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PREFACE

The Arkansas Senior Citizens' Handbook and the Arkansas Caregivers Handbook display the collective effort of a number of individuals and groups. We are grateful to the Young Lawyers Section members and other individuals who wrote and edited prior editions. Because of their outstanding work, revising this edition was a relatively easy task.

Many young lawyers volunteered their time and expertise to edit this edition. We thank them for their diligence and service.

Kim Cordas	Sarah Cotton
Brian Smith	Pam Haun
Chad Oldham	Karen Talbot Glean
Zane Chrisman	Rebekah Kennedy
Nick Livers	

We are also grateful for the assistance of young lawyers who contributed in other areas. Eddy Doman cannot be thanked enough for his work securing sponsorships. We would also like to thank Michelle Cauley, Derrick Smith, and Amy Dunn Johnson for their ideas and encouragement, and Elizabeth Tarkington for the photograph on the cover of the Senior Citizens' Handbook. A special thanks to Cathy Underwood for turning chapters into handbooks and Michele Glasgow of the Arkansas Bar Association for assisting her in that process.

Herb Sanderson, Scott Holladay, and Susie Keesling of the Arkansas Department of Health and Human Services deserve thanks for their help as well. Finally, we appreciate the support of our sponsors, and we hope you will show them your appreciation as well.

By the time these handbooks are printed, Judith Gray of the Arkansas Bar Association will be days away from her much deserved retirement. Her retirement will be a huge loss for the Arkansas Bar Association, and in particular the Young Lawyers Section. She is largely responsible for the YLS's many successes. It is a small comfort to know she leaves us much better than she found us. This project would not have been possible without Judith, and we are honored to have worked with her.

Patrick D. Wilson
Chair, Young Lawyers Section

James V. Scurlock, II
Chair, Handbook Revision Committee

INTRODUCTION



Arkansas Bar Association

Because we in the legal profession know that the constantly changing laws of the state can become confusing to most people, the Young Lawyers Section of the Arkansas Bar Association, along with the Arkansas Bar Foundation, has published this useful handbook. This particular publication, the Senior Citizens' Handbook, has been written especially for you, the senior citizen of Arkansas.

This is the ninth edition of this useful guide that has been designed and updated over the years to remind you of your many rights and Because we in the legal profession know that constantly changing laws can be confusing to most people, the Young Lawyers Section of the Arkansas Bar Association publishes handbooks for the public. This particular publication, the Senior Citizens' Handbook, has been written especially for you, the senior citizen of Arkansas.

This is the ninth edition of this useful guide. It

has been designed and updated over the years to inform you of some of your many rights and privileges as citizens of Arkansas. It has proven to be quite popular. We hope that this Senior Citizens' Handbook will help answer questions that you may have or help you locate the services that may be beneficial to your individual needs.

All of the information in this handbook is based on the laws and regulations of the state of Arkansas and the United States. You should not rely totally on the information provided here as a basis for benefits because the laws, policies, and procedures often change.

Please look at this publication as a guide, and contact the appropriate agency listed in the back of the book if you have questions or need to verify information. If you have a question that we have not answered, you may want to consult an attorney or representatives from a state or federal agency.

SOCIAL SECURITY

Generally, there are three categories of Social Security benefits: retirement benefits, disability benefits, and survivors benefits.

Eligibility for Social Security benefits depends on how long you have monetarily contributed as a worker. In order to qualify for retirement, disability, or survivors benefits for your family, you must have a certain number of years of coverage. Most workers have earned one quarter of coverage for each period in which a specified amount of wages was earned. A quarter of coverage is earned when earnings in a quarter equal a specified amount. This figure, however, is adjusted upward each year as average wages increase (no more than four quarters of coverage can be credited for one year).

The following table shows the amount of earnings needed in a quarter for each year from 1981 to the present.

1981.....	\$310
1982.....	340
1983.....	370
1984.....	390
1985.....	410
1986.....	440
1987.....	460
1988.....	470
1989.....	500
1990.....	520
1991.....	540
1992.....	570
1993.....	590
1994.....	620
1995.....	630
1996.....	640
1997.....	670
1998.....	700

1999.....	740
2000.....	780
2001.....	830
2002.....	870
2003.....	890
2004.....	900
2005.....	920
2006.....	970

Ten years of coverage will fully insure a worker and his or her family for life. In certain cases, however, less work credit will be enough for full coverage. This depends upon the date of birth of the worker and whether the benefits sought are retirement, disability, or survivors benefits.

Social Security Retirement Benefits

Because of longer life expectancies, full retirement age varies with your date of birth. Please see the chart below to determine the age at which you may retire with full benefits. You may retire as early as age 62, but the amount you would receive will be less than at your full retirement age.

Age To Receive Full Social Security Benefits

Year of Birth	Full Retirement Age
1937 or earlier	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943-1954	66
1955	66 and 2 months
1956	66 and 4 months

1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 and later	67

How Much To Expect

Being **covered** or **insured** only means that you and your family can receive benefits if you have worked long enough and paid Social Security taxes. The amount you receive in monthly paychecks depends on the average yearly earnings of your working career under Social Security. These basic benefits are now automatically adjusted upward every January to keep pace with the cost of living.

If you are retired or near retirement, and you want to estimate what you should receive from Social Security, ask for a copy of the leaflet: **Estimating Your Social Security Retirement Check** at any Social Security Administration Office in your community.

You may also call 1-800-772-1213 to request a benefits estimate.

Working After Payments Have Started

After retirement, you may get an opportunity to go back to work on a full-time or part-time basis. If you have already begun receiving your Social Security checks, you should contact your local Social Security Office to determine current earnings limitations. These limitations fluctuate annually.

Social Security Disability Benefits

For a worker to qualify for disability benefits, he or she must be unable to engage in any substantial, gainful employment due to a physical or mental impairment that either: (1) is expected to result in death; or (2) has lasted or is expected to last for at least 12 months.

To be eligible for disability payments, you must meet the following tests:

- **Duration of work test:** You need to have worked a certain number of years depending upon the age at which you become disabled. The younger you are when you become disabled, the less years of work you will need. The work does not need to fall within a certain period of time.
- **Recent work test:** You must have 20 quarters (5 years) of coverage out of the preceding 40 calendar quarters (10 years) to qualify. Different requirements exist for workers who become disabled before they reach age 24 and 31. Also, for those disabled by blindness, this test is generally not required.

Social Security Survivors Benefits

When a worker who has paid Social Security taxes dies, certain members of the family may be eligible for survivors benefits. The required number of years of work needed to be eligible for benefits will depend upon the person's age at the time of death.

Eligible survivors include certain disabled and non-disabled widow or widowers, unmarried children, children at any age who were disabled before age 22 and remain disabled, dependent parents age 62 or older, and under certain circumstances, stepchildren, grandchildren, or adopted children.

You can receive Social Security survivors benefits and work at the same time but, depending on your age, your benefits could be reduced if you earn more than certain amounts.

Remarriage, divorce, and retirement may have an effect upon survivors benefits.

When Should You Contact Your Social Security Office

Sometimes a person is uncertain whether he or she qualifies for Social Security. In many cases, that doubt causes a person to lose those benefits to which he or she is entitled. Therefore, it is important that you contact your Social Security Office if:

- You are unable to work because of an illness or injury that is expected to last a year or longer or result in death.
- You are 62 years of age or older and plan to retire.
- You are within three months of 65 even if you do not plan to retire.
- Someone in your family dies.
- You, your wife or husband, or your dependent children suffer permanent kidney failure.

What You Need To Apply For Social Security Benefits

You may apply online at www.socialsecurity.gov or call 1-800-772-1213.

In applying, you will need:

- Your own Social Security Card or a record of your number. If your claim is on another person's record, you will need that person's card or a record of the number.
- Proof of your age; a birth certificate or a baptismal certificate made at or shortly after birth if you have one.
- Your marriage certificate if you are applying for widow's or widower's benefits.
- Your children's birth certificates if you are applying for them.
- Your Form W-2 for the last 2 years or a copy of your last two Federal Income Tax Returns if you are self-employed.
- Proof of U.S. citizenship or lawful alien status if you (or a child who is applying) were not born in the U.S.

- Your spouse's birth certificate and social security number if he or she is applying for benefits based on your record.
- Your military discharge papers if you had military service.
- Your checkbook or bank statement (necessary for direct deposit of your benefits into your bank account).

If you are applying for disability benefits you need, in addition to the above, the names, addresses, and telephone numbers of doctors, hospitals or clinics that have treated you for your disability.

Do not delay applying because you do not have all these proofs. The staff at the Social Security Office will assist you.

Introduction to Supplemental Security Income (SSI)

The **Supplemental Security Income** (SSI) program is also administered by the Social Security Administration. SSI's aim is to provide a basic monthly income to the blind, the disabled, and the elderly (age 65 or older) who are in special need of financial assistance. Unlike Social Security, you can get SSI benefits even if you have never worked or for other reasons do not qualify for Social Security benefits.

Who Qualifies?

SSI is available to persons who are 65 or older or are blind or disabled and who do not have more income and resources than permitted. Because income requirements change often, contact your local Social Security Office to determine your eligibility.

SSI defines a person as disabled if he or she is unable to engage in any gainful employment due to a physical or mental impairment which has lasted or is expected to last for at least 12 months or is expected to result in death.

Penalties

There is both earned income, which may be in cash or in kind, and unearned income. Earned income is generally wages. Unearned income includes annuities, pensions, Social Security benefits, dividends, interest, prizes and awards, alimony, gifts and inheritances, and death benefits. There are certain things not considered to be income at all and certain earned and unearned income that is not counted towards the income limitations. Generally, you cannot have more income than what your monthly benefit amount would be.

As examples, unearned income over \$20 a month reduces the amount of the SSI benefit. People who work while receiving SSI can earn no more than \$65 a month without losing \$1 in benefits for each \$2 in earnings over \$65.

Eligible people living in a friend's or relative's home may face having their payments reduced. Also, an unmarried couple living together may be listed by the Social Security Administration as "holding out as husband and wife." When this happens, and both persons are receiving SSI, each check will be reduced, if necessary, so that the two checks together will equal the amount that a couple would receive.

Resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance. The resource limit for an individual is \$2,000 and for a couple the resource limit is \$3,000. There are certain exclusions from resources, including your home and household goods and personal effects up to a certain amount. There are certain rules regarding automobiles as well.

You should check with the Social Security Administration for more information regarding SSI and the income and resource limitations.

If you feel that such rulings are wrongly applied to your situation, you can challenge them

administratively or in Court (see below).

Appeals Process

If your application for Social Security or SSI benefits is denied, or if any of your benefits are reduced or terminated, you certainly may appeal the decision:

- After the action is taken against you, you must make a written request for a reconsideration within 60 days of the denial.
- If this fails, you must request a hearing before an administrative law judge within 60 days of the reconsidered decision.
- Another denial entitles you to request a review by the Social Security Appeals Council in Falls Church, Virginia, within 60 days of the adverse decision. The Council can refuse to review the case.
- If the Council refuses to review or decides against you, you have another 60 days to appeal to the local U.S. District Court.
- If you win an appeal at any level, you may receive benefits retroactively to date of application, reduction, or termination.
- If the U.S. District Court decides against you, you have another 60 days to appeal to the appropriate U.S. Court of Appeals.
- In extremely rare cases, an appeal to the U.S. Supreme Court is possible should the U.S. Court of Appeals decide against you.

Forms are available from any Social Security Administration Office if you want to use the appeals process. You are allowed to have a friend or relative assist you in any appeal proceeding. You may also want to contact an attorney to help you with an appeal or any other matter concerning the Social Security and Supplemental Security Income programs. It is important to remember that before an attorney can charge you a fee, he or she must petition the Social Security Administration for approval of the fee.

Representative Payees

Persons can be designated to receive Social Security benefit checks on behalf of beneficiaries who may not be able to manage their own affairs. These persons are known as **representative payees**. The primary responsibility of the representative payee is to use the Social Security money he or she receives for the beneficiary's basic or personal needs.

The representative payee is usually a spouse or other relative, friend, or legal guardian. An institution such as a nursing home can also be designated as a representative payee.

The process for having a representative payee appointed begins with a friend or relative

notifying the Social Security Office that an individual is incapable of handling his or her own affairs. A doctor's statement to that effect must also be filed. The Social Security Administration then determines whether the individual is mentally competent to continue receiving his or her own checks.

Any appointment can be challenged. For more details, call or visit the Social Security Office nearest you.

Most banks and savings and loan associations will directly deposit your benefit checks to your account if you request direct mailing to the financial institution by the Social Security Administration. For more details, call or visit your bank or savings and loan association.

CLIENT SECURITY FUND

In 1973, the Supreme Court of Arkansas, pursuant to constitutional power to regulate the practice of law, created the Client Security Fund. The Client Security Fund is a trust fund designed to protect clients from losses caused by the dishonest conduct of lawyers. Five lawyers, one from each Congressional district, and one from the State at large, serve on the Client Security Fund Committee. The maximum amount that can be claimed from the Fund is \$40,000. Monies for the fund come from a portion of the annual attorney license fees.

To be considered, the claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct such as theft or embezzlement of money, property or other things of value which have arisen out of a lawyer-client relationship. The Fund is not designed to cover negligence or similar acts. The Client Security Fund Committee has the authority to admit or reject claims in whole or in part, to the extent that funds are available.

No Claim will be paid until the lawyer shall have been disbarred or suspended from the practice of law, has voluntarily but permanently surrendered his license to practice law, or has died before disbarment or suspension could take place. Claims made on the Fund must be filed with the Clerk of the Arkansas Supreme Court.

If you would like more information on the Client Security Fund, send a self-addressed envelope to "Client Security Fund," Clerk of the Supreme Court, 625 Marshall Street, Little Rock, AR 72201, or request a claim form from the Arkansas Supreme Court Clerk at (501) 682-6849.

FOOD STAMPS

The **Food Stamp Program** provides an Electronic Benefits Transfer (EBT) card to pay for food at most stores. Under agreement with the United States Department of Agriculture, the Arkansas Department of Health and Human Services administers the program through its local offices. In these days of ever increasing food prices, with resulting pressure on millions of older Americans on fixed incomes, the Food Stamp Program can help stretch the food budget of those who qualify.

How To Apply for Food Stamps

File an Application Form: This form may be obtained from the Food Stamp Office or online at www.arkansas.gov/dhhs.

Have an Interview: After you have completed your application, a Food Stamp representative will conduct a confidential interview with you. If you have a physical or mental impairment or are 60 years of age or older, cannot go to the Food Stamp Office and are unable to have someone go for you, inform the worker, and they will arrange to interview you by telephone or at your home.

Meet Eligibility Requirements

Food stamp applicants must meet the following six basic eligibility tests:

Residency/Citizenship: An applicant must live in the county in which the application is filed and be a U.S. citizen or a lawfully admitted alien.

Lawful Food Stamp Household: Applicants must not be boarders, ineligible students, disqualified individuals or residents of an institution.

Work Registration: All able-bodied persons ages 18 through 59, who are not exempt

(exempt by reason of being employed, having care of dependent children or being incapacitated), must register for work. Persons who quit their jobs without good cause will not be allowed to participate in the program for a period of three months.

Resources: The value of non-exempt resources cannot exceed \$3,000 for households with a member age 60 or older. The maximum amount of available resources is \$2,000 for all other households.

Income: Households containing a member age 60 or older or a Supplemental Security Income or a Social Security Administration disability recipient must have a net income at or below 100% of the Office of Management and Budget income poverty guidelines.

All other households must have a gross income at or below 130% of the OMB income poverty guidelines and net income at or below 100% of the poverty guidelines.

Social Security Number: Each household member must supply a Social Security number.

Eligibility requirements for the Food Stamp Program are subject to change. You should contact your local Food Stamp Office if you have questions concerning eligibility.

If after the interview the Food Stamp Office determines that you are eligible for the program, you will be sent a Food Stamp identification card and information about how your Food Stamps can be used. Should your application for food stamps be denied, you will be sent a notice of explanation.

If you are dissatisfied with the decision reached in your case, you may request a hearing by contacting the Food Stamp Office.

HOMESTEAD PROPERTY TAX

This homestead exemption provides for the exemption from certain legal processes and defines rural homesteads and urban homesteads. It also defines the rights of surviving spouses and minor children.

This act defines **rural homesteads** as those which consist of 160 acres of land and not less than 80 acres. The 160 acres of land shall not exceed the value of \$2,500, and in no event shall the homestead be reduced to less than 80 acres without regard to value. **Urban homesteads** are defined as consisting of one acre of land, with value in the sum of \$2,500, and in no event shall be reduced to less than three-quarters of an acre without regard to value.

Survivorship passes to the spouse if the parties have been continuously married to each other in excess of one year. Minor children share rights with the spouse until 21 years of age. In the event of the death of both parents, this act shall inure to the benefit of the minor children.

Disabled Veterans

This act provides an exemption of real and personal property taxes to veterans who are 100% disabled, awarded by the Veterans Administration. Surviving spouses are allowed the exemption. You must furnish proof to the assessor in the county where you reside.

What Do You Do If Designated A "Personal Representative"

A Personal Representative is a person left in charge of an estate when a person dies. If a person dies leaving a Will, it ordinarily names a Personal Representative. If there is no Will, the law provides that the court give preference to certain relatives and heirs in naming a Personal Representative.

Find out more about the duties of a Personal Representative in the "Handbook for Personal Representatives in Arkansas." You may receive a copy free of charge by writing the Arkansas Bar Association, P.O. Box 5130, North Little Rock, AR 72119, or you may download a copy at www.arkbar.com.

LONG-TERM CARE INSURANCE

Long-term care insurance covers a wide variety of services for people with a prolonged illness, disability or cognitive disorder. Long-term care encompasses many different services meant to help people with chronic conditions compensate for limitations in their ability to function independently. Long-term care services may include, but are not limited to, help with daily activities at home such as bathing and dressing, respite care, home health care, adult day care, and nursing home care.

Long-term care expenses are generally not covered by Medicare, Medicare supplement insurance, or the major medical health insurance provided by most employers. Instead, private insurance companies sell long-term care policies. For a list of companies approved to sell long-term care insurance in Arkansas contact the Arkansas Insurance Department at 1-800-224-6330.

In general, you should not buy long-term care insurance if:

- You cannot afford the premiums.
- You have limited assets.
- Your only source of income is a Social Security benefit or Supplemental Security Income (SSI).
- You often have trouble paying for utilities, food, medicine, or other important needs.
- You are on Medicaid.

You should consider buying long-term care insurance if:

- You have significant assets and income.
- You want to protect some of your assets and income.
- You can pay premiums, including possible premium increases, without financial difficulty.

- You want to stay independent of the support of others.
- You want to have the flexibility of choosing care in the setting you prefer or will be most comfortable in.

Be careful to determine exactly what benefits a particular policy provides. Some long-term care policies only cover stays in state licensed nursing homes, while others cover only home care, and some cover both types of care. Benefit payments also vary, in that some policies pay according to the actual costs of the eligible service performed, while others pay you an amount specified in the policy regardless of the actual costs of the service performed. In addition, you should consult your tax advisor or legal advisor regarding the tax consequences of choosing a tax-qualified or a non-tax-qualified policy.

Be sure to understand the amount of coverage a particular policy provides. Most plans have a maximum lifetime benefit limit. Most plans also offer a choice of periodic benefit amounts (usually \$50 to \$150 a day, \$1,500 to \$7,500 a month) for nursing home care. It is important to know how much nursing homes in your area charge before selecting a periodic benefit amount. Of course, the higher your lifetime maximum amount and periodic benefit amount, the higher your yearly premium.

It is also important to review a policy to determine when you will become eligible for benefits. The most common methods for determining when benefits are payable are based upon the insured's (1) inability to perform activities of daily living, (2) cognitive impairment or mental incapacity, or (3) doctor's certification of medical necessity. The eligibility requirements may vary for home health coverage and nursing home coverage.

For more information on long-term care insurance, contact the Arkansas Insurance Department, Seniors' Health Insurance Information Program, at 1-800-224-6330, or the Arkansas Department of Health and Human Services, Division of Aging and Adult Services,

at (501) 682-2441.

Resource: www.ltcfeds.com

MILLER TRUST

Miller Trusts (42 U.S.C. § 1396p(d)(4)(B)), also known as Qualified Income Trusts (QITs), may be established in order for an individual to meet the income requirements necessary to qualify for Medicaid services. Without a QIT, an individual who makes one dollar over the Medicaid requirement will not qualify for Medicaid nursing home benefits even though the person's income is insufficient to pay the nursing home charges.

The money held in QIT is not considered income to the individual for purposes of evaluating Medicaid eligibility. The QIT regulations require that all the individual's income be paid to the trust each month and that disbursements be made only as authorized by the regulations and approved by the Department of Health and Human Services (DHHS). Payments made from the QIT to the individual for items such as food, shelter, and clothing are considered income for Medicaid purposes, but payments made from the QIT for the individual's medical expenses (including nursing homes) are not counted as income for Medicaid purposes.

Federal law requires that (1) QITs be

irrevocable, (2) QITs can only be terminated or amended with DHHS approval, (3) QITs be funded only from Social Security, pension and all other income payable to the individual, and (4) upon the individual's death, all assets remaining in the QIT will be paid to DHHS up to an amount equal to the medical payments made by the state for the individual. In addition, DHHS legal counsel must review and approve the QIT before Medicaid accepts the trust.

If the money in a QIT is paid out as authorized by law, transfer of asset penalties will not apply. Money held in a QIT can be used to pay the fair market value of an individual's medical care (including nursing home care), food, mortgage, clothing, and other approved expenses. But funds in excess of those needed for medical care and other items and services for the individual's benefit will be subject to the transfer of assets penalties. Funds from an individual's QIT may also be used for the sole benefit of the individual's spouse without being subject to the transfer of assets penalty.

Resource: Estates, Gifts and Trusts, 1995-1998 Tax Management Inc.

MEDICAID

Medicaid is a joint federal-state program which provides limited medical services and contributes toward the costs of medical care for eligible persons. In Arkansas, the Medicaid program is administered by the Department of Health and Human Services. Medicaid is not related to the federal program known as Medicare and is available only to those persons who are able to meet certain financial and other eligibility guidelines.

Eligibility

Eligibility for the Medicaid program depends upon a number of factors and is determined on a case-by-case basis. Some general guidelines are set forth below. If you believe you may qualify for Medicaid, you should contact your local DHHS office for assistance in completing an application.

If you are receiving Supplemental Security Income (SSI), you are automatically eligible for Medicaid.

If you are not receiving SSI, but are age 65 or older, or under age 65 and "disabled" as defined by the Social Security Administration, you may qualify for Medicaid if you fall within certain resource and income limitations.

Individuals whose income is above the eligibility limits but meet the other eligibility factors may qualify if their medical expenses are unusually high.

Individuals meeting certain eligibility factors could also be eligible as a **Qualified Medicare Beneficiary** where Medicaid would pay their Medicare premiums, deductibles and coinsurance.

Additionally, individuals not qualifying for full

Medicaid Benefits could qualify for limited coverage in certain situations. These programs target specific groups who do not receive medical insurance or are suffering from certain illnesses.

Coverage

Many different types of health-related services are covered by the Medicaid Program. As a general rule, however, the particular service or treatment must be recommended by a physician. Your local DHHS office can provide specific information concerning the various services for which Medicaid will pay.

On February 1, 1994, Arkansas implemented the Primary Care Physician (PCP) Managed Care Program. Each Medicaid recipient, except those listed below, must choose a physician enrolled in the Managed Care Program who will be responsible for the management of the recipient's total health care including referrals for other specialty services.

Medicaid recipients who do not have to choose a PCP are those who:

- have Medicare as their primary insurance;
- receive services from Children's Medical Services;
- are in nursing or ICF/MR facilities;
- are Medically Needy Spend Down;
- have retroactive eligibility only; or
- are temporarily absent from the state (e.g., a foster child placed out of Arkansas).

You should remember that some doctors and other suppliers of medical services may legally refuse to accept payments from Medicaid. For this reason it is a good idea to check with a doctor beforehand and explain that Medicaid

will be used. Should the doctor not accept Medicaid, you may wish to consult a physician who will.

Eligibility Denial

Should your application for Medicaid be denied for any reason, you will receive a notice telling you so. You may appeal this decision, provided you do so within a certain period of time. You should ask the DHHS representative about this appeals deadline. If you remain dissatisfied

after your appeal hearing, you may wish to consult an attorney for further assistance.

For More Information

If you have additional questions concerning Medicaid, telephone, write or visit the Department of Health and Human Services Office located in your county. These offices look forward to serving you.

To receive additional copies of this handbook or the Consumer Law Handbook (also available in Spanish) contact:

Arkansas Bar Association
P.O. Box 5130
North Little Rock, Arkansas 72119
Telephone: 501-375-4606 / 1-800-609-5668
Fax: 501-375-4901

These handbooks
are available by downloading them at
www.arkbar.com

MEDICARE

Medicare is a federal health insurance program. People age sixty-five or older and those under age sixty-five who have been entitled to Social Security disability benefits for twenty-four months are eligible for Medicare. In addition, workers covered by Social Security and their dependents who need dialysis treatment or a kidney transplant because of kidney failure also have Medicare protection. Your local Social Security Office takes applications and provides information about the Medicare Program.

Medicare has three parts—**hospital insurance**, **medical insurance**, and **prescription drug coverage**. Hospital insurance can help pay for inpatient hospital care, inpatient care at skilled nursing facilities, hospice care and home health care. Medical insurance can help pay for necessary doctor's services, outpatient hospital services, and a number of other medical services and supplies that are not covered by the hospital insurance part of Medicare. Prescription drug coverage will assist with drug costs. Most people will pay a monthly premium for the medical and prescription drug insurances, though help is available for people who meet income or other eligibility requirements.

Medicare added the prescription drug coverage on January 1, 2006. This plan covers generic and brand-name drugs. If you require a drug that is not covered by the plan, your doctor can apply for an exception or appeal the decision with Medicare.

Coverage

Contact Medicare for information on Medicare benefits or Medicare billing. You can call Medicare Part A and ask for the MEDPARD book for a list of doctors and medical suppliers

that accept Medicare. Call your Social Security Office for information on obtaining your Medicare card or for enrolling in Medicare.

You should remember that Medicare will not cover the costs of **custodial care**. Care is considered custodial when it is primarily for the purpose of meeting personal needs and could be provided by persons without professional skills and training. For example, custodial care includes help in walking, getting in and out of bed, bathing, dressing, eating and taking medicine. Likewise, Medicare will not cover care which is not "reasonable and necessary" for the diagnosis or treatment of an illness or injury. For example, it will not pay for hospital or skilled nursing facility costs when the type of care you need could be provided elsewhere.

Also, if you stay in a hospital or skilled nursing facility longer than you need to be there, Medicare payments will end when further inpatient care is no longer reasonable and necessary.

Medicare Assignments

Many physicians accept what is known as **Medicare Assignment**. This means that the fees charged by the physician for certain medical services will be no higher than those set by Medicare as the allowable charges for such services.

Participating Doctors and Suppliers

Doctors and suppliers may sign agreements to become **Medicare participants**. Medicare participating doctors and suppliers have agreed in advance to accept assignment on **all** Medicare claims. Doctors and suppliers are given the opportunity to sign participation agreements each year. Medicare participating

doctors and suppliers can display emblems or certificates that show they accept assignment on all Medicare claims.

When Your Doctor Does Not Accept Assignment

Doctors who do not accept assignment of a Medicare claim can charge up to 15% more than the Medicare approved amount, and you are responsible for paying the part of your bill that is more than the Medicare approved amount, since your doctor or supplier did not agree to accept the Medicare approved amount as payment in full.

For most covered services, there are limits on the amount a doctor or supplier can charge you over and above the Medicare approved amount. This is called the "limiting charge." To determine the limiting charge for a particular service, contact the Medicare carrier for your area. Limiting charge information also appears on the Explanation of Medicare Benefits (EOMB) form usually sent to you by the carrier after you receive a Medicare-covered service. If the EOMB shows that your doctor exceeded the charge limit, contact the doctor and ask for a reduction in the charge, or a refund if you have paid the bill. If you cannot resolve the issue with the doctor, call your Medicare carrier.

Medicare carriers also are required to screen doctor bills for overcharges and notify the doctor and the patient within thirty (30) days of any overcharge. The doctor is then required to refund the overcharge within thirty (30) days or credit your account for it. Doctors who knowingly, willfully and repeatedly charge more than the legal limit are subject to sanctions.

Medicare Supplements

As Medicare does not pay for all costs resulting from health-related problems, many people find it beneficial to obtain supplemental insurance. For those who qualify, Medicaid may pay many of the expenses not covered by Medicare. For those who would not qualify for Medicaid, there are a variety of other supplemental insurance policies available. You should be very careful in choosing such insurance, making sure that the coverage fits your personal needs and the premiums fit your budget. You may wish to consult a friend or relative knowledgeable in such matters before deciding upon an insurance plan.

You can also contact the Arkansas Division of Insurance for further information on Medicare supplements.

NURSING HOMES

The decision of whether to enter a nursing home is an important one and can be a very difficult one. Careful consideration should be given to whether a nursing home is necessary or desirable.

If you are deciding to enter a nursing home, you should take time to:

- Discuss the matter with your family doctor, hospital social workers, family and others who care about the care you need and the kind of treatment you receive.
- Ascertain whether alternative forms of care such as a residential care facility or in-home care are available in your area and can provide the care you need.
- If you and your physician decide you need nursing home care, visit the homes in your area.

You should look for several things when choosing a nursing home. Some things to consider are the services offered, the general atmosphere of the home, the physical structure and setting of the home, and the rates charged.

There are many sources from which you can obtain specific nursing home information:

Arkansas Office of Long Term Care
P.O. Box 8059, Slot 400
Little Rock, Arkansas 72203-8059
(501) 682-8486

Arkansas Division on Aging and Adult Services
1417 Donaghey Plaza South, 14th Floor
Little Rock, Arkansas 72201
(501) 682-2441
Your Area Agency on Aging

Your Local County DHHS Office

Publications, such as "Dealing with Arkansas Nursing Homes," a report by Arkansas Consumer Research

Arkansas Health Care Association
501 Woodlane Dr., Suite 300
Little Rock, Arkansas 72201
(501) 374-4422

Of particular interest might be inspection reports of nursing homes which are available for public review at the Office of Long Term Care and the Local County Human Services Office. Also, the Office of Long Term Care produces a list of currently licensed homes. You may also ask to see the home's inspection records at the facility itself. By federal rule, nursing home inspection records must be available to the public at the facility.

Choosing a Nursing Home

There is only one type of nursing facility nationwide. All nursing homes are now known as Nursing Facilities.

Nursing Facilities are medical facilities in which high intensity, comprehensive and planned 24-hour nursing care is provided with maximum efficiency by registered and licensed nurses. Rehabilitation is also provided as required by the individual's plan of care. These types of homes serve convalescent residents and those with long term illness and also provide services for persons who, because of their physical or mental limitations, require 24-hour care but do not require the degree of care and treatment a hospital provides.

Keep in mind that a physician must certify the level of care you need before you enter a

nursing home. The certification of Medicaid recipients must also be reviewed by the Utilization and Review section of the Office of Long Term Care.

After making a preliminary investigation of a Nursing Facility's records and determining which type is best suited to your needs, you should visit the home. The administrator, the person managing day-to-day operations, will be glad to show you and your family the facility if you make an appointment. Some questions you might ask at that initial meeting are:

- Is the nursing home Medicare and/or Medicaid certified?
- Are other insurance plans accepted?
- Is there a staff physician or medical director who assists in policy making and answers emergency calls?
- May a husband and wife share a room?
- What are the facility's policies about smoking and use of alcohol in residents' rooms?
- What kinds of activities are offered to residents? How often are they scheduled?
- What are visiting hours, and will you be able to visit friends and relatives outside the nursing home? How often are such visits allowed?
- What are the facility's bed hold policies?
- How often are fire drills held for staff and residents?
- What facilities and staff are available for rehabilitation and physical therapy?
- How well is the home able to meet your specific needs, such as special diets, etc.?

These are just examples of the types of questions you might want to ask; some of them will not be relevant to you. It is important that the facility offer you services that will not needlessly restrict your normal lifestyle.

Not only should you speak with the nursing home administrator, but you should informally speak to the residents and staff to obtain their impressions of the atmosphere of the home. Speak freely, and ask any questions you believe will assist you in making your decision. Among other things, you should check out the following items to determine if the general atmosphere is suitable:

- Cleanliness. A good home will be kept clean, with no overriding odors. Pay particular attention to the condition of the residents' rooms and the kitchens, bathrooms and dining areas.
- Staff attitude. The quality of services provided by the facility greatly depends on the attitudes and competency of the staff. Good staff members care about the residents, and this can be observed in the way they treat individuals. Note whether residents are treated with kindness, dignity and respect.
- Safety. It is especially important for older persons who may be somewhat physically or mentally limited to see that safety is taken into account by the home administrators. Watch for fire hazards, unobserved smoking restrictions, unlighted stairways and passageways blocked by obstacles.
- Appearance of the residents. Notice the physical appearance of residents. They should appear clean and appropriately dressed. Talk to some of them and determine whether they are satisfied with the care they are receiving.
- Resident activity. What activities are offered to residents? Are they engaged in

activities such as trips to theaters, parks and visits to friends and family?

- Food. Proper nourishment is vital for older persons, and you should visit the home at a time when you can view a meal being served. This will give you an idea of a typical menu, and you may want to ask to sample the food to determine quality and taste.
- Privacy. Privacy will be a very important factor to the nursing home resident, and you should ask how personal activities, such as baths given in bed, are carried out with the maximum amount of privacy possible.

Cost of Nursing Home Care

There are four methods of paying for nursing home care: private pay, Medicare, Medicaid and supplemental insurance. However, a growing number of people entering nursing homes have long term care insurance or are beneficiaries of pensions that provide nursing home coverage.

If you pay the entire cost of nursing home care yourself, you are a **private pay** resident, and the nursing home will determine the rate you will pay.

Medicare also provides coverage for nursing home care in certain cases. You should contact your local Social Security Office to find out when nursing care is covered by Medicare and how much of the costs Medicare will pay. In any event, you should know that Medicare will only pay for care at nursing homes which are certified. Your local Social Security Office can also tell you which nursing homes are certified for Medicare payment.

Medicaid can be used by eligible persons to defray the costs of nursing home care not covered by Medicare. Once again, the nursing home must be properly certified before Medicaid will pay for care received there. Your

local Social Security Office can tell you which homes are certified and what costs may be covered by Medicaid.

Many supplemental insurance policies also provide payments toward nursing home care (see the handbook section on Medicare).

Patient Rights

Each nursing home, by state and federal statute and regulation, must publish written policies and procedures guaranteeing rights and listing responsibilities of residents in that home. These policies must guarantee that each resident:

- Is fully informed, as evidenced by the resident's written acknowledgment, prior to or at the time of admission and during the stay, of all rules, regulations, and policies governing his conduct.
- Is told of all services available and the costs of such services.
- Is informed of the right to complete an advance directive.
- Is fully informed of his own condition and given the opportunity to help plan medical treatment. A resident may refuse to participate in any experimental research.
- Is transferred or discharged only for medical reasons, nonpayment or for the welfare of other patients. The resident must be given notice of the transfer, and such actions have to be documented in medical records. There are appeal rights related to involuntary transfers.
- Be encouraged to exercise his or her rights as a patient and a citizen.
- May manage his or her personal financial affairs, or is at least given a quarterly accounting of any financial transactions made on his or her behalf if the resident

gives, in writing, permission to the facility's staff to manage his or her finances.

- May not be physically or mentally abused.
- May have restraints used as directed by a physician in the individual's plan of care only as necessary to protect the resident from harming themselves or others.
- Is assured of confidentiality of all personal and medical records of the resident. These records may be made available to agencies financially assisting the resident, to the new home when the resident is moved, or to a third party in contract with the home. A resident has the right of access to his or her medical records.
- Be treated with dignity and respect by the staff, including having privacy for certain types of treatment and for personal needs.
- May not be forced to perform services for the home which are not in his or her therapy plan.
- May visit and talk privately with anyone he or she chooses, and can send and receive personal mail unopened.
- May participate in social, religious and community activities at his or her discretion.
- If married, be given private facilities in which to meet his or her spouse, and if a married couple is together in a home, they must be allowed to share a room.
- May retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other patients.

Many of the above rights may be suspended only if a doctor finds and documents that there is a medically sound reason for doing so.

The nursing home has the responsibility to make sure the residents know and understand their rights. The resident's relatives assume this responsibility though, when the resident is incompetent under state law, is found medically incapable of understanding by a doctor, or will not communicate with the staff of the nursing home.

Any additional policies promulgated by the home must not interfere with the basic rights set out above.

Medicaid Agreement

Those nursing homes which are Medicaid certified offer an additional protection for their residents in the form of an agreement that the home enters into with the Arkansas Department of Health and Human Services (Human Services). This agreement provides a powerful deterrent to improper action by the nursing home because it allows the Medicaid contract to be canceled by Human Services if a nursing home is found in violation. These are among the additional protections provided:

- The home will provide the necessary care and services for the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with the comprehensive assessment and plan of care.
- Residents or families will not be billed for supplemental pay, but care must be provided for a fee established by Human Services.
- No Medicaid recipient can be transferred from the home without 30 days written notice or the resident's written permission, or that of a responsible member of his family, or that of the Office of Long Term Care. Certain agencies must be notified before the transfer.

You are entitled to a copy of the federal "**Patients' Bill of Rights**" and the Medicaid

agreement, so you may refer to them at will. Ask your nursing home for these documents.

Other Legal Remedies

Of course, nursing home residents and their families have the same methods of enforcing their rights as any other citizen, and in cases of assault, battery or theft, criminal penalties can be sought.

The nursing home which has undertaken the care of an individual can be liable for negligence if that responsibility is not fulfilled. The nursing home is responsible also for the actions of its employees in the scope of their employment and can be liable for injuries intentionally caused by employees to residents of the home.

Usually a contractual relationship exists between the nursing home and the resident. Sometimes, it will be possible to bring an action for breach of contract based on violations of that mutual agreement.

It is preferable, of course, that any dispute you or your relatives may have with the nursing home be resolved amicably. Most nursing homes have a grievance board or similar group to help resolve resident problems. However, if resolution is not possible, you should contact the appropriate agencies, such as the Division of Aging and Adult Services or the Office of Long Term Care of the Arkansas Department of Health and Human Services.

The Division of Aging and Adult Services has instituted the **Nursing Home Ombudsman**

Program to advocate the position of the older Arkansan, especially problems encountered in nursing homes. If you are interested in its services, contact the Division of Aging and Adult Services. Facilities are required to conspicuously post the name and phone number of the local area Ombudsman. The Ombudsman should be the first to be contacted if resolution of problems is not reached with the facility's staff or administration.

The following checklist will aid you in making an informed choice of a nursing home in Arkansas:

- Assess your care needs and discuss them with your physician;
- Investigate what kind of facility will meet those needs;
- Note the atmosphere of a prospective facility and consider it as a relevant factor in choosing your home;
- Check out the costs of nursing home care and what financial assistance is available to you;
- Know your rights as a resident; and
- If those rights are violated, inform the nursing home and attempt to obtain relief. If you are not satisfied with the resulting actions by the home, contact the appropriate state agency, and as the next step, consult an attorney.

Arkansas nursing homes are here to serve you. If you choose a facility in which you feel productive and content, the purpose of long term care will have been fulfilled.

WILLS AND ESTATE PLANNING

A well-prepared Will is one of a number of effective tools you can use to make sure that your property, called your **estate**, passes as you wish to your family and loved ones after your death. Your estate consists of property and cash assets that you own. It includes bank accounts, land, furniture, buildings, cars, stocks and bonds, proceeds of life insurance payable to your estate, and pension plan benefits payable to you.

In Arkansas, a valid Will must comply with these requirements:

- The maker, called the **testator**, must be at least 18 years of age.
- The testator must be of "sound mind" at the time the Will is prepared.
- The Will must be in writing and signed by the testator.

Witnesses

If a Will is typewritten, it must be signed by at least two witnesses to the testator's signature. The witnesses should be persons who do not receive any property in the Will.

A handwritten (holographic) Will is valid in Arkansas if it is *entirely* in the handwriting of the testator and signed by the testator. It may be witnessed, but does not have to be. To be admitted into Court after the testator's death, three persons familiar with the testator who will not receive any property under the Will must testify that the handwriting and signature are the testator's. The danger of a homemade Will is that you may inadvertently create an instrument which is not valid or which has unintended consequences.

If a Will is contested, it will be necessary for the witnesses to appear in Court.

Executor or Administrator

Most Wills name an **executor** (male) or **executrix** (female) to administer the Will. A financial institution with trust powers can serve as an executor. The executor is the person whom the testator chooses to oversee his Will during probate proceedings. The job includes paying all debts and taxes of the deceased as well as distributing the estate according to the testator's wishes as expressed in the Will. If the executor has died before the testator, is ill or is otherwise unable to carry out his or her duties, or if the testator fails to name an executor in his Will, the Court will appoint an **administrator** to do the executor's task. The Court also does this when a person dies without a Will. To avoid this situation, it is a good idea to name a successor executor just in case the first choice is unable to perform the job. An executor or administrator may also be known as a **personal representative**.

Restrictions on Distributing Property

Generally, Arkansas laws are very lenient in allowing you to distribute your property, by means of your Will, as you desire. One major restriction is that property which is held *jointly*—that is, owned by two persons with the right of survivorship—cannot be distributed by Will. The surviving party automatically becomes the sole owner of all jointly owned property (such as real estate, bank accounts, motor vehicles and household goods) when one party dies. Joint tenancy between husband and wife in Arkansas is called **tenancy by the entirety**.

How Long Does a Will Remain Valid?

A Will that meets all of the specifications described above is good until it is changed or revoked by you. Changed circumstances may require an addition or correction by **codicil** to the Will (a document stating additions or changes to the original Will). You may also need to completely redo the Will if the changes are substantial ones. It is important to note that if a codicil is used, it must be in writing and signed by you, and witnessed, just like the Will itself.

If a married person makes a Will and later gets a divorce or the marriage is annulled, the Will remains valid, but any bequest to the divorced spouse is revoked automatically.

Marriage after a Will is made does not affect the Will, but the testator will probably want to make a new Will or add a codicil to his old one to include bequests to his spouse. Similarly, births and deaths of children or grandchildren may affect your wishes for distribution of your estate. A child (or grandchild in certain cases) who is omitted from mention in the Will remains entitled to a share of the estate.

Lapse

In Arkansas, if you leave property in a Will to someone who dies before you do, the gift **lapses** and goes into the **residue** of your estate. (The residue consists of all of the property of a testator which is not specifically mentioned in his Will.) An exception to this occurs when you leave property to a descendant (a child or grandchild), and your descendant has surviving children or grandchildren. In that case, if your descendant dies before you, the gift passes to his or her descendant or descendants and does not lapse.

Specific Bequests On a Separate Document

Arkansas law allows you to note in your Will that certain specific bequests may be found on

a separate list which you will keep with your Will. This list may be made before you execute the Will, or it may be made after you execute the Will. The list may be changed from time to time without affecting the provisions or validity of your Will. This allows for more flexibility in disposing of individual items. This procedure may only be used for tangible personal property and not real estate. It cannot be used to dispose of money bequests, evidences of indebtedness, documents of title, securities or property used in a trade or business. It is a good idea to date such a list, and when a new list is made, to destroy any old lists.

Taking Against the Will

Arkansas law provides for "taking against the Will" in some circumstances. Those who may take against the Will are: (1) provided the husband and wife have been married at least one year, a surviving spouse who is excluded or omitted from his/her spouse's Will or is given less than he/she would have received by law if the spouse had died without a will; (2) a child who is born or adopted after a Will is executed (unless the Will makes provision for afterborn or adopted children); (3) a child who is living at the time the Will is executed but is not mentioned in the Will. (A parent may disinherit a child in a Will by listing him by name and making it clear that he is to receive nothing from the testator's estate.)

What Happens When You Die Without a Will?

If you should die without a valid Will, which is called dying **intestate**, all of your property—other than that which is held jointly—will be distributed among your surviving relatives according to Arkansas law. For example, if you are the sole owner of a piece of real property and you die intestate, leaving children, this property would descend to your children, which may not be your intent. Your spouse would be limited to a life interest in one-third of the property. If the children wish to sell the property, they have to prove their legal right to the property to "clear the title" and work out

an agreement as to the life interest of the surviving parent. (If there had been a Will, title to the property would have been established without the need for additional proceedings.)

If your children are minors, a guardian may be appointed for them by the Court, and the estate will remain under Court supervision until the children are 18. The guardian is required to post bond. With a Will, if you leave property to a minor child, you can: (1) suggest a guardian of your choice and request the elimination of the bond requirement; (2) leave the property **in trust** for the children; or (3) leave property to a custodian pursuant to the Arkansas Uniform Transfers to Minors Act.

If you die without a Will, your estate cannot be distributed to your friends or to your favorite charity.

Wills and Life Insurance

Life insurance policies in no way take the place of having a Will. If your policy is payable **to your estate** after death, the proceeds will be distributed according to your Will. If the policy benefits are payable to a beneficiary other than your estate, such as your spouse or another relative, your Will has no effect on the proceeds.

Estate Taxes

Whether an estate must pay an estate tax depends upon the size of the estate and whether the estate is left to a surviving spouse.

All portions of an estate that are left to the surviving spouse, regardless of value, are exempt from the estate tax (the **unlimited marital deduction**). On the other hand, all portions of the estate that are not left to the surviving spouse are subject to the estate tax if the estate exceeds a particular value. An estate must exceed a certain value before the estate is subject to the estate tax. This value is indexed to increase over a period of years. The following table shows the value an estate must exceed in a given year in order for the estate to

be subject to the estate tax:

Year	Value
2006, 2007, 2008	\$2,000,000
2009	\$3,500,000
2010	\$0
2011	\$1,000,000

In order to calculate the estate tax, you must first determine the value of your gross estate. Your gross estate for tax purposes is all property owned at death, certain property transferred during your lifetime in which an interest was retained, and in some circumstances, property transferred within three years of death. After determining the value of your gross estate, certain deductions and exemptions are taken which will reduce the value of your gross estate. After making these deductions and exemptions, the resulting number is called the taxable estate. The estate tax rate will be applied to the taxable estate to determine the amount of estate tax owed. If the taxable estate falls below the value listed in the above chart, no estate tax will be owed.

Estate tax laws change often. Currently, the federal estate tax is repealed in 2010, but comes back in 2011. Additionally, Arkansas presently has no estate tax. Because the laws change frequently, you should consult an attorney to determine if you should plan for estate tax.

Dispensing With Probate

If it can be determined that the value of a deceased person's estate does not exceed \$100,000, excluding homestead and certain allowances to the surviving spouse and minor children, and that there are no claims against the estate, a person entitled to a distributive share may file an affidavit with the probate court, listing the property of the deceased and its value, along with the names of relatives and their relationship to the deceased, the persons entitled to receive the property or the persons having possession of the property and all heirs. Use of this affidavit, where applicable, eliminates the need for probate administration.

What To Do When Someone Dies

When there is a death in a family, frequently the last thing the surviving relatives attend to is the legal distribution of the deceased's estate. When there is a valid Will, the survivors may know how to go about handling the distribution—but not always. When there is no Will, which is often the case, proper steps to take may be unknown to the family. (If you wish to make anatomical gifts, or if you have specific burial instructions, it is best *not* to make such provisions in your Will, as by the time your Will is produced, it may be too late.)

If an individual dies leaving property that is not transferred by other means (joint ownership, right of survivorship, trust, etc.), it must go through probate court proceedings. When there is a valid Will, the executor or executrix named by the Will should be contacted (if he or she is not already aware of the testator's death), and that person should get in touch with a lawyer (preferably the one who prepared the Will) who will initiate proceedings in the probate court. In the absence of a Will, administration is still required, and a friend or relative should contact a lawyer.

A petition must be submitted to the Court to have the Will (if there is one) admitted into probate and to have a personal representative appointed. If there is no Will, the petition simply asks for the appointment of an administrator for the estate. Notice of probate proceedings are published in the newspaper. Following the publication of this notice there is a three-month period during which persons having a claim against the estate may make their claims known to the Court and a six-month period for other claims, such as for personal injury. The personal representative has an affirmative duty to give actual notice of the claims period to any creditor who is known or reasonably ascertainable. With the assistance of the lawyer and the personal representative, the value of the estate is assessed, and taxes, if any, are paid, along with other costs of the administration. Once this is completed, and valid claims have been paid, the Court confirms

the distribution of the remaining property to the beneficiaries. The entire process of administering an estate takes at least six months to complete, but it is not uncommon for estates to be open much longer.

Ancillary Probate

If you own real property in another state as well as in Arkansas, you may be subject to legal proceedings in that state as well as in Arkansas.

Cost of Probate

Filing fees for probate administration in Arkansas vary from county to county, but they currently range from approximately \$70 to more than \$135.50, depending on where you live. The executor or administrator of your estate is entitled to receive a fee, which is a percentage (roughly 3%) based upon the value of personal property in your estate.

In addition, the attorney hired by your personal representative is entitled to a fee based on a percentage of the total property in the estate, although it is also acceptable for the personal representative to make a contractual fee arrangement with the attorney. Regardless of the basis of fees, their reasonableness is subject to approval of the probate court.

Having Your Will Declared Valid Before You Die

Arkansas law makes it possible for you to present your Will to the probate court during your lifetime, requesting that the Court rule on the validity of the Will (a procedure known as **ante-mortem probate**). If the Court finds that the Will is properly executed, that you are of sound mind and free of undue influence and the Will is otherwise valid, the Court may declare it valid. The Will is then placed on file with the Court. If you change your Will, or write a new one, this procedure will not validate the new or changed Will. A new proceeding must be commenced.

The purpose of this procedure is to prevent a Will contest after your death. All persons who may have an interest in your estate must be made parties to such a proceeding.

A Will may also be filed with the probate court without any ruling made as to its validity, as a means of safekeeping the document.

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TRUSTS AND AVOIDING PROBATE

Living Trusts

A **living trust** (also called a **revocable trust**) is an arrangement whereby one person (the "trustee") manages property for the benefit of another person (the "beneficiary"). This type of trust is set up during the lifetime of the property owner (the "grantor"), who transfers all or part of his property into the trust prior to his death. A living trust may also be created jointly by a husband and wife. Many people prefer the trust to a Will, because the trust's terms do not become public at the grantor's death, and the assets owned by the living trust do not pass through probate court. The greatest disadvantage is that certain assets may inadvertently never be transferred to the trust, thus remaining outside the trust at the grantor's death, and necessitating a probate administration after all.

Many companies who market living trusts promote federal tax savings as an incentive, but unless your estate exceeds a certain amount, your estate will not be subject to federal estate tax and the living trust will not provide any extra savings. If you are interested in a living trust, it is advisable to contact an attorney to draft a trust instrument which will be tailor-made to your particular needs and circumstances.

Joint Ownership as a Will Replacement

With or without a Will, if your estate must undergo probate administration, your family will be faced with a probate court proceeding before your property is legally distributed following your death. Property in joint ownership, however, does *not* pass through probate. Because of this, you may be tempted

to use joint ownership to distribute your estate, instead of a Will, with the idea of sparing your family the delay of probate court proceedings.

This may or may not be a wise move to make. Joint ownership is a fixed and rigid system that does not allow for changes in circumstances. It gives another person equal control during your lifetime over whatever property you decide to place under that arrangement. For example, a joint owner of your bank account can draw on or deplete that account while you are still living, without your permission, even though you may only intend for that person to have the money in that account after your death.

Keep in mind that using joint ownership as a means of helping your family avoid probate court after your death may end up causing you considerable problems in your lifetime. Joint ownership can be a useful legal device in helping distribute your estate after you die, but be certain that you are acting wisely.

Remember also that a husband and wife who own everything jointly may still need a Will in the event that they die simultaneously. In addition, probate administration will still be necessary for the estate of the surviving joint tenant when that person dies.

TODs, PODs, and Beneficiary Designations

Some assets such as insurance policies and retirement accounts can pass outside of probate through the use of beneficiary designations. Bank and brokerage accounts usually allow you to make a payable on death ("POD") or transfer on death ("TOD") designation. Upon your death, these assets will be paid directly to the designated beneficiary

without the requirement of probate. You should check with your bank or financial institution to see if a beneficiary designation is available.

Beneficiary Deeds

A Beneficiary Deed allows you to designate beneficiaries to receive real property or an interest therein upon your death without any

probate. This is done by executing and filing the deed conveying the property to named beneficiaries upon your death. To be effective the document must be recorded before you die. You are free to revoke this designation at any time prior to your death, without the consent of the beneficiary you name. The revocation must also be recorded before you die in order to be effective.

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LIVING WILLS/HEALTH CARE DECLARATIONS

The terms living will and health care declaration are often used interchangeably. Both terms describe the same thing. Their intent is to permit an individual to make a present decision about his future medical care or treatment.

The living will is not a substitute for a will which disposes of one's property at death. The living will is a written document which, when properly drafted and executed, allows a person to direct his physician to withhold or withdraw life-sustaining treatment that only prolongs the process of dying. The declaration could be put into effect if one develops an incurable or irreversible condition that will cause death within a relatively short time or if one becomes permanently unconscious.

One may be reluctant to make such a declaration while still active and in good health. If so, he may wish to give a spouse or child the authority to make health care decisions in the event he is no longer able. Hospitals are required by law to offer the Living Will/Health Care Declaration document to a patient upon admittance. By making someone your health care proxy, as it is called, you can avoid some of the conflict that frequently tears family

members apart.

In order to assure that one's wishes are followed, it is important that you communicate and provide a copy of your health care declaration to your regular attending physician. You should also provide a copy to your health care proxy and your spouse, an adult child, or other responsible person who checks on you frequently. In all cases, you should let the involved persons know where you have placed the original copy of the declaration.

Much of the complication has been removed from health care declarations by the legislature's passage of the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act. Any individual who desires to assure that his wishes concerning the right to die will be followed can do so with a health care declaration. If one wishes to revoke a declaration, he may do so at any time by communicating his decision to the attending physician or other health care provider. The Living Will/Health Care Declaration is not a required legal document. Whether or not one signs the document is a personal decision and should be carefully considered.

POWER OF ATTORNEY

A **power of attorney** is an instrument which authorizes another person to transact business or make certain decisions on your behalf. A power of attorney may be used to permit someone else to sell your real estate or your automobile or to authorize someone to transact banking business on your behalf. The effect of a power of attorney is to substitute another person in your place. In this article, the person who gives the power of attorney is called the **principal**. The person or agent to whom the power is given is called the **attorney in fact**.

The authority of a power of attorney may be either general or specific. The **general power** is very broad and typically authorizes the attorney in fact to transact any and all business for the principal. The **specific power** relates to a particular transaction such as a sale of a particular piece of property. With a specific power, the attorney's authority would be limited to that transaction.

The attorney in fact may be a friend or relative. It should be someone you know very well and in whom you place the utmost trust. If you are considering executing a power of attorney, remember that it can be used to disadvantage. You should be very careful in choosing the attorney in fact.

Both the general and specific powers of attorney may be revoked at any time by the principal. The principal should notify the attorney in fact in writing and any known persons, banks, or institutions with whom he has been doing business.

The power of attorney is revoked upon the death of either party or upon the incompetency or incapacity of either party. For the power of attorney to be useful after a principal is declared incompetent, it must be a durable power of attorney. A **durable power of**

attorney is not affected by the subsequent disability or incapacity of the principal. If you wish to plan for the possibility that you may someday be incapable of making your own decisions, you should have a **durable power of attorney**.

Remember that a durable power of attorney must be executed while you are still competent and able to make your own decisions. With a durable power of attorney, you can define the scope of authority as well as the individual you wish to be appointed. The durable power of attorney can also be drafted so that it does not go into effect until you become incompetent.

If you have not executed a valid durable power of attorney, and you become incompetent, the Court will appoint either a conservator or a guardian to look after you and transact your business. You have little control over whom the Court appoints. Because of the extra protection and safeguards afforded by the durable power of attorney, some additional time and expense is incurred in drafting and executing the power. You should expect to pay a little more money for a durable power of attorney than you would for a general or specific power of attorney.

If you are contemplating the preparation and execution of any type of power of attorney, you should be prepared to discuss the following matters with your lawyer. The lawyer will need to know the names and current mailing addresses for you and your attorney in fact. You may want to discuss more fully the differences between the various powers of attorney mentioned in this article. It will be helpful for both you and the lawyer if you have your deeds, titles, abstracts, certificates of deposit and other papers which will be affected by the power of attorney. You may want to define the beginning date of the power and duration. You may also want to consider whether the attorney in fact will be

compensated, and if so, in what way. Many powers of attorney give the attorney in fact the power to appoint his successor. You may want to limit that authority or simply name the successor in the original power. If the power of attorney is a specific one dealing with the sale of a particular piece of property, you may want

to include certain terms directing the actions of the attorney in fact.

The power of attorney is a very useful instrument for transacting business in your absence, but remember that it should be used carefully and wisely.

To receive additional copies of this handbook or
the Consumer Law Handbook (also available in Spanish)

Contact:

Arkansas Bar Association
P.O. Box 5130
North Little Rock, Arkansas 72119
Telephone: 501-375-4606 / 1-800-609-5668
Fax: 501-375-4901

These handbooks
are available by downloading them at
www.arkbar.com

GUARDIANSHIP

Guardianship is a legal procedure whereby a Circuit Court appoints a "guardian" to act on behalf of an "incapacitated person" or ward. An incapacitated person is one who is impaired by reason of a disability. Such a disability may be mental or physical illness, drug or alcohol dependence, or being a minor. The person is considered incapacitated when they lack the ability to make essential decisions concerning their health or safety, or to manage their property.

Any person may file a petition for the appointment of himself or some other qualified person as guardian of an incapacitated person. The petition must include, among other things, the name and address of the incapacitated person and of the person seeking the appointment, the nature of the incapacity, a description of the property owned by the incapacitated person and its value, the reason the appointment is sought, the type and scope of guardianship requested, and the interest of the petitioner in the appointment. An evaluation of the incapacitated person by a doctor or other qualified professional will be required by the Court prior to the determination of incapacity.

There are two basic types of guardianship: guardianship of the person and guardianship of the estate. The Court may appoint a guardian

to serve in either or both capacities, and may limit the powers and duties of the guardian, depending on the circumstances.

A guardian of the person is appointed by the Court to oversee the care and maintenance of the incapacitated person. This type of guardianship is particularly useful when a person is unable to make decisions concerning health care due to a disabling disease.

A guardian of the estate is appointed by the Court to protect and preserve an incapacitated person's property, to invest it, and to use it for the benefit of the incapacitated person. In this type of guardianship, the guardian must make periodic accountings to the Court for all assets and how those assets are used. Likewise, the Court may require that the guardian give a bond to assure that the affairs of the incapacitated person are properly administered.

Arkansas law also provides for the appointment of a "temporary" guardian in certain instances. Such a guardian may be appointed where there is imminent danger to the life or health of an incapacitated person or where his property is subject to loss, damage or waste due to the person's incapacity. A temporary guardianship is of short duration, no more than ninety days.

LANDLORD / TENANT RELATIONS

This section discusses the rights and responsibilities of landlords and tenants. A landlord, often called a lessor, allows another person to use or occupy real property (land or a building or portion of a building located on that land) that he owns, or otherwise has the right to possess, in exchange for the payment of money or other consideration, called rent. A tenant, often called a lessee, is the person who uses or occupies the land or building.

A lease is the agreement that sets forth the terms and conditions under which the landlord allows the tenant to use and occupy the land or building. A lease is also a form of contract, which is a legally-enforceable agreement.

An oral agreement between the landlord and the tenant can create a valid lease, but it is better for all parties involved for their agreement to be put in writing. Leases for one year or longer are not enforceable if not in writing.

Agreements between landlords and tenants for the lease of property are often called tenancies. There are primarily three types of tenancies:

A **tenancy for years** is one with a definite beginning and a definite end. It may be for a specified number of days, weeks, months, or years. Although often called a tenancy for years, it does not have to last a year. A tenancy for years ends at the specified time whether or not notice to terminate is given.

A **periodic tenancy** is a tenancy which continues for period after period unless terminated. For example, a periodic tenancy might be from year to year, month to month, or week to week. Notice is required to terminate the tenancy. Usually, notice equal to one full period is required to terminate the tenancy, so for a month to month tenancy, a full month's notice is required to terminate. However, for a

year to year tenancy, only six months' notice must be given.

A **tenancy at will** is one that can be terminated by either party at any time.

The agreement between the landlord and the tenant will determine what type of tenancy is held by the tenant. Both parties should feel comfortable that they understand the lease agreement and all of its terms prior to entering into an agreement.

Duties

Both the landlord and the tenant have certain obligations with respect to the property and one another. If either fails to fulfill his duties, the other may have legal recourse.

Duties of the Tenant

- To pay the rent on time as required by the lease or rental agreement;
- To comply with other covenants and fulfill other responsibilities under the lease or rental agreement;
- To not use the property for unlawful purposes or allow others to do so;
- To not damage or destroy the property;
- To give proper notice of the intention to vacate, if applicable;
- To leave the premises at the end of the term.

Duties of the Landlord

- To ensure that the tenant has the right to possession of the property as against third persons;
- To not interfere with the tenant's possession of the property so long as the tenant fulfills his obligations under the lease or rental agreement;

- To comply with other covenants and fulfill other responsibilities under the lease or rental agreement;
- To give proper notice of the intention to terminate the lease, if applicable.

Unlawful Detainer

If the tenant holds over the leased premises after the termination of the lease or rental agreement, fails to vacate the premises after written demand to do so, or fails to pay the rent for the property when due, he is guilty of an unlawful detainer. The landlord may file suit against the tenant in the county where the property is located.

Upon the landlord's filing of a complaint and supporting affidavit, the Clerk of the Circuit Court will issue a summons to the defendant tenant and will also issue a Notice of Intention to Issue Writ of Possession. If the tenant does not file a written objection to the landlord's claims in the office of the Circuit Clerk within five (5) days of receipt of the Summons and Notice, a Writ of Possession is issued.

A Writ of Possession directs the Sheriff of the county in which the property is located to deliver possession of the property to the landlord. The Sheriff notifies the defendant tenant of the issuance of the Writ of Possession by delivering it to him. If the tenant is not found within eight (8) hours, the Writ may be served by placing it upon the front door of the property. If after twenty-four (24) hours the tenant remains in possession and has not returned the premises to the landlord, the Sheriff will notify the landlord or his attorney that the tenant is still in possession. The landlord will then provide the Sheriff with whatever labor and assistance is required to remove the tenant's possessions and belongings from the property to a reasonably safe place of storage under the landlord's control until a final determination by the Court.

If the final determination of the matter is in favor of the tenant, his possessions and belongings will be immediately restored to him. If the final determination is in favor of the landlord and includes a monetary judgment, the Court will order the landlord to sell the tenant's possessions in a commercially reasonable manner. The proceeds of the sale will be used first to pay the cost of storage, next to satisfy the monetary judgment of the landlord against the tenant, and finally, any remainder will be paid to the tenant.

If the tenant files a written objection to the Notice of Intention to issue Writ of Possession within five (5) days, a preliminary hearing will be scheduled and notice of the date, time, and place of the hearing will be provided to the tenant by certified mail. At the preliminary hearing, the landlord must present evidence sufficient to show his entitlement to possession of the property. This evidence will usually be that he is the owner of the property and that the tenant has not paid the rent. The tenant is entitled to present his own evidence to refute the landlord's claims.

If, after the preliminary hearing, the Court finds that the landlord is likely to prevail in a final hearing, the tenant will only be allowed to remain in possession of the property upon posting adequate security.

If the final determination is in favor of the landlord, he may recover the entire amount of rent due under the rental agreement and possession of the rented property. If the final determination is in favor of the tenant, he may recover his costs and any damages, and may also regain possession of the property if it has been turned over to the landlord.

In addition, a tenant who willfully holds over after the termination of the term of the lease and thirty days' written notice to vacate may be liable for double the rent for the time during

which he keeps the person entitled to possession of the property out of possession. Similarly, if a tenant gives written notice of his intention to leave at a specified time but then fails to do so, he is liable for double the rent during the time he continues in possession.

Criminal Eviction

Arkansas also has a law that provides for criminal penalties to be assessed against a tenant who fails to pay his rent when due and refuses to leave the leased premises after ten (10) days' notice. The tenant who refuses to leave after ten (10) days' notice will be guilty of a misdemeanor. Upon conviction by a court in the county in which the leased building or land is located, the tenant will be fined twenty-five dollars (\$25.00) for each day that the tenant refuses to leave. The defense to a charge brought under this law is proof that the tenant has paid the rent or was otherwise entitled under the terms of the lease to refuse to pay.

Nuisance/Criminal Violations

Any tenant who fails to maintain the property in a safe, healthy or habitable condition; who uses or allows another person to use the leased premises as a common nuisance; who uses the property for the purpose of unlawfully selling, storing, keeping, manufacturing, using, or giving away any controlled substance, precursor, or analog; or uses the property for gambling, prostitution, or the unlawful sale of alcohol may be evicted by the prosecuting attorney of the county, the city attorney of the city, or the landlord.

Landlords' Liens

All property placed on the premises by the tenant is subject to a lien in favor of the landlord for the payment of all sums agreed to be paid by the tenant. After the termination of the lease, all property left on the premises by the

tenant may be disposed of by the landlord.

Liability for Injuries or Repairs

The landlord is not liable to the tenant for death, personal injury, or property damage caused by a defect or disrepair on the premises unless the landlord has agreed or assumed an obligation to maintain or repair the leased premises and fails to perform such maintenance or repair in a reasonable manner.

Manufactured Homes or Mobile Homes

When a manufactured home or mobile home on a leased site is unoccupied and the lease or rental payment for the site is sixty (60) days or more past due, the landlord is required to give the lessee and the lienholder of the mobile home or manufactured home written notice by certified mail that the mobile home or manufactured home is unoccupied and that the lease or rental payment is past due. This notice must include the information required by Arkansas law.

If the mobile home or manufactured home is not removed from the premises within thirty (30) days of the lienholder's receipt of the notice, the mobile home or manufactured home is subject to a lien in favor of the landlord for the payment of lease and rental payments accruing from the date of the lienholder's receipt of the notice. The lienholder becomes responsible for lease or rental payments accruing from the date the lienholder received the notice.

Security Deposits

A landlord may not demand or receive a security deposit in an amount or value greater than two (2) months' rent.

Within thirty (30) days of the termination of the tenancy, the landlord must return any money or property held as security or provide the tenant

with an itemized description of the application of the deposit or any portion of the deposit to unpaid rent and other damages caused by the tenant's failure to comply with the lease or rental agreement.

If the landlord fails to return the security deposit or provide a written explanation, the tenant may be able to recover the money or property due him and damages in an amount equal to twice the amount wrongfully withheld along with costs and reasonable attorneys fees. However, there are circumstances where these provisions may not apply.

Storage Facilities

A "self-service storage facility" is property used for renting or leasing individual storage spaces in which the tenants themselves customarily store and remove their own personal property on a self-service basis. Such storage facilities are generally treated as other leased property but Arkansas has several laws that apply specifically to these facilities.

The operator of a self-service storage facility has a lien on all personal property stored within each leased space for rent and associated charges. The rental agreement for such storage space must contain a statement in bold type advising the tenant of the existence of the lien and the fact that property stored in the leased space may be sold to satisfy the lien if the tenant is in default. If the tenant is in default, the operator may deny the tenant access to the leased space.

If the tenant is in default for more than forty-five (45) days, the operator may enforce the lien by selling the property stored in the leased space for cash after providing written notice to the tenant by certified mail and publishing the notice in the newspaper at least seven (7) days prior to the sale. The notice must comply with the requirements of Arkansas law.

The tenant may, at any time prior to the sale, pay the amount necessary to satisfy the operator's lien and redeem the tenant's personal property. After the sale, the tenant is entitled to any proceeds of the sale in excess of the amount necessary to satisfy the lien. If the tenant doesn't demand the balance of the proceeds after satisfaction of the lien within two (2) years after the date of the sale, such surplus is paid to the county.

Suggestions for Landlords and Tenants:

- Keep copies of the lease, receipts or canceled checks for rent payments, records of damages to the property and repairs, and any correspondence between the parties.
- Keep notes or a diary of conversations between the parties, whether in person or over the telephone, concerning the leased property or any provision of the lease or rental agreement. If at all possible, put all agreements between the parties in writing.
- Both the landlord and the tenant should inspect the property before entering into the lease or rental agreement. Take pictures or videotape the property.
- Read the lease carefully. Although the lease is often written by or on behalf of the landlord, both parties should understand the document before it is signed and neither party should hesitate to question points that may be unclear. If there is anything in the lease that differs from the parties' agreement, the terms of the verbal agreement should be written into the lease. If you sign the lease with the provisions contrary to your verbal agreement, the written lease, and NOT your verbal agreement, will control the parties' rights and responsibilities.
- Working together to resolve issues amicably will likely save costs, including legal costs, in the long term and make it

more likely that the rental property will continue to be a comfortable home or place of business for the tenant and a source of income for the landlord.

Other Available Resources

Landlords and tenants of federally subsidized housing may have different rights and remedies for non-payment of rent. The nature of these rights and remedies depend upon the type of housing authority and the federal regulation involved. Should you have any questions regarding federally subsidized housing, contact the Public Housing Division–Little Rock HUD, (501) 324-5935.

If you need help with any of these issues, you should consult a licensed attorney. If you feel

that you cannot afford an attorney, there are organizations that offer free legal assistance on a variety of matters. More information about these organizations is available in other portions of this handbook or by contacting the Arkansas Bar Association or the county bar association in your county.

If you request or are offered free legal advice from any organization not described in this handbook or recommended by the state or county bar association, ask if the person advising you is a licensed attorney or is being supervised by a licensed attorney. If the person from whom you are receiving advice is neither a licensed attorney or supervised by a licensed attorney, you should contact another organization or licensed attorney.

This handbook is a public service project
of the
Arkansas Bar Association
Young Lawyers Section
for
Senior Citizens

SECTION EIGHT HOUSING

The Federal Government funds a rental subsidy program which is known as the Section Eight Housing or Rental Assistance Program. The program is designed to supplement the rent payments of low income families and individuals. Rents paid by tenants under the program amount to no more than 30% of the adjusted family income. The program is tailored to meet the individual needs of families by offering a choice in finding a unit suitable to their needs and desires.

Eligibility

You may qualify for aid if:

- Your family consists of yourself.
- Your family consists of yourself and one or more family members.
- You are handicapped, disabled or are 62 years of age or older, and you live with others who are handicapped, disabled or elderly, or you live with someone who takes care of you.
- You live alone and are 62 years of age or older.
- You live alone and are handicapped or disabled, or you are forced to move by government action or a natural disaster.

Family Income Limits

To receive Section Eight benefits, your income must not exceed certain amounts. The income limit of any participant qualifying for the Section Eight Program will vary depending on several

factors. First, the amount will depend on the number of live-in family members. In other words, the more dependents that a family contains, the higher the income limit. Secondly, the income limits differ for different geographical regions. This criteria is included in order to account for the fact that certain heavily populated areas have a higher cost of living. When an individual applies for housing assistance, the local agency will be able to determine the exact income limits for the area.

How Does It Work?

First, you apply at the local agency which administers the Section Eight Program. Contact your local Area Agency on Aging or governmental unit to find out if Section Eight assistance is available in your area. Your eligibility is determined during an interview, and you are told how to obtain reasonably priced housing suited to your needs.

After being certified to participate in the program, you have sixty days to find suitable housing and an owner who agrees to lease to you. Any housing approved under the program must meet minimum housing standards for decent, safe and sanitary housing as established by the U.S. Department of Housing and Urban Development. Additional local minimum housing codes have to be met also. Your present residence may qualify if it meets the required standards.

Once your lease is signed with the landlord, the local agency reviews it and inspects the dwelling to make sure they both meet the program standards. If all is in order, a contract is executed between a local agency and the property owner authorizing payment of a portion of the total rent on behalf of the tenant.

The family pays a monthly amount for rent,

which is determined by examination of income, family size, etc., and the local agency pays the difference between the family contribution and the total amount of rent due. Both the family and the agency make the monthly payments directly to the owner or landlord. Under the program, the tenant pays no more than 30% of the adjusted income for rent.

Example: Mr. X finds an efficiency apartment that rents for \$110 a month, utilities included. His adjusted income is \$160 a month from Social Security. Under the Section Eight Program, he must pay 30% of his adjusted income toward rent and utilities, which in his case is \$48. The Owner will receive a Housing Assistance Payment of \$62 on the first of every month from the local agency administering the Section Eight Program.

30% of tenant's income (adjusted) Housing Assistance Program	\$48.00
Payment paid to owner as rent balance	62.00
TOTAL MONTHLY RENT	+\$110.00

The Preference Rule

If you are an eligible applicant for the program, you may receive a preference housing if:

- You are involuntarily displaced from your housing unit.
- Your housing unit is substandard.
- You pay more than 50% of family income for rent.

Verification is required in each category to qualify for a preference. Contact your local

housing authority for more information on preferences.

Relocation Assistance to Displaced Tenants

If you are notified that you will be involuntarily displaced from public housing or section eight housing, do not move until you receive information regarding available assistance from your public housing agency. You will receive this information more than 90 days before you need to move unless your current housing is so unsafe that you must be required to move sooner. You will generally be entitled to moving expenses as well as assistance with replacement housing. Your housing agency will help you find replacement housing, or you may find your own housing.

Assistance for Victims of Disasters

If you have been displaced by a disaster such as Hurricane Rita or Katrina, you may qualify for section eight housing whether or not the home from which you were displaced was section eight housing, government housing, or private housing. Some eligibility requirements may be waived. Your share of the rental payment under the usual section eight formula may be waived or reduced for up to 18 months. Contact your local housing authority or the Department of Housing and Urban Development.

Changes That Could Be Made

Congress is considering changes to eligibility requirements and the interview process for Section Eight housing that could be made as soon as 2007. They are also considering changes to the way income is figured in determining the tenant's share of rental payment. Be sure to ask your local housing authority for correct information.

CONSUMER GUIDE

In the past, the slogan used in the business world was, "Let the Buyer Beware." Now we have laws that protect the consumer from unfair business practices, fraud, etc. These laws will not work automatically. Therefore, you, the buyer, need to be aware of the laws which protect you.

The following is a discussion of what you should know in order to protect yourself as a consumer. This is only a brief discussion. If you believe that you have been misled or cheated by a salesman or merchant, you should consider contacting your attorney, your local legal services office, or the Attorney General's Office.

Contracts and Credit Buying

Almost all major and even routine purchases that you make as a consumer involve the making of a contract between you, the buyer, and a merchant, the seller. If you have ever bought a car, hired a workman to do repair work for you or purchased a pair of shoes using a credit card, you have entered into a contractual situation.

Contracts most often come into the picture for consumers when credit is extended for purchase of an item or service and payment is delayed or spread out over a period of time. This arrangement is commonly known as **buying on time** or **buying on credit**. In effect, the store, dealer or company that you are buying from extends you a loan in the amount needed to purchase the item or service that you want to buy. You, in turn, agree to pay back that money, plus a **finance charge** of some kind.

Whenever you **buy on time**, make sure that you know how much your total cost will be.

Know how long you will have to make payments and be sure that you can meet them.

Credit buying terms with which you should be familiar:

Cash Price: This tells you what an item or service would cost if you paid for it completely in cash at the time you bought it.

Finance Charge: (also **carrying charge** or **price-differential**) This is the price that you have to pay for the privilege of paying over time in installments. It is added to the cash price.

Deferred Payment Price: This is the total amount that you will pay for the item or service over the term of the installment period. (Cash price plus finance charge equals deferred payment price.)

Annual Percentage Rate: This is the rate of interest which you must pay for the privilege of buying on credit.

The **Federal Truth-in-Lending Act** requires some persons and most businesses who extend credit to tell consumers what that credit will cost in the long run. When you buy on credit, you must be told the **finance charge** and the **annual percentage rate of interest** on the purchase you wish to make. Lenders who fail to make disclosures may be sued by their customers for twice the amount of the finance charge—from a minimum of \$100 to a maximum of \$1000—plus court costs and attorney's fees. If lenders wilfully or knowingly disobey the law and are convicted, they could be fined up to \$5000 or be imprisoned for one year or both.

Before signing any sales contract, ask yourself these questions:

- Do I know what I am buying?
- Do I understand to my satisfaction what the contract says and what my obligations will be under it?
- Can I get just about the same item elsewhere at a better price?
- If the purchase is for credit, am I satisfied with the price I am paying for the loan?
- What kind of protection do I have in the way of guarantees and warranties? Buying something **as is** means there is no warranty.

Basic Contract Do's and Don'ts

Do insist that the salesman let you take home a copy of the contract before you sign it.

Don't deal with any salesman who refuses to let you take home a completed contract before you sign it.

Do show the contract to a friend or a lawyer if you have any questions about some provision of the contract.

Don't sign anything unless you have time to read it carefully (or have it read to you) and you fully understand what it says.

Do insist that all promises (guarantees and warranties) be put in writing.

Don't ever sign a contract with blank spaces that are to be filled in later by a salesperson.

Do keep copies of all contracts, payment records and complaint letters in a safe place.

Door-to-Door and Telephone Sales:

How many times have you heard the old warning, "Beware of the door-to-door salesman!"? Well, no matter how many times it has been repeated, even the most strong-willed consumer occasionally falls prey to an enterprising door-to-door salesperson. That pair of shoes, bottle of "miracle" cleaner or set of encyclopedias may be too tempting to pass up if we find we really need one or another of them—or are made to feel that we do. If by some chance the "magic spell" woven by the salesperson wears off as soon as he leaves with your money or a sales contract, there are some things that you can do about it.

Arkansas law and the Federal Trade Commission (FTC) provide special rights for consumers who have purchased, at home or by telephone, an item costing \$25 or more. Basically, the laws allow you a three day "cooling off" period from the time you complete a cash or credit sales contract during which you can decide whether to cancel the sale. If you decide to cancel or rescind the contract, you must do so by written notice to the company or business before midnight of the third calendar day, excluding Sundays and holidays, after the date of the transaction. Keep a copy of the notice of cancellation for your records.

Arkansas law and the FTC rule require the salesperson to furnish you a notice of cancellation form, along with all copies of the sales contract or receipt of sale. Using this method to cancel the transaction, you merely sign and date one copy of the notice of cancellation form and send or deliver it to the company or business within the three-calendar-day period from the date of the transaction. You might consider sending this notice or a written letter of cancellation by certified mail with a return receipt request. Under Arkansas law, if the seller fails to give both oral and written notice of the buyer's right to cancellation, the cooling off period does not begin to run until actual notice is given, and the buyer is no longer obliged to return the goods in substantially the same condition.

Once the merchant receives the notice or letter of cancellation, he has ten (10) days to refund any money that he has received, return any documents that you have signed, return any goods or property that you have traded in, and inform you whether he will pick up or let you keep any items that were left with you. Products left with you must be made available to the seller in the same condition as you received them. It is not your responsibility to ship the items back to the seller or to pay postage expenses for such shipping. Within twenty (20) days after the contract has been canceled, the seller must either pick up items left with you at your address or, if you agree to ship the items, the seller must pay the return postage expenses.

NOTE: Keep in mind that these laws do not apply to all purchases. They do not cover purchases under \$25. Also, purchases made at a regular place of business are not covered. Finally, the laws do not apply if you, the buyer, initiated the contact with the seller and specifically requested the seller to visit your home.

Consumer and Home Repairs

Whenever it is necessary for you to hire someone to do work in your home, shop around and use some caution. There is nothing that says you have to hire the first contractor that you find. Get two or three estimates to see who is offering the best bargain. Also, check references before you hire. There are a lot of fly-by-night operators.

After you decide upon a contractor, ask that the agreement be put in writing. If you do not get all the important facts in writing, you are asking for trouble. Items such as price and the guarantees of work done should be on paper so that you can avoid arguments after the work is completed. Likewise, it is often useful for the agreement to clarify who will be responsible for providing any equipment or building materials and when the contractor is expected to complete his work.

If you are going to pay for the work in installments, and the contractor or loan company takes a **mortgage** or **deed of trust** on your home as collateral, remember two things: (1) you may have three business days after you make the agreement in which to cancel it—if the work has not begun during that time; (2) if you get behind on your payments, the contractor or loan company can take your home from you by foreclosure.

Collection Activities and Garnishment

When you are paying for a product or service over time and get behind on your payments, the company or bank may turn your debt over to a collection agency. Remember that a collection agency **cannot** use harassment to get the money. If you are called by an agency late at night, i.e., between 9 p.m. and 8 a.m., or if your friends or employer are being bothered, you may report the company to the State Collections Agency Board, 523 South Louisiana, Suite 460, Little Rock, Arkansas 72201, or telephone (501) 376-9814. Your attorney may also be able to stop the harassment.

When loan companies, banks or collection agencies obtain a judgment against you for a debt that you owe, they may be able to garnish a percentage of your wages or bank accounts or retirement benefits, or take your car, house or valuable furniture. Your Social Security pension, though, is absolutely protected.

What's a Consumer To Do?

Perhaps the best way for a consumer to protect himself or herself today is to use an abundance of caution in any transaction involving money or valuables. You should take the time and effort to find out exactly what you are to receive for your money and exactly how much the item or service will ultimately cost you. A pretty good rule of thumb is that if it seems "too good to be true," it probably is.

One area of particular concern to many senior citizens involves life insurance, health insurance, health insurance supplements and burial insurance. With these, as with all contractual undertakings, you should be certain that you fully understand all terms and conditions of the insurance policies. You may find that a plan which seems perfect for you at first glance may not really serve all your needs or give you your money's worth. Also, keep in mind that it is perfectly appropriate for you to shop around to find the best policy at the best price.

Another problem area involves medical supplies and services, such as hearing aids, braces and the like. As a general rule, you should always consult your physician before purchasing such items or services.

All in all, a consumer's good sense is his or her best weapon. A little healthy consumer skepticism may be helpful, too. For as it has been said, "Better a good deal missed than a bad deal made."

CONSUMER LAW HANDBOOK

Do you feel like you have been given the run-around or been taken advantage of by a merchant? Do you want to be better prepared if you encounter such problems? If so, you need a copy of the Arkansas Consumer Law Handbook.

The information in the Arkansas Consumer Law Handbook is based on the laws of the State of Arkansas and the laws of the United States. The handbook contains valuable information that will help answer questions and identify services that relate to your consumer rights. This book is intended to be a general guide to consumer law and is not a substitute for a consultation with a lawyer. Laws, rules and procedures change often and you should consult an attorney or an agency representative listed in the back of the handbook if you need specific legal information.

If you would like a copy of the Arkansas Consumer Law Handbook (available also in Spanish), please write the Arkansas Bar Association, P.O. Box 5130, North Little Rock, AR 72119, or you may call the Arkansas Bar Association at 501-375-4606 or 1-800-609-5668 to request your copy today. It can also be downloaded on-line at www.arkbar.com.

Consumer Complaint Agencies

Arkansas Agencies:

Arkansas Attorney General's Office
Consumer Protection Division
200 Catlett Prien Tower Building
323 Center Street
Little Rock, Arkansas 72201
(501) 682-2341 (in Pulaski County)
1-800-482-8982 (statewide)

Arkansas Public Service Commission
1000 Center Street
Little Rock, Arkansas 72201
(501) 682-1718 (in Pulaski County)
1-800-482-1164 (statewide)

Consumer Action Panels:

Major Appliances
Consumer Action Program
20 North Wacker Drive, Suite 1231
Chicago, Illinois 60606
1-800-621-0477

Better Business Bureau of Arkansas
1415 South University
Little Rock, Arkansas 72204
(501) 664-7274 (in Pulaski County)
(501) 664-0024 (fax)

Arkansas Insurance Department
1200 West Third Street
Little Rock, Arkansas 72201
(501) 371-2600

Federal Agencies

For questions about any service or agency in the Federal Government, call the Federal Information Center at 1-800-688-9889. FICs are designed to help consumers find needed information to locate the right agency to help with problems.

NEED LEGAL HELP - BUT CAN'T AFFORD IT?

If you need legal help in a noncriminal matter and do not have the financial resources to retain a private attorney, and you believe you might qualify for free legal representation, you may want to contact the Legal Services Program in your county. The Legal Services Programs provide free legal assistance to low-income persons in most types of civil cases.

www.arlegalservices.org

REFERENCES & INFORMATION

If you desire the services of an attorney but do not know how to locate one to represent you, legal representation can be obtained by contacting the following organization:

National Organization of Social Security Claimants' Representatives

1-800-431-2804

Serving claimants statewide

You will be referred to a private attorney who is familiar with representing claimants before the Social Security Administration. Some private attorneys may be willing to take your case under a fee arrangement whereby no fee will be charged unless your claim is allowed.

Community Organizations Providing Non-Attorney Representation:

Disabled American Veterans

Veterans Administration Regional Office
Room 121 Bldg. 65, Fort Roots
P.O. Box 1280
North Little Rock, Arkansas 72115
501-370-3838
Mon. thru Fri. 8:00 a.m. - 4:00 p.m.

Represents veterans, veterans' widows or veterans' dependents residing in Arkansas. However, hearings must be held in Little Rock as representatives cannot travel.

Arkansas Department of Veterans Affairs

Veterans Administration Regional Office
Fort Roots
Building 65 Room 119
P.O. Box 1280
North Little Rock, Arkansas 72115
501-370-3820
Fax 501-370-3829

The **Arkansas Department of Human Services Division on Aging and Adult Services** has a resource center you can call at 682-2441 for information on subjects pertaining to aging.

Contact the agency on aging in your area to obtain up-to-date information on local services available to senior citizens.

Area Agency on Aging of Northwest Arkansas

910B Northdale Shopping Center
P.O. Box 1795
Harrison, Arkansas 72602-1795
870-741-1144 or 800-432-9721
Mon. thru Fri. 8:00 a.m. - 4:30 p.m.

Serving claimants residing in Baxter, Benton, Boone, Carroll, Madison, Marion, Newton, Searcy and Washington counties.

White River Area Agency on Aging

P.O. Box 2637
3998 Harrison Street
Batesville, Arkansas 72503
870-793-4431 or 800-382-3205
Fax 870-793-3971
Mon. thru Fri. 8:00 a.m. - 5:00 p.m.

Serving claimants residing in the following counties: Cleburne, Fulton, Independence, IZard, Jackson, Sharp, Stone, Van Buren, White and Woodruff.

East Arkansas Area Agency on Aging

P.O. Box 5035
2005 E. Highland Drive Suite D
Jonesboro, Arkansas 72403
870-972-5980 or 800-467-3278
Fax 870-930-2209
Mon. thru Fri. 8:00 a.m. - 5:00 p.m.

Serving claimants residing in the following counties: Clay, Craighead, Crittenden, Cross, Greene, Lawrence, Lee, Mississippi, Phillips, Poinsett, Randolph and St. Francis.

Southeast Arkansas Area Agency on Aging

709 East 8th
P.O. Box 8569
Pine Bluff, Arkansas 71611
870-534-3268 or 800-264-3260
Fax 870-534-2152
Office Hours: 8:00 a.m. - 5:00 p.m.

Serving claimants residing in Arkansas, Ashley, Bradley, Chicot, Cleveland, Desha, Drew, Grant, Jefferson and Lincoln counties.

Central Arkansas Area Agency on Aging

P.O. Box 5988
706 West Fourth Street
North Little Rock, Arkansas 72119
501-372-5300 or 800-482-6359
Fax 501-688-7443
Mon. thru Fri. 8:00 a.m. - 4:30 p.m.

Serving claimants residing in Faulkner, Lonoke, Monroe, Prairie, Pulaski and Saline counties.

West Central Arkansas Area Agency on Aging

905 West Grand
Hot Springs, Arkansas 71913
501-321-2811 or 800-467-2170
Fax 501-321-2650
Mon. thru Fri. 8:00 a.m.-4:30 p.m.

Serving claimants residing in Clark, Conway, Garland, Hot Spring, Johnson, Montgomery, Perry, Pike, Pope and Yell counties.

Area Agency on Aging of Southwest Arkansas

P.O. Box 1863
600 Columbia 11 East
Magnolia, Arkansas 71754-1863
870-234-7410 or 800-272-2127
Fax 870-234-6804
Mon. thru Fri. 8:00 a.m. - 5:00 p.m.

Serving claimants residing in Calhoun, Columbia, Dallas, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, Ouachita, Sevier and Union counties.

Western Arkansas Area Agency on Aging

P.O. Box 1724
524 Garrison
Fort Smith, Arkansas 72901
501-783-4500
Mon. thru Fri. 8:00 a.m.-5:10 p.m.

Serving claimants residing in Crawford, Franklin, Logan, Polk, Scott, and Sebastian counties.

Arkansas Volunteer Lawyers for the Elderly

Catherine D. Edwards, Director
2020 West Third Street, Suite 620
Little Rock, Arkansas 72205
501-376-9263 or 1-800-999-2853

Serving all counties except Clark, Faulkner, Garland, Hot Spring, Jefferson, Lonoke, Pulaski and Saline.

United States Senators and Congressmen

Personnel in the offices of the following senators and congressmen will provide you with information or assistance with problems relating to federal programs for the elderly.

Senator Blanche Lincoln

Room 3108 Federal Office Building
700 West Capitol
Little Rock, Arkansas 72201
501-324-6286 or 1-800-392-9364
Mon. thru Fri. 8:00 a.m. - 5:00 p.m.

Or:

Dirksen Senate Office Building-229
Washington, D.C. 20510-2502
(202) 332-0600
Mon. thru Fri. 9:00 a.m. - 6:00 p.m.

Senator Mark Pryor

The River Market
500 Clinton Avenue, Suite 401
Little Rock, Arkansas 72201
501-324-6336
Monday thru Friday 8:00 a.m. - 5:00 p.m.

Or:

257 Dirksen Senate Office Building
Washington, D.C. 20510
(202) 224-2353
Monday thru Friday 9:00 a.m. - 6:00 p.m.

Congressman Marion Berry

1st Congressional District
Room 211 Federal Building
615 South Main
Jonesboro, Arkansas 72401
870-972-4600 or 1-800-866-2701
Fax 870-972-4605
Mon. thru Fri. 8:00 a.m. - 5:00 p.m.

Or:

1407 Longworth Building
Washington, D.C. 20515
(202) 225-4076
Fax 202-225-5602
Mon. thru Fri. 9:00 a.m. - 6:00 p.m.

Congressman Vic Snyder

2nd Congressional District
Room 1527 Federal Office Building
700 West Capitol
Little Rock, Arkansas 72201
501-324-5941
Fax 501-324-6029
Monday thru Friday 8:00 a.m. - 5:00 p.m.

Or:

1319 Longworth House Office Building
Washington, D.C. 20515
(202) 225-2506
Fax 202-225-5903
Monday thru Friday 9:00 a.m. - 6:00 p.m.

Congressman John Boozman

3rd Congressional District
30 South 6th Street
Fort Smith, Arkansas 72901
501-782-7787
Fax 501-783-7662
Mon. thru Fri. 8:00 a.m. - 5:00 p.m.

Or:

1421 Longworth House Office Building
Washington, D.C. 20515
(202) 225-4301
Fax 202-225-5713
Monday thru Friday 9:00 a.m. - 6:00 p.m.

Congressman Mike Ross

4th Congressional District
1617 Olive Street
Pine Bluff, Arkansas 71601
870-536-3376
Fax 870-536-4058
Monday thru Friday 8:00 a.m. - 5:00 p.m.

Or:

514 Cannon House Office Building
Washington, D.C. 20515
(202) 225-3772 or 1-800-223-2220
Fax 202 225-1314
Monday thru Friday 9:00 a.m. - 6:00 p.m.

**NEED LEGAL HELP –
BUT CAN'T AFFORD IT?**

Two nonprofit Legal Services Programs work together to provide free civil legal assistance to low-income residents throughout Arkansas. Eligibility is based on federal poverty guidelines. Because of demand and limited resources, the programs must set priorities for case acceptance. Some typical situations we help with are: emergency family matters including divorces involving spousal abuse; housing; adoptions and guardianships; debt problems; garnishments; bankruptcies and repossessions; public benefits—SSI, Social Security Disability, food stamps, and Medicaid; and legal problems of the elderly. More information can be obtained at:

The Statewide Legal Aid Services HELP LINE

Low-income Arkansans can contact legal aid services from anywhere in the state by calling the toll-free number listed below between the hours of—

**9:00 – 11:00 AM and 1:00 – 3:00 PM
Monday through Friday**

**1-800-9-LawAid [1-800-952-9243]
Or
In Pulaski County – 376-3423**

The Statewide Legal Aid Services Website

Extensive information is also available on the legal aid services website:

www.Arlegalservices.org

Information is available on the site for potential clients, attorneys and interested citizens including basic forms, fact sheets and for participating attorneys access to resources such as the Poverty Law Manual.

Arkansas Pro Bono Partnership

The Arkansas Pro Bono Partnership is a collaborative effort to improve and expand the reach of pro bono activities in the state. Sanctioned by the Arkansas Bar Association, the Partnership is charged with coordinating the recruitment, responsibilities, and recognition of volunteer attorneys. Access to the Partnership can be gained through the legal services website identified above.

Legal Aid Services Main Offices

Center for Arkansas Legal Services
303 West Capitol Avenue/Suite 200
Little Rock, AR 72201
501.375-3423
Jean Turner Carter
Executive Director

Legal Aid of Arkansas
714 South Main Street
Jonesboro, AR 72401
870.972.9224
Lee Richardson
Executive Director

