders. Be wary of any strange or unexpected messages, even if it's from someone you know.
- Don't open any attachments unless you know the sender and were expecting them to send it.
- Don't respond to or click on pop-up windows on your phone or computer.
- Don't conduct any transaction involving personal information while using a public (or unsecured) network.
- Don't trust a link sent to you by someone you don't know.
- Don't trust an e-mail that asks for your personal or account information (called a phishing scam).
- Don't open or respond to an e-mail or website with a deal that is too good to be true.
- Don't believe that someone you do not know is going to give you money.
- Don't believe a person who just needs you to "help transfer funds" and they need your bank account number to do so.
- Don't believe you won a lottery that you did not enter.
- Don't believe a rich, famous person just wants to help you out and they need your bank account information to do so.
- Don't respond to emails or text messages that require you to respond to a crisis – such as a problem with your bank account or taxes – or give sensitive information, such as your credit card number or bank account number.
- Don't send money or gifts to someone you met on a dating website or app whom you have not met in person.
- Don't rely on Artificial Intelligence (AI) for any legal advice or information.

VIRGINIA'S JUDICIAL SYSTEM

Virginia's Judicial System consists of Magistrates and four levels of courts. Each one serves specific purposes:

Magistrates: Citizens often encounter magistrates as their first point of contact with the judicial system. Magistrates are responsible for independently reviewing complaints of criminal conduct brought by law enforcement or the public. They issue various processes, including arrest warrants, summonses, search warrants, emergency protective orders, and more. Magistrates also conduct bail hearings to

determine pre-trial release conditions for individuals arrested.

District Courts: The unified district court system consists of the General District Court (GDC) and the Juvenile and Domestic Relations (J&DR) District Court. GDC handles criminal cases involving misdemeanors and civil cases with claims up to $25,000 (up to $50,000 in personal injury and wrongful death cases.) GDC also handles traffic infractions. J&DR handles a wide range of cases involving children, families, and domestic matters. These include protective orders, child custody, child visitation, child support, spousal support (or alimony), children in need of supervision or services, foster care, and termination of parental rights.

Circuit Courts: Circuit Courts are the only trial courts of general jurisdiction. They handle civil actions of various monetary claims, have exclusive original jurisdiction over most monetary claims exceeding $25,000, and various non-monetary claims. These include divorce, adoption, guardianships and conservatorships, and probate. They also handle criminal cases, including all felonies, which are more serious offenses punishable by imprisonment of over one year. Lastly, Circuit Courts handle appeals from GDC and J&DR final decisions, and are reheard de novo, which is a complete do-over with a new trial.

Court of Appeals: The Court of Appeals of Virginia reviews appeals of Circuit Court decisions. It must hear every such appeal because it is an "appeal by right." There is no new hearing, trial, testimony or evidence. Rather, the Court of Appeals of Virginia reviews the written record of the lower courts to see if there was enough evidence to support the decision, and whether the decision was correct as a matter of law.

Supreme Court: The Supreme Court of Virginia reviews appeals from decisions of the Court of Appeals of Virginia. It does not have to hear every such appeal because it is an "appeal by leave." As with the Court of Appeals of Virginia, there is no new hearing, trial, testimony or evidence. Instead, the Supreme Court of Virginia conducts a similar review of the written record of the lower courts to see if there was enough evidence to support the decision, and whether the decision was correct as a matter of law.

More information can be found at https://www.vacourts.gov/static/courts/cib.pdf.

PART 11 – TAXES

FEDERAL INCOME TAXES

As a caution to the users of this Handbook, the federal and state tax laws are a continuing source of political friction between the U.S. Congress and the Administration and are subject to change. The tax law enacted in July 2025 made significant changes to several provisions that will impact seniors, and several deductions, exemptions and credits will be adjusted for inflation annually. It is important to check for current advice and instructions in making your income, estate, gift and other tax-related decisions.

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

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

Federal income tax laws that affect seniors changed substantially in December 2017, and changed again in the 2025 tax law. Current information as of July 2025 is discussed in more detail on the following pages.

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

- Gross Income
- Minus Adjustments
- Equals Adjusted Gross Income
- Minus Standard Deduction or Itemized Deduction
- Equals Taxable Income
- Taxable Income times the Tax Rate (your tax rate depends on your filing status)
- Equals Tax
- Minus Credits
- Minus Withholding and Estimates paid
- Equals Tax Owed or Refund

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

There are five filing statuses: Single, Married Filing Jointly, Married Filing Separately, Head of Household, and Qualifying Widower. Your filing status is determined on the last day of the year, December 31. If you are married on the last day of the year, then you generally must use one of the two married filing statuses. Most people who are married choose married filing jointly because it is a more beneficial tax status than married filing separately. If you are not married on the last day of the year then your filing status will most likely be Single or Head of Household. If your spouse died within the last two years, then you might be eligible for the filing status of Qualifying Widower. The IRS instructions to Form 1040 provide all the detailed requirements for each filing status.

If your gross income exceeds a certain threshold then you must file an income tax return, IRS Form 1040. The requirement to file a federal income tax return this year depends on several factors, including your total income in 2024, the source of your income, your age and your filing status. Here is an overview of the IRS filing requirements for the 2025 tax season.

If your 2025 gross income, which includes all taxable income but excludes Social Security benefits (unless you are married and filing separately), was below the threshold for your filing status and age, you likely will not have to file a federal income tax return. The 2025 federal filing thresholds are the following:

- Single: $15,000 ($17,000 if you were 65 or older by Jan. 1, 2025)
- Married filing jointly: $30,000 ($31,600 if one taxpayer is 65 or older, or $33,200 if both taxpayers are over 65)

The definition of gross income for this purpose includes all income you received during the year, however, do not include social security unless one-half of your social security benefits plus your other gross income and any tax-exempt interest is more than $25,000 ($32,000 if you are married and filing jointly). The IRS usually adjusts these thresholds slightly upward each year because of inflation.

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

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

The due date for the IRS Form 1040 is April 15. If you cannot file your return by this date, then you can request a six-month extension from the IRS by filing Form 4868 by April 15. The extension to file your tax return is not an extension to pay your income tax. If you pay your income tax owed after April 15 then you will most likely incur penalties and interest. Even if you are not required to file a tax return it may be to your advantage to do so. Filing a tax return will start the three-year limitation period for the IRS to audit and assess tax. Additionally, low-income seniors may be entitled to tax credits that will generate a refund.

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

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

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

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

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

- The 2025 tax law does not eliminate taxes on Social Security Payments. Instead, the law enacts a $6,000 tax deduction for individuals aged 65 or older with income up to $75,000 – or up to $150,000 for married couples filing jointly. Each spouse can take the deduction, for a total of $12,000, if both are 65-plus. Above the thresholds, the deduction phases out, ending at incomes of $175,000 for individuals and $250,000 for couples. The deduction is temporary and set to expire after 2028 unless extended. The deduction applies to all of a senior's income — not just to Social Security benefits.
- Pension and IRA Distributions are another common form of income and are usually reported to you on Form 1099-R.

After you add up all your sources of taxable income on the Form 1040, you get to subtract either the Standard Deduction OR the Itemized Deductions. Most people choose whichever one is larger. Among the biggest changes to federal tax law that occurred in the years 2017 and 2025, was the increase in the Standard Deduction. As a result of this increase, a lot more people are choosing the Standard Deduction. For a tax filing in 2025, the Standard Deduction for unmarried people $15,750. The Standard Deduction for married people is $31,500. Additional deductions are available if you, or you and your spouse, are over 65 or blind. The July 2025 tax law provides an additional "Senior" deduction of $6,000 per taxpayer for those over 65 beginning in 2025 and through 2028. This additional deduction phases out for higher income taxpayers, however. Please be certain to review this information with your tax advisor as the new limits are incorporated into your tax planning.

Important Point: Whichever deduction you choose on your IRS Form 1040 – the Standard Deduction or the Itemized Deduction, you MUST choose the same thing on your Virginia income tax return Form 760. For a tax filing in 2025, the Virginia Standard Deduction is $8,500 for single filers and $17,000 for married filers filing jointly. There may be an occasion when you choose the Itemized Deduction on your IRS Form 1040 even though it is slightly lower than the Standard Deduction because it will result in a lower Virginia income tax.

The most common types of itemized deductions are:

- Medical expenses that exceed 7.5% of your adjusted gross income.
- State taxes, for example, state income taxes, state real estate tax, and state personal property taxes. This deduction is limited to $40,000 for 2025, but increases by 1% each year through 2029. In 2030 the limit reverts to $10,000 unless changed by legislation.
- Charitable contributions.
- Mortgage interest that you pay on a loan secured by your home. If your loan is more than $750,000 then your mortgage interest deduction might be limited. If you did not use the proceeds of the loan to buy, build or substantially improve your home, then your mortgage interest deduction might be limited. IRS publication 936 provides more information.

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

Contributions to Qualified Charities: If you plan to take an itemized charitable deduction on your income tax return, your donation must go to a qualified charity by December 31. Ask the charity about its tax-exempt status. You can also use the IRS Tax Exempt Organization Search Tool – https://www.irs.gov/charities-non-profits/tax-exempt-organization-search – to check if your favorite charity is a qualified charity. Donations charged to a credit card by December 31 are deductible for the year in which the charge is made to the credit card, even if you pay the bill in the following year. A donation made by check also counts for the year in which the envelope is postmarked. Gifts given to individuals, whether to friends, family, or strangers, are not income tax deductible. Gifts to candidates for political office are not tax deductible.

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

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

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

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

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

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

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

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

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

An individual who (a) is 65 or older, or (b) who is under 65 and who retired with a permanent and total disability and receives taxable disability income (a "qualified individual") may be eligible for this credit depending on their income levels. There are two income limits: an adjusted gross income that exceeds a certain amount OR if your total nontaxable social security and other nontaxable pensions, annuities, or disability income exceeds a certain amount. The maximum credit is between $3,750 and $7,500.

This credit will reduce the tax you owe, but it will not result in a refund. Contact your tax advisor or local IRS office if you think you may be eligible for the federal tax credit or see the IRS publications referenced above. The IRS has an interactive online tool to help determine your eligibility: https://www.irs.gov/help/ita/do-i-qualify-for-the-credit-for-the-elderly-or-disabled. IRS Publication 524 states that: "If you can take the credit and you want the IRS to figure the credit for you, check the appropriate box in Part I of Schedule R and fill in Part II and lines 11 and 13 of Part III, if they apply to you. Then, on Schedule 3 (Form 1040), line 6d, enter 'CFE' on the line next to that box. Attach Schedule R to your return."

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

For a tax filing in 2025, the maximum earned income tax credit (EITC) is $7,830 for low and moderate income workers and working families, and the maximum income limit for the EITC is $66,819. The

credit varies by family size, filing status and other factors. The IRS provides an interactive online tool that you can use to determine if you are eligible for this credit: https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/use-the-eitc-assistant

Selling Your Home: If you sell your home, you might have to pay tax depending on big your gain was. The gain on the sale of your home is calculated as follows:

- Selling Price
- Minus Selling Expense
- Equals Amount Realized
- Minus Adjusted Basis
- Equals Gain (or Loss)

Your adjusted basis generally will equal the amount you paid for your home plus any improvements that you made. Some examples of improvements that increase your basis are: additions to your home (such as a deck or patio), new roof or new siding, or new windows.

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

Even if your gain is fully covered by the exclusion, you may have to report the gain on your tax return if you received a form 1099-S when you sold your home. For more information see IRS Publication 523 available at https://www.irs.gov/pub/irs-pdf/p523.pdf

Gift Tax Exclusion: Effective January 1, 2025, a donor (someone giving a gift) may give up to $19,000 per year to as many recipients as he or she wishes without incurring gift tax.

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

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

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

STATE INCOME TAXES

Virginia income tax is calculated using Virginia Department of Taxation Form 760. The starting point for calculating your state income tax is your adjusted gross income as reported on IRS Form 1040. The Form 760 is available at https://www.tax.virginia.gov/sites/default/files/taxforms/individual-income-tax/2024/760-2024.pdf.

If your Virginia adjusted gross income exceeds certain thresholds then you must file a Form 760. The 2025 Virginia filing thresholds are the following:

- Single: $11,950
- Married filing jointly: $23,900

You must partially fill out Form 760 to determine your Virginia adjusted gross income. To determine whether you need to file an income tax form in Virginia, go to: https://www.tax.virginia.gov/who-must-file.

Remember: you *must file a Virginia income tax return to receive a refund from Virginia.*

The due date for the Virginia Form 760 is May 1. If you cannot file your return by this date, then Virginia grants an automatic six-month extension. No form is required. The extension to file your tax return is not an extension to pay your income tax. If you pay your income tax owed after May 1 then you will most likely incur an extension penalty and interest. For more information, please refer to the instructions for Virginia Form 760 found at: https://www.tax.virginia.gov/sites/default/files/vatax-pdf/2024-760-instructions.pdf.

PART 12 – HELPFUL CONTACTS

AREA AGENCIES ON AGING

To find your local Area Agency on Aging, contact the Department for Aging and Rehabilitative Services, Division of Aging at 804-662-9333 or toll-free at 800-552-3402 or at https://www.vda.virginia.gov/aaamap.htm

Or contact the Virginia Association of Area Agencies on Aging at 804-545-1644 or at https://vaaaa.org/25-area-agencies-on-aging.

CITIZEN HELP LINES

Alcoholics Anonymous – 800-839-1686

Information and Referral Services of Virginia - 211

National Suicide Prevention Lifeline – 800-273-8255 (800-273-TALK)

SAMHSA (Substance Abuse and Mental Health Services Administration) – 800-662-4357 (800-662-HELP)

Small Business Administration – 800-827-5722

Social Security Administration – 800-772-1213

Virginia Adult Abuse Hotline – 888-832-3858

CONSUMER PROTECTION

Better Business Bureau (BBB)
To find your local BBB, contact https://www.bbb.org/us/va

Virginia Attorney General
Consumer Protection Unit
804-786-2042 or 800-552-9963 or contact https://www.oag.state.va.us/consumer-protection/index.php/file-a-complaint

CREDIT BUREAUS

Equifax: 800-525-6285; P.O. Box 74024, Atlanta, GA. 30374; www.equifax.com

Experian: 888-397-3742, P.O. Box 9532, Allen, TX. 75013; www.experian.com

TransUnion: 800-680-7289; P.O. Box 6790, Fullerton, CA. 92834; www.transunion.com

DISCRIMINATION

disAbility Law Center of Virginia – 804-225-2042 or 800-552-3962 or contact https://www.dlcv.org

Equal Employment Opportunity Commission (EEOC) – 800-669-4000 or contact https://www.eeoc.gov/field-office/richmond/charge

Virginia Fair Housing Office – 804-367-8530 or 888-551-3247 or contact https://www.dpor.virginia.gov/FairHousing

EMPLOYMENT

Virginia Employment Commission – to file a claim for unemployment compensation, call 866-832-2363 or contact https://www.vec.virginia.gov/apply-unemployment-benefits

FUNERAL SERVICES

Virginia Board of Funeral Directors and Embalmers – 804-367-4479; Complaints contact 804-367-4691 or 800-533-1560 or https://www.dhp.virginia.gov/PractitionerResources/Enforcement

HEALTH CARE INFORMATION

Alzheimer's Association – call 800-272-3900 or contact https://www.alz.org/chapter-search

Medicare Hotline – 800-633-4227

Virginia Association for Hospices and Palliative Care – 804-740-1344 or https://leadingagevirginia.org

Virginia Department of Behavioral Health and Development Services – 804-786-3921 or contact https://dbhds.virginia.gov/contact/need-help

Virginia Department of Social Services, Adult Services – 804-726-1904 or contact https://www.dss.virginia.gov/adults.cgi

Virginia Public Guardianship Program – 804-588-3989 or contact https://vda.virginia.gov/publicguardianship.htm

HOUSING INFORMATION

Virginia Department of Housing and Community Development – 804-371-7000 or contact https://www.dhcd.virginia.gov/housing

Virginia Housing (formerly VHDA) – 804-782-1986 or 877-843-2123 or contact https://www.virginiahousing.com

LEGAL AID

To find your local civil legal aid program, call 866-534-5243 (866-534-LEGLAID) or contact https://www.valegalaid.org/find-legal-help

To find other legal help, go to https://vsb.org/Site/Site/legal-help/legal-help.aspx or download "Access to Justice" at https://vsb.org/common/Uploaded%20files/docs/pub-alsc-brochure.pdf

LONG-TERM CARE OMBUDSMAN

To find your local Long Term Care Ombudsman, call the Department for Aging and Rehabilitative Services at 804-565-1600 or 800-552-3402 or contact https://www.elderrights.virginia.gov/locations.htm

LONG-TERM CARE INSURANCE

Virginia Bureau of Insurance – 804-371-9741 or 800-552-7945 or contact https://www.scc.virginia.gov/consumers/file-complaint-consumers

NATIONAL ORGANIZATIONS

American Association of Retired Persons (AARP) – call 888-687-2277 or contact https://www.aarp.org for free access to materials on issues of interest to the elderly

American Bar Association Commission on Legal Problems of the Elderly – call 202-662-8690 or contact https://www.americanbar.org/groups/law_aging

National Consumer Voice for Quality Long Term Care – call 202-332-2275 or contact https://theconsumervoice.org

National Council on Aging – call 202-479-1200 or contact https://www.ncoa.org

NURSING HOMES, ADULT DAY CENTERS & ASSISTED LIVING FACILITIES

For complaints about Nursing Homes, call Virginia Department of Health, Licensure and Certification at 804-367-2106 or 800-955-1819 or contact https://www.vdh.virginia.gov/licensure-and-certification/complaint-unit

For complaints about Adult Day Centers and Assisted Living Facilities, call 800-543-7545 or contact https://www.dss.virginia.gov/about/email_licensing_complaint.cgi

RAILROAD RETIREMENT ACT BENEFITS

Railroad Retirement Helpline – 877-772-5772

SENIOR ATTORNEYS

American College of Trust and Estate Counsel – call 202-684-8460 or contact https://www.actec.org/find-a-lawyer/#/

National Academy of Elder Law Attorneys – call 703-942-5711 or contact https://www.naela.org/Web/Shared_Content/Directories/Find-a-Lawyer.aspx

Virginia Academy of Elder Law Attorneys – call 757-585-3989 or contact https://www.naela.org/Shared_Content/Directories/Chapters/VA/Find-a-Lawyer.aspx

SOCIAL SERVICES

To find your local Department of Social Services, call 804-726-7000 or 800-552-3431 or contact https://dss.virginia.gov/localagency/index.cgi

VETERANS' AFFAIRS

U.S. Department of Veterans Affairs, Roanoke Virginia Regional Benefit Office – call 800-827-2000 or contact https://www.va.gov/roanoke-va-regional-benefit-office

Virginia Department of Veterans Services – call 804-786-1286 or 844-838-7838 (844-VDVS-VET) or contact https://www.dvs.virginia.gov/benefits-services

VIRGINIA FREE LEGAL ANSWERS

To post a civil legal question at no cost to be answered by a volunteer pro bono attorney, contact https://virginia.freelegalanswers.org

VIRGINIA LAWYER REFERRAL SERVICE

For a referral to discuss your legal issues with a lawyer for up to half an hour for only $35, call 804-775-0808 or 800-552-7977 or contact https://vlrs.community.lawyer

VIRGINIA POVERTY LAW CENTER (VPLC) SENIOR LEGAL HELPLINE

For Virginians aged 60 and older, the Senior Legal Helpline provides information and guidance (but not representation) mainly on nursing home and assisted living issues, Medicaid eligibility and planning, elder abuse, neglect and financial exploitation, and Social Security. For assistance, call 844-802-5910.

Senior Virginians Handbook

We know your lifestyle doesn't slow down at age fifty-five. Today, Virginians are working well into their 70s and beyond. You are as busy as ever, with more challenges and opportunities and little time to research them all. While not intended to replace the legal advice of a lawyer, this book is intended to assist you in making informed choices.

The Senior Virginians Handbook was written by lawyers for older Virginians, families, and caregivers, and provides an overview of the issues and choices facing senior Virginians today. Packed with contact information and resources, this book can help you make educated choices about your lifestyle, financial, and health decisions, and help you find experts to support you when needed.

Programs presented by the Senior Lawyers Section of the Virginia State Bar using the Senior Virginians Handbook are available to the public. For more information, to schedule a program, or to order copies of the Senior Virginians Handbook, please use the form found at **https://bit.ly/VSBOrderForm** or call the Virginia State Bar at (804) 775-0500.