

Seniors & the Law:

A Guide For Maturing Texans



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

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

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MAKING ENDS MEET

You may be living on your retirement or receiving Social Security. You may have a nice house but no cash, or you may be struggling just to pay your bills. How you make ends meet will depend on your particular circumstances. In your senior years, making ends meet will likely involve new types of income such as a pension, Social Security, supplemental security income, or maybe a reverse mortgage.



What is Social Security? – the Basics

Social Security is a governmental benefit supplied to eligible workers and/or their family. Social Security beneficiaries earned their benefits by paying into the system throughout their time at work. Your employer matches the amount you pay in taxes. (If you are self-employed, you pay that portion of the tax as well.) During your work life, you earn social security credits and can earn up to four credits per year. If you were born in 1929 or later, you need to have 40 credits to be eligible to draw Social Security benefits. People born before 1929 will need fewer credits to be eligible. Most people who work full time will accrue the 40 credits in

10 years. The majority of people will accrue far more credits than necessary to be eligible for benefits. Though the accrual of excess credits will not increase the benefit you receive, the income you earn in those years will. Between 1960 and 2004, Social Security helped cut the poverty rate among seniors by more than two-thirds, from 35 percent to 10 percent.

How Are My Benefits Calculated?

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

When Can I Start Drawing Social Security Benefits?

You can start drawing benefits as early as age 62 years old. However, at 62 years of age, you will not be at “full retirement age” and as a result, you would receive a reduced benefit. Full retirement age is between the ages of 65 and 67 depending on your date of birth. Social Security benefits are increased by a certain percentage (depending on your date of birth) if you delay your retirement beyond full retirement age. However, the benefit increase no longer applies when you reach age 70, even if you continue to delay receiving benefits.

How Can I Find Out What My Monthly Benefit Will Be?

Every year, about three months before your birthday, you should receive a statement from Social Security. This statement will tell you if you have enough credits

to be eligible to receive benefits. Assuming you do, the statement will provide an estimated monthly benefit. Remember, this is only an estimate. If you are many years from retirement, drastic changes in your earnings can affect the estimate. For more information, you can contact Social Security at 1-800-772-1213 or go to their website at www.ssa.gov.

If I Continue to Work, Will my Benefits be Reduced?

Maybe. If you work and are at full retirement age, you may keep all of your benefits no matter how much you earn. If you started receiving benefits before your full retirement age and continue to work, however, there is a limit on how much you can earn before your benefits may be reduced. Finally, if your latest year of earnings is one of your highest years, Social Security will recalculate your benefits and pay you any increase due.

Can I Receive Social Security if I was a Stay at Home Spouse and am now a Widow(er)?

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

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

Is my Social Security Benefit Affected by My Pension?

Generally, no. If you worked for a company that has a pension plan and you still paid social security taxes, then your social security benefits are not affected by your pension.

(However, note that if you have substantial income from another source, your social security benefit may be subject to income taxation.) But, if you receive a pension for work not covered by social security – for example, federal civil service, some state and governmental entities, or work in a foreign country – your social security benefit may be lowered or offset.

How Do I Apply for Social Security Benefits?

You can call the toll free number for the Social Security Administration at 1-800-772-1213 to apply for benefits or to make an appointment with a local Social Security office. You should apply at least three months before you want to start receiving benefits. The office will tell you what documentation you will need to bring with you. You can also apply on-line at www.ssa.gov

What is a Representative Payee?

A representative payee is a person that is authorized to receive your social security checks on your behalf. If you have trouble managing your money, the Social Security Administration can appoint a friend or relative of yours to receive the checks. That person is supposed to use those funds for your benefit and is required to file an annual report with the Social Security Administration that details how the benefits were used. That person can be charged and convicted if they use your funds for some other purpose.

What is a Reverse Mortgage?

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

There are several types of reverse mortgages. For all types of reverse mortgages, interest accrues on the loan and the lender will not allow the mortgage to exceed the value of the home. The amount of money you obtain from a reverse mortgage will depend on your age at the time you get the mortgage, the value of the home, the interest rate, and whether you will receive the loan in lump sum or monthly payments. Also, in most, if not all cases, the lender will require the reverse mortgage be the only lien on the home. So, if your home is currently not paid off, you have to pay it off or use the proceeds from the reverse mortgage to pay the remaining balance. In all instances, you will still be responsible for the property taxes on the home, maintaining insurance on the home and all upkeep and maintenance.

Obviously, the advantage to obtaining a reverse mortgage is that it allows you to generate funds from what is

likely one of your most valuable assets, your home. The disadvantage is that by borrowing this money, you are decreasing the value of your estate and in many cases, the house is sold to pay back a reverse mortgage when you leave the home or pass away. Please be aware that if you are receiving Supplemental Social Security Income or any other assistance that is based on financial need, you need to determine whether obtaining a reverse mortgage will jeopardize those benefits. More information on reverse mortgages is available through AARP on-line at www.aarp.org.

What Can I Do if I Can't Afford to Eat?

For many senior citizens living on a fixed or limited income, money for nutritional food is often overshadowed by other expenses such as rent, utilities and medication. Through funding from the Older Americans Act, all Area Agencies on Aging in Texas provide a Nutritional

FINANCIAL ASSISTANCE FOR THE AGED

Special Tax Relief For Seniors

- Property taxes may be locked-in at age 65 if you own your own home and live in it as your principal residence.
- Seniors over 65 receive an additional standard deduction on their taxes.
- Seniors can utilize the annual tax-free gift as a great way to create an education legacy for your children and grandchildren.
- Seniors may qualify to exclude from their income, all or part of any gain from the sale of their home.
- Seniors may elect to “catch-up” on retirement contributions by contributing up to \$5,500 towards an IRA or Roth IRA once you turn 50 years of age. Also, if you are still employed at age 50, a \$16,500 per year contribution may be made towards a 401(k).
- Seniors need to be aware that any payment that you receive from your IRA or qualified retirement plan before you reach age 59 ½ is normally called an “early” or “premature” distribution. As such, these funds are subject to an additional 10 percent tax. But there are a number of exceptions to the age 59 ½ rule that you should investigate if you make such a withdrawal.
- The Tax Counseling for the Elderly (TCE) Program provides free tax help to people age 60 and older. Trained volunteers from non-profit organizations provide free tax counseling and basic income tax return preparation for senior citizens. As part of the IRS-sponsored TCE Program, AARP offers the Tax-Aide counseling program during the filing season where trained and certified volunteer counselors help people of low-to-middle income, with special attention to those age 60 and older. For more information on TCE call the non-toll-free number 404-338-7894. To locate the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit <http://www.aarp.org>.

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

Program, which serves nutritionally balanced meals to seniors who are age 60 or older and their spouses, regardless of age, through a network of congregate meal sites. You may make a donation, however, the meals are free. The Nutrition Program in your area may provide transportation as well. Also, for seniors who are eligible, home delivered meals are available. Contact your county's local Area Agency on Aging for more details or call 1-800-252-9240 for automatic referral by phone to the Area Agency on Aging in your area.

Can I get help paying my electric bill?

There is a program through The Public Utility Commission called LITE-UP Texas that provides a discount on utility bills from your retail electric provider for the following months: May, June, July, August and September. Only qualified customers in areas of competition are eligible for the LITE-UP Texas discount. There are some areas in Texas where electric competition is not yet available. You may automatically qualify if you already receive certain benefits from the Texas Department of Human Services. To see if you qualify or to obtain an application, call 1-866-4-LITE-UP (1-866-454-8387).

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

Lawmakers have provided several types of property tax relief for older homeowners. Generally, you qualify for them if you are 65 years of age or older, or if you are over 55 and you are the surviving spouse of a person who died at the age of 65 or older. Exemptions specifically for homeowners age 65 and older (and over-55 surviving spouse) are given in addition to the general homestead exemptions. As with the general exemptions, over-65 exemptions will vary depending on the jurisdiction in which your home is located.

Also, all school districts by law must grant an additional exemption of \$10,000 for school taxes to over-65 homeowners. Added to the \$15,000 general homestead exemption for school taxes, this means you will have at least a \$25,000 exemption from school taxes when you qualify.

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

If you are 65 or older and you are having trouble paying your taxes, a tax deferral may be of interest to you. Texas residents over the age of 65 can defer the payment of real property taxes on their residential homestead until the property loses its homestead character. You should be aware that a tax deferral only postpones the payment of the taxes owed. It does not cancel them. During the deferral period, taxes are still due, interest on the taxes accrue, and a tax lien may be imposed on the property, but the tax lien cannot be enforced and a penalty may not be imposed. If you cease to own the home or live in it, all taxes, penalties, and interest become due immediately. The taxing units may proceed with delinquent tax suits if the taxes are not paid promptly. The new homeowner or your estate must pay the tax liabilities to retain the property. The deferral provisions also applies to an over-55 surviving spouse of a deceased person who was receiving a deferral on his or her homestead at the time of death, when the surviving spouse owns or occupies the homestead. You can obtain an application for an over-65 tax deferral from your local tax appraisal district.



CHOOSING WHERE TO LIVE

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

Housing Options

There are many housing options available to seniors in Texas. In choosing what option is the best fit for you will depend upon your level of independence and your financial situation. Whatever option you choose, be sure and investigate the costs and benefits for you. If you are entering into a contract, be sure to have an attorney review the documents before you sign them to ensure the services promised to you are actually addressed in the paperwork.

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

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

There comes a time in many individuals' lives when they are no longer able to care for themselves or live completely independent lives. It often starts with the need for occasional help around the house such as house-cleaning, help with daily grooming, preparing meals or just getting around, but it can steadily increase as one's limitations increase. Later on, around-the-clock care in a nursing home may be required. Some indicators that one might need additional help include:

- Personal hygiene issues
- Missed doctor's appointments
- Getting Lost
- Atypical/unhealthy relationships
- Repeated phone calls at odd hours
- Forgetting to take medication
- Inappropriate behavior, clothing or speech
- Symptoms of depression

Housing options available for those who need more assistance include the following:

- Assisted Living – There are more and more assisted living facilities in Texas. These facilities are geared towards senior citizens that may need some assistance but still want to maintain their own space and as much independence as possible. Assisted living facilities vary greatly in the services they offer and the living arrangements. In some facilities you may have a room while others provide you a small apartment. Assisted living facilities generally will provide meals, personal care, support services, social activities and 24-hour supervision (meaning someone is generally available at all times if there is a problem). Some facilities will offer limited health related services as well.
- Nursing Home – For individuals that require greater help nursing homes and/or skilled nursing care may be the most appropriate option. Typically, a nursing home will provide for the basic needs of an individual and will also have nursing care available. In addition, a doctor typically will come to the nursing home to check on the residents in varying intervals.
- Hospice Care – Hospice care is a comprehensive and specific type of medical, supportive, social, emotional and spiritual care to the terminally ill and their families. Hospice care is not intended to cure illnesses. Rather the goal is to help end or ease pain and other troubling symptoms of an illness as well as providing comfort and support.

For more information on hospice care, contact the National Hospice Foundation at 703-516-4928 or at www.nationalhospicefoundation.org.

- **Continuing Care Retirement Community** – A continuing care retirement community (CCRC) offers multiple levels of care and services as well as several different housing options which allows you to select the option that best fits your lifestyle and level of independence. The agreement as to what services are to be provided and at what cost are covered in a contract you sign with the CCRC. Assuming the option is provided for in the contract, one important benefit is that the CCRC usually will allow you to change your living arrangement (i.e. from a home to an assisted living to a skilled nursing facility) as your needs change. Again, this is typically negotiated in the original contract so be sure and get financial and legal advice before signing the final papers.

For additional information you may want to contact your local Area Agency on Aging, or look at the websites for the Texas Department on Aging, the U.S. Department of Housing and Urban Development and AARP. Additionally, one can hire a geriatric care manager (“GCM”) to determine the most appropriate placement for a family member. GCMs are usually registered nurses trained to evaluate the cognitive and physical capacities of a person to determine their level of need and/or independence. For additional information visit www.caremanager.org, the website for the National Association of Professional Geriatric Care Managers.

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

One option might be an Adult Day Care/Day Activity and Health Services facility. Adult Day Cares/Day Activity facilities provide health, social and related support services in a structured program on a daily or regular basis, but not overnight. Health service includes personal care, nursing or therapy services, as well as monitoring a participant’s

health conditions. Another option is Home Health Agencies, which provide nursing care, dialysis, medical social service, or physical, occupational, speech, respiratory or intravenous therapy. Local community agencies or religious groups also offer home delivered meals such as Meals on Wheels. Contact your local Area Agency on Aging or the United Way for such facilities in your area.

Where can I find information on assisted living facilities, skilled nursing and/or nursing homes?

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

- AARP Elder Care Locator 1-800-677-1116
- Texas Attorney General’s Consumer Help Line 1-800-621-0508
- Ombudsman, Texas Department of Aging, Long Term Care 1-800-252-9240

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

No. Medicare, one of the government’s health care programs for those 65 years and over, does not cover long-term care or help with personal or household services. However, it will pay for home care services related to acute, short-term health problems if a person is home-bound, under a physician’s care and needs part-time or intermittent skilled nursing services or physical or speech therapy. Medicare assistance for nursing home care is also very limited. Furthermore, Medicaid is a need based government benefit that does cover long-term care, which can include home health care and nursing home expenses.

Will Medicare pay for hospice care?

Yes. The Medicare Hospice Benefit is covered under Medicare Part A (hospital insurance). Medicare beneficiaries who choose hospice care receive a full scope of non-curative medical and support services for their terminal illness.

Can my landlord evict me for any reason at all?

No. You can only be evicted for non-payment of rent, lease violations, if the lease has expired or if no lease exists.

Further, a landlord who just “throws out” a tenant may be liable for both civil and criminal penalties. Before you are evicted you will receive notice of the proceedings and an opportunity to be heard in court. An eviction suit, (also called a “forcible detainer”) is the process by which a landlord tries to regain possession of the premises.

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

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

OBTAINING HEALTH CARE AND BENEFITS

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

Can I get Health Insurance after I retire?

If you are lucky, part of your retirement package may include the continuation of health insurance coverage.



However, in order to take advantage of this coverage, your required annual premium contribution may increase dramatically.

Others may receive federally mandated continuation coverage from their former employers. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers with health plans and 20 or more employees to offer coverage to departing workers, including those retiring, for up to 18 months (or 29 months for disabled workers). However, these workers must pay up to 102 percent of the group rate.

Some older people without employer benefits who are too young for Medicare turn to the private market. The biggest drawback of this option is that finding coverage is quite difficult and generally expensive. Even if you find coverage, rates are typically based on age and health risks – two facts that tend to work against us as we get older. Fortunately, two additional options that work for the majority of people include Medicare and/or Medicaid.

What is Medicare?

Medicare is a federally funded government program that has been around since 1965. Most Americans automatically become entitled to Medicare when they turn 65. In fact, if you're already receiving Social Security benefits, you won't even have to apply – you'll be automatically enrolled in Medicare.

Your Medicare plan choices include: (1) The Original Medicare Plan (Parts A and B); (2) Medicare Advantage Plans (Part C); and/or (3) Medicare Prescription Drug Plans (Part D).

Details as to the costs and benefits of each plan choice can be found in a handbook entitled "Medicare & You" on Medicare's webpage (www.medicare.gov). This book is typically sent to all people on Medicare each fall. To obtain a copy of the handbook or to get general Medicare information and other important telephone numbers, call Medicare at 1-800-MEDICARE (1-800-633-4227).

Original Medicare Plan (Medicare Parts A and B)

Original Medicare is a fee-for-service plan that covers many health care services and certain drugs. It is comprised of 2 parts – Part A (called "Hospital Insurance") and Part B (called "Medical Insurance"). Part A helps cover inpatient care in hospitals, as well as some care in skilled nursing facilities and hospice. Most people don't pay a premium for Part A because they or a spouse already paid for it throughout their payroll taxes while working. Part B helps cover doctors' services, outpatient care, and home health care. It also covers some preventive services to help maintain your health and to keep certain illnesses from getting worse. Part B helps pay for these covered services and supplies when they are medically necessary. Most people pay a monthly premium for Part B. Together, Part A and Part B allow you to go to any doctor or hospital that accepts Medicare.

Original Medicare covers most health services and items but does not cover the following services, among others: long-term care, routine dental care, dentures, cosmetic

surgery, acupuncture, hearing aids, and exams for fitting hearing aids.

The Original Medicare Plan pays for many health care services and supplies, but it doesn't pay all of your health care costs. There are costs that you must pay, like coinsurance, copayments, and deductibles. These costs are called "gaps" in Medicare coverage. You may consider buying a Medigap policy to cover these gaps in Medicare coverage (see below *What is Medigap?*).

Medicare Advantage Plans (Medicare Part C)

Medicare Advantage Plans are health care options run by private insurers that are approved by and under contract with Medicare. If you join one of these plans, you generally get all of your Medicare-covered health care through that plan. These plans cover more services and have lower out-of-pocket costs than the Original Medicare Plan, and can include prescription drug coverage. Medicare Advantage Plans include:

- Medicare Home Maintenance Organizations (HMOs);
- Preferred Provider Organizations (PPOs);
- Private Fee-for-Services Plans;
- Medicare Special Needs Plans; and
- Medicare Medical Savings Account Plans (MSA).

Medicare Advantage Plans provide your Medicare Part A and Part B coverage but can charge different amounts for certain services (costs vary per plan). Since these plans typically provide extra coverage than Original Medicare Parts A and B, you may have to pay a monthly premium to your Medicare Advantage Plan for the extra benefit that they offer.

When you join a Medicare Advantage Plan, you use the health insurance card that you get from the plan for your health care. For most of these plans, there are generally extra benefits and lower copayments than in the Original Medicare Plan. However, you may have to see doctors that belong to the specific plan or go to certain hospitals to get services.

If you join a Medicare Advantage Plan, your Medigap policy won't work. However, this does not mean it won't pay any deductibles, copayments, or other cost-sharing under your Medicare Health Plan.

To compare Medicare Advantage Plans, go to www.Medicare.gov/Choices/Advantage/asp.

Prescription Drug Coverage Plans (Medicare Part D)

Medicare Prescription Drug Plans are stand-alone insurance plans that add coverage to the Original Medicare Plan, some Medicare Advantage Plans and Medicare Medical Savings Accounts. Coverage with these plans may help lower prescription drug costs and help protect against higher costs in the future. Private companies provide the insurance. Like other insurance, if a beneficiary decides not to enroll in a drug plan when they are first eligible, they may pay a penalty if they choose to join later.

Most people will pay a monthly premium for this coverage. Your costs will vary depending on your financial situation and which Medicare Prescription Drug Plan you choose. If you have limited income and resources, you may get extra help to cover prescription drugs for little or no cost.

When you join a Medicare Prescription Drug Plan, you use the plan member card that you get from the plan when you go to the pharmacy. When you use the card, you will get a discount on your prescriptions.

You can compare Medicare Prescription Drug Plans at www.Medicare.gov.

What is Medigap?

Unfortunately, Medicare won't cover all of your health care expenses. For some types of care, you will have to satisfy a deductible and make co-payments. Consequently, many Medicare recipients purchase a Medigap policy.

There are several standard Medigap policies that you can purchase. Each of these policies offer certain basic core

benefits, and all but the most basic policy offer various combinations of additional benefits to cover those procedures and items that Medicare will not.

When you first enroll in Medicare Part B, you have a six-month Medigap open enrollment period. During that time, you have a right to buy the Medigap policy of your choice from a private insurance company, regardless of any health problems you may have. The company cannot refuse you a policy or charge you more than other open enrollment applicants.

What is Medicaid?

Medicaid is a comprehensive medical assistance program that helps many people who are unable to pay for medical care or some or all of their medical bills. It is broader in many respects than Medicare and does not require payment of premiums, deductibles and copayments as does Medicare. The program is sponsored primarily by each state. In Texas, the Health and Human Services Commission (HHSC) (www.hhsc.state.tx.us) runs the program.

Two general Medicaid programs apply to Texas seniors: (1) Primary Care Case Management (PCCM); and (2) STAR.

The PCCM program provides health care services for most people with Medicaid in 202 Texas counties. People with PCCM coverage choose a primary care provider for health care services. The primary care provider is the person or health care center that will provide most of a client's health care services.

The STAR program is a managed care program wherein you choose a health plan and a primary care provider. STAR is located in the Bexar, Dallas, El Paso, Harris, Lubbock, Nueces, Tarrant, and Travis service areas (corresponding to areas that include these counties). You must enroll in the STAR program if you live in a STAR service area and you receive Medicaid because you have limited income (does not apply to those who receive Medicaid solely because they are blind or disabled).

Eligibility

Many Medicaid beneficiaries receive their Medicaid automatically because they qualify for Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF).

For the purposes of this guide, you may apply to Medicaid if you are:

- (1) 65 years or older; and/or
- (2) Blind or disabled; and
- (3) Have limited income and resources.

Information on applying for Medicaid may be obtained by visiting the website of the Texas HHSC at www.hhsc.state.tx.us/medicaid/contacts.html, or www.yourtexasbenefits.com/wps/portal or by calling 2-1-1 on your telephone.

When Does Coverage Start

Coverage may start retroactive to any or all of the three months prior to application, if the individual would have been eligible during the retroactive period. Coverage generally stops at the end of the month in which a person's circumstances change.

For specific information about Medicaid enrollment, eligibility, coverage and/or services in Texas, please dial 2-1-1 on your telephone or call the Medicaid Client Hotline at (800) 252-8263. You can also visit a local HHSC benefit office. Additionally, you can go to www.yourtexasbenefits.com to fill out an online screening form, which will help you determine whether you qualify for Medicaid.

Dual Eligibles

People with Medicare who have limited income and resources may get help paying for their out-of-pocket medical expenses from Texas Medicaid. There are various benefits available to “dual eligibles” who are entitled to Medicare and are eligible for some type of Medicaid benefit.

For people who are eligible for full Medicaid coverage, the Medicaid program supplements Medicare coverage by providing services and supplies that are available under the state's Medicaid program. Medicaid also covers additional services (for example, nursing facility care beyond the 100 day limit covered by Medicare, prescription drugs, eyeglasses, and hearing aids).

Long-Term Care Medicaid

With long-term care costs rising, people are finding they are unable to afford long-term care, such as nursing home living. Medicare only pays nursing home costs for the first 100 days after a hospital stay. It does not pay for long-term care in a nursing home (typically defined as 30 or more days of continuous care). You will need to pay for that out-of-pocket or rely on benefits from long-term care insurance (LTCI), or, perhaps Medicaid.

In order to be qualify for “Long Term Care” Medicaid, an individual must meet:

1. an income cap; and

For 2010, the income cap is \$2,022 per month in “countable” income for an unmarried or widowed individual, or \$4,044 per month in “countable income” for a married couple, if both apply for Medicaid.

2. a resource limit.

For 2010, the resource limit is \$2,000 for an individual. The limit for a married couple is \$3,000. These amounts have remained the same since 1989. All assets except “exempt” assets are counted. Exempt assets include one residence located in Texas of any acreage, valued at up to \$500,000, one automobile used for transportation, personal and household goods, unlimited value of a prepaid, irrevocable funeral contract for the applicant, and certain other property.

Without going into the complexities of determining exempt or otherwise excludable income and resources, suffice it to say that there are many ways to limit and/or

reduce income and resources in order to qualify for Long Term Care Medicaid. However, before you embark on such a path, consult an attorney to determine the validity and legality of potential asset transfers. Ultimately, early preparation may benefit individuals from being penalized for improper asset transfers.

Under the Medicaid Estate Recovery Plan (MERP), Texas may file a claim against the estate of a deceased Medicaid recipient, age 55 and older, who applied for certain long-term care services on or after March 1, 2005. Claims include the cost of services, hospital care, and prescription drugs supported by Medicaid. Considering your entire estate may be sold off to pay for your long-term care, it is wise to consult an attorney who is knowledgeable in Medicaid estate planning early about how to structure your estate. The rules surrounding this issue are numerous and complicated and may affect you, your spouse, and your beneficiaries and/or heirs.

Do I need long-term insurance?

As discussed above, long-term care for an individual can be quite expensive. Medicare does not cover 30 days of continuous long-term nursing home care and Medicaid will cover it only if you meet certain criteria. Therefore, some private insurance companies sell long-term insur-

ance policies. Each policy will have its own terms and conditions, but essentially it is a policy that will pay a certain amount towards your long-term care. This may include providing coverage for costs incurred in an assisted living facility, adult day-care, nursing home, home health care and/or respite care. If you are interested, don't wait too long to buy it because you'll need to be in good health. In addition, the older you are, the higher the premium. Before you purchase such a plan, be sure you are clear as to the cost of the plan and the exact coverage it provides.

PLANNING AHEAD — INCAPACITIES, DISABILITIES AND DYING

The law allows you to prepare written instructions regarding medical treatment in the event you become incapacitated and it allows you to appoint someone to make decisions for you if it becomes necessary. Therefore, in order to be in charge of your future you must plan ahead.

Planning in the event of incapacity

As we grow older, we face the possibility of becoming unable to take care of our own financial affairs or to make our own health care decisions. Planning ahead can ensure that the people you trust will have the authority to look after you without the need for court involvement known as guardianship proceedings.

What are statutory durable powers of attorney?

This document enables you to appoint agents to manage your financial and personal business affairs. Most powers of attorney are “durable,” meaning that they are valid even after you are no longer competent. However, this document can be drafted so that your agent can act on your behalf immediately. Furthermore, it is very important for you to have alternate agents named in the event your primary agent is unable to serve.



What are medical powers of attorney?

This document allows you to appoint agents to make your healthcare decisions in the event you are no longer able to do so. Also, your acting agent will have authority to determine your place of residence if there comes a time when you are no longer able to live at home. Additionally, as in a statutory durable power of attorney, it is very important for you to have alternate agents named in your medical power of attorney in the event your primary agent is unable to serve.

What is a HIPAA Authorization to Release Medical Records?

HIPAA is a federal act that affects the disclosure of certain medical information. This document lists individuals, typically those you have appointed as agents in your medical power of attorney, providing them access to your confidential medical information so they are able to make informed decisions on your behalf if and when necessary.

What is a Living Will?

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

It should be noted, a Living Will is different than a Medical Power of Attorney. A Medical Power of Attorney authorizes a person to make medical decisions on your behalf, subject to any limitations outlined in the Medical Power of Attorney, if you are physically or mentally unable to make those decisions. By contrast, a Living Will deals

with your wishes with regard to life support issues when your condition is terminal or irreversible. If you have a Medical Power of Attorney but also want a Living Will, you need to make sure the documents are drafted so that they do not conflict with each other. Additionally, if you decide you do not want a Living Will, then agents in a medical power of attorney will assist you in making end of life decisions.

What is guardianship?

Guardianship is an ongoing and court-controlled proceeding by which the court appoints someone, usually next of kin, to take care of the incapacitated person's financial and personal affairs. Without planning ahead, a guardianship may be the only legal means by which even a family member, or any other appointed individual, can take care of you. Having in place a statutory durable power of attorney and a medical power of attorney can help prevent the need for a guardian appointment. Guardianships also tend to be the most expensive manner of property and personal management due to attorneys' fees, bond premiums, and court costs. Further, married individuals often assume their spouse will automatically have authority to act on their behalf if they lose capacity. Be aware that this is not the case.

What about a living trust?

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

Planning in the event of death

Estate planning is an important tool often overlooked. Planning your estate is about seeing that your loved ones are provided for and making sure your property is distributed according to your wishes. Through the use of wills and trusts you can transfer most of your property at or before your death quickly and inexpensively.

The simplest way to ensure that your property will be distributed according to your wishes *after death* is to prepare

a will. A will is a legal document that designates how your property and assets will transfer after you pass away.

Do I need a will?

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

What property is not controlled by my will?

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

Should I put funeral and burial instructions in my will?

Although there is nothing to prohibit you from stating such wishes, in your will, you need to be careful that the appropriate person has access to your instructions



immediately after your passing, to make sure your wishes are carried out. Often wills are not read or located until days or weeks after a death, which is too late to be of help to the people who must make immediate decisions about your funeral and burial arrangements. You can also, make a separate document stating your wishes and inform your executor, attorney or loved ones where to find it when the time comes.

For more detailed information about wills and your legal rights in Texas, visit www.tyla.org and download a copy of “To Will or Not to Will” or request a free copy by calling 1-800-204-2222.

What is a trust?

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

What are the various kinds of trusts?

Trusts can be divided into two major categories based on when and how they are created. The first type of trust is a testamentary trust, which is created in a will and comes into being at death (or some future time). Testamentary trusts are often created to in order to provide for the management and disposition of assets, creditor protection and tax benefits. Providing for assets to pass in trust, rather than outright, may be appropriate for minors, adults suffering from disability, persons who are spendthrifts, or those perceived by the Trustor to lack management skills and judgment.

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

Living Trust

The living trust is a written trust agreement between the trustee (the manager of the trust property) and the settlor (the person who creates the trust arrangement). Because the trust is created during the settlor's life, the living trust is a twofold plan—one plan directs the administration of assets during the settlor's lifetime and the other directs the disposition of his or her estate at death. Out of this simple arrangement come many myths about the efficacy of the living trust. Keep in mind that a living trust is a legal document and should be prepared by an attorney. Be leary of non-attorneys selling living trusts. In the past, financial advisors have used selling living trusts in ways to exploit and defraud seniors.

Myth 1: "Living trusts will reduce your taxes"

Because a living trust is usually revocable and amendable during your lifetime, all of the income realized by the trust is recognized by you and reported on your individual income tax return. Likewise at your death, the assets of the trust are subject to estate tax. Note that tax planning can be accomplished in wills and in living trusts. However, a living trust, compared to a will, does not provide a tax advantage.

Myth 2: "A living trust will avoid probate"

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

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

Legal fees for probate are typically based on an hourly charge as opposed to a percentage of an estate. Texas permits "independent administration" of estates which avoids costly probate court procedures. Generally, Texas is considered a "probate friendly" state.

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

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

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

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

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

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

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

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

Advantages of Estate Planning

The estate planning process should begin with articulating what you want to happen to your assets during lifetime and at death and then contacting an attorney to explore the different ways in which to accomplish those goals. Some advantages to estate planning include:

- You are able to provide for the disposition of all of your assets and can avoid the passing of assets to persons you do not wish to benefit. Without planning, a court will determine who controls your assets at death and the laws of the State of Texas will determine your heirs;
- You may designate a guardian for a minor or disabled adult child and provide for management of assets on behalf of a minor or disabled beneficiary of the will.

You can also designate whether to place the assets in trust for the beneficiary and the terms of the trust;

- You may provide for management of assets on behalf of a beneficiary who lacks financial responsibility or who has creditor risks;
- You may reduce the likelihood of a will contest;
- You are in charge of appointing capable representatives of the estate (executors and trustees);
- You can provide for charitable gifts; and
- You are able to coordinate your will or trust with beneficiary designations for life insurance, retirement benefits, etc.

STAYING ON THE JOB

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

Can I Be Fired or Turned Down for a Job Because of My Age?

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

If you feel you have been discriminated against because of your age, you need to file a complaint with the Equal Employment Opportunities Commission (EEOC) and/or the Texas Commission on Human Rights (TCHR). The TCHR can be contacted at 1-888-452-4778 and they can be contacted on-line at www.tchr.state.tx.us. There are time constraints in which to file a complaint with these entities as well as bringing suit against the person/entity that has discriminated against you. You should contact a lawyer who handles discrimination claims if you have specific questions about your rights and legal options.

If I Continue to Work Will I Lose My Social Security Benefits?

Maybe. If you work and are at full retirement age, you may keep all of your benefits no matter how much you earn. If you started receiving benefits before your full retirement age and continue to work, however, there is a limit on how much you can earn before your benefits may be reduced. Finally, if your latest year of earnings is one of your highest years, Social Security will recalculate your benefits and pay you any increase due. For additional information on Social Security, please see the “Making Ends Meet” section of this guide.

GETTING AROUND

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

Are the Driving Requirements Different for Seniors?

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

Under Texas law, the Department of Public Safety has the authority to maintain records on licensed drivers. These records consist of any convictions for traffic law violation charges, incidents of accident involvement, and violations creating a hazard to other persons or property. Through the use of such records, the Department of Public Safety has the authority to identify those drivers that are experiencing difficulty in the operation of a motor

vehicle involving the safety and welfare of others and may consider these factors in withholding or withdrawing an individual's driving privileges as provided by statute.

Will the Department of Public Safety Evaluate any Physical or Mental Conditions in Deciding whether to Renew or Revoke my License?

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

Can the Department of Public Safety Limit My Driving Rights Rather than Revoke my License?

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

Are there any Special Accommodations to Assist with Driving if I am Disabled?

Accessible parking for disabled drivers must be made available at businesses and government offices. To park in a designated disabled space, your vehicle must display



one of the following items: a special license plate, a red or blue placard that hangs from the rearview mirror of your vehicle, or a disabled veterans license plate.

Individuals that qualify for accessible parking are generally afflicted by one of the following conditions: a mobility disability (a device or devices are needed to assist with walking), legal blindness, severe cardiac or respiratory impairments, or the individual requires the use of portable oxygen. Temporary disabilities might also qualify a person for a disabled person parking placard that would expire after six months. If you have such a condition and wish to apply for access to disabled parking, you can go to <http://www.txdmv.gov/vehicles/drivers/disabled.htm>.

In addition, communities provide various means of assistance to those who cannot drive or use public transportation. Contact your local Area Agency on Aging by calling the Texas Department of Aging at 1-800-252-9240, and ask about transportation services for seniors in your area.

Are there any Refresher Programs to Help me Improve my Driving Skills?

Yes. There are several programs that teach seniors how to be better and safer drivers. One such program is the 55 Alive/Driving Safety Program sponsored by the AARP. In Texas, all drivers that complete a driver safety course are qualified to receive a 10% discount off their automobile insurance premiums. For more information about this program, go to the AARP website at

http://www.aarp.org/family/housing/driver_safety_program/ or contact the AARP at 1-888-OUR-AARP. You can also contact your local Texas Drivers License office for more information on these programs.

HANDLING ELDER ABUSE

Texas has more than 2 million residents age 65 or older and an estimated 2.6 million people with disabilities. In 2002, the Texas Department of Adult Protective Services completed 56,906 investigations of abuse, neglect or exploitation involving adults living at home. Of these, 41,154 were confirmed. In the last decade, the number of in-home cases investigated by Adult Protective Services has more than doubled. More than 80% of the allegations of maltreatment that are validated in APS in-home cases include neglect. Surprisingly, many of the neglect cases are from one's own personal neglect. Help is available, but it requires people to understand and recognize the warning signs and to be vigilant against elder abuse.

What is elder abuse?

There are three general categories of elder abuse. The following are common types of abuse inflicted on the elderly or disabled:

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

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

If you feel your situation is an emergency, contact 911 or your local emergency hotline. Reports of alleged abuse, neglect or exploitation of the elderly should be made by contacting the Texas Department of Family and Protective Services Statewide Intake Program (SWI) 24 hours a day, 7 days a week by calling toll free 1-800-252-5400.

Am I required to report suspected elder abuse?

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

Is domestic violence the same as elder abuse?

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

How can I help?

Get involved in your community. For example:

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

Possible indicators of abuse, neglect or exploitation

- **Physical signs**
 - Injury that has not been cared for properly
 - Injury that is inconsistent with explanation for its cause
 - Pain from touching
 - Cuts, puncture wounds, burns, bruises, welts
 - Inappropriate administration of medication
 - Soiled clothing or bed
 - Lack of necessities such as food, water or utilities
 - Forced isolation
- **Behavioral signs**
 - Fear, anxiety, agitation, anger
 - Isolation, withdrawal, depression
 - Contradictory statements, implausible stories
 - Hesitation to talk openly
- **Signs of Physical Abuse by Caregiver**
 - Prevents elder from speaking to or seeing visitors
 - Anger, indifference, aggressive behavior toward elder
 - History of substance abuse, mental illness, criminal behavior or family violence
 - Flirtation or coyness as possible indicator of inappropriate sexual relationship
 - Conflicting accounts of incidents
 - Lack of affection toward elder or talks of elder as a burden
- **Signs of Financial Abuse by Caregiver**
 - Frequent expensive gifts from elder to caregiver
 - Elder's personal belonging, papers, credit cards missing
 - Numerous unpaid bills
 - A recent will when elder seems incapable of writing will
 - Caregiver's name added to bank account
 - Elder signs on loan
 - Frequent checks made out to "cash"
 - Unusual activity in bank account
 - Caregiver's refusal to spend money on elder
 - Signatures on checks or legal documents that do not resemble elder's signature

AVOIDING CONSUMER SCAMS

According to a March 2009 study by the MetLife Mature Market Institute, financial abuse of the elderly cheats older Americans out of more than \$2.6 billion annually. However, underreporting of these crimes is rampant due

to the embarrassment and fear that many elder Americans feel after being victimized prevents them from reporting these crimes. Unfortunately, Texans are just as susceptible to financial exploitation, making it important for elder Texans to know their rights and how they might be vulnerable. For instance, once in a lifetime offers should always elicit suspicion and skepticism.

What types of scams should I be aware of?

- **Door-to-door solicitation:** Products frequently misrepresented by door-to-door salespeople include home improvements such as siding and storm windows, funeral service contracts, living trusts, books, and magazines. Be suspicious of the following: anyone who tries to sell by playing on your emotions; salespeople who tell you they are selling their service or product at the lowest price or tell you that their competitors do poor quality work; and salespeople who say they have done other work in your city or neighborhood but refuse to give you the names of several past customers.
- **Identity Theft:** Identity theft occurs when someone uses your personal identifying information without your permission. This information includes your name, address, driver's license number, Social Security number, mother's maiden name, birth date or financial information such as your bank account, credit card or PIN number. An identity thief may use your information to obtain new credit cards, open checking accounts, get a fake driver's license or Social Security card, make long distance phone calls or make purchases using your bank account or credit card. Warning signs include: receiving bills from a credit account you did not open; discovering unauthorized charges on your credit, long distance or bank accounts; being contacted by a collection agency regarding a debt you did not incur; and, having checks disappear from your checkbook.
- **Telephone Fraud:** The most common telephone solicitation scams to watch out for are:
 - *Free gift offers.* These often require you to pay shipping and handling charges, redemption fees or gift taxes before delivery. The gift may be worth less than the extra charges.
 - *A very low priced offer.* Few legitimate businesses can afford to give away things of real value or substantially undercut everyone else's price.
 - *Get rich quick schemes.* These are offers that promise "high-profit, no risk" investments. No high-profit investment is risk free.
- *Buy one, get one free deals.* These often involve travel or vacation offers. The one you pay for may cost more than the entire package is worth.
- *Donations to fake charities.* Some telephone solicitation callers will use a name that sounds like that of a well-known charity, but in reality the charity does not exist. Be wary of emotional pleas for disaster relief, families of soldiers, war victims, law enforcement personnel and so on.
- *Phony contests offering prizes.* To claim your "prize," you may be asked to provide your credit card or bank account number for "verification purposes." The prize may have very little value and the caller may use your credit card or bank account information to bill you for merchandise that you did not order or to steal your identity.
- *Foreign lotteries.* Although it is illegal to purchase tickets in a foreign lottery, scam artists sell such tickets under the pretense that you are part of a pool of ticket purchasers sure to win and split the proceeds. In another version of the scam, the caller will say you have already won, but that you must send money to cover the tax on your winnings. The caller may ask for a bank account number so your winnings can be deposited directly, or for a credit card number for "verification purposes."
- *Calls requesting your personal identifying information* (date of birth, social security number). This information can be used by identity thieves to obtain new credit cards or make purchases in your name.

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

- **Home Improvement:** Home improvement scams often occur when a salesperson comes to your door saying that he or she was in your neighborhood and noticed that you needed siding, storm windows, or some other improvement. Be leery of a salesperson that appears at your door uninvited and always compare prices by shopping around.
- **Mail Order Sales:** Under federal law, you must receive mail-order merchandise within a reasonable time after placing your order. If the seller cannot ship

on time, you have the right to cancel. For more help, check with your local Better Business Bureau and Attorney General's Consumer Protection Office to find out if any complaints have been filed against the company. You can also check with the post office about complaints they have received about a company.

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

How Do I Avoid Telemarketing Calls?

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

How Can I Avoid Releasing My Social Security Number?

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

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

1. Adopt an active policy of not giving out your Social Security number unless you are convinced it is required or is to your benefit.

2. Never print your Social Security number on your checks, address labels or other identifying information.
3. Do not carry your Social Security card or other cards containing the Social Security number in your wallet. Your wallet could be lost or stolen. Attempt to resist merchants' requests to write your Social Security number onto your checks.
4. Pay attention to your Social Security Personal Earnings and Benefit Estimate Statement, which is mailed each year about three months before your birthday by the Social Security Administration. Be certain the information in the file is correct. You can also contact the SSA at 1-800-772-1213 to learn how to obtain this free report. If incorrect information is recorded, contact the SSA immediately.
5. Order a copy of your credit report each year. If you are a victim of identity theft, the credit report will contain evidence of credit or banking fraud committed using your name and SSN. It will also show other SSNs associated with your name. The federal government, in accordance with the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), established www.annualcreditreport.com as a centralized, secure website for consumers to obtain their credit reports for free from three different reporting agencies once a year. While other companies have established and aggressively advertise supposedly free consumer credit reporting services, they frequently impose unexpected fees and subscriptions. Annualcreditreport.com is the only government-sanctioned service that enables consumers to request, view and print their credit reports securely over the Internet, by mail or by telephone.
6. If a private business requests your Social Security number:
 - Leave the space for the SSN on the form blank or write "refused" or N/A in that space.
 - Speak to someone in authority or write to the business and explain why you do not want your SSN used to identify you. If you do not receive satisfaction from the first person you contact, go to a person in the organization with more authority.
 - If the company insists on having your SSN, tell the company you will take your business else-

where. If the company persists, follow through on your promise.

7. If your bank, credit union or other financial service provider uses your SSN as a personal identification number (PIN) or as the identifier for banking by phone or the Internet, write a letter of complaint. Request a different PIN and/or identification number assigned. Do not replace it with a common number such as your birth date.

What Do I Do if Someone Steals My Identity?

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

- Notify the police, your banks, and your creditors immediately. Obtain a copy of your police report as evidence that you have been a victim of fraud.
- Cancel all existing credit cards, accounts, passwords and PINs, and replace them with entirely new ones. Call the credit bureaus and ask each to attach a fraud alert and victim's statement to your report. The following are the three largest credit-reporting agencies:

Equifax: 1- 800-685-1111

Experian 1- 888-397-3742

TransUnion 1- 800-916-8800

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

GETTING DIVORCED OR REMARRIED

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

If I Get Divorced, Can I Still Get Social Security Benefits on My Spouse's Record?

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

Will I Continue to Receive Social Security Benefits as a Widow(er) if I Remarry?

Not if you re-marry before you are 60 years old. As a widow(er) you can receive benefits at age 60 (50 if you are disabled). Be aware, if you remarry before you are 60 years old you will not be eligible for these widow(er) benefits throughout the marriage. For additional information on Social Security, please see "Makings Ends Meet" section of this guide.

How Does Divorce Affect my Will?

In Texas, if after making a will, you get divorced or the marriage is annulled, then any provisions that are to the benefit of your former spouse are null and void unless the will specifically states otherwise. For example, if in your will you left "everything to my spouse, and, in the event that my spouse predeceased me or did not survive

me, then all my property passes to my children”, after the divorce, that provision would be read to leave everything to your children.

Regardless of the foregoing, it is suggested that whenever you have a significant change to your life such as a divorce, having a child, becoming the guardian of a grandchild, or the death of a family member, you would review your will and make any necessary changes. By doing so, you will ensure that your estate is distributed the way you want when the time comes.

RAISING YOUR GRANDCHILDREN

Are you parenting a second generation of your children? More and more grandparents in America are faced with the challenge of raising their grandchildren. According to the 2000 census, over 4.5 million Americans have grandchildren living in their households. If you are in this situation, you need to know your rights and legal options.

As a Grandparent, Do I Have Legal Authority to Make Decisions or Take Actions for My Grandchildren?

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

What Types of Situations would Require Legal Authority?

Many schools require enrollment forms to be completed only by a parent or legal guardian. Some doctors or hospitals may require proof of your right to make treatment decisions for the child. If you need to collect insurance proceeds or other type of financial support for the child, you may need to show proof of your authority to act. If you need to add the child to your health insurance, many employers and/or insurance companies require that you be appointed the legal guardian of the child.

Sadly, some grandparents feel the need to protect their grandchildren from an abusive parent and may need to seek legal authority to do so.

Does a letter from the Grandchild's Parent Give me the Proper Authority?

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

Should I Seek a Guardianship over my Grandchild?

A guardianship is one method for obtaining authority to care for your grandchild. Guardianships are expensive (costing anywhere from \$1,000 to \$4,000) to establish, therefore, consider carefully your need before acting. Will your situation continue long-term? Are the parents unavailable to make decisions and sign documents when necessary? Is a parent likely to show up to remove the child from your care against your wishes? Is a guardianship necessary for the child to receive health insurance benefits? Does the child have property or assets that need to be invested or managed? If you answered yes to any of these questions, you should consider meeting with an attorney to discuss a guardianship. Be aware that establishing a guardianship takes several weeks in the smoothest situations, so do not wait until you absolutely need a guardianship to begin the process.

Should I be Managing Conservator of my Grandchild?

Conservator rights (derived from the Texas Family Code) give you almost the exact same authority to care for the child as being appointed the child's guardian (derived from the Texas Probate Code). While the Family Code process differs from the Probate Code process, you end up with basically the same authority to act for the child. Seeking appointment as managing conservator can be a little less expensive than seeking a guardianship; however, be certain that you won't need a legal guardianship before you proceed with a conservatorship. Many

insurance companies now require the guardianship route before they will cover the child with health benefits. It is very unlikely that you would ever need to be both guardian and managing conservator.

Does Seeking a Guardianship or Conservator Rights Terminate the Parents' Rights?

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

Is My Grandchild Entitled to Social Security Benefits?

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

How do I go About Collecting Child Support for my Grandchild?

If both parents are living and neither parent has had his or her rights terminated, then you could seek to receive the child support from both parents (assuming they can be located and are working). You will likely need to be appointed the guardian or managing conservator before seeking to receive child support. You can hire a lawyer to pursue your claim, or you could file with the Texas Office of the Attorney General. The Office of the Attorney General is responsible for locating absent parents, establishing paternity, establishing, enforcing and modifying child support orders, and collecting and distributing child support monies. For more information, you can

visit the Office of the Attorney General's website at www.oag.state.tx.us/cs/index.shtml.

What are my Rights as a Grandparent to Visit my Grandchild if his Parents Take him Away?

Under the Texas Family Code (Section 153.433), a grandparent has limited rights of access to grandchildren. To determine one's rights, the following sets forth pertinent considerations:

- At least one biological or adoptive parent of the child has not had that parent's parental rights terminated;
- The grandparent requesting access to the child demonstrates that visitation is in the "best interest" of the child by showing that denial of possession of or access to the child would significantly impair the child's physical health or emotional well-being; and
- One of the following circumstances must exist: your child (the parent) is in jail or has been in jail during the three month period before the petition was filed; is incompetent or has died; or, does not have actual or court-ordered possession of the child.

Remember to Consider what Happens to your Grandchild in the Event of your Death or Incapacity.

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

LOSING A SPOUSE OR A PARENT

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

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

GETTING LEGAL ASSISTANCE

How Do I Find a Lawyer?

You may contact the State Bar of Texas Lawyer Referral & Information Service toll free at 1-800-252-9690 and request a lawyer referral.

The State Bar of Texas also certifies referral services operated by local bar associations and other non-profit public service organizations. Listed below are the current certified referral programs. Should you need a referral from one of these organizations, please call the phone number or visit the website listed.

Arlington Bar Association

(817) 277-3113

www.arlingtonbarassociation.org

Corpus Christi Bar Association

(361) 883-3971

www.ccbbar.com

Dallas Bar Association

(214) 220-7444

www2.dallasbar.org/referral

El Paso Bar Association

(915) 532-7052

www.elpasobar.com

Harris County Bar Association

(713) 236-8000

www.harriscountybar.com

Houston Lawyer Referral Service

Toll Free: (800) 289-4577, Direct: (713) 237-9429

www.hlrs.org

Jefferson County Bar Association

(409) 835-8438

www.jcba.org

Lawyer Referral Service of Central Texas

Toll Free: (866) 303-8303, Direct: (512) 472-8303

www.AustinLRS.org

North Dallas Bar Association

(972) 980-0472

www.attorneys-dallas.com

Plano Bar Association

(972) 423-4116

www.planobar.org

San Antonio Bar Association

(210) 227-1853

www.sanantoniobar.org

Tarrant County Bar Association

(817) 336-4101

www.tarrantbar.org

Who Can I Call for Free Legal Advice?

Dallas Bar Association Legal Advice Telephone Line

2nd & 3rd Wednesday of each month

5:30 pm – 8:00 p.m.

(214) 220-7476

Legal Services of North Texas

Legal Aid Line: Mon – Fri 9:00 a.m. – noon

1-888-529-5277 Toll Free

www.lanwt.org

Lone Star Legal Aid

1-800-733-8394

www.lonestarlegal.org

Texas Legal Services Center

Legal hotline for older Texans

1-800-622-2520

www.tlsc.org

Texas Rio Grande Legal Aid

1-888-988-9996

<http://www.trla.org/>

West Texas Legal Services, Inc.

1-800-955-3959

www.wtls.meshtest.net

COMMUNITY RESOURCES

ADULT PROTECTIVE SERVICES 1-800-647-7418

DISABILITY RIGHTS, TEXAS

Mental Health-Mental Retardation

and Developmental Disabilities

1-800-252-9108

AGING

Area Agency on Aging

1-888-622-9111

Texas Department on Aging and

1-800-252-9240

Disability Services

ALZHEIMER ASSOCIATION

<http://www.alz.org>

1-800-272-3900

AMERICAN ASSOCIATION OF RETIRED

PERSONS (AARP)

<http://www.aarp.org>

1-888-687-2277

AARP Elder Care Locator

1-800-677-1116

AMERICAN BAR ASSOCIATION

<http://www.abanet.org>

1-800-285-2221

AMERICAN CANCER SOCIETY

<http://www.cancer.org>

1-800-227-2345

AMERICAN DIABETES ASSOCIATION

<http://www.diabetes.org>

1-800-342-2383

AMERICAN HEART ASSOCIATION

<http://www.americanheart.org>

1-800-242-8721

AMERICAN LUNG ASSOCIATION

<http://www.texaslung.org>

AMERICAN PSYCHOLOGICAL ASSOCIATION

<http://www.apa.org>

1-800-374-2721

AMERICAN SOCIETY ON AGING

<http://www.asaging.org>

1-800-537-9728

ARTHRITIS FOUNDATION	1-800-442-6653	NATIONAL COUNCIL ON AGING	http://www.ncoa.org	1-800-424-9046	
ARTHRITIS FOUNDATION INFORMATION LINE	http://www.arthritis.org	1-800-283-7800	NATIONAL DO NOT CALL REGISTRY	http://www.donotcall.gov	1-888-382-1222
ASSISTANCE FOR THE BLIND	1-800-232-5463	NATIONAL FRAUD INFORMATION CENTER	http://www.fraud.org		
ASTHMA AND ALLERGY FOUNDATION HOTLINE	http://www.aafa.org	1-800-727-8462	NATIONAL KIDNEY FOUNDATION	http://www.kidney.org	1-800-622-9010
ATTORNEY GENERAL OF TEXAS			NATIONAL MENTAL HEALTH ASSOCIATION	http://www.nmha.org	1-800-969-6642
Consumer Help Line	1-800-621-0508		NATIONAL STROKE ASSOCIATION	http://www.stroke.org	1-800-787-6537
Medicaid Fraud Control Unit	1-800-252-8011		OLDER WOMEN'S LEAGUE	http://www.owl-national.org	1-877-653-7966
http://www.oag.state.tx.us			RECORDING FOR THE BLIND AND DYSLEXIC	http://www.rfbd.org	1-800-221-4792
COALITION OF TEXANS WITH DISABILITIES	http://www.cotwd.org	1-512-478-3366	SOCIAL SECURITY ADMINISTRATION	http://www.ssa.gov	1-800-772-1213
EQUIFAX	www.equifax.com	1-800-685-1111	STATE BAR OF TEXAS	http://www.texasbar.com	1-800-204-2222
EXPERIAN	www.xperian.com	1-888-397-3742	STATE BAR OF TEXAS LAWYER REFERRAL SERVICE		1-800-252-9690
FREEDOM OF INFORMATION	1-800-580-6651		SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES	http://www.samhsa.gov	1-877-726-4727
INTERNAL REVENUE SERVICE	1-800-829-1040		SUSAN B. KOMEN FOUNDATION (Breast Cancer Information)	http://www.komen.org	1-877-465-6636
www.irs.gov			TEXAS BUREAU OF VITAL STATISTICS		1-888-963-7111
MEDICAID HOTLINE	1-800-252-8263				
MEDICARE HOTLINE	http://www.medicare.gov	1-800-633-4227			
NATIONAL ASSOCIATION FOR CONTINENCE	http://www.nafc.org	1-800-252-3337			
NATIONAL COMMITTEE FOR THE PREVENTION OF ELDER ABUSE (NCPEA)	http://www.preventelderabuse.gov	1-202-682-4140			

**TEXAS DEPARTMENT OF FAMILY AND
PROTECTIVE SERVICES / ABUSE HOTLINE**
<http://www.dfps.state.tx.us> 1-800-252-5400

TEXAS DEPARTMENT OF HUMAN SERVICES
Nursing Home Complaints 1-800-458-9858
and Investigations

**TEXAS DEPARTMENT
OF INSURANCE** 1-800-252-3439
**MENTAL HEALTH
AND MENTAL RETARDATION**
www.dads.state.tx.us (512) 454-3761

TEXAS DEPARTMENT OF PUBLIC SAFETY
<http://www.txdps.state.tx.us>

TEXAS LEGISLATURE ONLINE
<http://www.capitol.state.tx.us>

TEXAS SECRETARY OF STATE
<http://www.sos.state.tx.us>

TEXAS YOUNG LAWYERS ASSOCIATION
<http://www.tyla.org> 1-800-204-2222
ext. 1529

THE ELDER LOCATOR
<http://www.eldercare.gov> 1-800-677-1116

**THE PUBLIC UTILITY COMMISSION
(LITE-UP Texas)** 1-888-782-8477
<http://www.puc.state.tx.us> 1-866-454-8387

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

This guide was adapted from “Seniors and the Law: A Guide for Maturing Californians,” which was created by the State Bar of California in 2003. Content from the original publication has been used with permission of the State Bar of California (calbar.ca.gov).

A project of the Family Law Committee of the Texas Young Lawyers Association

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