CONSUMER'S GUIDE to New Jersey Law

A New Jersey State Bar Foundation Publication

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Introduction

The New Jersey State Bar Foundation believes that **"informed citizens are better citizens"** and takes an active role in educating all New Jersey residents about the legal system and the rights it guarantees. To help you better understand your legal rights and responsibilities, the Foundation is pleased to present the *Consumer's Guide to New Jersey Law*. We hope this booklet provides you with basic information about different areas of the law relevant to your everyday life.

Buying or Selling a Home

What are some problems I might have?

Buying or selling a home is a major transaction. In fact, purchasing a home will probably be the largest single investment you'll ever make.

Because the transfer of property in New Jersey is very complicated, there are many serious problems that might crop up when you are buying or selling real estate.

For example:

- Missing heirs, forgers, invalid divorces, irregular foreclosures and other unexpected complications can leave the legal ownership of the property up in the air, even though the deed appears to transfer full title.
- You may not be able to determine personally beforehand whether the property has any serious physical defects like water conditions, structural problems, inadequate electrical wiring, termite infestation or random contamination.
- The seller's title to the property may be burdened with mortgages, easements, unpaid taxes or other liens.
- The description or survey of the property may be either inadequate or incorrect. You may actually be acquiring less property than you think you are.
- All important details of the transaction may not be included in the contract of sale. Even if you have verbally agreed upon an item, if it's left out of the contract, it's unenforceable.
- Deed or zoning restrictions may prevent you from using the property as you'd like.

What is the contract of sale?

A contract of sale is an agreement for the purchase and sale of real estate. This is the most important piece of paper involved in any real estate transaction because it sets the rights and responsibilities of the purchaser and the seller.

The contract may be called a binder, a broker's agreement, a memorandum of sale or a deposit receipt. Whatever it's called, if the paper contains the essential parts of a contract, it is a legal contract of sale. After this is signed, no further "formal" or "legal" contract is needed to bind you. From then on, any dispute between the buyer and seller will be settled by referring to the provisions of the contract.

The parties to a real estate contract by a licensed real estate broker have three business days to have the contract reviewed by their respective attorneys. The attorney can have the contract amended or even cancel the contract provided that the attorney is afforded the opportunity to review the contract and consult with you in a timely fashion.

For your own protection, it is important to consult your attorney within three business days after signing a broker-prepared contract for the sale or purchase of real estate.

How can a lawyer help?

When you retain the services of an attorney, he or she will guide you through all aspects of the real estate transaction.

For example, an attorney can help the purchase by:

- Preparing, reviewing and explaining the contract of sale; and attempting to amend it, if necessary within the three-day review period.
- Helping you to get answers to questions concerning termite, structural, and radon inspections, the

zoning status of the property, restrictions on property use and property insurance.
- Assisting you with your mortgage commitment and explaining your prepayment rights.
- Ordering and then reviewing the survey and all title searches that will define the description, location and legal ownership of the property.
- Helping to settle any title problems.
- Settling any problem regarding the transfer of occupancy, closing date, and possession.
- Determining adjustments for taxes and other costs,
- Preparing the final closing statement and documents.
- Representing you and advising you at the closing and making sure that your interests are properly protected. The closing is the meeting at which such documents as the seller's deed and affidavit of title and the buyer's note and mortgage are signed. The balance of the selling price is paid to the seller at that time.
- Recording the deed and mortgage and canceling any existing mortgages and liens.
- Obtaining title insurance policies covering your ownership interest and the mortgage interest of lending institution.
- Delivering all important documents to you for safekeeping after closing

The seller's attorney can help by:

- Preparing, reviewing and explaining the contract of sale; and likewise attempting to amend this contract, if necessary, within the three-day period.
- Gathering important title information for the purchaser's lawyer. This will help speed the search and survey process.
- Resolving any title problems revealed by the searches.
- Cooperating with the purchaser's attorney in settling possession and closing date problems.
- Helping you to determine the correct balance due on your mortgage.
- Cooperating with the purchaser's attorney in preparing the final closing statement.
- Preparing the deed, affidavit of title, survey affidavit and other necessary documents.
- Representing you at the closing and making sure that you receive the correct proceeds from the sale.

What fees and charges are involved in buying or selling real estate?

Here are some important points to remember about real estate fees and charges:

- Funds paid to your attorney are divided into two parts. These are (1) the attorney's fee and (2) reimbursement for the cost of searches, surveys, recording costs and title insurance premiums.
- In addition, lender's charges, including the application fees and other charges and escrows for taxes and insurance required by the lender, must be paid by the purchaser.
- Real estate brokers generally charge a commission to the seller based on a percentage of the sale price. Some brokers do not represent the seller but represent the buyer and charge a commission to the buyer. The broker must disclose this information to the seller and buyer in advance.
- Homeowner's insurance provides coverage against liability for fire, theft, accidents and so on. You must pay a yearly premium to continue your coverage.
- Flood insurance may be required or recommended in some areas. For this coverage you must pay a yearly premium.
- Title insurance is insurance against title defects that didn't show up in the public record. The premium is paid at the closing and the coverage continues as long as you own your home.
- Realty transfer tax (generally paid by the seller).

Landlord/Tenant Rights and Responsibilities for Residential Property

What is the Truth in Renting Act?

This law provides for the preparation, updating and distribution of a statement of rights and responsibilities of landlords and tenants in New Jersey as well as "landlord disclosure statement." Landlords are required to distribute a rights and responsibilities statement to all tenants with a rental term of at least one month who are living in a building with three or more apartments. The *Truth in Renting* statement is meant to be an informational document; it isn't exhaustive or detailed. Anyone who wishes to take action based on the statement should contact an attorney or the Office of Landlord/Tenant Information, State Department of Community Affairs, P.O. Box 800, Trenton, NJ 08625-0800; a county legal services agency; or a landlord/tenant or mobile home organization.

Landlords are required to distribute *The Truth in Renting* to their tenants. The booklet is available free and may be downloaded from the Department of Community Affair's website (http://www.state.nj.us/dca/). The booklet is no longer available for sale through the DCA, however, both landlords and tenants may print copies directly from the website for distribution.

What happens to my security deposit?

The security deposit can't be more than one and a half times one month's rent. Because this money continues to be the property of the person who makes the deposit, it is only held in trust by the person receiving the money. The security must be deposited in a bank or a savings and loan association in New Jersey in an interest-bearing account at the current rate.

The tenant must be told in writing within 30 days of deposit: 1. The name and address of the bank; 2. The type of account; 3. The current rate of interest; and 4. The amount deposited. If the tenant isn't notified he or she may choose to have the money applied to rent payment by notifying the landlord in writing and is entitled to a seven percent per year interest rate.

What happens if my security deposit isn't returned to me when I move?

If a landlord doesn't return your security deposit within 30 days, you may sue. If the tenant is successful, the court may award double the amount owed, plus full court costs. The court also may award reasonable attorney's fees.

What else could happen to a security deposit?

It can be applied toward unpaid rent or other charges that you owe, or to the cost of repairing any damage that you caused to your rented premises.

If a landlord does not return your security deposit within 30 days or provide you with a written explanation of the damages and charges that justify the non-return of the security deposit, you may sue. If the amount of damages caused by a tenant is greater than the security deposit, a landlord may sue the tenant for the additional money.

If a building is sold, the original landlord must turn over the deposit plus any interest that has been earned to the new landlord and let the tenant know (by registered or certified mail) that the new landlord will be responsible for it.

(See the section of this booklet dealing with small claims court for information on suits under $3,000. However, a small claims suit for the collection of a security deposit has a limit of $5,000.)

What New Jersey laws forbidding discrimination apply to landlords and tenants?

The New Jersey Law Against Discrimination requires equal treatment regardless of race, creed, color, national origin, ancestry, age, marital status, familial status, sex or sexual orientation, atypical cellular or blood trait, genetic information or service in the armed forces. Discrimination complaints should be reported to the Division on Civil Rights, New Jersey Department of Law and Public Safety. Regional phone numbers follow:

South Shore Regional Office
609-441-3100; TTY: 609-441-7648

Southern Regional Office
856-486-4080; TTY: 973-648-4678

Northern Regional Office
973-648-2700; TTY: 973-648-4678

Central Regional Office
609-292-4605; TTY: 609-292-1785

Unreasonable discrimination in renting or leasing a dwelling to a family with children also is prohibited, as is refusing to rent or seeking to void a lease to

someone because of the birth of a child. New Jersey law also prohibits discrimination based on a tenant's source of lawful income (such as Section 8 or Welfare). To file a complaint, contact your attorney or the nearest regional Office of the Division on Civil Rights for more information.

What if I don't pay my rent?

If a tenant has not paid rent that is due within the time permitted by any grace period provided by the lease or by state law, a landlord can file a complaint to evict the tenant in Landlord/Tenant Court (Special Civil Part-Landlord/Tenant Division). The tenant can prevent eviction by paying all the money due the landlord plus the landlord's court costs (filling and service fees) to the landlord or to the clerk of the court on or before the day of court.

A landlord is prohibited from taking a residential tenant's possessions for non-payment of rent.

Is there rent control in New Jersey?

Not on a statewide basis. However, a rent increase must not be unconscionable and must comply with state law and municipal ordinances.

New Jersey law provides that a tenant is entitled to written notice of any rent increase whether or not there is a rent control ordinance in effect in the town or city. The notice should be sufficient in advance of the time the new rent goes into effect so that tenant has an opportunity to decide whether to pay the increase. A lease may require a longer period of time, but the minimum required by state law for a month-to-month tenancy is one-month advance notice of the increase.

Who has to take care of the dwelling?

In general, a tenant must protect and preserve a landlord's property. A tenant must notify a landlord when there are conditions that must be repaired. You must return a property to your landlord in generally the same condition as you received it, except for normal wear and tear.

In turn, the landlord must keep the property in livable condition. The New Jersey Supreme Court has held that a landlord offering a dwelling unit for rent implies that it is in livable condition. It is understood that a landlord will repair damage to vital facilities caused by normal wear and tear.

Are there heat standards for apartments?

Yes. The landlord is responsible for maintaining the heating system. Every unit must contain facilities that will provide and maintain heat at 68 degrees Fahrenheit from October 1 to May 1.

The landlord must also supply the fuel source to operate the heating system if it serves multiple units. A landlord and tenant can agree that the tenant will pay the bill to supply the heat to a unit when the unit is served by separate heating equipment and a separate bill can be given.

For emergency action in the event of failure to supply the required heat, contact the person designated in your lease or in the landlord's registration statement. If this does not work, contact your municipal health officer or the Office of Landlord/Tenant Information in Trenton.

Can I be evicted?

A landlord may recover possession of a property only through proper legal channels. There are a number of causes for eviction. Each cause, except for failure to pay rent, must be described in written form to a tenant. Depending on the cause, a certain amount of time must pass between the delivery of the notice and the eviction action.

In some cases, a landlord is required to give a tenant a preliminary written notice to stop an act. Only when a tenant continues that act after the first notice does a landlord have cause for eviction.

Some common causes for eviction, notice requirements and time before legal action for eviction are as follows:

- Failure to pay rent. (No written notice is required; legal action may be started immediately.)
- Continued disorderly conduct after written notice to cease. (legal action may be started three days after a second written notice.)
- Destruction, damage or injury to premises willfully or through gross negligence. (legal action may begin three days after written notice.)
- Substantial violation of rules and regulations after a written notice to cease. (The rules must have been accepted by the tenant or made a part of the lease at the beginning of the lease term. Legal action may begin one month after the second written notice.)
- Habitual failure to pay rent on time. (If the tenant has paid rent late on multiple occasions, the landlord must send written notice as required by law prior to commencing a legal action for eviction.)

For a complete list, contact the Department of

Community Affairs or consult your attorney.

If a landlord is successful in court at getting a judgment for possession of the rental unit, a tenant might be locked out of the apartment in as little as nine days.

If a landlord files an eviction action they may be entitled to collect reasonable attorney fees. If this is the case, and the tenant is successful in disputing the landlord's claims, the tenant may also be entitled to reasonable attorney fees.

Divorce

Where can I get help with marital problems?

An attorney, religious leader or social agency can refer you to a marriage counselor, psychologist or special service group for advice about solving family problems.

What will a lawyer talk about during the first conference?

In most cases, a lawyer will discuss several topics, including:

- The possibility of solving marital problems through counseling.
- Assistance to you as a parent in meeting your children's needs.
- Dissolving the marriage by divorce.
- Financial matters involving child support, alimony, real estate and personal property.
- Legal rights of the parties.
- Court procedures.
- Procedures in the lawyer's office for handling the case.
- Legal fees and court costs.
- Mediation or arbitration as an alternative to trial.
- A collaborative divorce.

How is divorce started?

The lawyer for the individual seeking the divorce will file a formal document (called a complaint for divorce) with the appropriate court. This complaint includes information on the marriage, residency, present living arrangements, children of the marriage, previous court actions (if there are any) relating to the marriage, and the specific cause claimed for seeking a divorce. The most common cause is irreconcilable differences. A copy of the filed complaint will be served on the spouse, either by mail or in person by the sheriff, or on the spouse's attorney.

What should I do if my spouse has filed for divorce?

You should consult an attorney for advice right away. You may contest the reason claimed for the divorce, or contest child custody, support, alimony, and/or property division by filing the proper papers and appearing in court. You only have 35 days to answer the complaint so you must respond quickly.

Or you may allow the case to be decided by default if you do not contest the basis for the divorce or you have no children or property, and you do not need any support. However, you will be bound by the judge's decision at the entry of a Final Judgment of Divorce. Failure to follow court orders could resort in jail time, fines, community service, damages and payment of the other person's legal fees. *It is generally not advisable to allow a case to be decided by default without input from you.*

Even if you and your spouse have reached an agreement on support, alimony, property distribution, or other issues, each of you should seek a review of the agreement by your own independent attorney. Your attorney will let you know what your rights are, choices you can make and any possible consequences of actions you might take.

How long does it take to get a divorce?

The time it takes to get a divorce depends on many factors, including the degree to which you and your spouse have agreed on related matters, and on the current backlog of matrimonial cases in your county. Your lawyer can offer some general guidance on the length of the delay that you might expect in your divorce. A general guide, however, is that if both the husband and wife have agreed on all aspects of the divorce, a final court ruling will usually take three or four months. If aspects of the case are contested, a final decision may take anywhere from eight or nine months to several years, depending upon the complexity of the case and the backlog in your county.

Will the court make any temporary decisions?

If it's necessary, the court can make temporary decisions about: custody of minor children; alimony and

child support; who will live in the home that you and your spouse shared; disposal of property to ensure payments of support or to protect a spouse's share in the property; parenting time for the spouse who does not have physical custody of the children; and any other temporary orders at the formal request of a spouse or because the judge believes it will be in the best interest of justice.

What happens while I am waiting for the court's decision on a final divorce?

After all papers are filed, there is usually a delay of at least several months before a judge can hear the case. During this time, the attorneys for both sides exchange information and financial documents in your case, and try to help the parties settle financial questions and other differences. The husband and wife may sign a written statement agreeing to a particular division of marital property, child custody, support, alimony and other financial matters.

What are the grounds for divorce in New Jersey?

Under New Jersey law, a divorce may be granted for any of the following causes:

- Irreconcilable Differences
- Adultery.
- Willful and continued desertion for 12 or more months. Either physical desertion or refusal to have sexual relations with the other spouse may establish this cause.
- Extreme cruelty, including any physical or mental cruelty that endangers your safety or health, or which makes continued living together improper or unreasonable. The law requires, however, that no complaint for extreme cruelty can be filed with the court until at least three months after the last act of cruelty listed in the complaint.
- Separation, if separate and different places of living have been maintained for at least 18 consecutive months or more and there is no reasonable prospect of reconciliation.
- Voluntarily induced addiction for habituation to a narcotic drug or habitual drunkenness for 12 or more consecutive months.
- Mental illness that resulted in the spouse being kept in an institution for 24 or more consecutive months after the marriage was begun.
- Imprisonment of the spouse for 18 or more consecutive months after the marriage was begun. (This cause for divorce can be charged after the defendant's release from prison only if the husband and wife have not resumed living together after imprisonment ended.)
- Deviant sexual conduct voluntarily performed by the defendant without the consent of the spouse. Incompatibility is not grounds for divorce in New Jersey.

What is a "no fault" divorce?

"No fault" is the term people use to describe a divorce based on separation in different homes for 18 or more consecutive months. If a husband and wife have lived separate and apart for that length of time, either may file for divorce. You must be separated for 18 months before you can file for divorce under "no fault" since the length of the separation is the grounds for the divorce. Irreconcilable differences is also a no fault ground. All of the other causes are fault grounds—and fault must be testified to.

Who will get custody of the children?

The welfare of minor children is of major concern to the court. Both parents must participate in a mandatory Parents' Education Program. Property rights and welfare of the adults involved are secondary. Neither parent is entitled to custody of any children automatically. Divorcing parents may come to an agreement by themselves as to custody and parenting time arrangements. If the court decides these matters, the judge must consider many factors that will be discussed in court at a hearing. The factors include the age and sex of the children, stability of the child, compatibility with each parent, ability of the parent to care for the children, the personal conduct of each parent to care for the children, the personal conduct of each parent and the preference of the children, who may be interviewed by the court. Courts encourage mediation programs to assist the parties in resolving these issues for themselves. Custody orders may take several forms including sole custody; joint legal and/or joint physical custody; split custody; or any other arrangement, which is in the children's best interest.

Will there be alimony? Support?

If you and your spouse cannot reach an agreement on these issues, the judge will decide these and other issues after receiving all the evidence including the needs of the parties; the income and/or earning potential of each party; the length of the marriage and the lifestyle of the marriage. You are required to file a

financial disclosure form called a *Case Information Statement*. Your lawyer will help you make your financial needs and wishes clear to the judge.

Who will get the property?

In New Jersey, each spouse is entitled to a fair share of all property acquired during the marriage. If there is no agreement by you and your spouse, the judge will decide on "equitable distribution" of property after hearing testimony. Equitable distribution is not necessarily a 50-50 division because New Jersey laws do not establish "community property."

When is a divorce final?

When the judge issues an order declaring that a marriage has ended under the laws of New Jersey, the divorce is final, subject only to an appeal of that decision.

Are all arrangements final after the judge has entered the decree?

Not necessarily. After a divorce is final, changes in some arrangements (like custody, parenting time and support) may be considered if either party can show a judge that circumstances have changed substantially. Equitable distribution is usually not modifiable.

A modification in support arrangements may be called for if there have been changed circumstances that substantially hurt the dependent spouse's ability to maintain the standard of living which was reflected in the original decree. Criteria that may influence the court to order a modification might include inflation, a decrease or increase in either party's income, illness, disability, the decision of the dependent spouse to live with another person or a new job. Be aware, though, that each individual case will be considered upon the circumstances of that case.

Domestic Violence

What should I do if I am threatened or assaulted?

- Call the police.
- Contact the State Domestic Violence Hotline at 1-800-572-SAFE (7233), if you are in need of emergency shelter, counseling or other services.
- A temporary restraining order can be obtained at the Family part of the Superior Court, Monday to Friday between 8:30 a.m. and 3:30 p.m.
- On weekends, holidays and other times when the Superior Court is closed, the police can assist in obtaining a temporary restraining order by contacting a municipal court judge.
- File criminal charges against the perpetrator.

What is Abuse under the Prevention of Domestic Violence Act (PDVA)?

Under the PDVA, abuse is defined as any of the 14 following crimes:

1. Homicide
2. Assault
3. Terroristic threats
4. Kidnapping
5. Criminal restraint
6. False imprisonment
7. Sexual assault
8. Criminal sexual contact
9. Lewdness
10. Criminal mischief
11. Burglary
12. Criminal trespass
13. Harassment
14. Stalking

What is a restraining order and how can it help me?

A restraining order is a civil order issued by a judge that provides protection for you and your family from abuse by a present or former spouse, present or former household member, from a person you've had a dating relationship with, or a person you have a child in common with or expect to have a child with.

You can file for a restraining order where the domestic violence occurred, where you live, where the defendant lives, or where you are sheltered or are temporarily staying.

Under a temporary restraining order (TRO) the following relief can be granted:

- Forbidding the defendant from entering the home you live in or going to your place of employment.
- Forbidding contact with you or your relatives.
- Forbidding the defendant from possessing any firearm or order the police to search for and seize any weapon or firearms permit.

- Temporary custody of any children or animals.
- Anything else the judge believes is appropriate.

A final restraining order (FRO) hearing is normally scheduled to be heard in Superior Court within 10 days of you obtaining a TRO. If your FRO is granted, additional relief including but not limited to the following can be ordered:

- Temporary spousal support and/or child support.
- Sole possession of a shared residence.
- Payment for reasonable losses resulting from the abuse (i.e. cost of injuries, attorney's fees).
- Completion of a Batter's Intervention program by the defendant.

If you would like a lawyer to help you protect your rights, you may obtain the name of an attorney by calling a county bar association Lawyer Referral Service. If you cannot afford a lawyer please contact Legal Services of New Jersey or your county's local legal services office to see if you qualify for free legal services. For more information about domestic violence, please visit the New Jersey Coalition to End Domestic Violence online (njcedv.org) or contact their office at 609-584-8107.

The New Jersey State Bar Foundation also publishes a free booklet, *Domestic Violence: The Law and You,* which may be downloaded or ordered from the Foundation's website (njsbf.org). You may also call 1-800-FREELAW to obtain a copy.

Child Abuse

How do I report child abuse?

New Jersey law provides that, "Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately to the Division of Child Protection and Permanency (DCPP) by telephone or otherwise."

Trained family service specialist in each local DCPP district office receive, screen, evaluate and investigate reports of child abuse and neglect in order to ensure the safety of children and protect them from imminent harm.

Reports of child abuse, neglect or abandonment should be made to your nearest DCPP district office during business hours. However, you can call a toll-free child abuse statewide hotline, 1-877-NJ ABUSE (1-877-652-2873), 24 hours a day, seven days a week. Where possible, information should include names and addresses of the child and his or her parent(s) or guardian(s), the child's age, the nature and extent of the child's injuries, abuse or maltreatment and any other information the person believes may be helpful with respect to the child abuse and the identity of the perpetrator.

All records of child abuse and all information obtained by the DCPP in investigating such reports, including the name of the person reporting, are confidential under state law and can only be released under strictly limited circumstances listed in the law.

Abuse is defined as the physical, sexual or emotional harm or risk of harm to a child under the age of 18 caused by a parent or other person who acts as a caregiver for the child. Neglect is defined as occurring when a parent or a caregiver fails to provide proper supervision for a child or adequate food, clothing, shelter, education or medical care although financially able or obligated to do so.

Wills

What is a will?

A will is a written document that directs how your probate estate (such as real property, stocks, bonds and your personal effects) will be distributed after your death. A will also states who will administer your estate (i.e., an executor). It can also appoint a guardian for minors or mentally incapacitated children and a trustee for trusts you created under your will.

It is important to note that the probate estate does not include assets held jointly with right of survivorship, which pass to a survivor, regardless of what your will provides. The probate estate also does not include retirement assets, which designate a beneficiary other than your estate.

Do I need a will?

Yes, if you want your own wishes to govern who will receive your property and who will manage your estate.

What if I die without a will?

If you die without a will, New Jersey's statutes will determine how your probate estate will be distributed. If you are survived by a spouse and children of that marriage, your spouse will receive everything. If any of your children have a parent other than your surviving spouse, your spouse will receive 25 percent of your estate (but not less than $50,000 or more than $200,000), plus half of the balance; your children will receive everything else. If you are not married and have no descendants, your parents will inherit your estate, or if neither of your parents is living, other specified family members will inherit your estate.

If you die without a will, an administrator will be appointed to manage your estate. Generally, a family member will be appointed by the court as the administrator and will typically have to pay for a surety bond before being authorized to serve.

If your children are minors, their inheritance will generally be held by a court-appointed guardian of their property. The guardian is most often the surviving parent and generally must obtain a surety bond, which is a cost that can be avoided with a will. Funds held by a guardian are turned over to your child when the child is 18. If you want the funds held for a child to a later age, you will need to make such provisions in your will by creating a trust and appointing a trustee.

Can I prevent my spouse from getting my property?

Possibly. You can disinherit your spouse in your will. However, certain laws exist to protect a spouse if this happens. For example, New Jersey provides a surviving spouse with a right to take an elective share (which is up to one-third of certain assets), but there are several conditions that must be satisfied before a spouse is entitled to an elective share. If you and your spouse executed a valid prenuptial agreement waiving the right to an elective share or if grounds for divorce exist at the time of your death, your spouse will not be entitled to an elective share.

Property that you own jointly with right of survivorship with your spouse, as well as any life insurance, IRAs, 401(k) plans and similar retirement plans for which you designate your spouse as the beneficiary, will pass to your spouse regardless of what your will says.

May I change my will?

Certainly. A will may be changed or revoked in its entirety prior to your death provided that you have the mental capacity to change or modify it. To make changes to your will, you must either create a new will or execute an amendment, which is known as a codicil.

How much does it cost to make a will?

The cost will vary according to each person's needs. Unfortunately, many individuals get inadequate generic wills when they are looking for a bargain. An attorney should analyze your personal situation prior to preparing your will.

Can a will save money?

Absolutely. A will can eliminate the requirement of a surety bond, which will save money in even modest estates. For larger estates, a properly drafted will can often reduce federal estate taxes and New Jersey inheritance taxes by establishing trusts and providing directions as to how long a beneficiary must survive you in order to inherit under your will.

How do I make a will?

A will must be in writing and follow requirements established by New Jersey statute. A will may be executed by any competent person who is at least 18 years of age in the presence of two witnesses who sign the will as such. The will may also be "self-

proved," which means that the person making the will and the two witnesses acknowledge certain facts before a Notary Public or other person authorized to take acknowledgements. If it is self-proved, it will not be necessary for either of the witnesses to make statements regarding the execution of the will when it is offered for probate after your death. Because a self-proved will simplifies the process after your death it is preferable to follow this procedure.

A will that is not witnessed by two persons may be valid only if the signature and material provisions of the will are in your own handwriting. Such a will is called a holographic will. Although preparing your own will may sound attractive to you, the procedure for getting this type of will admitted to probate after your death is far more complex, time-consuming and expensive than the procedure for getting a will that is properly executed and witnessed admitted to probate.

It is recommended that a will be prepared by an attorney experienced in estate planning. If a will is vague or creates questions regarding interpretation, or fails to provide for a contingency, it could be subject to expensive court proceedings.

Living Wills

What is a living will and should I sign one?

The term "living will" has a special meaning and should not be confused with your will which passes property to loved ones. Like a will, it is in writing, but it contains instructions for your medical care if a time comes when you cannot personally make decisions about your care. If you do not have a living will, now is the right time to consider signing one.

You have the right to decide whether to accept or reject medical treatment when you are ill. Because of temporary or permanent loss of mental capacity, many of us would be unable to exercise our rights to participate in those decisions. A clear statement of your wishes, particularly with respect to the administration or withholding of medical procedures, will be binding on physicians and other health care providers. Such a statement has been referred to as a living will because it makes your intentions clear but the term instruction directive, as used in the New Jersey law governing living wills, is more accurate.

An instruction directive can (and often should) be combined with a proxy directive. A proxy directive appoints another individual (e.g., family member or friend) to make decisions for you when you are not able to do so. This proxy directive can address the many possibilities that may prompt you to consider making a living will in the first place. These include changes in medical techniques or the possibility that an illness suffered during incapacity may not be terminal. The individual named in your proxy directive must act consistently with your instruction directive, making specific decisions in light of your expressed intention.

What is the New Jersey Advance Directives for Health Care Act?

The New Jersey Advance Directives for Health Care Act took effect on January 7, 1992. The advance directive for health care may include a "proxy directive" and/or an "instruction directive." A proxy directive appoints a health care representative to make health care decisions in the event of incapacity. An instruction directive is a statement of an individual's personal wishes with regard to health care in the event of loss of decision-making capacity.

An advance directive becomes operative when transmitted to the attending physician or health care institution and when the person is determined to lack capacity to make a particular healthcare decision. Such finding of a "lack of capacity" must be determined by an attending physician and verified by another physician.

The law provides for the removal of life-sustaining treatment if the patient is permanently unconscious, the patient's condition is terminal, or if the treatment is experimental and is likely to be ineffective or is likely to merely prolong an imminent dying process. Life sustaining treatment may also be withdrawn if the patient has a serious irreversible illness and the risks and burdens of the treatment reasonably outweigh the benefits of the treatment to the patient or imposition of treatment on an unwilling patient would be inhumane. If the circumstances described above do not exist, the living will does not apply and the validity of the advance directive will depend on certain constitutional issues involving the right to refuse treatment.

If an advance directive is unclear with regard to

particular treatment, the physician must consult with the patient's healthcare representative, and perhaps the patient's family and exercise reasonable judgment to carry out the patient's wishes, giving consideration to the intent and spirit of the directive.

It should be noted that healthcare professionals and religiously affiliated healthcare institutions may adopt policies and refuse to carry out the patient's wishes to have life-sustaining treatment removed. In such a case, they must facilitate the timely transfer of the patient to another suitable healthcare facility. Healthcare institutions and providers acting in good faith and in accordance with the provisions of this act in order to carry out the terms of an advance directive are immune from legal liability and from discipline for unprofessional conduct. A health care institution that willfully fails to carry out the provisions of this act shall be subject to civil penalty of up to $1,000 for each violation.

For additional information and forms, visit the New Jersey Department of Health and Senior Services, Division of Senior Affairs (http://www.nj.gov/health/advancedirective) or call 1-800-792-8820.

Violent Crime Compensation

Can victims of violent crime receive compensation from the state?

Yes, under the law innocent victims of certain types of crime can receive compensation including reimbursement for losses and payment of bills related to the crime.

What is the Victims of Crime Compensation Office?

The VCCO is an office established to assist victims of crime. Each state has such an office that compensates victims for losses as allowed by each state's statute.

Who can file a claim?

The injured person or surviving spouse or child of a person who dies as the direct result of a crime; or a relative who was dependent on such a victim, can file for a claim. However, if you are the person who was responsible for the crime upon which a claim is based or an accomplice or a member of the family of such a person, you're not eligible for compensation.

What requirements do I have to meet?

As highlighted on the VCCO's website (njvictims.org), an applicant must establish that he or she is an innocent victim; that he or she filed a timely report; that the losses are compensable and that he or she meets statutory filing timelines.

For more information concerning your rights as a victim of a violent crime, contact the Victims of Crime Compensation Office at 1-877-658-2221 or njvictims@njvictims.org.

If I am confused, should I hire an attorney?

The Agency does not provide legal advice, but its staff will assist victims. Of course, all citizens have the right to hire attorneys. In a minority of cases, attorneys assist victims, especially those involving domestic violence, ongoing marital issues and civil suits. In certain circumstances, minimum attorney fees are paid. Please go to the website (njvictims.org) for more details or call the Agency.

Your Rights if Arrested

When can I be arrested?

A police officer may arrest you if the officer has a warrant for your arrest or if the officer does not have a warrant for your arrest but sees you violate or attempt to violate the law. An officer may also arrest you if he or she has probable cause to believe that you have committed a crime. This means that even if the officer was not present when the crime was committed, if the officer has reasonably reliable information that you were the person who committed a crime, he or she may act on that information.

What is an arrest warrant?

An arrest warrant is a court order requiring law en-

forcement to place into custody (i.e., place under arrest) the person named in the warrant. It is usually a statement setting forth the probable cause to believe that the person named in the warrant committed a crime. If you ask, the police are required to show you the warrant.

Can the police use force to arrest me?

If you resist a lawful arrest, the police officer can use all reasonable force to arrest you. However, after you have been restrained, the officer cannot continue to use force.

What if I am innocent?

Even if you think you are not guilty, it is a crime to resist an officer who arrests you lawfully. Do not talk back or act disorderly. If it turns out that you have been arrested illegally, the law gives you the right to seek money damages from the wrongdoers.

If the police officer does not have a search warrant, do I have to submit to a search?

A police officer, subsequent to a lawful arrest, has a right to search your person.

Under certain circumstances, automobiles that you may have been in and the surrounding area in which you were arrested may be subject to a search. You may not resist the officer but you are under no obligation to sign a consent authorizing a police officer to search anything. You should not, however, resist or interfere with the police officer's conduct. The vindication of your rights, if they have been violated, will come later.

Do I have to submit to a chemical test?

New Jersey law allows an officer who has reasonable cause to believe you are drinking or under the influence of a drug while operating a motor vehicle on public roads, to request that you take a breath test. You have no right to consult with an attorney before taking a breath test. If you refuse, your driver's license may be suspended for six months. If you submit to the test, the result may be used in evidence against you for that particular charge. You do not have to consent to a blood test.

What happens after I am arrested?

After an arrest is made, normally you will be taken to the police station where you will be processed and "booked." If your arrest is for a minor offense, you will probably be released right from the police station. If the arrest is for a more serious offense you will be transported to a holding facility such as county jail, and will be held there pending the review of your bail status by a judge. You have a right to call your lawyer and you have a right to consult with a lawyer.

Do I have to answer any questions?

It is your right under the U.S. Constitution to refuse to answer any questions, sign any statements, or take any tests (other than a breath test) concerning the crime. You may have the aid and advice of a lawyer at all times. (This includes a public defender if you can't afford a private attorney in New Jersey.)

After identifying yourself, you may refuse to make any further statements. Of course, you may give up these rights. You may, if you choose, make statements, sign papers and take tests. Any information obtained from you voluntarily, and without the use of force or intimidation, may normally be used against you in court. When you are arrested, under the *Miranda* decision, the arresting officer has the obligation to advise you of all of these rights.

An oral admission of guilt is a confession and may be admissible as evidence in a trial and may produce a conviction, the same as a written, signed confession.

A police officer or prosecutor has no legal authority to induce you to make a confession or admission of guilt either by force or threats or by promises of no prosecution or of leniency in the event of prosecution. The promise of a police officer or a prosecuting official to help you or to intervene with the court in exchange for a confession is not binding.

It is always advisable to have an attorney with you when you speak with the police. You should understand that even an explanation as to where you are going or where you came from may be used against you. If you are stopped for a traffic violation or any other reason, you do not have to give any information other than who you are and basic identification information. You should be cooperative, polite and respectful. You have a right to ask why you were stopped and a right to continue on your way without inappropriate delay.

Can I be released on bail?

Bail is the posting of security to ensure your appearance in court. In most cases, you may be released on bail. The amount of bail is determined by a proper court or in certain cases by the proper police official. In some cases, you may be released without bail on your own signed promise to appear in court.

How can I get bail?

Any person who has security acceptable to the court (or in certain cases the sheriff or proper police official) may post bail. For example, ownership of real estate, stocks, bonds, or cash where permitted may be used as security. If property is held in more than one name, all parties holding that property must sign the necessary papers. If you cannot find someone from your family or friends who can post bail bond, professional bondsmen will, for a fee, post the bail bond. You should know and fully understand the cost of this bond. A list of names of bondsmen is usually kept at police stations. The court rules provide that you may put up 10 percent of the bail in cash and sign a "recognizance," which means that you will be responsible for the balance if required.

What happens to the money I have with me?

Practices vary. A receipt or list should be made of the money and property taken from you when you are booked and you should be entitled to a copy. This money will usually be returned to you unless the prosecuting authorities believe it is the fruit of criminal activities. Under these circumstances, they may seek to forfeit money or goods that they have taken from you. Prosecutors may seize and retain cars. Some prosecutors have seized houses and boats. The law allows the state to seize criminal proceeds and instrumentalities of criminal conduct.

When do I go before the court?

After arrest and booking, you must be taken before the proper court as soon as practicable.

Should I have a lawyer with me?

It is always advisable to speak with an attorney and to have him or her with you when you appear in court. The judge must inform you of all the charges and of your right to have a lawyer if you do not have one. The judge must allow you a reasonable time to send for a lawyer, even to the post of postponing the hearing so that you can obtain one. If you have no money, the judge, in municipal court, will provide the municipal public defender. If the charges are serious, you may be entitled to representation by the Office of the Public Defender upon proper application and financial qualification.

What if I do not know a lawyer?

If you do not have an attorney, or do not know how to select a lawyer to help you, it may be possible for you to be referred to a lawyer through your county bar association's lawyer referral service.

Your right to legal counsel if you are arrested is a fundamental one in our country. The right is so important that if you are charged with a serious crime, and cannot afford to hire a lawyer, the court must see that a lawyer is appointed for you.

Automobile Insurance

Am I required to purchase insurance for my car?

Yes. The law requires the owner of every automobile registered in New Jersey to purchase an insurance policy. When you purchase a new policy or renew an old policy, you will be provided with a *Buyer's Guide* that will contain a brief description of all mandatory and optional coverages and a *Coverage Selection Form* that will permit you to indicate your choice of coverage. It is important that you discuss your automobile insurance coverage with your insurance company representative, your broker or your agent.

What types of automobile insurance policies are available?

The law requires you to elect either a *standard* or a *basic* automobile insurance policy. A standard policy provides bodily injury (BI) liability coverage, personal injury protection (PIP) coverage and uninsured/underinsured (UM/UIM) motorist coverage. A basic policy provides only a limited amount of PIP coverage without any liability or UM/UIM coverage.

What is liability coverage?

The purpose of liability insurance is to pay monetary damages to any person who is injured due to either (1) your negligent operation of any automobile or (2) the negligent operation of your automobile by you or by anyone else with your permission. In addition, liability insurance protects your assets if an injured person makes a claim against you, a resident member of your family or the operator of your automobile.

How much liability insurance am I required to purchase?

If you select a standard policy, you are required to purchase bodily injury liability coverage in the mini-

mum amount of $15,000 per person/$30,000 per accident. However, your insurance company must offer you additional bodily injury coverage up to $250,000 per person/$500,000 per accident split limits or $500,000 single limit.

If you select a basic policy, you are not required to purchase any bodily injury liability insurance. However, you may elect to purchase optional bodily injury liability coverage in the amount of $10,000 for injury to one or more persons in any one accident.

Should I elect a basic policy?

No. A basic policy provides no bodily injury liability coverage (unless you select the $10,000 option) and will place your assets at risk if a personal injury claim is made against you. If a judgment is entered against you for monetary damages, you will be responsible for paying the judgment yourself. You will be subject to a levy against your property and an execution against your wages. If you cannot pay the judgment, you will have a debt against your credit record for 20 years, lose your driver's license and be prohibited from registering a car in your name.

In addition, if someone makes a claim against you or if you are sued, your insurance company will not provide a lawyer to defend you, even if you feel that you were not at fault for the accident. You will be required to retain your own attorney to represent you. If you do not appear in court, a default judgment may be entered against you for monetary damages.

Do I have the right to make a claim if I am injured in an automobile accident?

If you purchase a standard policy, you will be required to elect a lawsuit option that will affect your right to make a claim against a negligent driver. You may choose either the "no limitation on lawsuit option" or the "limitation on lawsuit option." If you purchase a basic policy, you will automatically be assigned the "limitation on lawsuit option".

What is the "no limitation on lawsuit option?"

If you elect the "no limitation on lawsuit option" (sometimes called "no threshold"), you are allowed to make a claim against a negligent driver for any injuries that you sustain in an automobile accident.

What is the "limitation on lawsuit option?"

If you elect the "limitation on lawsuit option" (sometimes called the "verbal threshold"), you are not permitted to make a claim against a negligent driver for your non-economic loss (pain and suffering) unless you have sustained one of the following six types of injuries:

- Death
- Dismemberment
- Significant disfiguration or significant scarring.
- A displaced fracture.
- Loss of a fetus.
- Permanent injury where a body part or organ has not healed to function normally and will not heal to function normally with further medical treatment.

Does my choice of the lawsuit option apply to anyone else?

Yes. Your choice of lawsuit option applies to your spouse and any children who live with you (who do not have their own insurance coverage). If you choose the "limitation on lawsuit option," they will also lose the right to make a claim for injuries sustained in an automobile accident unless their injuries qualify under the "verbal threshold."

What is personal injury protection (PIP) coverage?

The New Jersey No Fault Act requires your automobile insurance policy to include "personal injury protection coverage." PIP provides coverage for medical expenses, income continuation, essential services, death benefits and funeral expenses, regardless of who caused the accident.

Who is entitled to receive PIP benefits?

PIP benefits are available to the following persons: (1) you and any resident family member who is injured in any automobile accident while a driver, a passenger or a pedestrian and (2) any person who is the driver or passenger of your automobile with your permission.

Does PIP coverage provide for the payment of medical bills?

Yes. If you purchase a standard policy, your insurance company is required to pay reasonable and necessary medical expenses up to $250,000 per person per accident; however, you may elect lower limits of medical expense benefits in the amounts of $15,000, $75,000 or $150,000. If you select a basic policy, your medical expense benefits will be limited to $15,000.

Are the medical expense benefits provided by PIP coverage subject to any deductibility or copayments?

Yes. The payment of medical bills is subject to a statutory deductible of $250 and a copayment of 20 percent up to $5,000 per person per accident ($1000). This means that you may be required to pay $1,200 of the first $5,000 of medical expenses.

In addition, you may elect higher deductibles in the amounts of $500, $1,000, $2,000 and $2,500. If so, you will be required to pay more of your own medical bills.

Does PIP coverage provide any "additional" benefits?

Yes. If you purchase a standard policy, you will automatically receive additional PIP benefits including income continuation of $100 a week for 52 weeks; essential services of $12 a day for 365 days; a death benefit up to $5,200; and funeral expenses of $1,000.

You may purchase "additional" PIP coverage that will include income continuation benefits up to $700 a week for two years or as long as the disability persists; essential services of $20 a day for two years; a death benefit up to $5,200; funeral expenses of $2,000; and an additional death benefit of $10,000.

A person who selects a standard policy may choose to exclude all PIP benefits other than medical expenses up to $250,000. A person who selects a basic policy will not receive any PIP benefits other than medical expenses up to $15,000.

What happens if I am involved in an accident with a person who is uninsured or unidentified (hit-and-run)?

The law requires the owner of every automobile registered in New Jersey to purchase an insurance policy; however, a small number of people violate the law by failing to purchase an insurance policy or by leaving the scene of an accident. The law permits you to purchase insurance that will allow you to recover monetary damages for your own injuries, even if the other driver is uninsured or unidentified (hit-and-run).

A standard policy provides uninsured motorist coverage in the amount of $15,000 per person/$30,000 per accident. You may purchase additional UM coverage up to $250,000 per person /$500,000 per accident or $500,000 single limit (as long as you have the same amount of liability insurance).

A basic policy does not provide any uninsured motorist coverage.

What happens if I am involved in an accident with a person who has inadequate insurance coverage?

If you are injured in an accident, you may make a claim against the negligent driver for your non-economic (pain and suffering) and economic loss. However, the insurance company that insures the negligent driver will not be responsible to pay any damages above their policy limit.

Since many owners maintain only the minimum liability limits of $15,000/$30,000 and since basic policyholders have no bodily injury liability coverage, you can purchase your own insurance coverage to protect yourself and your family.

You may purchase underinsured motorist coverage in the same amounts as your uninsured motorist coverage up to $250,000 per person/$500,000 per accident or $500,000 single limit (as long as you have the same amount of liability insurance).

A basic policy does not provide any underinsured motorist coverage.

How much insurance coverage should I purchase for my automobile?

You should elect a standard policy with PIP coverage of $250,000 for medical expenses. In addition, you should purchase liability coverage that is adequate to protect your assets if a claim is made against you and uninsured/underinsured motorist coverage that is adequate to protect you if you are injured by a person who is uninsured or has less insurance than you do.

The law requires minimum liability and uninsured/underinsured motorist coverage of $15,000/$30,000; however, the minimum limits are not adequate to protect you or your assets. Most people purchase higher limits of coverage such as $100,000 single limit; $100,000/$300,000 split limits; $250,000/$500,000 split limits; $300,000 single limit; or $500,000 single limit.

What is the responsibility of my insurance company, broker or agent?

Your insurance company is required to provide you with a copy of the *Buyer's Guide* and the *Coverage Selection Form*. However, your insurance company, broker or agent is not responsible for the choices that you make for coverage, as long as you are provided the minimum coverage required by law. If you purchase inadequate coverage, you cannot sue your insurance company, broker or agent unless you were damaged as the result of their gross negligence.

What happens if I do not purchase liability insurance for my automobile?

The owner of an uninsured automobile is subject to serious civil and criminal penalties including fines up to $5,000; loss of driver's license for two years; community service for 30 days; and imprisonment for 14 days.

In addition, you would not be permitted to sue a negligent driver for any injuries that you sustained in an accident, including pain and suffering and economic loss, even if you were not at fault for the accident.

Is there any insurance that provides coverage if my car is damaged in an accident?

Yes. You can purchase collision coverage (for property damage) and comprehensive coverage (for fire and theft). These coverages require you to select a deductible: the amount of money that you must pay before your insurance company pays the balance of your claim. Most people have a deductible of $750; however, you may choose a higher or lower deductible.

Is there any other type of liability insurance that provides coverage for my automobile?

Yes. A personal catastrophic liability umbrella provides insurance coverage if a claim is made against you or any resident family member for injuries sustained by another person for any reason anywhere in the world. This type of insurance will provide additional coverage if a claim is made against you due to the negligent operation of a motor vehicle. The standard umbrella provides liability coverage of $1 million.

What should I do if I am involved in an accident?

First, you should call the police and if someone is injured you should call an ambulance. It is against the law to leave the scene of an accident. If the police do not come to the scene, you must make certain that the accident has been reported.

In addition, if possible, you should take a picture of the accident scene including the location of each vehicle and the amount of property damage. Obtain the name, address, phone number, driver's license number, license plate number, name of insurance company and policy number from each driver and vehicle involved in the accident.

You will need to give the police your driver's license, vehicle registration and insurance card. If you are injured, go to the hospital or consult with a doctor as soon as possible.

Also, you must notify your insurance company, agent or broker as soon as possible that you have been involved in an accident.

What should I do if I am injured and I want to make a claim against the other driver?

If you were injured in the accident, you should consult with an attorney as soon as possible. It is important that you determine your legal rights and responsibilities as soon as you can. You should make sure that your lawyer has experience in handling personal injury claims.

What should I do if a person who was injured in the accident makes a claim against me?

If someone makes a claim against you for the injuries that they have sustained, you should send the letter to your insurance company, agent or broker. They will assign an insurance adjuster to handle the claim and, if necessary, a lawyer to represent you.

Lemon Law

Who is covered under the New Car Lemon Law?

Any consumer who buys, leases, or registers a new passenger car or motorcycle in the State of New Jersey is covered by the Lemon Law. The consumer is protected for two years after the original delivery date of the vehicle, or for the first 24,000 miles of use, whichever comes first.

How do I know if my car is a lemon?

To qualify under the Lemon Law, the vehicle must have a "nonconformity," which is a defect or condition that *substantially impairs the use, value or safety of the vehicle*.

A new motor vehicle is presumed to be a lemon if it has one or more defects that continue to exist after three attempts at repair or after the vehicle has been out of service for a total of 20 calendar days or more.

If the defect is likely to cause death or serious bodily injury, the vehicle will be considered a lemon if the defect is not corrected after only one repair attempt.

What are my remedies if my car is a lemon?

If your car qualifies as a lemon, the dealer and manufacturer must accept the return of the vehicle, and give you a full refund of everything that you paid, including the value of your trade-in, taxes, license and registration fees, finance charges, rental and towing costs you had to pay because of the defect, and any third-party service contracts, GAP insurance, or other products sold with the car. The dealer and manufacturer may deduct a reasonable amount for your use of the vehicle.

How do I exercise my rights under the New Car Lemon Law?

You can pursue a claim under the Lemon Law by (a) filing a claim with New Jersey Division of Consumer Affairs' Lemon Law Unit, (b) filing a claim with the vehicle manufacturer's informal dispute settlement procedure, or (c) filing a lawsuit. If your lawsuit is successful, the Lemon Law requires the manufacturer to pay your attorneys' fees and costs in addition to providing you with a refund.

What about used cars?

The New Jersey Used Car Lemon Law, which covers only used passenger motor vehicles purchased from used car dealers on or after July 3, 1996, prohibits dealers from making misrepresentations about used car defects and warranties, and requires used car dealers to provide warranties on cars under a certain mileage and model year.

For all used car sales, the Used Car Lemon Law prohibits dealers from making misrepresentations about the vehicle's mechanical condition, failing to disclose material defects in the car, failing to disclose or misrepresenting the terms of any warranty, and failing to provide a clear explanation of the meaning of an "as is" sale, among other rules.

The length of the warranty required under the Used Car Lemon Law depends on the used motor vehicle's mileage. If a motor vehicle has 24,000 miles or less, the dealer must provide the customer with a warranty for 90 days or 3,000 miles, whichever comes first. If a motor vehicle has more than 24,000 miles, but less than 60,000 miles, the dealer must provide the customer with a warranty lasting 60 days or 2,000 miles, whichever comes first. If a motor vehicle has between 60,000 and 100,000 miles, the dealer must provide the customer with a warranty for 30 days or 1,000 miles, whichever comes first.

Even if the dealer does not give you a written warranty, the law says that you automatically get the benefits of the warranty.

Cars not covered by this law include:

- Motor vehicles sold for less than $3,000.
- Motor vehicles that are more than seven model years old.
- Motor vehicles that have been declared a total loss by an insurance company.
- Motor vehicles that have odometer readings of more than 100,000 miles.
- Motor vehicles that were not purchased from a dealer.

In negotiating a better price for the vehicle, consumers may waive their right to a warranty. This waiver of the warranty must be in writing, and can only be made on vehicles with more than 60,000 miles on the odometer.

What are my rights under the Used Car Lemon Law?

Similar to the New Car Lemon Law, if your car is covered under a Used Car Lemon Law warranty, the dealer is required to repair any material defect that substantially impairs the use value, or safety of the vehicle that occurs during the warranty period. You are required to make a $50 copay for covered repairs. If the car is out of service for twenty or more days or is subject to three or more repair attempts for the same defect, you can require the dealer to buy back the car and get a full refund, minus sales tax, title and registration fees, and a deduction for reasonable use.

How do I exercise my rights under the Used Car Lemon Law?

As under the New Car Lemon Law, you can pursue a claim under the Lemon Law by (a) filing a claim with New Jersey Division of Consumer Affairs' Lemon Law Unit, (b) filing a claim with the vehicle manufacturer's informal dispute settlement procedure, or (c) filing a lawsuit. If your lawsuit is successful, the Used Car Lemon Law also requires the manufacturer to pay your attorneys' fees and costs in addition to providing you with a refund.

There is also a Lemon Law for motorized wheelchairs and scooters, which requires manufactures to give a one-year warranty on such equipment.

For more details on your rights under all three Lemon Laws, contact the Lemon Law Unit, Division of Consumer Affairs, P.O. Box 45026, Newark, NJ 07102; 973-504-6226.

On Being a Witness

What does a witness do in court?

Your job as a witness is to provide your honest recollection of the information that you have about the case. All participants in a trial are anxious to learn the truth which means that witnesses are needed to provide their own best description of what they know. Of course, there may not be complete agreement among witnesses. The attorney involved will ask probing questions in their effort to provide all important information to the court. Sometimes the questions are difficult for the witness to answer. However, it is important for you to remember that everyone involved in the trial is trying to get all the information that is available. Your participation as a witness—telling the truth to the best of your ability—is an essential part of the American system of justice.

What about the day I appear in court?

- Check with the party or attorney who subpoenaed you the day before you are scheduled to testify to make sure your appearance is needed.
- Dress neatly.
- Take your subpoena with you because it notes the time and place of the trial.
- Introduce yourself to the attorney or investigator who has subpoenaed you if you haven't already met. If the trial has started, wait for recess before you enter the courtroom.
- Be dignified. Avoid loud laughter; smoking and gum-chewing are not allowed in the courtroom. Smoking is not allowed in most courthouse hallways
- Do not eat or drink in the courtroom.

What shall I do while I'm on the stand?

- Your appearance is very important. Dress appropriately.
- Stand upright when you are taking the oath. Say "I do" clearly.
- Speak clearly and loudly.
- Speak in your own words. Don't memorize what you're going to say. Be natural.
- Forget anything you may have seen on TV regarding courtroom scenes.
- Listen to the questions and make sure that you are answering what is asked. Don't answer a question that you really don't understand.
- Answer only what is asked. If the question is supposed to be answered with a yes or no, don't volunteer anything further.
- Only offer information that you have personally seen or have knowledge of; don't relate secondhand information.
- Don't lose your temper when you are questioned.
- Say "I don't know" if you don't know, but try to be definite when you do have an answer. Try not to say "I think" or "I believe."
- Don't generalize or exaggerate.
- If you made a mistake in your testimony, clear it up as soon as possible.
- When the judge interrupts you, or the other attorney objects to what you say, stop talking immediately.
- Always be polite.

Municipal Court Rights

What are my rights in municipal court?

- You have the right to be represented by an attorney
- If you cannot afford an attorney, you have the right to apply for a Public Defender.
- You will have ample time to consult with your attorney and prepare a proper defense.
- You have the right to be informed of the charges against you.
- You have the right to remain silent concerning the charges against you and not testify in the trial of your case, but anything you say may be used against you.
- You may plead guilty or not guilty to the non-indictable charges against you. Examples of non-indictable charges are traffic offenses, disorderly persons offenses and violations of ordinances. If you are charged with an indictable offense, the judge cannot ask for your plea because the local county prosecutor must first decide whether he or she wants to refer the case to the county grand jury. If the case is not referred to the grand jury, you will then be remanded to municipal court as a downgrade, non-indictable offense and treated accordingly. If, however, the matter is referred to

the grand jury, you will receive notice some time thereafter as to whether you have been indicted or not. There are, additionally, certain indictable offenses that may be tried by the judge if you waive indictment and trial by jury in writing. You have the right to be informed if you have been charged with such an offense.
- You have the right to be informed of your right to apply for some diversionary programs such as Conditional Dismissal, Conditional Discharge or Pretrial Intervention.
- You are presumed to be innocent until proven guilty beyond a reasonable doubt.
- You have the right to testify or not to testify on your behalf.
- You have the right to call or subpoena witnesses to testify on your behalf.

What do I do if I intend to plead not guilty?

If you come to court for a traffic offense and you have not previously notified the court of your intention to plead not guilty, speak to the court clerk immediately. If the officer or others involved can be contacted to testify, your case may be heard. If they cannot be reached, you will have to make another court appearance at a later date.

If you plead not guilty, you and the witnesses will be placed under oath to speak the truth. It is necessary for the prosecution to prove the charges against you beyond a reasonable doubt. Your attorney has the right to ask the prosecution's witnesses any question pertaining to the charges. If you do not have an attorney, you will be permitted to ask questions directly of the witness.

When the prosecution has finished, you may then present your own witnesses or testify on your own behalf. You are not forced to testify against yourself, but you may testify if you desire. Any evidence you give may be used by either side. If you do testify, the prosecution has the right to ask you any questions pertaining to the charges.

When all the witnesses have testified, you or your attorney may tell the court why you think you should be found not guilty.

If the court finds you guilty and you feel the judgment or the sentence was in error, you have 20 days within which to appeal. Appeals will be heard by the Law Division of the Superior Court.

When you plead guilty it is not necessary to have a trial. You have admitted that you have violated the law. However, you may then explain to the judge any extenuating circumstances. The judge will then assess the penalty.

You can plead guilty to a traffic offense subject to a civil reservation. This means that your guilty plea cannot be used against you in any other type of legal proceedings, such as a civil lawsuit alleging automobile negligence.

Small Claims Court

What is small claims court?

Small claims court is the place where someone may have a fast, inexpensive way of suing someone for small amounts of money owed to them. It is properly called the Superior Court of New Jersey Law Division, Special Civil Part, Small Claims Section.

Do I need a lawyer?

No, an individual can represent themselves; however, you may want to consult with a lawyer. The Court Rules are simpler than in other state courts.

When should I go to small claims court?

Your case can be heard in small claims court if your claim is for $3,000 or less, $5,000 if based upon the return of a security deposit or is one of the following:

- A contract or agreement.
- Damage to property or a person caused by someone else's negligent driving of a motor vehicle.
- A landlord/tenant dispute concerned with the return of all or part of a security deposit.
- Claims for back rent.
- Return of money used as a down payment.
- Damage to or loss of property.
- Consumer complaints for defective merchandise or faulty workmanship.
- Payment for work performed.
- Claim based upon receiving a bad check.

Malpractice by a professional, probate, family and tax matters cannot be filed in small claims court.

Who can use small claims court?

If you are 18 or older, you are eligible to file a suit in small claims court. If you are under 18, a parent or guardian may file and present your case for you.

Where is the court?

The lawsuit should be filed in the county where the defendant resides or has a place of business.

What is the cost?

The filing fee is $35 for one defendant and $5 for each additional defendant. In addition, there is a $7 charge for each defendant for service by certified mail and regular mail.

The New Jersey Court's website, www.judiciarystate.nj.us, has detailed information.

Bankruptcy

Can I declare bankruptcy?

If you have debts that were honestly incurred and want a fresh start, it may be advisable to consult an attorney about declaring bankruptcy.

Once every eight years you are entitled to file a petition to discharge your debts if you are unable to pay them. This means that you would be released from the obligation of repaying most of your debts (taxes, student loans, debts incurred by fraud, alimony and child support are some exceptions) so that you may wipe the slate clean or engage in business without being liable for the repayment of the earlier debts. In addition, in order to qualify for a Chapter 7, you must demonstrate that the filing is in good faith by passing the "means test." You will pass the test if your gross household income from all sources during the six months immediately preceding the filing is less than the average median income for a similarly sized household in the same geographic area.

Does this mean I have to give up all of my possessions?

No. Despite the fact that filing for bankruptcy causes a debtor's property to be subject to the claims of creditors, certain property is exempt from claims by creditors and can therefore be retained by the debtor. Some examples are:

- Up to $22,975 in value in real property used by the debtor as a residence.
- Up to $3,675 in value in one motor vehicle.
- Up to $1,550 in value in jewelry.
- Up to $2,300 in "tools of the trade."
- Up to $12,250 in aggregate value in household furnishings, goods, wearing apparel and related property.

There are additional exemptions that a debtor can utilize depending upon the nature of his or her assets.

Can my debt be paid a little at a time instead of all at once?

Yes. If you have a regular source of income, you can choose to pay off all or part of your debts in installments, correct mortgage defaults, and extend out payments for back taxes. To file under this law, which is called "Chapter 13", you must have a regular source of income sufficient to pay all or a portion of your debts. This is especially helpful for people who operate their own business, retired debtors who collect a pension and Social Security, or even welfare recipients.

Can bankruptcy be used as a protection against foreclosure on my home?

Possibly. When a bankruptcy petition is filed, the "automatic stay" take effect and creditors are not allowed to continue or commence an action against the debtor, including a foreclosure action, without obtaining permission from the Bankruptcy Court. Generally, filing for relief under Chapter 13 of the Bankruptcy Code will provide a debtor the opportunity to cure mortgage defaults and reinstate the mortgage.

The New Jersey State Bar Foundation also publishes a free pamphlet, *A Basic Guide to Personal Bankruptcy* may be downloaded or ordered from the Foundation's website (njsbf.org). You may also call 1-800-FREELAW to obtain a copy.

Credit and You

What are my credit rights?

If you apply for credit, a federal law known as the Equal Credit Opportunity Act forbids a creditor from discriminating against you in any application for credit based on your race, color, religion, national origin, gender, marital status, age or because you receive public assistance (these are known as legally protected classifications).

You are entitled to this protection when the credit for which you apply is for your personal, family or household use or for certain business purposes. To comply with the Act, creditors must follow certain rules when requesting information from you and when rejecting an application for credit. These legally protected classifications cannot be used as a criteria to deny any application for credit nor can a creditor discourage you from applying based upon these classifications. A creditor who does not follow these rules subjects itself to civil liability to an applicant for actual and punitive damages.

What can a creditor ask me when I apply?

Subject to certain restrictions, a creditor can ask you to provide basic information that relates directly to your ability to repay loans such as your income and employment history. A creditor can also use your credit history from a credit reporting agency to obtain your current and past history with credit accounts.

The Act prevents a creditor from asking about your spouse or former spouse, unless your spouse or former spouse is also applying for the same credit or will be permitted to use or be liable on the account or you plan to repay the credit using the spouse's income or alimony, child support or maintenance payments.

If you are applying for unsecured credit in your name only, a creditor cannot ask you if you are married.

You also cannot be asked whether any income shown on your application comes from alimony, child support or maintenance payments although you can provide that information if you want that income to be considered in the creditor's determination as to whether you have sufficient income to be able to repay any credit.

A creditor cannot require that you provide information about your gender, race, color, religion or national origin although you can voluntarily provide that information.

A creditor also may not ask about your plans to have or raise children although you can be asked about expenses relating to your dependents.

A creditor may not impose different terms or conditions, such as a higher interest rate, based upon any of these legally protected classifications.

What information can a creditor consider when it evaluates my application?

In deciding whether you are creditworthy, a creditor cannot use assumptions as to the likelihood you will have children in the future.

The creditor may not refuse to consider income you derive from part-time work or from retirement benefits and must also consider alimony, child support or maintenance payments you disclose so long as such payments are likely to be consistently made. A creditor who regularly considers credit history on joint accounts cannot refuse to consider the credit history of accounts for which you are both liable. Your immigration status and ties to the community can be considered since this might bear on the creditor's ability to be repaid.

What limits can a creditor place on the type of account I can obtain and my use of an account?

So long as you are creditworthy, a creditor cannot refuse to grant you an individual account on the basis of any of the legally protected classifications. The creditor must allow you to obtain a loan or open a credit card account in your own name even if you are married.

A creditor cannot require that you obtain a cosigner if you otherwise meet the creditor's standards based upon your credit history and income. A creditor cannot require you to reapply, change the terms of your account or terminate your account because you have reached a certain age, have retired or have changed your name or marital status. However, if your marital status changes and the creditor made the loan based on income of your former spouse, the creditor may require reapplication if it receives information that your income alone may not support your credit. If you qualify on your own for the amount and terms of credit you request, a creditor cannot automatically require the signature on the loan document of your spouse or another person.

What kind of notice am I entitled to after I apply?

If you have applied for credit for your personal, family or household use or on behalf of a business that has gross revenues of less than $1 million in its

preceding fiscal year, the creditor must notify you of the action taken on your application within 30 days of when the application is complete.

If your application is rejected, the creditor must provide the specific reasons for the rejection or must inform you that you have a right to contact the creditor within 60 days to receive these reasons. A rejection based upon your "income being too low," "insufficient employment history" or bankruptcy is usually acceptable reasons for a rejection. A response that you simply "did not meet the standards of the creditor" is likely to be considered not a specific enough explanation for the rejection.

What if I am denied credit based on information contained in a consumer report?

If your credit is denied or the charge for the credit is increased based entirely or partly on information obtained in a consumer report provided by a consumer reporting agency, the user of the report must so advise you and disclose the name and address of the consumer reporting agency. Within 30 days of your receipt of this information, and upon your presentation of proper identification, you may request a copy of the information in your file without charge. After that time, the consumer reporting agency may impose a reasonable charge on the consumer for making this disclosure. You must be notified of the charge before the credit agency makes the disclosure.

In addition, if you believe you have proof that the creditor did not comply with said law, you can consider suing the creditor in federal court where you may be awarded actual and punitive damages as well as attorney's fees.

Immigration and Naturalization

How do I get a visa to go to the United States?

Generally, foreign nationals who want to come to the United States must first obtain a visa from the American Embassy, Consular Section, in their home country. There are two kinds of visas: immigrant and non-immigrant visas.

An **immigrant visa** is issued to individuals who wish to live permanently in the U.S.; there are several employment-based and family-based categories, all of which, with some exceptions (i.e., immediate relatives of U.S. citizens, special immigrant, and refugees) are subject to annual numeric limitations. Monthly visa bulletins may be found on the Department of State's website at: https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html.

Non-immigrant visas are issued to foreign nationals who wish to travel to the U.S. on a temporary basis (e.g., business, tourism, medical treatment, temporary work, or study). With minor exceptions, there is no numerical limit in the amount of non-immigrants who can come to the United States each year. The most notable exception is H-1B Temporary Workers in a specialty (professional) occupation; there is currently an annual numerical limit ("cap") of 65,000 for H-1B visas for individuals holding a Bachelor's degree or equivalent, plus 20,000 for individuals holding a U.S. (only) Master's degree.

Nationals of the countries participating in the Visa Waiver Program (VWP) are authorized to travel to the U.S. as visitors (business or pleasure) for up to 90 days without first obtaining a visa, provided they meet specific requirements, i.e., possess a machine-readable passport and valid Electronic System for Travel Authorization (ESTA) approval prior to travel.

Which United States Citizenship and Immigration Services (USCIS) Office reviews/approves immigration-related matters in New Jersey?

The majority of immigrant and nonimmigrant petitions and applications must be filed with a USCIS Service Center or Lock Box facility having jurisdiction over a particular type of petition or application and/or geographic location (e.g., in work-related petitions). Customers may call the **USCIS National Customer Service Center** with inquiries regarding specific cases they have filed with USCIS or for general information at 1-800-375-5283 **(TDD for the hearing impaired** 1-800-767-1833).

Certain applications, such as the applications for Naturalization (N-400), Citizenship (N-600), and some applications for Adjustment of Status (I-485), are transferred, after initial review, to a local field office for interview scheduling and final adjudication. There are two field offices in New Jersey:

Newark Field Office is located at 970 Broad Street, Newark, NJ 07102. This office services Bergen, Essex,

Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties.

Mount Laurel Field Office is located at 530 Fellowship Road, Mount Laurel, NJ 08054. This office services Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties.

How does one become a naturalized U.S. Citizen?

After becoming a U.S. permanent resident, one is eligible to apply for naturalization in the U.S., by filing Form N-400, provided all eligibility criteria are met:

1. Be at least 18 years of age at the time of filing;
2. Be a U.S. Permanent Resident ("green card" holder) for at least 5 years (3 years if lawful permanent resident (LPR) was granted based upon one's marriage to a U.S. citizen);
3. Live for a minimum of 90 days in the state or USCIS district where one applies for Naturalization;
4. Demonstrate "physical presence" within the U.S. for a specified period of time;
5. Demonstrate continuous residence for a specified period of time;
6. Demonstrate an attachment to the principles of the U.S. Constitution;
7. Demonstrate a basic knowledge of U.S. history and government, as well as an ability to read, write, speak and understand basic English; and
8. Take an Oath of Allegiance to the U.S.

Additional information regarding the application for Naturalization may be found at USCIS website at: http://www.uscis.gov/n-400.

What are removal proceedings?

Removal proceedings (previously called deportation) can be instituted by an immigration judge within the Executive Office of Immigration Review (EOIR) against any immigrant in the U.S., including permanent residents, for violating the U.S. immigration laws. The main reason for being involved in removal proceedings after being issued permanent residence is evidence that the foreign national has committed a "crime of moral turpitude." While these proceedings are administrative (not criminal) in nature, there are certain procedural due process safeguards that attach. For example, the foreign national has the right to notice of the charges, to present exculpatory evidence in his or her own behalf, to cross-examine government witnesses, to obtain a written decision and the right to appeal.

Removal proceedings are also conducted for foreign nationals subjected to exclusion when stopped at the border or border checkpoints, i.e. airports, inspection stations, etc., and who have not yet been admitted into the United States. Although also called removal proceedings, the relief available to those subject to grounds of exclusion is more limited. Certain foreign nationals seeking admission may be summarily excluded without hearing. However, generally some foreign nationals in removal proceedings may request adjustment of status, political asylum, cancellation of removal or voluntary departure. Recent changes in the law have severely limited relief from removal for foreign nationals previously convicted of a crime. If you or a foreign national friend is facing removal proceedings you should contact an experienced immigration attorney. If you cannot afford an attorney, contact a community-based legal service organization.

What is the Illegal Immigration Reform And Immigrant Responsibilities Act (IIRIRA) of 1996?

In addition to the creation of a single "removal" proceeding, the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA" or "IIRAIRA"), enacted by Congress on September 30, 1996, has changed significantly the immigration laws of the United States. This legislation bill focused on Illegal activities and penalties for racketeering, alien smuggling and the use or creation of fraudulent immigration-related documents, as well as other crimes and immigration-related offenses committed by foreign nationals and the consequences, including deportation. This law, among others had a provision, knowns as "the 3-10 year bar", barring those who stayed in the U.S. illegally from re-entry. Individuals who have accumulated from six to 12 months of unlawful presence are barred for three years and those with more than one year of unlawful presence, a year illegally are barred for 10 years. Although a waiver of these penalties may be available, it is extremely limited. A waiver is available only to a foreign national who is the spouse or son or daughter of a United States citizen or of a permanent resident if the foreign national could show hardship to such relative. Other changes in the law remove the availability of Section 245(i) of the Immigration and Nationality Act, which gave the opportunity for many foreign nationals to obtain permanent residency in the United States without leaving. Yet another law provides for special relief for Nicaraguans and Cubans who have been in the United States before December 1, 1995.

What is Deferred Action for Childhood Arrivals (DACA)?

Effective June 15, 2012, individuals who were brought to the U.S. illegally as children and meet specific eligibility requirements may request consideration of deferred action for a period of two years, subject to renewal. They are also eligible for work authorization. Deferred action is a use of prosecutorial discretion to defer removal for a certain period of time. Deferred action does not provide lawful status. On November 20, 2014, President Obama announced an executive action expanding the population eligible for the Deferred Action for Childhood Arrivals program (also known as "DACA+") to people of any current age who entered the United States before the age of 16 and lived in the United States continuously since January 1, 2010, and extending the period of DACA and work authorization from two years to three years. On June 23, 2016, the Supreme Court issued a ruling in U.S. v. Texas, effectively leaving in place the preliminary injunction that was issued on February 16, 2015 blocking the federal government from implementing DACA+. The ruling does not directly impact the original DACA initiative launched in 2012, which remains in effect.

What is Deferred Action for Parental Accountability (DAPA)?

On November 20, 2014, President Obama announced an executive order allowing parents of U.S. citizens and lawful permanent residents to request deferred action, permitting them to stay in the U.S. temporarily without fear of deportation, and apply for employment authorization for three years, provided they have lived in the United States continuously since January 1, 2010, and pass required background checks. On June 23, 2016, the Supreme Court issued a ruling in U.S. v. Texas, effectively leaving in place the preliminary injunction that was issued on February 16, 2015 blocking the federal government from implementing DAPA. Accordingly, DAPA remains on hold.

NOTE: United States laws and regulations regarding immigration are currently in flux and the information in the above section may have changed since its publication. It is best to consult an attorney if you are unsure of your rights.

Employment Discrimination

Note: The following area of law changes rapidly. Because this brief summary cannot cover all aspects and changes, you should not rely upon this for legal advice. Consult an attorney to learn the full scope of your rights.

What is "At Will" employment?

Employment in New Jersey is generally considered to be "at will." That is, you may quit your employment at any time and your employer may terminate your employment at any time for a good reason, a bad reason or no reason, as long as the reason is not prohibited by statute or public policy or is contrary to an agreement or contract.

How do I know if I have an agreement or contract of employment limiting my employer's ability to fire me?

In certain circumstances, a contract of employment between you and your employer may arise limiting your employer's ability to fire you to those situations where he or she has cause. These contracts can be either express or implied. Express contracts usually are in the form of written agreements that expressly state the terms of employment. Implied contracts most frequently arise from employee manuals or handbooks distributed to employees, even though most employers do not intend that any employment contract arise from such a manual. In deciding whether an employment contract has arisen from an employee manual, the court will decide whether a reasonable employee would have read the language of the manual as a promise that employment would be terminated only for cause.

An employer may avoid a contractual commitment by setting forth in the manual in a clear and conspicuous manner that the handbook is not intended to be a contract and you may be fired at the will of the company.

In addition, an employer may not fire you where to do so would violate public policy. The public policy must be expressed clearly in a law, regulation or court decision. This protects you from being discharged when you act contrary to your employer's desires but

pursuant to a public policy. For example, an employer would violate public policy if he or she fired you for opposing his or her violation of the law.

Does New Jersey law prohibit employment discrimination?

The New Jersey Law Against Discrimination prohibits employers from discriminating against you on the basis of age, ancestry, atypical hereditary cellular or blood trait, service in the US armed forces, sex, pregnancy, race, national origin, nationality, color, creed, handicap or disability, sexual orientation or affectation orientation, gender identity or expression, genetic information, marital status, civil union status, domestic partnership status, and other protected categories. An employer may not treat you differently because of any of these characteristics in terms of hiring, promotion, compensation, discipline, discharge or any other term or condition of employment. However, an employer does have the option of treating you differently on the basis of your qualifications, job performance or some other legitimate business reason. If your employer creates or allows a discriminatory work atmosphere which is unreasonable and unbearable, you may be deemed constructively discharged and a victim of employment discrimination if you quit your job as a result of the unbearable atmosphere. Employers also are prohibited from maintaining any policy or practice that does not discriminate on its face, but which has a disproportionate negative effect on individuals in the protected categories.

As to sexual harassment, the law states that not only do you not have to tolerate unwelcome sexual conduct or sexual advances in order to keep your job or get a raise, promotion or other benefits of employment, but it also prohibits an employer from causing or allowing a working environment that is sexually hostile, offensive or intimidating to the "reasonable person." The prohibition against a hostile work environment applies equally to other categories of prohibited discrimination.

Employers also are prohibited from discriminating against female employees on the basis of pregnancy. As long as a pregnant woman can still work, she cannot be forced to leave her job. Pregnancy must be treated the same as any other disability is treated by the employer. Employers in certain situations may be required to provide you with a reasonable accommodation or give you time off from work necessary or related to childbirth.

An employer may not discriminate against you because of handicap that does not prevent you from performing your job. The law also protects employees with "perceived" handicap. An employer must reasonably accommodate your handicap before he or she decides you cannot perform your job. A protected handicap can either be mental or physical. AIDS and some other contagious diseases are considered handicaps under current law in New Jersey. In such instances, despite the handicap, it may be determined that you are not able to perform the job requirements because your handicap is a "direct threat" to the health and safety of yourself and your coworkers. In order to demonstrate "direct threat," the employer must be able to demonstrate that there is a high probability of significant harm if the employee is allowed to work.

The Supreme Court of New Jersey has held that alcoholism is a handicap.

What should I do if I feel I've been a victim of employment discrimination?

You can file a complaint with the New Jersey Division on Civil Rights, 31 Clinton Street, PO Box 46001, Newark, NJ 07102; 973-648-2700. You also may file a complaint in court. Strict time limits define the period within which you must file a complaint.

You should be aware that from time to time, the law is either changed by the New Jersey Legislature or interpreted differently by the courts.

What is the Family Leave Act?

New Jersey's Family Leave Act requires employers with 50 or more employees to provide eligible employees with up to 12 weeks of unpaid leave during a 24-month period for the birth or adoption of a child or to care for a seriously ill family member. The New Jersey law does not require employers to maintain an employee's health benefits while on leave.

In addition, on August 5, 1993 the federal Family and Medical Leave Act became effective and requires employers with 50 or more employees to provide eligible employees with 12 weeks of unpaid leave during a 12-month period for birth, adoption or a seriously ill family member or for the employee's own serious health condition. The federal law also provides eligible employees with 26 weeks of unpaid leave in a single 12-month period to care for a family member who is a covered service member and who has a serious injury or illness related to active duty service. The federal law requires the continuation of health benefits during the leave period.

Leave taken under both the New Jersey and federal law may be taken all at once or on a reduced or intermittent schedule. Upon returning from leave, the employee must be restored to the same or an equivalent position.

Where the provisions of the federal and the New Jersey laws conflict, an employer must comply with the law providing greater leave rights. In addition, if leave is qualified as both federal and state leave, the leave used counts against an employee's entitlement under both laws.

What is the Conscientious Employee Protection Act?

If you discover that your employer is violating the law, he or she may not retaliate against you if you report the activity to a supervisor or a government official or refuse to participate in the activity. The law also forbids your employer from retaliating against you because you participate in an investigation into alleged illegal activity by your employer. Retaliation includes firing, suspension, demotion, and any other actions that have a negative effect on your employment.

Americans with Disabilities Act

What is the Americans With Disabilities Act?

The Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq., signed into law on July 26, 1990, is landmark civil rights legislation that grants broad civil rights protection by prohibiting discrimination on the basis of disability in the areas of employment (Title I), public service and transportation (Title II), public accommodations (Title III) and telecommunications (Title IV).

Who is protected by the ADA?

To be included under protections of the Americans with Disabilities Act a person must have a disability, or have a relationship or association with an individual with a disability. An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is perceived by others as having such an impairment. In response to U.S. Supreme Court decisions that interpreted those protected by the ADA narrowly, Congress amended the ADA in 2008, broadening terms within the definition of "disability" and enlarging the pool of individuals protected by the Act. Under the amendments, an impairment must be considered in its active or unmitigated state. As a result, an individual is protected even if their impairment is intermittent or can be mitigated. The ADA does not specifically name all included impairments. The ADA, however, does not consider current drug or alcohol abuse, gambling, homosexuality, bisexuality, or kleptomania as disabilities.

The New Jersey State Bar Foundation, in cooperation with the Essex County Bar Association and its Committee on the Rights of Persons with Disabilities, publishes a free booklet on this subject entitled *Disability Law: A Legal Primer.* The booklet, now in its sixth edition, helps explain laws concerning persons with disabilities and may be obtained by calling 1-800-FREE LAW or downloaded/ordered from the Foundation's website (njsbf.org). The primer is also available in Braille or on CD.

For related information about legal issues affecting New Jersey residents with disabilities, the Community Health Law Project (CHLP) may be able to help. CHLP is a special public interest legal aid corporation that provides legal advocacy services exclusively to people with disabilities and the elderly. Services include direct individual legal services, education, training, information and referral. CHLP also has unique legal programs for people with disabilities who have been discriminated against because of architectural, transportation and communication barriers, and those who have encountered discrimination in seeking community housing because of disability.

You may contact CHLP at the following:

Administration
185 Valley Street, South Orange, NJ 07079
973-275-1175, TTY: 973-275-1721
Email: chlpinfo@chlp.org

North Jersey
650 Bloomfield Ave., Ste. 210, Bloomfield NJ 07003
973-680-5599, TTY: 973-680-1116
Email: Bloomfield@chlp.org

East Jersey
65 Jefferson Avenue, Ste. 402, Elizabeth, NJ 07201
908-355-8282, TTY: 908-355-3369
Email: Elizabeth@chlp.org

Shore Area
1 Main Street, Suite 413, Eatontown, NJ 07724
732-380-1012
Email: Eatontown@chlp.org

Central Jersey
225 East State Street, Suite 5, Trenton, NJ 08608
609-392-5553, TTY: 609-392-5369
Email: Trenton@chlp.org

Central Jersey
4 Commerce Place, Mt. Holly, NJ 08060
609-261-3453

South Jersey
Station House Office Building
900 Haddon Ave., Ste. 400, Collingswood, NJ 08108
856-858-9500
Email: Collingswood@chlp.org

1701 New Road, Northfield, NJ 08225
856-858-9500

Finding a Lawyer

When do I need a lawyer?

This really depends on your situation. Don't just think about seeing an attorney after something happens. Try to anticipate problems. Generally, you should think about talking to a lawyer about such events as:

- Planning to leave your property and/or assets to your family upon your death.
- Serious accidents.
- Deaths, Marriage, divorce or adoptions.
- Changes in your finances.
- Buying, selling or leasing real estate or personal property.
- Business transactions.
- Civil or criminal lawsuits.
- Appearances, applications or appeals to government agencies or boards (zoning, variance, subdivisions)
- Planning for incapacity due to illness, mental disease, or impending surgery for yourself or a loved one.
- Entering into a contract for substantial home improvements.
- Leaving an employment position.

When I get a lawyer, what can I expect?

In most cases, lawyers follow a careful step-by-step process that may include:

- Conferring with you, the client, to pinpoint the problem.
- Gathering and analyzing all available facts and information.
- Interviewing everyone involved in the case.
- Recommending what you should or should not do, possibly writing letters, drafting legal documents.

If it is a court matter:

- Preparing legal arguments for presentation in court.
- Negotiating a settlement if both sides can reach agreement.
- Presenting your side of the case and your witnesses in court.
- Appealing the court's decision if your case is rejected.

How should I choose a lawyer?

It might be unwise to choose a lawyer purely on a dollar basis. Here are some sound ways to find someone to represent you:

- Talk to an attorney who has represented you in the past. Even if your lawyer does not handle this type of case, he or she may be able to recommend an attorney who does, and would be able to contribute his or her detailed knowledge of your problem. If you are moving, he or she can often recommend a legal advisor near your new home.
- Talk to friends who have been to a lawyer. People who are happy with their attorney are often good references. Lawyers depend on good client relations and word-of-mouth referrals for new business.
- Call your county bar association's Lawyer Referral Service. You can arrange for an initial legal consultation at a modest cost through this service.
- Consult a law directory, such as Martindale-Hubbell, which should be available at your local library.
- Scan legal websites.

How do I ensure a good lawyer-client relationship?

Remember, good legal assistance is not a one-way street. You have to cooperate with your lawyer if you really want to be helped. The attorney-client relationship is privileged and confidential, so don't hesitate to take your lawyer into your confidence. Here are some important tips to follow:

- Don't withhold information from your lawyer.
- Give him or her an objective statement of all the facts.
- Don't look for simple, quick answers to complex questions. Lawyers are justifiably cautious in drawing conclusions or answering questions about complicated legal problems. They know that cases are rarely "open and shut".
- Let your attorney know about any new developments in your case.
- Don't hesitate to ask questions about any matter relevant to your case. Remember, though, lawyers are not doctors, psychiatrists, marriage counselors or financial advisers.
- Work with your attorney. If you don't understand why something should be done or have doubts about some action your lawyer recommends, ask questions and get an explanation.
- Be patient—don't look for instant results. Trust your lawyer to follow through on the case, but don't hesitate to ask for progress reports from time to time. You always have a right to know what your lawyer is doing for you.
- Don't fall into the trap of expecting the same result on your case as obtained by a friend or neighbor in their case; no two cases are alike.

What about legal fees?

The time, study, experience and attention your attorney gives your problem all influence the legal fees. A lawyer invests thousands of dollars on such things as education, staff, books and journals, rent and insurance. Consequently, a lawyer must set a charge for his or her service that is both reasonable and adequate to cover his or her own investment.

Because no two legal matters are exactly the same, fees vary widely. Some factors involved are:

- The amount of time and labor spent on your problem. To a lawyer, time is money. Your lawyer should keep very careful records of the time he or she and the lawyer's staff spend on your case. This varies according to the amount of experience, training and the workload of the attorney.
- Ability, experience and reputation also are important factors in determining a lawyer's fee. If the attorney is well known as a leader in his or her field, the fee probably will be higher. Professionals do not work on a bid basis, so the cheapest lawyer may not be the best one to help you.
- The results obtained often are considered in setting the fee. Unless a lawyer takes your case on a contingent arrangement, where no fee is collected if a case is lost, your lawyer will expect to be paid, no matter the outcome. Even on a contingency basis, the client is expected to pay out-of-pocket costs such as investigators fees, postage/phone/-delivery costs, medical and hospital report costs, court filing fees and witness fees. If an attorney agrees to a contingent arrangement, he or she will take a percentage of the recovery if the suit is successful.
- Office overhead also is a factor in setting fees. Remember that when you hire an attorney, you also hire his or her entire staff—secretaries, investigators and other employees. Usually, approximately 50 percent of the fee helps to pay for overhead.

In most arrangements an attorney must explain the basis for the fee arrangement in writing with a retainer agreement. A retainer is required before an attorney starts work and you may need to replenish it as more work is done.

At times, a lawyer may not be able to set a fee in advance because it isn't possible to tell beforehand how much work your case entails. However, you usually can get a fair estimate of the costs from your lawyer, so don't ever hesitate to talk about fees. *It's a good idea to talk about the fee on your first visit.* Be frank and specific about the costs. If you can afford to spend a certain amount of money, make sure you tell the lawyer. Getting answers early will prevent unfortunate misunderstandings later.

Where else can I go for help?

If a private attorney cannot represent you in a matter, he or she may be able to help by referring you to an appropriate public agency, such as Legal Services or the Public Defender in your county.

Handling Problems with a Lawyer

How can I make a complaint about a lawyer?

Talk to your lawyer. Regardless of the nature of your complaint, the fastest, most effective solution to many problems is to advise your lawyer of your concern. Discuss your feelings frankly with your lawyer. You'd be surprised how often a candid phone conversation or face-to-face meeting can quickly resolve a concern or misunderstanding.

Letters: If telephone calls or an in-person meeting with your attorney are unproductive, a letter to your attorney outlining your specific complaints may provide a useful record. This will also give your lawyer a clear explanation of your concerns and give him or her an opportunity to resolve the matter.

Other Actions: Assuming you have been unable to resolve your concern by the previously suggested methods, and you wish to take the matter further, it is important to determine the nature of your complaint.

- **If it is a fee dispute**: If your complaint involves only a dispute over a lawyer's fee, such as when you have reason to believe the fee is excessive, then you are entitled at your option to use the fee arbitration process established by the New Jersey Supreme Court. It is usually a simple, quick and inexpensive way to resolve the fee dispute. It also saves you from going to court. The local fee arbitration secretary will provide you the opportunity to tell your side of the story. A written decision is usually given soon after the hearing.
- **If it is an ethics complaint**: Claims against lawyers that you believe to involve dishonest, fraudulent or unprofessional conduct may be the grounds for an ethics investigation. The ethics grievance procedure set up by the New Jersey Supreme Court investigates and, if appropriate, disciplines serious attorney misconduct. Mere unhappiness with the result of a case, disappointment with your attorney for not returning several telephone calls, or anger over a legal bill do not, in themselves, form the basis for an ethics grievance.

How are ethics problems handled?

By Supreme Court rule, all grievances must be in writing and filed with the secretary of the district ethics committee for the district in which the lawyer has his or her main law office. In the event the committee determines that an actual conflict of interest exists in any case, either the member who has the conflict may be disqualified from participating in the case or, in appropriate cases, the matter may be transferred to another district.

The secretary of the committee reviews the grievance to determine if the conduct alleged would constitute unethical conduct. If so, the secretary dockets the case and assigns the matter for investigation to an attorney member of the committee. The assigned investigator is instructed to complete their investigation within the Supreme Court's time goals (six months for standard investigations and nine months for complex investigations) and submit a written report to the chair of the committee. If the chair determines that there is sufficient proof of unethical conduct, a formal complaint is prepared. The complaint is served upon the lawyer, who is then required to file a formal answer within 21 days of service. This step begins what is known as the hearing stage.

Formal complaints are tried before a hearing panel consisting of at least three members, usually composed of either two lawyers and one public member or three lawyers. The procedure in a disciplinary hearing is similar to that in a court trial.

After the hearing is concluded, the panel deliberates and determines whether the complaint should be recommended for dismissal or whether some type of discipline is appropriate. The committee may recommend appropriate discipline, but that decision generally is made by the Disciplinary Review Board, which will review the matter and recommend appropriate discipline to the Supreme Court of New Jersey.

Where can I go for help?

For fee disputes or ethics complaints, call the toll-free number 1-800-406-8594 and follow the prompts to be connected to the appropriate district fee arbitration secretary or district ethics secretary to request a grievance form. Callers should be prepared to enter the five-digit zip code of the city where the attorney maintains an office. If a caller is having difficulty with the toll-free number, they may call the Office of Attorney Ethics at 609-530-4008 to request that a grievance form be sent to them.

Those who have access to the Internet may print out an ethics grievance form or a fee arbitration request form by visiting www.judiciary.state.nj.us/oae/index.htm. Visitors may consult the online list of ad-

dresses of all the district ethics secretaries and district fee arbitration secretaries to determine where to mail their completed forms.

Loss of Your Money through Dishonesty: In 1961 the New Jersey State Bar Association created what is now called the New Jersey Lawyer's Fund for Client Protection. The fund is now a committee of the Supreme Court. It was established to reimburse clients who have suffered a loss due to dishonest conduct by a member of the New Jersey Bar. To file a claim, call 855-533-3863 to request a claim form or write to: New Jersey Lawyers' Fund for Client Protection, Richard J. Hughes Justice Complex, P.O. Box 961, Trenton, NJ 08625. The fund is financed by a portion of the annual registration fee required to be paid by all New Jersey lawyers.

Compensation for Injuries on the Job

How can I get compensation for injuries on the job?

If your injury is related to your employment, you can recover payment regardless of whose "fault" the accident was by going to New Jersey's Workers' Compensation Court. If you are injured at work, you are entitled to payment of your medical expenses, wage replacement for the time you are unable to work while recovering from your injuries, and a monetary award to compensate you for any permanent injuries you sustained.

Workers' Compensation law covers not only injuries from accidents, but also covers injuries caused by what are known as "occupational diseases." Examples of occupational diseases include repetitive motion injuries such as carpal tunnel syndrome; loss of hearing due to noise exposure; pulmonary diseases caused by exposure to dust or fumes at work; or cancer caused by exposure to toxins.

In cases involving injuries suffered in connection with employment, your lawyer will represent you without payment in advance. The fee is contingent upon a successful conclusion.

Under this arrangement, your lawyer will receive no fee if your case is lost. (Of course, you still may have to pay certain costs directly related to your claim.) Under this fee arrangement, the lawyer must invest his or her own time, effort and office expenses without advance payment. This plan permits any injured worker, regardless of financial resources, to be represented by a private attorney in cases of this type. By law, your lawyer's fee will be based on a percentage of the amount you receive, which will not exceed 20 percent, and is fixed by a judge of compensation upon conclusion of the case.

Legal Consequences of Substance Abuse

What are the penalties for substance abuse?

You already know that alcohol and drugs can damage your health and even lead to death. In addition to the significant medical and psychological consequences, substance abuse can also damage your future. For example, you might limit life's basic opportunities, such as earning a living. Often, companies require pre-employment drug testing. If you test positive for drugs, you may be surprised to learn that some corporations will not hire you even if you are otherwise qualified.

How about your ability to travel from place to place by driving a car? This privilege can be lost. Did you know that the penalty for a first drunk driving offense in New Jersey is up to one year's loss of driver's license plus fines and possible jail time? You may lose your driver's license for at least six months if you are convicted of any drug offense. It doesn't matter if a car was used in committing the offense.

Law Points for Senior Citizens

Numerous issues of law affect senior citizens in their daily lives. To help senior citizens better understand their rights, the Bar Foundation publishes *Law Points for Senior Citizens*. The booklet covers many topics of interest to seniors, including age discrimination, Social Security, wills, advance healthcare directives, elder abuse and much more. Now in its third edition, the booklet may be obtained by calling 1-800-FREE LAW or it can be downloaded/ordered from the Foundation's website (njsbf.org). *Law Points for Senior Citizens* is also available in Braille or on CD.

About the New Jersey State Bar Foundation

The New Jersey State Bar Foundation, founded in 1958, is the educational and philanthropic arm of the New Jersey State Bar Association. The Foundation believes **informed citizens are better cititzens,** and is committed to providing free legal education programming for educators and the public.

Programs provided by the Foundation include seminars on such topics as wills, divorce, taxes, retirement planning, disability law and health issues; mock trial programs for students in grades K to 12; and training sessions for teachers on the topics of teasing and bullying prevention, conflict resolution, peer mediation and character education. Publications geared for the public *include Law Points for Senior Citizens (Third Edition), Consumer's Guide to New Jersey Law, AIDS and the Law in New Jersey, Disability Law: A Legal Primer (Sixth Edition), Domestic Violence: The Law and You (Third Edition), A Basic Guide to Personal Bankruptcy* and *Residential Construction and Renovation: A Legal Guide for New Jersey Homeowners*. School-based publications available through the Bar Foundation include *Bill of Rights Bulletin, Constitutionally New Jersey, Historical Documents of New Jersey and the United States, The Legal Eagle, Respect,* a newsletter about tolerance and diversity, and *Students' Rights Handbook,* which is cosponsored with the ACLU-NJ. Some publications are available in Spanish and all are available in alternative formats for the visually impaired.

For more information or copies of program materials, visit the New Jersey State Bar Foundation online at www.njsbf.org or call 1-800 FREE LAW. Please follow the Bar Foundation on Social Media and invite your friends to like and follow us as well. @NJStateBarFdn can be found on Facebook, Instagram and Twitter. The Foundation also has a YouTube Channel.

Informed Citizens are Better Citizens

Follow the New Jersey State Bar Foundation on Facebook, Twitter and Instagram @NJStateBarFdn

And, check out the videos on our YouTube Channel. — Search for New Jersey State Bar Foundation.

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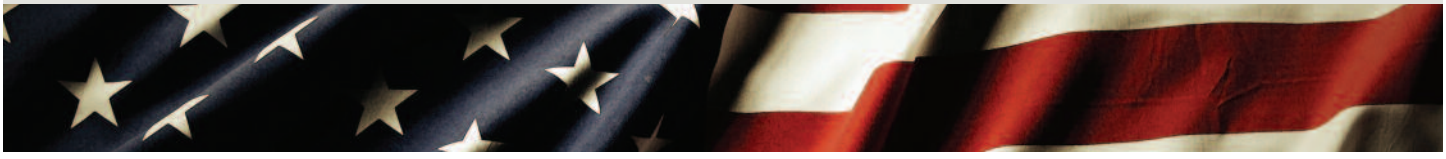

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