

PRIME TIME LAW

**A Practical Guide for those who
are experiencing the Prime of Life
and for those who Care for them**

**An Educational Presentation by:
David L. McGuffey**

Serving Tennessee & Georgia

Our Practice: People First

*202 West Crawford Street, Suite B
Dalton, GA 30722
(706) 428-0888*

www.mcguffey.net

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Introduction

The adage is true: “Most people do not plan to fail. They simply fail to plan.” This handbook is designed to help you avoid falling into the trap of waiting until its too late, and failing to plan.

As you read through this handbook, keep in mind that our population is getting older. America, according to U.S. Census data, will soon have more than forty (40) million residents over the age of 65. From 1900 to 2002, the average life expectancy increased from 49.2 years to 76.5 years. (*National Vital Statistics System*; available on Internet). Based on this increased life expectancy, our need to plan for our future is significantly more important now as opposed to 100, 50, or even 25 years ago. Where will you fit into this mix?

Profile of Age Characteristics for the United States: 2000 and 1990 (compiled by U.S. Administration on Aging): The total population of the United States for the year 2001 is 284,784,501. See U.S. Census website (www.census.gov). For 2000, the population of persons 62 and over was 41,256,029. The population of persons 65 and older was 34,991,753. Of persons 75 to 84, 4.5% live in nursing homes. Of persons 85 and older, 19% live in nursing homes.

When you plan, you select a target, you take aim, and you take the necessary steps to hit your target. **The questions you must ask are: (i) what are my goals for retirement (and beyond) and (ii) what have I done to achieve my goals?** For those who die early, these questions are moot. For the rest of us, a lack of planning can lead to unnecessary hardship on ourselves as we age and, after death, on those we leave behind.

As with all plans, you must begin somewhere. We begin with a discussion of what your rights are. This provides you with one of the points of departure. Another is an assessment of your financial position and an evaluation of any planning you have done thus far. The last is an assessment of your current health.

“Your Legal Rights 101”

In examining Elder rights, a brief examination of legal rights in general may be helpful. Elder rights, like most other rights, spring from three primary branches of the law. They are personal rights, property rights, and contract rights.

Personal rights govern how people should be treated. All of us have certain rights as citizens. We expect others to obey laws and rules created for our protection. When someone violates a rule established for our protection, and when that conduct harms us, our personal rights have been violated. Depending on the circumstances, the person who harms us may be held accountable under criminal or civil laws (or both).

Property rights relate to ownership. Those rights govern the use and

possession of property. If someone interferes with your lawful use of property, then your property rights may have been violated.

Contract rights govern agreements. Agreements, ranging from a common purchase at the grocery store to an agreement for services at a skilled nursing facility, are often of vital importance. When parties reach an agreement, they expect each side to live up to their word. The law says that parties to an agreement have a right to the benefit of their bargain.

In Elder law, personal rights protect you from abuse, neglect and substandard care. Wills, trusts and powers of attorney concern property rights since they relate to how your property is used or distributed. Contract rights protect the value of your agreements with individuals and businesses, particularly where you rely on those individuals and/or businesses to provide necessary care.

Once you know your rights, it is important to know you can take action when your rights are violated. Although it may not be necessary to complain about every wrong you suffer, if someone violates your rights and if you choose to speak up, the law will hold the wrongdoer accountable. For example, if anyone commits a criminal act that harms you, then the State will take action if you report the crime. If someone tries to take your property, the law provides a way to get it back. When someone breaks (or “breaches”) their agreement, the law allows you to sue for damages, and in some instances, the court may force the other party to live up to their agreement.

In the case of abuse, neglect and malpractice, our civil justice system says an injured party should be repaid what was lost. For example, if you are injured due to another person’s negligence and if you require medical care, then the law says the person who hurt you should pay your medical expenses. Since the law cannot undo pain, if you suffer pain, then the law says we should try to quantify your pain in dollars (e.g., how much would you give to avoid that pain); the wrong-doer should then pay you that amount. If a wrong-doer’s conduct injures your loved one and he/she dies, then you have a right to hold the wrong-doer accountable in law. In that instance, the law asks: “What is a life worth?”

In sum, our legal system is premised on responsibility and accountability.

With that in mind, our goal is to equip you to exercise your rights before you are injured, disabled or incapacitated. We hope your property will not be taken from you (or one of your loved ones) and depleted by an abuser. We hope assisted living facilities, nursing homes and other businesses that care for the elderly will provide appropriate care. We hope this Handbook will be used to prevent harm and ensure quality living.

If this Handbook helps you, then we have done our job. If, after reading it, you still have questions, we invite you to contact us (or another lawyer) and seek help. Help is available.

Finally, it is important to remember that no general article or paper can address specific legal situations. If you have a question concerning a situation that involves you or someone you know, you should seek the advice of a lawyer.

People: Rights and Responsibilities

- I. **First Things First: Planning:** An old and trite (but true) saying is: “People don’t plan to fail; they fail to plan.” The most important thing you can do for yourself and your family is to think ahead, talk openly with those you love and plan for your future. Reluctance to plan will not prevent time from catching up with you.
 1. **“Planning” is not a dirty word:** In virtually every arena of life, we plan. We plan because those who fail to plan wander in the dark, with no definable goals, which reduces their chance of successful living. Those who plan have direction. They have goals or targets. When choices need to be made, we can evaluate those choices against specific goals, and can make the choice most likely to achieve those goals. Estate Planning, which now includes planning for life during “old age,” is the process of arranging your affairs so that your wishes are carried out with maximum effect and minimum expense during any period of incapacity and following death.
 2. **Parents:** If you have a normal family relationship, your children will try to help you as age deprives you of some of your independence. If you have specific desires concerning how your children should help (or in some cases, leave you alone), then you should tell them. If you do not talk with your children now, you cannot expect them to know your wishes later.
 3. **Children:** Your parents were independent before you were born. Planning for incapacity is not about taking control of their lives. Planning is about honoring them. (See Ephesians 6:2) Your parents may not be ready to relinquish their independence. Thus, care giving is about you *helping* your parents respond to the aging process. Your parents may not appreciate you taking control of their lives (in whole or part) without consent. Talk to them. Find out where they want your help and find out where they want you to “butt out”. If you do not talk to your parents now, you are inviting trouble and disagreement later if you “step on their toes”.
 4. **Organize your affairs:** If you cannot (easily) find your financial information, including account numbers, insurance policies, deeds, powers of attorney, Will, Living Will, and other vital information, then you should assume looking for that information will be burdensome for your children (or spouse) in an emergency situation. You should make a list of banks where you have accounts, insurance companies with which you have policies, and places where you have documents and property. Even if you

consider this information private, you should keep it where it can be accessed when needed.¹ At a minimum, you should keep a copy of your important information (or a statement of where it can be found) with your Last Will and Testament.

5. **Planner/Questionnaire:** We have a planner/questionnaire that may help you organize your personal information. If want a copy, you can contact us by email and we will send it to you. Fill out the parts that apply to you and take it with you when you meet with an Estate Planning professional. When you fill it out, keep two things in mind: (i) Do not let the questionnaire serve as an excuse to postpone planning -- it is better to begin planning with an incomplete questionnaire than to avoid planning altogether; (ii) Be forthright with your Estate Planning professional. Professionals cannot help you map out the best route to achieve your goals if you fail to tell them your present circumstances.

III. Financing Retirement.

1. **Changing Levels of Income:** In 2000, the median household income for all Americans was \$42,148. On the high side, those aged 45 to 54 had a median annual income of \$58,218. Unfortunately, income often drops following retirement. Thus, on the low side, those aged 65 and older had a median annual income of \$23,048 in 2000. (Source: *U.S. Census Bureau: Money Income in the United States: 2000, published September, 2001*).

- A. It is not too early to consider how you will finance your retirement. Data from the Census Bureau website, shows common income sources (**in percentages**) for persons 65 years of age and older.

We are not financial advisers and, thus, it is not our purpose to tell you how to finance your retirement. However, Census Bureau data shows that many Americans continue to rely heavily on Social Security. We question whether that makes sense in today's political climate. If you have not spoken with a financial adviser, and if you are relying on Social Security to meet your needs, we suggest that you seek professional guidance. If you need information concerning financial planning needs, contact a Certified Financial Planner.

The following list of organizations is a starting point in securing appropriate financial advice:

¹ For example, we do not recommend putting your only copy of you power of attorney in a safety deposit box. If you become incapacitated, how will your agent prove he or she has authority to open the box?

American Institute of Certified Public Accountants: Personal Financial Planning Division	AICPA-PFP Division 1211 Avenue of the Americas New York, NY 10036	888-999-9256 www.aicpa.org
Financial Planners Standards Council	1600 - 505 University Avenue Toronto, Ontario M5G 1X3	800-305-9886 www.cfp-ca.org
National Association of Personal Financial Advisors	355 West Dundee Road Suite 200 Buffalo Grove, IL 60089	888-FEE-ONLY www.napfa.org
Society of Financial Service Professionals	270 South Bryn Mawr Avenue Bryn Mawr, PA 19010	888-243-2258 www.financialpro.org
CFP Board of Standards	1700 Broadway Suite 2100 Denver CO 80290	303-830-7500 www.cfp-board.org
Financial Planning Association	Suite B-300 5775 Glenridge Drive, NE Atlanta, GA 30328	800-322-4237 www.fpanet.org

If you need assistance hiring a financial planner, the following resources are available:

www.fpanet.org/plannersearch/cfpfacts.cfm www.cfp-board.org/cons_10qs.html
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2. **Social Security/Retirement Benefits:** Social Security has been with us since 1935. It is sometimes called the Old Age, Survivors, and Disability Insurance (OASDI) Act. OASDI programs, which are administered by the Social Security Administration (SSA), provide income to approximately **91 percent** of elderly households. Benefits are paid to workers, their dependents and survivors of workers. Social Security is designed to provide economic security and a source of income to those who contribute to the system. A substantial volume of information concerning the Social Security program is on the internet at: <http://www.ssa.gov>.

Types of Social Security Benefits: Social Security pays three principle types of benefits: (1) retirement benefits, (2) disability benefits, and (3) benefits paid to dependents. Benefits paid to dependents include payments to spouses, children and lump-sum death benefits.

- A. Most people ask two questions about Social Security:
- (i) **Will I receive Social Security benefits?**
 - (ii) **If so, how much will I receive?**
- B. Retirement Benefits: Answering the first question in the previous section: most Americans will get Social Security retirement benefits. You will not get SS benefits until you apply for them. (How to apply

is covered later in these materials.) You are probably² eligible to apply for retirement benefits if you: (i) were employed in a covered job (*a job that was subject to Social Security taxation*), (ii) are fully insured, and (iii) have reached at least the age of 62. More simply stated, if you paid Social Security taxes for at least ten (10) years, then you will probably be eligible for retirement benefits at age 62.

- C. Am I fully insured? The answer is, probably, “yes”. Most Americans who have been in the job market for more than ten years are fully insured. In SS technical terms, you are fully insured when you have forty (40) credits. Credits are roughly equivalent to quarters worked in a covered job. Forty credits are necessary because the law says you must have at least one credit for each year of life after age 21 through age 62.³ (*You might wonder why the government doesn't just say “forty”. We have no idea.*). Prior to 1978, credits were based on actual calendar quarters worked. Since 1978, Social Security “credits” are based on the amount of income you earn each year instead of the amount of time you spend working. You can only earn four credits per year, but if you earn enough money, you can get the annual maximum all at once. If you stop working before you have 40 credits, a record will be kept of the number earned. When you start working again, your credits will continue to build. As stated above, when you have forty (40) credits, you are “fully insured”.⁴ The SSA considers some persons, such as certain World War II veterans as fully insured regardless of the number of quarters earned.

More on Social Security Credits: The Social Security Administration put the following explanation on its website: “The amount of earnings it now takes to earn a credit changes each year. In the year 2004, you must earn \$900 in covered earnings to get one Social Security or Medicare work credit and \$3,600 to get the maximum four credits for the year.” (Emphasis added). Thus, if you earned \$3,600.00 in one week (or one day), you would get your annual maximum of four credits at once. The amount of income you must earn to get credit for a quarter changes each year and is posted on the SSA website.

- D. When can I receive benefits: Retirement Age?: Currently, the

² We admit we are hedging when we say “probably” and “should be”. We do not know your individual work history and do not know whether it was properly reported to the SSA.

³ See 20 C.F.R. § 404.110(b)

⁴ For persons born prior to 1929, the number is lower.

minimum retirement age is 62.⁵ However, you will not get the maximum benefit amount unless you delay taking benefits until you reach your full retirement age. Full retirement age, depending on your birth date, ranges between 65 and 67. (See Chart 1 at the end of these materials.) Persons who take benefits prior to reaching full retirement age are permanently penalized five-ninths (5/9) of one percent (1%) for each benefit month prior to reaching full retirement age. For those without calculators, if your full retirement age is 65, and if you begin taking benefits at age 62, then this is a permanent benefit reduction (penalty) of 20%. All cost of living adjustments (COLA's) will be based on this reduced benefit amount.

- E. Since early retirement will permanently reduce my benefits, should I retire early? **Unfortunately, we cannot tell you whether you should retire early.** It will depend on, among other factors, your current financial need and your health. We suggest that you consult a financial planner if you are considering early retirement. Nonetheless, you may want to consider some of the following information:
- (i) First, your local Social Security office will help you calculate your estimated benefits using different retirement ages, or will provide you with the tools to make those calculations yourself. (Most of the tools they use are on the Social Security Website.) Once you determine your estimated benefit amount, keep in mind that, additional earnings prior to the month you reach age 65 will reduce your Social Security benefit.
 - (ii) During the year you turn 65, your Social Security benefit is reduced \$1 for every \$3 you earn over the limit (*the limit is \$2500 per month, or \$30,000 per year*).
 - (iii) From age 62 through the year you turn 65, benefits are reduced \$1 for every \$2 you earn over the limit (*the limit is \$940 per month, or \$11,280 per year*). Thus, if you intend to continue working after age 62, penalties may offset any perceived advantage to taking Social Security benefits prior to reaching full retirement age. Again, this is a subject to take up with your financial advisor.
- F. How much do I receive? Your benefits are equal to your Primary Insurance Amount (PIA). Your PIA, a number that must be calculated, is the sum of three separate percentages. The Social Security Administration has several “calculators” on its website that

⁵ See 42 U.S.C. § 402(a)(1)

will estimate your PIA for you. Some of these “calculators” require information about your earnings history. If you do not know your earnings history, the Social Security Administration will give you that information. If you submit form **SSA-7004**, it will be provided at no charge. You can get form SSA-7004 by calling **(800) 772-1213**, by downloading it at www.ssa.gov/online/ssa-7004.pdf, or by going to our website.

- G. How much of my current income is subject to SS taxation?: The amount of income subject to Social Security taxation changes each year. For 2004, the maximum covered earnings amount is \$87,900. Knowing the maximum covered earnings amount will allow you to calculate the maximum PIA for each year because that is the base number used in calculating the percentages described above. For prior years, the amounts are online at the Social Security website. Information telling you how to calculate your retirement benefit at at:
<http://www.ssa.gov/OACT/ProgData/retirebenefit1.html>.

2. **Social Security/Disability Benefits:** Disability benefits are for persons who are not old enough to qualify for retirement benefits, but who otherwise meet eligibility criteria. The primary difference between retirement benefits and disability benefits is the method of determining whether you are eligible; if you are eligible, the method of calculating the amount of your benefits is similar.
- A. Initial Advice: **Applying for disability benefits without an attorney is like walking through a minefield blindfolded.** SS disability is sufficiently complex that it is a legal specialty. If you have any doubts concerning your ability to successfully represent yourself in front of the SSA, you should contact a lawyer experienced in dealing with SS disability cases.
- B. Am I eligible for disability benefits? Generally, you are eligible for SS disability benefits if (i) you have enough social security earnings to be insured for disability; (ii) you apply; (iii) you have a disability; and (iv) you have been disabled for five consecutive months.⁶
- C. How can I tell whether I have enough SS earnings to be eligible? According to federal regulations, the SSA can apply any of four (4) different rules to determine whether you have enough SS earnings to be eligible for disability benefits. The regulations are found at 20 C.F.R. § 404.130, (which is on the internet). You must meet the criteria in one of the rules in those regulations. If you do not know whether you meet these requirements, you should contact an attorney.

⁶ 20 C.F.R. § 404.315(a)

D. Do I have a disability? The SSA defines “disability” as the inability to engage in *any substantial gainful activity* by reason of any *medically determinable* physical or mental impairment. This means medical evidence must show that you can not hold any job. “You must not only be unable to do your previous work, but also any other type of work considering your age, education and work experience.”⁷ Your condition must be one that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.⁸ It does not matter whether work suitable for your condition exists in your immediate area, whether a specific job vacancy exists, or whether you would be hired if you applied for work.⁹

E. **What if I am already receiving other benefits?** If you are receiving other disability benefits, such as worker’s compensation benefits, then your SS disability benefits will be reduced by the amount of those benefits. See SSA Handbook § 503.2

3. **Where can I apply for Social Security?** You can apply for benefits by telephone, over the Internet at www.ssa.gov, or at any Social Security office. The toll-free number is **1-800-772-1213**. Local Social Security offices include:

Suite 5800, 6200 Bldg Eastgate Center Chattanooga , TN 37411 423-899-0649	450 Stuary Road, NE Cleveland , TN 37312 423-339-0519	623 Congress Parkway Athens , TN 37303 423-7488
124 Austin Street Greenville , TN 37745 423-639-9506	Room 223 Fed. Off. Bldg Knoxville , TN 37902 423-545-4354	523 W. Lamar Alex Parkway Maryville , TN 37801 423-982-3714
245 Heritage Park Dr. Murfreesboro , TN 37129 615-895-5790	315 South Jackson Street Tullahoma , TN 37388 615-455-3795	
415 East Walnut Ave. Dalton , GA 30721 706-226-1023	Room 104, Federal Bldg 600 E. 1 st Street Rome , GA 30161 706-291-5660	

If you are looking for a SSA office closer to you, go to the SSA Office Locator at <http://s3abaca.ssa.gov/pro/fo/fo-home.html> and enter your zip code.

When you apply for Social Security benefits, take the following: your Social Security number, birth certificate, W-2 forms or self-employment tax return from the

⁷ See SSA Handbook, Sections 507, 601 and 603.

⁸ *Id.* See also 42 U.S.C. § 416(i)(1).

⁹ See SSA Handbook § 507.1

previous year, military discharge papers (if applicable), spouse's Social Security number and birth certificate if he/she is applying for benefits, children's documentation if dependent benefits are applicable, and the name and account number where your benefit check will be direct deposited. Take the original documents with you; the Social Security Administration will copy them and give you back the originals. If you need help getting original documents such as birth certificates, the Social Security Administration will help you.

4. Miscellaneous Information:

- A. How do I contact the Social Security Administration? The SSA Hotline is 800-772-1213. For the hearing impaired, the number is 800-325-0778 (TTD).
- B. What if I disagree with the Social Security Administration? If the SSA takes some action adverse to you, then you can appeal. There are appeal deadlines and if you miss them, you can lose your right to object. You should consult a lawyer if you think an appeal is necessary.
- C. The Appeals Process in a Nutshell: The appeals process, described in SSA Publication Nos. **05-10041** and **05-10141** (available on the internet), has four steps: (1) reconsideration; (2) hearing by an Administrative Law Judge; (3) review by the Appeals Council; and, (4) federal court review. Generally, you start the appeals process by following the appeal instructions on your notice of benefits. If you disagree with the SSA benefit determination, you must file your appeal within 60 days after the notice arrives. At each appeal level, if you are not satisfied with the result, you will have a limited time to file notice that you want to move to the next step in the process. If your appeal involves a SSA decision to terminate benefits, then you can continue receiving benefits during the appeal process if you follow the instructions in your notice by filing the appropriate request within 10 days. However, if you lose your appeal, you will have to repay the benefits.

5. **Supplemental Security Income (SSI):** Unlike, Social Security, SSI is based on present need. Congress stated the purpose of SSI as follows: "to provide supplemental security income to individuals who have attained age 65 or are blind or disabled."¹⁰ More to the point, the purpose of SSI is to provide recipients with sufficient income to secure food, clothing and shelter. 20 C.F.R. 416.110. SSI guarantees a minimum income for the aged, blind and disabled. To qualify, your **countable** 2004 income must be less than \$564.00 per month for individuals, and less than \$846.00 per month for couples. Also, your present **countable** assets must be less than

¹⁰ 42 U.S.C. § 1381.

\$2,000.00 for individuals or \$3,000.00 for couples.

<http://www.ssa.gov/OACT/COLA/SSI.html>

- A. Countable income and assets include all income and assets that are not specifically excluded.
- B. Currently, the SSA **excludes** the first \$20 of unearned income you receive each month. It excludes the first \$65 of earned income each month. After the first \$65 of earned income, one-half of the excess is not counted. Generally speaking, your countable income is what you earn over those levels. See SSA Publication No. 05-11000.
- C. Currently, the SSA **excludes**: (i) the home you live in and the land it sits on; (ii) certain automobiles; (iii) household goods and personal property up to \$2000 in value; (iv) burial plots and plans; (v) burial funds up to \$1,500.00; and (vi) life insurance policies with face value of \$1,500.00 or less.
- D. Current Maximum Federal SSI Payment: As of January 2004, the maximum Federal SSI payment is \$564 per month for eligible individuals; \$846 per month for an eligible individual with an eligible spouse; and \$282 per month for an essential person. Information on SSI payment amounts and calculations appears on the SSA website at www.ssa.gov/notices/supplemental-security-income.html. You can access general information about SSI through the SSA website at www.ssa.gov.
- E. SSI Reductions: If you live in the home of a friend or relative, or if you live in a nursing home, your SSI amount may be reduced. The reason for this reduction is: SSI benefits are based on need and your needs are reduced when someone else provides you with food, clothing or shelter.

IV. **Medicare and Medicaid:**

Until you are of sufficient age to worry about the distinction between the two, most people do not know how Medicare differs from Medicaid. These two very different programs, Medicare and Medicaid, are the primary source of healthcare funding for persons over sixty-five and persons in nursing homes. And since everyone is living longer today, there are more Medicare and Medicaid recipients than ever before.

1. **Medicare**

Medicare is designed to pay for the healthcare needs of individuals over age 65 and for disabled persons who have received SSDI benefits for more than 24 months. The benefits are **not** tied to your income or earning capacity, nor are they tied to your health, except for persons qualifying due to Social Security Disability status.

Medicare is completely funded by the federal government with no contribution from the individual states. Local Social Security Administration offices manage the programs for the Health Care Financing Administration (HCFA), recently renamed The

Centers for Medicare and Medicaid Services. The Medicare program is designed to meet the medical needs of those covered, but not necessarily **custodial** needs.¹¹ Medicare principally covers hospitalization, acute care needs, physician, therapy and home health care for the homebound. Medicare coverage for long term care is limited to the first 100 days following hospitalization. Thereafter, if long term care is necessary, it must be funded some other way.

Medicare is divided into three parts: Part A, Part B, and Part C. Part A pays for in-patient hospital care, limited skilled nursing home care, home health care (on a limited basis), and hospice. Part B pays for doctors' services, outpatient hospital services, home health care (all home health care will be under Part B by 2006), and a number of other medical services and supplies that are not covered by Part A. Part C (also called Medicare + Choice), is an "opt-in" program similar to private HMOs. Part C includes everything in Medicare Parts A and B. In some cases, Part C pays for additional services not usually reimbursed by Medicare. There is an additional premium for any extras in your Part C plan.

Medicare Parts B and C charge premiums unless you are specifically granted a "free enrollment". The premiums will vary depending upon your employment history and payment of Medicare premiums.

For most health care services covered by Medicare, there is a deductible. For example, services covered by Part B, typically require payment of a twenty percent (20%) deductible; Medicare typically pays the other eighty percent (80%).¹² Likewise, Medicare will charge deductibles and co-payments. Be sure and check these points when you enroll. Medicare supplement plans, also known as "MediGap" policies, are popular insurance offerings that pick up where Medicare stops, including payment of Medicare deductibles and co-payments. Most states offer 10 standard plans from which to choose with numerous different coverages. MediGap policies can be purchased from most insurance companies that sell healthcare policies. You cannot be turned down if you apply for a MediGap policy during your open enrollment period.

If you are entitled to receive Medicare Part A with no premium, the Social Security Administration will probably enroll you automatically if you apply for benefits at age 65. Regardless of when you take Social Security benefits, and regardless of whether your Part A is free, you should apply for Medicare at your local Social Security Office about 3 months before your 65th birthday. Detailed information on enrollment procedures and periods is at www.medicare.gov.

Common premium and co-payment amounts are available online at www.medicare.gov.

Other co-payments for specific services are listed in Medicare and You, available

¹¹ As discussed below, this is important because most long term care is considered custodial.

¹² This assumes you use a physician who accepts Medicare assignment. Medicare only pays eighty percent of the Medicare rate, which means that if your physician charges more than the Medicare rate, you could be responsible for more than twenty percent of the bill. Federal law prevents the provider from charging a Medicare recipient more than 115% of the Medicare rate.

on the Medicare website (www.medicare.gov).

2. Medicaid

A. Eligibility.

Medicaid, unlike Medicare, is a needs-based program and is based on an individual's poor financial condition. When you apply for Medicaid, officials review your financial condition to determine whether you are "poor enough" to qualify.

Eligibility is determined using a two part test. First, you must be **categorically** eligible:

- (i) You must be a U.S. citizen, or legal alien, and must be a resident of the State and County where you apply and;
- (ii) You must fit within a covered group, such as the following:
 - (a) Age 65 or older;
 - (b) blind and disabled (as defined by the Social Security Administration);
 - (c) pregnant women and infants;
 - (d) children through age 18; or
 - (e) parents and children, or
 - (f) a SSI recipient.

If you meet at least one of these "categorical" requirements, then you must also meet **financial eligibility criteria** (in other words, you must be poor enough). Medicaid officials will require your disclosure of documentation showing your income and assets.

Within certain federal parameters, income and asset thresholds used to measure eligibility are set by each state. Since Medicaid is a needs-based program, usually you will meet with an official at your local welfare office (Department of Family and Children Services)¹³ when applying. If you have excess assets at the time of application, then you will be required to "spend down" some of those assets before you become eligible for Medicaid benefits. Once you have satisfied both the income and asset tests for Medicaid, and are categorically eligible, you will receive Medicaid benefits.

Nursing home care often costs between \$3500 and \$6000 per month. Thus, under present conditions, even persons with substantial assets quickly find themselves poor enough to qualify for Medicaid. In Georgia, between 80% to 90% of all nursing home residents are on Medicaid.

Since Medicaid is a joint program between the state and federal governments, different states have different options with respect to enrollment and services offered.¹⁴

¹³ In Georgia, each county has a Department of Family and Children Services.

¹⁴ In Tennessee, the Medicaid rules are located at T.C.A. § 71-5-101, et seq. In Georgia, the Medicaid Rules are found at O.C.G.A. § 49-4-140, et seq.

For example, Tennessee's version of Medicaid, called TennCare, provides coverage (for a fee) to persons who are considered "uninsurable" under conventional insurance plans; Georgia does not have a comparable provision.¹⁵

Most Medicaid programs make benefits retroactive for a limited period of time (usually, 3 months). For example, if you apply for Medicaid today, and if you are approved for benefits, you may receive benefits retroactive to 90 days before your application date.

B. Medicaid Planning.

With one principal exception, Medicaid looks at the eligibility of the applicant as of the application date. Many applicants who have excess assets engage in planning strategies to protect those assets and still qualify for Medicaid. If planning is not done properly, transfer penalties may apply that will prevent the applicant from receiving Medicaid. Thus, you should contact a qualified Elder Law Attorney before transferring assets for the purpose of becoming Medicaid eligible. (For a referral, go to the National Academy of Elder Law Attorneys website at www.naela.org).

When you apply for Medicaid, the government looks at all assets you own (or control) as of the date of application and all assets you have transferred during the previous 36 months. Although you must disclose your assets, only countable assets are considered. Most assets excluded for SSI counting purposes are also excluded when determining Medicaid eligibility. Thus, your home and the land it sits on are excluded, as are household goods, a cemetery lot, prepaid funeral contracts, one automobile and any asset that is not marketable. Since every State Medicaid plan is different, there are some variations in the transfer rules from state to state.

Special Rules in Nursing Home Cases

The exception mentioned above, regarding the time Medicaid eligibility is determined, applies to nursing home residents. Special rules apply to protect couples where one spouse requires nursing home care and the other remains healthy. In those cases, eligibility is determined as of the first day of the first month of continuous (30 days or more) institutionalization.¹⁶ That date, sometimes called the "snapshot" date, is critical for planning purposes.¹⁷

Initially, the healthy spouse can keep all non-counted assets (e.g., the home and land it sits on). After non-countable assets are excluded, the healthy spouse is entitled

¹⁵ Thus, it may make sense to evaluate your health insurance options before moving from Tennessee to Georgia; conversely, if you cannot get health insurance in Georgia, you may want to consider moving to Tennessee.

¹⁶ 42 USC § 1396r-5(c)(1)(A).

¹⁷ Thus, the "look back" or "snapshot" beginning date is different where a nursing home resident is institutionalized for some time prior to the Medicaid application date. As stated above, Medicaid "looks back" thirty-six (36) months from the eligibility date to determine whether assets were transferred for the purpose of qualifying for Medicaid. If assets were transferred from a trust, the look back period is 60 months. Further, a key component of many Medicaid Planning strategies is conversion of countable assets into non-countable assets (e.g., use cash in your bank account to do home repairs). Sometimes this conversion is more difficult after the eligibility date, particularly where you are dealing with an unsympathetic worker at the local welfare office.

to a resource allocation designed (in theory) to prevent impoverishment. For 2002, the resource allowance, depending on your State, ranges from \$17,856 to \$89,280. Since the institutionalized spouse is also entitled to keep up to \$2000 in resources, some states, such as Georgia, allow the healthy spouse to retain up to \$91,280 (\$89,280 plus \$2000) in countable assets (FY 2002). Other states, such as Tennessee, are not as generous. The Tennessee rule (generally) is that the healthy spouse can keep one-half of the couple's assets **up to** \$89,280; however, if that would result in the healthy spouse keeping less than \$17,856 (FY2002), then the healthy spouse keeps all of the couple's assets up to \$17,856.

Income earned by the healthy spouse is not considered available to the nursing home resident; thus, only the nursing home resident's income is considered in determining eligibility.¹⁸ Conversely, the income of the institutionalized spouse is considered available to the healthy spouse if he or she needs it to avoid becoming impoverished. As with assets, the healthy spouse is entitled to an allowance, which is adjusted each year. Income of the institutionalized spouse, up to the allowance threshold, is transferred to the healthy spouse until the joint income of the healthy spouse meets the minimum guidelines.¹⁹ In Tennessee, the minimum income allowance for 2002 is \$1,452.00; in Georgia, it is \$1,407.00. That amount can be increased following a hearing where "need" is shown.

Is planning wrong? Elder Law Attorneys (and most members of the U.S. Congress) say it is not because the goal of long term care is to restore health so you can return home. If you are too impoverished to return home, then the system has failed. Similarly, if your healthy spouse cannot live independently due to impoverishment, then the system has failed. If you plan ahead, then you can qualify for Medicaid benefits without becoming poor. On the other hand, if this planning is not done correctly, you could very easily disqualify yourself.

If you plan, Federal and State laws allow you to protect assets and still qualify for Medicaid. Among planning opportunities, you can transfer assets to a Special Needs Trust for the benefit of a disabled person. Medicaid rules are complex and you should consult an advisor if you wish to engage in that type of planning. Contact the National Academy of Elder Law Attorneys (www.naela.org) for a referral.²⁰

3. **Long Term Care Insurance:**

¹⁸ 42 USC § 1396r-5(b)(1).

¹⁹ In some cases, excess assets can be converted to income. For example, if done properly, excess assets can be used to purchase annuities. In other cases, where the healthy spouse can demonstrate that he or she needs more than the minimum allowance, additional income can be transferred from the institutionalized spouse to the healthy spouse following a hearing. These strategies fall under the category of "do not try these at home". If you need help planning for life after admitting a family member to a nursing home, contact a qualified attorney.

²⁰ There are many consumer oriented books and websites describing Medicaid rules. Among them, we recommend www.elderlawanswers.com and a booklet available through www.ezmedicaid.com. We also recommend Alexander Bove's Medicaid Planning Handbook, available through your bookseller or through www.amazon.com.

If you qualify and you can afford it, buy long term care insurance. Buy it for the same reason you buy home owner's insurance or automobile liability insurance: to have it in place if you need it.

Long term care insurance allows you to purchase quality long term care and still protect your assets. It provides more flexibility because you can use it to purchase a full range of options including home health care.

Policies marketed by numerous companies, are priced after considering age, health, and coverage sought. Policies can be structured on either an indemnity or a reimbursement basis. Indemnity policies pay regardless of whether care is provided, while reimbursement policies "reimburse" you for expenses paid to third party health care providers. Further, policies can be structured to cover only nursing care and assisted living, or, where comprehensive coverage is purchased, they cover home health care and other non-institutional needs. Although long term care insurance can be beneficial and can assist you in meeting health care related goals, remember that when you consider purchasing insurance, you are probably dealing with a commissioned salesperson. The insurance company, similarly, is a for-profit business. Their job is to take in more premium dollars than they pay out in claims. While nothing is wrong with this (you want your insurer to earn profits so they can pay claims), your job as an educated consumer is to ask enough questions to make an informed decision so you get a product that meets your needs. Insurance products are beneficial *only to the extent* they meet your needs. If you find an affordable policy that fits your goals, and if it is offered by a reputable insurer, buy it.

You must ask questions. You should ask about the insurance company's rating (look for A+ or better from a reputable rating service such as A.M. Best or Moody). Ask about the company's claim payment history. You should ask about the company's commitment to the long term care insurance market. There is no "scientific" way to measure this commitment, but indicators include (i) the number of policies written, (ii) the number of long term care policies written as a percentage of the total number of policies underwritten, (iii) the company's reserves and (iv) whether the company has increased rates as necessary to maintain solvency as health care costs have risen. You should contact trusted organizations such as the A.A.R.P., the Better Business Bureau, and local chambers of commerce. Check for complaints filed with your state's Department of Insurance and/or the State Attorney General's office.

If you have done your homework and are comfortable with the insurance provider, then you may be ready to make a purchasing decision. When you purchase a policy you are, in essence, purchasing access to a pool of money. You will want to purchase enough to cover your needs, but not so much that you simply fund the pool for other policy buyers. Talk with the agent about the cost of long term care and about the probable length of time you will need that care. Consider purchasing at least three years of coverage, at least \$100.00 per day of benefits, and inflation protection; healthcare costs only increase. Although most policies are limited to a term of years, some companies sell life-time need policies. Discuss this with your agent if such policies interest you. Some policies cover only necessary items, while others may cover "PERKS", such as private rooms. Some policies are crafted to achieve beneficial tax treatment, others are not (although there is a difference of opinion concerning whether

this is significant). Some include inflation protection, while other policies do not. You should weigh the benefits and costs of various packages as you make your decision.

The following chart, published by the National Citizens Coalition for Nursing Home Reform (“NCCNHR”) (www.nccnhr.org) identifies some pros and cons of LTC insurance:

Pros	Cons
<ul style="list-style-type: none"> * helps protect assets * helps preserve inheritance for loved ones * may avoid dependence on family or interference with their standard of living * may preserve freedom to choose preferred long-term care services, such as choosing a nursing home * policy may cover more than nursing homes, such as home care, adult day care, assisted living, or other health care facilities * helps avoid Medicaid * premium will be treated as qualified medical expenses for tax purposes 	<ul style="list-style-type: none"> * premiums/co-payments may be unaffordable, especially for older people * if your assets are low, you may soon qualify for Medicaid whether or not you have LTC insurance * if your assets and savings are high, paying out of pocket may be the best decision * other options may be preferable - e.g., finding an additional source of income, such as reverse mortgages * long term care insurance coverage may be limited, yet it may improve over time * general health insurance may cover some long-term care * policy payments may be below the real cost of nursing home care

If you have additional questions about LTC insurance, NCCNHR suggests contacting the following:

United Seniors Health Cooperative
 409 Third Street, SW, Second Floor
 Washington, D.C. 20024-3212
 (202) 479-6973
 website: <http://www.ushc-online.org>.

Consumers Union
 1666 Connecticut Avenue, NW
 Washington, D.C. 20009
 (202) 462-6262
 website:
<http://www.consumersunion.org>.

Families USA
 1334 G Street, NW
 Washington, D.C. 20005
 (202) 737-6340
 website: <http://www.familiesusa.org>.

IV. A Word about Doctors:

One of the most important decisions you can make is deciding who will be your doctor. Unless you can pay cash, your decision may be limited to those doctors who accept your insurance or who accept Medicare and Medicaid. Still, among those available doctors, you should pick the best doctor you can find because everything else related to your health care flows from that decision.

If necessary, use your current doctor as a referral for other health care providers. If you trust your current doctor, he or she may be your best source of information. Do not hesitate to ask others in the community, including friends and family about their experiences with doctors you do not know. Look to persons you trust for a referral. If that is not an option, then consult reputable organizations such as the American Board of Internal Medicine (202) 289-1700 and/or the American Academy of Family Practice (800) 274-2237.

Today, many doctors are board certified. This means the doctor has specialized knowledge and qualifications concerning a particular practice area. In most circumstances, a doctor must complete specialized training and pass an examination before they are certified. Today, the American Board of Internal Medicine and the American Academy of Family Practice certify competence in geriatric medicine. You can find out whether your doctor is board certified by contacting the American Board of Medical Specialties at (800)776-2378 or at www.abms.org.

When selecting a doctor you should also confirm that he or she has hospital privileges at the hospitals where you would seek primary treatment. Confirm your understanding of how your doctor charges for his or her services and whether they accept your insurance.

If you are concerned about your doctor for any reason, the Public Citizens Health Research Group has published a listing of 20,125 questionable doctors. You can order that publication on-line at www.citizen.org/hrg/qdsite/qdform.htm, or you can call (877) 747-1616 or you can write to Questionable Doctors 2000, 1600 20th Street N.W., Washington, D.C. 20009-1001.

When seeking treatment at hospitals, unless it is an emergency situation, your doctor should participate in choosing your hospital. You can choose hospitals based on locality, specialty or other criteria, but the primary concern is that the hospital will meet your medical needs. If you have questions concerning the hospital, most are accredited by the Joint Commission on Accreditation of Healthcare Organizations ("J.C.A.H.O."). Since most hospitals seek certification, a hospital that is not J.C.A.H.O. accredited should be examined closely to determine the reason why it is not accredited.

The American Hospital Association has published a Patient's Bill of Rights which detail some of the care you should expect to receive. That Patient's Bill of Rights is available on the internet at www.aha.org/resource/pbillofright.asp.

V. Long Term Care (LTC):

1. What is Long Term Care (“LTC”)?: Long Term Care includes a range of services aimed at helping those persons with chronic or debilitating conditions live as independently and comfortably as possible. Many of these services are considered “custodial”, which is why Medicare and health insurance policies provide little or no coverage. Among LTC options are the following: Senior Only Apartment-Style Housing; Congregate Care Facilities;²¹ Home Health Care; Assisting Living Facilities; and Nursing Home Care. Adult Day Care, a more recent option, is principally designed to help care givers during those hours when they cannot be available. As the cost of LTC rises, other options designed to reduce the cost of LTC may become available.

Check with the LTC provider you are considering to get specific information relating to facilities near you.

2. Do you (or does someone you love) need LTC?: If you can function independently, putting particular emphasis on your ability to care for your daily living activities, then you may not need long term care. LTC is designed to meet the needs of persons who can no longer provide for their own activities of daily living such as, eating, bathing, and ambulating (moving around). Among mobility issues are getting to and using the bathroom and getting into or out of beds, chairs or other difficulties in moving around. Other activities that may indicate a need that should be addressed include difficulty traveling outside the home, keeping track of money, preparing meals, doing housework or taking medications.

Your doctor should participate in any decision concerning LTC, but the following checklist may help you determine whether its time to consult the doctor on that issue:

- A. **Bathing (do you²² need someone else’s assistance?)**
- B. **Continence (do you have trouble controlling your bladder or bowels?)**
- C. **Dressing (do you need assistance; when you don’t have assistance do you either avoid dressing or do you wear what you**

²¹ Typically, apartment style facilities offer no services for elders, while congregate care facilities may offer amenities such as food preparation, housecleaning, transportation, and may have other on-site assistance. Typically, no assistance is offered with activities of daily living (eating, ambulation, etc.).

²² This checklist can also be used when evaluating whether those around you need help. Where appropriate, substitute “someone you love” for you.

wore previously?)

- D. Eating (do you need assistance with feeding or do you need tube feeding assistance or intravenous feeding assistance?)
- E. Mobility (do you need assistance moving around; when you don't have assistance are you confined to a bed or a chair?)
- F. Using the toilet (do you need assistance from another person?)
- G. Speech (do you have trouble speaking or when you speak is your speech so severely impaired that it is difficult or impossible to carry on a normal conversation?)
- H. Hearing (have you lost all or most of your hearing so that you can not understand normal conversation or hear noises such as the knock on a door or the ringing of a telephone?)
- I. Vision (are you either blind or so visually impaired that you could not recognize a person standing 2 to 3 feet away?)
- J. Mental status (is it difficult for you to understand or follow simple instructions; do you require constant supervision or a restraint for your own safety?)

3. Home Health Care and Congregate Housing: Options for home healthcare and congregate housing vary from place to place. Contact the Administration on Aging's **Elder Care Locator at (800) 677-1116** to find out what options are in your area. Another helpful contact is the Alzheimer's Association of (800)272-3900.

4. Assisted Living:

Assisted living facilities, also called "personal care homes" or "residential care facilities" are available to help those who need limited assistance with activities of daily living.

At a minimum, assisting living facilities should offer three (3) nutritious meals each day, housekeeping, laundry and some level of supervision to make sure that residents are okay. They should also offer some level of social/recreational activity, a safe environment, handicap equipped facilities, and should have 24 hour staff on the premises. When you are inspecting an assisted living facility, among other things, you should ask are "what kind of license does the facility hold and does it accept Medicaid?" You should determine who owns the facility; whether it is responsible to a local owner or is it part of a large corporation or chain; whether it is for profit or not for profit; whether it is affiliated with a religious organization; or whether it is affiliated with local nursing

homes. You should ask how many residents currently live there and on average how long do they live there. You should meet the staff, ask about the average length of employment for staff and find out how many people are on duty at any given time. Does the facility do a background check on staff and/or require training?

You should ask about the needs of current residents. For example, are they wheel chair bound or do they need assistance with eating and/or bathing? If the percentage of residents needing substantial assistance is high, then the facility will need a higher staff-to-resident ratio to provide quality care.

You should ask about services and costs related to meeting any activities of daily living needs. For example, how are meals prepared; is there a menu; who prepares the meals; and what is their training? If you require special dietary needs, will those needs be met? You should inquire concerning housekeeping, laundry, assistance with bathing, whether there are call buttons and, if so, where are they located. You should ask what transportation is available for doctor and hospital visits and how much it costs. You should ask whether there is a calendar of recent recreational activities. You should ask about safety issues such as sprinkler systems, smoke detectors, handrails, panic buttons. You should ask about convenience items, specifically, what is available and the cost. You should ask about discharge rules where your health declines, and whether any deposits/down payments are refundable under these circumstances. Finally, you should review the admission contract carefully, seeking advice from a lawyer if it contains terms you do not understand.

5. Nursing Home Care:

Nursing homes are primarily designed to meet the needs of persons who are convalescing from illness or to provide long-term nursing supervision for persons with chronic medical needs. The goal is to provide appropriate care and treatment to restore or maintain a resident's highest level of physical, mental, and social well-being. According to a report published in 1994 by the U.S. General Accounting Office, an estimated 12.8 million Americans of all ages need assistance from others to carry out every day activities. Approximately 57% are persons aged 65 or older; 40% are working age adults aged 18 to 64. Of those, 6.2 million Americans require another person's help with at least one basic activity of daily living such as eating, dressing or using the bathroom. As of September 5, 2000, the GAO estimated that 1.6 million elderly and disabled persons are in nursing homes nationwide.²³

As pointed out earlier in this Handbook, Medicaid is the primary government program that helps pay for long-term care. However, not all nursing homes accept Medicaid as a form of payment. Even nursing homes that accept Medicaid limit the number of beds for Medicaid residents. Accordingly, if you know you will be in need of nursing home care (e.g., your physician says nursing home placement will soon be necessary), then you may want to put your name on a waiting list so as to ensure the availability of a bed.

²³ See Nursing Homes: Aggregate Medicare Payments are Adequate Despite Bankruptcies, Statement of Laura A. Dummit before the Special Committee on Aging U.S. Senate (September 5, 2000).

You should investigate any nursing home you are considering before admitting yourself or a loved one. You should be able to secure information concerning complaints that have been filed against prospective nursing homes by talking with the local long-term care Ombudsman. (More about who “Ombudsmen” are and how to contact them later).

The official Medicare site provides a nursing home checklist you can use when inspecting a nursing home. It is available at www.medicare.gov/nursing.

A. Admission Agreement:

After you have selected a nursing home, you should carefully review the Admission Agreement. If you have questions concerning the agreement, review it with a lawyer. Never sign a legal document that you do not understand. Among the items in the Admission Agreement, it should state terms and conditions, charges, what services are covered under the basic rate, and what services require an additional fee. In addition, the Admission Agreement should identify whether the home is Medicare and/or Medicaid certified. If the home is certified, then it will not be allowed to transfer or discharge you if your private funds are exhausted and you become reliant on Medicaid. Of note, if the prospective resident is a Medicare or Medicaid recipient, then it is illegal for a nursing home to require payment guaranties from a third party.²⁴

Many homes demand third party guaranties anyway; but because they are illegal, they cannot be enforced. A simple letter from your lawyer should end harassment from the nursing home.

B. Resident Rights:

Nursing home residents do not abandon their rights as citizens when they cross the nursing home’s threshold. Under State and Federal law, they still have all rights they would have outside the nursing home. In addition, residents have the right to be treated with dignity, to be free from abuse, to individualized assessment and care, and to information about their condition. If the facility accepts Medicare or Medicaid, then it must provide all services and treatment necessary to help the resident maintain or reach his or her highest practicable physical, mental and psycho-social well-being. If you have questions about your rights as a nursing home resident, or the rights of a loved one, contact an Elder Law Attorney.

C. Malpractice, Neglect and Abuse:

If you think your loved one is a victim of Nursing Home malpractice, neglect or abuse, you should contact your local long term Ombudsman immediately.

Every county has a “watchdog” called a long-term Ombudsman. The title “Ombudsman” was created in the Elder Americans Act. An Ombudsman works to improve the quality of life for residents in long-term care facilities. The Ombudsman investigates and works to resolve

problems or complaints affecting long-term care residents; identifies problem areas in long-term care; speaks out for change; provides information about long-term care and

²⁴ 42 CFR § 483.12(d)(2).

related services; promotes resident, family, and community involvement in long-term care; educates the community about the needs of long-term residents; coordinates efforts with other agencies concerned with long-term care; visits long term care facilities routinely to talk to residents and monitor conditions; and educates facility staff about resident rights and other issues. The Ombudsman's duties include reporting institutional abuse. In the Chattanooga area your long-term care Ombudsman is Trudy Mott, (423) 755-2877. In Northwest Georgia, it is Renee Sanders (800) 822-5391. If you live elsewhere, use the Elder Locator discussed elsewhere in this Handbook to find your local Ombudsman.

If a your loved one dies as a result of suspected abuse, neglect, or malpractice, then consider having an autopsy performed. An autopsy can help confirm that appropriate care was (or was not) given.

Finally, if the situation warrants it and others should be held accountable for harming you or your loved one, consider contacting law enforcement officials or a private attorney.

VI. Elder Abuse:

Elder abuse occurs every day. It is sometimes defined as physical, psychological, sexual or financial abuse or neglect (depriving the elderly of their most basic needs such as food, clothing, shelter, supervision, medical assistance) of the elderly. Often, those closest to elders are the abusers. According to a study published in the *Journal of Elder Abuse and Neglect* (Volume 10, 1999): "approximately 60% of the perpetrators (of elder abuse) were relatives of the elderly victims, mostly their adult children, and the rest of the perpetrators were not related to the victims." While physical abuse is obviously criminal, economic abuse is equally serious because it may have the effect of depriving victims of their life savings and assets and, thus, their economic ability to live independently. The National Center on Elder Abuse estimates that in 1996 there were 293,000 reports of elder abuse.²⁵ A different report estimates that 449,924 elderly persons experienced abuse and/or neglect in domestic settings.²⁶ One study, the National Elder Abuse Incident Study, found that elders who are unable to care for themselves are more likely to suffer from abuse. Female elders are more likely to be the victims of all categories of abuse, except abandonment. Approximately 6 out of 10 victims of elder abuse experienced some degree of confusion.

In approximately 52% of all cases, men were the perpetrators of the abuse. The principal age category of perpetrators was 41 to 59 years. Study data showed that family

²⁵ The National Center on Elder Abuse, 1225 I Street, N.W., Washington, D.C. 20005, telephone (202) 898-2586.

²⁶ This report is available on the internet and can be accessed through the National Center on Elder Abuse website (www.elderabusecenter.org).

members were perpetrators in 9 out of 10 cases. Adult children of elder abuse victims were the most likely perpetrators (47.3% of the time). The second highest “abuser” category were spouses.

Among non-relative perpetrators of elder abuse, the study notes the following: neighbors, apartment managers, tenants, guardians, persons with power of attorney who initially helped elders do grocery shopping and bill paying, but gradually took advantage of them, contractors and handymen who ripped off elders with bogus charges, unscrupulous or phony financial planners, professional con men who provided “free” tax preparation services for elders at senior centers to gain their trust and then defrauded them later, home care aides or caretakers who stole food or other valuables from the elder’s homes (sometimes after intoxicating the elder), a room and board proprietor who dipped into the elderly resident’s funds and valuables, and others who befriended the elders to take advantage of them. (Financial Exploitation of Elders: Analysis of Risk Factors Based on County Adult Protective Services Data, Journal of Elder Abuse and Neglect (Volume 10, 1999).²⁷ The study also found that self-neglect was abundant and characterized self-neglect as behavior that threatens ones own health or safety. Self-neglect is generally manifested where older persons refuse or fail to provide themselves with adequate food, water, clothing, shelter, safety, personal hygiene and/or medicine.

In defining abuse, the following definitions were adopted:

Physical abuse was defined as the use of physical force that may result in bodily injury, physical pain or impairment. Physical punishments of any kind are examples of physical abuse.

Sexual abuse was defined as non-consensual sexual conduct of any kind with an elderly person.

Emotional or psychological abuse was defined as the infliction of anguish, pain or distress.

Financial or material exploitation was defined as the illegal or improper use of an elder’s funds, property or assets.

Abandonment was defined as the desertion of an elderly person by an individual who had physical custody or otherwise had assumed responsibility for providing care for an elder or by person with physical custody of an elder.

Neglect was defined as the refusal or failure to fulfill any part of a person’s

²⁷ The Federal Trade Commission has published many helpful articles and pamphlets on its website designed to help consumers identify fraud and respond to it. To find them, go to www.ftc.gov or www.consumer.gov. You can also reach the FTC by calling 1-877-FTC-HELP (877-382-4357). An example of one FTC article on the website is [Facts for Consumers: How to Right a Wrong](#). That article offers suggestions for dealing with unscrupulous telephone and direct sales persons and mail order companies. It includes a sample complaint letter and contacts for finding additional help.

obligations or duties to an elder.

Self-neglect was characterized as the behavior of an elderly person that threatens his/her own health or safety. The definition of self-neglect excludes a situation in which a mentally competent older person (who understands the consequences of his/her decisions) makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety.

Among the conclusions reached by the Study Committee were the following:

- Our oldest elders (80 and over) are most often abused and neglected
- Female elders are more often abused than males
- Almost half of abused and neglected elders were not physically able to care for themselves.
- In almost 9 out of 10 incidents of domestic elder abuse and neglect, the perpetrator is a family member.
- Although the reported number of elder abuse cases is significant, more than 5 times as many incidents are suspected to go unreported.

1. What You Can Do To Prevent Or Stop Elder Abuse:

If you suspect that someone is abusing an elder or that an elder needs assistance, then you should call the Elder Care Locator at **(800) 677-1116** to locate support and protective services in the community where your elder lives.

Elder Abuse Statutes
Tennessee: T.C.A. § 71-6-101, et seq.; T.C.A. § 71-2-111, et seq.
Georgia: O.C.G.A. § 30-5-1, et seq.; 31-8-80, et. seq.; 31-8-51, et seq.
Others may be found at: www.elderabusecenter.org/laws/index/html .
Elder Abuse Hot Lines:
You can report Elder Abuse at the following toll-free numbers:
Tennessee: (888) 277-8366
Georgia: (800) 677-1116
National Domestic Violence Hot Line: (800) 799-SAFE or 799-7233
Contact information for other states is available on our website

VII. **Health Care - Who makes the decisions when you cannot?:**

1. **Living Wills:**

Living wills are documents authorized by statute. Most states specify those formalities necessary for individuals to state their preference concerning whether to accept or refuse medical care during the final stages of life. Living Wills are not used to kill otherwise healthy patients; they are ineffective until a patient who is terminally ill cannot direct his or her medical care, either individually or through an effective power

of attorney. Living Wills differ from traditional Wills because they express specific desires that take effect *while the individual is still living*. Traditional Wills have no effect until the death of the declarant.

Tennessee and Georgia have specific formalities that must be followed when drafting and executing a Living Will. Each offers the will-maker several care options during his/her last days (generally ranging from “spend my last dime to keep me alive as long as possible” to “use your best judgment”). Tennessee’s form, in addition to making those decisions, also seeks Organ Donor Certification from the person completing the Living Will.²⁸

A Living Will allows you to communicate your desire concerning end-of-life care to your family and your physicians. For example, do you want to be placed on a ventilator or receive IV nutrition even if there is no medical reason to believe you will ever regain consciousness (i.e., you are brain dead)?

Living Wills can authorize the removal of life support, pain medication, food and water after your doctor says the patient “is not coming back”. Once these items are removed, the patient will die naturally, with as much dignity as possible.²⁹ Again, the Living Will does not authorize anyone to “take a life”; they cannot take effect until your doctor determines there is no hope for your recovery.

End-of-life decisions are among the hardest and most heart-wrenching decisions made by spouses, children or other loved ones. Consequently, a Living Will can remove some of the heartache and much of the stress for family because it communicates your wishes to them, validating those hard choices.

We highly recommend that you discuss your desires with your loved ones and that you make your choices known to them both prior to and after executing a Living Will. Their understanding of your intention is critical.

Living Wills are typically discussed when one undergoes any major surgical procedure. The federal **Patient Self-Determination Act** mandates that hospitals inform you of your rights concerning end-of-life decisions. Often, admitting nurses request a copy of any Living Will or other advanced directive you have in place before admission or upon admission for any surgical procedures. If you do not have one in place, often the hospital will have a pre-printed form you can sign stating your preferences. Make certain your healthcare provider knows your decision and knows whether you have a Living Will.

As with a traditional will, you have the right to change your mind. If you change your mind about any portion of the Living Will, you can revoke your Living Will with a simple statement to that effect or by making an oral statement to your attending physician. The physician will then note in your medical chart that you have revoked your Living Will.

²⁸ If your parent expressed interest in organ donation, you may wish to contact local medical schools and/or the National Anatomical Service at (800) 727-0700 with any questions.

²⁹ Alternatively, medical science can keep a body on life support for years with no hope for recovery.

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Living wills must be executed with the same formalities as traditional wills. That means, you need two (2) independent witnesses in the same location and at the same time for the execution of the Living Will. It is best if you also have a notary public witness the execution. Further, the beneficiaries under your traditional will should not be the witnesses for your Living Will. Pick someone else. If the Living Will is signed while at a healthcare facility, other restrictions apply. Usually, your doctor must witness execution of the Living Will in that setting. Your best course of action is to have the document executed well in advance.

2. Durable Power of Attorney for Healthcare:

A Durable Power of Attorney for Healthcare lets you designate one or more persons who will make health care decisions for you if you cannot make decisions for yourself. Since this POA is “durable”, it continues through any period of incompetence or disability. Durable Healthcare Powers of Attorney are commonly used where a patient is unconscious or where he or she suffers from a form of dementia, such as Alzheimer’s disease.

Most states, including Tennessee and Georgia, have statutory formalities that apply to Durable Powers of Attorney for Healthcare. Georgia has provided very specific guidance by including a form in its statute; that form should be used when possible so as to eliminate confusion. Other forms will be recognized if they comply with the statute and are executed with the same formalities.

Tennessee authorizes use of a Durable Power of Attorney for Healthcare, but does not provide specific language or specific forms for such a document.

In both States, the Health Care Power of Attorney must be witnessed by two (2) persons who are present when the principal signs the Power of Attorney. The document must be notarized by a notary public who is present at the time the principal signs the document. Additionally, in Georgia, if the principal is a resident of a hospital or skilled nursing facility when the document is signed, the attending physician must witness and sign the health care power of attorney in the presence of the principal, the other witnesses, and the notary.

Once a Durable Power of Attorney for Healthcare is executed, it is critical that you tell your attorney-in-fact (also called your “agent”)³⁰ that you have named them as such. Since a Durable Power of Attorney for Healthcare lets your agent make all healthcare decisions for you when you cannot speak for yourself, make sure your agent understands your health care preferences, particularly as they relate to long term care and end-of-life decisions. In some states, such as Tennessee, the Durable Power of Attorney for Healthcare extends beyond your death to let your agent make decisions regarding organ donation, or requesting an autopsy, or directing the dispositions of your remains. Communicate your preference regarding those issues as well.

Your agent can make those decisions described in your Living Will. In both Georgia and Tennessee, a Health Care Power of Attorney “trumps” a Living Will.

³⁰ The person who exercises power for you.

The procedure for revoking a Durable Power of Attorney for Healthcare is similar to the procedure for revoking a Living Will. You simply notify your agent that you have removed him or her, or that you desire to revoke the Durable Power of Attorney for Healthcare. Notice may be oral or in writing. You should also notify a healthcare provider orally or in writing of that decision. If you give that notice to a healthcare provider, the healthcare provider will probably make that a part of your medical record.

Property: Asset Management and Distribution

I. Planning for incapacity:

As has been stated earlier in this Handbook, planning for incapacity and death is not a pleasurable experience. However, planning can: (i) minimize the stress on our loved ones; (ii) ensure that your wishes relating to healthcare and the disposition of your assets are followed; and, (iii) protect your assets from taxation and from depletion. Many different planning tools are available to those in the prime of life. We have already discussed the Durable Power of Attorney for Healthcare. Next we will discuss General Powers of Attorneys, Wills, Trusts, and Gifts. Each is a tool that may be used to help you achieve your goals. As with anything significant in life, consider consulting a professional before selecting the right tool for your situation.

II. Financial (Non-Health Related) Powers of Attorney:

Powers of Attorney come in many shapes and sizes. Generally, a Power of Attorney is a document where one person (the “principal”) gives another person (your “agent” or “attorney-in-fact”) authority to act on his or her behalf. The scope of that Power of Attorney can be very limited, or it can be wide open allowing the agent to do virtually anything for the principal.

In America today, many individuals use form Powers of Attorney purchased at office supply stores. We rarely recommend that you use that type of “cookie-cutter” approach. While pre-printed forms may create an effective Power of Attorney, they cannot take into account your specific circumstances. Further, they do not always contain language making them “durable” during periods of incapacity. Pre-printed forms encourage informality in execution and may not be acceptable to third parties such as banks or stock brokers. In sum, if you need Power of Attorney to accomplish something that is important to you, then it is probably a good investment to have the POA drafted properly.

1. General Powers of Attorney (“POAs”):

You can use a general Powers of Attorney to grant as much or as little power to your agent as you desire.

Typically, an agent has only that authority described in the Power of Attorney. Both Tennessee and Georgia have enacted statutes listing powers that can be given to a fiduciary, which can be placed in the Power of Attorney. Those powers include the ability to deal with banks, sell real estate, file law suits, and obtain burial plots. These lists are not exhaustive and are meant to give an example of the breadth that a General Power of Attorney may encompass.

In Georgia, there is a statutory Financial Power of Attorney. The statutory form is very broad. If you prefer to limit the scope of the statutory form, then modification is appropriate.

Powers of Attorney terminate when the principal dies. Generally, an agent's action, without knowledge that his principal is dead, will be enforced as if the principal was alive. A General Power of Attorney, like a healthcare Power of Attorney, can be revoked by the principal at any time by giving written or verbal notice to the agent. Actions after an agent receives that notice are beyond the scope of his authority and do not bind the principal.³¹

2. Limited POAs:

Limited Powers of Attorney are powers that are not unlimited. Because a power of attorney is like a "blank check", most powers of attorney are limited. Limited Powers of Attorney are used in many instances. Often, when individuals can not be present for real estate closings, they execute a Limited Power of Attorney allowing an agent to close the deal. Similarly, when buying a car, typically the seller signs an odometer statement and limited power of attorney that lets the dealership transfer title to the car. Another situation that is common for a Limited Power of Attorney is when an individual authorizes someone to represent him before the Internal Revenue Service. The Internal Revenue Service has a form (**Form 2848**)³² allowing an attorney or accountant to represent you in IRS matters.

Limited Powers of Attorney can be tailored to handle virtually any circumstance. Many Limited Powers of Attorney are executed for a limited time such as while the principal is out of the country or undergoing surgery.

3. Making POAs Durable:

As stated above, traditionally, Powers of Attorney terminate upon incapacity (e.g. dementia). Most states now let you create a "durable" Power of Attorney that survives incapacity. To make a POA durable, language should be included stating that you want the Power of Attorney to continue during any period of incapacity or disability. Language such as "this Power of Attorney shall not be affected by subsequent disability or incapacity of the principal" or similar words usually suffice to show your intent to make the Power of Attorney "durable".

Like non-durable Powers of Attorney and Living Wills, you can terminate or revoke your durable Power of Attorney, orally or in writing. Simply give notice to your agent.

Powers of Attorney are very helpful in many facets of life, but can be critical when planning for incapacity. As explained below, Powers of Attorney are more flexible than Guardianships.

III. Guardianship:

³¹ They may, however, bind the agent. Be careful if you are acting as someone's agent.

³² IRS Forms are available at www.irs.gov.

A guardian³³ is someone **appointed by a Court** to represent you when you cannot represent yourself and when you do not have a valid Power of Attorney. In Georgia, for example, the power of a guardian over a ward, is the same as a parent's over a child. O.C.G.A. § 29-2-1. All States have guardianship statutes. By statute, guardians "guard" the safety of their "ward" and preserve and protect their assets.

A guardian is not appointed until a hearing is held and the ward is found incapable of caring for himself or herself. According to the Supreme Court of the United States, if you can speak for yourself, you cannot be involuntarily committed. *Addington v. Texas*, 441 U.S. 418 (1979). Thus, a guardianship proceeding begins with (i) the filing of a petition; (ii) followed by a competency hearing.

If the Court appoints the petitioner as guardian, he or she is then responsible to the Court and must seek Court approval of most significant actions. Thus, guardianship is less convenient than action under an effective Power of Attorney; where guardianship proceedings are contested and legal representation is required, it is more expensive. Since most court filings are public records, guardianship also includes a loss of privacy.

Many questions concerning the rights and responsibilities of guardians are addressed and answered on The National Guardianship Association website (www.guardianship.usalaw.com). You can contact the NGA at 1604 North Country Club Drive, Tuscon, AZ 85716, or at (520) 881-6561. Guardianship proceedings can be complex; if you have questions, you should contact an attorney.

IV. Wills:

A traditional Will is, quite simply, a written statement of how your property is distributed when you die. The law requires certain formalities before any will is recognized as a final declaration of where your property goes after death. Accordingly, be careful with pre-printed forms. Since most attorneys provide free consultations, we recommend that you at least meet with an attorney to discuss your estate planning goals.

1. Formalities of Will:

Certain formalities must be followed when wills are executed. First, the will maker must be of sound mind. In other words, the person making the will must be competent, clear thinking or lucid. The law presumes you are competent to make a will if you know you are directing where your property will go when you die and you can clearly express your desires.

Second, the will maker must be at least fourteen (14) years old.

Third, the will maker must sign the document.

Fourth, the execution of the will by the will maker must be witnessed by at least two

(2) witnesses who are at least fourteen (14) years old themselves and who are present at

³³ In Tennessee, this is called "conservatorship". The guardian is called a "conservator".
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the same time and in the same place as the will maker when he executes the will. If all of these formalities are accomplished, the will is probably legal and binding.

Most attorneys advise that both witnesses execute an Affidavit when the will is executed. The affidavit indicates that the identities of the persons signing the will were verified by a notary public. If done this way, then witnesses usually do not have to be located and brought to Court when a will is probated; their statements in the affidavit regarding how the will was executed are usually sufficient. Most, if not all Tennessee Courts, will accept the affidavit to probate the will in lieu of making the witnesses appear and testify about its execution. Georgia has a statutory form.

Wills can and should provide for the disposition of **all** property of the will maker, whether the property be real property or personal property. No specific language is required other than language showing that the will maker wants to, in the present tense, dispose of the property when he or she dies.

2. Intestacy:

When someone dies **without a will**, they die intestate. Intestacy means that the State decides where your property goes after you die. When you die without a will in Georgia or Tennessee, your property will go to your spouse if you have no children. If you have a spouse and children, then spouse and children share equally,³⁴ provided that the spouse receives at least one-third (1/3) of the estate.³⁵ If you have no surviving spouse, then your children will all receive equal shares and if one has passed away their children will receive the share of the deceased child. There are further progressions of these intestacy rules listed specifically in the statute, for example if you have no spouse or no children, then your parents inherit your estate.

Your probate estate includes any property whether real or personal that is titled in your name. Certain items such as real estate owned jointly with right of survivorship, do not become a part of your probate estate. Likewise, insurance policy proceeds which have specific beneficiaries listed do not become part of your probate estate.

Today, many people buy forms in office supply stores or other places, attempting to save money by preparing their own wills. While these wills may work, why “roll the dice” with your estate? Many attorneys prepare wills at reduced rates and certain groups, like A.A.R.P. members, can often get special rates on wills. Thus, even though legal representation is not required when you execute a will, remember that you are disposing of all of your earthly assets. As one respected text puts it, “although no particular form is required, the best interests of the testator and his estate will be served by drafting the will in traditional form, spelling out his intent in detail, anticipating all contingencies that may arise, and using words that have a clear and well defined

³⁴ Parents, particularly those with minor children, should execute a will. You do not want a guardian to try and raise children without access to necessary resources (because your children own them).

³⁵ A spouse may have a right a minimum share of the estate under State law, regardless of whether there is a will.

meaning.” Prichards on Wills and Administration of Estates, 5th Edition.

3. Codicils:

Codicils are documents that amend, change or modify an existing will. Codicils may be used to change a beneficiary, change the executor, or they may dispose of additional property. Codicils must be executed and attested in the exact same manner as a will. If a previously executed will was invalid for any reason, and is then “republished” (reaffirmed) in a valid codicil, any deficiency in the execution of the prior will is eliminated. Both the will and the codicil are then deemed legal because the codicil is a republication of an entire will with the new terms.

4. Holographic wills:

Holographic wills are handwritten wills, signed by the testator, that dispose of assets. Often, holographic wills omit legal formalities. Nonetheless, Holographic wills are sometimes recognized if they are clearly illustrative of the testator’s intent and they are completely in the testator’s handwriting. We do not advise use of holographic wills; still, if the only choice is between intestacy or a holographic will, then use a holographic will.

Tennessee recognizes holographic wills, while Georgia does not recognize them unless they are executed in front of two witnesses.

5. Nuncupative will: A nuncupative will is an oral will made on one’s death bed. Tennessee law provide as follows:

A nuncupative may made be made only by a person in imminent peril of death whether from illness or otherwise and shall be valid only if the testator died as a result of the impending peril and must be:

- (a) declared to be his will by the testator before two (2) disinterested witnesses;
- (b) reduced to writing by or under the direction of one of the witnesses within thirty (30) days after such declaration; and
- (c) submitted for probate within six (6) months after the death of the testator.

T.C.A. § 32-1-106.

That same statute provides that a nuncupative will may not dispose of more than \$1,000.00 in personal property unless you are in the military in the time of war in which case the aggregate amount could equal \$10,000.00. Further, a nuncupative will neither revokes or changes an existing written will. Georgia does not recognize nuncupative wills.

6. Tennessee and Georgia Wills:

Both Tennessee and Georgia require virtually the same formalities in the execution of a will. Thus, a will that is valid in one state should be valid in the other.

V. Trusts:

Trusts have been used for centuries as a way of “controlling” the use of property when the Settlor (the person creating the trust) is incapacitated, dead or can no longer

hold legal title to the property. Trusts can be implied or expressed. Typically, they are in writing and are created for a specific purpose.

A trust created during the Settlor's³⁶ lifetime is called an *inter vivos* (or "Living") trust. A trust created through a will is a testamentary trust. Once a trust is created, it is treated as a separate legal entity, like a corporation, and holds property in its own name for the benefit of others. Anyone, including the Settlor himself, can be the trust beneficiary.

Trusts can be revocable or irrevocable. If a trust is revocable, then the Settlor can give property to the trust while reserving the right to take it back under stated conditions. Irrevocable trusts permanently transfer property from the Settlor to the trust. The trust then holds the property until it is distributed to its beneficiaries.

Trusts are often more efficient tools for asset management than Powers of Attorney because the trust holds legal title to the trust property. That means that the trustee has power to "act like an owner" so-to-speak, signing legal papers where necessary. Trusts also survive the settlor's incapacity, which makes them a good disability planning tool. Of course, the Trustee must look after the interests of the beneficiaries, and he must answer to the appropriate court.

In some instances, trusts can be established to meet special needs of a beneficiary. If the beneficiary otherwise qualifies for government benefits, the trust can be drafted to protect eligibility for those benefits. However, those trusts are highly specialized and should only be prepared by a qualified professional.

This paper does not address the use of trusts as a tax planning device. See your tax professional if that is a concern.

Wills versus Living Trusts		
Issue	Wills	Living Trusts
What it is	A Will is a document, authorized by statute, stating how your assets will be distributed after your death.	A Trust is a legal entity that a settlor creates by contract, for the benefit of named beneficiaries.
Estate Taxes	Same as Living Trust.	Same as Will.
Income Taxes	Step up basis can give slight tax savings.	None.
Medicaid Liens	Community Spouse can make testamentary distribution without penalty for institutionalized spouse.	No benefit. If you can reach assets, so can Medicaid authorities.
Costs to Prepare	Usually less expensive than Living Trust. Attorneys often prepare simple wills for a nominal cost, such as \$250. A.A.R.P. Members are entitled to special rates from attorneys in the A.A.R.P. Legal Network.	Usually more expensive than Will. Among costs are all costs associated with transferring assets from your name into the trust.

³⁶

The person who creates the trust is called the "settlor" or trustor".

Wills versus Living Trusts		
Costs to Settle	Requires probate; usually more expensive than Living Trust.	Avoids probate (usually); usually less expensive than Will; Living Trusts are also an effective way to avoid multi-state (or ancillary) probate where you own real estate in more than one state.
Disability Planning	Wills are not effective until death, so they are not an effective disability planning tool.	Living Trusts can be used to manage assets during a period of disability.
Distributions to Beneficiaries	Just as quick as Living Trust.	Just as quick as Will.
Confidentiality	None. Wills are filed with the Probate Court and are (usually) public records. For example, at least one website publishes celebrity wills.	Trust documents are private and maintain confidentiality over terms and assets.
Protection from Creditors	Initially, creditors must be dealt with. However, after the statutory notice is given, creditor claims that are not presented to the executor are barred.	Virtually none. Again, as with Medicaid, if you can reach assets, so can your creditors.
Traps	Among common traps, a Will that is not properly drafted or executed may not be recognized by the Probate Court.	Among common traps, those who fail to execute a pour-over will often leave some assets outside the trust and subject to intestacy rules. Also, transfer of retirement benefits into a trust can trigger substantial tax penalties.

VI. Estate Planning:

We are not tax experts and do not offer tax planning advice. Accordingly, this section is intentionally general. If you need tax planning advice, see a tax professional. At best, we can point you in the right direction, and that is what we will try to do.

At present, a tax is imposed on the transfer of assets from one generation to the next. This is called an estate tax if the transfer is made after death. At present, the estate tax ranges from 18% on estates of \$10,000.00 or less to 55% on estates of three million dollars (\$3,000,000.00) or more. The estate tax applies to the gross estate (including most life insurance) regardless of whether it goes through probate. As of January 1, 2002, the estate tax exemption is to one million dollars (\$1,000,000.00). In 2004, the exemption rises to one and a half million dollars (\$1,500,000.00).

The gift tax (for transfers prior to death) ranges from 2.5% for gifts of \$5,000.00 or less to 57.75% for gifts over ten million dollars (\$10,000,000.00). There is an annual exclusion which provides "in the case of gifts made to any person by the donor during the calendar year, the first \$10,000.00 of such gifts shall not be [taxed]". See Tax Code § 2503. Thus, you can give anyone (or everyone) up to \$10,000.00 per year without fear of incurring a gift tax. One couple, by combining their giving, could give another couple

\$40,000.00 per year.³⁷

The Economic Growth and Tax Relief Reconciliation Act of 2001, signed by President Bush on June 7, 2001 changes certain estate and gift tax rates and rules. Consult your tax advisor if you have questions concerning tax liability. If you do not have a tax advisor, we recommend any of the following:

Winter & Harris, C.P.A.'s (706) 278-2834

You can also contact the Trust Department at your local bank for a referral.

Conclusion

In this Handbook we have attempted to answer many questions concerning senior issues. We have answers them in generalities and thus, we may not have answered a question that you are facing or the answer we gave may not fit your circumstances. In some instances, we have been intentionally vague because we do not know your specific circumstances. If there is an issue that concerns you that we did not address, or that we did not address in sufficient detail for you, please do not hesitate to contact us.

You may reach us at:

Law Office of David L. McGuffey, LLC
202 W. Crawford Street, Suite B
Dalton, GA 30722
(706) 488-0888
www.primetimelaw.com
www.mcguffey.net

Serving Georgia and Tennessee

³⁷

Some people believe this exemptions applies to Medicaid transfers. It does not.

Definitions

1. **Agent:** An agent is the person who can act for you under a power of attorney.
2. **Attorney-in-fact:** See Agent.
3. **Beneficiary:** A beneficiary is the person who is entitled to receive the benefit of a gift under a will, trust or other testamentary document.
4. **Executor:** The person named in a will who represents an estate is an executor. Formerly, female executors were called an executrix. The executor's job is to collect all assets of the estate, determine whether any creditor claims exist and, if so, whether they are valid, pay any valid claims, and distribute any remaining assets to the beneficiaries.
5. **Fiduciary:** A fiduciary is someone who has a legal duty to act in the best interest of another.
6. **Grantor:** See Settlor.
7. **Income:** Income, in this Handbook, means earnings on principal. In the Medicaid Planning context, it refers to earnings received during earning month, whether earned or unearned.
8. **Personal Representative:** This is a new term that replaces "Executor", "Executrix", "Trustee", "Agent", and other terms. It is a person who represents either another individual or an estate or a trust.
9. **Pour-over-will:** A will that transfers any leftover assets to a trust.
10. **Principal:** (1) When this term refers to a person, it is the person who creates a power of attorney. (2) When this term refers to money, "principal" is the original investment, plus accumulated and undistributed interest..
11. **Settlor:** A settlor is a person who creates, or establishes a trust. Such persons are also called trustors.

12. **Simple Will.** A traditional will that provides for the outright distribution of

your property. A Simple Will does not include any complex tax planning or disability planning.

13. **Testamentary Will:** A will that establishes one or more trusts.
14. **Testator:** The person who makes the will is the testator. Formerly, a female testator was called a testatrix.
15. **Testatrix:** See Testator.
16. **Trust:** A legal arrangement where property is held for the benefit of another person, who is known as a beneficiary.
17. **Trustor:** See Settlor.

Finding Vital Records

Tennessee:

Tennessee Vital Records
Department of Health
Central Services Building
421 5th Avenue, North
Nashville, TN 37247-0450

(615) 741-1763

Georgia:

Georgia Department of Human Resources
Vital Records Service
2600 Skyland Drive, NE
Atlanta, GA 30319-3640

(404) 679-4701

*(Information on this page taken from CDC website at:
<http://www.cdc.gov/nchs/howto/w2w/alphabet.htm>)*