

NEW MEXICO **Senior Legal** **Handbook**



*A joint project of the
New Mexico Aging & Long-Term
Services Department and the
New Mexico State Bar Foundation
Legal Resources for the
Elderly Program*

Legal Resources for the Elderly Program

New Mexico's
FREE Legal Helpline
for Seniors

Albuquerque 505-797-6005 • Statewide 1-800-876-6657
Monday–Friday • 8 a.m.–5 p.m.



New Mexico State Bar Foundation
Legal Resources for the
Elderly Program

www.sbnm.org/LREP

Table of Contents

CHAPTER ONE: Retirement and Disability Income	1
Social Security Retirement.....	1
Social Security Retirement Benefits for Dependents.....	2
Social Security Disability (SSDI) and Supplemental Security Income (SSI)	4
Overpayment of SSDI and SSI Benefits	7
Veterans Benefits.....	8
Railroad Workers Retirement Benefits	10
Pensions.....	10
Resources	12
CHAPTER TWO: Benefits Programs for Low-Income People	14
Resources	16
CHAPTER THREE: Government Health Benefits	18
The Affordable Care Act.....	18
Medicare.....	18
Medicare Savings Programs.....	25
Other Medicare Services	26
Medicaid.....	31
Estate Recovery	34
Other Medicaid Long-Term Care Options	34
Non-Medicaid Long-Term Care Options	35
Long-Term Care Insurance	36
Community Based Assistance for Aging and Long-Term Services	37
Dental, Vision and Hearing	38
Resources	38
CHAPTER FOUR: Consumer Protection Issues	41
General Information.....	41
Credit Purchases.....	41
Contracts	42
Warranties	43
High-Pressure Sales and Consumer Fraud.....	44
Legal Protection from High-Pressure Sales	45
Shopping by Phone, Mail, and the Internet.....	46
Payday Loans.....	47
Resources	47

- CHAPTER FIVE: Debt Problems** 49
 - Types of Debt..... 49
 - Handling Calls from Creditors 49
 - What To Do if You Are Sued..... 50
 - What To Do if the Creditor Gets a Judgment Against You..... 51
 - Resources 53

- CHAPTER SIX: Bankruptcy** 55
 - Exemptions - What You Can Keep in a Bankruptcy..... 55
 - The Automatic Stay and Discharge of Debt..... 56
 - Chapters 7 and 13..... 56
 - Non-Dischargeable Debts 57
 - Resources 57

- CHAPTER SEVEN: Rental Housing** 58
 - Landlord/Tenant Rights and Responsibilities 58
 - Mobile Home Parks Living..... 63
 - Subsidized Housing 64
 - Going to Court..... 66
 - Fair Housing Laws 66
 - Renter’s Insurance 68
 - Resources 68

- Chapter EIGHT: Real Property Ownership** 70
 - Transfers of Real Property..... 70
 - Types of Property Ownership 71
 - Borrowing Money on the Equity in Your Home 72
 - Reverse Mortgages 72
 - Homeowner Insurance 73
 - Resources 74

- CHAPTER NINE: Estate Planning**..... 75
 - Intestate Succession..... 75
 - Last Will and Testament..... 75
 - Trusts 77
 - Non-Probate Transfers 77
 - Resources 80

- CHAPTER TEN: Probate** 81
 - Affidavit of Successor in Interest 81
 - Affidavit of Surviving Spouse..... 81
 - Filing Probate 82
 - Duties of the Personal Representative 83
 - Resources 83

CHAPTER ELEVEN: Issues of Diminished Capacity and End of Life Decisions ...	84
Advance Healthcare Directives.....	84
Financial Power of Attorney	87
Representative Payee.....	88
Guardianship/Conservatorship	89
Abuse, Neglect and Exploitation.....	91
Resources	92
CHAPTER TWELVE: Grandparent Caregivers	95
Kinship Guardianship	95
Alternatives to Guardianship	95
Financial Assistance for Grandparent Caregivers	96
Grandparent Rights.....	97
Resources	98
CHAPTER THIRTEEN: Divorce	99
Community Property and Separate Property	100
Domestic Violence	100
Resources	101
CHAPTER FOURTEEN: Employment Discrimination	102
New Mexico Law.....	103
Federal Law	104
Time is of the Essence	106
Resources	106
CHAPTER FIFTEEN: Miscellaneous Issues	108
Tax Issues.....	108
Automobile Insurance	108
Life Insurance.....	109
Resources	110
Resources	111
Index	119

Preface

Today's world presents senior citizens with many difficult and complex issues. In order to successfully navigate these issues, seniors must be aware of their legal rights and also aware of resources that will help them enforce those rights. This handbook was developed to empower seniors by helping them to obtain this information, so they may enjoy the highest quality of life possible.

This handbook is based on New Mexico and Federal law and is intended for informational purposes only. The handbook is not intended to provide advice, legal or otherwise. Because every individual's situation or problem is unique, there may be exceptions to the material presented in this book that apply to your particular situation. You should always seek the advice of a qualified attorney for assistance with your individual problems and questions.

From time to time, supplements to this handbook will be made available reflecting changes and new developments in laws, issues and resources that affect seniors. These supplements will be available through the **Legal Resources for the Elderly Program (LREP)**. Please contact LREP at 505-797-6005 or 1-800-876-6657.

Retirement and Disability Income

This chapter explains the most significant financial programs available to older persons through federal and state governments, as well as the private sector. The chapter also provides guidance on how to apply for the programs.

Social Security Retirement

Social Security benefits are probably the most widely recognized of all the government benefit programs. Social Security benefits are based on the same principle as insurance. You pay into the program in the form of a payroll tax while you are working. When you retire, you receive a monthly benefit based on your earnings. You continue to receive this monthly benefit for the rest of your life. Your spouse and dependent children may also be eligible to receive a monthly benefit based on your earnings. (There is also a disability benefit through Social Security, which will be discussed later in this chapter.)

If you work for an employer, your employer is responsible for reporting your earnings to the SSA. If you are self-employed, it is your responsibility to report your earnings to the SSA. SSA recommends that you request a copy of your Social Security statement at least once a year. This statement can be obtained on-line at www.socialsecurity.gov. Your statement provides you with a convenient way to determine whether your earnings have been accurately posted to your Social Security record. It is your responsibility, as

well as your employer's, to confirm that all of your earnings are accurately reported to ensure that you receive the maximum benefit to which you are entitled.

Eligibility for Benefits

To be eligible to receive Social Security Retirement (SSR) benefits, you must be at least 62 years old, and you must have worked and paid taxes into the Social Security system for a required minimum time. Social Security measures your work time as “quarters of coverage,” sometimes also referred to as “credits.” Credit for a quarter of coverage is granted for a quarter of a year in which a minimum amount of wages were earned and Social Security taxes were paid. This generally means that you must have worked, and paid SS taxes, for approximately 10 years over the course of your working life to be eligible for SSR benefits.

Benefit Amount and Full Retirement Age

The amount of your Social Security benefit depends on several factors, most importantly, the amount of your lifetime earnings and the age at which you choose to begin receiving benefits. The more you earn, and the longer you wait to collect benefits, the higher your benefit will be.

If it is practical for you to do so, it may be best to wait until your “full retirement age” to begin receiving benefits. Full retirement age for those born in 1937 and earlier was 65 years of age. The full retirement age gradually rose from 65 to 67 for people born between 1938 and 1960. Full retirement age is 67 years old for people

born after 1960.

It is possible to begin receiving Social Security retirement benefits as early as age 62. However, your monthly benefit will be permanently reduced if you choose to begin collecting benefits before your full retirement age. Additionally, as explained in the next paragraph, if you continue to work and earn income while collecting early benefits, your benefits may be further reduced until you reach your full retirement age.

Each year the SSA fixes a limit on the amount of income you can earn (prior to reaching your full retirement age) without incurring a reduction in benefits. If your earned income exceeds this limit, your benefits will be reduced by \$1 for every \$2 you earn over the limit. For example, in 2019, the earned income limit was \$17,640 for the year. This meant that, in 2019, your SSR benefit would be reduced by \$1 for every \$2 you earned above \$17,640. **Beginning in the month that you reach full retirement age, you can earn as much money as you like without any reduction in your benefits.**

Some people choose to delay receiving their Social Security benefit beyond their full retirement age. One reason to do this, if possible, is that your retirement benefit will be increased by a certain percentage for each year that you delay up to age 70. Additionally, if you continue to work during this time, your lifetime earnings will be increased which will ultimately increase your retirement benefit.

Important Note: Regardless of what age you decide to begin collecting SSR benefits, you must enroll in Medicare when you turn 65 unless an exception applies to your situation

(contact the SSA for more information regarding possible exceptions). SSA advises filing for Medicare benefits approximately 3 months before you turn 65. If you do not enroll in Medicare when you first become eligible, you will pay a higher Medicare premium for the rest of your life.

Taxes on SSR Benefits

People who have a substantial amount of income in addition to their SSR benefit may have to pay income taxes on their benefits. At the end of the year, you will receive a statement from SSA showing the amount of SSR benefits you received for that year. You can use the information on this statement when you file your federal income tax return to determine if you owe taxes on your benefits.

Social Security Retirement Benefits for Dependents

In addition to providing retirement benefits for the wage earner, benefits under the Social Security program may be available to the wage earner's family members, specifically a spouse, widow/widower, children and/or divorced spouse (and, in limited circumstances, grandchildren). The following is a general description of the most common types of dependent benefits.

Spousal benefits. As a spouse, you can receive up to one-half of the retired worker's full retirement benefit. If you choose to begin collecting the spousal benefit prior to reaching full retirement age, the benefit will be permanently reduced by a percentage based on the length of time until your full retirement age is reached.

If you were also a wage earner and are entitled to retirement benefits based on your own work record, you will be paid your own benefit first. If the amount of your benefit is less than your spousal benefit, you will receive a combination of the two benefits totaling the amount of the higher spousal benefit. For example, if you have a retirement benefit of \$400 per month based on your own work record, and the spousal benefit you would receive is \$700, at your full retirement age, you would receive your full benefit of \$400, plus \$300 from your spousal benefit for a total of \$700.

Widow/Widower benefits. These benefits are also known as survivor's benefits. Widows or widowers can begin receiving full SS benefits based on the work history of their deceased spouse, at the widow(er)s full retirement age, or reduced benefits as early as age 60. If the widow(er) is disabled, he/she can begin receiving benefits as early as age 50. A widow(er) can get benefits at any age if he or she is taking care of the deceased's child who is under the age of 16 or is disabled.

In general, to qualify for survivor's benefits, the deceased spouse and surviving spouse must have been married at the time of death and for at least 9 months prior to the death.

Children's benefits. If a parent is disabled, retired, or deceased, unmarried children under the age of 18 (or up to age 19 if the child is in school full time) may receive Social Security benefits based on the parent's work record. Children who are permanently disabled before the age of 22 can receive benefits for the duration of their disability. Under certain circumstances, grandchildren may also be eligible for benefits.

Divorced spouses. Divorced spouses may

be entitled to benefits on their living or deceased ex-spouse's work record. In order to qualify for these benefits, the benefit you are entitled to receive based on your own work must be less than the benefit you would receive on your ex-spouse's work record. Additionally, your marriage must have lasted at least 10 years, you must presently be unmarried, and you must be at least 62 years of age (if your ex-spouse is deceased, you may begin collecting benefits at age 60 or age 50 if you are disabled).

If your ex-spouse is still living, he or she must also be eligible to receive benefits. For example, you are eligible for benefits on your ex-spouse's work record if he or she has turned 62 and is eligible for benefits. However, if he or she has not yet applied for benefits, you must have been divorced for at least two years before you can receive benefits.

You may collect benefits on your ex-spouse's work record even if your ex-spouse has remarried. However, as noted above, you may not collect on our ex-spouse's work record if you have remarried before age 60, unless your later marriage ends. If you remarry after age 60 (age 50 if disabled), you may still collect benefits on your ex-spouse's record.

Maximum family benefits. There is a limit to the total amount of money that can be paid to a family based on an individual's work record. The limit varies. If the sum of the benefits (either retirement or disability) payable on the worker's record exceeds this limit, the benefits to family members will be reduced proportionately. The worker's benefit will not be affected.

Special, one-time death benefit. A special one-time death benefit may be available to your widow(er) or minor children after your death.

Note: Many of the benefits available to dependents under the SSR program are also available to dependents under the SSDI program discussed in the next section. However, no benefits to dependents are available under the SSI program.

Social Security Disability (SSDI) and Supplemental Security Income (SSI)

In addition to Social Security retirement (SSR) benefits, the Social Security Administration (SSA) also administers disability benefits. The SSA pays out disability benefits under two programs: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). When you apply under either one of these programs, you must provide the Social Security Administration with detailed information about your medical, work and education history to assist in determining if you qualify for either program.

SSDI General Eligibility Requirements

As with SSR, SSDI is based on your work record. In order to qualify for SSDI, you must have worked and paid Social Security taxes for the required number of quarters. You generally need ten years (40 quarters) of employment to qualify for SSDI benefits. In addition, you must have worked five years out of the ten-year period ending in the year your disability began and be found to be disabled under Social Security guidelines. There are no resource/asset (house, savings, etc.) limits associated with SSDI; however, you must meet certain earned income restrictions, as discussed in the following paragraph.

Each year the Social Security Administration determines a threshold amount of earnings that an SSDI recipient can make and still be considered disabled. If your earnings average more than this amount, you cannot be considered disabled for the purposes of obtaining SSDI. In 2019, this threshold amount was \$1,220 per month.

SSI General Eligibility Requirements

If you do not have enough work quarters to qualify for SSDI, you may still qualify for disability assistance under the SSI program. SSI is a need-based program for the very low-income elderly, blind and disabled. It is administered by the state on behalf of the Social Security Administration. Unlike SSDI, there is no work credit requirement; however, an applicant must meet certain income and resource requirements, in addition to being determined to be disabled.

In order to be eligible for SSI, you must have a very low income. Income is money from employment, other benefit programs (such as Social Security retirement or Veterans Affairs), and private pensions. Also taken into consideration are “non-cash” items, such as living in someone else’s home at no cost or having someone else provide your food at no cost to you. In 2019, a single person had to have an income below \$771 per month to qualify for SSI. A couple’s income had to be below \$1,157 per month.

Additionally, to qualify for SSI, you must have very limited assets/resources. Assets are things you own, such as real estate, bank accounts and cash. Only certain assets are considered or counted when applying for SSI. Assets that are not counted are your

home, many of your personal belongings (such as your clothing and furniture) and, in most cases, one vehicle. In 2019, the amount of countable assets a single person could have and still qualify for SSI was \$2,000. The amount for a couple was \$3,000.

Note: The income and asset eligibility figures provided in this handbook are examples only. As with most public assistance programs, the income and asset eligibility requirements are subject to change at least once yearly to reflect inflation and changes in federal and state budgetary constraints.

SSI and SSDI General Information

If your claim for SSDI benefits is granted, you will be eligible to receive health insurance benefits through Medicare 24 months after the date you are approved for SSDI benefits. If your claim for SSI benefits is granted, you may also be covered under Medicaid.

When you turn 65 years of age, your SSDI benefits automatically switch to Social Security retirement benefits; however, the amount you receive each month will remain the same. If you receive SSI, your benefit will be adjusted when you begin receiving SSR benefits. If your SSR benefit amount (or any retirement benefit or pension, for that matter) exceeds the income eligibility requirement for SSI, you will no longer receive a SSI payment or full coverage under the Medicaid program.

SSI and SSDI Disability Determination

In order to be considered disabled for the purposes of SSDI, you must be unable to do the work you did previous to your

disability and, also due to your disability, unable to adjust to any other kind of work. Additionally, your disability must be expected to last at least one year or to result in death. The SSA considers the following factors when determining if a disability exists.

Severity of the disability. The condition upon which you base your disability claim must be severe enough to interfere with basic, work-related activities for at least one year, or to result in death.

The List of Impairments. The Social Security Administration has compiled a detailed list of medical conditions for each of the major body systems. The conditions included on these lists are so severe that, if you have one, you are automatically considered disabled. Cystic fibrosis, lupus and multiple sclerosis are examples of these qualifying conditions. If you have a condition that is not on the list, the SSA must determine that your condition is equal in severity to a medical condition already on the list. If your condition is on the list, or is found to be as severe as one on the list, you will be determined to be disabled.

Ability to work in prior employment. If your condition is not one of those on the List of Impairments, and is not found to be as equally severe as one on the list, then a determination is made as to whether or not your condition interferes with your ability to do the work you did previously. If your condition does not interfere with the work you did previously, your disability claim will be denied.

Ability to work in new type of employment. If you are unable to do the work you did previously, a determination is made as to

whether you are able to adjust to other work. In making this determination, your age, education, past work experience, transferable job skills and medical condition are all taken into consideration. If it is determined that you are unable to adjust to other work, your claim for disability will be approved. Otherwise, your claim will be denied.

Note: There are special rules for those who are blind, recognizing the severe impact blindness has on a person's ability to work. For more information, contact the SSA.

Appealing a Denial of Disability Benefits

If your claim for SSDI or SSI benefits is denied, you have the right to appeal the decision. There are four levels of possible appeal: reconsideration; a hearing before an Administrative Law Judge; review by the Appeals Council; and federal court review. The levels of appeal are progressive, meaning if you are not satisfied with the decision at one level, you may appeal to the next level. You may not skip any levels; in other words, you may not go from an initial denial of your application for benefits to review in federal court.

If your SSDI or SSI claim is denied and you decide to appeal, it is important to read and understand the directions for appealing the decision. These directions will be included with the decision. **At each stage or level of appeal, there are time limitations for requesting review that must be adhered to or you may lose your right to appeal. Generally, you have 60 days after you receive a notice of a decision to ask for any type of appeal.** The following is a general overview of the appeals process for SSDI and SSI disability claims.

Reconsideration. Reconsideration is a complete review of your claim by someone who had no part in making the first decision. The person conducting the review will look at all the evidence used in making the original decision, plus any new evidence you submit. After the review, a notice will be sent to you explaining the decision.

Hearing before an Administrative Law Judge (ALJ). If, after reconsideration, you are still not satisfied with the decision, you may request a hearing before an ALJ. Prior to the hearing, you may submit new evidence to be considered at the hearing. You may bring witnesses to the hearing to testify on your behalf. The ALJ may ask witnesses (a doctor, for example) to come to the hearing and testify. You may ask the ALJ to order witnesses to come to the hearing. During the hearing, the ALJ may question you and your witnesses. You may also question the witnesses.

You may appear before the ALJ in person at the hearing and present your case, or you may ask the ALJ to make a decision based on the evidence in your file. If you are able, you should attend the hearing. This will give you the opportunity to provide the ALJ with information that may not be in your file.

If you request a hearing but find that you are unable to attend, it is very important that you notify the ALJ as soon as possible and explain why you will be unable to attend. The ALJ may be able to accommodate you by changing the time or place of the hearing. **If you fail to attend your scheduled hearing, you could lose your appeal rights.**

Appeals Council review. If you disagree with the decision of the ALJ, you may request review of your claim by the Appeals Council. You may submit new evidence to be

considered by the Council. Unlike the two preceding levels of appeal (reconsideration and hearing before an ALJ), review at this level is not automatically granted. The Appeals Council will consider all requests for review but may decline to review your claim if it believes that the decision of the ALJ was correct. If the Appeals Council decides not to hear your claim, it will send you a written notice explaining the decision.

If the Appeals Council accepts your case for review, it will either decide the case or send it back to the ALJ for further action. You will be notified of the Appeals Council's decision by mail.

Federal court review. If after going through reconsideration, a hearing before an ALJ and Appeals Council review, you are still dissatisfied with the decision on your claim, the final level of appeal available to you is to file a lawsuit in the U.S. District Court in your area. The court will review the evidence and the earlier decisions but will not hold a hearing. It is advisable to have an attorney represent you at this phase.

Note: It is very important that you carefully read and follow the instructions for appealing a decision on your disability claim for each and every level of appeal. The instructions for appealing the decision are always included in the letter or notice of decision. The instructions will explain how to appeal, where to appeal and, most importantly, how long you have to appeal. **If you fail to appeal within the time allotted to do so, you may lose your right to appeal altogether.**

Right to have representation. At all levels or stages of review, you are permitted to be assisted or represented by someone

of your own choosing. Unlike most legal proceedings, the person representing you does not have to be a licensed attorney. Your representative should, however, be familiar with you and your disabling condition(s), as well as have an understanding of how the Social Security program you are applying for works. The person you choose to assist or represent you may not charge or collect a fee from you without first obtaining written approval from Social Security.

Overpayment of SSDI and SSI Benefits

An overpayment of Social Security Retirement (SSR), Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits occurs when you receive more benefits than you were entitled to receive. An overpayment can occur for any number of reasons and may or may not be your fault. Many overpayments occur because the benefit recipient failed to notify the SSA of a change in his or her status. In the case of SSDI, the change might be an improvement in your disabling condition and you are now able to work, or you earn more than you expected from wages while collecting early SSR benefits. If you receive SSI, the change in status might be a change in income or assets, the death of a spouse or a change in living arrangements.

To lessen the chance of an overpayment, it is very important to keep in touch with the SSA. Always advise them of any changes in your circumstances and keep a record of your communications. If you receive any mail from the SSA, open it immediately and read it carefully. If you do not understand what the letter or notice says, seek assistance.

Call LREP at (800) 876-6657 for assistance if you receive a letter from the SSA that you do not understand.

Never simply ignore the SSA. The SSA will not go away.

If you are involved in an overpayment situation, the SSA is required to notify you of the overpayment and include the following information:

- The reason for the overpayment.
- The amount of the overpayment.
- The time period covered by the overpayment.
- Your right to request a reconsideration of the overpayment determination.
- The time limit in which you must file an appeal.
- The amount of the proposed monthly payment.
- The availability of a lower monthly repayment amount.
- The availability of forms to appeal the overpayment determination and the availability of assistance from the SSA in filling out the forms.

There are two ways to appeal an overpayment determination. These are a request for waiver or a request for reconsideration.

Request for Waiver. If you believe you may have been overpaid, but the overpayment was not your fault and you cannot afford to repay the overpayment, you can request a waiver of payment (SSA Form SSA-632). In requesting a waiver, you are not

challenging fact that you have been overpaid or the amount of the overpayment, you are simply asking to have repayment of the overpayment waived. If the overpayment was your fault, because, for example, you failed to inform SSA of a change of status, you are not eligible for a waiver.

Request for Reconsideration. If you do not believe that you have been overpaid by SSA or you dispute the amount of the overpayment, you should request a reconsideration of the determination (SSA Form SSA-561). In your request for reconsideration, you should explain why you think you have not been overpaid or why the amount is incorrect.

You should also file a request for reconsideration if you believe that you have been overpaid but cannot afford to repay the overpayment at the rate the SSA requests.

Both types of appeal are time sensitive. Read the notice you receive regarding the overpayment determination very carefully. The notice will explain how to appeal and the time frame for doing so.

If you are unsuccessful in appealing the determination at this level, you may seek further review by an ALJ, the Appeals Council and, finally, in U.S. District Court.

Veteran's Benefits

The United States Department of Veterans Affairs (VA) offers a wide range of benefits to persons (and their dependents and survivors) who have served in the U.S. armed forces, the national reserves or the National Guard. To be eligible, you must have received a discharge other than dishonorable. Some benefits are available to all veterans. Other benefits are

available only to those veterans who have served during specific periods.

To apply for VA benefits or request information, contact the VA regional office nearest you or contact the New Mexico Department of Veteran's Services, a state agency with field offices whose specific purpose is to assist veterans in obtaining benefits and services. Other resources available to veterans are the Veteran's Service Organizations such as the American Legion, Disabled American Veterans, Veterans of Foreign Wars, American Veterans, etc. See the "Resources" section of this Handbook for more information.

The following is a brief summary of the major federal benefits. You should contact the New Mexico Department of Veteran's Services to determine if you are eligible for any state assistance as a veteran.

Disability Compensation. If you have a disability as a result of an injury or disease that began or was aggravated during your military service, you may be entitled to compensation benefits. The type and severity of your disability determines the benefit amount you will receive.

Pensions. Pensions are also available to veterans who have 90 days or more active military service (before 1980 and at least one day of which was during a period of war) **and whose incomes are within certain limits and who are totally and permanently disabled.** The disability does not have to be service-connected. The amount of pension depends on your income, disability and number of dependents. Veterans of a period of war who are 65 or older and meet the service and income requirements listed above are eligible to receive a pension regardless of current physical condition.

Dependents. If your disability rating is at least 30% (see www.va.gov to explain the ratings system), you may receive an additional monthly sum if you have a spouse, children or parents who are dependent.

Other VA Benefits. A number of other benefits are available to veterans. For example, some veterans are eligible for nursing home care. To find out what benefits may be available to you, contact the Veterans Affairs regional office nearest you or visit the VA on the Internet.

Appeals. If you have been denied VA benefits, a notice of your right to appeal will be included with the denial notice. This notice will advise you how to proceed with your appeal, including any deadlines that may apply. Your first step in the process is to file a Notice of Disagreement with the VA regional office, medical center, or National Cemetery Administration Office that made the decision. Your local office will then send you a Statement of the Case (SOC), explaining how they came to their decision regarding your case. You must also file a Substantive Appeal within 60 days of mailing the SOC or within one year of the decision, whichever is later. This allows you to appeal to the Board of Veteran's Appeals (BVA) and request a hearing.

The BVA may allow, deny or remand your case. If the BVA remands your case, means that the BVA is requesting more information and has not made a final decision regarding your case. If your claim is ultimately denied by the BVA, you will have several options, including appealing your case to the U.S. Court of Appeals for Veterans Claims. **Each step of the above appeal process has an important filing deadline which you must follow, or your rights may be lost.**

Railroad Workers Retirement Benefits

The railroad retirement system covers nearly all types of railroad employment in the United States. If certain vesting and work record requirements are met, the spouses and dependent survivors of these workers also may receive benefits. The Railroad Retirement Board (RRB) is the agency responsible for determination and payment of benefits, which includes pension, disability, spousal and survivors' benefits.

Certain retired railroad workers are also eligible for Social Security benefits (because of other non-railroad work), as are their spouses, former spouses and survivors. The RRB is also responsible for payment of the Social Security benefits for these retirees, combining the benefit payment with the railroad benefits and issuing one check. However, the Social Security Administration still handles all claims regarding Social Security benefits, as well as making all determinations including eligibility and benefit amount.

An application for benefits may be made to any RRB office. The process and documentation for applying and proving eligibility is similar to Social Security. You will receive a written notice of the decision.

To appeal the denial of a claim you must file a written request for reconsideration with the RRB. Most reconsiderations are written reviews, but a hearing may be requested in some cases. If after reconsideration your claim is still denied, you may appeal to the RRB's Bureau of Hearings and Appeals (Bureau). If you are not satisfied with the decision of the Bureau, you can further appeal to the three-member Board which heads the RRB. If you are

still unhappy with the RRB's decision, you may file an appeal with the U.S. Court of Appeals.

Each level of appeal has important deadlines that must be complied with in order to preserve your right to appeal. Information regarding the process and deadlines will be included with the notice of decision you receive.

For more information, contact your local Railroad Retirement Board office. See the "Resources" section of this Handbook for more information.

Pensions

State and Federal Pension Plans

If you were employed by the federal, state or local government, you may or may not be covered by Social Security.

Federal Employees

The retirement system for federal employees is much too complex to cover adequately in this publication. If you were or are an employee of the federal government and need information regarding your retirement benefits, how to apply, or how to appeal an unfavorable decision, contact the personnel office of the agency for which you worked. You may also contact the Office of Personnel Management in Washington, D.C. or visit their website at www.opm.gov.

Federal government employment and Social Security

Prior to 1984, federal government employees were covered under the Civil Service Retirement System (CSRS). If you were covered under the CSRS, you did not pay Social Security taxes on your earnings and, as such, those earnings will not be accounted

for on your Social Security record. Your retirement benefits will be paid out under the CSRS.

In 1984, the Federal Employees Retirement System (FERS) came into being. If you were employed by the federal government from 1984 forward, you are covered by FERS. Work under FERS is covered by Social Security. Some federal employees who were covered by CSRS chose to switch to FERS. If you paid into both the CSRS and FERS, your Social Security benefits may be affected by your CSRS pension. Contact the Social Security Administration for more information.

Note: Whether you are covered under CSRS or FERS, you still paid Medicare taxes on your earnings and, as such, are covered under the Medicare program.

State and local government employment

If you work for a state or local government agency, you may or may not be covered under the Social Security system. State and local government employment may include a broad range of employment situations including, but not limited to: teachers, firefighters, police officers, university employees, health care workers and sanitation workers. If you are covered only by a state or local pension plan and you do not pay Social Security taxes, your earnings from the state or local government employer will not appear on your Social Security record.

In some cases, state and local government employees are covered by both Social

Security and the state or local government pension plan. In this case, you will receive both a retirement benefit from Social Security and from the state or local government pension. As noted above in the section on federal government employment, if you are covered under Social Security as well as a state or local government pension, the amount of your Social Security benefit may be affected by your state or local government pension. If you are covered by both a state or local government pension and Social Security, you should contact the Social Security Administration for more information about how your benefits will be affected.

New Mexico Public Employees (PERA) and New Mexico Educational Employees (ERA). The Public Employees Retirement Association of New Mexico (PERA) administers more than 600 different pension plans for state and local government units in New Mexico. Given the size and the complexity of the program, it is not possible to adequately summarize your benefits here. For information about your account, benefits, and options, you should contact PERA. A retirement kit is available from PERA with instructions and an application for benefits. See the “Resources” section of this Handbook for more information.

The retirement fund for New Mexico’s educators is managed and administered by the State of New Mexico Educational Retirement Board (ERB). Members range from bus drivers to university professors. For information about your account, benefits, and options, you should contact the ERB. See the “Resources” section of this Handbook for more information.

Private Pension Plans

ERISA. The Employee Retirement Income Security Act of 1974 (ERISA) was enacted to provide increased protections for employees who are covered by private employee benefit plans. The law sets minimum standards for most voluntarily established pension and health plans in private industry. Examples of such plans include pension plans, profit sharing plans, 401(k) retirement plans, employee stock ownership plans, and COBRA health insurance.

Your Right to Information. A plan administrator usually handles the operation of employee benefit plans. ERISA requires that all plan rules be in writing and that the plan administrator disclose to you in writing all important facts and rules you need to know about your employee benefit plan. ERISA does not require any particular benefits, only that the plan rules established by the employer are available to employees and that the plan is administered according to those rules.

By having access to the plan rules, your employment records, and a statement of the credit you have earned to date, you can determine when you will be eligible for benefits and the approximate amount of your benefits. You may request copies of the plan from the plan administrator. You should also receive a periodic summary plan description that outlines your rights.

Consult your plan rules or plan administrator for questions regarding eligibility for benefits, payment of pension benefits and how to appeal unfavorable decisions.

Remember: Always notify the plan administrator of a change of address.

Lost Pensions

If you think you or your deceased spouse might be owed a pension but are not sure how to locate the plan, try contacting the Pension Benefit Guaranty Corporation (PBGC). PBGC is a government agency that maintains a pension search directory with a list of people who are entitled to a pension yet cannot be found by the companies funding the pensions. See the “Resources” section of this Handbook for more information.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Department of Veterans Affairs

(800) 827-1000

www.va.gov

Disability Rights New Mexico

Agency that advocates for people with disabilities

3916 Juan Tabo Blvd. NE

Albuquerque, NM 87111

(505) 256-3100 (Albuquerque)

(800) 432-4682 (statewide)

www.drnrm.org

Go Direct Helpline

(877) 874-6347

www.GoDirect.org

Human Services Department

Information and referral

(505) 827-7750

(800) 283-4465 (Toll Free)

www.hsd.state.nm.us/isd

Income Support Division

Local office is listed in the telephone directory government pages under “State – Human Services Dept. – Income Support Division.”

www.hsd.state.nm.us/isd

Information Center for New Mexicans with Disabilities

(505) 272-8549

(800) 552-8195

(505) 272-0321 (TTY)

www.cdd.unm.edu

New Mexico Aging and Long-Term Services Department Aging & Disability Resource Center

State agency assisting the elderly and those with disabilities achieve the highest quality of life.

(800) 432-2080

www.nmaging.state.nm.us

New Mexico Department of Veterans’ Services

Statewide community service program that assists with obtaining benefits.

(505) 827-2400

www.nmdvs.org

New Mexico Educational Retirement Board (ERA)

(505) 827-8030 (Santa Fe)

(505) 888-1560 (Albuquerque)

(866) 691-2345 (Toll-Free)

www.nmerb.org

Pension Benefit Guaranty Corporation

(800) 400-7242

www.pbgc.gov

Public Employees Retirement Association (PERA)

(505) 476-9300 (Santa Fe)

(505) 383-6550 (Albuquerque)

(800) 342-3422 (Toll Free)

www.nmpera.org

Railroad Retirement Board

(877) 772-5772

(312) 751-4701 (TTY)

www.rrb.gov

Social Security Administration

Local office is listed in the telephone directory government pages under “United States – Social Security Administration.”

(800) 772-1213

(800) 325-0778 (TTY)

www.ssa.gov

South Central Pension Rights Project

Free assistance with pension problems and questions.

(800) 443-2528

www.southcentralpension.org

United States Access Board

Federal Agency devoted to accessibility for disabled individuals

1331 F St., N.W.S.-1000

Washington, DC 20004-1111

(800) 872-2253

(800) 993-2822 (TTY)

www.access-board.gov

CHAPTER TWO

Benefits Programs for Low-Income People

The Income Support Division (ISD) of the New Mexico Human Services Department (HSD) administers a number of State assistance programs. Detailed information and applications for financial assistance are available at your local ISD office. These programs are need-based and, in order to qualify for services, you will be required to provide a variety of detailed financial information.

Applications for any assistance program administered by the State (food stamps, cash assistance or Medicaid) must be made at your local ISD office. Most applications are followed by an interview. You will be asked about your household, including the Social Security numbers of all household members, and to provide proof of the information you give. A caseworker may also visit your home to confirm eligibility.

When applying for any type of assistance, you should keep a record of all of your interactions and communications with the agency. Keep copies of all records that you provide to the agency. Request a receipt from the agency for all documents that you deliver as part of your application. This can help if the agency claims to have not received a required document. Also, keep all documents or communications that you receive from the agency. Additionally, you should keep a list of the dates you contacted the agency, the issue you contacted the agency about, and the results of the contact.

If you qualify for assistance, you will be provided benefits for a defined period of

time. When your benefits period expires, you may re-apply for additional benefit periods; however, you will be required to show that you still qualify for benefits. You must also report all changes in your situation that may affect eligibility. These must be reported to your caseworker within 10 calendar days of the occurrence of the event. Such events include income changes, buying or selling a vehicle, changes in resources, changes in residence, changes in housing costs, and when anyone moves in or out of the home.

Several of the most common low-income assistance programs are briefly discussed below; however, for specific and current information regarding these programs and other assistance programs that may be available, you should contact your local ISD office or the Resource Center of the New Mexico Aging and Long-Term Services Department. See the “Resources” section of this Handbook for more information.

Supplemental Nutrition Assistance Program (SNAP)

SNAP, formerly known as food stamps, is a federally funded program that is managed by the State. It provides an Electronic Benefits Transfer (EBT) card for the purchase of food. An EBT card is used like a bank debit card. Every month, your SNAP benefits will be deposited into your EBT account. You can then use the card to purchase food items at participating grocery stores. You do not have to be receiving any other type of assistance to be eligible for SNAP. SNAP benefits may

only be used to purchase food products. SNAP benefits may not be used to purchase items such as tobacco, alcohol, pet food, soap, or paper products.

Any household may qualify for SNAP benefits if the total household income and resources are low enough and the household members are U.S. citizens or qualified legal residents. The exact amount of SNAP benefits you receive depends upon household income and the number of people in your household.

Low-Income Home Energy Assistance Program (LIHEAP)

LIHEAP assists eligible New Mexico residents with their heating and cooling costs. LIHEAP is federally funded through the U.S. Department of Health and Human Services. Funding levels for the program are established annually by the federal government.

LIHEAP provides vouchers for assistance with heating (gas, electric, propane and wood) in winter months and, funding permitted, cooling in summer months. Eligibility is based on a point system that considers household income, household size, vulnerability of household members (including children under 6, adults over 60, and the disabled), as well as the regional energy costs. Participation in certain other benefit programs, such as SNAP, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) or certain needs-tested Veterans benefits, may automatically qualify an individual for assistance through LIHEAP.

Low-Income Telephone Assistance Program (LITAP)

If you receive Medicaid or LIHEAP assistance, you may also qualify for the

Low-Income Telephone Assistance Program (LITAP) through your telephone service provider. This program provides a small subsidy for basic telephone service, and reduced installation charges. For more information about the LITAP program, contact your telephone service provider for an application. You may need to provide proof of eligibility from your local ISD office.

Temporary Assistance for Needy Families (TANF)

The TANF program, known in New Mexico as NMWorks, provides a small amount of cash assistance and job training to eligible New Mexico families. This monthly cash assistance benefit should be used to meet family needs such as housing, utilities, and clothing costs.

In order to qualify for this benefit program, you must be a resident of New Mexico, pregnant or responsible for a child under 19 years of age, a U.S. citizen, legal alien, or permanent resident, have low or very low-income, and be either under-employed (working for very low wages), unemployed or about to become unemployed.

Right to Appeal

If your application for any of these assistance programs is denied, your benefits are lowered or stopped, or your application is not processed in a timely manner, you have the right to appeal the decision through a process called a “fair hearing.” The notice you receive from ISD regarding your benefits determination will contain a form to request a hearing. You can also request a hearing through your local ISD office. You may have a friend, family member or attorney help with your appeal. There is a time limit for filing an appeal. Therefore, if you decide to

appeal, you should act quickly after receiving your notice of determination from ISD.

Prior to the fair hearing, you can send documents and other evidence that you think is meaningful to your case to your hearing officer. Also prior to the hearing, you have the right to examine your case record and any documents used in the determination of your benefits.

At the hearing, you should explain to the hearing officer why you disagree with the decision. You will receive a written decision from the hearing officer explaining the outcome of your appeal. If you are not satisfied with the decision, you have 30 days from the date of the decision to ask the State District Court to review the decision.

Important Note: If you continue to receive benefits pending the hearing and the issue is not resolved in your favor, you may be required to repay some or all of the benefits you received between the time you requested the fair hearing and the time the final decision was issued.

Fraud Penalties

Any person who knowingly gives false, incorrect, or incomplete information in order to apply, to receive benefits, or to help someone else receive benefits from a low-income assistance program is subject to prosecution for fraud. If found guilty of fraud, a person can be fined, imprisoned, and/or barred from receiving future benefits.

Other Resources for Seniors

There are a number of other resources and programs to assist senior citizens. For example, if you are elderly and home-bound, you may qualify for meal delivery

service. These programs are usually referred to as “Meals on Wheels” programs and are often offered through senior centers or other programs for seniors. There may also be special transportation services provided in your area to take you to doctor’s appointments and to do your shopping.

Check with your local senior center, the Office of Senior Affairs or the telephone directory in the county or city government pages under “Senior,” for information about the programs your community offers.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)
(800) 876-6657 (outside Albuquerque)
www.sbnm.org/LREP

Hear Now Program

Hearing aid assistance.

(800) 328-8602
www.starkeyfoundation.org/Hear-Now

Home Retrofit

City of Albuquerque Department of Senior Affairs

Provides assistance to income-eligible disabled people of all ages in retrofitting their home to accommodate their special needs.

(505) 764-6400

Human Services Department

Information and referral

(505) 827-7750
(800) 283-4465 (Toll Free)
www.hsd.state.nm.us/isd

Income Support Division

Local office is listed in the telephone directory government pages under “State – Human Services Dept. – Income Support Division.”
www.hsd.state.nm.us/isd

LIHEAP (utility assistance)

Your local Income Support Division office is listed in the telephone directory government pages under “State-Human Services Division.”
(800) 283-4465
www.hsd.state.nm.us/isd/liheap.html

LITAP (telephone assistance)

Your local Income Support Division office listed in the telephone directory government pages under “State-Human Services Division.”
(800) 244-1111 (Century Link)
(800) 564-1211 (Spanish)
www.qwest.centurylink.com/TAP/index.html

New Mexico Aging and Long-Term Services Department Aging & Disability Resource Center

State agency assisting the elderly and those with disabilities achieve the highest quality of life.
(800) 432-2080
www.nmaging.state.nm.us

Discount Prescription Drug Program (DPDP)

A state-sponsored program available to all New Mexico residents, regardless of whether or not they have insurance.
(800) 233-2576
www.nmrhca.org

Partnership for Prescription Assistance (PPA)

PPA helps provide free or nearly free prescription drugs to patients who cannot pay for their medications.
(888) 477-2669
www.pparx.org

Seniors Eye Care Program

Raising awareness about eye health, screening and information about eye care.
(877) 887-6327
www.aao.org/eyecare-america

Total Community Care (PACE)

Available to person 55 years and older. A day health care center offering comprehensive set of services aimed at keeping those, who would otherwise require institutionalization, at home. Currently available to Albuquerque residents only.
(505) 924-2650
www.myinnovage.org

Government Health Benefits

Most people have heard of Medicare and Medicaid, but often do not know exactly what each of these programs do or understand the differences between them. This chapter will explain the differences between the programs, the benefits each program provides, your rights and protections under the programs, and where you can obtain more information.

The Affordable Care Act

The Affordable Care Act (ACA) is the new health care reform law that went fully into effect in 2014. The ACA is a long and complex law that attempts to improve healthcare in the United States by ensuring that more Americans have affordable, quality healthcare, and by curbing the growth of healthcare spending in the U.S. Some of the features of the law are new benefits, rights and protections for individuals, and increased rules and regulations for insurance companies.

The ACA expands Medicaid coverage to many people who formerly did not qualify for Medicaid, and offers tax credits or subsidies to low and middle income people who do not qualify for the expanded Medicaid.

Under the ACA, you can still buy private insurance through a broker, get employer-based insurance, or get insurance through a government program such as Medicare or Medicaid. In addition to these traditional ways of obtaining insurance, the ACA also provides for a system of “insurance exchanges” that allow individuals to shop for a health insurance policy. New Mexico’s insurance exchange is online at BeWellNM.com.

The ACA did not make significant changes to the Medicare program. If you are currently enrolled in Medicare, you do not need to re-enroll or make changes to your plan. You will still receive the same services you have now, regardless of whether you have Original Medicare or a Medicare Advantage Plan (discussed below).

The ACA did expand some services in the Medicare program. For example, Medicare now covers certain preventative services such as mammograms and colonoscopies, without charging coinsurance or a deductible. The ACA also provides additional drug benefits and, by 2020, will completely close the gap in drug coverage known as the “donut-hole.”

A complete discussion of the ACA is beyond the scope of this handbook. For more information regarding the ACA contact New Mexico’s Aging and Long-Term Services Department. (See “Resources.”)

Medicare

Medicare is a large and complex program and the following discussion is intended as only a general overview. For more information, you should refer to the “Medicare and You” handbook published each year by the SSA. This handbook is a complete and easy to read guide to the Medicare program. If you are currently enrolled in the Medicare program SSA will send you this guide free each year as it is published. If you have not yet enrolled, the guide is available from the Medicare website or by calling SSA. (See “Resources”)

Medicare is a federally-funded benefit for medical insurance that is administered by the Social Security Administration (SSA). Generally, you qualify for benefits if you are 65 years old or older, and have worked and paid into Social Security or the Railroad Retirement Board for the required period of time.

If you are *under* age 65, you may qualify for benefits if: 1) you have been eligible to receive social security *disability* benefits for at least 24 months; 2) you receive a disability pension from the Railroad Retirement Board and meet certain other requirements; 3) you have ALS (Lou Gehrig's Disease); or 4) you have end-stage renal disease (permanent kidney failure requiring dialysis or a transplant) and meet certain other requirements.

Medicare works just like private health insurance. If you are already receiving benefits from Social Security or the Railroad Retirement Board at the time you become eligible for Medicare benefits, you will be contacted about three months before your Medicare eligibility date with information regarding your Medicare benefits. If you are not yet receiving Social Security benefits at the time you become eligible for Medicare (usually when you turn 65), you should contact Medicare a couple of months before your eligibility date (your 65th birthday) to obtain Medicare enrollment information.

If you do not qualify for Medicare because you did not pay enough into the Social Security system, you may still receive Medicare benefits, but you will pay higher premiums. If you are considered low-income and have limited assets, you may also qualify for help through the Medicaid program. Medicaid is discussed later in this chapter.

Medicare Programs

Medicare is divided into what are referred to as "Parts." Each Part provides a different type of medical service. This chapter discusses Medicare Parts A, B, C and D.

Medicare Part A - Hospital Care and Services

Medicare Part A works much like private hospital insurance. In general, Part A covers: in-patient hospital care; skilled nursing facility care; hospice services; and some home health services.

If you are receiving Social Security benefits or a railroad retirement benefit, you will be automatically enrolled in Medicare Part A when you turn 65 years old. If you are not receiving these benefits, you should contact Medicare about three months before your 65th birthday to enroll for benefits. Most people do not have to pay for Part A because they paid Medicare taxes while working. If you (or your spouse) did not pay Medicare taxes while you worked, or did not pay into the system for the required period, you still qualify for coverage when you turn 65 but you will have to pay the premiums.

While most people do not have to pay Medicare Part A premiums, actual medical coverage through Medicare Part A is subject to a variety of deductibles and coinsurance that you will be responsible for paying.

Deductibles and coinsurance are tied to Medicare "benefit periods." A benefit period begins the day you go into the hospital (or under special circumstances, a skilled nursing facility). You must generally pay a deductible for an inpatient hospital stay. If your inpatient stay continues for more than 60 days, coinsurance payments are required for

days 61-90. Lifetime reserve days give you an additional, one-time-only, 60 days at a higher per-day coinsurance than the 61-90 day coinsurance. The deductible and coinsurance amounts change every year to reflect inflation. See the Addendum for the current dollar amounts for deductibles and coinsurance.

A benefit period ends when you have not received hospital or skilled nursing care for 60 days in a row. If you go back into the hospital after one benefit period has ended, a new benefit period will begin with the same deductibles and coinsurance described above. There is no limit to the number of benefit periods you can have during your lifetime.

The rules regarding deductibles and coinsurance are different when you go to a skilled nursing facility **for rehabilitation services**. These rules are discussed later in this chapter, in the section on skilled nursing facilities.

Medicare Part B – Medical Services

Medicare Part B covers services such as doctor visits, outpatient hospital care, and other services such as physical and occupational therapy that Part A does not cover. Part B only pays for these services and supplies if they **are medically necessary**.

Medicare Part B requires you to pay a monthly premium. This premium changes every year to reflect inflation. There are programs that assist seniors in paying this premium if you meet the income and resource eligibility guidelines. These programs are called Medicare Savings Programs (MSP) and are discussed in detail in the section on “Medicaid,” later in this chapter.

Enrollment in Medicare Part B is optional. You can sign up anytime during a seven-month period beginning three months before your 65th birthday, including your birthday month, and extending three months after your birthday. **However, if you do not sign up for Part B during this seven month period, and later decide that you would like Part B coverage, the cost to you for this benefit will increase by 10 percent for every year that you were not enrolled after those first seven months.** You will have to pay this increased cost for the rest of your life. There is an important exception to this enrollment rule: if you are 65 or older, and you have been continuously covered under a group health plan from you (or your spouse’s) current employment, when your group plan coverage ends, you can then enroll in Part B without a penalty (increased cost).

Your Part B premium payments will automatically be deducted from your Social Security, railroad retirement or civil service retirement check. If you are not receiving income from one of these sources, you should contact Medicare to set up payment arrangements.

Medicare Supplemental (Medigap) Plans

Medicare Supplemental insurance, also called Medigap, is insurance that covers the cost difference between Medicare Parts A and B coverage, and the actual cost of the services you receive. Medigap plans are issued by private insurance companies (AARP, Blue Cross/Blue Shield, and many others), not the government. You must be enrolled in Medicare Parts A and B to be able to enroll in a Medigap plan. The best time to buy a Medigap plan is during your Medigap open enrollment period which starts on the first day of the month in which

you are age 65, or older, and have also enrolled in Medicare Part B.

If you are over 65, you have a guaranteed right (called a “Guaranteed Issue Right”) to buy a Medigap policy during your Medigap open enrollment period. This means that insurance companies are required by law to offer you a Medigap policy during open enrollment, even if you have health problems (“pre-existing conditions”) that might otherwise bar you from coverage. In this situation, an insurance company must be willing to sell you a Medigap policy, cover all your pre-existing conditions and not charge you more for the policy because of past or present health problems.

Guaranteed Issue Rights also allow you to purchase a Medigap policy outside your open enrollment period if you find yourself without health coverage through no fault of your own. The following are examples of when your Guaranteed Issue Rights may apply:

- Your health coverage ends because you move out of the plan’s service area or your health coverage provider stops providing coverage in your area.
- You join a Medicare Part C (Medicare Advantage) Plan (discussed below) or PACE plan (discussed later in this chapter) at age 65 and, **within the first year**, you decide you want to switch to Original Medicare (Part B) with a Medigap Policy.
- You leave Original Medicare (Part B) to join a Medicare Part C for the first time and decide **within the first year** that you want to return to Original Medicare.

Individuals who are under 65 and enrolled in Medicare Part B do not have guaranteed access to Medigap plans. As of the

publication date of this manual, New Mexico did not require insurance companies to offer Medigap policies to Medicare-enrolled individuals under 65. However, some insurance companies may voluntarily offer such plans. These policies will likely be more expensive than Medigap policies for those over 65, and the companies can use medical underwriting (the company considers medical history and pre-existing conditions in deciding whether or not to accept an application).

You may not need a Medigap plan. Before you purchase a plan, make sure you are not covered by another policy. Often, former employers provide Medigap plans to retirees to pay for costs that the Original Medicare Plan doesn’t cover.

To find a list of plans available in your area, look at the Medicare Personal Plan Finder on the Medicare website or call Medicare to receive free publications and other information discussing Medicare and Medigap plans. You may also contact the New Mexico Aging and Long-Term Services Department. (See “Resources”)

Medicare Part C and Original Medicare

Medicare recipients can choose either original Medicare or a Medicare Advantage Plan under Medicare Part C.

Original Medicare. Original Medicare is simply the basic Medicare plan discussed above that includes Parts A, B and an optional Medigap policy. Services are provided through any provider that accepts Medicare payments. Original Medicare is available throughout New Mexico.

Medicare Part C – Medicare Advantage Plans. Private companies also contract with the Medicare program to offer plans in addition to Original Medicare. These are Medicare Part C plans, also known as Medicare Advantage Plans.

Medicare Advantage Plans typically include the services covered by Original Medicare Parts A and B (and may also include drug plans discussed in the next section). There are several different types of Medicare Advantage Plans, including HMO, PPO, and private fee-for-services plans. Medicare Advantage Plans generally offer a wider range of services than Original Medicare; however, these plans generally restrict you to the plan's network of providers. Some Medicare Advantage Plans may charge more than the Original Medicare Part B premium.

Some Medicare Advantage Plans offer discounts on prescription drugs (not the same as the prescription drug program Medicare Part D, which is discussed below) and coordinate care among providers, which may lower your out-of-pocket expenses. Not all Medicare Advantage Plans are offered in all parts of New Mexico. You should contact Medicare or the Aging and Long-Term Services Department for more information about the Medicare Advantage Plans available in your area. (See “Resources”)

You may join a Medicare Advantage Plan at any time you are eligible for Medicare due to age or disability (as described above). You may leave or switch your Medicare Advantage plan if you qualify for a Special Enrollment Period, or during Medicare's Open Enrollment Period. Open Enrollment Periods are discussed below.

Making the best choice for you. There are many factors that you should consider when choosing a Medicare plan, such as cost, extra benefits, doctor choice, convenience, and quality of care. Also, individuals under the age of 65 who cannot find a Medigap plan that is affordable and provides enough benefits under Original Medicare may find a Medicare Advantage Plan that is more reasonable and comprehensive. **Medicare Advantage plans cannot discriminate against Medicare beneficiaries under the age of 65. These plans must offer the same services to Medicare beneficiaries under age 65 as they offer to beneficiaries over age 65. The one exception to this rule is if you have end stage renal disease (defined as needing regular dialysis or kidney transplant). If you have end stage renal disease, you may not qualify for a Medicare Advantage plan.**

Some questions you should ask when considering the Medicare Advantage plans available in your area:

- **Cost.** What are the plan's costs for premiums, deductibles, and coinsurance?
- **Benefits.** Does the plan offer extra benefits and services you need, such as prescription drugs, eye exams, hearing aids or routine physical exams?
- **Doctor choice.** Can you see the doctor(s) you want to see, or only those who are members of the plan? Do you need a referral to see a specialist?
- **Convenience.** Where are the doctors located and what are their office hours? Do you have to file claims yourself? Is there a telephone hotline for medical advice from a nurse or other medical staff?

If you are going to be on Medicare in the near future, you should check with your current medical providers to make sure

that they are Medicare providers. If you are planning to choose a Medicare Advantage Plan, make sure your medical provider(s) participates in that particular plan.

Medicare Claims. You should not need to file a claim for the services you receive from your health care providers, regardless of which Medicare plan you choose. If you choose the Original Medicare plan, it is important to make sure that your health care providers (for example, your physician and hospital) accept “Medicare assignment,” which is direct payment from Medicare. When a health care provider agrees to accept Medicare assignment, they are agreeing to accept as full payment what Medicare pays. (You are still responsible for any co-pays or deductibles.) If your health care providers do not accept Medicare assignment, you will be required to pay for the entire cost of the services rendered up front, and Medicare will reimburse you for the covered amounts, which may be considerably less than the amount you paid.

Medicare cannot pay your health care providers until a claim is filed. If your health care provider does not file a claim for services provided, the first thing you should do is contact the health care provider and request that a claim be filed. If, after requesting a claim be filed, the provider still has not filed the claim, the next step is to contact Medicare. (See “Resources.”) Medicare will contact the health care provider on your behalf to inform them of their duty to file Medicare claims in a timely manner.

You should also ask Medicare about the exact time limit for filing your particular claim. **Medicare claims must generally be filed within one full calendar year following the year in which the services were provided.**

For example, if you see your physician on April 15, 2019, the Medicare claim for that visit must be filed by December 31, 2020. If, after contacting the health care provider and Medicare, your claim still has not been filed, you should file the claim yourself. You can get the necessary forms by contacting Medicare. (See “Resources.”)

Remember: If the medical services that you need are not covered by Medicare, you will be responsible for the entire bill. Your physician or supplier must agree to accept Medicare assignment in order for the costs of services and/or supplies associated with your health care to be paid by Medicare directly.

If you are enrolled in a Medicare Advantage Plan, no Medicare claims are filed. Medicare pays the private insurance companies a set fee each month, eliminating the need to file Medicare claims.

Medicare Part D – Prescription Drug Coverage

Medicare Part D, or Medicare Prescription Drug Coverage, helps cover the cost of prescription drugs. You become eligible for Medicare Part D when you enroll in Medicare Part A. As with Part B, Medicare Part D is an optional benefit that you must enroll in. If you do not enroll when you first become eligible, and later decide you want Part D coverage, you will be charged an extra 1% premium penalty for each month you delayed enrolling in the program.

There is special assistance for those who have low incomes and few assets. If you are eligible for both Medicare and Medicaid, you will receive your prescription coverage under Medicare Part D, instead of Medicaid.

If you decide you want prescription drug coverage, you may choose Original Medicare, with access to Medicare Part D prescription drug plans, or you may choose a Medicare Advantage Plan that offers both medical benefits and prescription drug coverage. It is important when selecting a plan that you search the plan's covered drug list to make sure your drugs are covered.

Many Medicare Part D plans have deductibles, and most have a coverage gap known as the “donut hole.” Under the Affordable Care Act, the coverage gap will be completely phased out by 2020. You can contact Medicare or your drug plan provider for more details. (See “Resources”)

Open Enrollment Periods

Once you enroll in Medicare, you cannot change your selections regarding coverage type and providers until the next “Open Enrollment Period.” Medicare Open Enrollment takes place each fall. The specific dates of the Period vary from year to year. During the Open Enrollment Period, you can change your Medicare coverage. For example, you can change to a new Medicare Advantage plan or a new stand-alone Part D prescription drug plan; or you can switch from Original Medicare to a Medicare Advantage Plan or vice versa. **Please note that, if you switch from a Medicare Advantage Plan to Original Medicare, after being in a Medicare Advantage Plan for more than a year, you may not be able to qualify for Medigap coverage.**

If you enroll in a new plan during the fall Open Enrollment Period, your new coverage will start on January 1 of the following year. In most cases, Open Enrollment is the only time you can pick a new Medicare Advantage or Medicare Part D plan. (See the

Addendum for this chapter for the dates of Medicare's Open Enrollment Period for the current year.)

Part D Low-Income Subsidies – “Extra Help”

Medicare recognizes that low-income individuals may not be able to afford necessary medications or the Medicare Part D premiums. Medicare offers help for these individuals through subsidies available through the Part D “Extra Help” program. There are a number of levels of assistance. Each level has its own income and resource qualification requirements.

Automatic Eligibility. You will automatically qualify for a low-income subsidy if you are eligible for both Medicare and full Medicaid (meaning that you receive Supplemental Security Income (SSI) benefits and Medicare) or you are enrolled in the Medicare Savings Plan (discussed below). Automatically eligible individuals receive assistance paying Medicare Part D premiums, deductibles, prescription coinsurance and copayments, **and will have no coverage gap (no donut hole).**

Other Eligibility. If you are not automatically eligible, you must apply for the low-income subsidy through the Social Security Administration (SSA). You may qualify if your annual income is at or below 150% of the federal poverty level and you have very limited resources. These numbers may change yearly so it is important to consult Medicare or the SSA to determine your eligibility. (See the Addendum for the current income and resource restrictions.)

If you are eligible for Extra Help, you may pay as little as \$1.10 or \$2.40 for generic

drugs and \$3.20 or \$6.00 for brand-name drugs, depending on your income. For more information about Medicare Part D Extra Help, contact Medicare or contact the New Mexico Aging and Long-Term Services Department. (See “Resources”)

Non-Medicaid Prescription Drug Benefits

There are a several other sources of help (other than Medicaid) for prescription drug benefits. Some of these programs are briefly discussed below. Contact the specific program for more information. The contact information for each of these programs is included in the Resources section at the end of this chapter.

MedBank helps eligible patients access large pharmaceutical company Patient Assistance Programs to obtain free medications. Referrals are accepted from physicians, hospitals and social service agencies by fax or mail. MedBank also operates on-site services at several area clinics.

The Partnership for Prescription Assistance Program is composed of American pharmaceutical companies, doctors, patient advocacy groups and civic groups. The program helps low-income, uninsured patients get free or nearly free prescription medications.

The New Mexico Discount Prescription Drug Program (DPDP) is administered through the New Mexico Retiree Health Care Authority and is a state-sponsored program available to all New Mexico residents, regardless of whether or not they have insurance. When you enroll, you receive a card and a list of over 300 pharmacies that participate in the program.

Medicare Savings Programs

Medicare beneficiaries who have limited income and resources may be able to get help from *Medicaid* in paying their Medicare premiums, deductibles and other out-of-pocket medical expenses. Medicaid may also cover additional services beyond those provided under Medicare. These benefits are collectively referred to as the Medicare Savings Programs (MSPs). Individuals who are both entitled to Medicare Part A (and/or Part B) and eligible for some form of Medicaid benefit, are often referred to as “dual eligibles.”

The four most common MSPs are: the Qualified Medicare Beneficiary Program (QMB), the Specified Low-Income Medicare Beneficiary Program (SLIMB) and the Qualified Individuals Program (QI). The benefits and qualification criteria for each program are discussed below.

Each section includes sample income and resource limit information; however, the income and asset limits change yearly to reflect inflation. Please see the Addendum for this chapter for the current income and asset limits for each program. Additionally, there are exclusions to what is considered income and resources (for example, your home is generally not counted as a resource). Therefore, you should contact LREP or your local Income Support Division office to discuss your specific situation. (See “Resources.”)

Qualified Medicare Beneficiary (QMB). Under the QMB program, *Medicaid* will help pay your *Medicare* Part B premium, deductibles, coinsurance, and copayment amounts. The QMB program is a need-based program available to those whose income and

assets meet certain eligibility criteria. In 2019, the monthly income limit is \$1,012 for a single person and \$1,372 for a couple. There are also asset and resource limits. For example, in 2019 the resource limit for the program is \$9,230 for an individual and \$14,600 for a couple. In addition to these recourses, each person may have up to a \$1,500 burial fund. In addition to the income and asset criteria, you must be enrolled in Medicare Part A.

Specified Low-Income Medicare Beneficiary (SLIMB). Under the SLIMB program, *Medicaid* helps low-income people pay their *Medicare* Part B premiums only. SLIMB does not help with deductibles, coinsurance or copayment amounts. Like QMB, the SLIMB program is a need-based program; however, the income threshold is slightly higher than for QMB. In 2019, the monthly income limit for SLIMB for a single person is \$1,366 and \$1,852 for a couple. The asset limits are the same as the QMB program discussed above. In addition to the income and asset limitations, you must also be enrolled in Medicare Part A.

Qualified Individuals 1(QI1). The QI1 program is an expansion of the SLIMB program and offers the same benefits. To qualify, you must have Medicare Part A and meet certain income and asset criteria. In 2019, the monthly income limit for QI for a single person is \$1,366 and \$1,852 for a couple. The asset or resource limits are the same as for the QMB and SLIMB programs.

Other Medicare Services

Skilled Nursing Facilities

A skilled nursing facility (SNF) can be a stand-alone facility or can be part of a nursing home or hospital. An SNF

provides around-the-clock nursing services (to those in need of medical or nursing care) or rehabilitative services to manage, observe and evaluate care. Examples of such services are those provided by a licensed nurse or rehabilitation therapist (physical, occupational, or speech-language).

This section discusses benefits under Original Medicare. If you are enrolled in a Medicare Advantage Plan, you are still entitled to at least the same benefits as those offered by Original Medicare; however, choice of facility, costs, coverage and rights or protections may vary.

Eligibility for Medicare SNF Coverage

Medicare will cover skilled nursing facility care only if **all** of the following conditions are met:

- You have Medicare Part A.
- You have had a qualifying hospital stay. A qualifying hospital stay is a stay of at least three days in a row (not including the day you leave the hospital). **Note: a qualifying stay does not include periods in which a person is in the hospital emergency room or in the hospital for observation.**
- Your doctor has determined you need daily skilled care (five to six days per week is acceptable if you are only receiving rehabilitation therapies).
- You need the skilled services for a medical condition that was treated during the qualifying three-day hospital stay or that started while getting SNF care for another condition.
- You enter the SNF shortly after your qualifying hospital stay (generally within 30 days).

- The SNF is certified by Medicare.
- You have coverage days left in your benefit period (see below).

Covered services. When you qualify for SNF care, Medicare pays for the following: semi-private room; meals; skilled nursing care; physical therapy; occupational therapy*; speech-language therapy*; medical social services*; medications; medical supplies and equipment; ambulance transportation (if necessary to safely transport to a provider of services not available at the SNF); and dietary counseling.

* Rehabilitation therapies are covered only if they are reasonable and necessary for treatment of the patient's condition.

Skilled nursing facility stays and benefit periods. Medicare uses a period of time called a “benefit period” to keep track of how many days of SNF benefits you use and how many are still available. You get up to 100 days of SNF care in a benefit period. The benefit period begins on the day you start using hospital or SNF benefits. Once you use the 100 SNF days, your current benefit period must end before you can renew your SNF benefits. Your benefit period also ends when you have not been in a SNF or hospital for at least 60 days in a row, or you remain in a SNF but do not receive skilled care for at least 60 days in a row.

There is no limit to the number of benefit periods you can have. Once a benefit period ends, however, you must have another three-day qualifying hospital stay and meet the other requirements before you are eligible for another 100 days of SNF benefits.

You do not need a new three-day hospital stay if your break in SNF care has been

fewer than 30 days. In that case, your benefit period has not ended. However, the coverage available is limited to the number of unused SNF days remaining in your benefit period.

If you have a break in SNF care of more than 30 days but less than 60, you need another three-day hospital stay to qualify for more SNF benefits; however, your Medicare coverage is limited to the number of unused days in your current benefit period since the period has not ended.

Costs. Under Original Medicare, Medicare pays the entire cost of your stay for the first 20 days. A coinsurance payment is required for days 21-100. Beyond day 100, you must pay 100% of the cost of your stay. You must also pay any additional charges not covered by Medicare, such as telephone and laundry fees. For the most up-to-date information regarding what Medicare covers, contact Medicare or the New Mexico Aging and Long-Term Services Department. (See “Resources.”)

- There are several options for help paying the coinsurance payments for days 21-100 in a SNF. These include:
- Medigap – a supplemental insurance policy that fills the gaps in your Medicare coverage. A Medigap policy generally pays the SNF coinsurance for days 21-100. Check your individual policy for your specific coverage.
- Medicaid - if you qualify for both Medicare and Medicaid, Medicaid will pay the coinsurance not paid by Medicare for SNF care.
- Long-term care insurance - some policies will pay the coinsurance for days 21-100 in a SNF. Check your individual policy for your specific coverage.
- Private pay - if you do not qualify for Medicaid, do not have coverage through

your employer or union, and did not purchase any type of private insurance, the facility will expect you to pay for your care out-of-pocket.

When Medicare ends. When the SNF determines that you no longer qualify for Medicare coverage, the SNF must provide you with a Notice of Medicare Non-Coverage. If you don't receive this notice, ask the SNF to provide it. If you think you still need SNF care, you have the right to have Medicare review the SNF's opinion.

The notice of non-coverage must include:

- The date your Medicare coverage will end;
- Why your stay is not or is no longer covered;
- Notice of your right to request the SNF to have Medicare review the SNF's opinion of non-coverage (sometimes called a "demand bill");
- Notice that, if you request a demand bill, you are not required to pay for your SNF stay until you are informed of Medicare's decision; and
- A place for you to sign indicating that you received the notice.

The SNF cannot make you pay a deposit for services that Medicare may not cover until Medicare makes its decision, but you must continue to pay the costs you would normally pay under Medicare while the demand bill is being processed. **If Medicare decides your care is no longer covered, you will be responsible for the entire cost of the care you received while you were waiting for the decision.**

You may have a right to a "fast appeal" if you think your services are ending too

soon. During a fast appeal, an independent reviewer, called the Quality Improvement Organization (QIO), reviews the decision. You should receive a notice from Medicare telling you how to contact the QIO. If you do not receive this information, you should request it.

Medicare Home Health Care

Home Health Care is a program that provides medically necessary services at home to homebound individuals with an acute illness or other serious health condition. The services offered through this program include skilled nursing, rehabilitation therapies (physical, occupational and speech-language), social work, home health aide services, and medical supplies and equipment.

How frequently you will receive services under this program depends on your specific needs. Generally, you will receive a visit for a particular service two to three times per week. Medicare does not limit the number of visits, as long as all coverage criteria continue to be met. Medicare does not require deductibles or coinsurance for home care services except for durable medical equipment, which requires a 20 percent coinsurance payment.

Eligibility. To be eligible for Medicare home health services (under Original Medicare), you must:

- Be homebound;
- Need services that are ordered by a physician who establishes and periodically reviews a plan of care. **The services must be determined to be medically necessary;**
- Need skilled nursing care, physical therapy, speech-language pathology

services, or continued occupational therapy;

- Need services only on a part-time and intermittent basis. In other words, it is safe to provide at home with occasional visits rather than a 24-hour care facility; and
- Use an agency that is licensed and certified by Medicare.

Homebound. Medicare defines “homebound” as a person who is confined to the home because of a medical condition. This generally means it requires a major effort or assistance to leave your home, or your doctor feels it is critical to stay home because of your medical condition.

Skilled Care. To receive home health care under Medicare, you must have a need for “skilled” care. Only nursing, physical therapy and speech-language therapy are considered skilled services for purposes of qualifying. Occupational therapy is considered skilled only for continuation of services but not for initial eligibility. If you receive one of these services, you may also receive social work or home health aide services, but only as long as you need a nurse or therapist.

Furthermore, only those tasks requiring a licensed professional will qualify as skilled care. For example, nursing services are not skilled if all the nurse does is routinely check your blood pressure, as that does not require a licensed nurse. Physical therapy is not skilled if the therapist only escorts you while you walk to build endurance. However, if anything the nurse or therapist does for you requires a license, then they can also provide non-skilled care as needed.

Acute Care. The Medicare home health benefit is not intended to provide long-term care for chronic, stable conditions. Home health care is intended as a short-term service to help you recover from an acute episode.

If you have a chronic condition or little potential for improvement, home health care may still be available to teach you, your family or other caregivers how to best care for your needs. For example, a nurse can teach how to give medications, or monitor blood pressure or blood sugar. A therapist can teach caregivers how to assist you to transfer to a chair, walk, get dressed, bathe or do exercises.

Discharge. When you no longer need skilled care, are no longer homebound, or have no potential for further improvement, you may not qualify for further home health care. However, a home health agency cannot abandon you if you still need care and your health and safety would be in jeopardy if services were discontinued. The agency should work with you to arrange appropriate alternatives. You can also appeal to Medicare if you think care is being inappropriately discontinued.

If a home health agency denies, cuts back, or stops your care because it believes Medicare will not pay for the services a doctor ordered for you, the agency should send you a “Home Health Advance Beneficiary Notice” (HHABN). The HHABN explains why the agency thinks Medicare will no longer pay, explains that you will have to pay for continued services if Medicare does not, and gives you clear directions for getting an official decision from Medicare and for appealing that decision if payment

is denied. HHABN only applies if you are in Original Medicare. Medicare Advantage Plans have their own rules regarding home care and discharge. Check with your plan administrator for specific details.

If you believe that your Medicare-covered home health services are ending too soon, you may have the right to a “fast appeal.” In a fast appeal, an independent reviewer, called the Quality Improvement Organization (QIO), will look at your case and decide if you should keep receiving the home health services. Your agency should provide you with a “Notice of Medicare Provider Non-coverage” at least two days before your coverage ends. If they do not provide you this notice, you should request it. The notice should also explain the fast appeal process.

If you have concerns or complaints about the agency that is providing you care, contact the Home Health Complaint Hotline at the New Mexico Department of Health. (See “Resources”). For more information, contact Medicare and request a copy of Medicare and Home Health Care. (See “Resources”).

Hospice

Hospice is a special way of caring for people who are terminally ill. The goal of hospice is to provide care and comfort for you and your family during your final stage of life, not to cure your illness. Hospice may be provided in your own home, a hospice facility, a hospital or a nursing home.

Eligibility. To be eligible for Hospice you must:

- Have Medicare Part A (or Medicaid or private insurance with a hospice benefit);
- Be certified by your doctor and the

hospice medical director that you are terminally ill and are expected to live 6 months or less;

- Sign a statement choosing hospice care instead of routine Medicare covered benefits to treat your terminal illness;
- Receive care from a licensed and certified hospice agency (a Medicare-approved agency).

Services. Hospice services are provided by a team of caregivers including nurses, doctors, social workers, homemakers, home health aides, clergy or other counselors, trained volunteers, and your family. Services may include: physician services; nursing care; medical equipment; medical supplies; drugs for symptom and pain relief; home health aide for personal care; homemaker services; physical, occupational, or speech therapies; social work services; dietary counseling; grief and bereavement counseling for you and your family; and short-term care in a hospital or other facility for symptom relief or respite care

Respite Care. Respite is care given to a patient by another caregiver so that the usual caregiver can rest or take care of other things that he or she needs to do. During a period of respite care, you will be cared for in a hospice facility, hospital or nursing home. Respite periods can be up to five days at a time.

Services Not Covered. When you choose hospice care, Medicare will NOT pay for treatment to cure your terminal illness, nor will it pay for care from another provider if that care is related to your terminal illness or the services are similar to what hospice provides. All care that you get for your

terminal illness must be given or arranged by your hospice team. If you wish to see other providers or consider curative treatment for your terminal illness, you must disenroll from hospice. **You can choose to stop hospice care and return to traditional medical treatment, and continue Medicare coverage, for your condition at any time.**

Cost. Medicare pays almost all of the cost of your hospice care. You will have to pay no more than \$5 for each prescription drug or other similar product for pain relief and symptom control. If you are admitted to a hospital or other facility for respite care, you will pay five percent of the Medicare payment amount. There are no other deductibles or coinsurance. (See “Resources”).

Medicaid

Medicaid is a state-run program that provides health insurance to low-income individuals. The State of New Mexico and the federal government jointly fund Medicaid in New Mexico. Medicaid is a need-based program that is available only to those who meet certain income, asset and, in some cases, disability criteria. As of 2019, the Medicaid program in New Mexico is called **Centennial Care**.

Medicaid can be divided into two categories: non-institutional and institutional. Non-institutional Medicaid is for persons who do not require the level of care provided by institutionalization (nursing home care). Institutional Medicaid is for those applicants whose physical and/or mental health require placement outside their home, or require that extensive care and services be provided in the home. Institutional Medicaid is discussed in detail below.

You may qualify for Medicaid services under one of several different programs depending on your income level, your assets, your age, and whether or not you are considered disabled by the Social Security Administration (SSA).

If you qualify for **Supplemental Security Income (SSI)** (discussed in the chapter on government benefits and pensions), you automatically qualify for Medicaid benefits. Additionally, the Affordable Care Act expanded federal funding to include many low-income individuals who had previously not qualified for Medicaid. These individuals are sometimes called the “Newly Eligibles” and the program is referred to as “Expanded Medicaid.” Not all states chose to accept the federal funding and expand their Medicaid programs; however, New Mexico was one of the states that accepted the federal funds. This means that many more people in New Mexico can now get medical coverage through Medicaid. Visit the New Mexico Health Insurance Exchange at BeWellNM.com for more information and to apply for Medicaid benefits.

Institutional Care Medicaid

As discussed above, Medicare does not pay for “custodial care,” which is care provided in an institutional setting for individuals who can no longer live on their own. The need for this level of care usually occurs when an individual requires assistance with several of the activities of daily living, such as bathing, toileting and eating.

Custodial care is usually provided in a nursing home setting and can be very expensive. For example, in 2019, the average cost of care in a nursing home in New Mexico is approximately \$7,500 per month.

Some people can afford to pay for this type of care, or have Long-Term Care insurance which will help pay the costs; however, for many people this level of care would be simply unaffordable.

Institutional Care Medicaid helps people with relatively low incomes and resources pay for custodial care. The following sections outline the income and asset eligibility requirements for single and married applicants.

Single Applicants. If you are single, divorced, or widowed, or if your spouse is already in a nursing home, Medicaid will pay for custodial care in a nursing facility if you meet the following requirements:

- You are at least 65 years old, blind or disabled and a doctor has certified that you require nursing home care.
- You have no more than \$2,000 in assets. This includes the cash surrender value of any life insurance policies (such as “whole life” policies). However, the value of your home (if your equity is less than \$878,000) is not counted as an asset as long as you intend to return home. (The intent to return home does not necessarily have to be a realistic one.)
The state of New Mexico has the power, however, to make a claim against your estate, after you die, to recover the costs paid by Medicaid for your care. (“Estate Recovery” is discussed later in this section).
- You have no more than \$1,500 in a burial account. These burial funds cannot be co-mingled with non-burial funds. Instead of a burial account, you may choose to purchase a pre-paid burial agreement, of any amount, and still be eligible for Medicaid.
- You may have one car of any value.

- Your income does not exceed the specified income limit, which changes annually. For example, in 2019, the income limit for Institutional Medicaid was \$2,313 per month. While you are in the nursing home, you can keep \$72 of this amount each month for personal needs, such as toiletries, beauty shop visits and cigarettes. The remainder of your income is paid to the nursing home, for the cost of your care.

Married Applicants. If you are married and need to go into a nursing home, but your spouse is still well enough to stay at home, your spouse will generally be allowed to keep some of the community assets of the marriage to support him or herself. How much your spouse will be allowed to keep depends upon the amount of your joint income and assets.

As of 2019, an at-home spouse of a nursing home patient is allowed to keep the following income and assets:

- The primary residence of any value.
- A car of any value, as long as the car is used for transportation to work or medical care.
- One-half of all community assets (in addition to the home and one car) owned by you and your spouse, up to a maximum amount that changes yearly. In 2019, the maximum was \$126,420.
- At least one-half of your combined monthly income, and, in some cases, more than half.

As with many of the programs mentioned in this handbook, the income and asset levels for Institutional Care Medicaid are subject to change on a yearly basis to reflect inflation, availability of funds and program

priorities. See the Addendum for the current Institutional Medicaid income and asset limits.

Medicaid does not pay for the first 30 days of nursing home care. Often, patients have coverage either through private insurance or Medicare for the first 30 days they are in a facility. If that is not the case, paying the first month of nursing home care until Medicaid becomes available can be very difficult. If you are in this position, you should contact the Aging and Long-Term Services Department for advice. (See “Resources”)

Income Diversion Trusts. If your income exceeds the limit for qualifying for Institutional Care Medicaid but is less than the average cost of nursing home care, you may be able to use an Income Diversion Trust (IDT) to qualify for benefits.

An IDT is a special type of trust that allows you to set aside your income that is over the maximum allowable to qualify for Medicaid during your lifetime. Each month, your income, over the maximum allowable income is put into the trust. From the maximum allowable income, the trustee may take a small fee and your personal care allowance is deducted. The remaining amount is paid to the nursing home as your “medical care credit.” Your income (the portion that was over the maximum allowable income) accumulates in the trust. This type of trust is irrevocable, meaning it cannot be changed or revoked. The New Mexico Medicaid program is the beneficiary of the IDT and, upon your death, the program receives any money remaining in the trust as reimbursement for the cost of your care in the nursing home.

An IDT is a complicated legal document that must be created by an attorney. If you have questions about IDTs, call LREP for assistance.

Transferring Property to Qualify for Medicaid. People sometimes want to transfer their property into someone else’s name in order to qualify for Medicaid. Such transfers may actually prevent a person from qualifying for Institutional Medicaid. There are penalties, in the form of periods of ineligibility, for those who improperly transfer property or assets in order to qualify for Medicaid.

When an individual applies for Institutional Care Medicaid, a fairly extensive check is made of the applicant’s financial situation. For almost all transfers of assets, there is a “look back” period of 60 months. This means that certain transfers of assets will be scrutinized, and if the transfers are found to be inappropriate, the applicant will be subject to a penalty period in which he/she will have to pay for his or her own nursing home care. The penalty period is determined by dividing the value of the transferred asset by the average cost of nursing home care in New Mexico. For example, if, during the look back period, you gifted your home worth \$150,000 to a friend, then you could be penalized for 20 months (or $150,000/7,500 = 20$) and will not be eligible for Institutional Care Medicaid for those months. (The average cost of a nursing home in New Mexico is approximately \$7,500 per month in 2019.) **There are no penalties for transfers of assets made between spouses.**

Prior to making any transfers of property or any other asset, you should consult with an attorney. You can contact LREP for help with

these matters or contact an attorney who practices in the areas of estate and financial planning for the elderly and disabled.

Estate Recovery

After a Medicaid beneficiary's death, federal and state laws may, in some cases, require the New Mexico Human Services Department (HSD) to recover the benefits that were paid for the beneficiary's care during his or her lifetime. The type of benefit payments that HSD will attempt to recover include benefits paid for nursing home care, home and community-based services, and related hospital and prescription drug services. HSD will attempt to recover benefits only if the beneficiary was 55 or older when he or she received the services. This process is known as "Medicaid Estate Recovery" because HSD attempts to recover the benefit payments from the beneficiary's estate.

As discussed above, in most cases, Medicaid beneficiaries have very low incomes and very few resources when they become eligible for Medicaid benefits. The one significant resource Medicaid beneficiaries can own and still be eligible for Medicaid is the beneficiary's primary residence. This residence is most often the target of the Estate Recovery efforts.

There are some situations where Estate Recovery is not permitted. For example, if there is a surviving spouse, surviving minor child, or disabled or blind adult child who receives SSI or SSDI benefits, or if Estate Recovery would cause an undue medical or financial hardship to survivors.

As of the date of this publication, there is NO estate recovery after the death of a person who received Medicaid through

Supplemental Security Income (SSI) or Expanded Medicaid **and did not require long term care services.**

If you have questions regarding Estate Recovery, contact LREP for assistance.

Other Medicaid Long-Term Care Options

In addition to paying for nursing home care in a facility, Medicaid also has programs that may pay for someone to care for you in your home. Each program has its own eligibility requirements. For information on any of the following programs, contact your local Income Support Division office or the Aging and Long-Term Services Department. (See "Resources")

Program of All Inclusive Care for the Elderly (PACE). The PACE program is an optional benefit under both Medicare and Medicaid, and is, available only to the frail elderly. The PACE program is **not** part of the Centennial Care suite of programs. In order to qualify, an applicant must be at least 55 years old, be able to live in the community safely, have specific long-term care needs, live in specific locations in New Mexico, and be eligible for Institutional Medicaid.

The PACE program offers a comprehensive package of medical and social services aimed at keeping individuals as independent as possible and out of nursing homes. The medical services are provided at an adult day health care center, although services may be provided in-home and through outside referral services as needed. The applicant returns home each evening. Meals and transportation are included. Services are provided 24-hours a day, seven days a week.

Unfortunately, as of the date of publication of this handbook, the PACE program is only available in Albuquerque and limited surrounding areas. For more information about the PACE program, contact the Aging and Long-Term Services Department. (See “Resources”)

Centennial Care

New Mexico’s Medicaid Program, Centennial Care, offers “Community Benefit” services to improve the quality of life for the disabled and the elderly in their own homes. These services are intended to help people stay in their homes rather than enter a nursing home facility. These services, formerly known as Medicaid Personal Care Options (PCO), Coordination of Long-Term Services (CoLTS), and Mi Via are accessed through Centennial Care “Managed Care Organizations” (MCOs).

Services under the Community Benefits program are available to individuals who need a nursing facility level of care and who are eligible for full Medicaid services (individuals who qualify for Medicaid under the SSI income and asset restrictions). These individuals can access Community Benefits immediately. Total monthly benefits available to these individuals are limited to the amount that would have been spent for care in a nursing home facility.

A limited number of “slots” for the Community Benefits program are also available to higher income individuals who qualify for Institutional Care Medicaid described above. However, because of the limited slots available for services, these higher income individuals must register with the “Central Registry” through the Income

Support Division of the New Mexico Human Services Department. There may be long waits for openings for services.

Once an individual is enrolled in the Community Benefits program, the program will pay for assisted living facilities, adult day care, environmental modifications to the individual’s home, respite care, various therapies, and home visits by nurses and other care providers.

For more information about Centennial Care and Community Benefits, contact the Aging and Long-Term Services Department or the Human Services Departments. (See “Resources.”)

Non-Medicaid Long-Term Care Options

State-Run Nursing Homes

An individual who does not have private long-term care insurance, does not qualify for Medicaid and does not have the resources to pay for nursing home care on his or her own may still receive care through two State-run hospitals for indigent individuals who need nursing home level of care. They are located in Ft. Bayard and Las Vegas.

Assisted Living

Assisted living facilities bridge the gap between living independently and living in a nursing home. Residents of assisted living facilities generally do not require constant care but do need help with such tasks as housekeeping, laundry, bathing, eating and medications.

Assisted living is not an alternative to nursing home care. Instead, it is a different level of care for more independent residents. Some assisted living facilities can provide medical care, while others provide only room and board. The cost of living in an assisted living facility is generally not paid by Institutional Medicaid.

Continuing Care Communities

Continuing care communities provide various levels of care, including independent living, assisted living and nursing home facilities, all within the same building or set of buildings. In these communities, residents may initially move into the independent living facility and, as they require more assistance, move to the assisted living and then to the nursing home facility. This means that a resident in a continuing care facility can easily move to a another part of the facility, if more assistance is required, without having to go through the stress of looking for a new facility and relocating or adapting to a new place.

Continuing care communities are often very expensive. These communities generally require a substantial amount of money to “buy into” the community, in addition to monthly payments for rent and services. The buy-in money is often non-refundable, which may limit a resident’s options for moving or changing programs. If you are considering joining a continuing care community, you should make sure you understand the terms of the contract. You should also have a knowledgeable person carefully review the community’s financial statements. If the community goes bankrupt, you may have very little recourse for getting your buy-in money back.

Long-Term Care Insurance

Long-term care insurance (LTCI) generally covers types of care not covered by other private health insurance, Medicare, or Medicaid, such as home care, care in assisted living facilities, adult daycare, and Alzheimer’s facilities. LTCI is still a relatively new type of insurance and the types of coverage vary widely between policies.

LTCI policies also vary regarding the criteria for when services become available. For example, policies vary in the number of “activities of daily living” (ADLs) you must need assistance with in order to qualify for in-home services. Because policies vary in their coverage, it is critical to understand exactly what services and providers are covered, and where and under what circumstances you can access services.

LCTI is generally expensive unless you lock in low premiums when you are younger (under 60) and healthy. If you wait to purchase LCTI until shortly before you need it, your premium will be more expensive, a reflection of your age and state of health.

You should also consider whether you can afford the premiums, both now and in the future. As you age, your financial situation may change (due to the death of a spouse and the subsequent loss of that spouse’s income, for example). With long-term care insurance, if you miss a premium payment, you may lose the coverage, making the previous premiums you paid worthless.

Community Based Assistance for Aging and Long-Term Services

There are a number of other resources and programs available to assist senior citizens. Not all programs are available in all areas. Contact your local senior center, the Office of Senior Affairs, or the Aging and Long-Term Services Department, for information regarding the following programs in your community.

Senior Centers. Senior centers provide meals, activities and information for seniors. Many senior centers have volunteer opportunities for seniors. Senior centers are good places to make new friends, stay informed and keep active.

Meal Delivery Service. Meal delivery services (often called “Meals on Wheels”) are available for qualified elderly and disabled individuals. Meals are delivered to your home.

Transportation. If you are elderly or disabled, there may be special transportation services provided in your area to take you to doctor’s appointments and to do errands, such as your shopping. For information about transportation services in your area, check with your local senior center or look in the telephone directory in the county or city government pages under “Transportation.”

Home Assistance. Home assistance workers, called “homemakers,” help with light housekeeping and cooking, offering some relief from daily chores for caregivers and their clients.

Home Retrofit. In Albuquerque, Home Retrofit is a program that helps seniors and disabled persons modify their homes to make the home more accessible. Some of the repairs and improvements include adding grab bars, wheelchair ramps, and generally increasing accessibility for the disabled and impaired. (See “Resources.”)

Adult Daycare. Adult daycare centers help families care for elderly family members who cannot be left alone during the day. In addition to having trained staff supervising the participants, the centers often serve meals and provide supervised activities. Some adult daycare centers will even provide transportation to and from the center.

Protecting Your Rights in a Long-Term Care Facility

The Long-Term Care Ombudsmen Program (Ombudsman) of the Aging and Long-Term Services Department (ALSTD) advocates for the recognition, respect and enforcement of the civil and human rights of residents of long-term care facilities in New Mexico. The Ombudsman’s office consists of a small professional staff that supervises many volunteers located throughout the state. Both the staff and the volunteers regularly visit nursing homes and other long-term care facilities to ensure that residents are properly treated.

The Ombudsman’s primary duty is to investigate and resolve complaints made by residents of long-term care facilities. In discharging this duty, the Ombudsman often coordinates with other state agencies, including the Department of Health, the Human Services Department, and the Adult Protective Services Division of ALSTD. Ombudsman staff regularly speak

with residents, investigate complaints, and monitor quality of care.

The Ombudsman's office is a good source of information regarding long-term care facilities. You can get general information about all nursing facilities in your area on the Medicare website at www.medicare.gov. The information provided includes inspection reports, number of staff, and resident information

Dental, Vision and Hearing

Medicare does not cover eyeglasses, hearing aids or most outpatient dental work. However, there are some programs that may assist with these needs. Medicaid does cover these services.

Federally Qualified Health Centers (FQHC) provide health care services on a sliding-fee scale for patients who have no, or inadequate, health care coverage. The services provided by many FQHCs include dental and vision care as well as prescription drugs. If you have Medicare but have difficulty with your out-of-pocket health care expenses, you may want to consider seeking care at a FQHC. To find a FQHC in your area, contact the New Mexico Primary Care Association.

The Seniors' Eye Care Program (formerly the National Eye Care Project) is a program that links qualifying patients with participating ophthalmologists, who provide free examinations and treatment. If you are a U.S. citizen or legal resident 65 years or older, have not been to an ophthalmologist for three years or more, and do not have an HMO or veteran's vision care, you may contact this program to apply for assistance.

The Hear Now Program is a program that provides reconditioned hearing aids to low-income patients at reduced costs.

For more information on any of these programs, see the Resources section at the end of this chapter. You can also contact the Aging and Long-Term Services Department.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Affordable Care Act Health Insurance Marketplace

Marketplace to compare qualified health plans, get answers to questions, and enroll in health coverage

(800) 318-2596

(855) 889-4325 (TTY)

(800) 242-0339

www.healthcare.gov

Discount Prescription Drug Program (DPDP)

A state-sponsored program available to all New Mexico residents, regardless of whether or not they have insurance.

(800) 233-2576

www.nmrhca.org

(The) Eldercare Locator

(800) 677-1116

www.eldercare.gov

www.ec-online.net

Hear Now Program

Hearing aid assistance.

(800) 328-8602

www.starkeyfoundation.org/Hear-Now

Medicare

Health insurance program for seniors and the disabled

(800) MEDICARE (633-4227)

TTY/TDD: 1-877-486-2048

www.medicare.gov

Mi Via Program

A self-directed waiver program which gives recipients the power to choose and manage services they receive

www.mivianm.org

National Hospice and Palliative Care Organization

Provides free consumer information on hospice care and puts the public in direct contact with hospice programs.

(800) 658-8898

www.nhpco.org

National Institute on Aging

Alzheimer's disease Education and Referral Center

(800) 22-2225

(800) 222-4225 (TTY)

www.nia.nih.gov/alzheimers

New Mexico Aging and Long-Term Services Department Long-Term Care Ombudsman Program (LTCOP)

Ombudsmen assists residents by advocating for their rights, investigating complaints, helping to resolve concerns, and ensuring they receive the quality of care they deserve. Services are free, confidential and provided statewide.

1-866-451-2901 (Statewide Toll Free)

www.nmaging.state.nm.us/Long_Term_Ombudsman.aspx

New Mexico Aging and Long-Term Services Department Aging & Disability Resource Center

State agency assisting the elderly and those with disabilities achieve the highest quality of life.

(800) 432-2080

www.nmaging.state.nm.us

New Mexico Department of Health

(505) 827-2613

www.health.state.nm.us/

New Mexico Health Facility Licensing and Certification Bureau

Establishes, monitors and enforces quality standards for health facilities in New Mexico.

(505) 476-9025 (Santa Fe)

(800) 752-8649

www.nmhealth.org/about/dhi/hflc/prop/stli

New Mexico Health Insurance Exchange

Compare qualified health plans and enroll for health coverage

(833) 862-3935

www.nmhix.com

www.BeWellNM.com

Partnership for Prescription Assistance (PPA)

PPA helps provide free or nearly free prescription drugs to patients who cannot pay for their medications.

(888) 477-2669

www.pparx.org

Senior Citizens' Law Office

Offers legal services to Bernalillo, Sandoval, Torrance, and Valencia County residents 60 and over.

4317 Lead Ave. SE Suite A

Albuquerque, NM 87108

(505) 265-2300

www.sclonm.org

Seniors Eye Care Program

Raising awareness about eye health, screening and information about eye care.

(877) 887-6327

www.aao.org/eyecare-america

Total Community Care (PACE)

Available to person 55 years and older. A day health care center offering comprehensive set of services aimed at keeping those, who would otherwise require institutionalization, at home. Currently available to Albuquerque residents only.

(505) 924-2650

www.myinnovage.org

CHAPTER FOUR

Consumer Protection Issues

If you purchase goods or services for a non-business purpose, you are a “consumer.”

The majority of businesses and salespeople offering goods and services are honest, but there are businesses and salespeople who will try to cheat and take advantage of you. Senior citizens are often targets of these unscrupulous and dishonest businesses and salespeople.

There are a variety of state and federal laws that provide some protection from dishonest or unscrupulous salespeople. If you feel that you have been taken advantage of or lied to by a salesperson or business, contact LREP at 1-800-876-6657 or the Consumer Protection Division of the New Mexico Attorney General’s (NMAG) office (see “Resources”). It is also up to you, as a consumer, to protect yourself from dishonest or unscrupulous people and businesses by paying careful attention to the things you buy and the agreements you enter into.

This chapter discusses many of the most common consumer issues; however, there are many more consumer issues that are not addressed such as identity theft, use of debit cards, obtaining and removing errors from your credit report, etc. If you have questions regarding a consumer issue that is not discussed here, please call LREP or the NMAG.

General Information

You are your own best protection against dishonest and unscrupulous businesses and people. The following are some general principles that, if followed, will help you avoid many of the consumer issues discussed in this chapter.

- Carefully choose the people with whom you do business. Deal with businesses and people you know or who have a good reputation in the community
- Remember, if something sounds too good to be true, it probably is.
- Do not let anyone pressure you into buying something. There is seldom a legitimate offer that is good “for one day only.” Most reputable businesses will give you time to think before you commit. It is important to think carefully before entering into an agreement, because once you agree, you may not be able to change your mind.
- DO NOT GIVE MONEY TO ANYONE “UP FRONT!”
- You do not have to pay for anything mailed to you that you did not order.

Credit Purchases

Buying on time or credit means that you borrow the money to pay for the goods or services. You agree to pay back the money, plus a finance charge (interest), in a specified amount of time. The following are some important terms you should consider when you borrow money.

Cash price. The cash price is the amount the goods or services would cost if you paid cash, in full, at the time of the purchase.

Finance charge. A finance charge is the cost of borrowing money to pay for the goods or services. It generally includes the interest on the loan, but may also include other fees.

Total of payments. The total of payments is the total amount you will pay for the goods or services over time, which includes the cost of the goods or services, sales tax and the finance charge.

Amount financed. The amount financed is the amount you are borrowing, also known as the “principal.”

Annual percentage rate (APR). The annual percentage rate is the rate of interest you will pay for the goods or services over time. The interest rate can be fixed, meaning it remains the same over the life of the loan, or it may be variable, meaning it can change over the life of the loan.

Whenever you purchase any goods or services using credit, the federal Truth in Lending Act requires creditors to give you a written statement advising you of the amount financed, the annual percentage rate, the finance charge and the total payments for the purchase.

The majority of credit purchases are made with credit cards. When you use a credit card, you will incur a monthly finance charge on any unpaid balance. If you pay the balance in full before the due date listed on the credit card statement, you may be able to avoid the monthly finance charge.

Credit Insurance

When buying an item on credit, you will sometimes be offered “credit insurance.” Credit insurance is insurance that pays some or all of your loan if you are unable to meet your payment because of the occurrence of a specific event. The most common types of credit insurance are: credit life insurance which pays some portion of the loan if you

die; credit disability insurance which pays some portion of the loan if you become ill or injured and cannot work; involuntary unemployment insurance which pays your loan payments if you lose your job through no fault of your own; and credit property insurance which pays some portion of your loan if the property securing the loan (the car, house, etc.) is destroyed or stolen.

Credit insurance is usually optional. In other words, a lender generally cannot require you to purchase credit insurance in order to obtain a loan. Use care when filling out credit applications to ensure that you are not inadvertently committing yourself to an insurance policy you do not need or want. Sometimes people purchase credit insurance by accident, thinking they have only signed up for a credit account, but in actuality an insurance policy was included.

As with any insurance policy (or any contract for that matter), it is always important to read and understand the terms of policy so you will know what is covered and what is not. If you experience any problems regarding any type of insurance, contact the Office of the Superintendent of Insurance. (See “Resources”).

Contracts

A contract is a legal agreement between two or more parties (people, businesses, etc.) in which the parties each agree to do something. Contracts can be verbal or written; however, written contracts are generally much easier to enforce because it is easier to prove the terms of a written contract.

The specific type of contract discussed in this chapter is a contract for the purchase of goods or services. Some common examples

of these contracts are: credit card contracts; purchase agreements for automobiles, appliances and other large purchases; contracts for telephone (cell and landlines), Internet and television services; contracts with contractors to perform work on your home such as roofing or remodeling.

The following are good practices to follow when entering into a contract.

- Thoroughly read and understand all contracts prior to signing. **The law assumes that, when you sign a contract, you have read and understood it.**
- Do not allow yourself to be rushed or pressured into signing a contract. Take time to think about it and make sure these are goods or services you want, need, and can afford.
- Do not rely on verbal promises from the other party when entering into a contract. If there are any verbal promises or agreements between you and the other party, make sure they become part of the written contract.
- In particular, do not rely on the other party's verbal promises regarding your right to cancel the contract. If your right to cancel is not stated in the contract, then it may not exist.
- Similarly, make sure any guarantees or warranties are in writing.
- Never sign a contract that has blank spaces that can be filled in later. Insist that any blank spaces in a contract be filled in prior to signing.
- Keep a copy of all contracts, receipts, payment records, billing statements and any letters you send or receive regarding the goods or services.
- Make sure you keep the other party informed of any address changes,

to ensure that you receive all billing statements, correspondence and warranty information about your purchase.

Warranties

A warranty is a promise that a good or service actually is what it is represented to be and that it will function as advertised for some period of time. A warranty can be implied or express. Most purchased goods come with an implied warranty of merchantability, which means that, just by the act of selling the product, the seller is warranting that the product is fit for the ordinary purpose for which such a product is generally used. Additionally, some goods or services also come with an express or written warranty (part of the written contract itself) that the good or service is what it is represented to be and will perform for a specified period of time.

The first step in enforcing a warranty is to deal directly with the business who sold you the good or service. If you have an express or written warranty, read the warranty for instructions on how to make a warranty claim. If the warranty was implied, send a written complaint to the business where you bought the good or service. Be specific about the problem and about what you want to happen.

Make sure you include **copies** of your receipt, billing statements, cancelled checks or other documents. (**Never send original documents; you may never get them back.**) Remember to include your name, address and telephone number (and email address, if it was an on-line purchase) so that the seller can reach you. Send the information to the customer service department, if you are dealing with a large company. If the company

you are dealing with is small, send the letter directly to the owner. Consider sending this information by certified mail. The cost of certified mail is minimal and it provides valuable documentation that the business actually received your correspondence. Keep copies of any correspondence you send or receive. Be patient. You must allow the business a reasonable amount of time to make the situation right.

If you have waited a reasonable amount of time and have not had your concerns satisfied, you should contact the Consumer Complaints Division of the NMAG or the Better Business Bureau. (See “Resources”)

If your concerns have still not been addressed to your satisfaction, you have the option of taking the business to court. However, there are costs and risks associated with this course of action, and there is no guarantee that you will win. Before taking legal action regarding any issue, it is a good idea to consult an attorney for help evaluating your likelihood of success. **You can contact LREP at 1-800-876-6657 for help with these issues.**

High-Pressure Sales and Consumer Fraud

Far too frequently, senior citizens are targets and victims of consumer fraud. One reason is that seniors are likely to be home during the day when a majority of sales calls are made - both telephone and door-to-door. Other reasons include the fact that seniors sometimes suffer from diminished capacity, loneliness, inability to recognize a scam, and fear of being perceived as rude or impolite.

Here are some ways to protect yourself:

- **The most important thing to remember is that you do not have to talk to sales people who come to your door or contact you by telephone.** These salespeople often use hard-sell, aggressive tactics and often the more you talk to them the more insistent they become. Just politely say that you are not interested and close the door or hang up the telephone.
- Similarly, do not respond to unsolicited emails. The Internet in general and email in particular has become a favorite tool of people trying to take advantage of you. Emails saying you have won a prize, inherited money, or even that a family member is in trouble and needs your help are now common tactics for unscrupulous people. Responding to these emails in any way will lead you deeper into the scam. Never click on a website address embedded in an unsolicited email and **NEVER** send money or personal information in response to an email. **Reputable businesses, banks, etc. will never ask you to send personal information via email.**
- Talk to a family member, friend or other trusted individual prior to responding to offers or solicitations. Remember that your family and friends have your best interest in mind, while the person trying to sell you something may not.
- Hang up if you are asked to pay a fee to collect a prize or if you do not remember entering the contest. Any legitimate contest does not require a winner to pay a fee to collect a prize.
- Do some investigating. Call the Consumer Protection Division of the NMAG to make sure that the business or charity you are dealing with is legitimate. Do this before you purchase a good or service or donate money. (See “Resources.”)

- Never give out information about your credit cards or bank accounts unless you are absolutely certain that the business or charity you are dealing with is legitimate.
- If a business or charity insists on immediate payment (for example, suggesting you wire or send money by overnight delivery), this is a “red flag” indicator that the business or charity is not legitimate, and you should not deal with it.
- Enroll yourself in the national “Do Not Call” registry. The “Do Not Call” registry is a national registry established by the Federal Trade Commission (FTC). It prohibits many telephone solicitors from contacting you. You can add your name and telephone number to the registry by contacting the FTC. (See “Resources.”)
- You can have your name removed from many national direct mail lists by contacting the Direct Marketing Association. (See “Resources.”)

The final thing to remember is that solicitors, whether they use the phone or visit your home, will say just about anything to get you to say “Yes.” They will charm, flatter, intimidate, stretch the truth, and sometimes even lie. Don’t fall victim to these tactics. Remember, you are the only one who can protect yourself from becoming a victim of consumer fraud.

Legal Protection from High-Pressure Sales

There are several state and federal laws that offer some protection from high-pressure sales tactics to consumers. Examples of these laws are the 3-Day Cooling-Off Rule and the Door-to-Door Sales Act.

The federal 3-Day Cooling-Off Rule and the New Mexico Door-to-Door Sales law

provide consumers some protection from door-to-door sales pitches and sales made in temporary business locations such as fairgrounds, hotels or convention centers. These laws give buyers three days to cancel a sales transaction that has taken place under these circumstances.

The laws apply only in the limited circumstances described above. Examples of circumstances where the laws do not apply are sales that take place at the seller’s place of business or sales made where you contacted the seller and requested the sales call. The rule also does not apply to purchases made at arts and crafts fairs.

If the rule applies, the salesperson must tell you about your right to cancel at the time of the sale and provide you with a written Notice of Cancellation that you can use to cancel the contract, should you choose to do so. The contract must also explain your right to cancel and include the name and address of the seller as well as the date the sale was made. The contract must be in the same language that the salesperson used in his or her presentation. For example, if the salesperson communicated to the buyer in Spanish, the contract must also be in Spanish.

If you wish to cancel a transaction that is covered by the Rule, you must sign and date a copy of the cancellation form and mail it to the address given for cancellation. If you were not given the cancellation form, you may cancel by stating your desire to do so in writing and mailing it to the address given for cancellation. Make sure that the cancellation is postmarked before midnight of the third business day after the contract date. (Saturday is considered a business day, Sundays and federal holidays are not.) You may want to consider sending your

cancellation by certified mail, since proof of the mailing date and proof of receipt of the cancellation are important. You do not have to give any reason for canceling the sale.

After receiving your cancellation, the seller has 10 days to return any promissory note or other negotiable instrument you signed, refund all of your money, tell you if any product you have will be picked up, and return any trade-in.

The seller must either pick up any items left with you or reimburse you for any mailing expenses if you agree to send back the items. If you received any goods from the seller, they must be made available for return to the seller in as good condition as when you received them. If you do not make the goods available to the seller or say you are going to return them and fail to, you may remain obligated under the contract.

Shopping by Phone, Mail and the Internet

Shopping by phone, mail or the Internet is a convenient alternative to shopping at a store, especially for those who have trouble getting around. There are special rules that cover merchandise ordered by mail, telephone, computer or fax machine. Under the Federal Trade Commission's Mail or Telephone Order Merchandise Trade Regulation rules, a company must ship your merchandise within the time stated in its ads, or within 30 days of receiving your order if no time is given. If you do not receive the item within the time promised, you have the option of canceling your order and receiving a refund. If you are applying for credit to pay for your purchase at the same time you place your order, and no time is stated in the company's

advertisement, the company has 50 days to ship your order after receiving it.

If you use your credit card to pay for merchandise ordered by mail or phone, you are protected by the Fair Credit Billing Act (FCBA) which protects you in the event of a billing error or disputed charge. If you need to dispute a charge, you should write to the credit card company at the address for "billing inquiries" indicated on your monthly statement. Be sure to include your name, address, credit card number and a description of the billing error. You must contact the credit card company in writing within 60 days after the first bill or statement containing the error. You must pay the undisputed portion of the bill, including any finance charges.

Never give personal or financial information, such as your credit card or bank account information over the phone or on the Internet, unless you are absolutely sure that you are dealing with a legitimate and reputable business.

The best practice is to thoroughly check into any business (including an Internet business) before you deal with it. You can contact the Better Business Bureau online to see if there is any information available about the individual or company. You can also type the company site into a search engine, such as Google or Yahoo, to find out if there are any reviews or comments available online about the company that might help you decide if you want to do business with the company. Additionally, you can confirm a physical address and telephone number for the company. If they have none, then take your business elsewhere. It is to your benefit to take the time to do some research. It is very wise to exercise caution when doing

any kind of business, or simply browsing, through the Internet.

Payday Loans

Sometimes it is difficult to make ends meet, especially if you are a senior living on a fixed income. You may be tempted to take out a small, short-term loan from any one of a number of businesses such as “payday loans,” “cash advance loans” or pawn shops. These small, short-term loans typically work as follows: the borrower writes a personal check for the loan amount, plus whatever fees the lender requires. The check is post-dated (dated for two- or three-weeks in the future), and that is when the loan is due to be repaid. When that date arrives, the borrower has three options. One option is to let the lender cash the post-dated check, and the transaction is completed. Another option is for the borrower to repay the loan and fees in cash and, again, the transaction is completed. Unfortunately, what commonly occurs is the final option: the borrower “rolls” the loan over, meaning the borrower extends the term of the loan. In order to do this, the borrower again pays any fees associated with the initial loan. This scenario is repeated over and over, with the fees often ending up amounting to more than the initial amount borrowed.

While these loans are relatively easy to get, even for those whose credit is less than perfect, you should avoid them if at all possible. A typical two-week Payday Loan with a \$15 per \$100 fee equates to an annual percentage rate (APR) for these loans which can be as high as 400 percent. If you are unable to pay back the initial amount borrowed at the time it is due, you are at risk of getting trapped in an endless cycle of debt,

the amount of which far exceeds the original amount borrowed.

The surprising thing about these types of loans, which, as noted above, can often have an APR of several hundred percent, is that they are perfectly legal and thus, technically, not a scam. However, the people and companies who make these types of loans have been known to use questionable methods when trying to collect delinquent accounts. The American Association of Retired Persons (AARP) suggests several alternatives to obtaining this type of loan, such as borrowing from family or friends or seeking a small loan with a reasonable interest rate from your bank, savings and loan, or credit union. You might also consider taking a small cash advance from a credit card. Even though the interest rate on credit cards is rather high (typically around 18 percent), it is still a better rate than a “payday” type of loan.

Note: Payday loans can be discharged in bankruptcy, despite what the payday loan lender may tell or require you to sign.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)
(800) 876-6657 (outside Albuquerque)
www.sbnm.org/LREP

Better Business Bureau

(505) 346-0110
(800) 873-2224 (Toll Free)
www.newmexicoandsouthwestcolorado.bbb.org

Direct Marketing Association

Managing your mail

225 Reinekers Ln., Suite 325

(212) 768-7277 (ext. 1888)

www.DMAChoice.org

Federal Trade Commission, Consumer Response Center

Federal agency working to prevent consumer fraud.

(877) 382-4357

(866) 653-4261 (TTY)

www.ftc.gov

National Association of Insurance Commissioners

1100 Walnut Street

Kansas City, MO 64106-2197

(816) 842-3600

www.naic.org

National Do Not Call Registry

(888) 382-1222

(866) 290-4236 (TTY)

www.donotcall.gov

New Mexico Attorney General's Office, Consumer Protection Division

State agency that investigates consumer fraud

(844) 255-9210 (Toll Free)

(505) 490-4060 (Santa Fe)

(505) 717-3500 (Albuquerque)

(575) 339-1120 (Las Cruces)

www.nmag.gov

New Mexico Legal Aid

Civil legal services for low-income New Mexicans.

866-416-1922 (Albuquerque)

833-545-4357 (Toll-Free)

www.newmexicolegalaid.org

Office of Superintendent of Insurance

Provides convenient access to consumers to reliable insurance products

PO Box 1689

Santa Fe, NM 87504-1689

(855) 427-5674

www.osi.state.nm.us

Senior Citizens' Law Office

Offers legal services to Bernalillo, Sandoval, Torrance, and Valencia County residents 60 and over.

4317 Lead Ave. SE, Suite A

Albuquerque, NM 87108

(505) 265-2300

www.sclonm.org

CHAPTER FIVE

Debt Problems

If you are having trouble paying your bills, you are not alone. Unfortunately, many New Mexico seniors have difficulty making ends meet. Seniors develop debt problems for a number of reasons – fixed incomes that do not stretch to cover necessities, illness, job loss, adult children who have not taken responsibility for their own lives, or simply overspending. Whatever the reason, debt problems can quickly begin to feel overwhelming. This section discusses some of the tools and protections available to help you deal with your creditors.

Types of Debt

There are two types of debt - **secured debt** and **unsecured debt**. The options available to both you and the creditor depend on the specific type of debt. Therefore, it is important to understand which type of debt is at issue in each situation.

A **Secured debt** is a debt in which the lender holds or retains ownership rights for something of the borrower's until the debt is paid in full. The items held by the lender are called "collateral" or "security" for the debt. If the debt is not paid, the lender can take the collateral to satisfy the debt. Common types of **secured debts** are car loans and mortgages on real estate.

In the case of a car loan, the lender keeps the title to the car until the loan is paid in full. If the loan is not repaid, the lender "repossesses" the car from the borrower and sells the car to satisfy the outstanding balance on the car loan.

In the case of a mortgage on real estate, the lender maintains a "lien" (hold) on the real estate until the loan is paid in full. If the loan is not paid, the lender can "foreclose" on the lien and then sell the property to satisfy the outstanding balance on the loan.

If the proceeds from the sale of the collateral for the loan are not sufficient to pay off the remaining balance of the loan, the lender, in some cases, can sue the borrower for the remaining amount owed. This is called a "deficiency judgment."

Unsecured debt is a debt that is not secured by collateral. Common types of **unsecured debt** are credit card debt and medical bills. Because there is no collateral for the debt, if you do not pay your credit card bills, medical bills, or other unsecured debt, the creditor (the credit card company, hospital, etc.) cannot directly take anything from you. The creditor can, however, report your non-payment to the credit reporting agencies which will harm your credit rating. The creditor can also contact you to try to get you to pay the debt. If you still do not pay the debt, the creditor can sue you, in court, for the debt. These alternatives are discussed below.

Handling Calls from Creditors

Some of the hardest things to face when dealing with debt issues are the constant and sometimes harassing calls from creditors/debt collectors. In some circumstances, there are laws that protect you from this type

of harassment. The Fair Debt Collection Practices Act (FDCPA) is the federal law that dictates how and when a debt collector may contact you in an effort to collect a debt. For example, the FDCPA prohibits debt collectors from calling you before 8:00 a.m. or after 9 p.m. Debt collectors also may not lie to you or bully you in an effort to collect the debt.

If a debt collector contacts you, you should consider talking to the collector at least one time to see if the matter can be resolved, and to make sure the collector has not contacted you by mistake. During the call, try to get the collector's address if possible. If, after speaking with the collector, you decide you do not want them to contact you again, you should notify the collector, in writing, at the address obtained during the call, to stop contacting you. The FDCPA requires a debt collector to stop contacting you if you ask them, in writing, to stop. **You can contact LREP for assistance with the wording of a "stop calling letter."**

NOTE: Sending a written request for the debt collector to stop calling does not prevent the collector from continuing debt collection efforts through other means, such as suing you in court for the debt.

The debt collector is required by the FDCPA to send you a written notice of the debt within five days after they first contact you. The notice must include the amount you owe, the name of the creditor to whom you owe the debt and how to proceed if you do not think you owe the debt.

In practice, it can be difficult to enforce the FDCPA provisions. Sometimes the best way to deal with harassing calls from debt collectors is to simply not to speak to the caller. Just hang up the phone. You can

also use the caller ID service provided by your local telephone company to determine whether or not to answer the call, or you might purchase an inexpensive answering machine to screen your calls.

Always keep copies of any correspondence that you send to or receive from a debt collector or creditor.

What to Do if You Are Sued

If a debt collector cannot collect a debt through phone calls and other harassing tactics, the collector may sue you for the debt. The debt collector initiates the suit by filing a "Complaint" with the court. The Complaint is a legal document in which the debt collector describes the debt (the amount owed, the source of the debt, when the debt was incurred, etc.) and the evidence the collector possesses showing that you are the person who owes the debt. If you are sued by one of your creditors, you will receive a copy of the Complaint and a "Summons." A Summons is a legal document that the creditor is required to send, to notify you that you are being sued. The Summons should contain additional information regarding when and how you are required to respond to the lawsuit.

Your response to the lawsuit is called an "Answer." **You may file your Answer with the court within the specified number of days after receiving the Summons.** The specific number of days in which to respond should be indicated on the Summons. The time to respond is usually 20 days, if the lawsuit was filed in Metropolitan or Magistrate Court, or 30 days, if the lawsuit was filed in District Court. The Answer is your opportunity to dispute the truth and/or accuracy of the creditor's claims stated in

the Complaint. If the debt is not your debt or you have been incorrectly sued, you must file a timely answer. It is also your opportunity to describe your “defenses” (reasons you should not have to pay the debt).

Some possible defenses are that it is not your debt, or the debt is so old that the creditor no longer has the right to collect the debt. Unfortunately, the following are not defenses: being elderly, being disabled, not reading the contract, being on a fixed income, losing a job, or losing a spouse. These circumstances, while difficult, do not relieve a debtor from the obligation of repaying a valid debt.

If you are sued, you may file a timely Answer. If you choose not to file an Answer, the creditor will win the lawsuit by default. This is true even if the debt is not yours and you have been incorrectly sued.

If you have been sued by a creditor, LREP may be able to help. Please call us at: (800) 876-6657 for more information.

What happens in the lawsuit after you file your Answer varies depending on the court and the Creditor’s actions. The case may be scheduled for a hearing or mediation, or the creditor may file additional documents in the case. The creditor must send you a copy of all documents that it files with the court.

NOTE: If the creditor is represented by an attorney, you cannot contact the creditor directly; you must only contact the creditor through its attorney.

What to Do if the Creditor Gets a Judgment Against You

If the creditor wins the lawsuit, the court will issue a “Judgment” in favor of the creditor. A Judgment is an Order from the court stating that the court has determined that you owe the debt to the creditor. The court’s Order instructs you to pay the debt. The creditor can use the Judgment to obtain permission from the court to collect the debt by garnishing your wages, putting a lien on your property, or taking other things that you own to satisfy the debt.

Many Judgments can be “discharged” (eliminated) in bankruptcy; however, bankruptcy can be an expensive and difficult process. New Mexico law provides some protection for your income and assets that may eliminate the need to file for bankruptcy.

Tools Available to Creditors

Creditors have several options available to them to collect a Judgment for an unpaid debt. If you own real estate, the creditor can place a lien on the property. The creditor can then move to foreclose the lien, forcing a sale of the property, or wait until you sell the real estate and be paid from the proceeds of the sale. A creditor can also seize and sell your personal property to satisfy a judgment. (Please see below for protections that may be available to you.)

Additionally, a creditor can garnish your wages and bank accounts. Garnishment is a process in which the court orders a third party (your employer or bank) to turn over some of your income or assets to the creditor.

Your Protections Under New Mexico Law

Both federal and New Mexico law prevent a creditor from garnishing income from any form of pension or Social Security (SS), such as direct-deposited Social Security Retirement, Social Security Disability, or Supplemental Security Income. Additionally, a creditor cannot garnish savings in Individual Retirement Accounts (IRAs) or 401(k) plans.

Even though income from pensions and SS are exempt from garnishment, if you transfer the funds into another bank account, the pension or retirement income could then become subject to garnishment. Banks and financial institutions are required by Federal law to review an account to determine if it contains certain types of directly deposited federal benefits prior to complying with a garnishment order.

If you think your creditors may attempt to garnish your bank account, the best practice is to only put SS funds in the account and to only keep a very small amount of money in the account.

Savings that are not in a retirement account (IRA, 401(k), etc.) can be garnished, as can wages from employment, within certain parameters. Your wages cannot be garnished if you make less than 40 times Federal minimum wage per week. In 2019, this was approximately \$290.00 per week. For the purposes of this calculation, your wages are what you take home after Social Security, federal and state withholdings, and any other deductions required by law have been deducted. If you make more than the minimum amount described above, your creditor can garnish up to 25% of your

wages; however, you can never be left with less than the minimum amount (40 times minimum wage).

In addition to protecting your income, the law also offers some protection for your real and personal property. New Mexico law exempts some real and personal property from seizure by a creditor to satisfy an outstanding debt. The protections that each person has include the following:

- Equity in your home, up to \$60,000 for an individual or \$120,000 for two people owning the home jointly. This is known as a **homestead exemption**. This exemption does not apply to taxes, mortgages, or liens placed on the title because of work done on the house.
- If you cannot claim a homestead exemption, you are entitled to an exemption of real or personal property in the amount of \$5,000.
- Benefits from accident and health insurance, and life insurance proceeds.
- Tax deferred retirement savings such as IRAs, 401ks, etc., up to a certain limit.
- Personal property worth up to \$500.
- Tools of the trade worth up to \$1,500.
- A vehicle valued at up to \$4,000 (a couple can have one vehicle valued at \$8,000).
- Jewelry worth up to \$2,500.
- Personal clothing, furniture, books, and medical or health equipment being used for the health of the person, not for his or her profession.
- Pension or retirement funds and payments from an annuity contract.
- Worker's Compensation and Unemployment Compensation benefits subject to New Mexico law.

The exemptions do not apply if the personal property is used as security (collateral). For example, if you purchased an automobile, and it was used as security for the loan, the vehicle exemption would not apply. The exemptions also do not apply if the debt to be collected is based on taxes owed, past-due child support or delinquent federal student loans.

The protections available to debtors under New Mexico law **are not automatic**. You must take steps to put these protections in place. If you are sued by a creditor, and the creditor obtains a judgment against you, you will be served with one or more of the following important documents:

- “**Notice of Right to Claim Exemptions (Garnishment),**”
- “**Notice of Right to Claim Exemptions from Execution,**”
- “**Claim of Exemption from Garnishment,**” and/or
- “**Claim of Exemptions on Execution.**”

You must fill out these forms to claim the exemptions that apply to you. **You have only 10 days to fill out these forms and file them with the court** or you will lose your right to claim the exemptions discussed above.

If you receive a personally served Subpoena from the court instructing you to attend a hearing to discuss your income and assets, you **must** go to the hearing. You must also bring any financial records requested by the court. If you do not, you could be held to be in contempt of court and a warrant for your arrest could be issued.

If your only income and assets consist of items listed in the above exemptions, you may be what is called “judgment proof.” This means that if a creditor were to obtain a judgment against you, there would be no way for that creditor to collect the judgment because all of your income and assets are exempt from collection. **LREP can help you determine if you are judgment proof.**

A final word of caution when dealing with debt issues: do not give away your assets to avoid paying your debts. Some people who are experiencing financial difficulties are tempted to transfer assets out of their names and into the names of their family members in an attempt to shield their assets from creditors. **These types of transfers are illegal and may be voided by the court.** A debtor may not transfer assets in an attempt to avoid paying a creditor.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Consumer Debt/Bankruptcy Workshop

Free legal workshop for questions about repossessions, foreclosures, collection issues, and bankruptcy

(505) 797-6094 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

**New Mexico Attorney General's Office,
Consumer Protection Division**

State agency that investigates consumer fraud

(844) 255-9210 (Toll Free)

(505) 490-4060 (Santa Fe)

(505) 717-3500 (Albuquerque)

(575) 339-1120 (Las Cruces)

www.nmag.gov

New Mexico Legal Aid

*Civil legal services for low-income New
Mexicans.*

866-416-1922 (Albuquerque)

833-545-4357 (Toll-Free)

www.newmexicolegalaid.org

**New Mexico Taxation and Revenue
Department**

(505) 827-0700

(505) 827-0822 Personal Income Tax

(505) 827-0870 Property Tax

www.tax.newmexico.gov

Senior Citizens' Law Office

*Offers legal services to Bernalillo, Sandoval,
Torrance, and Valencia County residents 60
and over.*

4317 Lead Ave. SE, Suite A

Albuquerque, NM 87108

(505) 265-2300

www.sclonm.org

CHAPTER SIX

Bankruptcy

Bankruptcy is a legal tool that can sometimes be used to help resolve financial problems when a person becomes overwhelmed by debt and is unable to pay his/her bills. Some of the most common reasons people find themselves in this position are: job loss; unreimbursed medical expenses; divorce or legal separation; or failure of a small business. Bankruptcy can help by allowing the “debtor” (the person filing for bankruptcy) to “discharge” (eliminate) much of his/her debt. Bankruptcy is designed to give the debtor a financial “fresh start” and, therefore, it is often possible for debtors to keep much of their property and assets after a bankruptcy.

Bankruptcy is a complex legal topic. Please call LREP at: (800) 876-6657 for more information regarding your specific circumstances.

Exemptions - What You Can Keep In A Bankruptcy

As noted above, bankruptcy is intended to provide the debtor with a “fresh start.” Therefore, rather than requiring you to use all of your assets and income to pay your creditors, New Mexico law allows you to keep some of your assets in a bankruptcy by exempting them from collection by creditors. These exempt assets are similar as those discussed in the previous chapter on Debt Problems. The following are examples of assets that are exempt in a bankruptcy proceeding:

- Home equity up to \$60,000 per person or \$120,000 for two people owning the home jointly. This exemption is known as the **homestead exemption**. This exemption does not apply to taxes, mortgages or liens placed on the title because of work done on the house.
- If you cannot claim a homestead exemption, you are entitled to an exemption of real or personal property in the amount of \$5,000.
- Life, accident and health insurance benefits, and life insurance proceeds.
- Tax deferred retirement savings such as IRAs, 401ks, etc., up to a certain limit.
- Personal property worth up to \$500.
- Tools of the trade worth up to \$1,500.
- A vehicle valued at up to \$4,000 (or a couple can have one vehicle valued at \$8,000).
- Jewelry worth up to \$2,500.
- Clothing, furniture, books, and medical-health equipment being used for the health of the person, not for his/her profession.

The exemptions do not apply if the property is used as security for a loan. For example, if a vehicle is used as security for the loan, the vehicle exemption could not be used to reduce the amount owed on the loan.

The Automatic Stay and Discharge of Debt

One of the most powerful features of bankruptcy is the **automatic stay**. The automatic stay is a court order that goes into effect as soon as you file the bankruptcy case. In most cases, it remains in effect until the end of the case. The **stay** immediately stops (“stays”) all debt collection actions, including phone calls/letters to the debtor, lawsuits by creditors, and wage garnishments. **Collection actions for child support or alimony are not stayed.** The stay also stops the process of foreclosure of a home or repossession of a vehicle - at least for a little while.

At the end of the bankruptcy case, the debtor receives a “discharge,” which is a court order that releases the debtor from the obligation of paying the listed debts with the exception of non-dischargeable debts. The debtor may voluntarily repay a debt, but a creditor may never ask for or force repayment of a discharged debt. If the debtor owes a **secured** debt, such as a mortgage on a home or a loan on a vehicle, the **debtor must keep making payments** or the creditor can take the home or vehicle to satisfy the debt.

Any creditor, or the trustee, can object to the debtor’s debts being discharged. In such cases, the creditor or trustee claims that the debtor does not deserve the discharge of debt because the debtor failed to complete a course on personal financial management, failed to fully disclose his/her assets, hid or gave away property, destroyed or failed to keep records, etc. If the bankruptcy judge is convinced that this is the case, the judge may deny the debtor’s discharge of debt.

Chapters 7 and 13

There are several types of bankruptcy. Each type is named for the section of the bankruptcy code in which it is defined. The two types of bankruptcy most often used by individuals are **Chapter 7** and **Chapter 13**. The process is similar for filing both types, in that both require the debtor to file detailed statements containing lists of all debts and all property/assets owned by the debtor. Additionally, the debtor is required to attend a meeting early in the process to answer questions, under oath, regarding his/her debts and assets.

Chapter 7 bankruptcy is also known as “liquidation” bankruptcy because the trustee sells whatever property the debtor is not permitted to keep (see below) and distributes the sale proceeds to the creditors to satisfy the debtor’s debts. Any remaining debts are discharged without payment, except for “non-dischargeable debts” (discussed in detail below). Chapter 7 bankruptcy rules do not put a limitation on the amount of debt.

Not all people qualify to file a Chapter 7 bankruptcy. One of the goals of the bankruptcy laws that went into effect in 2005 was to force people who can afford to repay some of their debts, over time, to do so rather than allowing debtors to have their debts liquidated in a Chapter 7. The process to determine whether or not a debtor qualifies for Chapter 7 bankruptcy is complex. However, in general, if a debtor has had an income lower than the median income in the area (in which the debtor lives) for the 6 months prior to filing bankruptcy, the debtor will qualify for a Chapter 7. According to the US Census Bureau, the median household income in

New Mexico from 2013 through 2017 was \$46,718.

A person can only receive a discharge through a Chapter 7 Bankruptcy once every 8 years.

Chapter 13 bankruptcy is also known as a “reorganization” bankruptcy. In a Chapter 13 case, the debtor keeps all of his/her property and develops a repayment plan to repay some or all of his/her debts over a 3-5 year period. A debtor might choose to file a Chapter 13 bankruptcy to gain time (up to 5 years) to catch up on payments, in order to keep a house or vehicle, or to pay off tax debt, without additional penalties or interest.

To be eligible to file a Chapter 13, the debtor must have a regular income and, a total of secured and unsecured debt below a specified amount. The amount of debt permitted is adjusted periodically for inflation. In 2019, the amount of unsecured debt (credit cards, medical debt, unpaid utility bills, etc.) must not exceed \$419,275; the amount of secured debt (a house mortgage, vehicle loan, etc.) must not exceed \$1,257,850.

Most people, if they qualify, prefer to file a Chapter 7, rather than a Chapter 13, because Chapter 13 is a more expensive process, extends over a longer period of time, and requires the debtor to pay back at least some of the money owed.

Non-Dischargeable Debts

Not all debts are dischargeable in bankruptcy. **Non-dischargeable debts** include certain taxes, debts due to fraud on the part of the debtor, debts from deliberately harming someone, DWI debts, student loans (in some cases), and debts that were not listed by the debtor in the bankruptcy filing. Child support and alimony cannot be discharged and, as noted above, are not affected by the automatic stay. **A debtor must continue paying child support and alimony during bankruptcy proceedings.** The debtor must pay the other types of non-dischargeable debt after the close of the bankruptcy case.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Consumer Debt/Bankruptcy Workshop

Free legal workshop for questions about repossessions, foreclosures, collection issues, and bankruptcy

(505) 797-6094 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

CHAPTER SEVEN

Rental Housing

Landlord/Tenant Rights and Responsibilities

When entering into a landlord/tenant relationship, each party has rights and responsibilities. Whether you are the landlord or the tenant, it is important that you understand those rights and responsibilities. The Uniform Owner-Resident Relations Act (UORRA) governs the rental of dwelling units in New Mexico, and both the UORRA and the Mobile Home Park Act (together, known as “the landlord/tenant law”) govern the rental of spaces in mobile home parks. (You will find a separate section below specifically about mobile home parks.) If, after reading this chapter, you are not clear about your rights or responsibilities under the landlord/tenant law, please do not hesitate to contact LREP at (800) 876-6657.

The Rental Agreement

Whether the rented dwelling is a house, apartment, townhouse, condominium, or mobile home, the landlord and tenant (“the parties”) will enter into a “rental agreement” (also known as a lease). As with all contracts, it is always recommended that a rental agreement be in writing for the simple fact that putting such an agreement into writing protects both parties. A typical rental agreement establishes the amount of rent, when rent must be paid, the length or term of the agreement, the amount of the security deposit, and how each party must give notice to end the agreement. The agreement can also provide for other rights and responsibilities of the parties, including rights and responsibilities that are

not otherwise spelled out in the landlord/tenant law. For example, the agreement should state which party pays the water bill (or other utilities), and it could state whether the tenant has the option to renew the lease when it expires. However, the agreement must not contain any provisions that would take away rights that the landlord/tenant law specifically provides to tenants and landlords.

The typical term of a lease is either year-to-year or month-to-month. Many leases are for a fixed term of one year initially and then run from month to month, unless the parties agree to enter into a new lease for a term of another year or other period of time. The length of the lease usually governs the amount of notice either the landlord or tenant must give to make changes. For example, if a lease is month-to-month, the landlord will have to give the tenant a written notice at least 30 days in advance (“30-day notice”) before the landlord can raise the rent. Also, either party can give the other a 30-day notice to end the lease. Any 30-day notice must include an entire rental period, which would be an entire calendar month if the rent is due on the first.

If the lease is for a fixed term, for example, a year, the landlord cannot raise the rent during that year. Except in very unusual circumstances, the tenant cannot move out during that year without the landlord’s agreement without being liable for rent for the time it takes the landlord to re-rent the dwelling. Also in a fixed-term lease, the parties may or may not have to give notice of intent to move out or to end the lease at the end of that one-year period. You should

carefully read the rental agreement to make sure, and it is always a good idea to give notice to be on the safe side.

Any rental agreement can be ended early if both parties agree to a new end date by signing a “mutual lease rescission.”

Prior to taking possession of a rental unit, it is a good idea for both parties to inspect the unit and to note any problems or defects in writing. Also make a list of the furnishings, if any, and note the condition of each item. If the landlord and tenant disagree about anything on the list, note that there is disagreement and initial it. Taking pictures of the rental unit prior to taking possession may also be helpful. **Written agreements and documentation are the best evidence in the event of a dispute.**

Late fees

A landlord may only charge late fees if the written rental agreement calls for such fees. The late fee can be no more than ten percent of the rent. If the landlord wants to impose a late fee, he or she must notify the tenant of the charge, in writing, no later than the end of the month following the date on which the fee was incurred. For example, if the rent is \$500 per month and the late fee is \$50 if the rent is not paid by the fifth of the month, and if the tenant pays the January rent on January 6, the landlord can only impose the \$50 fee by notifying the tenant in writing of that fact before the end of February.

Deposits

When entering into a rental agreement, it is customary for the landlord to ask the tenant for a deposit. This deposit, often referred to as the security deposit or damage deposit, protects the landlord against losses from

unpaid rent or damage to the property. A landlord may not charge the tenant for normal wear and tear to the rental unit. As mentioned above, taking pictures of the unit at the beginning of the tenancy is a good idea in the event there is a dispute about the condition of the unit at a later date. It is also a good idea for the tenant to get a dated receipt for the entire amount of the deposit paid.

A landlord may not charge a deposit of more than one month’s rent on any lease less than one year in length. If the lease is for one year or longer, the landlord may collect a deposit for more than one month’s rent, but in that case the landlord must put the deposit in an interest-bearing account. Under New Mexico law, a landlord may not require a deposit that is nonrefundable, unless it is a small deposit for the purpose of holding the dwelling until the rental agreement is signed.

A landlord may require a tenant to pay the last month’s rent as further security. The landlord does not have to pay interest on this amount.

When a tenant moves out of a rental unit at the end of the lease, the landlord is generally required to return the deposit to the tenant within 30 days of the date the rental agreement ends or when the tenant moves out, whichever is later. If the landlord believes he or she has the right to keep part or all of the deposit, the landlord must provide the tenant an itemized written list of the deductions from the deposit along with any remaining balance. If the landlord fails to return the deposit or send an itemized written list of deductions and any remaining balance within the 30-day period, the landlord loses the right to withhold any portion of the deposit, loses the right to make any type of claim in court with

respect to the deposit, and will be liable for attorneys' fees and court costs in any lawsuit brought by the tenant to recover the deposit.

Landlord's Responsibilities

In addition to the duties defined in the rental agreement, a landlord (and the landlord's designated manager, if any) has many responsibilities under the law. The first responsibility is to hand over possession of the rented premises to the tenant at the time specified in the rental agreement. If the landlord fails to do this, the tenant is not responsible for any rent until possession is delivered. The tenant may also:

- Terminate the rental agreement effective immediately upon written notice to the landlord. The landlord must return all prepaid rent and any deposits.
- Demand that the landlord perform under the rental agreement; in other words, deliver possession of the rental unit to the tenant. The tenant may also sue the landlord and/or any person who is wrongfully in possession.

A landlord must also (both before and during the tenancy):

- Comply with the requirements of all applicable local housing codes affecting health and safety.
- Make repairs and do whatever is necessary to keep the premises (dwelling units and common areas) in a safe condition.
- Maintain all systems (electrical, plumbing, etc.) in good and safe working order.
- Provide and maintain a means for the collection and removal of trash.
- Make sure the tenant has running water, both hot and cold, and reasonable heat at all times.

Tenant's Responsibilities

The tenant also has responsibilities under the law. First and foremost is to pay the rent and pay it on time. If the tenant pays with cash, he or she should make sure to get a receipt from the landlord or manager. Tenants also must:

- Comply with the requirements of all applicable housing codes affecting health and safety.
- Keep the rental unit in a clean and safe condition, and, when moving out, leave the unit in a clean condition, except for normal wear and tear.
- Dispose of all trash in a clean and safe manner, as provided for by the landlord.
- Keep all plumbing fixtures in the rental unit as clean as their condition permits.
- Use all systems (electrical, plumbing, etc.) in a reasonable manner.
- Not destroy, damage or remove any part of the rented premises or allow anyone else to do so.
- Not act in such a way that disturbs the quiet and peaceful enjoyment of other tenants on the premises.

Repairs

As noted above, one of the many responsibilities of a landlord is to keep the rental unit in good repair and in a safe condition. A tenant has several options if a landlord does not make necessary repairs that impact the health and safety of the tenant.

The first is to give the landlord written notice, often referred to as a "seven-day notice," of the repairs that need to be made. This written notice may state that, if reasonable steps are not taken to make the necessary repairs by a specified date (at least seven days from the

landlord's receipt of the notice), the rental agreement will end. If the landlord takes reasonable steps to make all the required repairs within the time specified in the written notice, the tenant cannot end the rental agreement. If the tenant ends the rental agreement because the landlord did not comply with the "seven-day notice," the landlord must refund to the tenant any prepaid rent and deposits.

Another option a tenant has if a landlord does not make necessary repairs is "rent abatement." Rent abatement means that the tenant reduces the amount of rent he or she pays for the rental. Before abating the rent, the tenant must notify the landlord in writing (also a "seven-day notice") that, if the necessary repairs are not completed within seven days of receipt of the notice, the tenant will reduce the rent paid.

If the repairs are not completed within seven days, the tenant can reduce the amount of rent by one-third for each day from the date of notice through the day the necessary repairs are completed. If the rental unit cannot be lived in, and the tenant actually moves out of the rental unit, the tenant may subtract 100 percent of the rent for each day from the date of notification through the day the necessary repairs are completed.

A tenant may not use rent abatement for repairs on items that are considered amenities, such as exercise equipment in the apartment complex gym. Rent abatement is intended only for repair of items that affect health and safety, such as heat, water and electricity, or water or gas leaks, to name just a few. The cosmetic appearance of the paint job in the apartment, for example, is not considered to be a repair issue involving health or safety.

Important note: Proper notice must be given to the landlord **before** using either of

the options discussed above. The purpose of the notice is to give the landlord one final opportunity to make the necessary repairs. Failure to give the required notice could result in the tenant being sued by the landlord for breach of the lease agreement. You can obtain a seven-day notice form from LREP.

Landlord's Right of Entry

If the landlord or manager wishes to enter the rented dwelling for the purpose of making repairs that the tenant has not requested, inspecting the dwelling, or showing the dwelling to a prospective tenant or buyer, the tenant must be given a written notice at least 24 hours prior to the entry. The notice must specify the approximate time and purpose of the entry.

If the tenant tells the landlord that the particular time is inconvenient and requests an alternative time, the landlord must try to accommodate the tenant's request. The requirement of a written notice by the landlord does not apply in the case of emergency or when the tenant has requested a particular repair. In general, the landlord may not abuse his or her right of entry.

Eviction

The most basic thing to know about eviction is that a landlord can not remove a tenant from the rental unit without an order issued by a judge. The landlord also may not force the tenant out (by changing the locks, shutting off the utilities, or removing the tenant's possessions from the property) without a court order.

Before a landlord will have legal grounds for a judge to order eviction of a tenant, the landlord must give the tenant one of four kinds of written notices: **a three-day**

notice of non-payment; a seven-day notice of non-compliance; a three-day notice of substantial non-compliance; or a thirty-day notice of non-renewal. The notice can be delivered by mail, hand-delivery, or by posting on the door of the dwelling.

Three-day notice of non-payment. If the tenant fails to pay all or part of the rent, properly imposed late fees, or utilities (if required by the rental agreement), the landlord can give the tenant a written three-day notice. That notice must state the amount owed by the tenant, and it must give the tenant three business days to pay the amount owed or face eviction.

If the tenant does not pay in full during the three-day period, the landlord can go to court and request the right to evict the tenant (Order of Restitution). The court will generally set a hearing within seven to ten days. If the tenant moves out before the date of the hearing, the tenant may still be responsible for any unpaid rent owed to the landlord.

Seven-day notice of non-compliance. If the tenant has violated the rental agreement in some way other than non-payment of rent, the landlord may give the tenant a written notice specifying the violation, including the date and approximate time of the violation, and stating that the tenant has seven days to correct the violation. If the tenant fails to correct the violation, the landlord may go to court and seek the right to evict the tenant (an Order of Restitution).

If the tenant commits another (same or different) violation within six months, the landlord does not have to give tenant an opportunity to correct the violation. In this case, the landlord is only required to give

the tenant a written notice that the rental agreement will end in seven days.

If the tenant does not move out voluntarily, the landlord must prove to the satisfaction of the judge that the violations occurred and were not minor. If the judge is convinced, he or she will generally order eviction within three to seven days.

Three-day notice of substantial non-compliance. If the tenant commits a “substantial” violation, for example engaging in a felony-type illegal activity, such as assault or drug trafficking, the landlord only has to give the tenant a written notice describing the violation, including the date and approximate time, and stating that the rental agreement will end in three days.

In this case, the landlord does not have to give the tenant an opportunity to correct the violation. If, after a hearing, the judge believes that the violation occurred and that it was “substantial”, the judge will generally order the tenant evicted within three to seven days.

Thirty-day notice of non-renewal. If the rental agreement is month-to-month, or if the original rental agreement has expired and no new agreement has been made, the landlord can give the tenant a 30-day notice stating that the tenant must move out by the end of the following rental period. If the tenant does not move out by the specified time, the landlord can go to court and ask the judge to evict the tenant.

Disposition of a Tenant’s Property

There are specific rules a landlord must follow before and after disposing of any property left by a tenant after the tenant has moved

out of the rental. If the tenant has moved out after being evicted by the judge, the landlord must provide reasonable access to the tenant for three days following move-out so that the tenant can retrieve the property. If the tenant has moved out voluntarily, the landlord must provide reasonable access to the tenant for fourteen days.

If the tenant “abandoned” the dwelling, the landlord must provide access for thirty days. “Abandoned” is a legal term which means that the tenant has been absent for more than seven days, has not notified the landlord or manager of his or her absence, **and is not current on his or her rent.** Upon declaring a dwelling abandoned, the landlord must take all reasonable steps to contact the tenant, e.g., the tenant’s family, and/or the tenant’s employer, and the landlord must place a notice on the door of the dwelling stating that the tenant has thirty days to contact the landlord and retrieve the belongings. The notice must state how the tenant can contact the landlord during that period.

During that 30-day period, the landlord is required to provide reasonable access to the tenant, the landlord can change the locks and does not have to (and should not) leave the rental unlocked. However, before declaring the rental abandoned, the landlord must be reasonably certain (and be prepared to prove) that the tenant has been absent for more than seven days.

The landlord can charge the tenant reasonable storage fees while storing the tenant’s property. Once the three-day, 14-day, or 30-day period has ended, the landlord can dispose of the tenant’s property in any manner he or she chooses. However, if the value of the property is more than \$100, and if the landlord sells, keeps, or gives the property away, the landlord

must reimburse the tenant either the sale price or the fair market value of the property, less the storage fees.

If the tenant owes rent to the landlord or is liable to the landlord for damages (provided the landlord has sent the tenant an itemized statement of the rent owed and/or damages), then the landlord may deduct the amount owed by the tenant from any value the landlord received from the tenant’s property.

Mobile Home Park Living

Many seniors are attracted to mobile home park living because it is more private than apartments and relatively inexpensive. However, it is important to note that mobile homes lose value over time (like vehicles) and, therefore, are generally poor investments. It can also be prohibitively expensive to move a mobile home should that become necessary.

If a person is renting a mobile home in a mobile home park, the regular landlord-tenant laws (i.e. the Uniform Owner-Resident Relations Act) discussed above apply. If a person owns (or is buying) a mobile home located in a mobile home park, almost all of the regular landlord-tenant law applies. Additionally, the Mobile Home Park Act (MHPA) provides several additional safeguards to the mobile home owner if there are twelve or more mobile home spaces in the park.

The first safeguard provided by the MHPA is that the rental agreement must be in writing and must include:

1. The length of the lease, the amount of the rent and the amount of rent increases (if any) that occurred during each of the preceding two years.
2. The day the rental payment is due.

3. The day when rent will be considered overdue.
4. The rules and regulations of the park currently in effect.
5. The zoning applicable to the park property.
6. The name and mailing address where a decision of the landlord may be appealed.
7. The name and mailing address of the park.
8. All charges to the tenant other than rent.
9. An explanation of the tenant's right to request alternative dispute resolution.

The second safeguard is that the owner/manager of the park must give the mobile home owner advanced, written notice if he or she wants the tenant to move out of the park. The written notice is called a "Notice to Quit" and should include the following:

1. The name of the landlord or of the mobile home park.
2. The mailing address of the property.
3. The location or space number where the mobile home sits.
4. The county in which the mobile home is located.
5. The reason for ending the tenancy and the date, place, and circumstances of any acts allegedly justifying ending the tenancy. **The landlord must have a valid reason for asking you to move out** (such as a failure to pay rent or a significant violation). **The reason cannot be just that the lease has expired.** In addition, the landlord must have given the tenant any 3-day or 7-day notices required by the UORRA prior to giving the tenant a notice to quit based on cause.

The notice must be either hand-delivered to the mobile home owner or posted at the main entrance to the mobile home. If service is by posting, the notice must also be sent by certified mail, return receipt requested. A tenant will have 30 days from the end of the rental period during which the notice is received to move his or her mobile home out of the park. An owner of a multi-section mobile home will have 60 days to move.

Mobile home parks may adopt rules and regulations concerning the residents' use and occupancy of the park. The rules and regulations must be explicit, non-discriminatory, and reasonable. Resident's must be given 60 days notice (with a 30-day comment period) of any new or amended rules and regulations before they are implemented.

If a mobile home park landlord provides utility services for the residents, he or she may not charge the tenant more than the amount he or she paid for the utility services. The landlord must give reasonable access to records of meter readings.

Subsidized Housing

There are three main types of subsidized housing: **public housing**, which is housing owned by a government entity; **project-based Section 8 housing**, which is privately-owned housing that is directly funded by the government; and **Section 8 Housing Choice Vouchers**, which subsidize individual tenants through a voucher system. In all these situations, the low-income tenants **pay no more than 30% of their income for rent**, with the rest paid by the government.

Tax-credit property is another form of subsidized housing in which the private owner

gets a tax break in exchange for providing affordable housing, but the tenants' rent is not directly paid by the government. Public housing and Section 8 vouchers are generally administered through local public housing authorities (PHAs). Both the U.S. Housing and Urban Development Department (HUD) and the New Mexico Mortgage Finance Authority maintain lists of project-based Section 8 and tax-credit properties. Some project-based Section 8 apartment complexes are available only for the disabled, the elderly (over 62), or both. Eligibility for all subsidized housing is based on the applicant's income and citizenship or immigration status.

Public Housing

There are very few public housing projects in New Mexico, with the majority of those being in Albuquerque. Tenants living in public housing have rights most other tenants do not have. If you live in public housing and have a complaint against the PHA, a specific grievance procedure must be followed. The Uniform Owner-Resident Relations Act (landlord-tenant law) discussed above, generally applies to public housing, and certain steps beyond those required by that law must also be followed before a public housing tenant can be evicted. However, there are other provisions of applicable federal law that benefit the landlord and work to the detriment of the tenant.

For example, federal law allows a "one-strike" eviction policy with respect to the commission of certain crimes on or near the public housing premises, by a tenant, a member of the tenant's household, or someone within the control of a tenant. Having control over an individual can simply mean that the person is visiting you or someone in your family.

Unfortunately, the demand for public housing far exceeds the availability of such housing. In many cities, there are long waiting lists. It is a good idea to apply for public housing through more than one PHA to give yourself the best chance of getting into such a program.

Housing Choice Vouchers and Other Private Section 8 Programs

In New Mexico, most subsidized housing units are owned by private citizens or other private entities, and the owner can choose whether to accept Section 8 or "Housing Choice" vouchers. If the owner accepts vouchers, he or she enters into a contract with the tenant and the PHA. As with public housing owned by the government (discussed above), the tenant must meet certain eligibility requirements in order to qualify for the Section 8 program, including income requirements and a background check.

If you are accepted into the program, you will receive a voucher. The voucher entitles you to select the dwelling of your choice, whether an apartment, a single-family home, a condominium or a townhouse, provided that the landlord accepts such vouchers. These vouchers are "portable" meaning that a voucher holder takes the voucher with him or her to a new dwelling, as long as the new landlord takes Section 8 vouchers. As with government owned public housing, the "one-strike" policy, discussed above, also applies to Section 8 vouchers.

In addition to the Housing Choice voucher program, there are privately owned, "project-based" Section 8 housing complexes throughout New Mexico, in which the Section 8 program is administered by the management of the apartment complex.

For these programs, the person applies for Section 8 assistance directly with the management, which verifies the prospective tenant's income and does the background check. Unlike the situation with other types of housing, a landlord or manager cannot refuse to renew a tenant's lease unless the tenant is not current on his or her rent or has violated the rental agreement. This kind of subsidized housing is not portable. Tenants do not have vouchers they can take with them when they want to move.

Because of portability, Housing Choice vouchers are generally more desirable than simply being accepted into a project-based Section 8 housing complex. As with government owned public housing, the demand for Section 8 vouchers and project-based Section 8 housing far exceeds the availability of such housing, making for long waiting lists in many New Mexico communities.

Going to Court

The Metropolitan Court usually handles landlord/tenant issues in Bernalillo County. In the rest of the state, magistrate courts (small claims courts) handle these issues. The courts provide forms for filing and answering lawsuits regarding landlord/tenant issues.

A landlord who files a lawsuit for eviction must attach a copy of the notice he or she provided to the tenant (see above in the section on Eviction). A tenant who receives a summons and Petition for Restitution (eviction) can file an answer to the petition that states a defense such as "I paid all the rent due" or "I was not the tenant who had a loud party on Saturday night." Both parties may present evidence at the hearing. Common types of evidence include documents such as

rental agreements, receipts, bills, copies of any notices given by the landlord, photographs and the testimony of witnesses.

Tenants should think carefully before going to court without an attorney, as they will not receive any assistance from the court. You may want to consult an attorney if you think you have a good defense or if your case is a complicated one. If you are a New Mexico resident over age 55, you can call LREP for legal advice.

Fair Housing Laws

Fair Housing laws – primarily the federal Fair Housing Act and the New Mexico Human Rights Act – prohibit discrimination against a tenant or prospective tenant based on race, color, religion, national origin, gender, family status (presence of children under the age of 18), disability, sexual orientation, gender identity, serious medical condition, or spousal affiliation. These eleven categories are known as "protected classes."

These laws state that a landlord cannot legally refuse to rent to someone or renew their lease because of their race, sexual orientation or disability. Similarly, the landlord cannot charge more rent because of the tenant's gender, religion or national origin (ethnicity). Even where a landlord may be within his or her rights to evict a tenant under the landlord-tenant law (discussed above), landlords may **not** have different criteria for eviction based on different protected classes. However, it is often very difficult, if not impossible, to prove that the landlord took a particular action **because of** the race, color, religion, etc. of the tenant or prospective tenant.

Types of evidence that could prove discrimination include statistical evidence showing a pattern or practice of the landlord treating people in certain protected classes differently or witnesses to statements made by the landlord that reveal discriminatory motive.

People with disabilities have additional protections under the Fair Housing Act. A “disability” is defined as a long-term or permanent physical or mental condition that substantially limits one or more of a person’s major life activities. Examples of disability are:

- Mobility impairment
- Hearing loss
- Vision impairment
- Chronic alcoholism (if being treated)
- Substance abuse (if rehabilitated)
- HIV/AIDS
- Depression or other major mental illness
- Developmental disability
- Disfigurement
- Speech impairment
- Learning disability

One of the additional protections that people with disabilities have under the law is that landlords are required to make “reasonable accommodations” in their rules, policies, services, and practices if such accommodations are needed because of a person’s disability. For example, if a tenant needs a service animal to help deal with a disability and the apartment complex has a no-pet policy, the landlord must make an accommodation (an exception) for that tenant. If a landlord has a first-come-first-served policy for parking spaces and a mobility-impaired tenant needs a parking space close to the tenant’s apartment, the landlord must make an exception for that tenant.

Other examples of reasonable accommodation include:

- Providing the opportunity for a tenant to get a behavioral disorder under control
- Agreeing to a lease termination (without an early-termination fee) if the tenant has to move because of his or her disability
- Allowing a care giver to live with the tenant
- Not charging a pet fee for a service animal
- The housing authority allowing the disabled tenant’s Section 8 voucher to provide an extra room for a care giver

Physical modifications to a home or apartment are not considered to be “reasonable accommodations.”

Other additional protections for people with disabilities include a requirement that all ground floor apartments in apartment complexes constructed (or substantially remodeled) in 1991 or later must be “handicap accessible” and the common areas of these complexes must be fully accessible. For older subsidized apartment complexes, the owners and managers must provide a reasonable degree of accessibility in the complex and a reasonable number of accessible apartments for people with disabilities.

The accessibility requirement does not apply to housing obtained with a Section 8 “Housing Choice” voucher if the housing is not otherwise subsidized. Even in the case of older, non-subsidized apartment complexes and many other kinds of housing, a landlord must allow a tenant with a disability to make “reasonable modifications” to their unit.

Reasonable modifications include grab bars in the bathrooms, wheelchair ramps, relocated switches and outlets, and widened doorways. However, the tenant would have to pay for the modification and, in some cases, may have to

pay to undo the modification when the tenant moves out. Some governmental and non-profit agencies, such as the City of Albuquerque Department of Senior Affairs and Independent Living Resource Center, will install ramps and grab bars.

If you are a New Mexico resident over age 55 and believe you have been a victim of discrimination in housing or if you need to request a reasonable accommodation or reasonable modification, you can call LREP for legal advice. In any case, you can call HUD's office of Fair Housing and Equal Opportunity at (800) 669-9777 and file a discrimination complaint.

Discrimination complaints filed with HUD must be filed within one year after the discrimination occurred. Alternatively, a complaint can be filed in state or federal district court within 2 years after the discrimination occurred. Complaints may be filed simultaneously with both HUD and district court.

Renter's Insurance

Renters can buy insurance to protect their property within a rental unit. This type of insurance covers your personal property, such as furniture, computers and jewelry. The amount of coverage depends mainly on the value of the belongings. Consult an insurance agent to determine the amount of coverage that is right for you.

Some insurance policies cover only the "cash value" of the property, in other words, what the property is actually worth at the time of the event or accident. For example, if the TV set you purchased for \$300 two years ago is stolen, you may receive only a fraction of that amount because the TV set, in its used condition, is

no longer worth \$300. Thus the actual cash value of property is almost always considerably less than the replacement cost of the same property. "Replacement cost" insurance pays the amount it will cost you to replace the property. In the case of the \$300 TV, you would receive the amount that it would cost to replace that TV with a new one of the same quality. Replacement cost insurance is more expensive than cash value insurance because the coverage is more extensive.

Most renter policies also cover personal liability. This insurance protects you from liability to third parties, for example, if someone is injured on your property or your dog bites someone. Additionally, renter's insurance policies may cover your living expenses if you have to move out while repairs are being made to your dwelling.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Administration for Community Living

Provides links to government and non-government sites for information relevant to seniors and people with disabilities

(202) 401-4634

www.acl.gov

Americans with Disabilities Act Information Line, U.S. Department of Justice

(800) 514-0301

(500) 514-0383 (TTY)

www.ada.gov

City of Albuquerque
Department of Senior Affairs
714 7th St. SW
Albuquerque, NM 87102
(505) 764-6400
(505) 764-6405 (TTY)
www.cabq.gov/seniors

Disability Rights New Mexico
Agency that advocates for people with disabilities
3916 Juan Tabo Blvd. NE
Albuquerque, NM 87111
(505) 256-3100 (Albuquerque)
(800) 432-4682 (statewide)
www.drnrm.org

Home Retrofit
City of Albuquerque Department of Senior Affairs
Provides assistance to income-eligible disabled people of all ages in retrofitting their home to accommodate their special needs.
(505) 764-6400

HUD-U.S. Department of Housing and Urban Development
Albuquerque Regional Office
500 Gold Ave. SW 7th Floor, Suite 7301
Albuquerque, NM 87103
(505) 346-6463 (Albuquerque)
(800) 225-5342 (Toll-Free)
(800) 877-8339 (TTY)
www.hud.gov

Information Center for New Mexicans with Disabilities
(505) 272-8549
(800) 552-8195
(505) 272-0321 (TTY)
www.cdd.unm.edu

Landlord/Tenant Hotline
(505) 983-8447 (Santa Fe)
(800) 220-0350

New Mexico Legal Aid
Civil legal services for low-income New Mexicans.
866-416-1922 (Albuquerque)
833-545-4357 (Toll-Free)
www.newmexicolegalaid.org

New Mexico Technology Assistance Program (NMTAP)
625 Silver Ave. SW, Suite 100B
Albuquerque, NM 87102
(505) 841-4464
(877) 696-1470 (Statewide Toll-Free)

Public Housing Authority (PHA)
Administers public housing programs for low-income individuals. Look in the blue Government pages of your local telephone directory under your county or city for the PHA nearest you.

Senior Citizens' Law Office
Offers legal services to Bernalillo, Sandoval, Torrance, and Valencia County residents 60 and over.
4317 Lead Ave. SE, Suite A
Albuquerque, NM 87108
(505) 265-2300
www.sclonm.org

United States Access Board
Federal Agency devoted to accessibility for disabled individuals
1331 F St., N.W.S.-1000
Washington, DC 20004-1111
(800) 872-2253
(800) 993-2822 (TTY)
www.access-board.gov

CHAPTER EIGHT

Real Property Ownership

The concept of “property” is generally divided into two categories, personal property and real property. Real property refers to land, including the houses and other structures on the land. Personal property refers to everything else you own, such as your clothes, furniture, vehicles, jewelry, and other household items. This chapter discusses the ownership of real property.

Transfers of Real Property

Ownership of real property is demonstrated by a deed to the property. A deed is a legal document that uniquely describes a piece of real property and also identifies the person(s) who own the property, along with the type of ownership they hold. Types of property ownership are discussed later in this chapter. To be effective, a deed must be recorded with the clerk of the county or counties where the property is located.

As with your personal property, you can sell, bequeath or give away your real property. If you want to transfer a piece of property that you own to someone else, you will need to prepare a new deed for the property listing the new owners.

Adding someone’s name to the deed to your property gives the person an ownership interest in the property, **even if your name remains on the deed**. By adding someone’s name to the deed, they become a joint owner of the property and, depending on the type of ownership (types of ownership are discussed below), the person may be able to

exercise control over the property that is not in keeping with your wishes.

If you decide to transfer your property to another person, you will no longer be the legal owner of the property. The person to whom you transfer the property can sell the property **without your permission**. You could also be forced to move out of the property by that person. If the person to whom you transferred the property has financial problems, goes through a divorce, or loses a lawsuit, the property could be lost to that person’s creditors.

One way to prevent these problems is to keep the property in your name alone. Do not let anyone pressure you into changing a deed. If you want your property to pass to a certain individual or individuals upon your death, you can make a provision for this in your will or execute a special type of deed that only takes effect after your death (discussed later in this chapter). There is rarely a reason to put someone else’s name on the deed to your property (other than a spouse) or to transfer the property to someone else while you are still living.

If, after understanding the potential problems, you still wish to transfer your property, it is advisable to see an attorney to ensure the deed is drafted correctly and that your interests are protected to the extent possible. For a transfer of land to be valid, the owner of the property must sign the deed before a notary. **It is very important that you do not sign any document that is blank or that you do not understand.**

Types of Property Ownership

As noted above, the deed to a piece of real property defines the property, identifies the owner(s) of the property and defines the type of ownership that the owners have in the property. In New Mexico, legal title to property is usually held in one of three ways: sole ownership; tenants-in-common; or joint tenants.

Sole Ownership. Sole ownership means that property is completely owned by one person and the deed to the property is in that person's name only.

Tenants-in-Common. Property owned as tenants-in-common means that multiple people own the property together. The owners may own equal or unequal shares. Each tenant-in-common can transfer his/her portion of the property through sale, gift, or by will to anyone he/she chooses, without the consent of the other tenants-in-common. The new owner will become a tenant-in-common with the other owners.

Where more than one person owns a piece of property, it is presumed the property is held by the owners as tenants-in-common, unless the deed clearly expresses an intent to pass the property in some other manner (for example, as joint tenants as described below).

Joint tenants. A joint tenancy in real property is ownership of the property by two or more people, each of whom owns the whole property in **equal, undivided shares**. Owning property in undivided shares means that, if one joint tenant dies, the other joint

tenant(s) automatically becomes the owner of the deceased person's share. If there are only two joint tenants and one dies, the remaining person becomes the sole owner of the entire property. This automatic transfer is known as the "right of survivorship."

Unlike tenants-in-common, property held in joint tenancy generally cannot be passed through a will. This is because, upon the death of one of the joint tenants, the remaining joint tenants own the entire property, so the deceased joint tenant's share is not part of his/her probate estate (see the Chapter on Probate later in this handbook for more information). It is very important to remember that once a joint tenancy is created, you cannot remove a name or transfer full ownership without the consent of the other joint tenants.

Types of Deeds and Recording of Deeds

New Mexico recognizes several types of real property deeds. The most common types are warranty deeds, quitclaim deeds, and transfer on death deeds. Each type of deed expresses certain promises (commonly referred to as covenants) to the buyer/new owner.

A **warranty deed** promises that the owner/seller's title to the property is good. "Good" title means that there was nothing wrong with the title before the owner obtained title to the property and that nothing has gone wrong with the title during the owner's ownership of the property. An owner who gives a warranty deed may be held legally responsible if the title is not good.

A **quitclaim deed** makes no promises regarding the title to the property. It simply releases any claim the owner/seller may have to the property. You should proceed with

caution if you want to purchase property and the owner only offers you a quitclaim deed. The owner is simply transferring whatever right, title or interest he or she has in the property, if any.

A **transfer on death deed** (TODD) transfers ownership of the property upon the owner's death from the owner to the person named on the deed. No ownership or other interest in the property is transferred during the owner's lifetime. **A transfer on death deed (discussed below) must be recorded prior to the death of the property owner in order to become effective upon the owner's death.** TODDs are discussed in greater detail in the chapter on estate planning later in this handbook.

If you are going to transfer or acquire land, it is advisable to consult with an attorney to determine which type of deed is appropriate for your particular situation.

All deeds, mortgages and other documents that affect title to property must be recorded in the office of the county clerk of the county or counties where the property is located. Recording deeds to property is necessary to protect yourself and future buyers. Recording documents that affect title to real property gives "notice" to the world of your ownership of the property. If you fail to record a deed, mortgage or other document, a court may protect the rights of a person who later buys or takes a mortgage on your property without notice of your interest.

Borrowing Money on the Equity in Your Home

If you own your home and have built up equity, you may have thought about refinancing, taking out a second mortgage,

or a home equity loan. Carefully consider your other options before borrowing on the equity in your home. If you become unable to make the payments on the loan, you could lose your home and also lose any equity you have built up.

If you decide to borrow money on the equity in your home, take care in choosing the lender. There are many unscrupulous lenders who prey on the elderly, those with low incomes, and those with less-than-favorable credit. Shop around for the best interest rates and other costs. **Most importantly, don't sign anything that you don't understand!** If there is something that you don't understand, ask for an explanation. Better yet, consult with an attorney, financial advisor or someone else you trust before making any loan decisions.

If you should have second thoughts after the loan closes, you may have three business days from the date of closing to cancel the deal. This safeguard is called a "right of rescission" and is provided by the federal Truth in Lending Act. A right of rescission only applies to loans in which your primary residence is used as collateral.

Call LREP if you have questions or concerns relating to borrowing money on the equity in your home, your right of rescission, or any other consumer issues.

Reverse Mortgages

In the last decade, reverse mortgages have become very popular in the United States. A reverse mortgage (RM) is a special type of loan that allows a homeowner to turn some of the equity in his or her home into cash. The equity you have built up in your

home over the years is paid back to you. Many seniors use this type of mortgage to supplement their Social Security income.

A reverse mortgage differs from a traditional mortgage or a home equity loan in that you are not required to make monthly payments; in fact, as noted above, payments are made to you. To qualify for a RM all of the people named on the deed to your home must be at least 62 years of age. You also must own your home outright, or have a low mortgage balance that can be paid off at closing with proceeds from the RM. You must have the financial resources to pay ongoing maintenance costs, utility charges, property taxes and property insurance. Finally, **you must live in the home** as your primary residence.

The amount you can borrow is based on a number of factors including your age, the amount of equity you have in your home and the interest rate the lender is charging. You may receive the money in a lump sum, monthly advances, through a line of credit or in a combination of the three. Because you still retain the title to the home, you are responsible for maintenance, taxes, insurance and repairs. **If you do not pay the taxes and insurance on the property, the lender can foreclose on the loan and you will lose your home.**

You do not need to repay the loan as long as you live in the house and keep the taxes and insurance current. The lender is paid back when the home is no longer your primary residence, when the house is sold, or from the proceeds of your estate after your death.

Whether or not to get a RM is an important decision and should be made only after careful consideration. For many people, their home is their largest single asset and

source of wealth. You should consider a RM only after considering all other options. Remember, a RM uses some or all of the equity in your home. This means that there will be fewer assets for you, and for your heirs in the future. Also, RMs generally have high fees and interest rates making them an expensive type of loan. You should not use a RM for short-term needs or if you are planning to move or sell the property.

Not all RMs are the same. There is a large variance in the upfront fees and interest rates for RMs. You should shop around for the best deal. For more information about reverse mortgages and a free list of lenders who offer reverse mortgages, contact the United States Department of Housing and Urban Development (HUD) or the American Association of Retired People (AARP). (See “Resources.”)

Homeowner Insurance

Everyone who owns a home or has personal property has exposure to a risk of loss from fire, theft or other event or accident. Insurance protection for your home and belongings is available. The amount of coverage depends mainly on the value of the property. Consult an insurance agent to determine the amount of coverage that is right for you.

Some insurance policies cover only the “cash value” of the property, in other words what the property is actually worth at the time of the event or accident. For example, if the TV set you paid \$300 for two years ago is stolen, you may receive only a fraction of that amount because the TV set, in its used condition, is no longer worth \$300. Thus, the actual cash value of property is almost always much less than the replacement cost of the same property. “Replacement cost”

insurance pays the amount it will cost you to replace the property. In the case of the \$300 TV, you would receive the amount that it would cost to replace that TV with a new one of the same quality. Replacement cost insurance is more expensive than cash value insurance because the coverage is more complete.

For those who do not own their home, there is renters insurance. This type of insurance covers your personal property, such as furniture, computers and jewelry. With both homeowner and renters insurance, if you have items of significant value (such as antiques or artwork) these items need to be listed specifically in order to be insured for their full value.

Most homeowner and renters policies also cover personal liability, which protects you from liability to third parties, for example, if someone is injured on your property or your dog bites someone. Additionally, both homeowner and renters insurance policies may cover your living expenses if you have to move out while repairs are being made to your dwelling.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)
(800) 876-6657 (outside Albuquerque)
www.sbnm.org/LREP

American Association of Retired Persons (AARP)

601 E. Street NW
Washington, DC 20049
(888) 687-2277 (Toll-Free)
(877) 342-227 (Toll-Free Spanish)
(877) 434-7598 (TTY English)
(866) 238-9488 (TTY Spanish)
www.aarp.org

HUD-U.S. Department of Housing and Urban Development

Albuquerque Regional Office
500 Gold Ave. SW 7th Floor, Suite 7301
Albuquerque, NM 87103
(505) 346-6463 (Albuquerque)
(800) 225-5342 (Toll-Free)
(800) 877-8339 (TTY)
www.hud.gov

National Association of Insurance Commissioners

1100 Walnut Street
Kansas City, MO 64106-2197
(816) 842-3600
www.naic.org
Office of Superintendent of Insurance
Provides convenient access to consumers to reliable insurance products
PO Box 1689
Santa Fe, NM 87504-1689
(855) 427-5674
www.osi.state.nm.us

Senior Citizens' Law Office

Offers legal services to Bernalillo, Sandoval, Tarrant, and Valencia County residents 60 and over.
4317 Lead Ave. SE, Suite A
Albuquerque, NM 87108
(505) 265-2300
www.sclonm.org

CHAPTER NINE

Estate Planning

An issue of great importance to seniors is what will happen to their property after their death. There are many things you can do before your death to ensure that your property is dealt with according to your wishes. This chapter discusses actions you can take now to enable a smooth distribution of your assets after your death.

Intestate Succession

If you do not prepare any type of estate planning (such as a will), when you die, your property will be distributed through a process called **intestate succession**. In intestate succession, New Mexico law determines who will receive your property.

There are separate intestate rules for “separate property” (property that is yours alone) and “community property” (property that was acquired during a marriage and is considered the property of both spouses). See the chapter on divorce later in this handbook for more information on separate and community property.

Intestacy and Separate Property. According to New Mexico’s intestacy laws, when you die, your spouse is entitled to one-quarter of your separate property. Your children are entitled to the remaining three quarters of your separate property. If you have no children, your surviving spouse is entitled to all of your separate property. If you are not married at the time of your death, your children will receive all of your property with equal shares going to each child.

Intestacy and Community Property. If you die intestate, your spouse gets your entire one-half of the community property of the marriage (the other one-half already belonged to your spouse).

No Spouse or Children. If you have no spouse or children, your parents will receive all of your property. If your parents have died, then your siblings will receive your property. The search for relatives continues down the line. The state will get your property if, and only if, you have no family or relatives to claim your property and you did not leave a will designating the people or entities who should receive your property. This rarely happens; however, it does illustrate the importance of appropriate planning for the distribution of your estate upon your death.

Last Will and Testament

A will is a signed and witnessed document that directs how your estate (your property) is to be distributed upon your death. You can direct the distribution of virtually anything in a will: money, personal property, real estate, cars, etc. You can name a guardian for your minor children or incapacitated adult children. You may make provision for any pets you own. You also appoint your “personal representative” (sometimes called an “executor”) in your will. Your personal representative is the person who handles your affairs after your death. The duties of a personal representative are discussed in more detail in the chapter on probate later in this handbook.

The minimum legal requirements for a valid will in New Mexico are:

- The person making the will must be at least 18 years old and of sound mind. Sound mind means the person understands what property he/she has and knows to whom he/she wants the property distributed upon his/her death.
- The will must be in writing and dated.
- The person making the will must sign the will in front of two witnesses. If he/she is unable to sign, another person may sign at his/her direction and in his/her presence.
- The will must also be signed by two witnesses. It is advisable that the two witnesses be disinterested third parties who do not receive anything in the will. The two witnesses must see the person making the will sign the will. The witnesses must also see each other sign the will. **The two witnesses must be able to testify that they believe the person making the will was of sound mind when the will was signed.**
- New Mexico also permits a will that is “self-proving.” A self-proving will is one in which the person making the will, and both witnesses, attach notarized statements (affidavits) to the will attesting that the maker of the will understood what he/she was doing, made the will voluntarily, and that the witnesses saw the maker sign the will. It is not mandatory that your will be self-proved, but, if it is, it allows your will to go through probate without the witnesses appearing in court to testify that you wrote the will. This can speed up the probate process, especially when witnesses cannot be located or have since passed away.

While it is permissible to write your own will, it is not advisable. Hiring an attorney to draft your will helps to ensure the will is valid. An attorney can advise you whether or not you even need a will (many people do not need a will) and advise you as to what property can best be distributed through a will. Once you make a will, you should review it after major life changes, such as births, deaths, marriages or divorces.

If you have a will, you may make reference to a separate list of personal property, such as jewelry, furniture, photos, china, etc. This list must describe the property with some specificity and must name the person who is to receive the property. The list must be signed by the person making the will, and dated. This list may be prepared either before or after your will is prepared and may be changed at any time; however, each time you make a change, you must sign and date the list. You cannot distribute money or real estate with this list. You must have a will to make use of such a list. If you make this type of list, you should attach it to your will.

As noted above, not everyone needs a will. If you have a will, those you leave behind at your death may have to go through a probate proceeding in order to receive your property in accordance with the will. The probate process is discussed in detail later in this handbook.

There are several alternatives to a will and probate in New Mexico. These alternatives are discussed in the following sections of this chapter. You can contact LREP or consult an estate planning attorney to determine which type of estate planning is right for you.

Trusts

A trust is one of several alternatives to a will. In a trust, one person, called the “settlor,” sets aside property or money for the benefit of another person, called the “beneficiary.” Instead of giving the property or money directly to the beneficiary, the settlor places it under the control of a third person, called the “trustee.” Typically, the trustee will invest the assets of the trust and pay any interest earned to the beneficiary. At the expiration of the trust, the trustee distributes the assets of the trust to the beneficiary.

Trusts can be complex documents and are often expensive to set up. **Most people do not need a trust.** Examples of situations where a trust may be appropriate are when there are tax issues due to extensive wealth, when a person owns property in multiple states, when one or both of the partners in a marriage have children from a previous marriage, a parent wishes to provide for an adult child who is disabled or incapacitated, or the intended beneficiary of the trust has proven him or herself unable to handle money. A trust allows the settlor to exercise some control “from the grave.”

Non-Probate Transfers

A non-probate transfer is a distribution of a deceased person’s property by any means other than probate. Property that you own that is held in the ways discussed in this section passes to your beneficiaries without the need for a will or a probate proceeding.

One important note, a distribution directed in a will has no effect regarding property that is designated to be transferred through a non-probate mechanism. Property transferred through a non-probate

mechanism is, for practical purposes, transferred immediately upon your death and, therefore, never becomes part of your probate estate. **A non-probate transfer always takes priority over any designation regarding the same property in a will.**

Transfer on Death Deed (TODD)

A TODD is a special deed to real property (land, house, etc.) that allows you to designate who receives that property upon your death. It is a good alternative (or addition) to a will in many cases. TODDs are a relatively new concept. New Mexico has recognized TODDS since 2001 and is one of several states that allow the use of such deeds. The TODD ownership transfer will take place without having to go through probate.

Another major advantage of the TODD is that the individual(s) designated to own the property upon your death (the “beneficiary”) does not have an ownership interest in the property until you die. You retain full control over the property and can sell it, borrow money on it, or give it away.

Because the beneficiary has no claim on the property during your lifetime, the property cannot be taken by the beneficiary’s creditors to satisfy a debt of the beneficiary - at least not during your lifetime.

If the property is owned by you and one or more other people as joint tenants (see the chapter on real property for a discussion of joint tenancy), the property will not transfer to the beneficiary until the last joint tenant has died – unless the remaining joint tenant(s) have created a new TODD naming a different beneficiary.

As noted above, a TODD takes precedence over a will. If your will states that a certain person or persons will inherit a piece of your real property and you record a TODD naming a different person as beneficiary of that same real property, the person named in the TODD will become the owner of the property upon your death **regardless of what your will says.**

Like any deed to real property, a TODD must be filed with the county clerk in the county where the real property is located. **The deed must be filed prior to the death of the property owner.** The owner does not have to notify the beneficiary that a TODD has been filed, nor does he/she have to notify the beneficiary if the TODD is revoked. You can revoke a TODD at any time during your lifetime.

Upon your death, a certified copy of your death certificate must be recorded with the county clerk. This completes the transfer of the property to the beneficiary.

The transfer to the beneficiary is subject to any mortgages, creditor's claims against the estate of the deceased, liens, easements, and spousal and family allowances. For example, if the real estate has a mortgage, the mortgage will still need to be paid.

There are ready-made TODD forms available. However, deeds are complex and it is advisable to have an attorney draft the deed for you, to ensure that it is done correctly.

Payment on Death Accounts (POD)

Payment on death accounts (POD) are an alternative to a will as a way to distribute the contents of bank accounts. POD accounts are

treated as normal bank accounts during the lifetime of the person who holds the account. Upon the death of the owner of the account, any funds in the account will be distributed according to the POD designation. The person designated by the account holder to receive the remaining funds is called the "payee." During the lifetime of the account holder, the payee has no control over or claim to the funds in the account. Contact your bank or financial institution to find out how to set up a POD account.

Transfer on Death Accounts (TOD)

Transfer on death accounts (TOD) work in much the same way as POD accounts, except instead of bank accounts, they apply to securities (stocks, bonds, mutual funds, etc.) held in an account at a brokerage company. The person who will receive the securities upon the death of the owner is called the "transferee." As with POD accounts, the transferee has no claim to or control over the securities during the owner's lifetime. You should contact your securities broker to find out how to set up a TOD account.

Joint Tenancy

Joint tenancy (discussed in more detail in the real property section of this handbook) is a way of holding property that provides an inexpensive alternative to a will, and also avoids probate and intestate succession. Creating a joint tenancy requires special words on a property deed. When one of the owners or joint tenants dies, the remaining owner(s) receives the deceased owner's share of the property (in equal shares if there is more than one remaining joint tenant).

There are numerous drawbacks to using joint tenancy as an estate planning tool.

Additionally, now that New Mexico has adopted the transfer on death deed (discussed above), the reasons for using joint tenancy as an estate planning tool, except between spouses, have been all but eliminated.

One major drawback of using joint tenancy for estate planning is that the property is at risk for claims from *each* joint tenant's creditors and spouses. The following example may help to illustrate this drawback.

Example: Your spouse recently passed away. You and your now deceased spouse held your house as joint tenants. Now you are the sole owner of the house. You decide to put one of your children on the deed so that, when you pass away, your children will not have to probate your estate. A year passes, and the child you put on the deed has developed debt problems. Because the child's name is on the deed to your house, the child's creditors can put a lien on your house and foreclose the lien to satisfy the child's debts. If you had, instead, used a transfer on death deed, your child would have no ownership interest in the property until your death, thus protecting your property from the claims of others.

Since the advent of the transfer on death deed, use of joint tenancy as an estate planning tool, should only be used between spouses or life partners.

Gifts of Personal Property

A gift is a voluntary transfer of property (real or personal) for which the "donor" (the person who gives the gift) receives nothing in return from the "recipient" (the person who receives the gift). The donor must

intend to make the gift and must deliver the gift to the recipient, who must accept the gift. These steps result in a valid gift. Gifts made during the lifetime of the donor generally cannot be taken back unless the recipient agrees to return the gift to the donor.

Sometimes people make a gift that they intend to take effect upon their death. For example, you might tell your granddaughter that she may have a certain piece of jewelry at your death. These types of gifts are not valid because there is no delivery to the recipient. If you wish someone to have something of yours upon your death, you can achieve this through a bequest in a will.

If actual physical delivery of a gift is impractical because of the size of the gift, symbolic delivery may be permitted. Symbolic delivery is achieved by giving the recipient something representative of the actual gift item. For example, you may give a note that states, "I am giving you my piano because I never play anymore and I know how much you admire it. You may pick it up at any time." Moving a piano is a complicated endeavor, and it may be some time before the recipient is able to actually take possession of the piano; thus, the courts would probably consider the note sufficient to prove the donor's intent to make a gift of the piano to the recipient.

If actual delivery of a gift is impractical because of the location of an item, constructive delivery may be permitted. In constructive delivery, the donor gives the recipient the means to obtain possession of an item, such as the key to a safety deposit box at a bank. In such a case, a court would probably find that the donor intended to make actual delivery of the gift.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Senior Citizens' Law Office

Offers legal services to Bernalillo, Sandoval, Torrance, and Valencia County residents 60 and over.

4317 Lead Ave., Suite A

Albuquerque, NM 87108

(505) 265-2300

www.sclonm.org

CHAPTER TEN

Probate

Probate is the legal process in which a court grants a person the authority to handle the affairs of a person who has died. **The person who has died is called the decedent.**

Many people fear the probate process, but most fears about probate are unfounded. In certain circumstances probate can be costly and time consuming; however, this is generally the exception and not the rule. When probate does become costly, it is usually the result of disputes between family members that spill over into the disposition of the deceased's estate.

Probate is necessary when a person dies leaving property titled in his/her name (real estate, bank accounts, vehicles, stocks and bonds, etc.). This property is called the decedent's estate.

Probate is not necessary to transfer property that is not "titled," such as personal items including furniture, jewelry, artwork, and other personal effects. Probate is also not necessary if the decedent has arranged for a non-probate transfer of "titled" property. Examples of non-probate transfers are: real estate held as Joint Tenants, real estate with a recorded Transfer on Death Deed, bank accounts with Payable on Death designations, brokerage accounts with death beneficiary designations, etc.

Affidavit of Successor in Interest

Probate is not required for small estates where the decedent's total estate is worth less than \$50,000 **and** does not include any real property

(land, a house, a farm, etc.). If the decedent's estate qualifies as a **small estate**, it may be possible to distribute the decedent's property without probate by using an "**Affidavit of Successor in Interest**" (also sometimes referred to as a "Small Estate Affidavit"). The Affidavit is a sworn statement by the signer of the form that the signer is entitled to the decedent's property.

An Affidavit of Successor in Interest can be used if at least **30 days** have passed since the decedent's death **and** no probate case related to decedent's estate has been opened in any court. The affidavit must be signed by the person entitled to receive the decedent's property, and it must be notarized. The affidavit can be presented to banks to collect the decedent's money and other institutions such as the Motor Vehicles Department, to change title to the decedent's vehicles.

The Affidavit of Successor in Interest form can be obtained from LREP by calling 1-800-876-6657.

Affidavit of Surviving Spouse

In many circumstances, probate is not required to transfer the decedent's primary residence to the decedent's surviving spouse. If certain conditions are met, the residence can be transferred without probate by using an "**Affidavit of Surviving Spouse**" (also sometimes referred to as a "Homestead Affidavit").

An Affidavit of Surviving Spouse can be used to transfer the decedent's primary residence if **all** of the following conditions are met.

- At least **6 months** have passed since the decedent's death; **and**
- No probate has been filed; **and**
- The only item required to be transferred from the decedent's estate is decedent's primary residence; **and**
- The decedent and spouse owned the residence as community property **or** the decedent left (by Will) his/her interest in the residence to the spouse; **and**
- The residence is worth less than \$500,000.

The affidavit must be signed by the surviving spouse and notarized. The affidavit is then filed with the county clerk in the county in which the residence is located. **The Affidavit of Surviving Spouse form can be obtained from LREP by calling 1-800-876-6657.**

Filing Probate

If probate is necessary, the probate case must be filed with the **Probate Court** in the county where the decedent was physically living at the time of his/her death. Probate Courts are designed to help non-lawyers with simple, routine probate cases. There is a minimal charge to file a probate case. For example, the cost to file probate in Probate Court in 2019 was \$30.

In some cases, it may be necessary to file the probate case in District Court. The Probate Court will inform you if this is necessary. If you need to file your probate case in District Court, you should seek the advice of an estate planning attorney. **LREP can help assess your case and your options regarding complex probate cases.**

The probate case can be filed any time between 5 days and 3 years after the decedent's death. A probate may be filed after the 3 year period for the limited purpose of transferring title to real property from the decedent's name to the decedent's heirs.

Many Probate Courts have the forms and instructions necessary to file a probate case. The forms are also available on-line at the New Mexico Supreme Court Library Website.

Filing probate with a Will. If the decedent left a valid Will, the person filing the probate must submit the original Will and a certified copy of the decedent's death certificate to the Probate Court along with the necessary forms.

Instructions for filing probate with a Will are contained in probate forms 4B-021 and 4B-022. These forms are available on-line at the New Mexico Supreme Court Library Website. The court will appoint the person(s) designated in the Will as "**Personal Representative**" of the decedent's estate. Another name for the Personal Representative is Executor.

Filing probate where there is not a Will. People who die without a Will are said to have died "intestate." New Mexico has specific "Intestacy Laws" that detail who can be appointed Personal Representative of the Estate, who is entitled to the decedent's property and the share of the property each person receives.

A spouse has the highest priority for being appointed as Personal Representative, followed by the decedent's children. A person who wishes to be appointed Personal Representative must have the written consent of all other people with the same or higher priority for appointment.

The person filing the probate must submit a certified copy of the decedent's death certificate and copies of the written consent of other people with the same or higher priority for appointment as Personal Representative, along with the necessary probate forms.

Instructions for filing probate without a Will are contained in probate forms 4B-011 and 4B-012. These forms are available on-line at the New Mexico Supreme Court Library Website.

Duties of the Personal Representative

When the Probate Court appoints a person to be the **Personal Representative (PR)** of the decedent's estate, and there was a will, the court gives the PR a document called "**Letters Testamentary.**" If the decedent died without a will (intestate), the document is called "**Letters of Administration.**" This document gives the PR the legal authority to transact business on the decedent's behalf.

The PR is responsible for:

- Notifying all of the heirs of the decedent's estate;
- Gathering and inventorying the decedent's assets;
- Identifying and paying the decedent's debts (to the extent that funds are available in the estate to do so);
- Distributing the decedent's assets in accordance with decedent's Will or the intestacy statutes if there is no Will; and

Closing the probate by filing a sworn statement with the court stating that the

PR's duties are completed. The probate case must be open for a minimum of 3 months before it can be closed.

The PR is **not** entitled to use funds from the estate for the PR's personal benefit. However, the PR is entitled to fair compensation from the estate for the time spent administering the probate. The PR should keep a written record of the tasks and time expended. The PR may also use estate funds to pay for costs incurred in administering the estate (i.e. postage, filing fee, copies, etc.)

If the decedent's estate includes real property (land, a house, a farm, etc.), the PR may need to execute a "**Personal Representative's Deed**" in order to transfer the property out of the decedent's name. Deeds can be very tricky to properly draft and execute. It is a good idea to hire an attorney for this portion of the probate.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Senior Citizens' Law Office

Offers legal services to Bernalillo, Sandoval, Torrance, and Valencia County residents 60 and over.

4317 Lead Ave. SE, Suite A

Albuquerque, NM 87108

(505) 265-2300

www.sclonm.org

CHAPTER ELEVEN

Issues of Diminished Capacity and End of Life Decisions

As you grow older, you may become unable to care for yourself or to manage your property due to mental or physical disabilities. With careful planning now, you can decide how your affairs will be managed and who will care for you and your property should you become unable to do so.

One of the most dreaded situations senior citizens face is losing the ability to care for themselves and their property, commonly referred to as incapacity. **An incapacitated person is defined by New Mexico law is any person who demonstrates over time either partial or complete functional impairment measured by a person's inability to manage the person's personal care or the person's inability to manage the person's estate or financial affairs, by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause. In other words, an incapacitated person is someone who is substantially unable to provide food, clothing or shelter for him or herself, to care for his or her physical health, or to manage his or her financial affairs. This may be due to a physical or mental condition, chronic use of drugs, chronic intoxication, or other cause.** However, advanced age, hospitalization, refusal of medical treatment or eccentricity does not necessarily mean a person is incapacitated.

Generally speaking, for one to be considered to have capacity, he or she must be able to report their past and present personal history, where they are, what year and day it is,

and their understanding of the document they are about to sign.

Incapacity or loss of independence can occur suddenly (for example, when one has a stroke), or it can occur gradually, as with Alzheimer's disease. The key to retaining some control over your life is to prepare, ahead of time, for a loss of capacity by taking steps to instruct your family and loved ones of your wishes. The most effective way to let your family and loved ones know your wishes in the event you should become incapacitated is to prepare *advance directives*.

Advance directives, as the name suggests, are documents prepared in advance of becoming incapacitated. These documents include **advance health care directives powers of attorney, and directives regarding organ donation and/or cremation statements.** These documents are not effective unless the person executing them has capacity. If a person becomes incapacitated before executing most of the above-mentioned documents, a guardian or conservator may have to be appointed to make decisions for the incapacitated person. Proceedings to appoint a guardian and/or conservator can be time consuming and costly.

Advance Health Care Directives

An advance health care directive, is a document that allows you to specify who will make health care decisions for you if you lose the capacity to make those decisions for

yourself and includes your instructions for health care formerly known as a “living will.”

To create a valid advance health care directive, you must be at least 18 years old and have capacity (see above). The advance health care directive must be in writing and signed by you. No one can require you to execute an advance health care directive as a condition of obtaining health insurance or receiving health care.

The first part of advance health care directives include a health care power of attorney that allows you to appoint an agent to make medical decisions for you if you are unable to make those decisions yourself. An agent is someone you designate ahead of time who “steps into your shoes” and acts on your behalf when you are unable to act for yourself. Because this is a position of great responsibility, it is very important that you choose someone whom you trust to act in accordance with your wishes.

The second part of the advance health care directive formerly known as a “living will,” gives your instructions for end-of-life decisions. This includes the types of medical treatment you want to be used to prolong your life in the event you suffer a catastrophic event that leaves you unable to communicate your wishes. In this case, medical treatment refers to nourishment, hydration, and pain medication. An advance health care directive does not authorize euthanasia (“mercy killing”); it simply allows people who are very ill to have medical treatment and life sustaining measures stopped, which may hasten their death.

In order for the “living will” portion of an advance health care directive to be enforced, the physician in charge of the patient’s care

and another qualified health care professional must both examine the patient and certify in writing that he or she is, in fact, terminally ill or in an irreversible coma. The standard used by the examining physicians is that there is no reasonable expectation for improvement, and the illness or condition will result in death, regardless of the use of, or withholding of, maintenance medical treatment.

Acting on an advance health care directive does not constitute a suicide for any purpose, including insurance. Death resulting from the withholding or withdrawal of maintenance medical care in accordance with an advance health care directive does not constitute a homicide, murder, or any other crime.

Your health care power of attorney should be “durable.” This means that the power of attorney will remain in effect even if you are found to be incapacitated. In order for a power of attorney for health care to be “durable,” it must include a statement such as the following: “This power of attorney shall *not be affected by* the incapacity of the principal.”

In general, your power of attorney for health care should be a “springing” power of attorney. “Springing” means it only becomes effective if you are found to be incapable of making your own decisions. To be a springing power of attorney for health care, there must be a statement such as: “This power of attorney shall *become effective upon* the incapacity of the principal.” This means that the power of attorney will only be effective if and **only if** you (the principal) are found to be incapacitated by your primary physician and one other qualified health care professional. Until such a designation is made, you are the only one who may make decisions regarding your own health care.

You may revoke an advance health care directive at any time, as long as you have capacity (see above) to do so. If you have capacity, you may revoke the designation of your agent, and or your advance directives, in writing or by personally informing your supervising health care provider. A written revocation is preferred. You should send a copy of the revocation to all of your health care providers.

Having a lawyer prepare your advance health care directive is not necessary but may be helpful. New Mexico has a statutory form for advance health care directives. Contact LREP for free assistance with preparing this form.

If you do not have an advance health care directive and become incapacitated, New Mexico law allows a family member to step in and act as a decision-maker in your place. The law looks to the spouse or life partner first and then, in descending order, to an adult child, parent, adult brother or sister, and then grandparent. If none of these are available, a close family friend can act. If, after going through the list of possible decision makers, no one is available to serve, a guardian will have to be appointed to make health care decisions for you.

Organ and Tissue Donation

Many people decide to donate their organs or tissue to others when they die. Organ donation is allowed only after all lifesaving efforts have been exhausted. According to New Mexico Donor Services, the donation of a single person's organs and/or tissue can save or improve the lives of more than 50 people.

Just because you are a senior, do not think that you cannot be a donor. If you wish to

donate, you should tell your family, friends and health care providers. In addition, you should also prepare a "document of gift," which is a signed statement expressing your wish to donate. This statement can be in the form of a donor card or a written statement. It can be included in a will, although this is the least effective form of making a donation since the deceased's will is usually read *after* the time when organs and tissue can be procured. Alternatively, donor status can be established when you apply for (or renew) a New Mexico driver's license. If you have used one of these mechanisms to show that you want to donate your organs, the consent or concurrence of your family is not necessary. However, it is still a good idea to inform your family and loved ones of your desire to be an organ and/or tissue donor.

If you have left no written instruction nor made any verbal instruction regarding organ or tissue donation, your family, and in some circumstances non-family members such as domestic partners, can donate your organs or tissue upon your death. In some circumstances, if one family member objects to the donation, a decision will be reached by the majority of certain family members. You may also execute a written refusal regarding donation of your organs or tissue. For more information about organ and tissue donation, contact the New Mexico Donor Services. (See "Resources").

Funeral Plans and Cremation

One of the most difficult subjects to discuss with loved ones is your death. Because death is such an uncomfortable topic, many people leave the details to others. Making preparations for your funeral ahead of time can save your family and loved ones unnecessary pain and expense. Additionally,

making the arrangements ahead of time can also ensure that your final wishes will be carried out.

Funerals are often expensive, but the expense can be lessened with proper planning. Most funeral homes will assist in finding a means to pay for arrangements. Government agencies may also provide certain benefits. For example, if you are a veteran, you may qualify for a national cemetery plot. There are also many different private burial insurance plans available; however, such plans should be approached with caution because they can be expensive and have many limitations.

Cremation is a less expensive option than burial. You may authorize your own cremation in two ways. The preferred way is to make a signed written statement expressing your desire to be cremated. This signed written statement must either be notarized or be witnessed by two persons. You may also include an express statement in your will indicating your desire to be cremated; however, this method is less desirable because the will is often not read until after the funeral.

If you do not leave written instructions about your desire to be cremated (or whatever method of disposition you desire), it will be left to your family, and in some cases non-family members, to determine how handle your remains. If you have questions or concerns about burial insurance plans, contact the Office of the Superintendent of Insurance. (See “Resources”).

Financial Power of Attorney

A financial power of attorney (POA) is a document that gives one person the power to act on behalf of another regarding financial matters, as opposed to the health care power of attorney discussed above in the Advance Health Care Directives section of this chapter.

In a financial POA, as with the health care POA, the person giving the power is called the “principal” and the person receiving the power is called the “agent” or the “attorney in fact.” In spite of the name, the person you choose to act on your behalf does not have to be an attorney, nor is the individual given the authority to practice law. Usually, people choose their spouse, a relative or close friend to be their agent. The person you choose to be your agent should be someone you trust implicitly because they may be making decisions that could have a profound effect on your life.

A financial POA can be as limited or as general as you wish. For example, it could be limited to dealing with one real estate transaction, or it can be as broad as dealing with every aspect of your personal financial affairs. Your financial POA should list specifically each power you intend to give to your agent. **If your agent is using your POA for a real estate transaction, the POA must be recorded in the county or counties where the property is located.**

If you want your agent to be able to act on your behalf when you cannot act for yourself due to incapacity, your financial POA must be “durable.” A durable financial POA remains effective if you are found to be

incapacitated. To be durable, the financial POA must contain language such as: “This power of attorney shall not be affected by the incapacity of the principal.”

You can also create a financial POA that does not go into effect until you become incapacitated. This is called a “springing” POA because it “springs” into effect at the time you are found to be incapacitated. To be springing, the POA must contain language such as: “This power of attorney shall become effective upon the incapacity of the principal.” Typically, a finding of incapacity is made by two physicians (one being your own physician) certifying in writing that you are no longer capable of making decisions for yourself.

A financial POA must be signed and notarized. There are now do-it-yourself forms for financial POAs available on the Internet and at office supply stores. However, a financial POA can grant enormous power to your agent and, for this reason, it is advisable to consult with an attorney regarding your POA.

Your agent cannot use your money for his or her personal gain. Your agent has a fiduciary duty to act in your interest and try to do what you would do for yourself if you were able. Third parties will presume the person is acting on your behalf. There have been agents who have used their power for their own benefit, so it is very important that you choose someone you trust. You can ask your agent to provide an accounting. This means that the person acting as your agent provides a record of all money spent from your assets. You should specify in the POA document how often and to whom your agent must provide an accounting.

As with a health care POA, you can revoke a financial POA at any time. A financial POA *must* be revoked in writing and signed in the presence of a notary. If the original POA was recorded, then the revocation must also be recorded. You must send a copy of the revocation to all places your agent has done business on your behalf, such as your financial institutions. **If your financial POA deals with real estate, the written revocation must be recorded with the clerk in each county where your real estate is located.** You may also tear up the original and all copies.

It is important to note that your financial POA becomes **invalid** upon your death and your agent no longer has any power to handle your financial affairs. After your death, the handling of financial matters is based on your will, the probate process and any non-probate transfers you may have made (transfer on death deeds, pay on death beneficiaries, etc.).

Contact LREP for free assistance with a power of attorney. (See “Resources.”)

Representative Payee

A representative payee is an individual or organization appointed to receive Social Security or Supplemental Security Income (SSI) benefits for someone who cannot manage his or her own money. A representative payee is responsible for helping a person manage the money from his or her benefits checks. Often, the representative payee is a spouse, relative or close friend of the beneficiary.

The main responsibilities of a payee are to use the benefits to pay for the current and

foreseeable needs of the beneficiary. A payee must keep records of all expenses. When SSA requests a report, a payee must provide an accounting to SSA of how benefits were used or saved.

Note: Having power of attorney or having a joint bank account with the beneficiary is not the same thing as being a representative payee. These arrangements do not give legal authority to negotiate and manage a beneficiary's Social Security and/or SSI payments.

The Social Security Administration (SSA) must authorize the representative payee. Appointing a representative payee does not require a lawyer or action by a court. SSA will appoint representative payee only after a finding that a person is unable to manage his or her benefits.

SSA never authorizes an individual payee to charge a fee for being a representative payee. SSA may authorize certain types of organizations to collect a fee from a beneficiary's monthly payment for providing representative payee services. However, the organization must be qualified to provide payee services (as defined by SSA) and, have applied and been approved in writing by SSA.

The representative payee arrangement will end if the beneficiary shows that he or she is physically and/or mentally able to manage the benefit. The representative payee arrangement will also end upon a showing that the representative payee is not acting in the beneficiary's best interests.

Guardianship/ Conservatorship

Guardianship

A guardianship is a legal process that gives an individual, known as the "guardian," legal power over the *personal affairs* of an incapacitated person.

An incapacitated person is defined in the New Mexico Probate Code as any person who demonstrates over time either partial or complete functional impairment measured by a person's inability to manage the person's personal care or the person's inability to manage the person's estate or financial affairs, by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause. Thus, a person may be incapacitated if the person is unable to provide food, clothing or shelter for him or herself, unable to care for his or her own physical health and/or unable to manage his or her financial affairs due to a physical or mental condition. Advanced age, hospitalization or eccentricity alone does not automatically mean you are incapacitated. Refusal of medical treatment also does not necessarily mean you are incapacitated.

Personal affairs that a guardian has authority over include decisions about where the incapacitated person should live, what type of assistance the person requires with the tasks of daily living, etc. Personal affairs can also include handling the incapacitated person's finances in cases where the person has only a modest amount of resources. If the incapacitated person has substantial resources, the court will appoint a conservator, as discussed below.

The need for a guardianship or conservatorship can be eliminated by advance planning, as discussed in the preceding sections. By executing an advance health care directive and power of attorney in advance of incapacity, you can help ensure that the person of your choosing will be able to assist you if you become unable to manage your own affairs. Additionally, this advance planning can save your loved ones the emotional and financial costs of having to go through a court proceeding to have a guardian or conservator appointed.

Anyone who is concerned about the welfare of the incapacitated person, including the incapacitated person themselves, may ask the court to appoint a guardian. The incapacitated person has the right to be represented by an attorney during the proceeding. If the alleged incapacitated person does not already have an attorney, the court shall appoint an attorney to represent the alleged incapacitated person. In addition, the court shall appoint a qualified health care professional to examine the alleged incapacitated person. The qualified health care professional appointed by the court shall examine the person alleged to be incapacitated and submit a written report to the court describing the nature and degree of the person's incapacity and observations of the person's ability to make health care decision and manage the activities of daily living. The court shall also appoint a visitor to evaluate the needs of the alleged incapacitated person and provide a written report on the appropriateness of the appointment of a guardian and recommendations regarding the proposed guardian.

The court will appoint a guardian if it finds that the individual is incapacitated and needs a guardian to ensure his or her welfare. Often, the spouse, adult child, parent or

relative of the incapacitated person will be considered for appointment as guardian by the court.

A guardian has the same powers, rights and duties regarding the incapacitated person that parents have over their minor child. For example, a guardian may give consent for medical treatment for the incapacitated person or determine where the incapacitated person will live. The guardian must provide the court with a yearly report indicating the progress and condition of the protected person, including health, medical, dental, residence, education, living conditions, and what the guardian is doing and if the protected person continues to need guardianship. A guardian's responsibility for the protected person ends upon the death of the protected person, the incapacity or death of the guardian, or upon a showing that the protected person is no longer incapacitated and therefore no longer needs a guardian.

In some cases, the State Office of Guardianship provides guardianship court proceeding services for incapacitated persons who are income and resource eligible. (See "Resources.")

Conservatorship

A conservatorship is a legal procedure that gives an individual, known as the conservator, power over the *property and finances* of an incapacitated individual.

A conservator may be appointed only by a court. As with a guardianship, anyone who is concerned about the welfare of the incapacitated person, including the incapacitated person themselves, may ask the court to appoint a conservator. The person who is to be protected has the right to be

represented by an attorney throughout the court proceeding.

The person who is to be protected may request that a particular person be appointed conservator, or the court may appoint a person who is eligible to be the conservator, according to law. Those eligible for appointment include a spouse, parent, adult child or a relative with whom the protected person has been living.

The conservator has the power to deal with the protected person's money and property. The conservator must provide the court with a yearly accounting of the protected person's finances and property. Any person interested in the welfare of the protected person, including the protected person, may petition the court for an accounting, a bond, or for removal of the conservator. Any interested person, including the protected person, may petition the court for an end to the conservatorship. The court will end the conservatorship if it finds that the protected person is no longer incapacitated.

The conservator does not have the authority to handle the non-financial, personal affairs of the protected person. If necessary, a guardian must be appointed to handle those matters.

Abuse, Neglect and Exploitation

Physical and Emotional Abuse of Seniors

Abuse is usually described as the intentional mistreatment or harm of another. Physical abuse involves the intentional use of force, such as pushing, slapping or physical

restraint. Emotional abuse may take the form of threats, ridicule and humiliation, often triggered by stress (especially if combined with the use of alcohol). The problem of abuse or mistreatment of nursing home residents is taken very seriously in New Mexico. The New Mexico Department of Health (DOH) is responsible for licensing nursing homes and enforcing standards of care in nursing homes. The DOH, together with other state agencies such as the Aging and Long-Term Services Department, is actively investigating nursing homes suspected of abuse or mistreatment of residents.

Unfortunately, abuse and neglect of seniors is not limited to nursing homes. Sometimes is also found within families and other places in the community. It is very important for friends, neighbors, and anyone who has contact with the elderly, either in their private residences or in nursing homes, to be alert to any signs of abuse. Older people may be reluctant to report abuse because they are embarrassed or fear retaliation. Sometimes they simply do not wish to burden family members with such concerns.

Neglect

Neglect is the failure to provide basic necessities of life. It is the absence of care, such as inadequate food, housing, heating or cooling, cleanliness or health care. Neglect is the most likely form of abuse to occur, especially in the form of self-neglect of a senior living alone. Some signs of self-neglect would be an unkempt appearance: a male who stops shaving when he normally is clean-shaven or a general lack of grooming such as soiled clothing and unbrushed or unwashed hair.

Most people who live alone still need social interaction. When physical limitations prevent seniors from getting out on their own and they become shut-ins, many seniors become lonely and depressed. This isolation is a form of neglect, which can lead to an inability or failure to perform the activities of daily living (for example, personal hygiene, eating and household chores).

If you know someone who is either neglected by family members or who seems to be unable to care for themselves while living alone, you should contact New Mexico Adult Protective Services. (See “Resources.”)

Financial Exploitation

The elderly are at-risk for two primary forms of financial exploitation. First, close friends, family or caregivers may take advantage of the elderly person’s trust and intentionally mismanage income or assets to their own advantage. Secondly, as discussed in the chapter on consumer issues, the elderly are often the targets of scam artists or other strangers. They may turn up on the doorstep and offer home repair or other services. Often very charming and persuasive, these scam artists gain the trust of seniors and convince them to part with their money for services they do not need. Some telemarketers may try to confuse an elderly individual with fast talk.

Family and friends can help by frequently reminding seniors to be skeptical of anyone who stops by their home or calls them on the phone trying to get them to part with their money. According to an American Bar Association statistic, for each reported case of financial exploitation, as many as 25 cases are not reported to the authorities.

Family members who may not live close-by still need to be alert to any unusual financial dealings between older family members and professional caregivers. Sometimes it is the live-in nurse or caregiver who gains so much trust that the elderly person may be convinced to change a will, transfer money or assets, or give a power of attorney to an unscrupulous caregiver.

Signs of financial exploitation include: The elderly person suddenly stops making their own decisions and is depending on others to make decisions for them.

There is unusual bank activity.

- Another person cashes checks or signs documents.
- A new person moves in.
- An elderly person is accompanied by a stranger when making large money transactions.

If you suspect financial exploitation of an elderly person, do not ignore it. Follow your instincts and check into your suspicions. Adult Protective Services should be notified so they can investigate the situation. Abuse and exploitation can lead to both civil and criminal charges being filed against the abuser. (See “Resources.”)

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Adult Protective Services

Investigates claims of abuse, neglect and exploitation of adults.

6301 Fourth NW, Suite 3
Albuquerque, NM 87107
(866) 654-3219 (24-hour centralized intake system)
(505) 257-5320

(The) Family Caregiver Alliance

www.caregiver.org

Guardianship Legal Helpline**Pegasus Legal Services**

Offers assistance to caregivers who are seeking guardianship of minor children.

(800) 980-1165
(505) 244-1101 (Albuquerque area)
www.pegasuslaw.org

National Alliance for Caregiving

www.caregiving.org

National Alzheimer's Association**New Mexico Chapter**

Alzheimer's disease Education and Referral Center

9500 Montgomery Blvd. NE, Suite 209
Albuquerque, NM 87111
(505) 266-4473
(800) 272-3900
(866) 403-3073 (TDD)
www.alz.org/newmexico/
www.alz.org

(The) National Family Caregiver Association

(202) 454-3970

www.caregiveraction.org

National Hospice and Palliative Care Organization

Provides free consumer information on hospice care and puts the public in direct contact with hospice programs.

(800) 658-8898
www.nhpco.org

National Institute on Aging

Alzheimer's disease Education and Referral Center

(800) 222-2225
(800) 222-4225 (TTY)
www.nia.nih.gov/alzheimers

New Mexico Developmental Disability Planning Council

Adult guardianship services.

(505) 476-7332
(888) 779-6183
www.nmddpc.com

New Mexico Donor Services

Organ and tissue donation information.

(505) 843-7672 (Albuquerque)
(877) 401-2511 (outside Albuquerque)

Office of Superintendent of Insurance

Provides convenient access to consumers to reliable insurance products

PO Box 1689
Santa Fe, NM 87504-1689
(855) 427-5674
www.osi.state.nm.us

Online caregiver's newsletters:

www.caregiving.com

Senior Citizens' Law Office

Offers legal services to Bernalillo, Sandoval, Torrance, and Valencia County residents 60 and over.

4317 Lead Ave., SE, Suite A

Albuquerque, NM 87108

(505) 265-2300

www.sclonm.org

Social Security Administration

Local office is listed in the telephone directory government pages under "United States – Social Security Administration."

(800) 772-1213

(800) 325-0778 (TTY)

www.ssa.gov

Total Community Care (PACE)

Available to person 55 years and older. A day health care center offering comprehensive set of services aimed at keeping those, who would otherwise require institutionalization, at home. Currently available to Albuquerque residents only.

(505) 924-2650

www.myinnovage.org

CHAPTER TWELVE

Grandparent Caregivers

As a matter of public policy, the State of New Mexico has determined that the interests of children are best served when they are raised by their parents. The State has also said that, if the parents are unwilling or unable to provide appropriate care, supervision and guidance, the child should be raised by a family member, if possible. There are many children in New Mexico (and all over the United States) who are being raised by family members other than their parents. More often than not, these caregivers are the children's grandparents.

This new responsibility often occurs at a time when the grandparent is least equipped to care for a young child, because of failing health or living on a fixed income. Additionally, many grandparents find it almost impossible to gain access to benefits that they or the child may be entitled to, and to establish a "legal relationship" with the child so they can make decisions about the child's education and health care. Finally, many grandparents feel a sense of isolation, as if they are the only ones who are dealing with these issues.

This chapter discusses how grandparents can establish a legal relationship that authorizes them to enroll the child in school and take care of the child's health care needs. This chapter also covers financial assistance that may be available to grandparents and how to access the assistance.

Kinship Guardianship

New Mexico has established the Kinship Guardianship Act to assist grandparents and other caregivers who are caring for

children other than their own. A Kinship Guardianship is a legal process in which an individual is appointed by the court to serve as a child's guardian for an indefinite period of time. In order to qualify to become a guardian based on the Kinship Guardianship Act, the child's parent must have left the child in your care for 90 or more consecutive days.

Kinship guardianship can also be a solution when a parent has given consent for the guardianship, or if parental rights have been terminated. The parents' consent is not required for a guardian to be appointed; however, it makes the process much easier.

A guardianship *suspends* all of a parent's rights but does not *terminate* parental rights. Once a kinship guardianship has been granted by the court, the parent must go back to court to reapply for custody of the child if the parent decides he or she wants the child back.

The guardian has all the legal rights and duties of a parent, except the power to consent to the child's adoption. Guardianship under the Kinship Guardianship Act is different from guardianship of a minor under the probate code. You should consult an attorney for advice on which form of guardianship is appropriate for your situation.

Alternatives to Guardianship

There are several other ways to establish a legal relationship with a child in your care that will enable you to provide for the child's well-being.

Caregiver Affidavit. A Caregiver Affidavit is a document executed by the child’s caregiver that allows the caregiver to enroll the child in school and to authorize school-related medical care. If the caregiver is a relative of the child, he or she may also authorize general medical care, dental care and mental health care. A Caregiver Affidavit is valid for one year from the date it is executed and has no effect on the rights of the parents. The document must be signed by the caregiver and notarized. This document does not mean that you have legal custody of the child and does not give the more inclusive legal rights and duties of a Kinship Guardianship. Contact LREP for free assistance with this form. (See “Resources”).

Parental Power of Attorney (Parental POA). A Parental POA is a document executed by at least one of the child’s parents that gives the caregiver powers relating to the care, custody and property of the minor child. A Parental POA does not convey the power to consent to marriage or adoption. It can be as broad or narrow as the situation requires. The Parental POA is valid for six months, after which a new power of attorney must be executed. A Parental POA does not affect the rights of the parents in any way.

Custody. Custody, as the name implies, is a court proceeding in which someone other than the child’s parent(s) is given physical control of the child for an indefinite period of time. Each custody arrangement is unique, thus it may or may not affect the parent’s rights.

Adoption. Adoption is a court proceeding in which the parent/child relationship is legally severed. The parental rights of the child’s natural parents are permanently terminated, and the adoptive parents assume all parental

powers and duties. The parents’ consents are not required; however, it makes the process much easier. Once the adoption is complete, the parents have no legal relationship to the child, and, therefore, owe no duty of child support or any other obligation to the child. Advocacy Inc. can provide legal services to grandparents adopting a minor grandchild when the grandparents are providing a home and caring for the grandchild. (See “Resources.”)

Note: There are special concerns when the minor child is a Native American. The Indian Child Welfare Act (ICWA) is a federal law that allows the Native American custodian of the child, or the tribe, to intervene at any point in a state court proceeding for foster care placement or termination of parental rights. If you are the caregiver of a Native American child, you should be aware of the ICWA and seek the advice of an attorney specifically familiar with this area of Law.

Financial Assistance for Grandparent Caregivers

Many grandparents who become caregivers are retired and living on a fixed income. Some financial assistance is available to help relieve the burden on caregivers. See the chapters on retirement and disability income, and benefits for low-income families earlier in this handbook, for many State and federal programs that may be able to help. The following are two other possible avenues of assistance.

Child Support. Parents are obligated to support their children, even if the children are not living with them. If the child is receiving

financial assistance from the state in the form of Temporary Assistance for Needy Families (TANF), the state will automatically initiate child support proceedings against the child's parents. If the child is not receiving TANF, you can apply to the Child Support Enforcement Division (CSED) for assistance in obtaining child support from the child's parent(s). You must be patient, as CSED is typically overwhelmed with requests for assistance.

Private Insurance. A child can be covered under a parent's health insurance policy even if the child is not living with the parent. Courts will often order a parent to include a child under the parent's health insurance policy as part of a child support order. In some cases, a child may be covered under a caregiver's health insurance policy. If you are employed, you should check with your employer's human resources department or contact the health insurer directly to see if your health insurer offers such coverage.

Grandparent Rights

Traditionally, in New Mexico, parents have the right to decide with whom their children may associate. There are times when a parent, for various reasons, will not allow their child to visit with the grandparent. If visitation with the child is denied and informal communication doesn't resolve the situation, **under certain very limited circumstances**, grandparents may file a grandparent visitation petition in district court. This petition asks the court to order visitation with the child for the grandparents. The limited circumstances in which a grandparent may ask the court for such an order are:

If there is a pending court proceeding, such as dissolution of marriage, legal separation, or an order establishing a parent and child

relationship, a grandparent can ask the court to order reasonable visitation privileges to a grandparent.

If one or both parents of a minor child are deceased, a grandparent who was the parent of the deceased, may ask the court for visitation privileges.

If the following conditions are all true: the minor child's home state is New Mexico, the minor child resided with a grandparent for a period of at least three months, the child was less than six years of age at the start of the three-month period, and the child was subsequently removed from the grandparent's home, then the grandparent may ask the court for visitation privileges with the child.

A biological grandparent may ask the court for visitation privileges when the grandchild has been adopted or an adoption is being sought through a provision of a deceased parent's will. **Grandparents have no visitation rights when the natural parents' rights have been terminated or relinquished and the child is adopted by a non-family member.**

When a minor child is adopted by a stepparent and the parental rights of the biological parent are terminated or relinquished, the biological grandparents may attempt to establish visitation privileges.

The court will consider a number of factors in deciding whether to grant grandparent visitation. These factors include: the best interests of the child; prior interaction and relationship between grandparents, parents and grandchild; prior timesharing or visitation arrangements; effect of visitation; prior conviction of the grandparent for physical, emotional or sexual abuse or neglect; and the

grandparents' previous period as full-time caregiver for the child.

Possible outcomes of the court proceeding for grandparent visitation include: the court may order mediation and evaluation; the court may order other forms of contact such as phone calls or mail, instead of visitation; the court may order no visitation; or the court may order reasonable grandparent visitation.

Contact LREP for help in advice and assistance in assessing your visitation rights. (See "Resources.")

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)
(800) 876-6657 (outside Albuquerque)
www.sbnm.org/LREP

Advocacy Inc.

Guardianship, adoption and special immigrant status application for minor children

6301 Fourth NW, Suite 3
Albuquerque, NM 87107
(505) 266-3166 (Albuquerque)
(866) 257-5320
www.nmadvocacy.org/

Child Support Enforcement Division

Assists in obtaining or enforcing child support orders.

(800) 800-288-7207
www.hsd.state.nm.us/csed/

City of Albuquerque Department of Senior Affairs

714 7th St. SW
Albuquerque, NM 87102
(505) 764-6400
(505) 764-6405 (TTY)
www.cabq.gov/seniors

(The) Family Caregiver Alliance www.caregiver.org

Grandparents Are Indeed Necessary (GAIN) *Advocating expanded grandparent rights.* (505) 296-3589

Guardianship Legal Helpline Pegasus Legal Services

Offers assistance to caregivers who are seeking guardianship of minor children.

(800) 980-1165
(505) 244-1101 (Albuquerque area)
www.pegasuslaw.org

(The) National Family Caregiver Association

(202) 454-3970
www.caregiveraction.org

Online caregiver's newsletters:

www.caregiving.com

Senior Citizens' Law Office

Offers legal services to Bernalillo, Sandoval, Torrance, and Valencia County residents 60 and over.

4317 Lead Ave. SE, Suite A
Albuquerque, NM 87108
(505) 265-2300
www.sclonm.org

CHAPTER THIRTEEN

Divorce

Divorce can happen to any married couple, even after many years of marriage. In New Mexico you can obtain what is referred to as a “no-fault” divorce. In other words, neither party has to prove that the other was at fault. A no-fault divorce is simply based on the spouses’ inability to get along with one another. Before you can obtain a divorce in New Mexico, you must be a resident of New Mexico and have lived in the state for at least six months prior to the divorce.

A divorce consists of two parts, the dissolution of the marriage and the division of property. Property is divided into two categories, community and separate. Community property is anything acquired during the marriage other than by gift or inheritance. Separate property is property owned prior to the marriage such as gifts made to one spouse, inheritance, and items specifically earmarked as separate property by written agreement or court order. Community and separate property are discussed in more detail later in this chapter.

If you and your spouse can agree as to how to divide your property, debts and income, then you may be able to obtain a do-it-yourself or “pro se” divorce. Some local courts offer a pro se clinic where you can learn how to complete and file the necessary forms. Your local courthouse may have pro se divorce packets available as well. Court employees are not allowed to give you legal advice.

You and your spouse should consider hiring attorneys to help you with the divorce if

either of you have retirement funds or a pension, you have acquired a great deal of property or you cannot agree how to divide the property, debts and income. In general, it is a good idea to retain your own attorney to protect your individual interests in a divorce.

The court does not have to divide every piece of property exactly down the middle. The court is charged with making “equitable” property settlements; however, this does not necessarily result in an equal division of property. In general, the court will equitably divide community property (community and separate property are discussed in the next section) and return separate property to its owner. Additionally, you and your spouse can make trade-offs when dividing property. For example, you may want to keep a certain item of community property and in exchange, you may be willing to forgo your community property interest in your spouse’s pension.

There are limited circumstances in which the court will award spousal support as part of the property settlement. Rehabilitative spousal support may be awarded to the nonworking spouse for a limited period of time to provide education, training or work experience to increase his or her ability to earn an income. Transitional spousal support may be awarded for a limited period of time to supplement the income of the receiving spouse. Spousal support may also take the form of a single sum paid in one or more installments, which could be subject to certain contingencies (the death of the receiving spouse, for example). Finally, and

most rarely, spousal support may be awarded for an indefinite period of time.

Community Property and Separate Property

New Mexico is a community property state. “Community property” is defined as property acquired by either or both spouses during the marriage that does not qualify as separate property. Separate property includes property acquired by either spouse before the marriage or after the divorce, property acquired after a division of property resulting from a permanent separation without a divorce, property designated as separate by a court, property acquired by either spouse by gift or inheritance, and property designated as separate by written agreement between the spouses. The New Mexico courts assume that property acquired during the marriage is community property and that each spouse owns the property in equal shares (one-half to each spouse). It is your obligation to prove otherwise.

Property that is separate when acquired, such as from a gift or inheritance, can become community property if it is not kept separate but is instead “co-mingled” with community property. For example, a cash gift that is received by one spouse but is deposited into a community bank account may lose its status as separate property.

Community property includes earnings of both spouses during the marriage, and also includes property bought with community earnings. If spouses divorce, the community property is divided equitably between the two. You may also transfer your half of the community property to someone other than your spouse by a will.

If either you or your spouse earned retirement benefits or pension benefits while you were married to one another, these benefits are considered community property. This is true even though you may not have started receiving benefits from the pension before your divorce. Military pensions are also community property. If you are divorced in New Mexico, the court will determine what percentage of the pension each spouse should receive. In order to receive your portion of the benefits, additional legal documents are necessary and, consequently, you are strongly advised to consult an attorney for assistance with this process.

Whatever decisions you make regarding the division of community property, it is imperative that you consider your future needs as well as your present needs. Once a property settlement has been agreed upon, it is very difficult to make any modifications to it.

After your divorce, you may consider remarrying. Before you do so, you may want to consider entering into a prenuptial agreement with your intended spouse. Prenuptial agreements determine in advance how property will be divided in the event of a subsequent divorce. Prenuptial agreements may also ensure that property will pass to children of an earlier marriage rather than to children of a second spouse. The same advice applies to a prenuptial agreement as to a divorce: parties to the agreement should have their own separate attorneys.

Domestic Violence

Too often, the need for a divorce arises as a result of domestic violence. Domestic violence has reached nearly epidemic proportions in the United States. According to a 2010 report, nearly one-third of American women report having been abused

at some point in their lives by a husband or boyfriend. While the majority of domestic violence victims are women, men can also be victims. The elderly are also victims of domestic violence. Simply because you are a senior citizen does not mean it can't happen to you.

Domestic violence can take many forms. Hitting, pushing, physical restraint, rape, humiliation, ridicule, threats and isolation are some of the many acts of abuse endured by victims of domestic violence. It is most common for the abuser to be the spouse of the victim; however there are many cases of children abusing an elderly parent.

You do not have to be a victim! If you are in an abusive relationship, there is help. **If you are in immediate danger, call 9-1-1.** There are many organizations that assist those living in abusive relationships. See the "Resources" section at the end of this chapter for information about organizations that can help you if you are a victim of domestic violence.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)
(800) 876-6657 (outside Albuquerque)
www.sbnm.org/LREP

Adult Protective Services

Investigates claims of abuse, neglect and exploitation of adults.

(866) 654-3219 (24-hour centralized intake system)
(505) 476-4912

Child Support Enforcement Division

Assists in obtaining or enforcing child support orders.

(800) 800-288-7207
www.hsd.state.nm.us/csed/

Divorce Options Workshop

Free legal workshop for individuals considering divorce

(505) 797-6022 (Albuquerque)
(800) 876-6657 (Outside Albuquerque)
www.sbnm.org/LREP

National Domestic Violence Hotline

(800) 799-7233
(800) 787-3224 (TTY)
www.thehotline.org
e-mail: thehotline.org/get-help/contact-the-hotline/ (for non-emergencies only)
e-mail: deafhelp@thehotline.org (for non-emergencies only)

New Mexico Coalition Against Domestic Violence Hotline

(505) 246-9240 (Albuquerque)
(800) 773-3645 (outside Albuquerque)
www.nmcadv.org

New Mexico Legal Aid

Civil legal services for low-income New Mexicans.
866-416-1922 (Albuquerque)
833-545-4357 (Toll-Free)
www.newmexicolegalaid.org

CHAPTER FOURTEEN

Employment Discrimination

The law generally allows private organizations, individuals and public agencies considerable latitude to decide how to conduct their activities. For example, under New Mexico law, with few exceptions, a private employer can fire an employee any time for almost any reason, including “It’s just not a good fit.” The employer does not have to explain or allow the employee any opportunity to contest the decision. Exceptions to this rule may exist where there is a contract between the employee and the employer, a collective bargaining agreement between a union and the employer, or an employee manual that restricts when the employer can terminate an employee.

Certainly, a fair-minded employer will not fire an employee without a good reason and without considering the employee’s viewpoint. A fair-minded employer will also strive to treat employees similarly in similar circumstances, but the law does not generally require private employers to do any of those things.

Most employment in private enterprise and private nonprofit organizations is known legally as “employment at will.” This means that the employer and the employee are both free to end the relationship at any time for any reason. Employment at will in private business and nonprofit organizations is not unique to New Mexico; it is the general rule in the United States.

Public agencies generally allow more protection for employees who successfully complete a probationary period. Some private

employers do the same as a matter of policy, but this is an exception to the general rule.

There are, however, some circumstances in which the New Mexico Legislature and the U.S. Congress have declared that certain kinds of employment decisions are against the law. Illegal decisions generally involve employment decisions based on personal characteristics that an individual cannot change, such as race, sex, age (40 or over), ancestry, national origin, or disability. The law calls those “protected characteristics” and makes it illegal for employers to treat employees or applicants who meet the requirements for a job differently if the reason for the different treatment is a protected individual characteristic. In other words, a person who is “otherwise qualified” to get or keep a job may not legally be disqualified, or *discriminated against*, because of a protected characteristic. This is the basic definition of illegal discrimination in employment.

The following sections highlight the major features of New Mexico and federal anti-discrimination employment laws, and include contact information for the main government agencies that enforce those laws.

No discussion of illegal discrimination can be complete without noting that many important activities are not covered by anti-discrimination laws. For example, it is legal for a person to make choices about friends, to join private groups or to choose social activities because of race, gender or other characteristics that would be illegal reasons for making decisions in employment.

Finally, even in protected activities there are many legal reasons for deciding that a member of a protected group is not “otherwise qualified” for the activity or benefit involved. Common examples include a refusal to loan money to a member of a protected group because of low income or a bad credit rating, or an employer’s decision to fire a member of a protected group because of poor job performance. In those cases, the different treatment—the discriminatory decision—must be based on legally permissible reasons and not on protected characteristics.

New Mexico Law

The New Mexico Human Rights Act states that it is an unlawful discriminatory act to “refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition; or if the employer has 50 or more employees, spousal affiliation.” A general exception to this statement is where mandatory retirement of persons age 65 or older is allowed by federal law. For example, airline pilots are required to retire at the age of 65 due to the nature and requirements of the job. New Mexico law, except where otherwise noted, applies to employers having four or more employees, labor organizations and employment agencies.

The New Mexico Human Rights Act is administered and enforced by the Human Rights Bureau (HRB) of the New Mexico Department of Workforce Solutions. A person who feels he or she has been

discriminated against on any of the bases noted above may file a complaint with the HRB and the complaint will be investigated. The complaint must be in writing and filed within 300 days of the alleged act of discrimination.

If, after investigation, the HRB finds it is likely that a discriminatory act did occur, it will issue a **probable cause** finding and schedule the case for hearing before the Human Rights Commission. If you prevail in your hearing before the Commission, you may be awarded actual money damages, such as back pay and attorney’s fees. The HRB also has an Alternative Dispute Resolution program that claimants can use to resolve their complaints through mediation and voluntary agreements. The Alternative Dispute Resolution program is strictly voluntary, and all parties must be willing to participate in order for the program to apply to a particular case.

If the HRB finds there is not enough evidence to show that an act of discrimination occurred, it will issue a finding of **no probable cause**, and the case will be dismissed. You may appeal a finding of no probable cause to the state district court. You must do so within 90 days of the receipt of the finding of no probable cause. If you do not appeal within the 90 days, you lose your right to appeal.

Prohibited acts of discrimination sometimes fall under both state and federal laws. The federal agency that handles complaints of employment discrimination under federal law is the Equal Employment Opportunity Commission (EEOC). Because both state and federal laws may apply to acts of discrimination based on age or disability, the HRB and the EEOC have a work-sharing

agreement, meaning that a complaint filed with the EEOC will automatically be filed with the HRB, and a complaint filed with the HRB will also be filed automatically with the EEOC, provided the complaint meets the jurisdictional requirements of the other agency. (For example, EEOC will not investigate complaints based on sexual orientation, gender identity, spousal affiliation, or serious medical condition, because those categories are not protected under federal law.)

You may not file a lawsuit under the New Mexico Human Rights Act unless and until you have completed the complaint process with the HRB (or EEOC, if appropriate), and the agency has issued its decision and given you a “right to sue” letter.

If you feel you have been discriminated against in any protected activity for any of the reasons mentioned above, you may file a complaint with the Human Rights Bureau of the New Mexico Department of Workforce Solutions. (See “Resources”).

Federal Law

There are numerous federal laws that prohibit discrimination. The Civil Rights Act of 1964 prohibits discrimination in employment or public accommodations based on race, color, religion, sex or national origin. The Americans with Disabilities Act (ADA) prohibits employment discrimination based on mental or physical disabilities. The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination based on age (40 and over). This section will primarily focus on the ADA and the ADEA.

The Americans with Disabilities Act, commonly referred to as the ADA, prohibits employers from discriminating against qualified individuals with disabilities. This applies to job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. The ADA applies to all employers with 15 or more employees. The ADA also covers many other areas beyond the scope of this handbook. A wealth of information is available at the U.S. Department of Justice’s ADA Home Page, <http://www.ada.gov>.

The ADA prohibits discrimination in employment against an individual with a disability who can perform the essential functions of the job, with or without accommodation. An individual with a disability is defined as a person who (1) has a physical or mental condition which substantially limits a major life activity, (2) has a record of having such an impairment, or (3) is regarded as having such an impairment. Examples of major life activities include seeing, hearing and walking. For additional details, see the U.S. Department of Justice ADA Home Page at <http://www.ada.gov>.

Employers who are subject to the ADA are required to make what is called “reasonable accommodation” to enable a disabled employee to perform the essential functions of the job. One purpose behind requiring reasonable accommodation is to make existing physical facilities used by employees readily usable and accessible to persons with disabilities. Some examples of reasonable accommodation include installing ramps or specially equipped bathrooms. Another purpose is to modify the work environment and tools used by employees, within

reasonable limits, to provide a level playing field and allow individuals with disabilities who can perform the essential functions of the job to do so. Examples include modified work schedules and the provision of qualified readers or interpreters.

An employer who is covered by the ADA is not required to make a reasonable accommodation if doing so would impose an “undue hardship.” An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors including the employer’s size, financial resources and the nature of the business. An employer is not required to lower job performance standards as an accommodation, nor is the employer required to provide personal use items (such as glasses or hearing aids) to an otherwise qualified employee.

The Age Discrimination in Employment Act, known as the ADEA, protects individuals who are 40 or older from employment discrimination based on age. The law covers both employees and job applicants. The ADEA applies to employers with 20 or more employees, including state and local governments, the federal government, employment agencies and labor organizations.

Under the ADEA, it is illegal for an employer to discriminate against a person because of his or her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments and training.

Both the ADA and the ADEA prohibit retaliation against an individual for filing a charge of discrimination or in any way

participating in an action under the ADA or ADEA. In some cases, an employer who is found not to have discriminated to begin with can be found to have retaliated against an employee for filing a complaint alleging illegal discrimination.

As noted above, the agency that handles charges of discrimination under federal law is the Equal Employment Opportunity Commission (EEOC). If you feel you have a claim of discrimination under the ADA, ADEA, or the Civil Rights Act of 1964 (i.e. race, national origin, religion, or sex discrimination), you may file your complaint with either the EEOC or the New Mexico Human Rights Bureau (HRB). As noted above, the HRB and the EEOC have a work-sharing agreement, and any complaints of discrimination filed with the HRB that also fall under any of the federal laws dealing with discrimination are automatically filed with the EEOC. The work-sharing agreement ensures that the claimant’s rights are protected under federal law as well as state law.

If you choose to file your complaint with the EEOC, you must do so within 180 days of the discriminatory act. This deadline is extended to 300 days if the discriminatory act is also covered by a state law. This will often be the case, as New Mexico’s Human Rights Act is quite broad and covers many different types of discrimination, including age and disability. However, to ensure that your complaint is filed on time, it is wise to file well within the 180-day deadline. If you were discriminated against in your employment with a federal government agency or federal contractor, you must first file a complaint with that agency’s Equal Employment Opportunity (EEO) office. If you are unsatisfied with the EEO’s action

and wish to file with EEOC or HRB, you will still need to file with one of these agencies within the original 180-day or 300-day filing deadline.

If you file your claim with the EEOC, the agency will conduct an investigation, which may include written requests for information from the employer, interviews, document review, and possibly a visit to the workplace where the alleged discriminatory act took place. If the EEOC finds evidence of discrimination, the agency may file a lawsuit on your behalf.

If, after filing your complaint with the EEOC, the agency finds there is not enough evidence to support action on its part, you will receive a “**right to sue**” letter, which essentially releases the EEOC from any obligation to pursue your claim. You have 90 days from the time you receive the right to sue letter to bring your own action against the employer in either state or federal court, whichever is appropriate.

You may not file a lawsuit in state or federal court under the provisions of the ADA or ADEA (and other laws dealing with employment discrimination) unless and until you have completed the complaint process with the HRB or EEOC and the agency has made its decision and given you a “right to sue” letter.

Time Is Of The Essence

Whether your claim of discrimination falls under a state law, federal law or both, it is imperative that you file your complaint with the appropriate agency as soon as possible. **As noted many times above, there is a limited time to file complaints under**

the laws discussed in this chapter. The deadlines for filing complaints cannot be extended. If you file your complaint after the deadline for doing so has expired, you lose your rights under the law.

The laws pertaining to age and disability discrimination are complicated and can be confusing. If you believe you have been a victim of discrimination because of your age, disability or any other reason, the wisest course of action is to consult an attorney who has experience in dealing with these types of cases. Some attorneys will accept discrimination cases on a contingent fee basis. This means that the attorney will collect a fee only if he or she wins the case. In an unsuccessful contingent fee case, the client is only responsible for paying the costs of the lawsuit (for example, the filing fees, copying costs and witness fees).

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Americans with Disabilities Act Information Line, U.S. Department of Justice

(800) 514-0301

(500) 514-0383 (TTY)

www.ada.gov

**Equal Employment Opportunity
Commission**

Albuquerque Area Office
505 Marquette NW
Suite 900-9th Floor
Albuquerque, NM 87102
(505) 248-5201 (Albuquerque)
(800) 669-4000 (outside Albuquerque)
(800) 669-6820 (TTY)

**Human Rights Bureau, New Mexico
Department of Workforce Solutions**

1596 Pacheco Street
Aspen Plaza, Suite 103
Santa Fe, NM 87505
(505) 827-6838 (Santa Fe)
(800) 566-9471 (outside Santa Fe) www.dws.state.nm.us/LaborRelations/HumanRights/Information

Center for Development and Disability

(505) 272-3000
(800) 552-8195
(505) 272-0321 (TTY)
www.cdd.unm.edu

CHAPTER FIFTEEN

Miscellaneous Issues

Tax Issues

Income Tax

The IRS operates the Tax Counseling for the Elderly (TCE) program, in which IRS-trained volunteers assist people age 60 or older with their tax returns at neighborhood locations in many areas. In addition, volunteer income tax assistance (VITA) aides have been trained to help seniors with their tax returns. To find the VITA or TCE site nearest you, call your local IRS office. The American Association of Retired Persons (AARP) also provides Tax-Aide at various sites. To find a site near you, contact the AARP. See the “Resources” section for contact information for the programs discussed in this section.

If you have attempted to deal with an IRS problem unsuccessfully, you should contact the Taxpayer Advocate Service within the IRS. This service provides advocates who will independently represent the interests and concerns of taxpayers. These advocates can protect your rights and resolve problems that have not been sorted out through normal channels.

The IRS also has the TeleTax telephone service that provides recorded tax information on a variety of subjects. TeleTax is available 24 hours a day, seven days a week, from a touch-tone phone. Live assistance is also available 24 hours a day, seven days a week during tax season.

There are a number of free IRS publications to help answer your tax questions. They are available by calling the IRS, going online to the IRS website or visiting your local post office or library. Large print tax return forms are also available.

Property Tax

Property owners who are at least 65 and income-eligible may apply to have the valuation of their single-family, owner-occupied residence frozen at the valuation for the year they first apply. The owner must re-apply for this benefit each year.

Qualified veterans in New Mexico (and their surviving spouses) may be allowed a reduction of the assessed value of real property for county taxation purposes. Some disabled veterans may be eligible for a complete property tax waiver on their primary residence. Some New Mexico residents may also qualify for a “Head of Family” property tax exemption.

For further information about these property tax benefits and how they may apply to you, contact the New Mexico Taxation and Revenue Department.

Automobile Insurance

All New Mexico residents who own and operate automobiles in the state are required to purchase a minimum amount of automobile insurance or be able to show evidence of financial responsibility. A showing of financial responsibility is proof that you have the means to pay for any

damages you may cause as a result of an automobile accident.

The mandatory minimum amount of insurance a New Mexico resident must carry is \$25,000 for bodily injury or death for one person in one accident, \$50,000 for bodily injury or death for two people in one accident, and \$10,000 for property damage for one accident. If you choose not to purchase automobile insurance, you must provide evidence that you have the financial ability to satisfy judgments in the above amounts. Proof of financial responsibility can be shown by obtaining a surety bond or depositing cash in the amount of \$60,000 with the state treasurer.

It is also a very good idea to carry uninsured motorist insurance in addition to your liability insurance. Uninsured motorist coverage protects you from uninsured and underinsured drivers. (An underinsured driver has insurance, but the amount of coverage is not enough to pay the damages incurred.) If you decide not to purchase uninsured motorist insurance, your rejection of such coverage will be noted in the policy.

There are several other types of coverage that can be purchased. One option is to purchase collision insurance to cover any damage done to your own car. This type of coverage is optional; however, your lender will require that you obtain this type of insurance if you still owe money on your vehicle. Many people choose not to purchase this type of coverage if their car is older and has lost much of its original value. You may also purchase optional coverage for medical payments, which protects you and others in your car in the event that injuries require medical attention. Finally, you may purchase “comprehensive” insurance which covers

your car for certain damages not covered by collision insurance, such as theft, fire, vandalism, cracked windshields and hail damage. Please note that “comprehensive” insurance does not provide any coverage related to damage or liability incurred as a result of a collision.

Since rates, premiums and coverage vary greatly, you should shop around for the best coverage at the best rate. Insurance agents are generally very helpful and will answer any questions you have regarding your particular auto insurance needs.

It is imperative (and it is the law) that you carry the mandatory minimum liability insurance (discussed above) to cover bodily injury and property damage. If you do not have this type of insurance and you are in an accident for which you are at fault and are unable to pay any judgments that result from the accident, your license may be suspended.

Driving without insurance is against the law. **The state of New Mexico is taking the issue of uninsured motorists very seriously and is using all the resources at its disposal to enforce the laws dealing with the financial responsibility of residents who own cars. The money you think you will save by not purchasing the minimum amount of automobile insurance required by law is not worth the very real possibility of losing your driver’s license and still being required to pay for damage out of you own pocket.**

Life Insurance

Life insurance is a type of insurance that pays a specified amount of money to your named beneficiaries upon your death. The two most common types of life insurance are “term life” and “whole life.”

Term life insurance is usually less expensive, but the coverage is limited. Term life insurance has a specific termination date at which time the coverage will expire. For example, a term life insurance policy may be for a term of ten years. If you die during the term of the insurance policy, the policy will pay out to your beneficiaries. If you die after the term has expired **no benefits will be paid**. With term life insurance, you may find that you have paid premiums for many years on an insurance policy, only to have it expire before you die, leaving you with no coverage at the time of your death.

Whole life insurance policies remain in force until your death as long as you continue to pay the premiums. This type of insurance is generally more expensive than term life. Some whole life policies develop cash values.

You may have seen advertisements on TV, radio or in magazines offering life insurance policies with no physicals, or other easy terms. These policies are usually very limited as to the amount and extent of coverage especially in the first few years. Make sure you understand the terms and conditions of any life insurance policy before you buy. Ask a reputable agent or company for complete facts. Make sure there is a local representative available to answer any questions you may have.

Resources

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)
(800) 876-6657 (outside Albuquerque)
www.sbnm.org/LREP

American Association of Retired Persons (AARP)
601 E. St. NW
Washington, DC 20049
(888) 687-2277 (Toll-Free)
(877) 342-2277 (Toll-Free Spanish)
(877) 434-7598 (TTY English)
(866) 238-9488 (TTY Spanish)
www.aarp.org

Internal Revenue Service

Local offices are listed in telephone directory government pages under "United States – Internal Revenue Service."

(505) 837-5631 (Albuquerque)
(505) 424-5961 (Santa Fe)
(575) 526-0161 (Las Cruces)
(800) 829-3676 Publications
(800) 829-1040 Live assistance
(800) 829-4477 Tele-Tax tapes
(800) 829-4477 automated telephone service
(800) 829-4059 TDD
(800) 829-3676 forms and publications
www.irs.gov

New Mexico Taxation and Revenue Department

(505) 827-0700
(505) 827-0822 Personal Income Tax
(505) 827-0870 Property Tax
www.tax.newmexico.gov

Taxpayer Advocate Service

(877) 777-4778
(505) 837-5505

Resources

Administration for Community Living

Provides links to government and non-government sites for information relevant to seniors and people with disabilities

(202) 401-4634

www.acl.gov

Adult Protective Services

Investigates claims of abuse, neglect and exploitation of adults.

(866) 654-3219 (24-hour centralized intake system)

(505) 476-4912

Advocacy Inc.

Guardianship, adoption and special immigrant status application for minor children

6301 Fourth NW, Suite 3

Albuquerque, NM 87107

(505) 266-3166 (Albuquerque)

(866) 257-5320

www.nmadvocacy.org/

Affordable Care Act Health Insurance Marketplace

Marketplace to compare qualified health plans, get answers to questions, and enroll in health coverage

(800) 318-2596

(802) 242-0339

(855) 889-4325 (TTY)

www.healthcare.gov

American Association of Retired Persons (AARP)

601 E. St. NW

Washington, DC 20049

(888) 687-2277 (Toll-Free)

(877) 342-2277 (Toll-Free Spanish)

(877) 434-7598 (TTY English)

(866) 238-9488 (TTY Spanish)

www.aarp.org

Americans with Disabilities Act Information Line, U.S. Department of Justice

(800) 514-0301

(500) 514-0383 (TTY)

www.ada.gov

Benefits Checkup

Developed and maintained by the National Council on Aging (NCOA), Benefits Checkup is the nation's most comprehensive Web-based service to screen for benefits programs for seniors with limited income and resources.

Also able to identify benefits for adults over 55, who need help making ends meet

(202) 4791200

www.benefitscheckup.org

Better Business Bureau

(505) 346-0110

(800) 873-2224 (Toll Free)

www.newmexicoandsouthwestcolorado.bbb.org

Child Support Enforcement Division

Assists in obtaining or enforcing child support orders.

(800) 288-7207

www.hsd.state.nm.us/Child_Support_Enforcement_Divisions.aspx

City of Albuquerque

Department of Senior Affairs

714 7th St. SW

Albuquerque, NM 87102

(505) 764-6400

(505) 764-6405 (TTY)

www.cabq.gov/seniors

Consumer Debt/Bankruptcy Workshop

Free legal workshop for questions about repossessions, foreclosures, collection issues, and bankruptcy

(505) 797-6094 (Albuquerque)

(800) 876-6657 (outside Albuquerque)

www.sbnm.org/LREP

Consumer Financial Protection Bureau

Established by Congress to protect consumers by carrying out federal consumer financial law

(855) 411-2372

(855) 729-2372 (TTY)

www.consumerfinance.gov

Crime Victims Reparation Commission

6200 Uptown Blvd. NE, Suite 210

Albuquerque, NM 87110

(505) 841-9432

(800) 306-6262 (Toll Free)

www.cvrc.state.nm.us

Department of Veterans Affairs

(800) 827-1000

www.va.gov

Discount Prescription Drug Program (DPDP)

A state-sponsored program available to all New Mexico residents, regardless of whether or not they have insurance.

(800) 233-2576

www.nmrhca.org

Direct Marketing Association

Managing your mail

225 Reinekers Ln., Suite 325

Alexandria, VA 22314

(212) 768-7277 (ext. 1888)

www.DMAChoice.org

Disability Rights New Mexico

Agency that advocates for people with disabilities

3916 Juan Tabo Blvd. NE

Albuquerque, NM 87111

(505) 256-3100 (Albuquerque)

(800) 432-4682 (statewide)

www.drnrm.org

Divorce Options Workshop

Free legal workshop for individuals considering divorce

(505) 797-6022 (Albuquerque)

(800) 876-6657 (Outside Albuquerque)

www.sbnm.org/LREP

(The) Eldercare Locator

(800) 677-1116

www.eldercare.gov

www.ec-online.net

Equal Employment Opportunity Commission

Albuquerque Area Office

505 Marquette NW

Suite 900-9th Floor

Albuquerque, NM 87102

(505) 248-5201 (Albuquerque)

(800) 669-4000 (outside Albuquerque)

(800) 669-6820 (TTY)

www.eeoc.gov/field/Albuquerque/

(The) Family Caregiver Alliance

www.caregiver.org

Federal Trade Commission, Consumer Response Center

Federal agency working to prevent consumer fraud.

(877) 382-4357

(866) 653-4261 (TTY)

www.ftc.gov

Grandparents Are Indeed Necessary (GAIN)

Advocating expanded grandparent rights.

(505) 296-3589

Go Direct Helpline

(877) 874-6347

www.GoDirect.org

Hear Now Program

Hearing aid assistance.

(800) 328-8602

www.starkeyfoundation.org/Hear-Now

Home Retrofit**City of Albuquerque Department of Senior Affairs**

Provides assistance to income-eligible disabled people of all ages in retrofitting their home to accommodate their special needs.

(505) 764-6400

HUD-U.S. Department of Housing and Urban Development

Albuquerque Regional Office

500 Gold Ave. SW 7th Floor, Suite 7301

Albuquerque, NM 87103

(505) 346-6463 (Albuquerque)

(800) 225-5342 (Toll-Free)

(800) 877-8339 (TTY)

www.hud.gov

**Human Rights Bureau, New Mexico
Department of Workforce Solutions**

1596 Pacheco Street

Aspen Plaza, Suite 103

Santa Fe, NM 87505

(505) 827-6838 (Santa Fe)

(800) 566-9471 (outside Santa Fe) www.dws.state.nm.us/LaborRelations/HumanRights/Information

Human Services Department

Information and referral

(505) 827-7750

(800) 283-4465 (Toll Free)

www.hsd.state.nm.us/isd

Income Support Division

Local office is listed in the telephone directory government pages under “State – Human Services Dept. – Income Support Division.”

www.hsd.state.nm.us/isd

Information Center for New Mexicans with Disabilities

(505) 272-8549

(800) 552-8195

(505) 272-0321 (TTY)

www.cdd.unm.edu

Internal Revenue Service

Local offices are listed in telephone directory government pages under “United States – Internal Revenue Service.”

(505) 837-5631 (Albuquerque)

(505) 424-5961 (Santa Fe)

(575) 526-0161 (Las Cruces)

(800) 829-3676 Publications

(800) 829-1040 Live assistance

(800) 829-4477 Tele-Tax tapes

(800) 829-4477 automated telephone service

(800) 829-4059 TDD

(800) 829-3676 forms and publications

www.irs.gov

Keep Your Home New Mexico

A project of local and statewide agencies working together to help New Mexico homeowners who are at risk of losing their homes

(800) 220-0350 (Toll Free)

www.keepyourhomenewmexico.org

Landlord/Tenant Hotline

(505) 983-8447 (Santa Fe)
(800) 220-0350

Legal Resources for the Elderly Program (LREP)

Free legal advice and brief services to New Mexico seniors, 55 and over, via a telephone helpline.

(505) 797-6005 (Albuquerque)
(800) 876-6657 (outside Albuquerque)
www.sbnm.org/LREP

LIHEAP (utility assistance)

Your local Income Support Division office is listed in the telephone directory government pages under "State-Human Services Division."

(800) 283-4465
www.hsd.state.nm.us/isd/liheap.html
LITAP (telephone assistance)
Your local Income Support Division office listed in the telephone directory government pages under "State-Human Services Division."
(800) 244-1111 (Century Link)
(800) 564-1211 (Spanish)
www.qwest.centurylink.com/TAP/index.html

Medicare

Health insurance program for seniors and the disabled

(800) MEDICARE (633-4227)
TTY/TDD: 1-877-486-2048
www.medicare.gov

Mi Via Program

A self-directed waiver program which gives recipients the power to choose and manage services they receive

www.mivianm.org

National Alliance for Caregiving

www.caregiving.org

**National Alzheimer's Association
New Mexico Chapter**

Alzheimer's disease Education and Referral Center

9500 Montgomery Blvd. NE, Suite 209
Albuquerque, NM 87111
(505) 266-4473
(800) 272-3900
(866) 403-3073 (TDD)
www.alz.org/newmexico/
www.alz.org

**National Association of Insurance
Commissioners**

1100 Walnut Street
Kansas City, MO 64106-2197
(816) 842-3600
www.naic.org

National Consumer Law Center

A non-profit organization that uses expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the US

(617) 542-8010
www.nclc.org

**National Fraud Information Center &
Internet Watch**

Operated by the National Consumers League, mission is to give consumers the information they need to avoid becoming victims of telemarketing and Internet fraud and to help them get their complaints to law enforcement agencies quickly and easily

www.fraud.org

National Do Not Call Registry

(888) 382-1222
(866) 290-4236 (TTY)
www.donotcall.gov

National Domestic Violence Hotline

(800) 799-7233
(800) 787-3224 (TTY)
www.thehotline.org
e-mail: thehotline.org/get-help/contact-the-hotline/ (for non-emergencies only)
e-mail: deafhelp@thehotline.org (for non-emergencies only)

(The) National Family Caregiver Association

(202)454-3970
www.caregiveraction.org

National Hospice and Palliative Care Organization

Provides free consumer information on hospice care and puts the public in direct contact with hospice programs.
(800) 658-8898
www.nhpco.org

National Institute on Aging

Alzheimer's disease Education and Referral Center
(800) 222-2225
(800) 222-4225 (TTY)
www.nia.nih.gov/alzheimers

New Mexico Aging and Long-Term Services Department Long-Term Care Ombudsman Program (LTCOP)

Ombudsmen assists residents by advocating for their rights, investigating complaints, helping to resolve concerns, and ensuring they receive the quality of care they deserve. Services are free, confidential and provided statewide.
1-866-451-2901 (Statewide Toll Free)
www.nmaging.state.nm.us/Long_Term_Ombudsman.aspx

New Mexico Aging and Long-Term Services Department Aging & Disability Resource Center

State agency assisting the elderly and those with disabilities achieve the highest quality of life.
(800) 432-2080
www.nmaging.state.nm.us

New Mexico Attorney General's Office, Consumer Protection Division

State agency that investigates consumer fraud
(844) 255-9210 (Toll Free)
(505) 490-4060 (Santa Fe)
(505) 717-3500 (Albuquerque)
(575) 339-1120 (Las Cruces)
www.nmag.gov

New Mexico Coalition Against Domestic Violence Hotline

(505) 246-9240
www.nmcadv.org

New Mexico Commission of Public Records, State Records Center and Archives

(505) 476-7948
www.nmcpr.state.nm.us

New Mexico Department of Health

(505) 827-2613
www.nmhealth.org

New Mexico Department of Veterans' Services

Statewide community service program that assists with obtaining benefits.
(505) 383-2400
www.nmdvs.org

New Mexico Developmental Disability Planning Council

Adult guardianship services.
(505) 841-4519
www.nmddpc.com

New Mexico Donor Services

Organ and tissue donation information.

(505) 843-7672 (Albuquerque)

(877) 401-2511 (outside Albuquerque)

www.donatelifenm.org

New Mexico Educational Retirement Board (ERA)

(505) 827-8030 (Santa Fe)

(505) 888-1560 (Albuquerque)

(866) 691-2345 (Toll-Free)

www.nmerb.org

New Mexico Health Facility Licensing and Certification Bureau

Establishes, monitors and enforces quality standards for health facilities in New Mexico.

(505) 476-9025 (Santa Fe)

(800) 752-8649

www.nmhealth.org/about/dhi/hflc/prop/stli

New Mexico Health Insurance Exchange

Compare qualified health plans and enroll for health coverage

(833) 862-3935

www.BeWellNM.com

New Mexico Legal Aid

Civil legal services for low-income New Mexicans.

866-416-1922 (Albuquerque)

833-545-4357 (Toll-Free)

www.newmexicolegalaid.org

(The) New Mexico Mortgage Finance Authority (MFA)

The state's official housing agency, MFA administers more than 35 programs that finance housing for the homeless, develop new affordable housing, and help families become first-time homeowners.

344 4th Street

Albuquerque, NM 87102

(505) 843-6880

(800) 444-6880

(800) 659-8331 TTY

www.housingnm.org

New Mexico Primary Care Association

(505) 880-8882

New Mexico Taxation and Revenue Department

(505) 827-0700

(505) 827-0822 Personal Income Tax

(505) 827-0870 Property Tax

www.tax.newmexico.gov

New Mexico Technology Assistance Program (NMTAP)

625 Silver Ave. SW, Suite 100B

Albuquerque, NM 87102

(505) 841-4464

(877) 696-1470 (Statewide Toll-Free)

www.tap.gcd.state.nm.us

Office of Superintendent of Insurance

Provides convenient access to consumers to reliable insurance products

PO Box 1689

Santa Fe, NM 87504-1689

(855) 427-5674

www.osi.state.nm.us

Online caregiver's newsletters:

www.caregiving.com

Partnership for Prescription Assistance (PPA)

PPA helps provide free or nearly free prescription drugs to patients who cannot pay for their medications.

(888) 477-2669

www.pparx.org

Pegasus Legal Services

Offers assistance to caregivers who are seeking guardianship of minor children.

3201 4th Street NW

Albuquerque, NM 87107

(800) 980-1165

(505) 244-1101 (Albuquerque area)

www.pegasuslaw.org

Pension Benefit Guaranty Corporation

(800) 400-7242

www.pbgc.gov

Police

Dial 9-1-1 (for emergencies only)

Public Employees Retirement Association (PERA)

(505) 476-9300 (Santa Fe)

(505) 383-6550 (Albuquerque)

(800) 342-3422 (Toll Free)

www.nmpera.org

Public Housing Authority (PHA)

Administers public housing programs for low-income individuals. Look in the blue Government pages of your local telephone directory under your county or city for the PHA nearest you.

Railroad Retirement Board

(877) 772-5772

(312) 751-4701 (TTY)

www.rrb.gov

Senior Citizens' Law Office

Offers legal services to Bernalillo, Sandoval, Torrance, and Valencia County residents 60 and over.

4317 Lead Ave. SE, Suite A

Albuquerque, NM 87108

(505) 265-2300

www.sclonm.org

Senior Citizens' Resources

Entry site for seniors to locate U.S. Government and other websites on topics of interest to senior citizens.

www.usa.gov

Seniors Eye Care Program

Raising awareness about eye health, screening and information about eye care.

(877) 887-6327

www.aao.org/eyecare-america

Social Security Administration

Local office is listed in the telephone directory government pages under "United States - Social Security Administration."

(800) 772-1213

(800) 325-0778 (TTY)

www.ssa.gov

South Central Pension Rights Project

Free assistance with pension problems and questions.

(800) 443-2528

www.southcentralpension.org

Taxpayer Advocate Service

(877) 777-4778

(505) 837-5505

www.taxpayeradvocate.irs.gov

Total Community Care (PACE)

Available to person 55 years and older. A day health care center offering comprehensive set of services aimed at keeping those, who would otherwise require institutionalization, at home. Currently available to Albuquerque residents only.

(505) 924-2650

www.myinnovage.org

United South Broadway

HUD-certified housing counseling agency holds free monthly foreclosure clinic workshops to low-income New Mexicans. Also provide in-house legal services and direct representation.

1500 Walter SE

Albuquerque, NM 87102

(505) 764-8867

www.unitedsouthbroadway.org

United States Access Board

Federal Agency devoted to accessibility for disabled individuals

1331 F St., N.W.S.-1000

Washington, DC 20004-1111

(800) 872-2253

(800) 993-2822 (TTY)

www.access-board.gov

U.S. Secret Service Field Office

Agency's primary investigative mission is to safeguard the payment and financial systems of the United States.

505 Marquette St. NW, #1700

Albuquerque, NM 87102

(505) 248-5290 (Albuquerque field office)

(800) 248-5290

www.secretservice.gov

Index

A

abuse 91–92
ACA. *See* Affordable Care Act
ADA. *See* Americans with Disabilities Act
Administrative Law Judge 6
adoption 95–97
adult day care 35
advance directives 84, 86
Advance Health Care Directives 84–86, 87
Affidavit of Successor in Interest 81
Affidavit of Surviving Spouse 81, 82
Affordable Care Act 18, 24, 31
Age Discrimination in Employment Act 104–105
ALJ. *See* Administrative Law Judge
Americans with Disabilities Act 104
appeals 6–9
assisted living 35–36

B

bankruptcy 47, 51, 55–57
benefit period 14, 19–20, 27
blind 4, 6, 32, 34
burial insurance 87

C

caregiver affidavit 96
Centennial Care 31, 34–35
child support 53, 56, 57, 96–97
Civil Rights Act of 1964 104–105
Claim of Exemptions 53
Community Based Assistance 37
Community Benefits 35
community property 75, 82, 99–100
conservatorship 89–91
consumer fraud 44–45
consumer protection 41, 44

Continuing care communities 36
contracts 42–43, 58
Cooling-Off Rule 45
credit insurance 42
cremation 84, 86–87
custodial care 31–32
custody 95–96

D

debt 47, 49–53, 56, 77, 79, 83, 99
deed 70–72, 77–79, 81, 83
Department of Workforce Solutions 103–104
disability benefits 4, 6, 19
Discount Prescription Drug Program 25
discrimination 66–68, 102–106
divorce 55, 70, 75–76, 99–100
domestic violence 100–101
“Do Not Call” registry 45
donut hole 24
DPDP. *See* Discount Prescription Drug Program

E

EBT card. *See* Electronic Benefits
Educational Employees 11, 105
EEOC 103–104, 106
Electronic Benefits 14
Employee Retirement Income Security Act of 1974. *See* ERISA
Employment Discrimination 103–105
Equal Employment Opportunity Commission. *See* EEOC
ERA 11
ERISA 12
Estate Recovery 32, 34
eviction 61–62, 65–66
exemptions 53, 55
Expanded Medicaid 18, 31, 34
exploitation 91–92
Extra Help 24

F

Fair Credit Billing Act 46
Fair Debt Collection Practices Act.
 See FDCPA
fair hearing 15–16
Fair Housing laws 66
FDCPA 50
Federal Employees 10
Federally Qualified Health Centers.
 See FQHC
financial assistance 14, 95–97
financial power of attorney 87
food stamps 14
FQHC 38
funeral plans 86

G

gifts 79, 99
grandparent rights 97
Guaranteed Issue Rights 21
guardianship 89–90, 95–96

H

Hear Now Program 38
home equity loan 72
Homemakers 30, 37
Homeowner Insurance 73
home repair 92
Home Retrofit 37
Homestead Affidavit 81
homestead exemption 52, 55
Hospice 19, 30
Housing and Urban Development. *See* HUD
Housing Choice Voucher 64
HRB. *See* Human Rights Bureau
HSD. *See* Human Services Department
HUD 65, 68, 73
Human Rights Bureau 104–105
Human Services Department 14, 34, 35, 37

I

IDT 33
incapacity 84–85, 87–88
Income Diversion Trusts. *See* IDT
Income Support Division 14, 25, 34–35
income tax 2, 108
Indian Child Welfare Act 96
institutional care 31–33
Institutional Medicaid 31–34, 36
Internal Revenue Service. *See* IRS
internet 43, 44, 46–47
intestate succession 75, 78
IRS. *See* Internal Revenue Service
ISD. *See* Income Support Division

J

joint tenancy 71, 77–79
judgment proof 53

K

kinship guardianship 95–96

L

landlord's responsibilities 60
landlord/tenant 58, 66
Last Will and Testament 75. *See also* will
life insurance 32, 42, 52, 55, 109, 110
Living Will. *See* Advance Health Care
 Directives
long-term care 27, 29, 32, 34–36
long-term care insurance 27, 32, 35–36
Long-Term Care Ombudsman Program 37
Low-Income Home Energy Assistance
 Program (LIHEAP) 15
Low-Income Telephone Assistance Program
 15
LTCOP. *See* Long-Term Care Ombudsman
 Program

M

meal delivery service 16, 37
Meals on Wheels 16, 37
MedBank 25
Medicaid 18–20, 23–27, 30–36, 38
Medicaid Estate Recovery 34. *See* Estate Recover
Medicare 2, 5, 11, 18–31, 34, 36, 38
Medicare Advantage 18, 21–24, 26, 30
Medicare claims 23
Medicare Home Health Care 28
Medicare (original). *See* Original Medicare
Medicare Part A 19, 23, 25–26, 30
Medicare Part B 20–22, 25–26
Medicare Part C 21
Medicare Part D 22–24
Medicare Savings Programs 20, 25
Medigap 20–22, 24, 27
mobile home park 58, 63–64
Mobile Home Park Act 58, 63
MSPs. *See* Medicare Savings Programs

N

neglect 91–92
New Mexico Human Rights Act 66, 103
New Mexico Human Services Department
14, 34–35
Non-institutional Medicaid 31
nursing home 26, 31–36, 91

O

Ombudsmen 37
organ donation 84, 86
Original Medicare 21–24, 26–28, 30
overpayment, (SSI and SSDI) 7–8

P

PACE 21, 34
Parental Power of Attorney 96
Part D Low-Income Subsidies. *See* Medicare Part D
payday loans 47
payment on death accounts. *See* POD
pension 4–5, 9–12, 19, 52, 99–100
PERA 11
personal representative 75, 82, 83
physical therapy 27, 29
POD 78
Power of Attorney 85, 87–90, 92
power of attorney for health care.
See Advance Health Care Directives
prenuptial agreement 100
Prescription Drug Benefits 25
probate 71, 75–79, 81–83, 88, 95
property ownership 70–71
property tax 108
Public Employees Retirement Association.
See PERA
public housing 64, 66
Public housing 65

Q

QIO. *See* Quality Improvement Organization
QMB 25–26
Qualified Individuals 25–26
Qualified Medicare Beneficiary. *See* QMB
Quality Improvement Organization 28, 30
quitclaim deed 71

R

Railroad Retirement Board 10, 19
real property 70–72, 77–78, 81–82, 108
reasonable accommodations 67
rehabilitation 20, 26–28
rent abatement 61
renter's insurance 68

representative payee 88–89
respite care 30–31, 35
retirement benefits 2, 5, 10–11, 100
reverse mortgages 72–73
RRB. *See* Railroad Retirement Board

S

Section 8 Housing 64–66
senior centers 16, 37
Seniors' Eye Care Program 38
separate property 75, 99–100
skilled nursing facility 19–20, 26–27
SLIMB 25–26
Small Estate Affidavit 81
SNAP 14–15
SNF. *See* skilled nursing facility
Social Security 1–5, 7, 10–11, 19–20, 24, 31, 52, 73, 88
Social Security Administration 4–5, 10–11, 19, 24, 31, 89. *See* SSA
Social Security Disability Insurance. *See* SSDI
Social Security Retirement 1–2, 4–5, 7, 52
Social Security spousal benefits. *See* spousal benefits
Social Security survivor's benefits.
See survivor's benefits
speech-language therapy 27, 29
spousal benefits 2
spousal support 99
SSA 1–2, 4–5, 7–8, 18–19, 24, 31, 89
SSDI 4–7
SSDI Overpayment. *See* overpayment
SSI 4–7, 15, 24, 31, 34–35, 88
SSI Overpayment. *See* overpayment
SSR. *See* Social Security Retirement
subsidized housing 64–65
Supplemental Nutrition Assistance Program.
See SNAP

Supplemental Security Income. *See* SSI
surviving spouse 3, 34, 75, 81–82
survivor's benefits 3

T

TANF 15, 97
Tax Counseling for the Elderly 108
tax issues 77, 108
Taxpayer Advocate 108
tenants-in-common 71
tenant's responsibilities 60
TOD. *See* transfer on death accounts
TODD. *See* transfer on death deed
transfer on death accounts 78
transfer on death deed 71–72, 77, 79, 81, 88
transportation 16, 27, 32, 35, 37
trusts 77
Truth in Lending Act 42, 72

U

Uniform Owner-Resident Relations Act 58, 63, 65
utility assistance. *See* Low-Income Home Energy Assistance Program

V

VA 8–9
Veteran's benefits 8
visitation 97–98

W

warranties 43
warranty deed 71
will 71, 75–79, 86, 92, 100

Published by:

**New Mexico State Bar Foundation
Legal Resources for the Elderly Program**

P.O. Box 92860, Albuquerque, NM 87199

www.sbnm.org/LREP

All rights reserved. This handbook may not be reprinted without written permission
from the New Mexico State Bar Foundation and the Legal Resources for the Elderly Program.

Copyright © 2019 by the New Mexico State Bar Foundation and Legal Resources for the Elderly Program.