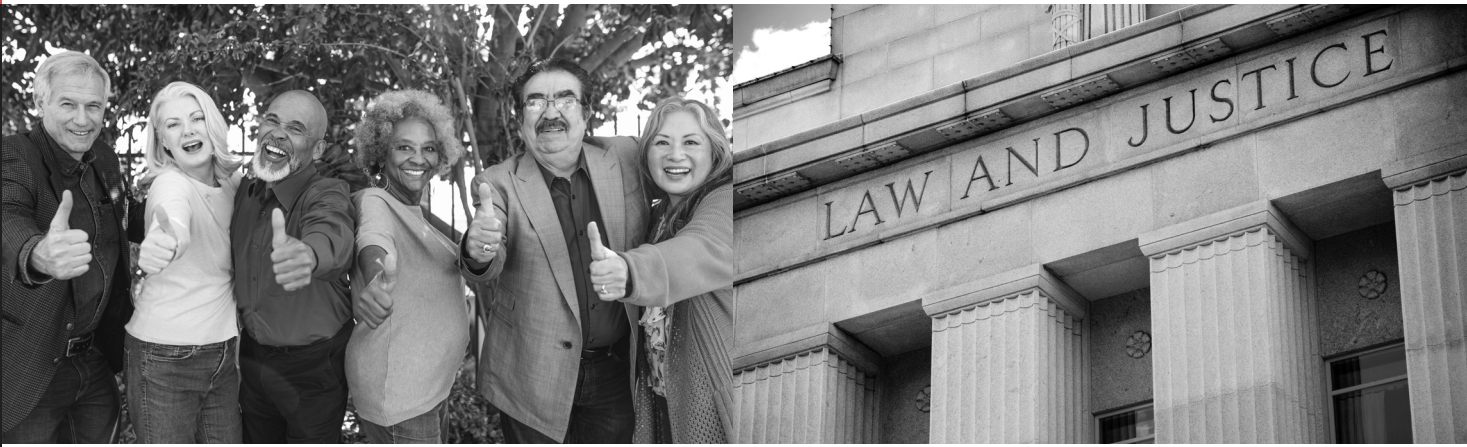


LAW POINTS FOR SENIOR CITIZENS

Answers to law-related questions
of special interest to senior citizens



FOURTH EDITION



A New Jersey State Bar Foundation Publication

LAW POINTS

FOR SENIOR CITIZENS

(FOURTH EDITION)

The information in *Law Points for Senior Citizens* (Fourth Edition) is published as a public education service to help explain laws in New Jersey. It does not constitute legal advice, which can only be given by your attorney. This booklet is based on laws in effect as of 2022.

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AGE DISCRIMINATION

What is age discrimination?

Age discrimination refers to the treatment of an individual in a manner different from others based solely or primarily upon the age of that individual. Generally, when the phrase “age discrimination” is used, it refers to the deprivation of some right or privilege to an older person.

Is it legal to discriminate against a person because of age?

In most, but not all circumstances, federal or state law prohibits discrimination on the basis of age. There are differences, however, between federal and state laws.

What is the federal law?

The federal law, known as the Age Discrimination in Employment Act (ADEA), is limited to making discrimination unlawful in the employment context. The ADEA makes it unlawful for an employer to refuse to hire an individual or to discharge an individual or discriminate against a person with respect to compensation or other terms and conditions of employment because of that individual’s age. In addition, an employer may not classify or segregate employees in any way that would deprive an individual of employment opportunities or would otherwise adversely affect a person’s status as an employee based upon that person’s age. The prohibitions of the

federal statute are limited to individuals over 40 years of age, with no age maximum. In some cases, however, age may be a Bona Fide Occupational Qualification (BFOQ) or mandatory retirement at a certain age may be permissible. The statute includes additional prohibitions against discrimination on the basis of age by employment agencies and labor organizations. The federal statute is further limited because it applies only to employers who engage in interstate commerce and who employ at least 20 persons. There are various other exceptions to the protection provided by the ADEA.

How does the state law prohibiting age discrimination differ from the ADEA?

New Jersey Law Against Discrimination (NJLAD) is broader than the ADEA. The state law prohibits discrimination in employment opportunities, in accessing any place of public accommodation, in accessing publicly assisted housing accommodation and other real property, and credit or business contracts because of race, creed, color, national origin, nationality, ancestry, pregnancy, breastfeeding, sexual orientation, gender identity or expression, disability, familial status, age, marital status, domestic partnership/civil union status, liability for military service, or sex. Therefore, under the New Jersey law, the failure to treat an individual equally because of age is unlawful not only in the employment context, but in housing, real estate and various other public accommodations. In addition, the state law does not limit its protection to any particular age group.

How am I protected by the laws prohibiting age discrimination?

Both the federal and state laws provide the procedures to be followed in reporting and seeking redress for discrimination based upon age. While it is not required that an individual be represented by an attorney, the procedures to be followed can get very complicated, especially with regard to deadlines for filing required documents.

The ADEA requires that before an individual can sue an employer in federal court for discrimination in employment, the employee must give prompt notice to the Equal Opportunity Commission (EEOC). The EEOC then has 60 days to investigate

the incident and to determine whether there has been actionable age discrimination. If the EEOC does not find that unlawful age discrimination has occurred, the individual may nonetheless pursue the matter and institute a lawsuit.

The state law provides for a somewhat different procedure. An individual complaining of age discrimination has a choice of pursuing the complaint in the courts or through the New Jersey Division of Civil Rights. In the latter situation, if the division finds that there are adequate grounds to suggest age discrimination, it will bring an action in the state administrative court. If the former option is chosen by the individual, the matter may be pursued through the law courts.

How do I know if I have been discriminated against?

It is almost impossible to identify all of the signs of discrimination. Under federal law, an employer cannot reduce your salary or wages or fire you simply because you reach a certain age, and cannot refuse to provide you with the same group health plan benefits offered to other, younger employees. On the other hand, it is not unlawful for an employer to take action with regard to any employee for good cause, where age is a “bona fide occupational qualification reasonably necessary to the normal operation of the particular business” or where the grounds for taking any action are based on reasonable factors other than age, and such factors are not a subterfuge to avoid the law against age discrimination.

If you think you have been discriminated against, you might wish to contact the New Jersey Division on Civil Rights or your attorney for further information.

DEALING WITH CREDITORS

What is a creditor?

A creditor is a person, corporation or business to whom you owe money for goods or services that have been supplied. There are two types of creditors: secured and unsecured.

A “secured creditor” has a lien or security interest in your real estate or an item of personal property. For example, most car loans are secured; the bank or credit company holds the title to your car until the loan is paid off. When you buy a major appliance or piece of furniture on credit, the store may have a “purchase money” security interest in the item because the store lent you the money needed to make the purchase. Sometimes, in order to get a loan from a bank, credit union or finance company, you are required to provide some property as collateral for the loan. This collateral is usually a second mortgage on your home or the title of your car. If you fail to make your loan payments, a secured creditor is entitled to satisfy the debt by repossessing the item you purchased or promised as collateral if it is personal property, and to file a foreclosure action in court if it is real estate.

In contrast, an unsecured creditor has no right to take any of your property to satisfy a debt without first bringing a lawsuit and obtaining a judgment against you. Only after a judgment has been obtained can the unsecured creditor send a sheriff or constable to levy on your property. For example, most credit card companies are unsecured creditors.

What can I do about a mistake on my bill?

Federal laws (such as the Fair Credit Reporting Act and the Fair Credit Billing Act) and state laws (such as the New Jersey Consumer Credit Transaction Act) contain

procedures for resolving disputes with merchants. Within 60 days after the mailing of the bill, you must notify the creditor, in writing, of your name and account number, the suspected error, why you believe the bill is wrong, and the suspected amount of the error or the item you want explained. The creditor must acknowledge receipt of your letter within 30 days and explain the bill or correct the mistake within 90 days. During this period of inquiry, the creditor is prohibited from threatening your credit rating.

You have the right to inspect your credit history at any time. If you find something unfavorable in your history that you do not agree with, you are entitled to submit an explanation, which must be made a part of your credit history.

Other federal laws prohibit discrimination on the basis of age, sex, marital status and race when you apply for credit. Federal law now allows each U.S. citizen to secure annually (once a year) a free credit report from each of the national consumer credit reporting companies (Equifax, Experian and Trans-Union). You can receive them online or through the mail. You can obtain your free credit reports annually from AnnualCreditReport.com. As of 2022, it is the only website authorized by federal law to obtain these reports. There are a number of other websites that can provide credit reports, but these are not affiliated with the government and may charge fees. It is important to periodically monitor your credit. It is also helpful to review reports from all three companies (Equifax, Experian and TransUnion) to identify correct or incorrect information from each company. Additionally, you may want to call to opt out of contact to your home from marketing companies. You can call 1-888-5OPTOUT or 1-888-567-8688 to opt out for a period of five years. You can also opt out for five years or opt out permanently by going to www.optoutprescreen.com. To opt out permanently, you will have to complete and sign a form that will be sent to you.

You also have the option to freeze your credit reporting with the three major U.S. credit reporting agencies (Equifax, Experian and TransUnion) and to unfreeze it later. Freezing your credit reporting means, in theory, that credit agencies should not be able to disclose your credit data until you unfreeze it. This means it should be harder for an unauthorized person to apply for credit in your name, (e.g., to take out a loan or credit card you didn't authorize). On the other hand, it makes the process more cumbersome if you want to apply for credit yourself in the future, including a

mortgage or auto loan. The process for freezing and unfreezing your credit reporting is different at each agency, but generally can be done online or over the phone. If you do freeze your credit reporting, make sure you keep any numbers or passwords you receive in the process, as it may be difficult to unfreeze your credit reporting if you lose this information.

What can I do about harassment from a debt collector?

The federal Fair Debt Collection Practices Act offers some protection against harassment by debt collectors. Under this law the term “debt collector” does not include your original creditor, who is exempt from the law’s provisions. You may notify a debt collector, in writing, that you refuse to pay the debt or that you wish the debt collector to cease further communication with you. The debt collector must then stop telephoning you and cease all other communications, except to notify you that they are taking other action, such as filing a lawsuit. A debt collector cannot contact you directly if they know that you are represented by an attorney. Debt collectors ordinarily cannot call you before 8 a.m. or after 9 p.m.

They are prohibited from using threats of violence, obscene or profane language, or other criminal means to collect debts. Further, a debt collector may not cause your telephone to ring repeatedly or continuously with the intent to annoy, abuse or harass any person at the called number.

The federal and state governments impose severe penalties on debt collectors or creditors who violate applicable provisions of the consumer protection statutes. If you believe that a creditor is acting improperly with respect to billing, or that a debt collector is acting improperly with respect to collection practices, you should document the facts as thoroughly as possible and seek the help of an attorney or call the New Jersey Division of Consumer Affairs Senior Hotline at 1-877-746-7850.

What happens when someone obtains a “judgment” against me?

The sheriff or constable may attempt to levy on your property and sell the items at public sale. State law allows you to designate \$1,000 worth of your property as exempt from the sheriff’s levy. Your bank accounts may be frozen and the creditor can apply to the court for an order directing the bank to turn over your money to the

creditor. A judgment could result in a lien against your real estate. When you sell your property, the judgment plus interest will have to be paid or a title company will not insure that the title to your real estate is good. Under other circumstances your real estate may be sold at a sheriff's sale to satisfy the judgment. If you are employed, the creditor may obtain a court order requiring that your employer turn over a portion of your paycheck to satisfy the judgment.

Can a creditor get my Social Security benefits?

Federal and state law prevents creditors from attaching Social Security benefits and state old-age payments. Many types of government pensions are also exempt. If a creditor, after obtaining a judgment following a lawsuit, sends the sheriff or constable to levy on your bank account containing these funds, you may go before the judge and prove that the money in the account is from Social Security checks or an exempt pension. A creditor can levy on IRA or KEOGH accounts, however 401K accounts are protected from levies by creditors.

What should I do if I am sued?

Do not ignore legal papers. Most legal complaints have to be answered within 35 days of receipt in order for you to protect your rights to be heard in court and to assert any defenses you may have. If you admit owing a debt but cannot pay it all at one time, contact the creditor or the lawyer acting on their behalf and attempt to arrange payments over time. Most creditors will cooperate because it is usually quicker than going through the court process. Always put such agreements in writing.

What is bankruptcy?

Bankruptcy is a legal procedure which allows you to eliminate most of your debts. Several options are available in bankruptcy, and it is very important to review all the facts of your situation and all the choices very carefully. If you believe your financial situation may make bankruptcy advantageous, you should consult an attorney for information and advice.

Closing advice

Never ignore legal papers. The problems will not go away, and default judgments will be entered against you. Talk to your lawyer to find out what choices are available to you. Communicate with your creditor or their attorney. Many times, satisfactory resolutions to the problems can be accomplished outside of the courtroom. When communicating with a creditor or attorney, always send letters or emails and keep a copy so that you are clear on what was discussed and agreed upon.

TENANTS' RIGHTS

Tips for moving into an apartment

Check with the local housing inspector to ensure there is a certificate of occupancy (C.O.) for the unit. Landlords are required to obtain a C.O. anytime they rent a property to a new tenant. When moving into an apartment, get a written lease that clearly states when the lease begins and ends, monthly rent charges and any additional fees. Your lease must include the amount of security deposit paid. You should walk through the apartment and ensure the unit is in working order before you sign the lease and hand over your security deposit. If there are any defects in the apartment, address this with the landlord prior to signing the lease. When you sign your lease, make sure the landlord or their authorized agent signs the lease, and that you get a copy, and that you get a receipt for any security deposits or rent payments. Keep your documents in a safe place. Prior to moving your belongings into the apartment, take pictures of the unit and keep your photos in a safe place.

Am I required to pay my landlord a security deposit?

Landlords are entitled to require payment of a security deposit. The amount of that deposit may not exceed one and a half (1½) months rent. In addition, the deposit must be kept in an interest-bearing account and the tenant is entitled to the interest annually or on the anniversary of the lease.

Within 30 days of receipt of the deposit, written notice must be provided to you by the landlord identifying the bank where the deposit is being held. If such notice is not provided, you may apply the deposit against your rent and the landlord is not

permitted to require that further security be posted. You must give your landlord written notice if you intend to live out your security deposit.

When you terminate your tenancy at the end of the lease period, your landlord must refund the security deposit to you with interest within 30 days. Any deductions from the deposit must be itemized and provided to you in writing. Deductions are permitted only for damage to the apartment beyond ordinary wear and tear. If the landlord fails to comply with those obligations, he or she may be liable to double damages, court costs and attorney's fees.

Can my landlord charge a pet deposit or pet rent?

Yes. Your landlord can charge a pet deposit so long as the amount collected does not bring the security deposit above one and a half (1½) times above rental amount. Landlords are allowed to charge an additional amount for pet rent. Any charges for pet rent must be specified in your lease. However, landlords cannot charge additional pet rent or require an additional deposit for service animals. You can send a written notice to your landlord requesting a reasonable accommodation, thus excluding any additional fees for your service animal.

Can my landlord refuse to accept a rental subsidy?

No, your landlord cannot refuse to accept a rental subsidy on your behalf. If your landlord refuses to accept your rental subsidy, then this can be considered a discriminatory practice and you may file a complaint against the landlord with the New Jersey Division of Civil Rights by calling 1-866-405-3050. Rental subsidies can be paid by Section 8 through the Department of Community Affairs (DCA) or other state and federal programs. Additionally, your landlord must accept any vouchers presented for your rent payment. These vouchers may come from community resources or government agencies.

Can my landlord require that I pay my rent online or in cash?

No, landlords cannot require you to pay rent by a specific method, i.e. online, convenience store deposit or cash. You should pay your rent by check or money

order. Allow three additional days if you are mailing your rent payment. You have the right to ask your landlord to provide a rent receipt when payment is made. Hold onto all rent receipts while you reside in the property.

Am I entitled to a grace period to make rent payments?

Yes. Senior citizens are entitled to a five (5) business day grace period for rent payments. No delinquency or other late charges shall be payable so long as your rent is received within five (5) business days from the first of the month. Business days do not include weekends, or State or federal holidays.

This only applies to senior citizens who received Social Security Old Age pensions, Railroad retirement pensions, or other governmental pensions in lieu of Social Security Old Age pensions, and by all recipients of Social Security Disability Benefits, Supplemental Security Income or benefits under Work First New Jersey.

Is my landlord allowed to raise the rent?

Yes. However, your landlord can only raise your rent during certain times. Your landlord cannot raise your rent until your current lease ends. Your landlord must give thirty (30) days written notice that your current lease is ending (or has ended) and that you are being offered a new lease at a higher amount. You may choose to sign the new lease and pay the higher amount or move out of the property. Additionally, some cities or towns have rent control laws that may limit the amount the landlord can raise the rent. Check with your local rent control board to determine if the rent increase is allowable by law. You should speak with an attorney or the rent control board if you believe that you are being asked to pay an unconscionable or unreasonably high rent increase.

Is my landlord obligated to supply heat to my apartment?

Yes, if heat is included in your lease, and you live in a property covered by the State housing code, which exclude owner-occupied buildings with one or two rental units, the landlord is legally obliged from October 1 to May 1 to provide enough heat to keep the apartment at 68 degrees between the hours of 6 a.m. and 11 p.m. and 65

degrees at night under state law. Your city or borough may have additional heating laws. If heat is not included in your lease, you should seek legal advice if your apartment is not being heated.

What should I do if my landlord fails to supply heat?

You should first notify the landlord of the problem. If the landlord fails to take action within a reasonable amount of time, you should call your local housing inspector or board of health. The housing inspector or board of health are empowered to enforce the state and local codes regarding heating requirements. Additionally, the housing inspector can file a complaint with the municipal court in your town against the landlord. This would force the landlord to appear in municipal court and face penalties including but not limited to fines.

Even if you get a shut-off notice due to non-payment, you may ask the utility company to keep your heat on between November 15 and March 15 if you get SSI, PAAD, HEAP, Lifeline Credit Program, or welfare, or if you cannot pay your bills because of circumstances beyond your control, such as the recent death of your spouse, high medical bills, or unemployment. There are also other county and local agencies, or other community-based programs that may provide financial assistance for back-utility bills.

Is the landlord obligated to make repairs to my apartment?

Yes. If the repairs are required to maintain vital facilities in the apartment and the damage results from ordinary wear and tear, the landlord is obligated to make the repairs.

What if the landlord refuses to make vital repairs?

You should notify the landlord of the need for repairs and allow him or her reasonable time to act upon your request. If the landlord refuses to make the necessary replacement or repair, you may have the repairs made yourself and deduct the cost from your rent, or you may temporarily set aside the rent. If you choose to authorize the repairs yourself or set aside the rent, you should first consult an attorney to be sure the repairs are serious enough to stand up in court.

Should I give my landlord oral or written notice of problems?

It is best to first call your landlord and then send a letter or email confirming the details of your conversation. Retain a copy of the letter for yourself so that, if necessary, you will later have proof of notice having been given.

What if my apartment building is being converted to a condominium or co-op?

The Senior Citizen and Disabled Protected Tenancy Act of 1981 as amended protects senior citizens and the disabled from eviction because of a conversion of property to condominiums or co-ops when the household income is no higher than three times the per capita income in the county in which they live or \$50,000, whichever is greater; and when the individual is more than 62 years old or is the surviving spouse of a senior citizen who has used the unit as a principal residence for one year and who is at least 50 years of age. The protection is good for a period of 40 years. The law also protects a disabled person who is totally and permanently unable to work because of a physical or mental impairment or blindness when that person also meets the income standards and has lived in the building for at least one year. If you have any questions about your rights in a building conversion, call the New Jersey Department of Community Affairs, Division of Codes and Standards at 609-292-7899.

Can I be evicted?

Under certain circumstances, a tenant may be evicted.

Some of the more common grounds for eviction are the following:

- Failure to pay rent (no written notice to tenant required; 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 in lease (legal action may be started one month after the second written notice).
- Repeated late rent (legal action may be started one month after a second written notice).
- The landlord of a building with three apartments or less wants to personally move into your apartment or sell the building to a buyer who wants to live in your apartment and the contract for sale calls for your apartment to be vacant at the time of closing (legal action may be started after a second legal notice).

Can a landlord lock me out of my apartment?

No. You may only be locked out of your apartment after a court enters an Order and even then, only by a Court Officer. If your landlord tries to lock you out, change the locks or otherwise interfere with your possession of the apartment, you should call the police.

Are there any special protections for tenants because of the pandemic?

Yes. There was a moratorium on evictions during the worst part of the pandemic. Even now, a low-or moderate-income tenant cannot be evicted for rent that became due from March 2020–August 2021. For certain low-income tenants, the covered period extends to December 2021. (The landlord can still sue for the money that is due.)

Recognizing that rental assistance applications can take some time, the NJ Supreme Court issued a directive that a tenant who shows that they have a pending rental assistance application should receive an adjournment of the court proceeding for 60 days, and perhaps longer in some circumstances.

How does the eviction process work?

The landlord files a complaint in the court setting forth the grounds for eviction. The court issues a summons, with a copy of the complaint, to the tenant. Most summons nowadays do not include the court date. Instead, the summons directs the tenant to contact the court and provide their contact information, including

telephone number and email address. It is important that the tenant provide this information and advise the court if they do not have an email address or need a disability accommodation or interpretation services.

The first step in the process is a Case Management Conference. Currently, these are held virtually. If you are not able to access the virtual hearing, you may go to the courthouse where the court representative will assist you in logging on from a technology room. It is important to participate in the Case Management Conference, where you may be linked with a Resource Navigator who can assist you with the process and provide resources for rental assistance.

The trial is usually held at least two weeks after the Case Management Conference. Some trials are now in-person, but most are still being held virtually. If you do not appear for trial, a default will be entered against you and a judgment for possession entered. If you do appear, there will be an opportunity to meet with a mediator and try to settle the case. If you do settle, it is important that you understand all the terms and that you are able to meet the obligations under the agreement. There are two types of stipulations of settlement. Whenever possible, you should enter into a settlement that provides for delayed, as opposed to immediate, entry of judgment.

If the case is not settled, the judge will try the case. If the landlord does not prove the case, the case will be dismissed. If the landlord proves the case and the court finds that the tenant does not have a valid defense, the court will enter a judgment of possession. After judgment, the process for the Warrant for Removal, which authorizes the Court Officer to lock you out, takes, at a minimum, ten days. If you have been evicted for non-payment of rent and you are able to pay all the rent and court fees within three days after you have been locked out, the court may vacate the judgment and allow you to return.

What about my belongings?

You should try to take all your belongings before you are evicted, however, the law does not allow the landlord to just throw away your remaining belongings. The landlord needs to give you at least 30 days notice before disposing of your property. (This law does not apply to cars and trucks, which may be towed.) When you leave,

you should notify the landlord that you have not abandoned your belongings and make arrangements to retrieve the property. If you get an extension on your lock out date from the court, usually called an Orderly Removal, you may waive your rights to collect your belongings after the new move out date.

Tips for moving out of an apartment

When moving out, tenants must leave the unit in broom clean condition. Do not leave items in the unit or you may be charged for its removal. Tenants are not responsible for ordinary wear and tear. You should take detailed pictures of the unit before returning your keys to the landlord. You are responsible for returning the keys for the unit to the landlord. Failure to do so could result in additional fees or costs. Additionally, provide your landlord with a new address to which the landlord may return your security deposit. You should remove your name from any utilities upon moving out. Additionally, update your new address with the US Postal Service and request mail forwarding to your new address.

For a more detailed look at tenants' rights, please review Legal Services of New Jersey's publication, *Tenants' Rights in New Jersey: A legal manual for tenants in New Jersey*, available at <https://www.lsnjlaw.org/Publications/Pages/Manuals/TenantsRights.pdf>.

AFFORDABLE SENIOR HOUSING

Many towns in New Jersey have affordable senior housing developments—apartments or homes that are set aside for seniors and people with disabilities who meet certain financial requirements. The financial requirements vary but are generally based on income. You can find a list of affordable senior housing through the New Jersey Department of Community Affairs, and you can contact each development you're interested in to find out the requirements. Sometimes developments have no vacancy, however, you may be placed on a waiting list to get in.

HOME EQUITY CONVERSIONS

Home equity conversions are methods that allow homeowners access to the equity tied up in their homes without being forced to move or repay a loan from limited income.

While there are several forms of home equity conversions, the most common are sale-leaseback and reverse mortgage.

Sale/leaseback

Under a sale/leaseback, an investor purchases the homeowner's home and grants the seller a life tenancy. The seller may receive a lump sum payment from which a life annuity is purchased, or may receive monthly mortgage payments from which rent is deducted. The specific arrangement is often dictated by tax considerations. An advantage of this approach is that the seller's income is protected against the buyer's default by the mortgage and the annuity purchased at the time of sale.

Reverse mortgage

A reverse mortgage is a loan made by a lender to a homeowner that provides either a lump sum, a line of credit or monthly payments to the homeowner. Typically, the loan does not have to be repaid until the homeowner moves, sells, or dies. The money received from the lender is not counted as income for purposes of eligibility for public benefits, such as Medicaid, food stamps or SSI. However, it may be counted as a resource for eligibility purposes if not spent in the month of receipt, and may be disqualifying for public benefits

The U.S. Department of Housing and Urban Development (HUD) sponsors a program called the Home Equity Conversion Mortgage (HECM), a reverse mortgage program that is insured by the federal government.

Theoretically, this mortgage can be made through any bank or mortgage company that is a Federal Housing Administration (FHA) lender. Some FHA lenders do not participate, but you can call local FHA lenders or the housing specialist at the New Jersey Division on Aging in Trenton to find a participating lender. Some of the features and requirements of HECM are:

- flexible payment options;
- adjustable-rate mortgages;
- loan repayment cannot exceed the sale proceeds of the house even if the loan and interest exceed this amount;
- HECMs are available only for single-family homes;
- all owners of the home must be at least 62 years of age; and
- applicants must receive counseling from a HUD-certified counseling agency that is separate from the lender.

Other programs

Some local lenders have their own reverse mortgage programs, which vary in terms and features from those listed previously.

Need for advice

Since a home equity conversion involves what is often one's most valuable asset, it is vital to consult with an attorney and a financial advisor before undertaking such an arrangement. Like all loans and contracts, home equity conversions involve fees, penalties and obligations as well as the benefits. All of these must be fully understood by the consumer before a decision is made whether or not the particular arrangement is appropriate under the circumstances.

TOOLS FOR CONTROL OVER FINANCIAL AND PERSONAL DECISIONS

What can I do now, while I'm healthy, to protect myself in the event of a future disability?

The United States Department of Health and Human Services estimates that while the vast majority of the 40 million Social Security beneficiaries are capable of maintaining independent lifestyles, approximately 20 percent of that number will suffer from some incapacity that will require them to delegate decision-making to someone else. There are several legal actions that you can take now to make your own choice and to avoid court-imposed decision-making.

Some of these actions (such as direct deposit of Social Security benefits and third-party payment accounts) can be taken directly by you. It is advisable, however, to consult an attorney when considering joint ownership of property, the inter vivos trust, the durable power of attorney, and the other legal choices listed in this booklet.

Direct deposit of your Social Security benefits

More than 99 percent of eligible New Jerseyans have their Social Security checks deposited directly into their bank accounts. If you are a beneficiary interested in direct deposit, you should go to your financial institution and sign an authorization,

Form 1199, which will be sent to the Treasury Department. Thereafter, Social Security retirement or disability benefits will be electronically transferred to your bank based on your date of birth, with some exceptions, and Supplemental Security Income (SSI) will be received on the 1st of each month.

- If you were born on the 1st through the 10th of the month, your Social Security will be deposited on the second Wednesday of the month;
- If you were born on the 11th through the 20th of the month, your Social Security will be deposited on the third Wednesday of the month;
- If you were born after the 20th of the month, your Social Security will be deposited on the fourth Wednesday of the month.

The funds will be in the bank despite rain, sleet or snow; you won't have to stand in line each month to cash or deposit your check; if you are hospitalized or away from home for an extended period of time, your checks won't pile up in the mailbox; and you don't have to worry about your checks being lost or stolen. Many banks offer free checking to older adults who sign up for direct deposit. You might want to shop around for one that does.

When opening your direct deposit account, it would also be prudent to execute a "power of attorney" at the same time at the bank. This "power of attorney" gives a person that you choose the power to handle your bank account if you are unavailable (perhaps on vacation or incapacitated). It is imperative that the person you appoint be trustworthy.

Third-party payment accounts

Financial institutions now commonly have online bill pay options that permit the account owner to go on their online account and pay mortgages, loans, utility bills, and other bills. These online banking services are free. Many financial institutions also give the account owner the ability to obtain bank statements online free of charge.

Joint ownership of bank accounts and other property

Many married couples have most or all of their property jointly owned between spouses, meaning both spouses names are on the bank accounts, on the deed to the house, etc. Sometimes seniors also add children or other family members as joint owners on property. Joint ownership can have both advantages and disadvantages.

Having a joint owner on a bank account makes it easier for the joint owner to help you manage the account by making sure your bills get paid, etc. The joint owner would still have access to the account even if you became incapacitated. But that can be a double-edged sword; if the person you add as a joint owner is untrustworthy, they could steal from you and deplete the account. Or they could get into financial trouble, and a creditor could seize the entire account. Additionally, your assets could count toward the joint owner's eligibility for means tested benefits like Medicaid.

When you pass away, generally property with a joint owner goes automatically to that joint owner, regardless of what you say in your will. For example, imagine you have two children and want everything to pass equally between them when you pass away. But your older child has been helping pay your bills, and you put that child as a joint owner on your bank accounts. This means that when you pass away, the bank accounts will pass entirely to your older child, and your younger child will probably receive less of your estate. This can cause resentment and family rifts that a parent would never want. Instead, this situation could possibly be handled better using a will and power of attorney.

Power of attorney

A power of attorney (POA) is a document in which you can appoint an agent to manage your financial affairs. The agent is called your attorney-in-fact. The agent can be anyone you want—a spouse, child, friend, etc.—and does not have to be an attorney. You can appoint multiple people as co-attorneys-in-fact and appoint successor attorneys-in-fact if the first person you pick can no longer serve.

In your POA, you can give your attorney-in-fact as much or as little authority over your finances as you wish. Typically, a POA would grant the attorney-in-fact broad powers over finances, including the ability to write checks from your accounts, to

move money between bank accounts, to make investments, to buy or sell your house or other real property, to enter into contracts, to file a lawsuit, to apply for government benefits, to create a trust, etc.

A POA is important because as people get older, they sometimes lose capacity to manage their affairs. But even if you no longer have capacity to pay the bills, the bills still need to be paid. By making a POA, you can appoint loved ones you trust to help manage your affairs, particularly if you can no longer do so yourself.

However, you should only make a POA if you completely trust the people you're appointing. If you have a good agent, a POA can be extremely helpful. If you have an untrustworthy or incompetent agent, however, the POA can be used to steal from you or make terrible financial decisions.

You can revoke or change your power of attorney at any time as long as you have capacity, and if your attorney-in-fact does something dishonest or wrong, you may be able to undo it. For example, if your attorney-in-fact steals from you, you would sue them to attempt to return the funds. However, if the funds are spent or the attorney-in-fact can't be found, then as a practical matter this may not be possible. The bottom line is that this is a position relying on trust.

A POA is only valid while you're alive. When you pass away, the power of attorney ceases. After you pass away, your property would generally be governed under your will, discussed further down.

In New Jersey, if you want the attorney-in-fact to be able to make gifts for tax or long-term care planning purposes, the POA must explicitly authorize this. Generic POA forms downloaded off the internet sometimes do not include this and other important provisions. If you are considering making a POA, it is often worth getting advice from an attorney.

A person can only make a power of attorney if they have capacity to understand what they are doing. If the person has already lost capacity, it is too late, and a guardianship (discussed below) would be required. If a person wants to make a power of attorney but is starting to slip mentally, it's important to make the document sooner rather than later.

Living trust

Some folks also create a revocable living trust in addition to a power of attorney. You, as Grantor, are named as a beneficiary and a relative, yourself, your lawyer, or a financial institution is named as trustee. The trustee or fiduciary must adhere to high standards of responsibility so that the danger that your funds may be misappropriated is minimized. A living trust can be a complement to a power of attorney and will, but not everyone needs a living trust. If you are considering making one, it may be well worth speaking with an attorney about whether it's appropriate for you.

Representative payee for Social Security

If you receive Social Security, the law permits a person designated by the Social Security Administration to receive and use your benefits for your necessities. This person is known as a “representative payee.” The Social Security Administration is not required to honor a power of attorney. Instead, they have their own process for designating a third party (such as a guardian or spouse, a friend, a public or non-profit agency, or a private institution licensed under State law) as the representative payee. Any third party may apply to become a “representative payee” but the Social Security Administration has discretion over who they appoint. To apply, a doctor must certify on form SSA 787 that the Social Security recipient is not capable of managing their own benefits. As of 2018, a new law allows competent, adult Social Security recipients to make an “Advance Designation of Representative Payee.” A Social Security recipient may designate up to three individuals who may serve as their representative payee should the need arise. You can make this designation online on your My Social Security account, by telephone, in person, or in writing. Additionally, provided you have capacity, you can change your designations at any time via the same methods.

No hearing is required for a representative payee to be appointed. The only notice is a letter to you that if you do not object within 10 days, the third party will be named as your representative payee. Your future checks will be made out in the name of your representative payee for your benefit, e.g., Mary Smith for John Smith. The

device can be a two-edged sword: it can be helpful in providing quick access to your funds, but it can also be used by vindictive family members or dishonest persons since Social Security requires little proof of incapacity. However, a law effective as of 1991 requires that the Social Security Administration conduct a face-to-face interview, if practicable, and obtain the prospective representative payee's Social Security number to determine if that person has ever previously misused funds as a payee.

Conservatorship

If you have not made arrangements described earlier in this booklet and you should become incapacitated, New Jersey permits you or a third party to ask a court to appoint a “conservator” to handle your financial affairs. That person must be bonded so that if your assets are misappropriated, you would have recourse against the bonding company. Furthermore, you would not have to be judged incapacitated and lose your civil liberties; the court would have to determine only that because of advanced age, physical infirmity or illness, you are unable to handle your affairs. The law provides for payment to your conservator from your estate.

Guardianship

If a person doesn't appoint people to manage their affairs through a power of attorney and advance directive for healthcare (discussed below), and loses capacity to manage their affairs, then it may be necessary to apply for guardianship.

In a guardianship proceeding, a plaintiff (usually a loved one) applies to court, asking the court to find the person incapacitated. Incapacitated means that the person can no longer manage their affairs and make important decisions, such as medical and financial decisions, because of a medical impairment. The plaintiff must present findings from doctors that the person is incapacitated, information about the person's finances, etc. The court will appoint an attorney to interview the plaintiff and the person over whom guardianship is sought. The alleged incapacitated person has a right to challenge the guardianship.

If the court finds the person to be incapacitated, the court can appoint a guardian, usually a loved one, but sometimes a volunteer, professional or government agency

(such as New Jersey's Office of Public Guardian). The guardian usually has broad powers over the person. In addition to managing the person's finances, the guardian may be able to control where the person lives, even who the person sees. By law, the guardian has a duty to act in the person's best interests.

Having a guardian appointed is different than making a power of attorney or healthcare directive. By making these documents, you are appointing agents to manage your healthcare and finances on your behalf. Your agents' powers come from you; they only have as much power as you give them, and the relationship is similar to an employer (you) and employee (the agent). By contrast, a guardian is appointed by the court, and the guardian's power derives from the state. You have no power over a guardian; the guardian has power over you, and the relationship is similar to a parent (the guardian) and child (you).

If you have people you trust to manage your financial and medical affairs, it is easier, less expensive and generally better to make a power of attorney and healthcare directive while you're healthy, than to need a guardianship down the road.

On the other hand, a guardianship can be necessary to stop the damage if a person is making bad decisions due to incapacity. For example, if someone with dementia has fallen victim to a scam, and is depleting their funds sending money abroad to someone they met online. In that case, a court could grant a guardian necessary financial powers that a power of attorney would not have.

SOCIAL SECURITY RETIREMENT BENEFITS

NOTE: The information in this section is subject to change. For the most up-to-date information check the Social Security website at www.ssa.gov or call your local Social Security office.

What factors should I consider when deciding when to retire?

There will be several factors involved in your decision about retiring. A company pension, for instance, may influence your decision. Your ability to keep on working and your own financial situation will also influence your decision. Finally, the rules of the Social Security program may affect your decision regarding when you should retire.

How will retirement affect my benefits?

The normal retirement age had been 65. However, to cope with the demographics of an aging population and the longer lifespan of the individual worker, the normal retirement age was increased gradually beginning in 1999. In 2027, the change will be fully phased in, and the normal retirement age will be 67, as is evidenced by the table below.

YEAR OF BIRTH	FULL RETIREMENT AGE
Before 1937	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943–54	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and after	67

Even if you don't plan to retire at your full retirement age, it is important for you to contact Social Security two or three months before you or your spouse reach the age of 65 to arrange for your Medicare health insurance protection. The initial enrollment period starts 3 months prior to the month you turn 65, includes the month you turn 65, and lasts 3 months after you turn 65 for a total of 7 months. If you fail to enroll in this time period, you will need to wait for open enrollment or a special enrollment period. You may also be subject to a penalty which results in increased Medicare Part B premiums for the duration of your enrollment unless you

meet the exception requirements for individuals who are still working and have other creditable coverage or have other creditable coverage, e.g., your spouse's employer provided insurance. For more detailed information, you can contact New Jersey State Health Insurance Assistance Program (NJSHIP) at 1-800-792-8820 which provides free guidance on Medicare issues.

What effect will early retirement have on the benefits I receive?

A person who starts retirement benefits before full retirement age will receive a permanently reduced benefit.

If a non-disabled worker retires after age 62 but before normal retirement age, the Social Security check is reduced by 5/9th of one percent for each month between the age of actual retirement and the then-prevailing normal retirement age.

Benefits can be paid only for months you are eligible throughout the entire month. This means that unless your birthday is the first or second day of a month, you cannot receive a check for the month you reach 62. In general, if you apply for early retirement benefits, your checks can start no earlier than the month you apply. If you wait until full retirement age to apply, you generally get back payments up to six months, but not before the month you reach full retirement age.

How will work affect my retirement benefits?

You can work after you become eligible for Social Security checks. The real question is: How much can you earn and still get retirement checks? The answer depends on whether or not you have reached full retirement age.

If you work and are full retirement age or older, you may keep all of your benefits, no matter how much you earn. If you are younger than full retirement age, there is a limit to how much you can earn and still receive full Social Security benefits. If you are younger than full retirement age during all of 2022, \$1 must be deducted from your benefits for each \$2 you earn above \$19,256. If you reach full retirement age during 2022, \$1 must be deducted from your benefits for each \$3 you earn above \$51,960. Contact Social Security in order to report your earned income if you are below full retirement age.

The above rules are for individuals who are collecting Social Security Retirement

because they have worked and paid into the system enough. If you are collecting Supplemental Security Income (SSI), the rules are very different. Your SSI will be partially reduced by your countable earned income. The first \$65 you earn is disregarded and one half of the remaining earnings are also disregarded.

NOTE: It is important to notify Social Security promptly about changes that could affect your checks. Failure to report changes can result in Social Security making an overpayment to you. If you are overpaid, Social Security will take action to recover any benefits not due you. Also, if you fail to report changes or you make a false statement, you can be penalized with a fine or imprisonment. If you have questions, you should call your local Social Security office.

What if I delay my retirement?

If you choose to defer retirement, each month of delay after attainment of full retirement age leads to an increase in the eventual benefit. If retirement is delayed past full retirement age, you will receive increases in your monthly benefit amount based on the number of months beyond full retirement age that you delay collecting until a maximum of age 70 as follows:

YEAR OF BIRTH	12-MONTH INCREASE	MONTHLY INCREASE
1933–34	5.5%	11/24 of 1%
1935–36	6%	1/2 of 1%
1937–38	6.5%	13/24 of 1%
1939–40	7%	7/12 of 1%
1941–42	7.5%	5/8 of 1%
1943 or later	8%	2/3 of 1%

For example, if you were born in 1944 and delay collecting social security until age 70 (4 years past full retirement age), your benefit will be 32% higher than if you collected at full retirement age (8% for each 12 month period beyond full retirement age).

After you start receiving full retirement benefits, you are permitted to continue working without jeopardizing benefits. In many cases, working longer will result in a higher salary and will cause your Social Security check to increase because of the higher earnings. This is really apparent with some private pension plans, where benefit amounts are based on the income earned in the three or five years just prior to retirement rather than on average compensation throughout a career.

Eligibility for Medicare is dependent on your having attained age 65 or having been disabled for two years, not on employment status. Delaying your retirement does not impair your eligibility for Medicare, although you will have to make an application for a Medicare card, unlike retirees who are automatically enrolled in Medicare Part A. In many situations the employer's group health insurance plan (EGHP) will have primary responsibility for insuring the over-65 worker (and the spouse of the older worker), with Medicare taking only a secondary role. It is critical though that once you are no longer working full-time, even if you have COBRA, you must be covered by Medicare because Medicare will become primary and the employer coverage will become secondary. Without Medicare enrollment upon retirement, you may have a gap in coverage.

How do I apply for Social Security?

When you apply for retirement benefits, Social Security will check your Social Security record, which shows all of your earnings covered by Social Security. Social Security will then figure your exact benefit rate. Your rate will depend on your age and the amount of earnings reported for you. Wage credits are available for World War II and post-World War II service, unless you are eligible for another federal benefit based on such service. If you are eligible for certain Railroad Retirement benefits, you may be barred from receiving Social Security. If you were employed in a foreign country, which has a totalization agreement with the United States, you may receive wage credits for Social Security benefits. Once you are on the Social Security benefit rolls, your checks will increase automatically to keep up with increases in the cost of living.

When do my checks start?

If you apply two or three months before your retirement month, your checks start for the month you retire. If you apply closer to the month in which you are retiring, your checks will usually start six to eight weeks after you apply and have submitted to Social Security all the required evidence.

Historically, payments are made each month for the previous month, and may be directly deposited into your bank account. The benefits are not pro-rated for the month you die so you must live the entire month to be entitled to the benefit for that month. Even if you die on the last day of the month, the check received the next month must be returned to the Social Security Administration.

Why do I need to notify Social Security of any changes that may affect my benefits?

It is important to notify Social Security promptly about changes that could affect your checks. Failure to report changes can result in Social Security making an overpayment to you. If you are overpaid, Social Security will take action to recover any benefits not due you. Also, if you fail to report changes or you make a false statement, you can be penalized with a fine or imprisonment.

What can be done if Social Security benefits are stopped?

You do not get a hearing before benefits are stopped, but you do have the right to appeal the matter. To appeal, go to your local office and the staff will assist you in filling out the correct forms. Your termination letter will set out the time limits for appeal.

Are Social Security benefits taxed?

Beginning in 1984, a part of your Social Security benefit can be included in your taxable income depending on your adjusted gross income, and the amount of your benefits.

What can be done if I am turned down for Social Security?

An attorney can be extremely helpful in assisting with Social Security appeals. As a senior, you may be eligible for free legal assistance from your local Legal Services office. If you are not eligible for free help from the Legal Services office, you should seek guidance from your county office on aging or from a private attorney. If the attorney wins the case for you, their fee will be taken from the Social Security award. The lawyer's fee will be set by the Social Security Administration and will be paid directly from the amount awarded.

The first step in the appeals process is a request for reconsideration, which must be filed within 60 days of receiving the notice of the denial. During the reconsideration stage, the applicant has the right to present new evidence.

If the application is again denied, the applicant has 60 days in which to request a hearing before an administrative law judge. At the hearing, the person appealing can have an attorney represent him or her.

Evidence can be presented, witnesses can testify (the judge can order witnesses to appear and testify), and Social Security Administration experts can be challenged by means of cross-examination.

The third stage involves a review by the appeals council that must be filed within 60 days of the decision by the administrative law judge.

The last step in the appeals process involves a lawsuit in federal court.

Missing any of the time limits (without good cause) for filing an appeal means that the right to appeal may be lost. However, a new application for benefits can often be made and the whole process will start over again.

What happens if the Social Security Administration says I received more benefits than I was entitled to?

If you believe the overpayment is incorrect, you can file a request for reconsideration (form SSA-561) within 60 days of the date you receive the notice of the overpayment. Alternatively, you can request that the overpayment be waived by filing form SSA-632 with the Social Security Administration. Ask for a detailed month-by-month accounting of how and why the overpayment was figured. Keep asking questions until the matter is understood. At the reconsideration stage, you can contest the claim that

you were overpaid. For example, if the Social Security Administration thinks veteran's benefits were received in January, February and March, and they actually didn't come until April, the matter can be resolved at this stage.

If the overpayment was figured correctly, then only file a petition for waiver, in which you ask the government not to collect the money. A person qualifies for a waiver if the person was not at fault in causing the overpayment and repayment would cause a hardship.

If the waiver is denied, ask for a reconsideration of waiver. Asking for this reconsideration within 10 days of receiving notice of the waiver denial will prevent a check from being cut off. If this reconsideration is denied, the Social Security Administration will withhold money or cut off the check, but you still will have all your rights to a hearing and to use the rest of the appeals process.

You can also ask the Social Security Administration to withhold a smaller amount from each check rather than to have an entire check stopped.

An attorney can be extremely helpful in appealing overpayment cases.

SUPPLEMENTAL SECURITY INCOME

NOTE: The information in this section is subject to change. For the most up-to-date information check the Social Security website at www.ssa.gov or call your local Social Security office.

What is Supplemental Security Income?

Supplemental Security Income (SSI) is a federal program under the Social Security Act. The federal government runs the program and pays most of the benefits. The state adds a supplemental benefit, and both are included in the monthly SSI check that recipients receive.

The purpose of SSI is to provide a minimum income to low-income people who are 65 or older, blind or disabled.

What is the difference between SSI payments and Social Security benefits?

Although SSI payments and Social Security benefits are both made by the same Social Security offices, the two programs are different.

SSI provides income maintenance for low-income people who are 65 or over, or who are disabled and cannot work. Social Security is an insurance program. Social Security benefits are available only to those who pay for the insurance protection it provides by working enough to earn 40 quarters of coverage.

Unlike Social Security, SSI is based on need. SSI does not require anyone to pay into the program in order to be eligible for benefits.

Who is eligible for SSI?

To qualify for SSI, you must be at least 65 years old, blind, or disabled. You must also be a U.S. citizen living in the United States, or a legally admitted permanent resident of the United States, or a permanent resident living in this country under a special status such as a refugee.

SSI is intended to assist persons in financial need. If your income is more than the limit allowed, you will not be eligible for SSI. The Social Security office or your County Office on Aging can explain limits on income and other resources.

What are the benefits?

The basic SSI benefits are monthly cash benefits. These rates change annually. For 2022 the federal single rate is \$841 and the rate for a couple is \$1,261. However, some factors reduce benefits, e.g., living arrangements, monetary assistance from friends or family, or earned income

How can I apply?

Any person has the right to apply for SSI. Although Social Security office workers may claim you are ineligible, they may not prevent you from filing an application. You may file an application at any Social Security office or online at ssa.gov.

What if my eligibility changes?

Report any change in your situation to the Social Security office. If an overpayment results from your knowing failure to report a change, a penalty may be assessed. Prompt reporting of changes may avoid overpayment problems. In some cases, prompt reporting may result in benefit increases being received sooner.

What if I am overpaid?

An overpayment occurs when a person receives payments for which the person is ineligible, or which are larger than they should be. Overpayments generally occur

when a change in status has been reported, but the next check is sent before the benefit amount can be adjusted. Status changes include hospitalization, death of spouse, change in living arrangements, and additions to resources or income.

The law requires Social Security to try to recover overpayments. To regain payments, Social Security may get the person who was overpaid to agree to an immediate repayment or a repayment schedule; or deduct the amount of the overpayment from future payments; or go to court to recover the amount of the overpayment, plus court costs and fees.

Recovery of overpayment affects only future SSI payments. It does not affect payment of regular Social Security disability payments.

Note: Where a person remains SSI eligible, recovery of overpayments will generally be made by deducting the amount from future SSI payments; up to 10 percent of the monthly check may be withheld to recoup the overpayment.

The law allows Social Security, in certain cases, to give up its right to collect an overpayment. If you are overpaid, you have the right to waiver if you were without fault, and if certain conditions apply.

If you offer to repay an overpayment, Social Security must explain your waiver rights. It must do this before it allows you to make any repayment. In fact, Social Security cannot take any action to collect an overpayment until it has first notified you in writing of the total amount owed, the action being taken by Social Security, and the time allowed for bringing an appeal.

Can I challenge an overpayment determination?

If Social Security tells you that overpayment has been made and must be repaid, there are two ways you can fight it. You can ask for a reconsideration and waiver. A reconsideration request alleges that a Social Security overpayment claim is incorrect and asks for a review of the finding. A waiver request asks that you not be made to pay the money back even if the finding of overpayment is correct. The reconsideration and/or waiver must be requested within 60 days of the notice of overpayment.

What if I receive less than I should?

A change in circumstances could entitle you to more benefits. If this happens and Social Security does not increase the amount of your check as soon as it occurs, it would owe you all benefits that should have been paid. The amount due is called an underpayment.

When you receive less than you should, bring the fact to the attention of a claims representative. Proper documentation of the status change must be shown in order to raise benefit levels. Retroactive benefits are only paid for 6 months when an underpayment is discovered.

What if I get duplicate checks?

Each SSI check has the words “Supplemental Security Income” on its face and has the month for which it is intended written plainly on it. If two checks for the same month arrive, do not cash both. Contact the Social Security office immediately and return the extra check. If you have direct deposit, notify the Social Security office if you have received two deposits for the same month.

Can I question the decision made on my SSI claim?

A written notice is sent to you when Social Security makes a decision that you are not eligible for SSI checks, that your SSI checks will stop, or that there will be a change in the amount you get. Be sure to read both sides of the notice for important information. If you don't agree with the decision, you have a right to appeal.

You have a right to be represented by a qualified person of your choice when you appeal a decision. An attorney's advice and representation can be very helpful. All appeals must be filed within 60 days of the date of the decision that you are appealing unless you have a good cause for filing late.

MEDICAL EXPENSES

NOTE: The information in this section is subject to change. For the most up-to-date information check the Social Security website at www.ssa.gov or call your local Social Security office.

What is Medicare?

Medicare is a federal program of health insurance. To be eligible for Medicare, one must have paid into the Social Security system while employed for at least 40 quarters and be 65 years of age or must have been receiving Social Security Disability Insurance for 24 months. Medicare insurance helps pay for acute illness situations and not for long-term or custodial care.

Part A Medicare is primarily hospital insurance. When a hospitalization occurs, the patient is required to pay a deductible of \$1,556 (2022). After that, Medicare will pay for most of the patient's expenses up until the 60th day of the hospitalization. After 60 days in the hospital, the patient is required to pay \$389 (2022) per day toward expenses. Part A Medicare will also help pay for stays in skilled nursing facilities, home health care, and hospice care if the patient qualifies. There is usually no premium for Part A.

Part B Medicare is physician services insurance. It will help pay for medical services, durable medical equipment, diagnostic tests, X-rays, and physical and speech therapies that are considered medically necessary. After the patient pays the first \$233 (2022) for Medicare-approved services, Medicare will pay 80 percent of the amount approved by Medicare for the service. The patient is responsible for the 20 percent that Medicare does not pay. Also, the patient may have to pay the difference

between what the doctor billed and Medicare approved unless the doctor accepts “assignment.” If assignment is accepted, the physician agrees to accept as the full fee the amount Medicare approves for the service. If you enroll for Part B, you must pay a monthly premium of \$170.10 for 2022.

In 2022, Medicare pays for the cost of a mammogram once (1) a year, a Pap smear test every two (2) years, and a colonoscopy every 120 months unless you are considered high risk.

Many private health insurance companies sell Medicare supplemental insurance that will help cover a number of the gaps in Medicare insurance. The United States Congress has regulated this field so that now all companies must offer policies with 10 levels of coverage. It is important to understand what each level of coverage does and does not include.

Read each explanation of Medicare benefits that you receive regarding every claim that is submitted. This will be listed on your Medicare Summary Notice (MSN). If Medicare refuses to pay for a claim, you have the right to appeal the decision. If you wish to appeal, you must do so within 120 days of receipt of the MSN. You can complete the redetermination request form and send it to the Medicare contractor listed on the MSN to appeal. Medicare will then review your appeal and send you its decision.

For both Part A and B appeals, if the amount at issue is \$180 (2022) or more, you have the right to a hearing before a United States administrative law judge after you have exhausted the lower level appeals. At that hearing you can be represented by an attorney and may present evidence, including sworn testimony to support your case. If the amount at issue is \$1,760 (2022) or more, you will also have the right to take your case to federal court.

What is Medicaid?

There are currently a number of Medicaid programs in New Jersey, each with its own eligibility guidelines and covered services. These programs are designed to provide healthcare coverage to the poor, the disabled and the elderly. If, for example, you are unable to afford healthcare, you may be eligible for Affordable Care Act

Medicaid, which is a Medicaid program for individuals between the ages of 18–64 who earn less than \$1,563 (2022) per month for a household of one (1) and who do not have Medicare coverage. If you are approved for Supplemental Security Income (SSI), you are automatically entitled to receive Medicaid. There are many other Medicaid programs for the aged, blind, and disabled. There are also a number of other programs that are similar to Medicaid in that they assist in affording you access to medical care or services. For information on subsidized programs in New Jersey, please contact your county Office on Aging (or Area Agency on Aging), the information for each is located at the end of this booklet. A partial list of programs appears below.

NJ Save is an online application to help low-income seniors and individuals with disabilities save money on Medicare premiums, prescription drug costs, and other living expenses. The application can be accessed online at <https://njdoas-ua.force.com/njsave/quickstart>. A paper application can be printed at <https://www.state.nj.us/humanservices/doas/forms/NJSaveApp.pdf>. This single application determines eligibility for the following programs:

- **PAAD (Pharmaceutical Assistance to the Aged and Disabled)** helps eligible New Jersey residents pay for most prescription drugs, testing materials and supplies. Eligibility requirements for PAAD are based on the residents' income, covering insurances and marital status.
- **Senior Gold Prescription Plan** provides pharmaceutical assistance to New Jersey residents whose income is too high for PAAD, but is not enough to adequately cover their prescription expenses each year.
- **Lifeline (Utility Assistance Program)** offers \$225 to persons who meet the PAAD eligibility requirements. This includes utility customers as well as tenants whose utility bills are included in their rent. Only one tenant in a household is entitled to this assistance. You are eligible for the Lifeline benefit if you are a recipient of PAAD.
- **SLMB (Specified Low Income Medicare Beneficiaries)** is a program that covers Medicare Part B premiums. Eligibility is based on income, resources, and being ineligible for full Medicaid.

- **Medicare Part D Low Income Subsidy (LIS also known as Extra Help)** is a program that reduces Medicare Part D premiums, deductibles, and copays.
- **HAAAD (Hearing Aid Assistance to the Aged and Disabled)** provides a \$100 reimbursement to eligible persons who purchase a hearing aid.

Additionally, the NJ Save application screens applicants and forwards their information to the appropriate eligibility determining agency for the following programs:

- **Universal Service Fund (USF)** is a program that helps make energy bills more affordable for low income customers. If eligible, USF may be able to lower the amount you have to pay for natural gas and electricity.
- **Low-Income Heating and Energy Assistance Program (LIHEAP)** is a program that helps very low-income residents with their heating and cooling bills, and makes provisions for emergency heating system services and emergency fuel assistance.
- **Supplemental Nutrition Assistance Program (SNAP)** is a program that provides nutrition benefits to supplement the food budget of needy families so they can purchase healthy food and move towards self-sufficiency.
- **JACC (Jersey Assistance for Community Caregiving)** provides a broad array of in-home services and supports that enable an individual who would otherwise qualify for placement in a nursing facility to remain in his or her community home. By providing a uniquely designed package of supports for the individual, JACC is intended to supplement and strengthen the capacity of caregivers, as well as to delay or prevent placement in a nursing facility. JACC serves individuals who are not eligible for Medicaid, and participants will share in the cost of their services.

You should contact your county board of social services or an attorney to determine whether or not you are eligible for any of the Medicaid programs.

An important Medicaid program is **Managed Long Term Services and**

Supports (MLTSS). This is the Medicaid program that covers long term care in a nursing facility or assisted living facility and provides a special package of benefits to individuals at home including private duty nursing, home delivered meals, and a personal emergency response system.

A person in need of long-term care must meet both clinical and financial eligibility in order for Medicaid to cover their cost of care. To be financially eligible, there is both a resource or asset test and an income test. For resources, a single person must have \$2,000 or less in assets which includes their home (unless they are currently living there), retirement accounts, checking accounts, the cash value of life insurance, etc. For married couples, anything belonging to either spouse counts toward resource eligibility but there are rules to prevent spousal impoverishment. First, the primary residence is exempt if the well spouse (known as a community spouse) resides there. Second, the community spouse can keep one-half ($\frac{1}{2}$) of their non-exempt resources up to a maximum of \$137,400 (2022). If one-half ($\frac{1}{2}$) of their resources is less than the minimum of \$27,480 (2022) they get to keep the minimum amount. Anything over these limits, must be spent on allowable expenses before the person can be Medicaid eligible.

With respect to the income test, the person seeking Medicaid eligibility must have gross income (i.e. before any deductions), including Social Security or pensions, below \$2,523 (2022). The income of the community spouse is not counted, and they get to keep their entire income. Beginning December 1, 2014, individuals whose income exceeds the income limit may still be eligible for Medicaid if they establish a Qualified Income Trust (QIT). Income that goes into the QIT is not counted for eligibility purposes but must still go toward the person's cost of care. The rules for QITs are complicated and if it is not done correctly, Medicaid eligibility will be denied, so an attorney's guidance is highly recommended. It is simply important to understand that if the Medicaid applicant's income exceeds \$2,523 (2022), they will not be eligible without a QIT. If you may need a QIT, you likely should speak with an elder law attorney.

When considering an application for Medicaid, one should bear in mind that the rules are fairly complicated, and that transfers of assets to third parties (such as gifts to children), whether done in order to become eligible for the program or not, can result in a penalty period being imposed during which payments by the state will not

be made for long-term care.

OBRA-93 (Omnibus Budget Reconciliation Act of 1993), which is federal legislation effective October 1, 1993, made significant changes to Medicaid. Transfers of assets made within 60 months of an application for Medicaid are penalized. This is commonly referred to as the five-year lookback. The penalty period is a number of days of ineligibility for Medicaid, determined by dividing the value of the assets transferred by the average cost of a nursing home in New Jersey which is \$374.39 (2022) per day. States must apportion the period of ineligibility between spouses so that only one penalty applies. In the case of joint assets, a withdrawal by one party is considered a transfer. The law also subjects transfers of income to a period of ineligibility. Transfer penalties can be avoided by returning all of the assets that were transferred.

When applying for Medicaid, agency workers will review your financial records for the past five years and require proof of where deposits came from and where withdrawals were spent. For that reason, if you may apply for Medicaid in the future, it's important to keep good records of your finances, and pay for things in a way that establishes records of where funds were spent (i.e. do not use cash).

In addition to the complicated financial criteria, an individual must be found clinically eligible in order to qualify for Medicaid. The Office of Community Choice Options (OCCO) is tasked with the responsibility of determining if an individual meets clinical eligibility for MLTSS. If the applicant is in a nursing facility or assisted living facility at the time of their application, the facility will file a request for the nursing assessment from OCCO. Individuals who are home have the extra burden of making the request themselves. To do that, the Medicaid applicant or family member most familiar with their medical condition, would call the local Area Agency on Aging or Aging and Disability Resources Center (AAA/ADRC) and request to be screened for eligibility for home-based Medicaid. The AAA/ADRC will then complete a series of pre-screening questions. If their screening yields that the individual may be clinically eligible, they will refer the case to OCCO for a full nursing assessment.

States are mandated to recover payments from the estates of Medicaid recipients. All benefits paid from the age of 55+ must be repaid to Medicaid from the estate of

the Medicaid recipient. Many Medicaid recipients do not have an estate at the time of their death, so estate recovery does not affect them. However, if the Medicaid recipient was home, they may still own their house which Medicaid will put a lien on in order to be repaid.

If your application for Medicaid benefits is denied, if your Medicaid eligibility is terminated, or if Medicaid refuses to pay a claim, you have a right to a fair hearing before a New Jersey Administrative Law Judge. At that hearing you have a right to be represented by counsel and to present evidence, including testimony, to support your case. The judge makes a recommendation to Medicaid regarding your case. Then, if Medicaid still denies your claim, you have a right to appeal to the Appellate Division of the Superior Court of New Jersey. In a situation where Medicaid has advised you that it intends to discontinue the payment of benefits, you may have a right to have benefits continued until your appeal has been decided but you must file your appeal within the time limits listed on the notice to receive this benefit.

Medicaid is constantly changing through regulations, statutes, and case law; as such, it is important to consult with an elder law attorney if you or someone you know may need long term care in the future. There may be steps you can take to protect assets from the cost of long term care with proper advance planning. Non-attorney Medicaid advisors often tout their services with respect to Medicaid and Medicaid planning, but the New Jersey Division of Consumer Affairs recommends against utilizing these services. See this fact sheet on the issue: <https://www.njconsumeraffairs.gov/News/Consumer%20Briefs/medicaid-advisors-application-assistors.pdf>. Use caution when selecting the person to assist you with your Medicaid planning.

NURSING HOMES, ASSISTED LIVING AND OTHER RESIDENTIAL FACILITIES

What are the differences between assisted living facilities and nursing homes?

People who experience cognitive decline, dementia and other health impairments often cannot fully take care of themselves anymore and need help with activities of daily living. Often a family member (such as a spouse or child) provides this care for a time, but at some point, the family member can no longer do it, and professional long-term care is needed. Sometimes a person can get the care they need with home health aides at home, but people who need more robust care may need to move into a residential facility: an assisted living facility, or nursing home.

People who can still take care of themselves to some extent may be able to get care in an assisted living facility. This is a residential facility; residents move into the facility and live there, and the facility provides all meals. These facilities have staff who provide some help with activities of daily living, but also provide recreational activities, opportunities to socialize, etc.

People who need a lot of help with activities of daily living likely will need to receive care in a nursing home. This is also a residential facility, but with more staff that can help with more activities of daily living, and with a medical focus.

What are the rights of nursing home residents?

Nursing homes provide nursing, rehabilitative and health-related care and services that cannot be provided outside an institutional setting.

Residents of a nursing home have the same rights as they had when they lived in an apartment or their home. They pay the nursing home monthly for room, board and medical services. The nursing home is, on the one hand, the landlord of the resident for room and board, and on the other hand, the employee of the resident for medical services.

Ordinarily, upon entry into the nursing home, the resident or a family member signs a contract setting out the terms of payment, price for each service, and so forth. The resident and the family also get a copy of the nursing home residents' rights, which include such things as the right to privacy; to manage one's own finances; to unrestricted personal visitation; to present complaints without fear of reprisal; to equal access to quality care without regard to source of payment; to a written plan of care and services; and to free choice of one's physician.

If the resident does not have enough money to pay for nursing home care, or runs out of money after paying privately, there are governmental programs that may pay for the care, including veterans' benefits, Medicaid and General Assistance. If a nursing home is Medicaid-certified, the facility cannot evict a resident because he or she becomes eligible for Medicaid. However, not all facilities accept Medicaid, and those that do not are permitted to discharge residents for failure to pay for their care. There are waiting lists for nursing home beds in many parts of the state, and those lists are longer for applicants who will enter as Medicaid or General Assistance eligibles than for those with substantial private resources.

However, if nursing home bills are not paid and a balance builds up, the facility can file a lawsuit to try to collect against the resident or, in some cases, their family members. This is especially true if a family member served as power of attorney, received gifts (especially if the gifts disqualified the person for Medicaid), or signed certain paperwork. If a loved one is entering a nursing home and a family member is considering signing the admission agreement, it's generally a good idea to work with an elder law attorney to review the agreement so the family member understands what is being signed.

There are only six ways to be transferred or discharged from a nursing home according to the Nursing Home Reform Act. A person can be evicted if (1) it is necessary to meet resident's welfare & welfare cannot be met at the nursing home, (2) the discharge is appropriate because the resident's health has improved such that the resident no longer needs the services of a nursing home, (3) the safety of individuals in the nursing home is endangered, (4) the health of individuals in the nursing home is endangered, (5) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under Medicaid or Medicare on resident's behalf) for stay at facility, or (6) the nursing home ceases to operate.

Even then, there are notice requirements and the nursing home must arrange for an appropriate and safe discharge before the eviction can proceed. (A resident can always leave the facility for overnight visits or discharge oneself).

It is important to understand that these same limitations do not apply to residents of Assisted Living Facilities. An Assisted Living Facility eviction is under the terms of landlord tenant law.

If a resident needs to be hospitalized, the nursing home will hold the bed open for the resident's return as long as the bed is being paid for. Medicaid pays bedhold fees for 10 days. If the resident is in the hospital longer than 10 days, the resident gets the next available bed in the same nursing home upon discharge from the hospital. (Usually the hospital will keep the resident until the next bed opens).

If a nursing home resident has a complaint about the nursing home, the resident or someone on the resident's behalf can complain to the administrator or to the New Jersey Office of the Ombudsman for the Institutionalized Elderly at 1-877-582-6995. A complaint can also be filed online at <https://www.nj.gov/ooie/>. The complaint to the ombudsman can be made anonymously or, if you give your name, it can be kept confidential if you so request. The ombudsman can go to the nursing home unannounced in order to investigate.

What are the rights of assisted living and other residential facility residents?

Assisted living means a coordinated array of supportive personal and health services, available 24 hours per day, which promote resident self-direction and

participation in decisions that emphasize independence, individuality, privacy, dignity and homelike surroundings to residents who have been assessed to need these services, including residents who require formal long-term care. An assisted living residence is a facility that provides apartment-style housing and congregate dining while assuring that assisted living services are available when needed. Other residential facilities can include a variety of settings, such as personal care homes, adult day care, and adult medical day care services.

Assisted living facilities typically have different terms of payment than nursing homes; facilities often require residents to pay privately for a certain time period before the facility will accept payment from Medicaid.

The rights to be expected at an assisted living or other type of facility are similar to those prescribed by law to nursing homes. Residences are to provide services that are consistent with the following principles of assisted living:

- a) To provide personalized services and care to meet each resident's needs;
- b) To foster the independence and individuality of each resident;
- c) To treat each resident with respect, courtesy, consideration, and dignity;
- d) To assure each resident the right to make choices with respect to services and lifestyle;
- e) To assure each resident's right to privacy;
- f) To nurture the spirit and uniqueness of each resident;
- g) To encourage families and friends to participate in resident service planning and implementation; and
- h) To provide opportunities for the assisted living facilities and programs to become a valuable community resource.

What are the rights of boarding home residents?

Every resident of a boarding home shall have the right:

- a) To manage their own financial affairs;
- b) To wear their own clothing and in the style they prefer;
- c) To style their hair according to their preference;

- d) To keep and use personal property in their room, except where the boarding house can show that this would be unsafe, impractical or interfere with the rights of others;
- e) To receive and send unopened mail;
- f) To unaccompanied use of a telephone at a reasonable hour and to a private phone at the resident's expense;
- g) To privacy;
- h) To hire their own personal doctor at their expense;
- i) To privacy concerning their medical condition or treatment;
- j) To unrestricted personal visitation with any person of their choice, at any reasonable hour;
- k) To make contacts with the community and to achieve the highest level of independence and interaction with the community of which they are capable;
- l) To present complaints on behalf of themselves or others to government agencies or other persons without threat of reprisal in any form or manner whatsoever;
- m) To a safe and decent living environment and care that recognizes the dignity and individuality of the resident;
- n) To refuse to work for the boarding facility, except as contracted for by the resident and the operator;
- o) To practice their religion or to abstain from religious practice; and
- p) To not be deprived of any legal right solely by reason of residence in a boarding house.

Are owners allowed to retaliate against tenants who seek enforcement of their rights?

No owner, operator or employee shall serve an eviction notice upon a resident or take any other action in retaliation for:

- a) the efforts of the resident or a person acting on their behalf to enforce any rights under a contract or any law; or
- b) the good faith complaint of a resident or a person acting on their behalf to a government agency concerning the owner, operator or employee's alleged

violation of any health or safety law, or other law regulating rooming houses or boarding houses.

Can I be evicted?

Residents of rooming and boarding facilities licensed by the New Jersey Department of Community Affairs may not ordinarily be evicted from such premises except for good cause as defined in New Jersey's Just Cause for Eviction Act. Unless otherwise directed or authorized by the Department of Community Affairs, an operator who wishes to evict a resident must follow the same procedures and substantive laws that govern the eviction of other tenants under the Just Cause for Eviction Act.

Residents may not, therefore, be evicted unless an operator can prove one of 16 specific grounds for eviction. These grounds include: (1) non-payment of rent; (2) disorderly conduct; (3) destroying or damaging property; (4) violating a reasonable agreement in the lease or residency agreement; (5) violating the operator's rules and regulations; and (6) failure to pay a valid rent increase. Residents of residential health care facilities (RHCFs) licensed by the New Jersey Department of Health are not protected by the Just Cause for Eviction Act. However, such residents are entitled to at least 30 days advance written notice of a transfer or discharge from the facility. Additionally, except in an emergency, residents of RHCFs may only be removed from the premises (1) for medical reasons; (2) for their welfare or the welfare of other residents; (3) for non-payment of rent; or (4) for repeated violations of the facility's written rules and regulations.

Residents may also be transferred or discharged if required by the department of health.

Elderly residents of nursing homes, residential healthcare facilities, boarding homes or any other such state-regulated facility offering health or health-related services to the institutionalized elderly, who experience abuse or exploitation from care providers, family members or strangers, should report these incidents to the Office of the Ombudsman for the Institutionalized Elderly at 1-877-582-6995.

How can I protect my rights?

The operator of a boarding house must make sure that a written notice of the rights of boarding home residents is given to every resident upon admittance to the boarding home and to each tenant already living there.

The operator must also post the notice in a conspicuous public place in the boarding facility. The notice shall include the name, address and telephone numbers of the Office of the Ombudsman for the Institutionalized Elderly, county welfare agency and county office on aging.

Where their rights have been violated, residents can sue for damages, costs and attorney's fees. Any boarding or rooming house resident whose rights are violated has the right to bring a lawsuit against any person committing such a violation. The action may be brought to enforce such rights and to recover actual and punitive damages for their violation. A tenant who wins any such lawsuit is also entitled to recover reasonable attorney's fees and costs of the action.

GRANDPARENTS' RIGHTS

The relationship between a grandparent and a minor grandchild can be adversely affected under the following circumstances:

1. The death of the grandparent's child where custody of the grandchild is with the surviving parent;
2. The divorce or separation of the parents of the grandchild;
3. The death of both parents of the grandchild; or
4. Neglect in care by the parents or parental unfitness.

In 1993, N.J.S.A. 9:2-7.1 was enacted. Under this law, a grandparent of a child residing in New Jersey may make application in superior court for an order of visitation.

The court will consider the following factors:

1. The relationship between the child and the grandparent;
2. The relationship between each of the child's parents, or the persons with whom the child is residing and the grandparent;
3. The time that has elapsed since the child last had contact with the grandparent;
4. The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
5. If the parents are divorced or separated, the time-sharing arrangement that exists between the parents with regard to the child;
6. The good faith of the grandparent in filing the application;

7. Any history of physical, emotional or sexual abuse or neglect by the grandparent;
and
8. Any other factor relative to the best interest of the child.

In June 2000, the U.S. Supreme Court restricted the ability of grandparents to gain visitation rights to a grandchild, giving deference to the parents. While the above New Jersey law is still valid, in 2003, the New Jersey Supreme Court instituted a threshold harm standard to the law, imposing the burden of proof on the grandparent seeking visitation. In other words, it is up to the grandparent to prove that denying visitation with a grandchild will result in harm to the child. Be aware that it is a high burden to prove and in light of the U.S. Supreme Court's 2000 ruling, there is a presumption in favor of the parent's decision-making authority.

WILLS

What is a will?

A will is a document, executed in accordance with state law, which directs how some or all of your property is distributed at your death. An executor is designated under your will who assembles the assets of your estate and pays debts and taxes. If you have a child who is a minor, a guardian should be appointed under the will who would serve if you and your spouse die before the child reaches the age of majority.

When must a trustee be designated under my will?

A trust is a separate entity that may be established under your will when appropriate. If a trust arrangement is part of your will, a trustee is to be designated to manage and distribute the trust funds. The trustee is directed to distribute the funds held by the trust to or on behalf of the beneficiary of a trust.

Everyone should have a will, but not everyone needs a trust. However, in certain circumstances trusts may be advisable. For example, if you have a disabled child, and receiving an inheritance would cause your child to lose disability benefits, you should consider speaking with an attorney about a special needs trust. As another example, if one of your beneficiaries has a drug problem or gambling problem and cannot wisely manage property, or is a minor child, it may be wise to leave any inheritance in trust for that beneficiary, with another trusted family member managing the trust.

Do all of my assets pass under my will?

Property in your name alone passes under your will. Such assets are known as probate property. Typical examples are bank accounts, stock certificates and personal

property, such as jewelry and motor vehicles. Assets that are not governed by your will are known as non-probate property. Assets held jointly, IRA accounts with designated beneficiaries, 401K's with designated beneficiary, 403(b) accounts with designated beneficiaries or life insurance policies with designated beneficiaries are all examples of non-probate property or non-probate assets. Joint property passes to the survivor and IRA accounts, retirement benefits and life insurance are distributed in accordance with the beneficiary designation.

What is the role of non-probate assets in planning my estate?

A goal in estate planning may be to coordinate the disposition of non-probate assets with the plan for assets to be distributed under a Last Will and Testament or a Trust. For example, if you desire a trust for your spouse under your will, consideration should be given to designating the trustee of this trust as beneficiary of your insurance policies. In this manner, a non-probate asset such as insurance will pass as part of the overall estate plan. Tax considerations should be reviewed and considered in this type of planning.

How is my estate distributed if I die without a will?

If you die without a will, your property will pass under New Jersey's intestacy statute. The intestacy statute may be different than your wishes, and usually requires additional time and expense. It's better to avoid this by making a will that reflects your wishes and makes things easier for your loved ones.

Must my spouse or domestic partner receive any part of my estate?

In New Jersey, if one dies while married, a spouse or domestic partner generally cannot be disinherited. The surviving spouse or domestic partner is entitled to receive a share of your estate equal to approximately one-third of your probate assets with certain adjustments. With the advice of an attorney, you can limit the amount your spouse or domestic partner inherits and also restrict such inheritance to certain assets.

When should I consider a new will?

Laws change, and life's circumstances change, so it's a good idea to review your will

with an attorney at least every ten years. You also should review your will if you have a major life change, such as if you get married or divorced, have more children, if it turns out one of your children or grandchildren may have disabilities, you want to change who serves as executor, you have a major change in your finances, etc.

Must an attorney be consulted to prepare my will?

A will is a complicated legal document, and if you try to prepare it without a lawyer, you likely will not understand what you're signing. By the time your loved ones need your will, by definition, you won't be around to answer any questions that come up. For that reason, it is highly advisable to work with an attorney to prepare your will. People who try to save money by writing their own will sometimes create much more expensive problems for their loved ones down the road, including big court cases that could have been avoided, fights between family members that have lasting impacts, etc.

What if I have children from a prior marriage?

If you or your spouse has children from outside your current marriage, then you and your spouse may want to leave property to different people in your wills. In order to make sure this is done fairly in a way that reflects your wishes, it is highly advisable to work with an attorney.

What if I have a disabled child or grandchild?

If one of your children or grandchildren (or anyone else you want to benefit) has disabilities, you should speak with an attorney about possibly using a special needs trust (also called a supplemental needs trust) as part of your estate plan, in order to avoid disqualifying that beneficiary from important disability benefits.

How can I make sure my wishes for my funeral are carried out?

Making arrangements ahead of time for your own funeral can assure you that your wishes will be carried out. This can be accomplished through a pre-need or pre-paid funeral, paid for by the assignment of an insurance policy, by the purchase of new

insurance, by the creation of a funeral account through the Choices Program in New Jersey or alternately through the establishment of an account for funeral arrangements. These arrangements should be made with your family and local funeral director, and it is wise to make plans with the funeral director and let your family know which funeral home has your instructions.

In addition, you can appoint someone under your will to control your funeral and the disposition of your remains.

In New Jersey, you can set up a burial fund to help pay for your funeral. The arrangements are made with a funeral director, but this money is kept by the state of New Jersey in an interest-bearing account. This means that if you decide to change funeral directors, you can do so without any problems. You can also withdraw the money if you change your mind or need it for something else.

People preparing for Medicaid or SSI eligibility can also set up a funeral fund. It is called an Irrevocable Pre-Paid Funeral Trust Plan. It is traditionally done as part of an overall Medicaid application. The money deposited and the interest it accumulates will not be counted as an asset by either Medicaid or SSI. However, the fund for those on Medicaid or SSI is irrevocable, that is, once you go on Medicaid or SSI, you can change funeral homes, but you cannot withdraw the money from the fund. It can only be withdrawn at the time of your funeral.

ADVANCE HEALTHCARE DIRECTIVES

Do I have the right to refuse medical treatment?

Each individual has the right to refuse medical treatment if that individual has the information necessary to make that decision. This means that a medical provider cannot treat a person (except in an emergency) without the person's consent after that person has been told of the advantages and disadvantages of the proposed treatment.

What if I become incapacitated?

What happens, however, if a person does not have the capacity to make a decision or give informed consent to medical treatment because he or she is incompetent or comatose? With regard to the refusal of life-sustaining treatment, New Jersey law provides that if a person has expressed their wishes in an advance directive for medical care, those wishes will be respected by the doctor or other medical provider.

If you wish to make your medical preferences known now, when you are competent, so that your wishes will be known should you be unable to express them yourself, you should consider putting them in writing through an advance directive for healthcare.

What is an advance directive for healthcare?

An advance directive for healthcare is a document in which you can set forth your instructions regarding your medical care (called an instruction directive or living will), and you can designate a healthcare representative to make decisions regarding your medical care if you're unable to make them (called a proxy directive or medical power of attorney).

This document is important because you should have a voice in your own medical care. Healthcare choices, and in particular end of life care choices, are some of the most personal decisions we can make in life. This document lets you set forth your instructions in advance, in case you're alive but you can't express your wishes or don't have the wherewithal to make decisions.

It also lets you give your loved ones a part to play in healthcare decisions if you can't make them. In addition, without this document, your loved ones may not be able to get important medical information for you due to patient privacy laws.

You should discuss your medical care preferences at length with any person or persons you choose as your healthcare representative.

You should give your advance directive to your attending physician or the medical institution caring for you. Your advance directive will be used when your attending physician determines you lack the capacity to make a medical decision and a second doctor confirms that opinion.

If you have provided so in your advance directive, life-sustaining treatment will be withdrawn only if you are permanently unconscious and your condition is terminal. It may also be withdrawn if you have a serious irreversible illness.

If you have an advance directive but change your mind, perhaps at a hospital, you may revoke your directive orally or by creating a new advance directive encompassing your most recent wishes.

Although the law does not require that advance directives be drawn and executed by attorneys, it is prudent to consult an attorney for those important decisions so that there will be no question or doubt about your document when it is needed.

POLST forms

In addition to having an advance directive for healthcare, you may want to speak with your physician about completing a POLST (Physician Order for Life Sustaining Treatment) form. These documents complement each other. An advance directive for healthcare would typically provide instructions in longer-term medical situations, while a POLST form can provide more immediate medical instructions regarding treatment and non-treatment. A POLST can only be done by a physician.

MEDICAL AID IN DYING ACT

The New Jersey Medical Aid in Dying (MAID) Act became effective August 1, 2019. The MAID Act permits competent New Jersey residents who have a terminal condition, to obtain medication, that must be self-administered, to end their life. There are many detailed requirements in order to use MAID. For more information speak to your physician or visit <https://www.nj.gov/health/advancedirective/maid/>.

ELDER ABUSE

According to the National Council on Aging, approximately 1 in 10 people over 60 are the victims of elder abuse. Two thirds of the abusers are family members. Elders who depend on relatives or neighbors find it hard to protect themselves against this abuse. Often, abused elders feel they should put up with the abuse because the abuser also provides necessary care. In 1993, the Legislature passed the Adult Protective Services Act, N.J.S.A. 52:27D-407. Below are a few terms covered in the act.

Abuse

Under the act, abuse is defined as any willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation of services that are necessary to maintain a person's physical and mental health.

Neglect

Neglect is defined as an act or failure to act that results in inadequate provision of care or services, which may result in serious injury or is life-threatening.

Exploitation

Exploitation means the act or process of illegally or improperly using a person or their resources for another person's profit or advantage. An example would be the misuse of a person's money or possessions.

Vulnerable Adult

A vulnerable adult is defined as a person 18 years of age or older who resides in a

community setting and who, because of physical or mental illness, disability or deficiency, lacks sufficient understanding or capacity to make, communicate, or carry out decisions concerning well-being, and is the subject of abuse, neglect or exploitation.

Reporting

A person who has reasonable cause to believe that a vulnerable adult is subject to abuse, neglect or exploitation may report the information to the county adult protective services provider or the local police. The person making such a report is immune from civil and criminal liability arising from the report. An employer or other person may not take discriminatory or retaliatory action against an individual who makes such a report.

Evaluation, Determination and Referral

The county adult protective services provider makes an evaluation and a determination regarding whether or not protective services are required. A referral is then made to the appropriate agency, hospital or organization.

Court Order

A court order can be obtained to provide such services. The county adult protective services provider is authorized to initiate guardianship, conservatorship or civil commitment actions if a permanent change in living situation is required. Criminal activity by a caretaker would be reported.

Criminal Report

The county director of adult protective services is authorized to report criminal activity on the part of a caretaker to local law enforcement officials.

FINDING A LAWYER

When do I need a lawyer?

Generally, senior citizens face many of the same legal problems that confront younger people; however, situations that can raise special concerns for senior citizens include:

- Denial of governmental benefits such as Social Security, SSI, Medicare, food stamps or welfare assistance.
- Applying for Medicaid, especially to pay for long term care.
- Pension rights.
- Planning for distribution of property after death and making a will.
- Buying or selling real estate; and landlord/tenant problems.
- Discrimination based on age.
- Rights of nursing home residents.
- Power of attorney, conservatorship or guardianship proceedings for persons who need assistance in managing their affairs.
- Settling an estate after someone's death.

If you have any of these problems, you should seek advice as soon as you can. Many simple problems become more complicated as time passes.

When in doubt, talk to a lawyer or the appropriate public agency. Many attorneys will discuss your legal problem for a modest fee. A brief talk can help you decide if any further legal assistance is needed.

How should I choose a lawyer?

It may be unwise to choose a lawyer purely on an estimate of fees. Shopping around for the cheapest lawyer may not be the best approach because that lawyer may not be the most qualified to handle your case. 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 your type of case, that lawyer may be able to recommend an attorney who does. If you are moving, the lawyer often can recommend a legal adviser near your new home.
- Talk to friends who have been to a lawyer. People who are happy with their attorneys often can make good recommendations. Lawyers depend on good client relations and word-of-mouth referrals for new business.
- Lawyer Referral Service in New Jersey, a program handled by the county bar associations, can often recommend an attorney near your home. Your county bar association referral service numbers are listed at <https://tcms.njsba.com/personifyebusiness/Resources/CountyBarAssociations.aspx>.
- Search the internet for attorneys who handle the type of case you're looking for. Many law firms have websites or other online listings that show the type of law they practice, as well as their credentials. You should consider working with an attorney with experience in the area in which you need help, as some areas of law are highly specialized. For example, if you are looking to qualify for Medicaid to pay for long term-care, you should consider working with an attorney whose practice is focused on elder law, rather than a general practice attorney.
- Study lawyers' advertisements. New Jersey lawyers may advertise their services. Ads may include a list of the types of cases the attorney is willing to handle. Although advertisements may not be as meaningful as your own experiences with a lawyer or the recommendations of friends, advertisements will provide the names and addresses of lawyers who may be willing to work on cases like yours. When you have the name of an attorney who represents clients with cases like yours, you should arrange an appointment to meet the attorney and determine if you would like that person to represent you.

What if I think I can't afford a lawyer?

Do not simply assume that you cannot afford a lawyer. Discuss your financial situation with the attorney first. Your lawyer may be able to arrange payment of legal fees over an extended period of time; some lawyers may be willing to work on your case upon payment of a retainer and accept partial payment on a regular basis as work on your case continues. In some cases, a lawyer may be willing to represent you fully or partly on a contingent fee basis. This means that the lawyer's fee will be paid from the funds recovered on your behalf under the terms of a written agreement between you and your lawyer. In some cases, such as Social Security matters, the lawyer is required to be paid in this way and the court or administrative law judge must approve the amount of the fee. In worker's compensation matters, the court will set the fee and determine how much you and the employer will pay.

Are there legal programs whose special purpose is to assist senior citizens?

Yes. The Older Americans Act mandates and funds local legal assistance programs, which provide free legal assistance to senior citizens in the following areas: public entitlements, healthcare/long-term care, housing/utilities, planning/protecting autonomy, family/domestic, individual rights and consumer issues. Contact your county office on aging for additional information about the program near you. Also, many legal services offices and legal aid offices provide free legal assistance and have expertise in areas of the law affecting seniors. The telephone numbers for those offices can be provided by your local office on aging (contact information below). The Community Health Law Project (CHLP) and Legal Services of New Jersey also serve disabled persons including frail elderly. CHLP's main office is located at 185 Valley Street, South Orange, NJ 07079, and you can contact them by phone at 973-275-1175 or online at www.chlp.org. Legal Services of New Jersey can be contacted by calling 1-888-LSNJ-Law (1-888-576-5529) online at <https://lsnjlawhotline.org>. Additionally, each county has its own legal services office which can be contacted directly.

COUNTY LEGAL SERVICE PROVIDERS

Central Jersey Legal Services (Mercer, Middlesex, and Union Counties)

Website: <https://centraljerseylegalservices.org/>

Email: cjls@lsnj.org

Phone: Mercer County—(609) 695-6249

Middlesex County—(732) 249-7600

Union County—(908) 354-4340

Essex-Newark Legal Services (Essex County)

Website: <https://www.essexnewarklegalservices.org/>

Email: enls@lsnj.org

Phone: (973) 624-4500

Legal Services of Northwest Jersey

(Hunterdon, Morris, Somerset, Sussex, and Warren Counties)

Website: <https://lsnwj.org/>

Email: Hunterdon County—lsnwj-hunterdon@lsnj.org

Morris County—lsnwj-morris@lsnj.org

Somerset County—lsnwj-somerset@lsnj.org

Sussex County—lsnwj-sussex@lsnj.org

Warren County—lsnwj-warren@lsnj.org

Phone: Hunterdon County—(908) 782-7979
Morris County—(973) 285-6911
Somerset County—(908) 231-0840
Sussex County—(973) 383-7400
Warren County—(908) 475-2010

**Northeast New Jersey Legal Services
(Bergen, Hudson, and Passaic Counties)**

Website: <https://www.northeastnjlegalservices.org/>
Email: NNJLS@LSNJ.org
Phone: Bergen County—(201) 487-2166
Hudson County—(201) 792-6363
Passaic County—(973) 523-2900

**South Jersey Legal Services (Atlantic, Burlington, Camden, Cape May,
Cumberland, Gloucester, Monmouth, Ocean, and Salem Counties)**

Website: <https://www.lsnj.org/sjls/offices.htm>
Email: SJLS@lsnj.org
Phone: 1-800-496-4570
Atlantic County—(609) 348-4200
Burlington County—(609) 261-1088
Camden County—(856) 964-2010
Cape May County—(609) 465-3001
Cumberland County—(856) 691-0494
Gloucester County—(856) 848-5360
Monmouth County—(732) 414-6750
Ocean County—(732) 608-7794
Salem County—(856) 678-6492

Additionally, the Long-Term Care Ombudsman's office serves the needs of persons 60 years of age or over who are residents of facilities that offer health-related services, including nursing homes, boarding homes, homes for the aged, convalescent homes,

veterans' hospitals, chronic disease hospitals, mental hospitals, day care centers, and mental retardation centers. Their contact information is as follows:

**NEW JERSEY STATE OFFICE OF THE OMBUDSMAN
FOR THE INSTITUTIONALIZED ELDERLY**

240 State Street

P.O. Box 852 Trenton, N.J. 08625

609-943-4023

877-582-6995

Email: ombudsman@advocate.state.nj.us

Where can I find additional information on law-related subjects?

The New Jersey Division of Consumer Affairs maintains a telephone number to call for information and advice on the best way to proceed when you have a complaint. The division can be reached at 973-504-6200. While they do not give legal advice over the telephone, they provide consumer help and can refer you to your local office of consumer protection.

You may learn, after checking with a private lawyer or other sources of legal assistance that your problem can be taken to a community dispute resolution group, arbitration, small claims court, a government agency or public interest group, or can be resolved by action you can take yourself.

Basic information on law-related issues can be found at your local library. It is important to note, however, that most articles and books are written from a national perspective, and that laws vary greatly from state to state. In addition, information may be outdated as new laws are passed and court decisions rendered.

AREA AGENCIES ON AGING/ AGING AND DISABILITY RESOURCE CENTERS

ATLANTIC (609) 645-5965

Cindy McNellis, Executive Director

Atlantic County Division of Intergenerational Services

Shoreview Building

101 South Shore Road

Northfield, NJ 08225

<https://www.atlantic-county.org/intergenerational-services/senior-services.asp>

BERGEN (201) 336-7400

Lorraine Joewono, Director

Bergen County Division of Senior Services

One Bergen County Plaza, 2nd Floor

Hackensack, NJ 07601

Email: seniors@co.bergen.nj.us

<https://www.co.bergen.nj.us/division-of-senior-services>

BURLINGTON (609) 265-5069

Amy Barra, Division Head
Burlington County Office on Aging
795 Woodlane Road
West Hampton, NJ 08060
Email: BCOfficeonAging@co.burlington.nj.us
www.co.burlington.nj.us

CAMDEN (856) 858-3220

Maureen Bergeron, Director
Camden County Division of Senior & Disabled Services
512 Lakeland Road
DiPiero Building, 4th Floor
Blackwood, NJ 08012
Email: seniors@camdencounty.com
<https://www.camdencounty.com/service/senior-disabled-services/senior-services/>

CAPE MAY (609) 886-2784

Mary E. Dozier, Executive Director
Cape May County Division of Aging and Disability Services
Social Services Building
3801 Route 9 South, Unit 4
Rio Grande, NJ 08242
<https://capemaycountynj.gov/200/Aging-Disability-Services>

CUMBERLAND (856) 453-2220

Barbara Nedohon, Executive Director
Cumberland County Office on Aging and Disabled
Administration Office, Room 29
800 East Commerce Street
Bridgeton, NJ 08302
www.co.cumberland.nj.us/aging

ESSEX (973) 395-8400

Maurice J. Browne, Director
Essex County Office of Senior Services
900 Bloomfield Avenue
Verona, NJ 07044
<https://essexcountynj.org/senior-services/>

GLOUCESTER (856) 384-6900

Eric M. Fisher, Executive Director
Gloucester County Division of Senior Services
115 Budd Blvd
West Deptford, NJ 08096
<https://www.gloucestercountynj.gov/303/Seniors>

HUDSON (201) 369-4313

Brian Poffel, Executive Director
Hudson County Office on Aging
830 Bergen Avenue 3B
Jersey City, NJ 07306
Email: bpoffel@hcnj.com
<https://www.hcnj.us/health-and-human-services/aging/>

HUNTERDON (908) 788-1361

Laine Nauman, Division Head
Hunterdon County Division of Senior, Disabilities and Veteran's Services
4 Gauntt Place, Bldg. 1
Flemington, NJ 08822
Email: aging@co.hunterdon.nj.us
www.co.hunterdon.nj.us/aging.htm

MERCER (609) 989-6661

Eileen E. Doremus, Executive Director

Mercer County Office on Aging

Mercer County Administration Building 640 South Broad Street

P.O. Box 8068

Trenton, NJ 08650-0068

Email: ADRC@mercercounty.org

<http://www.mercercounty.org/departments/human-services/aging-disability-resource-connection/office-on-aging>

MIDDLESEX (732) 745-3295

Laila Caune, Director

Middlesex County Department of Aging and Disabled Services

Administration Building, 5th Floor

75 Bayard Street

New Brunswick, NJ 08901

Email: answersonaging@co.middlesex.nj.us

www.co.middlesex.nj.us

MONMOUTH (732) 431-7450

Sam Pondor, Acting Director [check w/ him before going to print]

Monmouth County Office on Aging, Disabilities and Veterans Services

3000 Kozloski Road

Freehold, NJ 07728

<https://www.visitmonmouth.com/page.aspx?ID=170>

MORRIS (973) 285-6858 or 1-800-564-4656

Christine Hellyer, Executive Director

Morris County Office of Aging, Disabilities and Community Programming

340 West Hanover Avenue, P.O. Box 900

Morristown, NJ 07963-0900

Email: chellyer@co.morris.nj.us

www.morrishumanservices.org

OCEAN (732) 929-2091

Maria LaFace, Executive Director
Ocean County Office of Senior Services
1027 Hooper Avenue, Bldg. 2, 1st Floor
Toms River, NJ 08754
www.co.ocean.nj.us/oc/seniorservices/frmhomes.aspx

PASSAIC (973) 569-4060

Shirley Force, Executive Director
Passaic County Department of Senior Services, Disability and Veterans' Affairs
930 Riverview Drive
Suite 200
Totowa, NJ 07512
Email: shirleyf@passaiccountynj.org
<https://www.passaiccountynj.org/departments/senior-services-disability-veterans-affairs>

SALEM (856) 339-8622

Kathy Massey, Executive Director
Salem County Office On Aging & Disabilities
98 Market Street
Salem, NJ 08079
Email: scseniors@salemcountynj.gov
<https://health.salemcountynj.gov/human-services/office-of-aging-disabilities/>

SOMERSET (908) 704-6346

Joanne Fetzko, Executive Director
Somerset County Office on Aging and Disability Services
27 Warren Street, 1st Floor
P.O. Box 3000 Somerville, NJ 08876
Email: OfficeAging@co.somerset.nj.us
<https://www.co.somerset.nj.us/government/human-services/aging-disability-services>

SUSSEX (973) 579-0555

Lorraine Hentz, Division Director
Sussex County Division of Senior Services
One Spring Street, 2nd Floor
Newton, NJ 07860
Email: seniorservices@sussex.nj.us
<https://www.sussex.nj.us/cn/webpage.cfm?tpid=933>

UNION (908) 527-4870

Natalie Zarrillo, Director
Union County Division on Aging
Administration Building
10 Elizabethtown Plaza
Elizabeth, NJ 07207
<https://ucnj.org/departments/human-services/test-site-aging/>

WARREN (908) 475-6591

Steve Unger, Executive, Director
Warren County Division of Aging and Disability Services
Wayne Dumont Jr. Administration Building
165 County Route 519 South
Belvidere, NJ 07823
Email: SeniorServices@co.warren.nj.us
<https://www.warrencountynj.gov/government/human-services/division-of-aging-and-disability-services>

**NEW JERSEY DIVISION OF SENIOR AFFAIRS INFORMATION,
REFERRAL AND ASSISTANCE SERVICE (NJ EASE) 1-877-222-3737.**

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 that **informed citizens are better citizens** and is committed to providing free legal education programming for educators and the public. Programs provided by the Foundation include mock trial competitions for students in grades K to 12 and training sessions for educators on the topics of anti-bullying, anti-bias, conflict resolution, peer mediation and social emotional character development.

Publications geared for the public include *Domestic Violence: The Law and You*, *Consumer's Guide to New Jersey Law*, *AIDS and the Law in New Jersey*, *Disability Law: A Legal Primer*, *Avoiding Notario Fraud in New Jersey*, and *Residential Construction and Renovation: A Legal Guide for New Jersey Homeowners*. School-based publications available through the Bar Foundation include *The Bill of Rights Up Close*, *Beyond the Bill of Rights*, as well as our subscription-based publications—*The Legal Eagle*, a legal newspaper for kids, and *Respect*, a diversity newsletter. 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. 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 New Jersey State Bar Foundation can also be found on LinkedIn and YouTube.



New Jersey State Bar Foundation
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New Brunswick, NJ 08901-1520
1-800-FREE LAW
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