

**OKLAHOMA BAR ASSOCIATION
YOUNG LAWYERS DIVISION**

SENIOR CITIZENS HANDBOOK
Fourth Edition, 2011

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Preface for Fourth Edition

This is the Fourth Edition of the Oklahoma Senior Citizens Handbook. Like previous editions, this work was revised, edited, and written by volunteers from the Oklahoma Bar Association Young Lawyers Division (OBA/YLD). These young lawyers are committed to providing basic information to assist Oklahoma seniors in making informed decisions concerning their legal rights.

The works of this project began during the summer of 2010. When Molly Aspan, then Chair of the OBA/YLD asked Bryon J. Will if he would assist with this project, Mr. Will readily recognized the need and agreed to Chair the Senior Projects Committee. As the Third Edition of this Handbook was published in 2001, Mr. Will soon learned that there were no hard copies available and that the online version was the only means of distributing the information to those who needed it. Since many of the people affected by the information in this Handbook did not have access to the Internet or were not computer literate, Mr. Will quickly formed and met with his Committee in order to update and distribute the Handbook in an expedient manner. As a result, this Fourth Edition will be available both in print and on the Oklahoma Bar Association website.

The Third Edition of this Handbook was published by Myra Palevsky and Cathy Nickel. We would like to thank them and the authors who contributed much time and effort in drafting the First and Second Editions of this Handbook. Because the number of authors continues to grow with each subsequent Edition of this work, for simplicity and ease of reading only, the list of contributing authors for past editions now follows the Table of Contents.

Special thanks goes to those at the OBA/YLD who recognized the importance of this project and volunteered their time and without whom, the Oklahoma Senior Citizens Handbook, Fourth Edition, would not have been possible. A thank you also goes to the staff of the Oklahoma Bar Association who has provided assistance with this project, especially John Morris Williams, Carol Manning, and Morgan Estes. Funding for this Handbook was provided by the Oklahoma Bar Association Young Lawyers Division.

A very important thanks goes to Roy Tucker, Esq., 2011 OBA/YLD Chair, and Briana Ross, Esq. for helping with the final grammatical and structural revisions.

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Foreword for Third Edition and Fourth Edition

This Handbook is a project of the Oklahoma Bar Association Young Lawyers Division (OBA/YLD). Its purpose is to be an easy-to-read guide for senior citizens to use in their daily activities.

This Handbook is intended to be only an introduction to issues of concern to seniors. It is not intended to serve as legal advice, except that of a very general nature. Any time important issues arise, seniors should seek the advice of an attorney. The particular application of the law to a fact situation can differ substantially from the general rules of law illustrated in this Handbook. Also, the information in this Handbook was current as of winter 2010, and subsequent changes in the law are not reflected herein. Not all of the information contained in this Handbook was written by licensed attorneys and that should be kept in mind when using this Handbook as a reference.

The views and opinions expressed in this Handbook are those of the authors themselves and not the American Bar Association, the OBA/YLD, the Seniors Project Committee, the parties who funded this project or the editor of this Handbook.

Much of the information contained in this Handbook was obtained directly from the following primary source government websites:

United States Social Security Administration, www.ssa.gov
Oklahoma Department of Human Services, www.okdhs.org
United States Department of Health and Human Services, www.hhs.gov
United States Department of Veterans Affairs, www.va.gov
Oklahoma Department of Veterans Affairs, www.odva.state.ok.us
United States Health Care Financing Administration, www.medicare.gov
United States Department of the Treasury, Internal Revenue Service, www.irs.gov
Oklahoma Tax Commission, www.oktax.state.ok.us

An electronic version of this Handbook is available on the Oklahoma Bar Association's Web site at www.okbar.org/public/brochures.

About the Oklahoma Bar Association Young Lawyers Division

The Young Lawyers Division of the Oklahoma Bar Association (OBA/YLD) was organized in 1966 to provide an avenue for Oklahoma young lawyers to work on bar-related and public service-related projects. Since that time, OBA/YLD has taken an aggressive leadership role in all bar committees and activities.

The work of the OBA/YLD is carried out through the combined efforts of its officers, board of directors and committee members. The committees are the vehicles through which the Division implements its programs and projects and from which new ideas are developed. The OBA/YLD has implemented many unique projects, including this Handbook. Other OBA/YLD public service projects include a statewide high school Mock Trial competition, the Gift of Life project which supplies organ and tissue donor cards and pamphlets explaining legal issues involved with donation, and many other programs and projects impacting on the lives of Oklahomans.

The OBA/YLD has received national recognition for its dedication to public service. The OBA/YLD strives to remain one of the most active and progressive young lawyer associations in the United States.

FINANCIAL ASSISTANCE

Social Security Benefits

The Social Security system was designed to provide a basic level of financial support and health care for Older Americans. It is not intended to meet all of your financial needs. Probably, you will need other Income, such as pensions, insurance, savings, and other investments accumulated during working years.

Social Security is more than a retirement program. Many others besides retirees receive Social Security benefits such as citizens with disabilities, survivors of deceased workers and people with low incomes. You must have worked and paid taxes (or be a dependent or survivor of someone who worked and paid taxes) into Social Security to receive benefits.

The rules, payment schedules, and qualifications for each type of Social Security benefit are different. However, they all have one thing in common – they are based upon a person’s average wage in jobs where Social Security taxes were paid.

To obtain a detailed, personal estimate of your Social Security retirement, disability, and/or survivor benefits, visit the Social Security Administration office, call (800) 772-1213 and ask for a **Personal Earnings and Benefits Estimate Statement**, or visit the Social Security Administration’s website at www.ssa.gov

Retirement Benefits

As you work and pay taxes, you earn Social Security “credits.” Retirement benefits cannot be paid until you have earned the required number of credits. During your working lifetime, you probably will earn many more credits than you need to qualify for Social Security. These extra credits do not increase your ultimate Social Security benefit. However, the income you earned while working may increase your benefits.

Your benefit amount is based on your date of birth, the type of benefit you are applying for and your earnings averaged over most of your working career. Higher lifetime earnings result in higher benefits. If you have some years of no earnings or low earnings, your benefit amount may be lower than if you had worked steadily.

Your benefit amount is also affected by your age at the time you start receiving benefits. If you start your retirement at age 62 (the earliest possible age) your benefits will be lower than if you had waited until a later age. If you were born before 1938, you will be eligible for your full Social Security benefit at the age of 65. However, beginning in the year 2003, the age at which full benefits are payable will increase in steps from 65 to 67. Social Security will give you a personalized benefit statement at your request.

Disability Benefits

Social Security Disability is based upon the inability to work. It is designed to provide a continuing income to you and your family when you are unable to do so. Benefits continue as long as you are disabled.

Benefits are primarily for people who have worked and earned enough Social Security “Credits” to qualify for disability based upon their own work history. However, there are other kinds of disability benefits available depending on your circumstances.

Disability is one of the most complicated of all Social Security programs; for more information contact the Social Security Administration.

Survivors' Benefits

Parts of the Social Security taxes you pay go towards survivors' insurance. When you die, Social Security survivors' benefit can be paid to your:

- ❖ surviving spouse who is 60 or older;
- ❖ surviving spouse who is 50 or older and disabled;
- ❖ surviving spouse at any age if caring for a minor or a disabled child;
- ❖ unmarried children under the age of 18 or up to 19 if they are attending elementary or a secondary school full-time);
- ❖ disabled children if they were disabled before age 22 and remain disabled; and
- ❖ your parents, 62 or older, if they were depending on you for at least half of their support.

The amount payable to your survivor is a percentage of your basic Social Security benefit. Social Security can provide you with a personal estimate of your potential survivor's benefits.

Also, there is a special one-time death payment in the amount of \$255 that can be paid to only your spouse or minor children.

How and When to Sign Up for Social Security Retirement, Disability and Survivor Benefits

The rules are complicated, so contact a Social Security representative at (800) 772-1213 during the year before you plan to retire. It may be to your advantage to start your retirement benefits before you can actually stop working. For disability, survivors, and SSI benefits, you should apply as soon as you are eligible.

Social Security and Supplemental Security Income (SSI) payments may be deposited directly into your bank account or benefit payments can be mailed to you.

Social Security has a number of FREE publications that contain information about Social Security programs. For current information or to apply for benefits, visit a Social Security office or call a Social Security representative at (800) 772-1213. Also, more information is available at www.ssa.gov, the Social Security Administration's website.

SUPPLEMENTAL SECURITY INCOME (SSI)

Supplemental Security Income (SSI) pays monthly checks to people who are 65 years of age or older, blind, or have a disability and whose income and other financial resources are limited. SSI benefits are based on NEED rather than on the number of credits earned by working and paying into the program. If your income and your assets are below certain limits you may qualify for SSI benefits.

Benefits are paid to eligible individuals, not to family members or survivors. You must live in the U.S. and be a U.S. citizen to qualify for these benefits. People who receive SSI may also qualify to receive **Food Stamps and Medicaid**.

To find out more about eligibility and to apply for SSI benefits call your local Oklahoma Social Security Administration office at (800) 772-1213.

Oklahoma Supplemental Assistance Program

Oklahoma residents who are 65 years of age or older, blind or disabled may also be eligible for a supplemental payment from the Oklahoma Department of Human Services. SSI recipients and those with very low monthly incomes should apply for this program. Being a recipient of this state supplement will NOT reduce your Social Security benefits. For more information about eligibility or to apply for Supplemental Assistance contact your local Oklahoma Department of Human Services (DHS) county office. Additional information can be obtained by visiting the DHS website, www.okdhs.org.

VETERANS ADMINISTRATION DISABILITY COMPENSATION

The Veterans Administration pays compensation if a person is disabled by injury or disease incurred in or aggravated by active services in the line of duty. Payments are based on the degree of disability. Veterans Administration compensation may also be available for dependents of veterans with a service-connected disability.

For more information and eligibility requirements contact:

Oklahoma City VA Medical Center

(405) 456-1000

Eligibility/Benefits: Ext 5477

VA Outpatient Clinic- Tulsa

(918) 628-2500

Jack C. Montgomery VA Medical Center- Muskogee

(918) 683-3261 or (888) 397-8387

VA Regional Office-Muskogee

(800) 827-1000

Lawton Outpatient Clinic

Lawton, Oklahoma

(580) 585-5600

ODVA Central Office- Oklahoma City

(405) 521-3684

Additional information can be obtained by visiting the Oklahoma Department of Veterans Affairs website, www.odva.state.ok.us

OTHER FORMS OF FINANCIAL ASSISTANCE

State Tax Benefits

The State of Oklahoma recognizes some of the financial difficulties encountered by older person and has enacted certain tax provisions allowing older persons special treatment. The goal of these various options is to enhance the economic self-sufficiency of older people

Listed below are some state tax provisions that are of special interest to older persons.

Retirement Income - If you are receiving retirement benefits (U.S. State, city, county, etc.) you may be eligible for a \$10,000 deduction. Those individuals receiving Civil Service Retirement, including Survivor benefits, can deduct these benefits included on a Federal Return.

Sales Tax Relief - If your total household income is less than \$20,000 you may be entitled to a tax refund, even if you paid no income tax. Or if you are 65 years of age or older as of 12/31/00 or have a physical disability, your total household income is increased to \$50,000.

Medical Savings Account - Contributions made to and interest earned from a qualifying Oklahoma Medical Savings Account are exempt from taxable income.

Property Tax Refund - If you are a homeowner, age 65 or over or disabled, and your total household income is less than \$12,000, you may be entitled to a property tax refund, even if you paid no income tax. There is a 100% property tax exemption for disabled veterans.

Social Security - Social Security benefits included in the Federal Adjusted Gross Income are not taxed on your Oklahoma Return.

Special Exemption - If you are over 65 and your adjusted gross income is less than \$20,000, you may claim an additional personal exemption on your income tax return.

Double Homestead Exemption - If you are over the age of 65 or permanently disabled under certain circumstances you may be entitled to a double homestead exemption on your property taxes, and qualify for a senior valuation freeze.

For more complete, up-to-date information about tax benefits in Oklahoma call (405) 521-3160, visit the OTC website at www.tax.ok.gov/ or write the Oklahoma Tax Commission, 2501 Lincoln Boulevard, Oklahoma City, OK 73194-0009.

NUTRITION INFORMATION AND SERVICES

Food Stamps

The Food Stamp program is intended to supplement other income to help people buy food of greater variety so their family meals will be more nutritious. Food Stamps are coupons that can be used like money to buy food. The amount of Food Stamps you receive depends on your total household income and the number of people living in the household.

Food Stamps are accepted by most supermarkets and grocery stores. Older persons may use Food Stamps to contribute to Meals-on-Wheels and congregate meals programs, and even at certain restaurants.

Eligibility is based on the income and assets of a household. (A household is defined as a group of people living in the same house who buy and prepare food together). For specific eligibility requirements or to apply for Food Stamps contact your local Oklahoma Department of Human Services (DHS) county office.

Congregate Meals/Nutrition Sites and Mobile Meals

Congregate Meals/Nutrition Sites provide hot, nutritious meals, social services and companionship at centers throughout the state. The social services available at congregate meal sites include outreach and escort; Information and referral; nutritional information; health counseling and referral; nutritional information; health counseling and referral, and transportation and recreation.

Mobile Meals are nutritious meals delivered to the homes of those who are physically unable to attend congregate meal sites.

Contact your local Area Aging Agency or the Department of Human Services (DHS) county office for information on congregate or mobile meals in your area. (Also see Sources of Further Information later in this Handbook.)

DEPARTMENT OF HUMAN SERVICES

Aging Services Division (405) 521-2281

A wide range of services for Oklahoma's vulnerable elderly are delivered or administered through the Aging Services Division (ASD) of the Department of Human Services (DHS). ASD is located at 2400 Lincoln Blvd., Oklahoma City, OK 73105. Any question on advocacy, the availability of legal services, senior advocacy groups or new federal and state laws affecting the elderly may be directed to the Legal Services Developer.

A brief description of services provided by the Aging Services Division is:

Adult Protective Services (405) 521-3660. Provides policy, training, technical assistance and quality assurance for local DHS staff who investigate alleged abuse, neglect or exploitation of elderly or incapacitated adults. State Long-Term Care Investigators, (405) 521-6734, respond to alleged abuse referrals as an extension of adult protective services for the elderly and persons with disabilities who reside in nursing facilities statewide. **Statewide Abuse Hot Line (includes children) (800) 522-3511.**

Community Expansion of Nutritional Assistance (CENA) (405) 521-2281. This Division develops policy and procedures and provides assistance for this state program administered by the Area Agencies on Aging. The CENA program funds senior center activities and provides money for such things as new equipment and structural enhancements.

Community Relations Unit (405) 522-4510. Technical assistance and training on advance directives, do not resuscitate consent forms and other legal services (405) 522-3069; media and public relations; liaison to advocacy groups, coalitions, task forces and public-private

partnerships; health promotion, information and assistance; and general community education and training on request.

Legal Services Development (405) 521-8821. Provides technical assistance and training on elder rights topics such as grandparents' rights and end of life planning documents.

Senior Service Corps Programs (405) 521-2281. Division staff monitors the Retired and Senior Volunteer Program (RSVP), the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP). Volunteers are at least age 60 and serve public agencies and private nonprofit organizations.

Volunteer Service Credit Bank Program (405) 522-6240. Provides technical assistance in establishing services banks to encourage volunteers to provide in-home services and respite care for home-bound people with disabilities and their caregivers. Service credits are earned hour for hour for time volunteered and may be drawn upon at no cost when the volunteer or a family member needs similar services.

Home And Community-Based Programs

Adult Day Services- (405) 521-4229 or (800) 498-7995. These services is designed to meet the needs of adult Oklahomans who can no longer remain home alone but are not yet ready for 24-hour institutional care. A therapeutic program usually includes eight hours per day, which encompasses physical and recreational therapies, nursing and social services.

Advantage Waiver Program- (800) 435-4711. Federally funded in-home services to older Oklahomans and adults with disabilities who are medically and financially eligible to receive nursing facility care under Medicaid guidelines. This program is administered through a contractual arrangement by DHS. Aging Services and the Long-Term Care Authorities of Tulsa and Enid--includes adult day health care, home-delivered meals, comprehensive home care, case management, skilled care, medications, specialized equipment and supplies, environmental modifications and advance supportive restorative assistance.

Personal Care (800) 435-4711. Utilizing a care plan developed by a registered nurse, this program provides in-home assistance in bathing, grooming, meal preparation, light housekeeping and laundry for Medicaid-eligible persons who otherwise could be at risk of institutional care Services are available up to 7 days per week. The number of hours of service per day is based upon the needs of the individual.

Older Americans Act (OAA) Program (405) 521-2281. Administers eleven Area Agencies on Aging receiving federal and state funds. Services are available to those 60 and older, regardless

of income. Some of the services available include congregate and home delivered meals, outreach, health promotion, nutrition education, transportation, in-home assistance and legal services.

Transportation (405) 522-6683 or (800) 498-7995. Federal transportation funds are awarded to assist in purchasing vehicles for groups or projects providing transportation to these two populations.

HEALTH CARE

Medicare

Medicare is the national health insurance program for people 65 or older, disabled people and people with permanent kidney failure. Medicare coverage is not automatic. Three (3) months before your 65th birthday you should contact your local Social Security office to apply. If you become disabled before that time, Medicare coverage begins on the 25th month after the onset of your disability. Medicare coverage consists of two parts, Part A hospital insurance and Part B medical insurance, each having different enrollment rules, premiums and benefits.

Part A Hospital Insurance

Medicare hospital insurance is financed by payroll (FICA) tax. Most people 65 years or older are eligible for Medicare hospital insurance based on their or their spouse's employment record. If you are already receiving Social Security benefits, you are automatically eligible for Part A hospital insurance at no cost. You may also be eligible if you are:

- ❖ currently receiving railroad retirement benefits;
- ❖ eligible but not receiving Social Security or Railroad Retirement Benefits;
- ❖ receiving Veterans Benefits;
- ❖ under 65 and have received Social Security disability benefits or Railroad disability for 24 months; or,
- ❖ you are a kidney dialysis or kidney transplant patient.

If you do not qualify for Medicare because you have not worked long enough to receive Social Security benefits, you may purchase Medicare insurance for \$254.00 to \$461.00 per month, depending on your length of Medicare covered employment.

Medicare hospital insurance can help pay for inpatient hospital care, inpatient care in a skilled nursing facility after a hospital stay, home health care and hospice care for a terminal illness. For hospital visits, Medicare will pay for most covered benefits for sixty (60) days of hospital care except for an initial amount. This amount is your Part A deductible, and the hospital will charge you for this amount once each benefit period. A benefit period begins the day you enter the hospital and ends when you have been out of the hospital for sixty (60) consecutive days. If you

must go back to the hospital before sixty (60) days have passed, the hospital may not charge you for another deductible. You will be required to pay a percentage per day for days 61-90 in a benefit period and up to a percentage per day for days 90-150. After the 150th day, you are responsible for all costs. Many people purchase supplementary insurance from a private insurance company to help pay the deductible. Or, Medicare may pay the insurance deductible of certain people who qualify. Medicare will not pay for certain personal care items, private rooms and private duty nurses.

Skilled nursing facility care is available if you have been in the hospital at least three (3) days in a row before you transfer to the nursing facility and your doctor certifies that you need this type of care.

If your doctor decides you need home health care, Medicare will pay for an unlimited number of home visits to provide you with skilled nursing care, physical therapy or speech therapy. Medicare does not pay for full-time nursing care, meals delivered to your home or assistance with non-medical needs such as housekeeping and shopping.

If you are terminally ill, you may choose hospice rather than Medicare. The hospice programs include medical and support services, including counseling and pain control. This care can be in your own home or a residential setting other than a hospital or nursing home. Your doctor must certify that you are terminally ill, and you will not receive Medicare benefits for your terminal illness. Hospice covers these expenses. If you need treatment for a condition that is not related to your terminal illness, your regular Medicare benefits will still apply.

Part B Medical Insurance

Part B medical insurance is optional and costs \$96.40 a month if you enroll in the program when you become eligible. For every year that you postpone your Part B insurance the premium increases ten percent (10%). The Part B premium can be deducted from your Social Security check.

Medicare medical insurance helps pay for your doctor's services and for many types of medical services and supplies, and for out-patient services not covered by Medicare hospital insurance. You must pay the first 100 every calendar year. This is your Part B deductible. Medicare Part B medical insurance will then pay eighty percent (80%) of the approved charges for covered services you receive during that year. You must pay the remaining twenty percent (20%) (your "co-insurance"). If you have chosen to purchase supplemental insurance, it may help pay the deductible and co-insurance.

It is important to ask your doctor if he accepts assignment of your Medicare payment. If he accepts assignment, he agrees that the total charge to you is the same as the Medicare maximum approved charge. The amount may not be the amount your doctor or other medical provider

charges for his services. Often it is less. Under the assignment method, the Medicare payment goes directly to the doctor or the medical service provider, reducing paperwork for you. You will receive an explanation of Medicare benefits in the mail explaining the payment you have made and the amount you owe.

Doctors and suppliers do not have to accept assignment. If yours does not accept assignment, you will have to pay full amount charged and file a request with Medicare to pay the Medicare approved amount to you. Medicare will only pay eighty percent (80%) of the approved charges; you may face unaccepted expense if your doctor does not accept assignment.

Examples of some of the services that Part B will pay for are:

- ❖ doctors services;
- ❖ some diagnostic tests and x-rays;
- ❖ limited treatment of mental illness;
- ❖ drugs that cannot be self administered and medical supplies;
- ❖ outpatient hospital care, including emergency room or outpatient clinic of a hospital;
- ❖ outpatient physical, occupational speech therapy; and
- ❖ ambulance transportation.

Today, many private insurance companies offer a Medicare MO plan. In these plans, you sign over your medical benefits to the company for a monthly premium, and they, in turn, pay for your medical expenses. You should shop around for rates to determine if this type of insurance is suited to your needs. If you are healthy, these types of plans may benefit you as they are generally less expensive than paying Medicare premiums and supplementary insurance premiums. Be aware that if you travel often, or live in another area for a portion of the year, the coverage may not apply out of state. Information regarding HMO's can be obtained by contacting the insurance company directly.

If you have questions regarding enrolling for Medicare, you may call the Social Security Administration toll free at (800) 772-1213. SSA has a number of free publications to help you understand Medicare including "The Medicare Handbook," revised each year to inform you of premium and deductible changes. For questions about your Part A Medicare benefits, you may call (800) 633-4227 or, for questions about your Part B Medicare benefits, call (800) 633-4227.

Medicaid

Medicaid began in 1966 as Title XIX of the Social Security Act and was designed primarily to help with medical assistance for certain individuals (persons who are 21 and under, age 65 and over, pregnant, blind or disabled) with low income and little or no resources. It may also help pay for medical bills for members of families with dependent children. IF you are receiving Supplemental Security Income (SSI) or State Supplemental Assistance (SSA) you may also qualify for Medicaid.

Medicaid is NOT the same as Medicare. Unlike Medicare, which is available to all older people, Medicaid requires an individual to meet certain income and resource guidelines to be eligible. In Oklahoma, Medicaid is administered by the Oklahoma Health Care Authority (OHCA).

Medical Expenses Covered by Medicaid

Medicaid will not pay all types of medical expenses. Examples of services Medicaid may cover are:

- ❖ hospital stays- inpatient hospital services;
- ❖ hospital clinic visits and doctor visits - outpatient hospital clinic services;
- ❖ some prescription drugs;
- ❖ ambulance services;
- ❖ emergency dental services;
- ❖ vision and hearing services for persons under age 21;
- ❖ immunizations for persons under age 21;
- ❖ home health services;
- ❖ hospice services;
- ❖ mental health services for persons under age 22 and age 65 and over;
- ❖ rehabilitation and independent living services; and
- ❖ non-technical medical care (in-home personal care).

Medicaid Payments

Medicaid payments are made directly to the health care provider who has a contract with OHCA. **IF YOU PAY THE BILLS YOU WILL NOT BE REIMBURSED.** A provider who receives payment from Medicaid for a service may not bill the patient for any additional charges for that service. Nominal co-payments apply for some.

Not all physicians and health care providers will accept Medicaid patients. Always be sure to tell the health care provider that you have Medicaid coverage or show your Medicaid card **BEFORE** you make an appointment or receive treatment.

Individual Costs

Medicaid recipients who have too much income or other financial resources may be required to pay part or all of the health care expense. This co-payment is called a “spend down.” Some individuals may qualify for both Medicare and Medicaid. If so, Medicaid may pay all or part of the Medicare premium, co-insurance and deductible. States have the authority to recover, after your death, the amount of Medicaid spent for nursing home care and other health care services from your estate. Each state has its own procedures to waive recovery in hardship cases.

Applying for Medicaid

You may apply for Medicaid at your local county Department of Human Services (DHS) office. Your income and resources will be evaluated to determine eligibility. You will need to take proof

of your income with you. Bank accounts or money you might have on hand must be limited. Remember that each state's Medicaid program is different. You must be a resident of the state where you apply for Medicaid. Your local county DHS office can answer additional and specific Medicaid questions you may have.

Private Health Insurance Coverage

Because Medicare and Medicaid provide only limited benefits, many people often want additional insurance. There are two ways additional benefits can be received:

1. Medicare Supplement Policies - insurance to cover the gap between what Medicare pays and the patient's unreimbursed costs such as drugs and office visit co-payments. These Medicare supplement policies are paid on a "fee-for-service" basis.

2. Medicare Risk Policies - Risk plans get their names because they have contracted with the federal government to assume patients' insurance risks. Insurance companies receive a portion of their fee from the government and a smaller fee from the enrollee. Risk plans were designed with the intent that when a patient joins, he or she would not need any type of "gap" or supplement policy.

In any case, keep these things in mind in order to maintain a reasonable health care budget:

- ❖ check your health and medical policies to make sure you are not paying for double coverage;
- ❖ apply for all benefits to which you are entitled;
- ❖ check to see if the policy refuses to cover medical conditions you have at the time you buy the insurance ("pre-existing conditions");
- ❖ when switching policies, look to see whether the new policy has a waiting period or would exclude pre-existing conditions covered by your current policy;
- ❖ verify that you can renew the policy you are purchasing;
- ❖ appeal any substantial rejection of all Medicare or medical insurance for a specific service;
- ❖ renew prescriptions only as needed, and discontinue them as soon as possible;
- ❖ buy generic drugs; and
- ❖ never undergo surgery without getting a second opinion.

Group Health Continuation Coverage - (COBRA)

The Consolidated Omnibus Budget Reconciliation Act (COBRA) requires employers to allow certain people who would otherwise lose their group health insurance coverage to continue that coverage for a period of time at the group insurance rate. If you are entitled to continue coverage under your employer's health care plan, your health plan should send you a notice giving you the right to choose COBRA coverage. Generally all U.S. employers (with 20 or more employees) offering group health plans are subject to COBRA. Covered employees include current and former employees, retirees, spouses and dependents.

A "qualifying event" must occur in order for a person to be entitled to coverage. For an employee or a former employee, "qualifying events" include termination of employment or a reduction in hours. For a dependent, "qualifying events" include the employee's termination, reduction in hours, entitlement to Medicare, or death; divorce or legal separation from the employee; a child's loss of dependent status; or the employer's filing of a bankruptcy proceeding. Depending on the type of "qualifying event," coverage may be continued for 18-36 months. The scope of benefits offered must be identical to those received immediately before qualifying for continuation coverage.

COBRA does not require the employer to pay the cost of continued coverage for covered employees. Those electing to receive COBRA coverage (other than disabled beneficiaries) may be charged no more than 102% of the applicable premium charged to similarly situated people covered by the plan.

The election period for choosing continuation coverage lasts at least sixty (60) days and may begin on different dates depending on when coverage would otherwise be lost and when notices are sent.

Long-Term Care Alternatives And Financing

Deciding whether to enter a long-term care facility is important and can be very difficult. Careful consideration should be given to whether such a move is necessary or desirable. In reaching this decision, an individual should first consider whether alternatives to long-term care are feasible.

Personal Care Homes (Nursing Homes And Residential Care Facilities)

Two Levels of Care

Long-term care facilities provide health care and supervision of persons recovering from illness or in need of long-term nursing and personal care. Long-term care facilities are not hospitals. There are two levels of care provided by long-term care facilities:

- ❖ Nursing Facilities - these facilities provide 24 hour, comprehensive, planned medical care which includes administration of medications, rehabilitative or restorative therapy, diet supervision, trained observation, and personal care and supervision;
- ❖ Residential Care Facilities - these facilities provide supervision in a protective home environment. Residential care facilities with licensed pharmacy and nurse consultants can also administer medications.

Choosing a Long-Term Care Facility

Placing yourself or a family member in a long-term care facility is always a difficult decision. The prospective resident should take an active part in the selection process, if possible. Everyone involved in the decision should:

- ❖ identify medical needs, physical needs, and financial resources;
- ❖ Consider the location of the facility. It should be convenient for visiting family and friends;

- ❖ determine which services are included in the "basic daily charge," which services require additional payments, whether a deposit is required and whether it is refundable
- ❖ request and examine a copy of the Admissions Contract;
- ❖ establish whether the facility is Medicare and/or Medicaid certified;
- ❖ arrange for a trial period of a month or two, if possible;
- ❖ prepare a list of alternative acceptable facilities. Many facilities have waiting lists.

Arrange to visit all potential facilities. Visiting the facilities near the lunch hour allows the prospective resident to observe the care residents receive, the type of food served and to visit with current residents. Unannounced return visits, perhaps at night, are also informative.

Discuss each facility with the prospective resident. The prospective resident should share his/her evaluation of the facility first. He/she has the right to be actively involved in the choice of his/her new home.

Each facility has strengths and weaknesses. Match the facility's strengths with the prospective resident's needs. **See the facility from the prospective resident's point of view.**

More Information/Financial Assistance/Insurance

For more information on choosing a long-term care facility, call or write:

Department of Human Services
 Aging Services Division
 Office of the State Long-Term
 Care Ombudsman
 2401 N.W. 23rd ST., Ste. 40
 Oklahoma City, OK 73107
 (405) 521-6734
www.okdhs.org

Low-income individuals with limited assets may be eligible for financial assistance with nursing home costs from Medicaid. For more information contact the Oklahoma Department of Human Services (DHS) office in the county where you live.

Private insurance is available to cover some of the costs of custodial care in long-term care facilities as well as certain in-home care. Policies are also available to pay for care in a skilled nursing facility. For more information about Long-Term Care Insurance, call or write:

Oklahoma Insurance Department
 Post Office Box 53408
 Oklahoma City, Oklahoma 73152-3408
 (405) 521-2828 or (800) 522-0071
www.ok.gov/oid

Residents' Rights

Long-term care facilities, nursing homes and residential care homes must respect residents' rights. These rights must be posted. A copy must be provided to each resident and to the resident's personally selected or court appointed representative. Violation of any of these rights is a crime punishable by fines and/or imprisonment. Federal law provides additional protection in Medicare/Medicaid certified facilities. Oklahoma law guarantees these rights to all residents of long-term care facilities.

Below is a partial listing of rights you have when you enter a long-term care facility:

- ❖ **Civil and Religious Liberties** - You have the right to make independent personal decisions and to be informed of available choices.
- ❖ **Respectful Treatment** - You have the right to receive courteous and respectful care and treatment and the right to reside and to receive services with reasonable accommodation of your individual needs and preferences.
- ❖ **Abuse and Restraints** - You are entitled to be free from mental and physical abuse and from physical and chemical restraints not required to treat your medical symptoms.
- ❖ **Private Communications** - You have the right to have private communications with the people of your choice, including telephone conversations and visits and consultations. You have the right to send and promptly receive, unopened, your personal mail.
- ❖ **Medical Care** - You have the right to receive adequate and appropriate medical care, regardless of sources of payment. You have the right to participate in the planning or changing of care and treatment. You have the right to refuse medications and treatment after being fully informed of and understanding the consequences.
- ❖ **Privacy** - You have the right to receive respect and privacy of your medical care program. Case discussion, consultation, examination and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential.
- ❖ **Personal Belongings** - You have the right to keep and use your personal clothing and possessions. You also have the right to security in the storage and use of your clothing and possessions.
- ❖ **Transfers** - You have the right to receive notice before your room or roommate in the facility is changed. You shall not be transferred or discharged out of the facility against your will except for medical or safety reasons or for non-payment.
- ❖ **Complaints** - You have the right to present complaints to the facility's staff or administrator, to government officials or to any other person without fear of reprisal or discrimination against yourself or others. You may contact local law enforcement officials to report theft, abuse or other crimes.
- ❖ **Spousal Visits** - You have the right to privacy for visits from your spouse and you may share a room with your spouse residing in the same facility.
- ❖ **Money Matters** - You have the right to manage your own financial affairs unless you give the responsibility in writing to the facility or someone else.
- ❖ **Financial Exploitation** - You have the right to be free from the improper use of your financial, real or personal resources for the benefit of another person through the use of undue influence, coercion, harassment, duress, deception, false representation or false

pretense. Theft, fraud, forgery, extortion and wrongful use of power of attorney are examples of financial exploitation.

If you need more information or you think your rights or the rights of a friend or family member have been denied or abused, contact the local Long-Term Care Ombudsman program at your Area Agency on Aging, or call or write:

Department of Human Services
Aging Services Division
Office of Long-Term Care Ombudsman
2401 N.W 23rd St., Ste. 40
Oklahoma City, Oklahoma 73107
(405) 521-6734

or contact:

Health Department
Special Health Services
1000 N.E. 10th Street
Oklahoma City, Oklahoma 73117
(405) 271-5600

or contact:

Oklahoma Department of Human Services
Adult Protective Services Division
Post Office Box 25352
Oklahoma City, Oklahoma 73125-0352
(405) 521-3660

Long-Term Care Ombudsman Program

The Long-Term Care Ombudsman Program is a volunteer program, supervised and supported by the eleven (11) local Area Agencies on Aging. The purpose of this program is to improve the quality of life and quality of care available to residents of long-term care facilities. The Long-Term Care Ombudsman Program actively recruits and trains volunteers from the community. The volunteers receive training in problem solving, communication skills, the processes of aging and long-term care and information and regulations regarding long-term care facilities.

A goal of the ombudsman program is to have volunteers at each long-term care facility in the state. Volunteers of the Long-Term Care Ombudsman Program provide advocacy services for residents of long-term care facilities, monitor implementation of applicable state and federal laws, recommend change, promote development of citizens' advocacy organizations, and provide information about long-term care and long-term care facilities.

For further information on the Long-Term Care Ombudsman Program call or write:

Department of Human Services
Aging Services Division
Office of the State Long-Term Care Ombudsman
2401 N.W. 23rd St., Ste. 40
Oklahoma City, OK 73107
(405) 521-6734

Source: Resource Guide for Older Oklahomans, Oklahoma Department of Human Services, Special Unit on Aging (May, 1994).

Non-Institutional Long-Term Care

Summary

Many senior citizens need some nursing care or help with daily activities so they can continue to live in their own homes. Homemaker services, home health services, congregate or mobile meals and other services help people remain in their own homes. These services are sometimes less costly than long-term facilities and are generally more acceptable to the individual.

The following is a brief listing of the variety of services available in many counties in Oklahoma:

- ❖ Congregate Meals/Nutrition Sites
- ❖ Meals on Wheels (home delivered meals)
- ❖ Homemaker Services
- ❖ Home Maintenance Aide Programs/Non Technical Medical Care
- ❖ Health Care Screening and Referral to Appropriate Agencies
- ❖ Adult Day Care Centers
- ❖ Senior Citizen Housing

Contact the Area Agency on Aging nearest you for more information on services available in your area, or call or write:

Department of Human Services
Aging Services Division
2401 N.W. 23rd St., Ste. 40
Oklahoma City, OK 73107
(405) 521-2281

At-Home Care

Until the 1970s, older individuals had few choices when faced with their inability to care for themselves. The options were either family care at home or residence in a nursing facility or a "rest home." Now older individuals can remain at home without putting undue stress on their family. Home care services have developed as a result of (i) new technology that makes many medical treatments mobile enough for home administration and (ii) the rapidly rising cost of

residential nursing facility care. Unfortunately, however, home care is currently practical only for people with a limited need for assistance.

Levels of Care

Home care covers many medical and personal services provided at home to older individuals. Depending upon the services available in a community, home care can include:

- ❖ health care: nursing, physical and other rehabilitative therapy, medicating, monitoring and medical equipment;
- ❖ personal care: assistance with personal hygiene, dressing, bathing and exercise;
- ❖ nutrition: meal planning, cooking, meal delivery or meals at outside locations;
- ❖ homemaking: housekeeping, shopping, home repair service, and household paperwork;
- ❖ social and safety needs: escort and transportation services, companions, telephone check, overall planning and program coordination service;
- ❖ respite care: companionship and monitoring when primary caregivers are not available; and,
- ❖ hospice care: comfort-oriented care, rather than curative treatment, usually during the final six months of an individual's terminal illness.

Not everyone using home care will need all of these services, nor will every community have all of the services available. It is also not unusual that a single home care provider cannot provide everything that an individual may require. The additional services may have to be provided by community agencies or organizations, adult daycare or senior centers, or individuals hired directly by the family.

Locating Home Care Services

Arranging a program of home care involves some searching and organizing because services often must be obtained from more than one source. Depending upon the services needed, the following sources should be used as a starting point:

- ❖ friends and relatives;
- ❖ hospital Personnel;
- ❖ physicians;
- ❖ nursing registries;
- ❖ Oklahoma Association for Home Care
775 W. Covell Road, Suite 100
Edmond, OK 73003
(405) 495-5995
www.oahc.com;
- ❖ Joint Commission for Accreditation of Health Care Organizations
1 Renaissance Blvd.
Oakbrook Terrace, IL 60181 (630) 792-5000
www.jointcommission.org
(umbrella organization that accredits home health care organizations);

- ❖ Oklahoma Department of Health
1000 N.E. 10th
Oklahoma City, OK 73117
(405) 271-5600 & (800) 522-0203; and,
- ❖ Volunteer Organizations such as the American Heart Association, American Cancer Society, Alzheimer's Foundation, United Way, churches, synagogues, etc.

Choosing a Home Care Provider (also see the section on this subject immediately below)

In choosing among available home care providers, here are some of the things to look for:

- ❖ certification and membership: Medicare, Medicaid, the Oklahoma Association of Health Care, the Oklahoma Department of Health, the Joint Commission for Accreditation of Health Care Organizations, Home Care Association of America, National Association of Home Care;
- ❖ reputation: references from doctors and public health workers; and,
- ❖ personnel Standards: skill levels of employees and the process used to screen and select employees.

Costs and Financial Assistance

In addition to the physical and emotional advantages of remaining at home, there also can be significant financial savings if the care required is not too complicated. Home care can average from 50% to 75% less than the costs of residential care facilities, depending upon what care is required. On the other hand, once care becomes extensive or complicated a residential care facility can be relatively less expensive. It is important to discuss rates with prospective home care providers to uncover possible hidden charges. For example, there is sometimes a minimum charge per visit, per week, or per month. There may also be higher rates for night and weekend care, which could mean a significant cost increase if the individual requires such care.

Medicare could pay a significant amount of home care expenses. Medicaid will pay for some home care only if the individual has minimal assets. Even if the individual is not initially covered by Medicare or Medicaid, consideration should be given to determining if the home care provider is certified for both. The individuals' physical or financial situation may change, making the individual eligible for Medicare or Medicaid coverage.

Choosing Your Home Health Care Provider

Since 1992 your right to choose your home health care provider has become very complicated. Remember to stand up for yourself in all your health care choices.

Federal law guarantees you the right to choose the home health care agency of your choice. Unfortunately, some claim that physicians frequently approve only hospital-based home health care agencies.

Physicians who have certain financial relationships with a hospital are specifically prohibited by law from referring patients to that hospital's home health care agency(s) to the exclusion of other choices. If you are unfortunate enough to have been recently hospitalized and required

subsequent home health care, you may not have been aware that you actually had a choice of home health care providers. There are many privately owned home health care agencies within the state of Oklahoma who are qualified to render service and who are not affiliated with hospitals. However, patients who are routinely admitted to hospitals sometimes are not informed of those companies. Further, patients often want to use a specific agency and when they request their physician's approval for that agency the physician might deny it because of the physician's relationship with the hospital. In other words, physicians sometimes experience political pressure to refer patients to the hospital-based home health care agencies. That practice is a violation of your rights under federal law.

How can you tell if the home health agency you are considering is qualified? You should look to at least three factors: (1) Is the agency licensed by the Oklahoma Department of Health? (2) Is the agency a member of a national home health organization such as the Home Care Association of America (HCAA) or the National Association for Home Care (NAHC)? (3) Is the agency Medicare certified? There are a number of organizations to which an agency can belong. All agencies must be licensed by the State Department of Health to do business in Oklahoma. An agency does not have to be Medicare certified unless it receives payment from Medicare. If you have questions or need a referral, call: Oklahoma Association for Home Care (405) 495-5995 or Home Care Association of America at (202) 547-7424. To verify whether a particular home health care provider is licensed, you may call the Oklahoma Department of Health at (405) 271-5600 or (800) 522-0203.

Financing Long-Term Care

One out of every four persons over the age of 65 will spend time in a skilled nursing facility. For the over-80 population, that figure increases to one out of two. For those individuals and their families, the costs of paying for such long-term care will be shocking; the average cost now exceeds \$3,200 per month. Families are often more shocked to learn that unless they have depleted their life savings or have had the foresight to purchase long-term care insurance, they will have no choice but to pay such costs from their own pockets.

Medicare

Medicare only pays for about 2% of annual nursing home costs. At most, it will pay for a limited number of days of skilled care as long as the following conditions are met:

- ❖ The patient must be hospitalized for medically necessary inpatient hospital care for at least three consecutive calendar days, not counting the day of discharge;
- ❖ The patient must be eligible for Part A benefits in the month of discharge from the hospital;
- ❖ Admission to the skilled nursing facility (SNF) must occur within thirty (30) days of discharge unless SNF admission would be medically inappropriate during that time;
- ❖ The patient must demonstrate a need for skilled care, ordered by a physician, the type of which can be provided only in a SNF. These levels of care requirements are so strict that many patients cannot meet them.

Even when these conditions are met, Medicare Part A will cover the full costs for only a short period of time. After that time coverage exists for only a partial amount.

Long-Term Care Insurance

Long-term care insurance is now readily available from many insurance providers. This coverage, while expensive, should be seriously considered as a means of financing long-term care. Lifetime coverage is preferred for adequate protection, although other lengths can be obtained. If such coverage is unaffordable, at least three years of coverage should be obtained. This would cover any look-back period imposed by the Medicaid laws. The costs of skilled nursing facilities now run from \$80 to \$120 dollars per day and are steadily increasing. To be effective, coverage amounts should be a minimum of \$80 per day, preferably higher.

In evaluating any such insurance, careful attention should be given to the following matters:

- ❖ What level of care is provided (skilled, intermediate, custodial, home)?
- ❖ Whether the daily benefit is adequate to cover the present cost of care and can the benefits be increased?
- ❖ What are the waiting and deductible periods?
- ❖ Are there policy exclusions for pre-existing conditions or certain illnesses?
- ❖ Is there a prerequisite such as a hospital stay or medical need?
- ❖ Can the insurance company cancel the policy? If so, for what reason?
- ❖ Is a physical examination required?

Medicaid: The Payor of Last Resort

Medicaid is a federal and state, jointly funded, financial assistance program established in 1965 in order to pay for the health care of the "categorically needy and medically needy." The federal government sets basic rules for the states but allows the states great latitude in defining the income and asset criteria, which they will follow. As a result, Medicaid programs and eligibility requirements vary considerably from state to state. The Medicaid Institutional Care Program (ICP) provides for the payment of nursing home costs for those persons who both need long-term care and meet the financial requirements set forth by the state.

Each participating state must follow the general eligibility criteria set forth under federal law. States may broaden that criteria but may not promulgate rules that are more restrictive than their federal counterparts.

The basic eligibility criteria and a more thorough discussion of Medicaid rules are included in the Health Care section of this Handbook.

Medicaid Planning

Tough decisions are required when confronted with a decision of how and whether to apply for Medicaid when the applicant has assets. Often elderly people would prefer to preserve those assets for loved ones rather than expend them for medical care. But in order to be eligible for Medicaid, the only proper planning requires total loss of control of the funds by the elderly person. And as will be discussed shortly, it involves divesting control long in advance of any

application for Medicaid. Standard Medicaid planning would involve irrevocable transfers to third parties. These transfers usually take the form of gifts, trusts, or limited partnerships.

Medicaid planning frequently involves the gifting of assets owned by the applicant in order to meet income and/or asset eligibility requirements. But transfers of assets are subject to strict regulations that must be fully understood in order for the applicant to qualify. As a result, no gifting program should be undertaken without the advice of an attorney familiar with this area of the law. Failure to comply with the transfer regulations can result in unnecessary and financially damaging penalties to the applicant and his or her family, regardless of who the transferee is.

In order to curb the perceived abuses of the program, Congress imposed a "look-back" period of time to invalidate any transfer made in anticipation of applying for Medicaid benefits. Currently, the law mandates that the transfer of a resource within 36 months of applying for assistance triggers a period of ineligibility. In the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual, the "look-back" period is 60 months.

Another common method to preserve assets would be to convert "countable" assets to "non-countable" ones. For example, it would be possible to take an asset which is countable (such as a mutual fund) and sell it for the purpose of improving a non-countable one (such as improvement of the home).

If control over the estate is not an issue of importance, an irrevocable trust may be appropriate. Since the "look-back" period for transfers to trusts is extended to five years for transfers to trusts, the use of any trust-based plan should be carefully evaluated.

One method that is gaining popularity, without the "look-back" period, is the use of a special form of a limited partnership. A limited partnership is one in which there are general partners and limited partners. The general partner has control over the assets of the partnership and the limited partners do not. Yet the limited partners are able to enjoy the benefits as directed by the general partner. The partnership agreement would provide that the interests could not be transferred easily and impose conditions for transfer.

The transfer or reinvestment of assets involved in Medicaid planning requires the creation of legal documents such as wills, trusts, durable powers of attorney, and deeds. The importance of accurately timing any transfer and any application for assistance cannot be overstated. Consideration should be given to the effects of transfers and applications before they are made, not after. Although the planning may be for what is considered a "small" estate, the legal steps necessary for protection are very sophisticated. For that reason, it is important to obtain an experienced, competent professional advisor.

PLANNING FOR THE FUTURE

Life And Disability Insurance

Insurance is a very important component of planning for the future. Insurance is purchased for two primary reasons -- to create an estate and to preserve an estate.

Insurance purchased to create an estate is usually intended to replace the economic loss resulting from the death or disability of the family's bread-earner. For example, in the event of a disabling condition, disability insurance pays a periodic amount during the period of disability. Life insurance will provide a death benefit to offset a loss of income occurring because of death.

As a general rule, most people have insufficient insurance for such an event. The level of any such insurance should be based on need. If the bread-earner passes prior to the spouse, there can be a large reduction in income. This is true, even after retirement, as a result of lost or curtailed social security benefits. Some people are significantly underinsured, not realizing the value of their income contribution to their dependents. The amount of insurance for this purpose should be tailored to the family's lifestyle, as it exists prior to disability or death. The factors that should be considered are:

- ❖ the present dollar value of the income stream needing to be replaced in the event of a tragic event;
- ❖ the number of years that the income stream will be needed;
- ❖ the current and future impact of inflation;
- ❖ the possible future reduction of social security benefits;
- ❖ the debts left to survivors at death.

Life insurance purchased to preserve an estate comes in two general varieties. First, insurance is used to pay estate or inheritance taxes and fees associated with property transfers. Second, it is utilized to defray costs of burial and funeral arrangements.

Purchasing insurance to protect the estate requires a planning process unique to the specific situation. Insurance should not be purchased without first calculating what the death costs will be. Every person whose motivation in purchasing life insurance is to protect the estate should first reduce or avoid every cost possible. After projected costs are reduced to the lowest amount possible, life insurance should be purchased to cover the balance.

There is a panoply of insurance products in the market today. More are coming on-stream every day. Life insurance for planning purposes involves specialized knowledge. It has been said, "If you do not know jewels, know your jeweler." You should take the time to interview and select an insurance professional who is knowledgeable and who you trust. You should select one that you like and who will work well with your other advisors.

Durable Power of Attorney

A Durable Power of Attorney is a document which is used to delegate legal authority to another person (the "agent" or "attorney in fact") to act on behalf of the grantor (the "principal").

By including certain statutory-required language in the document, the agent's authority will remain valid even if the principal subsequently becomes incapacitated. Thus, the Durable Power of Attorney is an inexpensive alternative to a court-supervised guardianship or conservatorship which is necessary for a person who becomes incapacitated without preplanning. A Durable

Power of Attorney allows the principal, rather than the court, to choose the caretaker of his person and property upon terms designed by the principal.

In a Durable Power of Attorney document, the principal can give his agent a range of powers from a very limited action-specific power to a comprehensive laundry list of powers. Oklahoma law requires that the power be stated in specific terms, such as "to gain access to my safe deposit box" rather than in general terms such as "to do every act that I may legally perform in my place." An attorney-in-fact is prohibited from making decisions regarding signing an Advance Directive for Health Care, also known as a "Living Will."

The principal decides whether the granted powers in the document are effective immediately or become effective upon the happening of a triggering event such as a letter by the principal's personal physician that the principal is now incapable of handling his own affairs. If the power is immediately effective, the principal and attorney-in-fact share immediate, co-equal powers to the extent those powers are granted in the document. A power, which becomes effective upon a trigger event is advantageous if the principal fears that the agent will act prematurely.

Typically, the principal selects a relative or close friend as his agent. It is imperative that the agent is trustworthy and conscientious as the agent could use the powers to the disadvantage of the principal. The principal should also discuss the nomination with his agent in order to determine the agent's willingness to serve. The principal may name a successor attorney-in-fact in the event his first choice dies, ceases to act or resigns.

The document may state that the power terminates upon a specific date or event. If the principal is not incapacitated, he may revoke the power of attorney at any time. The power always terminates at the death of the principal.

To obtain a Durable Power of Attorney, consult with an attorney who will draft a need-specific, individualized document and insure that the document is signed according to Oklahoma legal requirements.

Durable Powers of Attorney for Health Care

A Durable Power of Attorney for Health Care is a recommended planning tool in order to delegate health care decisions to a chosen person in the event of the principal's disability or illness. Execution of a Durable Power of Attorney for Health Care is especially important for Oklahoma residents because Oklahoma has not adopted a family consent statute, which allows a prioritized list of individuals to make medical decisions on behalf of an incapacitated person without appointment of a guardian or a court order.

The Durable Power of Attorney for Health Care operates in the same manner as the general Durable Power of Attorney. The principal may include health care powers in the general Durable Power of Attorney covering property issues. However, some thoughtful consideration of creating separate documents for property and medical powers should be given in order to separate information regarding the principal's assets from his medical records or medical requests.

Powers included in the Durable Power of Attorney for Health Care grant authority for the agent to handle the principals' health care decisions. The attorney-in-fact cannot make life-sustaining decisions for the principal, except for "do not resuscitate." However, he may make other medical decision for the principal. Additional powers can cover such issues as the agent's access to medical information, employment or termination of health care personnel, authorization of pain relief, granting of releases, admission to and discharge from medical facilities, binding the principal to pay for treatment and seeking court intervention.

Since the Advance Directive for Health Care (also known as "Living Will") statute also provides for an attorney-in-fact to make health care decisions, care must be undertaken to avoid a conflict between two attorneys-in-fact. It is recommended that the same individual be named as agent under both the Durable Power of Attorney for Health Care and the Advance Directive.

Provide copies of the signed Durable Power of Attorney for Health Care to the named agent, principal's primary physician and immediate family. Ready-access to the document is recommended rather than storage in a safe deposit box.

Guardianship

Each of us has legal rights which collectively allow us self-determination: the ability to control our person and property. We may, for instance, enter into contracts, decide where to live and work, choose or refuse medical treatment, give away possessions, and draft or change a will. Our rights come from the U.S. and Oklahoma Constitutions, Oklahoma and Federal statutes, common law and custom.

As we grow older, our legal rights do not decrease, but there are increasing pressures that threaten our independence. Due to sickness, we may become mentally unable to make some or all choices for ourselves. Even if we are able, other people, out of good motives or bad, may try to make decisions for us. As a general rule, as long as a person, of any age, understands the implications of his actions, he has the right to take those actions, so long as they harm no one and violate no laws. The purpose of guardianship is assistance, the *parens patriae* responsibility of the State.

A Guardian is a person appointed by the probate court and given power to make some or all decisions about the care of another person and their property. A person for whom a guardian is appointed is known as a Ward.

Why are guardians appointed?

- ❖ Inability to care for self or finances;
- ❖ Senility or dementia;
- ❖ Organic or chronic brain syndrome;
- ❖ Old or advanced age;
- ❖ Stroke;
- ❖ Alzheimer's disease;
- ❖ Forgetfulness;

- ❖ Alcoholism.

Who usually serves as guardians?

- ❖ Children of wards;
- ❖ Spouses of wards;
- ❖ Siblings of wards;
- ❖ Other relatives, including nieces, nephews, grandchildren;
- ❖ Attorneys;
- ❖ Agencies;
- ❖ Public guardians;
- ❖ Banks.

Upon the appointment of a guardian, a ward may lose many rights such as the right to vote, to serve as a juror, to operate a motor vehicle, to be licensed to practice any profession, to contract, to maintain a bank account, or to invest one's assets. The guardian can be given the power to choose where a ward will live; to consent to medical treatment; to sell the individual's property; to receive money and property belonging to the ward; and to apply this money toward the ward's support and care. However, only with specific court approval can the guardian prohibit the individual's marriage or divorce, consent to removal of a body organ, to allow the performance of experimental biomedical or behavioral experiment, consent to the withholding or withdrawing of life-sustaining medical procedures, consent to termination of parental rights or consent to abortion.

A court case must be instituted for a guardian to be appointed. A family member, a Department of Human Services worker in cases of abuse or neglect, or any person interested in the welfare of the prospective ward may petition the court for appointment of a guardian.

If you are threatened with an unnecessary guardianship, you have the right:

- ❖ to object to the guardianship, to the powers of the guardian, and to appointment of a particular person as guardian;
- ❖ to be at the hearing and receive notice of the hearing;
- ❖ to be represented by a lawyer (the court will appoint a lawyer if you request one or if you wish to contest any aspect of the proceeding and if the court determines it is in your best interest);
- ❖ to present evidence in your own behalf;
- ❖ to cross-examine all witnesses;
- ❖ to subpoena witnesses on your behalf;
- ❖ to a closed hearing;
- ❖ to be evaluated by a physician, psychologist or social worker or other expert (the evaluation will address the individual's ability to make decisions and to meet the requirements for their health or safety and manage their property);
- ❖ to have any person you have previously nominated as your guardian to be appointed by the court if you are found to need a guardian; and

- ❖ to have a petitioner prove by evidence that a guardian is needed.

In order for the court to appoint a guardian, the court must be convinced by evidence presented at the hearing that you are not capable of making informed decisions about your own care or the management of your property. A guardian cannot be appointed just because of your age or because you are physically disabled. For example, a general guardianship of the person is not appropriate merely because a person is wheelchair-bound due to severe arthritis. A limited guardianship may be imposed if a disability affects the individual's ability in some way to care for himself or manage his property.

Who can be appointed as guardian?

- ❖ Any person you have previously nominated.
- ❖ Any current guardian appointed for you by a court of another jurisdiction.
- ❖ Any person nominated by your former guardian (if your former guardian was your deceased parent, spouse or adult child.)
- ❖ Your present spouse.
- ❖ An adult child of the individual.
- ❖ A parent of the individual.
- ❖ A brother or sister of the individual.
- ❖ A person whom the individual had been living with for more than 6 months.

The court must appoint the person nominated by you if that person is suitable and willing to serve. Ask your attorney for a free nomination of guardian form.

Not all guardians have the same powers. If a guardianship is appropriate, the court must tailor the powers of the guardian to the demonstrated need of the ward. A guardian with less than full powers is known as a limited guardian. Sometimes a special guardian is appointed.

Even if a guardian is appointed, a court may allow a ward to control part of his or her property to encourage self-reliance. For instance, a court may allow a ward to maintain a checking account in proper circumstances. The court will determine whether the individual may appoint agents, contract, grant conveyances or make gifts. The court may also direct that the individual get a monthly allowance to spend at the individual wishes.

A ward can still make a will if he or she is aware of property owned and natural heirs, and understands that the document drafted is a will. The person must not suffer from delusions or serious mental incapacities. The probate judge must witness the will.

A guardian cannot commit a ward to a mental hospital. A person can be involuntarily committed if he or she is mentally ill and dangerous to himself or others. This determination can only be made after a mental health commitment hearing, different from the guardianship hearing.

The responsibilities of a guardian include providing for the care and comfort of the ward and taking reasonable care of the property of the ward. A guardian must secure services to help the

ward return to self-reliance as soon as possible. A guardian must keep safely the property of the ward. The guardian shall manage the property of the ward as a prudent person would manage his own property, not with regard to speculation but with regard to conservation and growth. The guardian should be able to return the property at the end of the guardianship in as good of a condition as it was when he received it.

A guardian can be replaced. The ward, or any person interested in the ward's welfare, can petition the court to remove a guardian. The court will remove the guardian and appoint another person if the court finds abuse by the guardian, neglect of duties, incapacity of the guardian, gross immorality, conflict of interest, insolvency, or if the original nomination of guardian was legally defective.

A guardianship often lasts until death. But the guardian must report any change in a report to the court annually. The ward, the guardian, or any relative or friend may petition the court to dissolve the guardianship. If the court finds the ward no longer needs a guardian, the court will restore the ward to full legal capacity and remove the guardian.

Conservatorship

A conservator is a person appointed by the probate court to manage another person's property and financial affairs. A conservator has no power over the person of the ward.

In general, the court must determine after a hearing that you are unable to manage your property and financial affairs effectively because of physical disability in order to appoint a conservator.

A conservator cannot be imposed against your will. You must consent to the appointment of a conservator.

A conservator, like a guardian, manages all property belonging to the other person. He or she has broad, but not unlimited, power to deal with the property in the interests of the other person. The court may at any time limit a conservator's power. A conservator cannot decide where someone will live or consent to medical treatment.

A conservator must spend funds of the person necessary for support, education and care. He or she must file with the court a list of all property, and keep accurate records of money received and money spent.

The court can replace a conservator if he or she is not properly carrying out his or her responsibilities.

You, or anyone interested in your welfare, can file a petition with probate court requesting the conservatorship be ended. It must be shown that a conservator is no longer necessary.

If a conservator is appointed for you, you lose the right to contract (buy or sell, etc.) for anything except necessities (groceries, electricity, etc.). You lose the right to invest, manage, sell or

mortgage your property. You retain all personal rights, however such as the right to vote, to marry, to divorce, etc.

What alternatives are there to a guardianship or conservatorship?

As an alternative to a guardianship or conservatorship, a “protective compromise” may be considered when an individual’s behavior is questionable but not indicative of danger to himself. A living trust could be created with the individual and another family member serving as co-trustees. Durable powers of attorney for business transactions and for medical decision making can be used, as well as a living will (Advance Directive for Health Care).

Advance Directive For Health Care (Living Will)

An Advance Directive for Health Care is a written document that enables you to state what kinds of **life-sustaining** treatment you wish to receive or forego in the future under certain circumstances. Examples of life-sustaining treatment include breathing machines (ventilators), pacemakers, and tube feeding (artificial hydration and nourishment). Under no circumstances can you be denied medical care to reduce pain or discomfort.

Before an Advance Directive can be carried out, two physicians must certify in writing that (1) you have become incapable of making health care decisions for yourself, and that (2) you are in either a "terminal" condition or a "persistently unconscious" condition. Thus, even if you have signed an Advance Directive, as long as you retain the ability to make health care decisions for yourself, physicians will look to you for treatment decisions.

A "terminal" condition is an incurable condition in which a person will die within six months, even if life-sustaining treatment is administered. A "persistently unconscious" condition is an irreversible condition in which thought and an awareness of self and environment are absent.

The Advance Directive gives you a choice in designating the individual you wish to carry out your instructions on life-sustaining treatment. You can designate the "attending physician," defined as the physician who has primary responsibility for your care at the time life-sustaining treatment decisions must be made. Accordingly, you may not know in advance of your illness or injury who that physician will be. In the alternative, you may name a health care proxy who is not an attending physician, usually a family member or trusted friend, who is willing to act on your behalf.

An attending physician who declines to follow your Advance Directive must promptly take all reasonable steps to arrange for your care by another physician willing to follow your directions.

The Advance Directive also allows you to make organ donations, but you are not required to do so.

It is a simple matter to revoke an Advance Directive if you change your mind.

The Advance Directive form with instructions is available from many sources, including the Oklahoma Bar Association and most county and local bar associations.

Wills, Probate And Administration Proceedings, Living Trusts, Estate Planning

Wills

Who needs a will? Anyone wishing to control the distribution of his or her property upon death should consider drafting a valid will. The property of a person who dies without a valid will or other estate plan is distributed according to state "intestate succession" laws, and that person is called an "intestate." Those laws provide for the distribution of your property as follows:

The surviving spouse will inherit the entire estate if there are no surviving children, siblings or parents of the decedent.

If the decedent leaves behind surviving parents or siblings, the surviving spouse inherits all property acquired during the marriage by joint effort of the spouses. However, the surviving spouse and surviving parents or siblings must share any of the decedent's property brought into the marriage or acquired by gift or inheritance during the marriage.

If the decedent leaves behind surviving children, the surviving spouse inherits one-half of the decedent's entire estate and the children inherit and share the remaining one-half of the estate.

If the decedent leaves behind surviving children, but no surviving spouse, the children share the estate.

The intestate succession laws make no provision for the distribution of property to the decedent's friends or business/charitable interests. An intestate's property will pass only to his kin. Therefore, it is possible that distant relatives, possibly those the intestate has never personally met, may inherit the property. If there are no surviving relatives of an intestate decedent, the property is given to the state for the support of public education.

A person who has a valid will may give his property to virtually anyone he pleases on his death. However, a person cannot completely disinherit a spouse in Oklahoma.

Every will must meet certain formal requirements in Oklahoma:

- ❖ The person making the will, known as the "testator," must be at least 18 years of age.
- ❖ The testator must be of sound mind when the will is made, meaning the testator understands the nature and extent of his property and the effect of his will upon his death.
- ❖ The testator must intend the will to be his last will and testament when the will is drafted and signed.
- ❖ The testator must be free from any undue interference or influence from other people. In other words, the gifts and dispositions made in the will must be made by the free will of the testator reflecting his own wishes and desires.

Oklahoma allows its citizens to choose between two types of wills: an attested will and a holographic will. An attested will is a formal typed will. Most attested wills are drafted by an

attorney, but Do-It-Yourself Will kits are available at business stores. A word of caution is necessary about those kits, however. The requirements of a valid will must be strictly adhered to or the will may be declared invalid. Property would then pass according to the Intestate Succession laws previously discussed. The requirements for a valid attested will are:

- ❖ it must be signed by the testator himself at the end of the document. If the testator is unable to sign the document himself he may direct another person to sign for him in his presence;
- ❖ the testator must sign the will in the presence of at least two witnesses. The witnesses are known as the attesting witnesses;
- ❖ as the testator or his representative is signing the will, he must declare it to be his last will and testament;
- ❖ the two attesting witnesses must also sign the will in the presence of the testator.

Special care should be used when choosing the attesting witnesses. Can anybody witness another's will? In Oklahoma, the answer is a qualified "yes." The witnesses must be competent and must be 18 or over. Any person competent to make a will is competent to witness a will. May a person receiving property in the will, or an interested beneficiary, witness the will? In Oklahoma, an interested beneficiary is competent to witness a will, but his gift may be challenged or reduced by the court. Thus, for all practical purposes, the will should always be witnessed by two disinterested witnesses. Also, it is usually better to choose a witness who is familiar with the testator and has no immediate plans to relocate.

The second type of will recognized in Oklahoma is a holographic will. This will is **entirely** written, dated and signed by the testator himself. A holographic will must meet the requirements of all valid wills, but it does not have to meet the requirements for an attested will. For instance, a holographic will does not have to be witnessed. Holographic wills are not the most popular choice for estate planning. Courts are very strict with the requirement that **the entire will be completely in the testator's handwriting**, including the date. As there are usually no witnesses to the document, the validity of these wills is frequently contested, and will contests are expensive and time-consuming. Therefore, most experts in estate planning agree that one desiring a last will should consult an attorney to draft an attested will.

What if a testator decides to change an existing will? Changing a will is relatively simple and can be accomplished by a "codicil" or a whole new will. A codicil is an amendment that changes or supplements an existing will. A codicil must meet the same requirements as a last will and testament. There are no limits to the number of codicils that may be drafted to change a will. However, if several codicils have already been written, the testator should consider drafting a new will. Language declaring the new will to be the last will and testament and revoking the prior will should be included. Never attempt to change a will by marking directly on the will. This often leads to a will contest and may invalidate the will.

Finally, always remember to keep your will in a secure location. For instance, consider keeping this important document in a safe deposit box, a safe or a specific desk drawer (preferably with a lock). Remember to keep all codicils to the will in the same location. Also consider keeping

other important documents, such as a deed or a vehicle title, in the same general location. While Oklahoma does recognize methods for proving the contents of a lost or destroyed will, it is very difficult to do.

Probate and Administration Proceedings

When a person drafts a will, the will should dictate how his property is to be distributed upon his death. The will should also name an executor (or personal representative -- "PR"). The PR is responsible for seeing that the decedent's property is distributed according to the terms of the will, or Intestate Succession laws if there is no valid will. The PR must present an inventory of the estate's assets and liabilities. If the will meets the requirements for a valid will, the court "accepts" the will for probate. If not, or if there was no will, an "administration" proceeding is instituted.

The PR must then notify the decedent's creditors giving them an opportunity to present their claims. Notice of the probate or administration is sent to all known creditors. The notice is also published in a local newspaper for a specific length of time to notify any unknown creditors. This publication also functions to notify those wishing to contest the will. The court hears and rules upon the validity of these objections. If there are no valid objections, the estate taxes and creditors are paid and the PR distributes the estate by the terms of the will or Intestate Succession laws. If the terms of the will are unclear, the probate court makes an attempt to interpret the testator's intent.

The decedent's legal residence determines which court should handle the probate or administration. For example, if a person lived in Cherokee County at the time of his death, then the Cherokee County Probate Court should handle the proceedings. However, it is sometimes necessary to file an additional probate action in another state. If the decedent owned real property in another state, an "ancillary probate" must be filed where the real property was located.

Living Trusts and Other Trusts

The probate or administration process can be time-consuming and expensive depending on such factors as the size of the estate, the type of property in the estate, and the location of the property. A person may avoid or reduce the cost and inconvenience of such proceedings by creating an inter-vivos or "living" trust.

There are two types of trusts. A "testamentary" trust is created through a will. For instance, a person may wish to leave his minor grandchild a large sum of money. This person may direct the executor to give this money to a trust company to invest and distribute the income to the minor's guardian on a periodic basis. This common trust protects the estate and the beneficiary, but it does not avoid probate. Property designated to pass into a testamentary trust must go through probate as the trust will not come into being until probate is complete.

A living trust does avoid probate if properly funded. A living trust, as its name suggests, is created during someone's lifetime. A person creating a trust is called a "settlor." The settlor transfers legal title to certain property to the trust for the benefit of himself and others and

appoints a trustee to administer the trust. After the lifetime beneficiary's death, the property is distributed to other named beneficiaries according to the terms of the trust.

The living trust is generally created by hiring an attorney to draft a written document called a "trust instrument." The document should contain a description of the property transferred into the trust, a statement of the trust purposes and the terms of the trust, identify the beneficiaries, and identify the trustee and successor trustee. If real property will be transferred into the trust, the attorney also drafts the necessary documents of transfer. Only property that is in existence when the trust is created may be transferred into the trust. In other words, expectancies such as a future inheritance or profit are not transferable because they do not exist at the trust's creation. Do-It-Yourself trust kits are also available in business stores. However, creating a trust often requires an extended knowledge of commercial and real estate transactions. Most people find it necessary to consult an attorney to create this trust.

A living trust may be revocable or irrevocable. A revocable living trust may be canceled or modified during the settlor's lifetime. While the revocable living trust will not offer a tax advantage, all of the estate and income tax savings available through a skillfully drawn will and testamentary trust are available in a skillfully drawn living trust. In Oklahoma, the settlor may also be a lifetime beneficiary of the trust and the trustee so long as there is at least one other present beneficiary. However, the settlor should consider appointing someone other than himself as the trustee. This provides the settlor an opportunity to observe the efficiency of the individual or institution appointed as trustee.

The advantages of a living trust may be very attractive. As stated above, after property is transferred into the trust, the property is no longer a part of the settlor's probate estate. Thus, a living trust may substantially reduce or even eliminate the burden of probate. In addition, if valuable or desired property is not included in the probate estate, it diminishes the possibility of a will contest by those feeling "left out" of the inheritance. This is partly due to the private nature of a trust. It is not necessary to advertise the settlor's death in a public newspaper as there is no probate. The privacy of a living trust may become more important when a business interest is involved. When a will is probated, an inventory of the estate's assets and liabilities are made a matter of public record. If a business interest is included in the will, a competitor may have access to potentially sensitive information relating to that business.

Moreover, many people tend to draft their wills simply by leaving "my estate" to a designated person. The property is not inventoried or specifically listed in the will. When utilizing a living trust, however, the settlor must identify all property transferred to the trust. Thus, the settlor is forced to take a careful look at the assets and liabilities of his estate. The settlor may find weak spots in his financial affairs that may otherwise go unnoticed. Similarly, the living trust allows the settlor more freedom and less worry in retirement years. Property and investments may be managed by an institutional trustee with experience and expertise in investments.

Finally, the living trust may save valuable time to the beneficiaries at the settlor's death. The beneficiary of a will must wait until the probate is complete before any property is distributed to him. As a general rule, this process takes six (6) to twelve (12) months. A trust beneficiary, on

the other hand, receives his benefit much quicker. The trustee of a living trust requires only a certification of the settlor/lifetime beneficiary's death to implement the trust's directions regarding gifts to other beneficiaries.

There are disadvantages to the living trust. For instance, the revocable living trust may save probate expenses, but it does not provide a tax advantage because the settlor retains the power to change or modify the trust at any time before his death. He maintains some control over the trust property. In order to receive any tax advantages, the settlor must create an irrevocable living trust. With an irrevocable trust, legal title to the property is transferred to the trustee and the settlor cannot revoke or modify the trust provisions. Thus, the settlor relinquishes control over the trust property.

Another disadvantage for some may be the cost of creating the trust. Complex legal documents are often necessary depending on the type of property being transferred into the trust, resulting in potentially high legal fees. This may be a continuing process as new property is acquired and transferred into the trust. The expense of creating and maintaining the trust may equal or surmount the cost of probate.

Additionally, a living trust may not completely eliminate the need for a will and the subsequent probate action. Any property not transferred into the living trust, such as property acquired after the trust's creation, must be disposed of by a valid will or estate plan. For those with neither a will nor an alternate estate plan, the property will be distributed according to the Oklahoma intestate succession laws. Any property distributed by a will or the Oklahoma laws of intestate distribution must pass through a probate action. This may double the expenses depending on the size of the estate.

The final disadvantage of a living trust involves a creditor's right to make a claim against indebted property. In Oklahoma, when a will is probated a creditor has approximately two (2) months from the date the creditor's notice is filed to make a claim against the estate. Once the final distribution of estate assets is made, all creditors' claims are essentially barred. In contrast, there is no equivalent short-term statute regarding creditor claims when dealing with a living trust. Therefore, those with several creditors may prefer probate.

Anyone questioning whether a living trust, or any other estate plan, is right for them should carefully inventory their assets and liabilities and consult an attorney experienced in estate planning.

Estate Planning

Estate planning is beneficial for small estates as well as large estates. With proper estate planning you can designate who will receive your property at your death and also reduce, defer, or even eliminate estate tax on your property.

If you have not prepared a valid will or a trust at the time of your death, your estate will be distributed according to Oklahoma's "intestate succession" statutes. The statutes distribute property to spouses and relatives in a specific order. Although the order in which the statutes distribute property is logical and attempts to be fair, property may not be distributed as you

would have wanted. With a valid will or a trust your assets can be distributed to whom you want and in the proportion you want.

Federal Estate and Gift Tax

Please note that Federal Estate and Gift Tax amounts and exemption limits are subject to change annually. At the time of this writing, the United States Congress has extended the Bush era tax cuts for the years 2011 and 2012. The only information available on Federal Estate Tax is what is in the current law today. Please consult an attorney or a certified public accountant for the changes in the tax laws.

Estate Tax - Upon the death of an individual, the value of the estate passed is a taxable event. However, federal law allows for certain amounts of such value to be exempt from federal estate taxes. Prior to 2010, the federal estate tax rate for years 2008 and 2009 was 45%, but the exemption levels for the year 2008 was \$2 million and for year 2009 was \$3.5 million. During the year 2010, the federal estate tax was repealed, therefore there was no federal estate tax. Since the Bush era tax cuts have been extended for two more years, as of January 1, 2011, the federal estate tax will be reenacted with an estate tax rate of 35% with an exemption level at \$5 million. As of this writing this tax rate and exemption level will expire on December 31, 2012.

Gift Tax - The giving of money or anything for the value of money where full consideration, measured in money or money's worth, is not received in return, is considered a gift and therefore a taxable event. According to the Internal Revenue Service (IRS), there are many exceptions to this rule. Generally the following are not taxable gifts:

- ❖ Gifts that are not more than the annual exclusion for the calendar year.
- ❖ Tuition or medical expenses you pay for someone (the educational and medical exclusions).
- ❖ Gifts to your spouse.
- ❖ Gifts to a political organization for its use.

For the year 2010 the federal gift tax rate is 35% with an annual exclusion up to \$13,000. This annual exclusion applies to each donee. Therefore one can give up to \$13,000 a year to as many individuals as they desire without a federal gift tax. Many people take advantage of gifting up to the annual exclusion without paying a federal tax to reduce the value of their estate. The annual exclusion for a couple is \$26,000, so long as both consent to the gift. In 2011, the Bush era tax cuts will be extended and the exemption level will increase to \$5 Million, where one may donate up to \$5 Million without a federal gift tax. As of the time of this writing, the lifetime exemption expires December 31, 2012.

Generation Skipping Transfer Tax - The Generation Skipping Transfer Tax (GST) may apply to gifts or direct skips occurring at death to a person who is assigned a generation that is two or more generations below the assignment of the donor, or gifting party. This applies to any transfer, whether outright or in trust. Typically, the types of transfers taxed include:

- ❖ distributions of principal or income to grandchildren from a trust established for children or grandchildren,
- ❖ termination of a child's life income interest in a trust which continues for grandchildren, and
- ❖ direct gifts or bequests to grandchildren or in trust for their benefit.

During 2010, no GST tax was imposed on any such GST gift. In 2011, the Bush era tax cuts will be extended and the GST tax will reenact with a rate of 35% with an exemption of \$5 Million.

Contact information for the Internal Revenue Service (IRS)

Telephone: (800) 829-1040

Website: <http://www.irs.gov/>

Oklahoma Estate Tax

Other than federal estate taxes, an estate of a resident of Oklahoma may be subject to estate taxes as well. Prior to 2010, it was required to file an estate tax return with the Oklahoma Tax Commission. For the years prior to 2010 the tax rate was based upon the amount of taxable estate. A tax table is normally attached to the Oklahoma Estate Tax Return forms to indicate the rate respective to the size of the taxable estate. The exemption amount for 2008 was \$2 Million and the exemption amount for 2009 was \$3 Million.

In 2010 the Oklahoma Estate Tax was repealed and there is no requirement for filing an Oklahoma Estate Tax return for deaths occurring on or after January 1, 2010.

As of the time of this writing there is no information as to the change in exemption limit or change in the rate of the Oklahoma Estate Tax.

Contact information for the Oklahoma Tax Commission

Telephone: (800) 522-8165

Email: otcmaster@tax.ok.gov

Website: <http://www.tax.ok.gov/>

Steps To Take When Someone Dies

Here is a list of at least some of the things to do when someone dies and you are responsible:

- ❖ Make arrangements for the disposition of the decedent's remains per the decedent's request, if known.
- ❖ Locate and review the decedent's letter of instruction, if any.
- ❖ Notify relatives and friends of the death.
- ❖ Notify government agencies if the decedent received benefits from, or is entitled to benefits from, the agencies.
- ❖ Notify the decedent's employer, union, or any other group or professional organization with which the decedent may have had an association.
- ❖ Notify the decedent's creditors, including credit card issuers.
- ❖ Locate the decedent's important personal, financial, and legal documents; including any will and/or trust.
- ❖ Consult a lawyer.

Steps To Take To Ease The Burden On Your Family/Friends

Pre-death planning can ease the burden on your family and friends. Your pre-death plans should include preparing and updating the following documents:

- ❖ Last Will and Testament to dispose of your assets;
- ❖ letter of instruction regarding your funeral, burial, and related matters;
- ❖ statement summarizing your assets, debts, income, and expenses;
- ❖ directory of relatives and friends with addresses and telephone numbers for giving notification of death; and
- ❖ chart (Family Tree) showing names, addresses, and dates of birth of all children, siblings, and parents.

You should also accumulate the following personal information and documents in one place and be certain that your family is aware of that location:

- ❖ notice of any arrangements that have been made for making anatomical gifts (including a photocopy of your driver's license);
- ❖ contracts relating to cemetery plots, pre-arranged funerals, and burial instructions;
- ❖ safe deposit box(es) information;
- ❖ copies of signature cards for all bank accounts and investment accounts;
- ❖ copies of life insurance certificates;
- ❖ notice of health insurance coverage;
- ❖ notice of survivor annuity benefits;
- ❖ list of credit cards;
- ❖ military service information including discharge certificate;
- ❖ marriage and birth certificates;
- ❖ judicial decrees of divorce, adoption, and name changes;

- ❖ copy of social security card;
- ❖ deeds, promissory notes, and mortgages;
- ❖ name and address of professional advisors including attorney and accountant;
- ❖ copies of federal gift tax returns and last seven (7) years of income tax returns; and
- ❖ minutes of annual family estate planning meetings.

Funeral Homes

The more actions taken to pre-plan the last rites and disposition of remains, the greater the likelihood the family will avoid misguided extravagance or well-intended guesses about the decedent's wishes.

Funeral pre-planning usually does not require an immediate cash outlay. However, you may want to create a source of funds for paying the costs associated with your last rites and disposition of remains. Pre-funding may be accomplished by one or more of the following:

- ❖ establishing a pay on death bank account;
- ❖ assigning the proceeds of a life insurance policy; or
- ❖ executing a pre-need contract.

Planning your last rites and disposition of remains, prior to need, can relieve your family of a tremendous burden. Consider these factors whether planning the last rites and disposition of remains before or after the need arises:

- ❖ Consider membership in a memorial society.
- ❖ Consider membership in a cremation society.
- ❖ Visit several funeral homes and cemeteries. Take your time, ask questions and decide which arrangements you prefer.
- ❖ Obtain price lists for funeral and cemetery items. Compare prices and merchandise. Remember, you don't have to buy everything from one source.
- ❖ Obtain an itemized list of expenses before the funeral. Beware of package deals.
- ❖ Consult with a lawyer prior to signing any pre-need contracts.
- ❖ Consult with a lawyer familiar with the Federal Trade Commission's Funeral Rule (The Funeral Rule) which was enacted in 1984 to regulate the funeral industry.

If you should decide to pre-fund your last rites and disposition of remains through a funeral director, here are some of the questions to which you should obtain answers, in writing:

- ❖ Is the prepayment refundable in part or in full?
- ❖ What happens if the funeral home goes out of business?
- ❖ Does the prepayment cover any cost increases later?
- ❖ Who receives the interest on the account, and who must pay taxes on that interest?

GENERAL CONCERNS

Discrimination (Age, Handicap, Other)

Several state and federal laws give seniors rights if they are unfairly treated because of their age. These laws deal with discrimination in employment, in housing and against those with handicaps.

Employment

The federal Age Discrimination in Employment Act (ADEA) makes it unlawful for an employer (or employment agencies or labor organizations) to refuse to hire or to discharge any person or to discriminate regarding wages, terms, conditions, or privileges of employment because such person is 40 or more years old. Employers having 20 or more employees for at least 20 weeks in any given year are covered. Narrow exceptions have been made where there are bona fide occupational qualifications or federal regulations as to maximum age particularly where safety is a factor.

Under Oklahoma law, it is also a discriminatory practice to not hire or otherwise discriminate because of age. The qualifying age is also 40 and exceptions include bona fide occupational qualifications, employment of a family member, or employment in domestic service. Covered employers are those having 15 or more employees in each of 20 or more calendar weeks in the year. The Oklahoma Human Rights Commission and the Equal Employment Opportunity Commission are both empowered to enforce the laws.

Housing

Oklahoma statutes deal specifically with discrimination in housing, defining an "elderly person" as someone aged 55 or older. Unlawful practices include refusal to sell, rent, or negotiate on housing; discrimination in terms, conditions, or privileges of sale or rental; printing or publishing discriminatory notices; misrepresenting availability of housing for inspection, sale or rental; and denying access to multiple-listing services, or real estate brokers' organizations. Other unlawful practices include restrictive real estate covenants; refusal to consider the income of both applicants; refusal to consider public assistance or alimony as a valid source of income, and discrimination in obtaining financial assistance. Housing discrimination against handicapped individuals is also considered unlawful and such discrimination includes refusal to rent (or require an unreasonable deposit) because of guide dogs; refusal to permit reasonable modifications to the premises; and refusal to make reasonable accommodations in rules, practices or services.

The Oklahoma State Human Rights Commission is charged with the responsibility of investigating discriminatory housing practices. You or the Commission itself may file a complaint.

The Fair Housing Amendments Act of 1988 allows housing projects specifically designed or intended for occupancy by elderly families to give preference to these elderly families.

Handicaps

The Americans with Disabilities Act of 1990 (ADA) may have application for seniors because age often brings physical disability. The ADA prohibits discrimination against the disabled in employment and in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or operates such a place.

The Oklahoma Statutes also prohibit discrimination on the basis of handicap (a physical or mental impairment which substantially limits one or more of such person's major life activities) in employment or housing. In the case of employment discrimination, if the charges are not resolved within 180 days the charging party can sue in state district court.

If you feel you have been discriminated against, your first contact should be with the Oklahoma Human Rights Commission (405) 521-2360 or the Equal Employment Opportunity Commission (405) 231-4911. You may also want to contact an attorney specializing in civil rights or discrimination law. As time limits vary as to when you can file a complaint or lawsuit and some are very short, you should file your complaint as soon as possible after your rights have been violated.

Landlord - Tenant Relations

Renting an Apartment or House

When you rent an apartment, house or other living quarters, you enter into an oral or written rental agreement. Such a rental agreement usually sets the rent and defines the rights and responsibilities of the landlord and the tenant.

Most written rental agreements are prepared by lawyers, are on pre-printed forms and contain clauses drafted to favor the landlord. Therefore, remember that you are bound by the agreement once you sign it and be sure you understand it. Also remember that you have the right to alter the agreement before you sign even if it is pre-printed (but landlords often refuse to allow changes to their pre-printed forms). If you do not understand the agreement, have an attorney or some other person you trust explain it to you.

There are generally two types of tenancies, "periodic" (sometimes called "month to month") and "fixed." If the rental agreement does not state how long the tenancy lasts, it is a periodic tenancy. The period the agreement covers depends on the frequency of rental payments. The tenancy is week-to-week in the case of one who pays rent weekly and is a boarder, and in all other cases month-to-month. If the landlord decides to terminate the tenancy, the landlord must provide thirty (30) days' notice to the tenant unless the tenancy is less than month-to-month, in which case the notice period is seven (7) days.

A fixed term tenancy arises when the rental agreement specifies the term of the lease. Unless the rental agreement provides otherwise, rent is payable monthly and the rent payment cannot be increased during the term of the lease. You are usually bound to remain in the premises for the entire term of the lease.

If your rental term is about to expire but you want to stay, talk to your landlord. Likewise, if you want to move out before the end of your term, talk to your landlord -- you might be able to obtain a release from the lease or permission for someone else to move in for the rest of your term (often called "subletting").

Property Condition

If you are renting an apartment or other living facility besides a house, the landlord must keep all common areas clean, safe and sanitary. In all cases, the landlord must make all repairs necessary to keep the premises "fit and habitable" and keep all electrical, plumbing, sanitation, heating, cooling, and other appliances in good and safe working order. Depending on the unit rented, the landlord may also be required to provide other services. The landlord and tenant may agree, however, that the tenant must perform certain repairs, maintenance, alterations or remodeling.

Keep good records each time you need or request a repair. Do not hire someone to perform repairs without a written agreement that the landlord will pay. If some condition of the property materially affects health and safety, you may be entitled to withhold rent, but only if certain complicated rules are followed. Also, failure by the landlord to supply heat, running water, hot water, electricity, gas or other essential services may provide you greater rights. If the unit is uninhabitable or some condition poses an imminent threat to your health and safety, you might be allowed to terminate the rental agreement immediately. In any of these cases, consult an attorney or a trusted advisor as soon as possible.

Eviction

The landlord may try to evict you if you fail to pay rent or otherwise violate the rental agreement. If you breach the rental agreement and refuse to leave after the landlord gives you notice, the landlord might file eviction proceedings in court. In many cases such disputes are handled by the small claims court. Hire a lawyer if you receive notice of eviction proceedings unless you are being evicted for valid reasons.

A landlord has a lien on your property for unpaid rent except on tools, musical instruments and books used in a trade, family portraits and pictures, wearing apparel, prosthetic and orthopedic appliances, hearing aids, glasses, false teeth, glass eyes, bedding, contraceptive devices, soap, tissue, washing machines, vaporizers, refrigerators, food, cooking and eating utensils, all other appliances used for protection of your health, baby beds and other items for the personal care of babies. Therefore, it is important to pay your rent unless you are sure you are entitled to withhold rent.

Landlord's Rules

The landlord may impose rules regarding your use and occupancy of the rental property if the rules meet certain guidelines. But new rules imposed after you enter into a rental agreement are not valid against you if they substantially modify your rights as a tenant.

Security Deposit

Your landlord may require a security deposit at the beginning of the lease. The landlord may retain the security deposit at the end of the tenancy to pay for accrued rent or damage the

landlord suffered due to your failure to comply with law or the rental agreement. The landlord is required to refund all the remaining part of the security deposit within thirty (30) days after termination of the tenancy, your moving out and demand by you. You must make a written demand within thirty (30) days for the security deposit or the landlord may keep it. If the landlord decides to keep part of the security deposit, he must itemize the damages he claims to have suffered in writing and deliver that to you by mail at your address. Be sure the landlord is aware of your forwarding address.

CONSUMER PROTECTION LAW

Dishonest sellers and merchants prey on uninformed consumers who do not understand their obligations under the contracts they sign. Often the consumers that are the targets of consumer fraud are senior citizens. Certain state and federal laws are designed to protect consumers from dishonest sellers and unfair business practices. Despite the laws, the best precautionary measure is to be a cautious, knowledgeable consumer.

Contract Hints

Every time you purchase goods or a service, you enter into a "contract" with the seller of the good or service. This contract is considered a legal, binding agreement. As a cautious consumer, you should always ask for a written contract to be drawn up whenever you take out a loan, arrange for repairs to your property, make a large purchase, or buy or sell real estate. Never sign a written contract before taking the following precautions: (1) Take the contract home for a day or two to examine the contract closely and to think it over. If the contract is complex, ask an attorney to examine it. (2) Never sign a contract with blanks that are not filled in. Do not do business with a salesperson who will not fill in all of the blanks before asking for your signature. (3) Never sign a contract that you have not had time to read carefully. (4) Keep all copies of contracts, payment records and complaint records in a safe place. Following this advice will help to ensure that you know exactly what you are receiving in return for your signature.

Deceptive Trade Practices

Sometimes "good deals" cost the consumer considerably more money due to high monthly payments or disappointment due to poor product quality.

The Oklahoma Deceptive Trade Practices Act makes it illegal for anyone to misrepresent the characteristics, uses, benefits or quantities of goods or services. The Act also makes it illegal to represent used goods as new or that goods or services are of particular quality when they actually are not. Be an informed consumer, by demanding the contract in writing and reading the contract carefully and by knowing what you are buying. See also, the Oklahoma Consumer Protection Act.

Telephone and Mail Orders

Telephone and mail order shopping can be convenient, but it is also a way in which dishonest people take advantage of consumers. If you do not know the reputation of the selling company, investigate. If you place an order through the mail, always keep the ad, the name and address of the company, the date on which you ordered and your check number. Never give personal or financial information to a salesperson at your door or over the telephone. For example, do not give out your social security number, how much money you make, credit card account numbers or whether you live alone.

If you order by mail, you will be protected by the Federal Trade Commission's Mail Order Rule. This rule requires that companies must ship your product within 30 days if a specific time is not stated. If the goods cannot be delivered on time, the company must send a notice stating the reason for the delay and offer your money back. Never send cash when responding to a mail order ad -- send either a check or a money order. Always remember to check your order promptly upon receipt. Make sure the product is what you ordered and that it has not been damaged in shipping. If it is not what you ordered, contact the company immediately.

Credit

The Oklahoma Uniform Consumer Credit Code (U.C.C.C.) was enacted to protect consumer buyers against unfair practices by some suppliers of consumer credit. If you buy a product or service and pay for it with a credit card or agree to make payments, this is called buying on credit. If you buy on credit, you will likely have to pay a finance charge. One of the purposes of the U.C.C.C. is to set maximum finance charges for consumer credit sales and consumer loans. In Oklahoma, the maximum annual percentage rate that can be charged by a store credit card is subject to change. It is also very important to find out the total amount of the finance charge, interest rate, the total amount of the payments you must make, how long you have to make the payments and also how often to make the payments. A federal law called the Truth-in-Lending Act, along with Oklahoma laws, requires that lenders and merchants who sell on credit must disclose this information. Be sure to ask what the total cost of your purchase or the loan will be with the included finance charges.

Debt Collection

If you are making payments for a product or service because you purchased it on credit and you fall behind on your payments, the creditor can turn your debt over to a collection agency. These agencies are allowed to collect the money you owe by any legal means. However, the federal Fair Debt Collection Practices Act is designed to protect consumers from unscrupulous debt collectors. Under the Act, collection agencies are not allowed to use harassment, profane language or scare tactics to force you into payment. Collection agencies are also prohibited from calling before 8:00 a.m. or after 9:00 p.m. or contacting your friends or relatives. The Act contains several other protective provisions.

Door-to-Door Sales

Both state and federal laws protect consumers from sales resulting from high-pressure sales pitches by dishonest door-to-door salespeople. The Oklahoma U.C.C.C. provides the buyer the right to cancel a home solicitation sale three (3) business days after the day on which the buyer signed the agreement. Cancellation occurs when the buyer gives the seller written notice of cancellation at the seller's address. However, in order to be protected under this law, both the "sales pitch" and the agreement of purchase must take place at the buyer's home. Always keep a copy of the written notice of cancellation for yourself.

Investment Schemes

Investment schemes are a very common way dishonest people steal money from consumers. Be very wary of salespeople who offer investments that are risk free and can guarantee a high return on your money. An investment called a "sure thing" will likely result in the loss of your money. Never invest your money in an investment if you feel like you are being pressured. Investments, like complex contracts, are not something you should rush into. If you are thinking of investing a large sum of money, ask the advice of a professional or someone whose judgment you trust in aiding you with your decision.

Advice for Consumers

The best way to protect yourself from consumer fraud is to be a cautious, knowledgeable consumer. Always take the time to fully understand your obligations when signing a contract for goods or services. Know exactly what you are to receive and what the total cost will be. Remembering these things, along with understanding your rights as a consumer, will help to protect you from becoming a victim of consumer fraud. The old adage often holds true: "if it sounds too good to be true, it probably is."

Sources:

Consumer Credit Code, Okla. Stat. tit. 14A, 1-101 to 9-101.

Consumer Credit Protection Act, 15 U.S.C.A. 1601 et seq..

Deceptive Trade Practices Act, Okla. Stat. tit. 78, 51-55.

Fair Debt Collection Practices Act, 15 U.S.C.A. 1692 et seq..

Truth in Lending Act, 15 U.S.C.A. 1601-1667e.

DEBTORS' RIGHTS

Homestead Protection

If you are an Oklahoma resident, your home may be protected from future claims of creditors if that property is your homestead. The homestead is the property you or your family occupies as their home or residence, along with certain amounts of other various types of personal property such as livestock. If the homestead is located within a municipality it can be no more than one

acre without a dollar limit on its value. If the homestead is located outside a city or town it is limited to one hundred sixty (160) acres and the improvements thereon.

Creation of the Homestead

If you are a homeowner, it is relatively easy in Oklahoma to create a homestead in that land. To give a piece of land homestead status, one must intend to occupy that land as the residence and must actually occupy that land as such. If there has not been the opportunity for occupation, one must at least commit acts which clearly evidence the intent to make the land a homestead.

Benefits

Homestead protection can be useful if you are later sued as a result of an auto accident, business debts, medical bills, a loan guarantee that goes bad or other misfortune. Establishing a homestead will protect the value of your home against attachment, seizure, or execution by your creditors. Declaring your residence as your homestead may also provide tax benefits. However, declaring a homestead for tax purposes will require filing certain documents. Consult an attorney or call the county assessor to learn how to do this.

Restrictions

A homestead will not protect your home from the following:

- ❖ a mortgage you voluntarily granted encumbering the homestead;
- ❖ taxes or other legal assessments on the homestead;
- ❖ unpaid charges for work and/or materials for homestead improvements.

Duration and Destruction of Homestead

A homestead will generally continue as long as the party holding the land as a homestead continues to intend to and does occupy the land as such. The homestead right will pass to a surviving spouse as long as the spouse meets the intent and occupation requirements. The right will continue as long as the spouse maintains a home on the homestead land. Termination of a homestead may occur in several ways. A homestead may be waived, forfeited, or abandoned; lost by death if there is no surviving spouse or minor children; or lost upon a transfer or conveyance of title or rights in the land.

Home Equity Loans

A home equity loan allows you to take advantage of the equity in your home by taking out a loan against that equity. Home equity loans are often useful tools to fund a variety of ventures. As a senior citizen, it is likely that your home is your most valuable asset. The importance of protecting your home as an asset is evidenced by the fact that your home is protected against attachment, seizure or execution of judgment based on the homestead exemption recognized by the Oklahoma Constitution. Although generally safe, you should always proceed cautiously

when considering taking out any kind of home equity loan because a default or foreclosure could result in the loss of your home.

Reverse Mortgages

Reverse mortgages allow you to convert some of the equity in your home into cash while you retain home ownership. Rather than making a payment to your lender each month, the lender often pays you. This arrangement can help senior citizens increase their income and pay living or health-care expenses.

A reverse mortgage will use up some or all of the equity in your home, leaving fewer assets for you and your heirs in the future. It is a good idea to consult with your family and a financial advisor to discuss a workable plan for repayment.

Before entering into any reverse mortgage or other home equity loan, carefully consider your financial needs, future ramifications of the loan plans, and any alternative measures, which might provide sufficient finances to meet your needs. Your home is probably one of your most valuable assets and impairing it through these measures presents the possibility of foreclosure or loss of your home through a sale to pay off the debt. It would be wise to consult an attorney or an agency that deals with this area before entering into any such agreement. See the Federal Trade Commission Newsletter, "Reverse Mortgages", November 1991.

BANKRUPTCY LAW

Bankruptcy is a court procedure which can render some debts legally unenforceable and which is intended to ensure equality of treatment among creditors. It should be considered a last resort. The better way to avoid financial problems is to avoid credit in the first place. If you have incurred debt, try to negotiate with creditors or obtain substitute financing before filing bankruptcy. For help, consider the National Foundation for Consumer Credit (800) 388-2227 or check the yellow pages for credit counseling services.

Types of Bankruptcy

There are four types of bankruptcy that are most common to consumers and businesses. Chapter 7 is a liquidation bankruptcy. Under Chapter 7, a debtor can keep certain "exempt" assets and everything else must be surrendered and sold to pay bankruptcy administration expenses and creditors. Chapter 11 involves a reorganization of debts of a business or individual. It is generally the most expensive and is useful for individuals only in unique circumstances. Chapter 12 is a reorganization for family farmers. Chapter 13 involves a repayment plan for individuals that entitle the debtor to extend and often reduce payments over a three to five year period.

How to Choose a Type of Bankruptcy

While Chapter 7 bankruptcy requires the debtor to submit all non-exempt assets to the bankruptcy trustee, Chapter 13 does not. Therefore, Chapter 7 is best for those with few assets.

Chapter 13 is often called the "wage-earner" option and requires debtors to have some source of regular income, although it is not limited to those whose income is only wages or salary. Chapter 13 debtors must submit their income to creditors for the three to five year term of the plan, and if all the payments called for by the plan are made, the debts are discharged.

Chapter 13 allows the debtor to cure defaults under mortgages in some instances while Chapter 7 does not. A person does not qualify to file a Chapter 13 if he or she has secured debts greater than \$1,081,400 or unsecured debts of over \$360,475. A Chapter 11 is often most viable for substantial businesses with substantial debt. An attorney would be best able to evaluate your situation and help you choose the appropriate course of action.

Bankruptcy and Your House

As long as you keep your mortgage payments current, you are entitled to keep your homestead in Oklahoma even if you file bankruptcy. See the Section of this Handbook on Debtors' Rights for a description of what qualifies as homestead. Because the homestead is entitled to such protection, avoid granting a mortgage encumbering the homestead if that is possible.

Motor Vehicles and Bankruptcy

Oklahoma law allows a person to keep up to \$7,500 equity (value above the debt) in a motor vehicle. Most people, however, find that they can keep a car because it is financed and there is less than \$7,500 equity. Therefore, if you cannot sell a car for more than you owe on it and you keep the payments current, you may be able to keep the car. If you own the car free and clear of any liens, you are entitled to the \$7,500 only.

Other Property Besides Motor Vehicles and Homestead

Other assets remain exempt from creditors' claims and therefore can be retained despite a bankruptcy filing. They include, in very general terms, household and kitchen furniture, wearing apparel up to \$4,000, up to \$10,000 for tools of the trade, no limitation as to professionally prescribed drugs and other health aids, and certain animals.

Transfers to Family Members Before Bankruptcy

Transferring assets without receiving equivalent value for up to four years before you file bankruptcy could be deemed a fraudulent transfer. If such transfers are deemed to have taken place, they can be reversed or "avoided" by the bankruptcy court, thus the receiver of the asset will have to give the asset back to the giver. Likewise, you cannot "sell" your assets for less than their value. Unless you receive equivalent value such a transfer might still be considered fraudulent.

The Lasting Effects of Bankruptcy

Bankruptcy can affect you indefinitely. For example, credit applications often ask whether you have ever filed bankruptcy. Unless you lie (a very serious act), you will always have to answer "yes." However, the longer it has been since filing the less impact it will have. Bankruptcy generally can show up on a credit report for up to ten (10) years. A debtor cannot receive a second Chapter 7 bankruptcy discharge for eight (8) years after filing a previous Chapter 7 and receiving a prior discharge. Some say that you can reestablish your credit within a year or two after a bankruptcy filing except for major purchases or commercial loans. Finally, some people experience difficulty in obtaining employment after bankruptcy, even though there are laws designed to prevent that.

Credit After Bankruptcy

To reestablish credit, be patient. Get one credit card, make small purchases and pay them in a prompt fashion. Then use that credit reference as a springboard to other credit. Bankruptcy has become so common that many institutions will extend credit to people who have filed bankruptcy. There are now many "buy here pay here" car dealerships that make the purchase of a car possible. Also, there are secured credit cards that require you to open a bank account and then allow you to charge up to the amount in the bank account. Those cards often have a high interest rate and hefty annual fees, but they may give you the opportunity to obtain credit when no other avenue is available. Because you may be unable to file bankruptcy again, you should think carefully about incurring too much debt too fast after the bankruptcy to avoid the problem that caused the first bankruptcy.

CREDIT REPORTING AND CREDIT HISTORY

False Information in Your Credit History

Although a poor credit history cannot be erased, errors in your credit report can. Consumers should periodically review their credit reports to check for inaccuracies or omissions. This could be especially important if you are considering making a major purchase, such as buying a home. Checking in advance on the accuracy of the information in your credit file could speed the credit-granting process.

Your credit file may contain errors that could affect your chances of obtaining credit. Under the Fair Credit Reporting Act (FCRA), you are entitled to have incomplete or inaccurate information corrected without charge. However, credit bureaus will report the information they are given. Therefore, consumers should take the responsibility to investigate their credit reports because they are in the best position to know whether the information is accurate. If inaccurate information is found, consumers should bring the dispute regarding information in their credit report to the attention of the credit bureaus.

If you dispute information in your credit report, you must contact the credit bureau and explain the dispute. The credit bureau must investigate the dispute within a "reasonable period of time"

unless the credit bureau believes the dispute to be "frivolous or irrelevant." To check on the accuracy of a disputed item, the credit bureau will ask the creditor in question what its records show. If the disputed item is on the public record, the credit bureau may check there. Credit bureaus must delete any disputed item which cannot be verified. If an item contains erroneous information, the credit bureau must correct that error. Credit bureaus must also complete any item of information which is incomplete. For example, if your file showed accounts that belonged to another person the credit bureau would have to delete them. If it showed that you were late in making payments but failed to show that you were no longer delinquent, the credit bureau would have to add information to show that your payments are now current. Also, at your request, the credit bureau must send a notice of correction to any creditor who has checked your file in the past six (6) months.

If the investigation does not resolve your dispute, the FCRA permits you to file a statement of up to 100 words with the credit bureau explaining your side of the story. Employees of the credit bureau are often available to help you word your statement. Although it is possible to include a statement over 100 words, the FCRA provides that if the credit bureau provides assistance in writing a clear summary of the dispute, the statement must be 100 words or less. The credit bureau must include this explanation in your report each time it sends out your report.

In addition, Oklahoma law provides that whenever an opinion of a person's financial or credit standing is to be submitted in writing for the purposes of establishing a credit rating, the person submitting such an opinion on that credit standing must first mail a copy of such opinion to the person about whom the opinion is given. The mere existence of a written opinion will not necessarily require that the opinion be mailed to the person about whom the opinion is given; the opinion must be one which is submitted in writing to establish a credit rating.

There are three (3) large national credit bureaus that supply most credit reports. These companies are Equifax, Trans Union and Experian. Credit bureaus are usually listed in the yellow pages of your telephone book under "Credit Reporting Agencies." You may want to contact each of them to ask for a copy of your credit report.

You may contact any one of the three major credit bureaus at the following addresses:

Equifax Credit Information Services
P. O. Box 740241
Atlanta, Georgia 30374-0241 (800) 685-1111

Trans Union Corporation
Consumer Relations Center
P. O. Box 2000
Chester, Pennsylvania 19022 (800) 916-8800

Experian Information Services
P. O. Box 2104
Allen, Texas 75013-2104 (888) 397-3742

The Federal Trade Commission publishes free brochures on credit-related issues. For a complete list of publications, write for Best Sellers, Consumer Response Center, Federal Trade Commission, Room H-130, 600 Penn. Ave., N.W., Washington, D.C. 20580; or call 1-877-438-4338.

INCOME AND OTHER TAXES

Federal Taxes

Federal Income Tax

There are several income tax advantages for older Americans. However, tax laws and regulations are always subject to change. If you have any questions about your tax returns, consider discussing them with a certified public accountant or a tax attorney or calling the Internal Revenue Service.

Filing Your Income Tax Return

In general, every individual must file a federal income tax return on or before April 15th of each year. Certain individuals, however, are not required to file a federal income tax return, and special rules may be applicable to individuals who are 65 or older. For example, if you are a certain age and your gross income is less than a certain dollar amount, you may not be required to file a return. The gross income threshold may change whether you file as an individual or as a married couple. The amounts are subject to change, and the determination as to whether you must file a return is made for each year. If you are unsure as to whether you should file a federal income tax return, contact the Internal Revenue Service or a qualified tax return preparer.

Standard Deduction

Taxpayers may itemize deductions or elect the standard deduction amount. Taxpayers who are age 65 or older and/or blind are entitled to an increased standard deduction amount.

Selling Your Home or Other Property

Regardless of age, a taxpayer may exclude from income up to a certain dollar amount of gain (double for joint filers meeting certain conditions) from the sale of a home owned and used by the taxpayer as a principal residence for at least two of the five years before the sale. This exclusion does not apply if, within the two-year period ending on the sale date, there was another home sale by the taxpayer to which the exclusion applied.

Married taxpayers filing jointly for the year of sale may exclude up to a certain dollar amount of home-sale gain if:

- ❖ either spouse owned the home for at least two of the five years before the sale;
- ❖ both spouses used the home as a principal residence for at least two of the five years before the sale; and
- ❖ neither spouse is ineligible for the full exclusion because of the once every two year limit.

Stepped Up Tax Basis

A special provision of the income tax laws provides that a taxpayer who acquires property from a deceased person receives an income tax basis equal to the fair market value of the property at the time of the decedent's death. In many circumstances, this provision provides important planning opportunities because large amounts of unrealized gain (i.e., the difference between a property's fair market value and the property's lower income tax basis) can escape income taxation.

For example, assume that an individual owns property with a fair market value of approximately \$100,000 and an income tax basis of \$10,000. Upon a sale or other taxable disposition of such property, the owner would recognize a \$90,000 gain, which would either be subject to taxation at the applicable long-term capital gain rate, ordinary income, or a combination of capital and ordinary income rates.

If, however, the same property were held by the individual until death, those receiving the property would receive a "stepped up" income tax basis of \$100,000 (i.e., the fair market value on the date of death) and could immediately sell the property for \$100,000 without incurring any federal income taxation. Taking advantage of this provision may be an important part of your estate plan.

Medical Deductions

You may be able to benefit from itemizing your deductions if you have substantial medical and dental expenses which are not reimbursed by insurance. In general, you are entitled to an itemized deduction for unreimbursed medical expenses to the extent they exceed a certain percentage of your adjusted gross income.

Credit for Elderly or Disabled

If you are 65 years old before the end of a tax year or under 65 and retired on disability before the end of a tax year, you may be eligible to benefit from the Credit for the Elderly or Permanently and Totally Disabled. The amount of the Credit is dependent on your marital and filing status, the amount of certain federal benefits you receive, your income level and other factors.

State Taxes

Oklahoma Income Tax

In general, Oklahoma imposes an income tax on the amount of your income as determined for federal income tax purposes. However, certain items that may be taken into account for federal purposes are not counted in determining your Oklahoma income tax. For example, interest on certain obligations of the United States as well as certain government retirement benefits and social security benefits are not taxed. On the other hand, some items, such as municipal bond income, which are exempt from federal income taxation, are subject to the Oklahoma income tax. Also, special exemptions are provided if you are 65 or older and meet certain income limits or if you are legally blind.

If you are a low income resident of the state, you may file a claim for sales tax relief on Form 538-S and enclose it with your income tax return.

Property Taxes

Oklahoma has what is referred to as an "additional homestead exemption." This allows for an additional exemption of assessed value for a person with an annual gross household income of a certain dollar amount a year or less regardless of age. The form 538-H must be filled out and mailed to the Oklahoma Tax Commission at 2501 Lincoln Blvd, Oklahoma City, Ok., 73194-0003. Anyone who is 65 or older or totally disabled, who is head of household, and a resident of the state of Oklahoma during the previous year and whose gross household income does not exceed \$12,000 is qualified for this program. You may obtain the necessary form from the County Assessor's office or contact the Oklahoma Tax Commission at (405) 521-3108. There is also a veterans' exemption which allows certain veterans a certain dollar amount exemption on assessed value of personal property.

Tax Return Preparation Assistance

The Volunteer Income Tax Assistance Program (VITA) and Tax Counseling for the Elderly are two cooperative programs from the Internal Revenue Service and the Oklahoma Tax Commission that provide free services to taxpayers seeking assistance with the filing of state and local tax returns. Volunteers work in libraries and community centers from February to April. To find out when these volunteers will be in your area contact VITA at (800) 829-1040 or the Oklahoma Tax Commission at (405) 521-3637.

THE COURT SYSTEM (STATE AND FEDERAL COURTS)

When a dispute arises, the people involved should be able to sit down, talk with each other, and resolve their differences. Unfortunately, not all disagreements can be settled in an informal manner.

Courts in the United States hear two types of cases: civil cases and criminal cases. A civil case is a dispute between two or more people or a lawsuit against a person because he or she allegedly has violated another person's rights. Examples of civil cases are contract disputes, debt disputes, automobile accident claims and personal injury claims. A criminal case is one in which the government prosecutes someone accused of breaking a law. While the worst that can happen in a civil suit is a judgment for money damages or an injunction, in a criminal case the defendant may be fined, incarcerated, or both.

The United States has fifty-one court systems. These include a federal court system, including trial courts, appellate courts, and the United States Supreme Court; and fifty individual state court systems with separate trial courts, appellate courts, and state supreme courts.

Federal Courts

The first level in the federal court system is the District Court, the basic trial court. The District Court hears criminal cases in which the federal government is prosecuting someone for breaking a federal criminal law, such as kidnapping and mail fraud cases. A District Court also hears civil cases. However, in order for the federal court to have jurisdiction in a civil case, one of the following requirements must be met:

1. The case must involve a federal law, a treaty, or the U.S. Constitution.
2. The case must be specifically reserved for the federal courts, like antitrust, bankruptcy or maritime cases.
3. The case must be (a) between parties who are residents of different states and (b) involve an amount in excess of \$75,000.

If a party is unhappy about the outcome in District Court, he can appeal the case to one of thirteen Courts of Appeal. District Courts located in Oklahoma are part of the Tenth Circuit Court of Appeals, which also hears appeals from the District Courts located in Colorado, New Mexico, Kansas, Utah, and Wyoming. A Court of Appeals can uphold or reverse a District Court's decision, and/or return the case to the District Court for further proceedings.

The United States Supreme Court, located in Washington, D.C., is the highest court in our nation. In general, the Supreme Court will hear only cases reviewed by the Courts of Appeals. The Supreme Court will also review certain cases heard by the state supreme courts. The Supreme Court only agrees to hear a very small percentage of the cases it is asked to review.

Oklahoma Courts

The backbone of the legal system in the United States is the state courts. Unlike federal courts which have authority to hear only certain cases, state courts have authority to hear almost all types of cases. The Oklahoma Court system includes Municipal (city) Courts, District Courts, the Court of Appeals (four divisions), the Court of Criminal Appeals, and the Supreme Court of Oklahoma.

The lowest level of trial courts includes the municipal or city courts, which hear only criminal violations of city ordinances, mostly involving traffic citations. The next level of trial courts in Oklahoma includes the District Courts. There are twenty-six judicial districts in Oklahoma, each of which has at least one District Judge, with the more populous counties having several District Judges. There is also an Associate District Judge and Special Judge in each county of the state.

The District Courts hear all types of matters including criminal (both felony and misdemeanor), civil, family law (divorce, child custody, etc.), probate (wills, guardianships, conservatorships, etc.) and appeals from certain Municipal Courts. The District Courts also have a small claims docket for cases involving no more than \$6,000 where litigants can have their cases heard in an informal setting, without the need to be represented by an attorney. The District Court Clerk can assist persons wishing to have their cases heard on the small claims docket.

When a party is unhappy about the outcome of a civil case in District Court, he can appeal the case to the Oklahoma Supreme Court, which assigns the appeal to one of four divisions of the Oklahoma Court of Appeals. A party can appeal a decision of the Court of Appeals to the Oklahoma Supreme Court which, like the United States Supreme Court, only agrees to hear a small percentage of the cases it is asked to review. Oklahoma is somewhat unique in that all

criminal appeals are handled by the Court of Criminal Appeals, which has the final say with respect to all criminal appeals.

If you are accused of a crime, you may be entitled to a court-appointed attorney. If you need an attorney for a civil suit, and cannot afford one, you may wish to contact your local Legal Aid, who may be able to direct you to other legal resources.

SOURCES OF FURTHER INFORMATION

Area Agencies On Aging

These agencies and organizations provide direct services to older persons, such as congregate/home delivered meals, nursing home ombudsman services, legal services, information and referral and outreach services.

Grand Gateway Area Agency on Aging

333 S. Oak St.

P. O. Drawer B

Big Cabin, OK 74332

(918) 783-5793 or (800) 482-4594

(Craig, Delaware, Mayes, Nowata, Ottawa, Rogers, and Washington Counties)

EODD Area Agency on Aging

1012 N. 38th St.

P.O. Box 1367

Muskogee, OK 74402-1367

(918) 682-7891 or (800) 211-2116

(Adair, Cherokee, McIntosh, Muskogee, Okmulgee, Sequoyah and Wagoner Counties)

KEDDO Area Agency on Aging

P.O. Box 638

Wilburton, OK 74578-0638

(918) 465-2367 or (800) 722-8180

(Choctaw, Haskell, Latimer, LeFlore, McCurtain, Pittsburg, and Pushmataha Counties)

SODA Area Agency on Aging

224 W. Evergreen, Suite 202

P.O. Box 709 (Send mail to the P.O. Box)

Durant, OK 74702

(580) 920-1388 or (800) 211-2116

(Atoka, Bryan, Carter, Coal, Garvin, Johnston, Love, Marshall, Murray, and Pontotoc Counties)

COEDD Area Agency on Aging

400 N. Bell

P.O. Box 3398

Shawnee, OK 74802-3398

(405) 273-6410 or (800) 375-8255

(Hughes, Lincoln, Okfuskee, Pawnee, Payne, Pottawatomie, and Seminole Counties)

INCOG Area Agency on Aging

2 W. 2nd St., 8th Floor/Williams Tower 2

Tulsa, OK 74103

(918) 584-7526

(Creek, Osage, and Tulsa Counties)

NODA Area Agency on Aging

2901 N. Van Buren

Enid, OK 73703-2505

(580) 237-2205 or (800) 749-1149

(Alfalfa, Blaine, Garfield, Grant, Kay, Kingfisher, Major, and Noble Counties)

Areawide Aging Agency

4101 Perimeter Center Drive, Suite 310

Oklahoma City, OK 73112-5910

(405) 942-8500 or Info/Referral: (405) 943-4344

(Canadian, Cleveland, Logan, and Oklahoma Counties)

ASCOG Area Agency on Aging

802 W. Main Street

Duncan, OK 73533-1647

(580) 252-0595 or (800) 658-1466

Senior Info Line: (800) 211-2116

www.ascog.org

(Caddo, Comanche, Cotton, Grady, Jefferson, McClain, Stephens, and Tillman Counties)

SWODA Area Agency on Aging

Bldg 420-Sooner Drive

P.O. Box 569

Burns Flat, OK 73624-0569

(580) 562-4882 or (800) 627-4882

Fax: (580) 562-4880

www.swoda.org

(Beckham, Custer, Greer, Harmon, Kiowa, Jackson, Roger Mills, and Washita Counties)

OEDA Area Agency on Aging

330 Douglas Ave,

P.O. Box 668

Beaver, OK 73932-0668
(580) 625-4531 or (800) 658-2844
www.oeda.org

(Beaver, Cimarron, Dewey, Ellis, Harper, Texas, Woods, and Woodward Counties)

Audio Services

Oklahoma Department of Rehabilitation Services

Senior Citizens Hearing Aid Project

Services to the Deaf and Hard of Hearing

Oklahoma School for the Deaf

1100 E. Oklahoma Ave.

Sulphur, OK 73086

(580) 622-4900 or (888) 685-3323

(866) 309-1717 (Equipment)

Fax: (580) 622-4960

www.okrehab.org

Tulsa Speech and Hearing Assoc.

8740 E. 11th Street, Suite A

Tulsa, OK 74112

(918) 832-8742 (voice/TDD) Tulsa

(405) 239-6730 (voice/TDD) Oklahoma City (405) 228-4064

Statewide: (888) 311-3523 or (866) 207-8742 (Interpreter services only)

Department Of Mental Health

Reach Out

Substance Abuse Services

1200 N.E. 13th

Oklahoma City, OK 73117

(405) 522-3908 or (405) 522-3951 (TD) or (800) 522-9054 (24 hours)

(Referral Service)

Prevention Resource Center

P.O. Box 53277

Oklahoma City, OK 73152

(405) 522-3908

Education And Employment

Oklahoma State Regents for Higher Education

655 Research Parkway, Suite 200

Oklahoma City, OK 73104

(405) 225-9100 www.okhighered.org

Department of Libraries

200 N.E. 18th Street
Oklahoma City, OK 73105
(405) 521-2502 or (800) 522-8116

AARP/SCSEP

4823 S. Sheridan Rd.
Tulsa, OK 74145
(918) 621-4480 or fax (918) 622-2690

Geriatric Assessment Services**Geriatric Assessment Service****College of Osteopathic Medicine of OSU**

2345 Southwest Blvd.
Tulsa, OK 74107
(918) 582-1972

Housing And Long-Term Health Care**Dept. Of Human Services****Aging Services Division****Home Maintenance Aide Program**

Home and Community Based Services
P.O. Box 25352
Oklahoma City, OK 73125
(405) 521-2281
(405) 521-4165

Department Of Commerce**Community Action - Weatherization Assistance Program**

2800 NW 36th St., Suite 221
Oklahoma City, OK 73112
(405) 949-1495
www.okacaa.org

Long-Term Care Ombudsman**DHS Aging Services Division**

2401 N.W. 23rd St., Suite 40
Oklahoma City, OK 73107
(405) 521-6734

Legal Services

Legal Aid Services of Oklahoma, Inc.

Senior Law Project

2901 Classen Blvd. Suite 112

Oklahoma City, OK 73106

(405) 557-0014 or (800) 421-1641

www.legalaidok.org

www.oklaw.org

Contact your local Legal Aid office about special services for senior citizens.

Miscellaneous

Oklahoma Alliance on Aging

3200 NW 48th Street, Suite 222

Oklahoma City, OK 73112

(405) 943-1895

www.okallianceonaging.org

Alzheimer's Association

(800) 272-3900 (24 hours)

(918) 481-7741 (Tulsa)

(405) 319-0780 (Oklahoma City)

State Health Department

1000 N.E. 10th St.

Oklahoma City, OK 73117

(405) 271-5600 or (800) 522-0203

www.ok.gov/health

Eldercare

(405) 790-0816

Helps older Oklahomans stay in their homes and communities longer.

Oklahoma Department of Rehabilitation Services

Division of Visual Services Field Offices

(405) 271-6060 Oklahoma City

(918) 581-2301 Tulsa

(580) 436-2430 Ada

(580) 233-6514 Enid

(580) 286-3789 Idabel

(580) 585-4250 Lawton

(918) 302-4250 McAlester

(918) 781-4162 Muskogee

(580) 772-5805 Weatherford
(918) 256-5275 Vinita
(405) 222-0685 Chickasa
(580) 256-2565 Woodward
(405) 372-2017 Stillwater

Eye Care America

(800) 222-EYES (3937)
Online Referral: www.eyeamerica.org
Project matches persons over 65 with a volunteer ophthalmologist.

Senior Info-Line

(800) 211-2116

ADvantage Waiver program

(800) 435-4711
www.advantage.ok.gov

Senior Corps Programs

(405) 231-5201
Fax (405) 231-4329
www.seniorcorps.gov

Adult Protective Services

(405) 521-3660

Statewide Abuse Hot Line (includes children)

(800) 522-3511

Volunteer Service Credit Bank Program

(405) 522-6240

American Association of Retired Persons (AARP)

601 E Street, N.W.
Washington, DC 20049
1-888-OUR-AARP (687-2277)
www.aarp.org

National Center for Home Equity Conversion

360 Robert St., N. Suite 403
St. Paul, MN 55101
(651) 222-6775
www.reverse.org

Federal Trade Commission
1-877-FTC-HELP (382-4357)
TTY: 1-866-653-4261
www.ftc.gov

Office of the Attorney General
Consumer Protection Division
313 NE 21st Street
Oklahoma City, OK 73105-4894
(405) 521-3921 or (918) 581-2885
www.oag.ok.gov

The following pamphlets are available at no charge from the Oklahoma Bar Association. For brochures write to:

Public Communications Committee
Oklahoma Bar Association
P. O. Box 53036
Oklahoma City, Oklahoma 73152-3036
or read the brochures at www.okbar.org/public/brochures

If you write and request a pamphlet, include the title(s) of the pamphlets you would like:

Do You Need A Will?
Is Probate Needed?
When Do You Need Joint Tenancy?
Thinking Of Buying A Home?
What Are Your Rights And Duties As A Tenant?
What Are Your Rights As A Landlord?
Is Divorce The Answer For You?
Should You Go To Small Claims Court?
What Are Your Rights As An Employee?
Is Bankruptcy The Answer?
Information For Trial Jurors
Lawyers And Legal Fees
Abogados y sus Honorarios (Lawyers and Legal Fees)
What Is An Advance Directive For Health Care (Living Will)?
The Oklahoma Advance Directive For Healthcare
Methods for Resolving Conflicts & Disputes