

SENIORS & THE LAW

A Guide for Maturing Californians



FUNDED WITH A GENEROUS GRANT FROM THE CALIFORNIA BAR FOUNDATION

SENIORS AND THE LAW

A GUIDE FOR MATURING CALIFORNIANS

You have reached your “golden years.” Or your parents have reached theirs. You have a lot of company. With more than 4 million residents age 65 or older, California is the most senior-populated state in the nation. And the numbers keep growing. So, too, do the legal rights of seniors and the many programs geared for them.

As you become a senior, you will face new challenges. Will you have enough money to make ends meet? Will you become incapacitated? Will you be able to get around if you cannot drive? Will you wind up helpless and alone—or even abused? You may be a more likely target in a wide range of consumer scams as well, from home repair offers to mail-order schemes to living trust “mills.” Slick con artists set their sights on seniors.

At no other time in your life has it been more important to plan ahead—and know your rights. You may not be aware of the many laws, benefits and special services available to help you stay in charge of your life. “Seniors and the Law” touches on some of them and provides contact information for numerous resources. Keep in mind that this guide is intended to provide you with general information. Laws are constantly subject to change. If you have a specific legal problem, you may want to consult an attorney.

MAKING ENDS MEET / CHOOSING WHERE TO LIVE / OBTAINING HEALTH CARE AND BENEFITS / PLANNING AHEAD / DEALING WITH DEBT / STAYING ON THE JOB / GETTING AROUND / HANDLING ELDER ABUSE / AVOIDING CONSUMER SCAMS / GETTING DIVORCED OR REMARRIED / RAISING YOUR GRANDCHILDREN / FINDING A CAREGIVER OR NURSING HOME / LOSING A SPOUSE OR PARENT / GETTING LEGAL HELP / RESOURCES

MAKING ENDS MEET

You may be tapping into retirement benefits for the first time. You may be house-rich but cash-poor. Or you may be struggling just to pay your bills in the recent economic downturn. How you make ends meet will depend on your particular circumstances. But in your senior years, it will likely involve new types of income—Social Security, Supplemental Security Income, a pension or maybe a retirement account distribution.

What is Social Security?

It is a government program that provides regular benefits to eligible workers and their families after the worker retires, becomes severely disabled or dies. Social Security taxes from employees, employers and self-employed workers help fund the program. If you have paid into the program long enough—roughly 10 years—you will be eligible for full benefits sometime between the ages of 65 and 67 (depending on your date of birth). What you receive will be based on your past earnings. You may qualify for reduced benefits at age 62. But such benefits, if taken at that age, will remain at that lower level permanently.

Or, you can put off collecting any benefits until age 70. You will receive *delayed retirement credit* and wind up with a larger monthly check—as much as 8 percent more for each year beyond your retirement age. To find out how employment income might affect your benefits, see the section entitled *Staying on the Job*. And for information on the potential impact of your marital status, see *Getting Divorced or Remarried*.

Traveling or living in most foreign countries will not affect your eligibility for benefits. However, you should contact Social Security if you plan to leave the country for 30 days or longer.

To check your earnings and benefit status, call 1-800-772-1213 (socialsecurity.gov) for a free personal statement from the Social Security Administration. To find out what other types of benefits might be available to you, you can also check the National Council on Aging’s “benefits checkup” Web site (benefitscheckup.org).

What is a representative payee?

A representative payee is someone who is authorized to receive your Social Security checks for you. If you have trouble managing your checks, for example, the Social Security Administration might appoint a relative or friend to receive the payments for you. (A power of attorney is not sufficient for cashing such checks.) By law, a representative payee

can only spend the funds on your needs—and could be convicted of misusing funds if he or she were to do otherwise.

Veterans can contact the U.S. Department of Veterans Affairs and railroad retirees can contact the Railroad Retirement Board about similar payee programs. (See *Resources* section.)

What is Supplemental Security Income (SSI)?

SSI is a cash assistance program for U.S. citizens and some non-citizens who are age 65 or older, blind or disabled. Only those with limited resources can qualify for monthly checks in an amount based on the individual’s circumstances. In California, the program is administered with additional funding from the State Supplemental Program (SSP). Even if you believe you will not qualify for more than a very small amount of SSI/SSP funding, it may be worth your while to apply for such assistance. As a recipient, you are automatically eligible for free health benefits under Medi-Cal. And you may receive other benefits, such as *In-Home Supportive Services*, as well. (WIC §§ 12000-12351) You can apply for SSI/SSP at your local Social Security Administration office.

What is a reverse mortgage?

A reverse mortgage allows you, if you are 62 or older, to receive cash advances based on the equity in your home. If you own your home but have little income, this type of loan may assist you in making ends meet. You generally will not have to pay anything back until you sell your home, transfer title, leave your home for an extended period, move out or die. Nor is there any prepayment penalty. And you can never owe more than the value of your home. To obtain such a loan, you must use a licensed lender. (CC § 1923) In addition, you

KEY CODE ABBREVIATIONS

BPC	BUSINESS AND PROFESSIONS CODE
CC	CIVIL CODE
CCP	CODE OF CIVIL PROCEDURE
Corp.	CORPORATIONS CODE
FC	FAMILY CODE
GC	GOVERNMENT CODE
HSC	HEALTH AND SAFETY CODE
IC	INSURANCE CODE
LC	LABOR CODE
MVC	MILITARY AND VETERANS CODE
PC	PENAL CODE
Prob.	PROBATE CODE
PRC	PUBLIC RESOURCES CODE
PUC	PUBLIC UTILITIES CODE
RTC	REVENUE AND TAXATION CODE
UIC	UNEMPLOYMENT INSURANCE CODE
VC	VEHICLE CODE
WIC	WELFARE AND INSTITUTIONS CODE



must get counseling regarding such loans before applying for one. (The lender is required to provide information on counseling agencies and cannot accept your application without a certificate showing you underwent counseling.) With so much at stake, you should make sure you understand the legal and financial consequences before you sign such a loan.

You can get more information on reverse mortgages and local non-profit counseling agencies by visiting the U.S. Department of Housing and Urban Development's Web site or the AARP's Web page. (See *Resources*.)

Is there any special tax relief for seniors?

Yes, as a senior, you may be eligible to keep your property tax at the same level if you sell your home and buy another home that is worth the same or less. (See *Choosing Where to Live*.)

The future of two other tax relief programs for seniors, however, remains in question. In 2008, funding for a *homeowner and renter assistance program* that partially reimbursed property tax payments to low-income seniors and the blind and disabled was cut from the state budget. For more information, contact the Franchise Tax Board. (See *Resources*.)

And in a state budget crisis in early 2009, legislation suspended a state *property tax postponement program* that allowed low-income seniors and disabled citizens to defer the payment of the property tax on their homes until the sale of the property or the settlement of their estate. (RTC §§ 20581, 20639) For updated information on the program's status, contact the State Controller's office. (See *Resources*.)

Homeowners of any age can file a *homeowners property tax exemption* with their county assessor's office to claim a tax exemption on \$7,000 of the market value of their home. To be eligible, the homeowner must live in the home. (RTC § 218)

TOUGH TIMES.

In these turbulent times, hundreds of thousands of Americans have lost their homes in foreclosure. Many others have seen their retirement nest eggs cut in half. In turn, lawmakers are passing legislation and proposing numerous changes and reforms to help stimulate the ailing U.S. economy and keep Americans afloat. Seniors age 70-1/2 and older do not have to take their retirement distribution in 2009, for example. Food stamps and unemployment benefits have been expanded. Many working Americans will see their paychecks fattened by tax cuts. And recipients of Social Security and certain other benefits will get a one-time \$250 payout. Go to recovery.gov to track the impact of the stimulus legislation. And check with your Congressional representative for updates on further proposed changes.

Can I get any help paying my gas and electric bills?

If you have very little income, you may qualify for *California Alternate Rates for Energy (CARE)*. This program provides a 20 percent discount on electric and natural gas bills. (PUC § 739.1) For information and an application, contact your local energy company.

What can I do if I can't afford to eat?

Find a *nutrition site* in your community. Every county has them—usually in senior centers.

You and your spouse can get hot meals at such facilities as long as one of you is age 60 or older. The nutrition program in your area may provide transportation as well. You may make a donation, but the meals are free. (WIC §§ 18325-18335) And

if you are homebound, you can have hot meals delivered to you. The cost will depend on your ability to pay. (WIC §§ 9500-9501) Your county's Area Agency on Aging can provide you with information on local nutrition sites. (See *Resources*.)

Counties also offer *food stamp* programs to supplement or cover the grocery bills of those in need. If you are on SSI/SSP, however, you would not qualify for such assistance. For more information on eligibility, call 1-800-952-5253 (choose *Public Social Services Programs* from the automated selection) or go to the Department of Social Services Web site at www.dss.cahwnet.gov/foodstamps/. Or call your local county social services or human services agency.

Is there any financial assistance available for seniors who are immigrants?

Yes. California's Cash Assistance Program for Immigrants (CAPI) is for seniors who meet all the criteria for SSI/SSP cash assistance but have been turned down because of their immigration status. Such seniors may be able to get almost the same amount of cash as they would have received through SSI/SSP. (WIC §§ 18938, 18941)

If the senior entered this country before Aug. 22, 1996, he or she is probably eligible for CAPI. If he or she did not get a green card until after that date, however, the situation is more complicated. And if the senior arrived here more recently, there may be additional hurdles, depending on the senior's circumstances, sponsor and resources.

If you are a senior immigrant who is not eligible for CAPI, however, you may qualify for another type of assistance. If you have very little income, for example, you may be able to get help through General Assistance (GA) or General Relief (GR). Or, if you are a recent refugee, you may be able to get Refugee Cash Assistance (RCA). Or, if you are raising a grandchild or other young relative, you may qualify for another benefit. (See *Raising Your Grandchildren*.)

For more information on CAPI, GA/GR or RCA, contact your local human services department or Area Agency on Aging.

CHOOSING WHERE TO LIVE

Most people prefer to remain self-sufficient for as long as possible. In your senior years, however, your circumstances—a change in your health or finances, for example—may call for a new living arrangement.

Can I get a tax break if I downsize to a smaller home?

Maybe. In some counties, if you are over age 55 (or severely or permanently disabled) and you sell your home to buy another home of the same or lesser value in the same county, your property tax will be calculated according to the base year value of your old home. In addition, some counties have ordinances allowing you to move from one county to the next—and still get the tax break. However, you will only get this property tax break once—unless you become disabled after receiving the tax relief based on your age. (RTC § 69.5)

Also, regardless of your age, you can sell your home for up to \$250,000 in tax-free profit without owing capital gains tax—if you have owned and lived in your home for two years during the five years prior to the sale. If you are married and file a joint return, you would generally be allowed up to \$500,000 in tax-free gain from the sale of your home. (Internal Revenue Service (IRS), Pub. 523)

Can a landlord turn me down as a tenant because I am a senior?

No. It is illegal for landlords to discriminate against anyone simply because he or she is 62 years old or older. Nor is it legal to discriminate

DISCOUNTS TRAVEL AND RECREATION

Your advancing years could result in some savings. As a senior—sometimes as young as 50—you can now travel, eat out, go to the movies and even visit national monuments at a cut-rate price. Just ask for the senior discount and, in many cases, you will get one.

If you are at least 62, you can get discounted rates for parking and camping facilities at **CALIFORNIA STATE PARKS**. And if you are a senior with little income, you may be eligible for a **GOLDEN BEAR SENIOR STATE PARKS PASS**, which would entitle you and your spouse or domestic partner to free parking during non-peak season at most California State Park-operated properties. (PRC § 5011) Passes are available for a \$5 annual fee at any state park or district office.

At 62, you also qualify for an **AMERICA THE BEAUTIFUL—NATIONAL PARKS AND FEDERAL RECREATIONAL LANDS SENIOR PASS**. This is a lifetime entrance permit (after a \$10 processing fee) to national parks, monuments, recreation areas and national wildlife refuges. It also provides a 50 percent discount on the use of certain facilities and services. For information, call 1-888-GOPARKS (467-2757), or visit nps.gov. The pass can only be obtained in person at any national park, wildlife refuge or forest, as well as certain other federal offices.

against a prospective home buyer based on his or her age. (California Fair Employment and Housing Act, CC § 51.2; GC § 12955(d))

Can my landlord evict me for any reason at all?

If you have a long-term lease, your landlord cannot evict you during the lease term unless you violate one of the lease provisions, such as failing to pay your rent. With a month-to-month lease, your landlord, in general, simply needs to give you 30 days' notice, or 60 days' notice (this longer period may be repealed in 2010) if you've lived in the rental for more than a year. And in most cities, your landlord does not have to give a reason for evicting you. (CC § 1946.1) There are, however, exceptions. For example, your landlord cannot evict you in retaliation for filing certain legal complaints. Nor can your landlord discriminate against you based on your age or various other personal characteristics. If you live in a mobile home park (CC § 798.55), it could be more difficult to evict you. And in most cities with rent control ordinances, your landlord would have to have a "good cause" to evict you.

If, however, you fail to pay rent, or you destroy or severely damage the property, use it for unlawful purposes (such as selling drugs), substantially interfere with the rights of other tenants or violate any other provision in the lease agreement, you could receive a written notice to move out in three days.

Can I stop the eviction if it will leave me without a home?

The fact that an eviction will leave you homeless is not a legal defense. However, you cannot be kicked out of your home without a court order issued by a judge. And even then, only a sheriff or marshal can actually evict you. Your landlord cannot lock you out or shut off your utilities without going through a legal process. (CC § 789.3) For example, if you break your rental agreement by failing to pay your rent, your landlord could send you a three-day notice. If you did *not* violate your rental agreement, the landlord could send you a 30-day notice (or a 60-day notice for long-term tenants, at least until 2010). Then, after the notice period is over, he or she could file an *unlawful detainer* seeking a court-ordered eviction. (CCP § 1161) A copy must be delivered to you. Then you would have five days to oppose the eviction by filing a written *answer* with the court. Seek legal help immediately. If you ignore an unlawful detainer, it could result in a *default judgment* authorizing immediate eviction.

If you cannot afford the fee for filing an answer, you can submit a form asking the court to waive it. And if you have very little income and cannot afford an attorney, you may qualify for assistance from a local legal aid society. (See *Getting Legal Help*.)

Even if the court authorizes the eviction, however, you may have a last resort. You could file a *petition for relief from forfeiture*. If the eviction would be harder on you than your continued residence would be on the landlord, the judge may allow you to stay put if you are able to pay the rent. (CCP § 1179)

You also could ask the judge to postpone the eviction to give you time to prepare an appeal or to find somewhere else to live. Judges often grant such a request if you pay all of the rent up to your departure date. For more information, order a free copy of the State Bar pamphlet *What Should I Know Before I Rent?* (See *Resources*.)

Could I be evicted if my landlord loses my apartment in a foreclosure?

Maybe. But keep in mind that you have certain rights, including some new protections, in such a situation. If you have a lease, for example, a new federal law generally gives you the right to remain in your apartment until the end of that lease. The lease could only be terminated based on a foreclosure if the new owner plans to move into your apartment—and then you would be entitled to a 90-day written notice. And if your lease is expiring or is a month-to-month agreement, you now must receive a 90-day notice to vacate before eviction proceedings can begin. The new law applies to all foreclosures after May 20, 2009. Also, if

your property was foreclosed on by either Freddie Mac or Fannie Mae, there are new opportunities for post-foreclosure rental agreements that could keep you in your home. And if you live in a city with "just cause" protections, a foreclosure generally would not be reason enough to evict you—even after the expiration of any lease.

You have other rights as well. The new owner, for example, cannot change your locks without a court order or shut off your utilities. And in light of a recent boom in real estate scams, you should verify the identity of anyone who approaches you claiming to be the new owner. For more information, go to ForeclosureInfoCa.org.

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

Yes, you have the legal right to do so if you have a disability and the modifications are necessary for your "full enjoyment of the premises." You may have to promise that you'll return the apartment to its original state when you move out, but your landlord cannot prohibit such changes. (CC § 54.1) If he or she does, you can file a complaint with the California Department of Fair Employment and Housing or HUD. And for more information on your rights, call the Department of Consumer Affairs for a referral to a local tenants rights office or check the department's Web site for an online list of such offices (see *Resources*). The Department of Consumer Affairs' online publication *California Tenants: A Guide to Residential Tenants' and Landlords' Rights and Responsibilities* may assist you as well. To receive a free copy by mail, call 1-866-320-8652 or send your request to: California Tenants, c/o Department of Consumer Affairs, Policy and Publications Development Office, 1625 N. Market Blvd., Suite N-112, Sacramento, CA 95834.

HOUSING OPTIONS

- If you need to cut costs or would like some company, consider **shared housing**. Go to www.nationalssharedhousing.org to find a directory listing California "match-up" and "group residence" programs. To find shared housing programs for low-income seniors, contact your county welfare department. (HSC §§ 19902-19904; WIC § 17000)
- Or, check out a **senior citizen housing development**, which is generally restricted to seniors age 55 and older. Such developments are specially tailored to seniors and may offer useful services. (CC § 51.3)
- If you need assistance in your day-to-day life, you might look into **senior housing** in which you pay a monthly fee for an apartment, communal meals, housekeeping and, in some cases, transportation. Some facilities offer help with personal care as well.
- Another option is an **assisted living facility**—a licensed *residential care facility for the elderly* (RCFE)—which provides supervision and home-like, non-medical services (such as a room, meals, laundry, transportation and some assistance with daily activities). Such facilities must be licensed. (HSC § 1569.10) All advertisements and correspondence must include the facility's license number. And the license must be posted in a prominent place at the facility as well. (HSC §§ 1569.30, 1569.68, 1569.681) Such facilities are not licensed to care for anyone who is bedridden or who requires 24-hour nursing care.
- A **board-and-care home**—also an RCFE—is often a converted private home housing up to six residents who need some assistance with bathing, eating and other daily activities.
- A **continuing care retirement community** (www.calccrc.ca.gov) offers all levels of care. By contract, the provider promises to care for you as you age—sometimes for the rest of your life—in exchange for an entrance fee and/or periodic charges. Before signing any contract, seek financial and legal advice and carefully weigh the risks, benefits and costs. In addition, make sure that you understand exactly what the facility is promising to do for you. (HSC §§ 1770 *et seq*) Entrance fees can range from \$10,000 to \$500,000, with additional monthly fees of \$2,000 or more.

To check the license of any facility that provides medical care, call the California Department of Public Health licensing and certification program at 1-800-236-9747. To verify the license of a facility that does not provide medical care, call your local California Department of Social Services Community Care Licensing office. (Check your local listings or visit cald.ca.gov.)

See **Finding a Caregiver or Nursing Home** for living arrangements involving greater assistance. And for more information on your alternatives, you might contact the California Registry, which can provide you with a free list of assisted living, residential care or nursing home options based on your needs, budget and location. Or, check the Web sites maintained by the U.S. Department of Housing and Urban Development (HUD), the state Department of Public Health, the Administration on Aging and AARP. Your local Area Agency on Aging may be able to assist you as well. (See *Resources*.)

Can a younger person live with me in an age-restricted senior housing development?

It depends on your situation. Generally, the housing development's minimum age for residency (at least 55) would not apply to a spouse or cohabitant, a family member who is caring for you, a hired caregiver or a person who provides you with "primary physical or economic support." There are other exceptions as well. (CC § 51.3)

Can my landlord prohibit me from keeping a pet?

No, not if you are over 60 and live in rented housing owned or operated by the state or by a city or county. State law allows you to keep up to two pets. (HSC § 19901) Federal law also allows seniors and disabled persons living in federally assisted rental units to keep pets. (This does not apply to private landlords.)

Also, if you live in a mobile home park, you cannot be charged a fee for keeping a pet unless the park actually provides special services or facilities for pets. (CC § 798.33)

If I need to be hospitalized for an extended period, can I rent out my mobile home?

Yes, if your doctor confirms (in writing) that you will be away from home for medical treatment, the mobile home park management must allow you to rent out your home or sublet the space for up to 12 months—as long as certain criteria are met. (CC § 798.23.5) For a copy of California's Mobilehome Residency Law, visit hcd.ca.gov (go to *Quick Links, the Office of the Mobilehome Ombudsman*) or call the Office of the Mobilehome Ombudsman at 1-800-952-5275.

OBTAINING

HEALTH CARE

AND BENEFITS

Understanding your health care rights, sorting through insurance policies and finding a way to pay your medical bills can be daunting tasks. But there are resources to help educate you about your rights and help you weigh your options.

How can I find out more about my various health care options?

Call California's Health Insurance Counseling and Advocacy Program (HICAP) for counseling. HICAP is a network of community-based programs that provide free education, counseling and assistance to Californians about Medicare and related health and prescription drug insurance coverage (call 1-800-434-0222). Additional resources include: Medicare, the California Department of Insurance and your local Area Agency on Aging. (See *Resources*.) In addition, if you have questions or complaints regarding your HMO, you can contact the California Department of Managed Health Care HMO Help Center at 1-888-466-2219 (hmohelp.ca.gov).

Can I get health insurance after my retirement?

You may be entitled, by law, to continued coverage under your employer's group health insurance plan for a short period of time. Some employers actually maintain health insurance for their retired employees. But obtaining *private individual coverage* as a senior can be expensive and difficult, particularly if you have a *pre-existing condition*. As a senior, however, you do have other options. Medicare, Medigap policies, health maintenance organizations (HMOs), long-term care insurance, Medi-Cal or veterans' benefits may help cover your medical and long-term care expenses.

What is Medicare?

Medicare is a federal health insurance program that primarily covers Social Security recipients who are at least 65 years old or who are younger but have certain disabilities or who need kidney dialysis or a kidney transplant. Income level and assets have no bearing on an individual's eligibility for coverage.

Generally, Medicare participants may choose between the Original Medicare Plan, a Medicare Advantage Plan (sometimes called *Part C*—

an HMO or PPO), a special needs plan, a private fee-for-service plan and, in some instances, other Medicare health plans that are only available in certain parts of the country. The participant pays the deductibles, co-payments and, in some cases, a monthly premium. Medicare then pays the rest of the tab for covered services.

The program has three components. *Part A*—referred to as hospital insurance—covers inpatient hospital care, some skilled nursing and home health care and hospice care. *Part B*—which has a \$96.40 monthly premium (in 2009)—helps pay for additional medical services. (It may cover physical and occupational therapy, for example, and some medically necessary home health care.) The third component, *Part D*, was launched in 2006 to provide prescription drug coverage. (If you have very little income or currently receive certain other government benefits, you may qualify for greater help with your prescription drug bills.)

Under *Part D*, all Medicare beneficiaries now qualify for prescription drug coverage. As a beneficiary, you can choose from a variety of Medicare-approved prescription drug plans. Keep in mind that these private insurance plans vary—in their premiums, deductibles, co-payments and lists of covered prescription drugs. Or you might choose to enroll in a Medicare Advantage Plan that covers physician and hospital care as well as prescription drugs. Before enrolling in any plan, make sure it meets your particular needs.

In addition, you may not need to enroll at all. You may already have a Medicare-approved prescription drug plan through Veterans Affairs, for example, or your employer, former employer, union or existing Medicare Advantage Plan. (If you are uncertain, contact your benefits advisor for guidance.) For more personalized assistance, go to Medicare's Web site, contact a Medicare representative or seek assistance from a HICAP counselor (see *Resources*).

What is Medigap?

It is supplemental health insurance that can help pay some of the expenses that are not covered by Medicare. For example, it may cover co-payments or some additional costs for a prolonged stay in a skilled nursing facility. Medigap does not, however, offer prescription drug coverage. (Medicare now handles such coverage.)

It is important to carefully consider your particular situation in deciding whether this supplemental insurance is worth the extra expense. Seek out the advice of a HICAP counselor. In addition, you could request a copy of Medicare's publication, *Choosing a Medigap Policy: A Guide to Health Insurance for People with Medicare*.



How is Medi-Cal different from Medicare?

Unlike Medicare, Medi-Cal is a health insurance program based on need. It pays for the health and medical care of seniors who are at least 65 and who have very limited resources and income. (If you receive Supplemental Security Income, you automatically qualify for Medi-Cal benefits.) But even if you do not meet the strict financial need requirements, you could still qualify for Medi-Cal benefits if you are at least 65, blind or disabled, and have very little money or property. In such a case, however, you might have to pay a portion of your medical expenses yourself as a "share of the cost." (WIC § 14005.7)

Medi-Cal covers, among other expenses, doctor visits, lab tests, prescription drugs and dental care. It also would cover long-term care in a licensed facility or your home. For more information on Medi-Cal eligibility and benefits, call your local Area Agency on Aging or your county social services agency.

As a veteran, am I entitled to additional health benefits?

Probably. As a veteran, you may be eligible for health care services at more than 50 medical centers and clinics throughout the state. Depending on your household income and net worth, you may pay just \$15 to see a primary care doctor and \$50 to see a specialist. In addition, your medicine could cost no more than \$8 per prescription and you may be entitled to some dental care. For more information, call the U.S. Department of Veterans Affairs. (See *Resources*.)

Do I need long-term care insurance?

It depends on your situation—your health, financial resources and arrangements for future care, for example. There may come a time when you need daily help with bathing, dressing and preparing meals. Or, you may even need long-term, round-the-clock assistance. Such care can put a serious financial strain on you and your loved ones. Unlike Medicare, long-term care insurance covers custodial care. (Medicare covers nursing facility and home health care but only if it is skilled care, medically necessary and for a limited period of time.) In addition, such insurance may cover home health care, adult day care, nursing home care, the cost of an assisted living facility and respite care.

Before investing in this type of policy, consider your circumstances and seek free counseling from HICAP. To locate a local HICAP counselor, call the California Department of Aging. (See *Resources*.)

PLANNING AHEAD

You can only stay in charge of your future affairs if you plan ahead. Tax laws allow you to build a retirement nest egg in special tax-deferred accounts. The law allows you to prepare written instructions regarding medical treatment in case you become incapacitated. It allows you to appoint someone to make decisions for you if it ever becomes necessary. And it allows you to decide who will inherit your property someday. But the right to have your wishes carried out *later* is worthless unless you act *now*—while you still can.

How can I help ensure that my affairs will be handled my way if I become incapacitated?

You can take certain legal steps. A *power of attorney* is a written legal document that gives another person the right and authority to act on your behalf. (Prob. § 4022) That authority will end if you become incapacitated—unless you have a *durable power of attorney*. A durable power of attorney will remain in effect if you ever become incapacitated. (Prob. § 4124) This means that if you were suddenly unable to handle your own affairs, someone you trust—your legal *agent* or *attorney-in-fact*—could do so for you. Or you might choose to set up a *springing power of attorney*, which would only become effective at a specified future date or event (such as if you were to become incapacitated). (Prob. § 4030)

You can authorize your agent to simply pay your bills. (This is usually a safer arrangement than adding someone else's name to your bank account.) Or you can empower your agent to handle nearly all of your affairs. Your agent, however, cannot take anything of yours as a "gift" without your specific written authorization. (Prob. § 4128) These powers of attorney all expire when you die. (CC § 2357; Prob. § 4152) Make sure that you understand all of the terms before signing a power of attorney. And be absolutely certain that your chosen agent is both capable and trustworthy. Seniors have lost their life savings to unscrupulous agents—even to agents who are family members.

With an *advance health care directive*, you can designate someone to make medical decisions for you in the event that you become unable to do so for yourself. (Prob. §§ 4605, 4629, 4682) You could name an alternate agent as a backup. And you can include instructions regarding your future medical care, such as life-support treatment. Simply fill out the available printed form. It must be notarized or witnessed by two qualified individuals. (You can revoke the directive at any time, as long as you are still competent.) Give copies to your health care agent, alternate agent, doctor, health plan representatives and family. And if you are admitted to a hospital or nursing home, take a copy with you. Consider registering your directive with California's Secretary of State as well. By doing so, health care providers and other authorized individuals may be able to obtain information from your directive in an emergency if your agents or family members cannot be reached. (Prob. §§ 4800-4806) To obtain an advance health care directive kit (in English or Spanish) for \$5, call the California Medical Association at 1-800-882-1262 (cmanet.org). Or, ask your doctor for one.

You might also consider completing a *Physician Orders for Life-Sustaining Treatment (POLST)* form if you are terminally ill or in frail health. Signed by your physician, this new form (effective in 2009) allows you to give specific end-of-life treatment instructions regarding, for example, your pain management, cardiopulmonary resuscitation, feeding procedures and other medical interventions. It has the force of a physician's medical order and remains with the patient wherever he or she receives care. It does not, however, replace the traditional advance directive, which includes other instructions. (Prob. §§ 4780-4785) For more information, talk to your doctor or go to finalchoices.org.

What is a living will?

The term *living will* is used in many states to describe a legal document that states an individual does not want life-sustaining treatment if he or she becomes terminally ill or permanently unconscious. It should not be confused with a will or a living trust, which serve different purposes. In 2000, the advance health care directive became

California's legally recognized format for a living will. It is more flexible than the traditional living will—allowing an individual to give various health care instructions in advance and to appoint someone who will make his or her health care decisions if necessary.

The advance health care directive also replaced the *durable power of attorney for health care (DPAHC)*. However, if you already executed a DPAHC and it has not expired, it would still be valid. Or, if you previously executed a *Natural Death Act Declaration* (California's old format for a living will), that, too, would still be valid. You do not need to replace it with the more comprehensive advance health care directive unless you choose to do so.

Can I be barred from handling my own affairs for any reason?

Yes. To consent to medical treatment or make a legal contract, for example, you must be able to understand the nature and consequences of your actions. The law refers to this as having sufficient *capacity*. (CC § 38; Prob. §§ 811-813) If you lose such capacity, the agent named in your durable power of attorney may step in on your behalf. Or, if you haven't made such arrangements, the court may appoint a *conservator*.

What is a conservator?

A *conservator* is someone authorized by the court to manage your affairs. A conservator may be appointed if you become unable to make sound decisions, feed or dress yourself, handle your own finances or resist undue influence. (Prob. §§ 1800-1804) Conservators may be family members, friends or, in some cases, the county public guardian. But, unlike an agent with a durable power of attorney, a conservator will receive court supervision in the handling of your affairs. (Prob. § 1851.5) You should be aware that a conservatorship can be expensive. (If you receive SSI/SSP or certain other government benefits, you could qualify to have the court fee waived.)

You can nominate your own conservator in an advance health care directive for a judge's future consideration. (Prob. § 4672) Even after a petition for conservatorship has been filed, you can nominate your own conservator if you have *sufficient capacity* to do so. (Prob. § 1810) If someone seeks to have a conservator appointed for you, you must be notified. And you may oppose the conservatorship in a court hearing. (Prob. § 1826)

Do I need a will?

Yes, you need a will if you want any control over who will inherit your property. Even if you own very little, you can earmark a particular piece of jewelry or a cash gift for a person or charity of your choosing. You can nominate guardians for your young children. You can express your funeral and burial wishes. And you may name an *executor* to carry out your wishes. The *executor*, who must be officially appointed as your *personal representative* by a judge, will collect and manage your assets, pay off debts and distribute your property. (Prob. §§ 58, 6101, 8400-8402, 8802, 9050)

Your will may be handwritten. Or you can fill out a *California Statutory Will*. This may be useful if you have very few assets. (This form can be printed out from the State Bar Web site. Go to calbar.ca.gov, then *Public Services* and *Making a Simple Will*.)

However, your will *must* meet strict requirements to be valid. And it should be kept up-to-date. If you do decide to revise it, do not make



your changes on the original. You can amend your will with a separate legal document referred to as a *codicil*. You may want to consult an attorney before creating or changing such an important document. (Prob. §§ 6110, 6111, 6221, 6226)

If you die without a will (referred to as *intestacy*), your property will go to your spouse, registered domestic partner, children or next of kin, according to California's intestate succession laws. (Prob. § 6401) And if you don't have a spouse, domestic partner or child, or your next of kin cannot be located, your property will go to the state. (Prob. §§ 6800, 11900-11904)

SAVE FOR RETIREMENT

■ Consider depositing your earnings (up to \$5,000 in 2009) into a tax-deferred *Individual Retirement Account (IRA)* up to age 70-1/2. If you are 50 or older, you can contribute \$6,000 or your taxable earnings for the year, whichever is less. (IRS Pub. 590)

■ Check out a non-traditional *Roth IRA*. If your annual adjusted gross income is less than \$120,000 in 2009 (\$176,000 for a married couple), you may qualify for such an account. The taxes are not deferred, but the distributions will be tax-free. (RTC § 17507.6; IRS Pub. 590)

■ Find out if your employer offers a tax-deferred *investment savings plan*, such as a 401(k). In general, employees can set aside a portion of their earnings (up to \$16,500 in 2009). And, as part of a "catch-up" plan, you can generally put away \$5,500 more if you are 50 or older.

■ Ask about your company's *pension plan*. Most pension plans include a survivor's pension. Contact your pension plan administrator. For general information, call the Department of Labor's Employee Benefits Security Administration at 1-866-444-EBSA (444-3272) or visit www.dol.gov/ebsa (go to pension plans). Or, check the Pension Benefit Guaranty Corporation Web site (pbgc.gov).

How will my property be distributed after my death?

If you have a will, the executor named in your will starts the process by filing a petition in court and seeking appointment as your personal representative. Your personal representative will take charge of your assets, pay your debts and distribute the rest of your estate to your beneficiaries. This court process is known as *probate*. If you do not have a will, a relative or other interested person can start the process.

Simpler procedures are available for transferring property to a spouse or if the estate amounts to less than \$100,000. (Prob. §§ 13100-13116, 13540-13545)

Does a will cover everything I own?

No. Generally a will does not control the distribution of life insurance proceeds, retirement plan assets, certain jointly owned assets, "transfer on death" or "pay on death" accounts and the assets of revocable living trusts. (Prob. §§ 5000 *et seq*) For more information on wills and estate planning,

order free copies of the State Bar's consumer education pamphlets *Do I Need a Will?* and *Do I Need Estate Planning?* (See *Resources*.)

What is a revocable living trust?

It is a partial substitute for a will. With a living trust, your assets are put into the trust during your lifetime and transferred to your beneficiaries when you die. Most people name themselves as the trustee who manages the assets. This allows you to remain in control of the living trust assets during your lifetime. You also can revoke or change your living trust. One advantage of a living trust is that the assets do not go through probate. And the distribution process often takes less time. (Prob. §§ 15000 *et seq*)

A revocable living trust, however, does not remove all need for a will. Generally, you would still need a will—known as a *pour-over will*—to cover any assets that are not included in the trust.

Also, be aware that a living trust is not appropriate for everyone. Whether it is the best option for you will depend on your particular circumstances. Watch out for unqualified "advisors" who sell living trusts in "trust mill" scams and who seek to obtain seniors' private financial information for other purposes as well. (See *Avoiding Consumer Scams*.)

The free State Bar pamphlet *Do I Need a Living Trust?* can provide you with more detailed information (see *Resources*). And before creating such a trust, you should seek advice from a qualified estate planning attorney. (See *Getting Legal Help*.)

Will my beneficiaries' inheritance be taxed?

It depends on the circumstances. Property left to your spouse or a charity will not be subject to *estate tax*. The portion of the estate that is left to anyone else—even your children—will be taxed if your assets total more than \$3.5 million in 2009. In 2010, the estate tax will disappear completely. But in 2011, unless Congress passes an extension, the exemption will revert back to \$1 million. (IRS form 706, Pub. 950)

Under federal law, you can also give away as much as \$13,000 a year (in 2009)—\$1 million during your lifetime—to each of your children or to anyone else without incurring *gift tax*. In addition, you could pay your grandchild's college tuition or medical insurance premiums (or anyone's tuition or medical bills, for that matter) free of gift tax—but only if the payments are made directly to the educational institution or medical provider. (IRS form 709) For information on estate tax and other gift tax exemptions, contact an estate planning attorney. Or, call the IRS or State Controller's Office. (See *Resources*.)

Can I just leave my savings in a bank account for later use?

Not for more than three years—unless you deposit or withdraw funds or contact the bank. If an account or safe deposit box sits dormant for that long without any activity, the funds or contents will be turned over to the state. (This would not apply if you have another active account at the same bank or financial institution.) Before transferring the funds, the bank must send a notice to your last known address. (CCP §§ 1513, 1513.5) To reclaim such funds or property, go to searchthevault.com or contact the Bureau of Unclaimed Property in the State Controller's Office. (See *Resources*.) Some 2.5 million notices were sent out in 2008 urging owners to reclaim their state-held valuables.

Also in 2008, Congress temporarily increased the insurance coverage at FDIC-insured banks and savings institutions and NCUA (federally insured) credit unions to \$250,000 per depositor (certain retirement accounts were already insured up to \$250,000). If you have more in savings, you might consider dividing it up among different types of accounts (putting some away in a payable-on-death account, for example, in which *each* beneficiary is insured up to \$250,000) or splitting it up among various FDIC-insured institutions. Unless Congress takes further action, however, the insurance limit will revert back to \$100,000 per depositor in 2010. For more detailed information and online guides, go to the FDIC Web site (www.fdic.gov). You can request free copies of FDIC pamphlets by calling 1-877-275-3342. Or, go to the FDIC Web site, click on *About FDIC* and scroll down to *Publications and Documents*.

DEALING WITH

DEBT

Perhaps your debts have become unmanageable now that you are living on a fixed or more limited income. Maybe the unexpected costs of medical treatment or prescription drugs have pushed you to the brink. Or maybe you're facing the foreclosure of your home in tough times. How you deal with the situation will depend on your particular circumstances.

What should I do if I am having trouble paying my bills?

You could contact your creditors and ask for more time to make payments. It might help to call a credit and debt counseling agency as well. Shop for one that you believe gives good advice. And keep in mind that if you wind up filing for bankruptcy, you will be *required* to complete such counseling from an agency approved by the U.S. Trustee Program. (See *bankruptcy* question on the next page.)

Be cautious about obtaining a debt consolidation loan to pay off your debts. If the interest is too high, you could wind up with an even bigger problem. And if you do get a loan, make sure that the financial statements turned over to the lender are true and complete. For more information on credit and loans, go to ftc.gov/credit.

What will happen if I simply don't pay my debts?

If you signed an agreement putting the property up for collateral—*securing* the debt—when you bought it, the creditor could repossess the item. But even in the case of *unsecured* purchases (purchases made with credit cards, for example) the creditor can obtain a court judgment in which property can be repossessed, your wages attached and your bank accounts seized. (CCP §§ 487.010-487.030, 706.050) In addition, if you

own a home, a *lien* could be placed on your property for an unpaid debt. You may, however, be able to file a *claim of exemption* for your home. In addition, if you have very little income or assets, you may be *judgment-proof*, in which case your creditors may not take further legal action.

For more information on handling debt, get a free copy of the State Bar pamphlet *What Can I Do if I Can't Pay My Debts?* (See *Resources*.)

Should I file for bankruptcy if I cannot pay my debts?

If you have few assets and little or no income, bankruptcy may not be your best option. It will seriously damage your credit for 10 years and will not necessarily wipe out your debt. For seniors with greater assets and income, however, filing for bankruptcy might make sense if your creditors will not agree to an extended payment schedule. Seek an attorney's advice before making such a decision.

There are two types of personal bankruptcy: *Chapter 13* and *Chapter 7*. In general, if you have a steady income, *Chapter 13* allows you to stop most debt collection in exchange for a promise to pay your available funds to creditors as part of a three-to-five-year repayment plan. With a repayment plan, you may be able to keep certain property—such as your car or home—even if it was used to secure a loan. And if you fulfill your obligation, most remaining debt would be canceled at the end of the repayment period.

Under *Chapter 7*, however, you ask the bankruptcy court to cancel most of your debts because you don't have enough money or property to pay them off. (To qualify for a *Chapter 7* plan, you would have to meet specific criteria related to your income and future ability to pay.) Certain assets would be sold to help pay off your creditors. With this type of bankruptcy, you generally would not be able to keep property that was used as collateral for a loan.

Before filing for either type of bankruptcy, however, you will need to undergo credit counseling from a U.S. Trustee Office-approved agency. And before your bankruptcy case ends, you would have to complete personal financial management counseling as well. For lists of approved counselors, visit usdoj.gov/ust (go to *Credit Counseling and Debtor Education*).

Is there anything I can do to stop bill collectors from hounding me?

The law sets some boundaries for bill collectors. For example, with debts involving car loans, medical care or charge accounts, such collectors cannot contact you before 8 a.m. or after 9 p.m. without your permission. Generally, they cannot contact you—or someone else—at work regarding the debt. Nor can they harass you or mislead you with lies. And they must identify themselves when they call. In addition, bill collectors must include "debtors rights" information with their first written notice to the debtor. (CC §§ 1788 *et seq.*, 1812.700) For information or to file a complaint, contact the Federal Trade Commission at 1-877-FTC-HELP or ftc.gov.

If I am receiving Social Security income, can my creditors get ahold of it?

No. In general, your Social Security income is protected from creditors. (It may be even easier to protect such income if you have your checks deposited directly into your bank account.) Social Security income can, however, be garnished for court-ordered child support, alimony or unpaid federal taxes.



Can I lose my home if I fall behind in my mortgage payments?

Yes. (CC §§ 2920 *et seq.*; CCP § 580a) However, you may be able to work out a plan with the lender to have your payments reduced or even suspended temporarily. Or, you might be able to refinance your home into an affordable, government-backed mortgage. And in light of the recent home mortgage crisis, other options may soon be available. But you must take action immediately. Do not ignore notices from your lender saying you are in default on your payments. The lender could foreclose and sell your home in just months without going to court. Call your mortgage company. Or contact HUD at 1-800-569-4287 for a referral to a free counseling agency that can help you find a solution. Or call the Homeowner's Hope 24-hour hotline at 1-888-995-HOPE.

But be cautious in your search for help. Avoid falling victim to a *loan modification scam*. Recently, California has seen an explosion of such scams. It may start with a call or knock at the door and an offer to renegotiate your loan—for an upfront fee. You may be told to avoid contacting your lender. Then, while little or nothing is done to modify your loan, you unwittingly lose precious time and slip closer to foreclosure.

Foreclosure consultants are, by law, prohibited from collecting fees upfront (attorneys are exempt) and from asking the homeowner to sign any lien, deed of trust or deed. (CC § 2945) And beginning in July of 2009, such consultants will have to register with the Department of Justice unless they are licensed to do residential mortgage loans. (CC § 2945.45)

If your home is not in foreclosure yet (the *Notice of Default* has not been recorded), real estate brokers can collect fees in advance, but only if their advance fee client agreement forms have been approved by California's Department of Real Estate.

Be on the lookout for other *foreclosure rescue scams* as well. For example, you could wind up paying a high fee for a "forensic loan audit" to help prevent your foreclosure—and then receive no service at all.

Some seniors wind up facing foreclosure because a *predatory lender* lured them into a home equity loan that they cannot possibly repay. The interest rate and fees may be much higher than those of a standard loan, and may even be illegal. Or, the loan may require a large "balloon" payment at some point. In addition, the lender may avoid explaining all of the loan's terms or may offer misleading information (seeking, instead, to take advantage of the senior who could be facing a cash crunch). Seniors—who may have little income but greater equity in their homes than many younger homeowners—are primary targets in this type of scam. Even if a loan is illegal, however, you could still wind up losing your home. If you fall behind in your payments, take action immediately. For more guidance, go to ForeclosureInfoCa.org, www.hud.gov, and 995hope.org. Or, as a California homeowner, you can call the Housing and Economic Rights Advocates (HERA) at 1-510-271-8443 for a free legal consultation by phone.

STAYING ON THE JOB

In the face of soaring health care costs, a troubled economy and shrinking retirement plans, many seniors in recent years have migrated back to the workplace—or simply stayed on the job. The number of workers age 65 and over doubled in the last three decades—a much greater expansion than seen in the general pool of workers. The number of workers age 75 and over increased even more, nearly tripling between 1977 and 2007. And with America's baby boomers just entering their mid-60s, experts say, the trend is just beginning.

Can I be turned down for a job or a work training program because of my age?

No. An employer cannot fire you, deny you a job or discriminate against you simply because you are over 40 (the federal *Age Discrimination in Employment Act* and *California Fair Employment and Housing Act*). Nor can an employer turn you down for a training program or educational benefit simply because you are over 40. (GC §§ 12920, 12940)

If you experience such discrimination, you can contact the California Department of Fair Employment and Housing or your local Equal Employment Opportunity Commission office. (See *Resources*.)

Cell phones and driving: It is illegal to use a cell phone while driving unless your phone is set up for hands-free use, or you are making an emergency call (to law enforcement, for example). Nor can you use any electronic wireless communications device to write, send or read text messages (except to select a name or phone number to make a call). (VC §§ 12810.3, 23123-23134)

Will I lose my Social Security benefits if I stay on the job or go back to work?

No, not if you have reached full retirement age (between 65 and 67, depending on your birth date). And if you do without Social Security benefits until age 70, you will receive a larger monthly benefit check, regardless of any additional earnings. However, if you collect Social Security payments before you reach full retirement age *and* earn additional income, your benefits will be reduced if your earnings exceed a certain amount.

For more information, you should contact your local Social Security Administration office.

GETTING

AROUND

Simply getting around, too, can be a challenge in your senior years. Studies show that seniors (age 65 and older) actually cause fewer auto accidents than the youngest drivers (ages 18 through 25). But if an accident occurs, the older driver is at much greater risk of serious injury or death. According to a Rand study, seniors are nearly seven times more likely than younger drivers to be killed in a two-car accident. While your age alone is not reason enough to limit or take away your driver's license, you can lose your driving rights based on traffic violations, failed written or driving tests, poor vision or various other medical conditions.

Are the driving requirements different for seniors?

No. But when you reach age 70, you can no longer renew your license by mail. (VC § 12814.5(c)) And the Department of Motor Vehicles (DMV) can request a doctor's approval. You may not receive a license if your corrected vision is 20/200 or worse in your best eye. (VC § 12805(b)) The DMV also can refuse to issue or renew your driver's license if you are an alcoholic or addicted to certain drugs, have had lapses of consciousness within the past three years or marked confusion or any physical or mental disorder that could affect the safety of your driving. (VC § 12806)

In addition, if a doctor diagnoses Alzheimer's disease or certain other conditions linked to lapses of consciousness, he or she is required to notify the local health office. And, in turn, the health office must contact the DMV. (HSC § 103900(b))

Can I be reported for inadequate driving?

Yes. Anyone can fill out a DMV *Request for Driver Reexamination* to flag an unsafe driver. Officials try to keep the reporter's name confidential. (VC §§ 1808.5, 13803)

Can the DMV simply limit my driving rights rather than revoke my license?

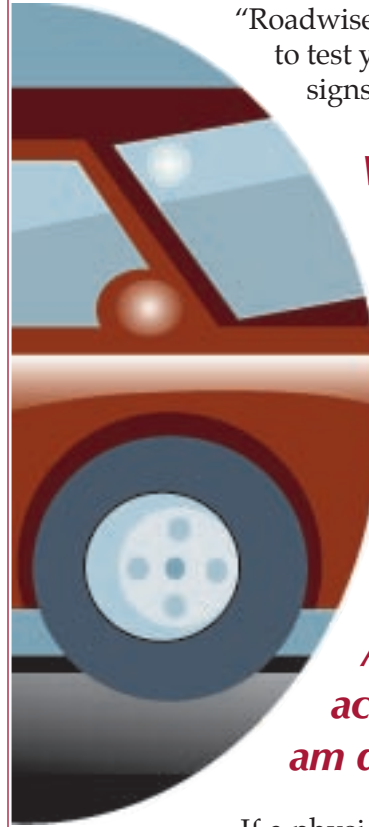
Yes. The DMV may, for safety reasons, issue a driver's license for a shorter period of time than the terms of a regular license. (VC § 12508) Or, depending on your ability, you may qualify for a restricted license that only permits you to drive during daylight hours, for example, or on city streets (not highways or freeways), or within 20 miles of your home.

Are there any refresher programs to help me improve my driving skills?

Mature driver education courses are available for drivers who are 55 years old or older. And senior drivers who complete such a course can get a discount on their car insurance for three years. (VC § 1675) For the location of a "Mature Driving Improvement Program" in

your area, you could check with your local senior center or call 1-916-229-3127. For additional information geared for seniors, visit the DMV's Web site at dmv.ca.gov (click on *Home*, then *Seniors*). And there are also resources that can help you evaluate your own—or an elderly parent's—driving skills. For example, visit the AAA Foundation for

Traffic Safety's Web site at aaafoundation.org/quizzes. Check out the resources at seniordrivers.org (such as AAA's "Roadwise Review"). Or go to aarp.org/driversafety to test your "Driving IQ" and learn a few warning signs for when to limit or stop driving.



What is a DMV medical information card?

It is an adhesive-backed card, available through the DMV, that can be attached to the back of your driver's license. The fill-in-the-blanks card can be used to identify your blood type, allergies, past or present medical problems, medications and information on how to reach your doctor and other contact person in an emergency. (VC § 12811.1)

Are there any special accommodations for me if I am disabled or unable to drive?

If a physician certifies that you are disabled, you can qualify for a special parking placard. With such a placard, you can park in specially marked, more accessible parking spaces. In addition, you do not have to pay the parking meter. (VC §§ 22511.5, 22511.55)

Cities may also adopt ordinances permitting individuals who are physically disabled or age 50 or older to travel on sidewalks via electric cart. A permit and identification sticker is required. (VC § 21114.5)

In addition, communities provide various means of assistance for those who cannot drive or use public transportation. Contact your county's Area Agency on Aging or a local senior center and ask about transportation services for seniors. Some communities provide free rides solely to seniors who are disabled, while others offer services to all seniors. In some communities, special vans make scheduled trips to grocery stores, shopping malls and senior centers. In others, taxi vouchers help seniors keep their doctor appointments.

If you are no longer able to drive, keep in mind that you will probably need another form of identification once your driver's license expires or is revoked. If you are 62 or older, the DMV will issue you a free senior citizen ID card that will be valid for 10 years and can be renewed for another 10-year period. (VC §§ 13000-13008) Or if you cannot drive because of a physical or mental condition, you can exchange your valid driver's license for a DMV-issued ID card free of charge.

HANDLING

ELDER ABUSE

As many as one in seven seniors nationwide experiences elder abuse—usually at the hands of a family member. Some wind up bruised and battered, or dehydrated and neglected in their own beds. Others end up penniless, victims of a relative's greed. And some even lose their homes. Yet most elder abuse still goes unreported. Your caregiver may be stealing from you, beating you or simply leaving you stranded in your own room. You may be afraid of what will happen if you tell someone. But help is available. Turn your situation around before it gets worse.

What is elder abuse?

It is the neglect, exploitation or "painful or harmful" mistreatment of anyone who is 65 or older (or who falls under the legal definition of a "dependent" adult aged 18-64). It might be physical violence, psychological abuse, isolation or a caregiver's neglect. It could be identity theft (see *Avoiding Consumer Scams*), or the theft or embezzlement of a senior's property. (PC § 368; WIC §§ 15610.23, 15610.27)

In short, elder abuse involves various crimes, such as theft, that can strike younger victims as well. However, criminals face stiffer penalties when their victims are 65 years old or older.

Report of Elder Abuse

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

If you suspect that the abuse is occurring in your friend's home, call your local *Adult Protective Services (APS)* agency. (Check your county phone listings or ask your Area Agency on Aging for the number.) If you suspect that the abuse is occurring in a licensed long-term care facility, such as a nursing home, contact your local long-term care *Ombudsman*. (To locate the Ombudsman, call 1-800-231-4024.) Your report will be confidential—and you can remain anonymous. (WIC §§ 9700 *et seq.*, 15600 *et seq.*)

Or, to report elder abuse of any kind, you can simply call the California Attorney General's Bureau of Medi-Cal Fraud and Elder Abuse Hotline at 1-800-722-0432 or contact your local district attorney's office.

For more information, order a complimentary copy of the State Bar pamphlet *What Should I Know About Elder Abuse?* (see *Resources*). You could also order *A Citizen's Guide to Preventing & Reporting Elder Abuse*, produced by the California Attorney General's Office. For a free copy of this guide, write to: The Office of the Attorney General, 1425 River Park Dr., Suite 300, Sacramento, CA 95815. Or visit ag.ca.gov (go to *Publications* and *Elder Abuse*) for an online version.

Am I required to report suspected elder abuse?

Yes, if you are responsible—with or without pay—for taking care of an elder or dependent adult. Other *mandated reporters* include: administrators, supervisors and licensed staff of facilities providing care and services to the elderly; Adult Protective Services employees; physicians; police officers; and clergymen. If a mandated reporter fails to report suspected abuse, he or she could be charged with a misdemeanor. (WIC § 15630) In addition, financial institution employees must report any suspected financial abuse of elders as well—or risk facing civil penalties.

Is there anyone who will check on my elderly father's well-being for me?

Yes. If you are worried about a parent or elderly loved one who lives in another community, you can contact the local law enforcement agency in his or her community and request a *well-being* check.

EXAMPLES OF ABUSE

■ Your caregiver or a "new friend" pressures you to sign a power of attorney so that he can handle your affairs for you—and then sells your home for the cash.

■ Malnourished and covered with bedsores, you lie stranded in your own bedroom while your live-in son is busy emptying your bank accounts.

■ A home repairman persuades you to pay cash on the spot for a "great" home improvement deal—and then fails to do any work.

■ You forget to take your medication and a nursing home staff member slaps you in the face.

What will happen if someone finds out that my grown child is hurting me?

It depends on the abuse. *But if you are being mistreated in any way, you need help. And your child needs help as well.* Call your local Adult Protective Services office and explain your situation. An APS social worker can meet with you privately and help ensure that you are safe. (WIC § 15762)

Is domestic violence the same as elder abuse?

No. And different laws apply to each as well. The law defines domestic violence as certain kinds of abuse directed toward a spouse or former spouse, domestic partner or former domestic partner, cohabitant or person *of any age* with whom the abuser has had a "dating or engagement relationship," has had a child or is related by blood or marriage. (FC §§ 6200 *et seq.*; PC § 13700(b)) Such violence is behavior driven by a need to control. It can range from threats to unwanted sexual touching and hitting. And it cuts across all cultures, ethnic backgrounds, education levels and income brackets. If a victim

of domestic violence is age 65 or older, however, the case may be handled as elder abuse.

What can I do to protect myself from an abusive caregiver or spouse?

If you are in immediate danger, call 911. When the police arrive, explain what happened. In both elder abuse and domestic violence cases, the officers can contact an on-call judicial officer and issue you an

Emergency Protective Order (also called an *EPO*) immediately.

This legally prohibits the abuser from coming near you. (Beginning in 2010, such emergency orders can apply to any other named members of the household as well.) The EPO will remain in effect for five court days or seven calendar days. You could also seek a *Temporary Restraining Order* (also called a *TRO*). Just fill out the forms at your local court. The TRO will go into effect as soon as it has been signed by a judge and delivered to the abuser.

And a TRO may be made "permanent," which means it will be good for up to five years and can be renewed. (WIC § 15657.03; FC 6345(a); CCP § 527)

But while a restraining order may help protect you, be aware that it does not eliminate the risk of future violence.

Restraining orders also may be obtained in elder abuse cases in which a senior has suffered physically or mentally from financial abuse or neglect.

In cases of domestic violence, state law allows victims to keep their addresses confidential through the state's Safe at Home program. This means that your home address need not appear on court papers or other official documents. For more information, call 1-877-322-5227. And to locate a local shelter or counseling, call the National Domestic Violence 24-hour hotline at 1-800-799-7233 (1-800-787-3224 for TTY). Another resource is the State Bar pamphlet *Can the Law Help Protect Me from Domestic Violence?* (To order a copy, see *Resources* for contact information.)

AVOIDING

CONSUMER

SCAMS

Americans lose an estimated \$40 billion a year in telemarketing fraud alone, and another \$120 million in foreign lottery scams. And the victims are often seniors. You could be approached through the mail, by telephone, via e-mail or at your front door. Know your rights and how you might be vulnerable. As the old adage goes: If it seems too good to be true, it probably is.

■ **Charitable Donation Con:** Watch out for fake charities. Anyone soliciting funds for charitable purposes must register with the state Attorney General's Office. (BPC § 17510.85; GC § 12599) To find out if a charity is registered, call the Attorney General's Office (see *Resources*) or visit the Web site (ag.ca.gov/charities). You could also check with your local Better Business Bureau (bbb.org).

■ **Door-to-Door Solicitation:** Ask to see a business permit. (Most cities require one.) Resist pressure to buy anything on the spot. If you do make a purchase, remember that you usually have three business days to legally cancel such a contract if it was made in your home or in a temporary business place, such as a convention center, restaurant or

hotel. (CC § 1689.6(a)) Contact the Better Business Bureau to check out the business. And to report a fraud, call the police or county district attorney's office.

■ **Financial Advisors and Investment Scams:** Beware of investment seminars touting get-rich-quick schemes. Check out the "investment" before investing. Call the state Department of Corporations' toll-free hotline at 1-866-ASK-CORP (275-2677). For further information on protecting yourself, check out the Department of Corporations' "Seniors Against Investment Fraud" (SAIF) program. For a few SAIF tips, see *Avoid Investment Scams* in the next column.

■ **Funeral and Cemetery Fraud:** Watch out for high-priced sales pitches. *The Consumer Guide to Funeral and Cemetery Purchases*—available at no cost from the Department of Consumer Affairs' Cemetery and Funeral Bureau—details your requirements, pre-needs arrangements and what to look for in a contract. To verify a funeral establishment's license or to file a complaint, call the Cemetery and Funeral Bureau at 1-916-574-7870 or go to cfb.ca.gov. Check with your local Better Business Bureau as well.

■ **Home Repair/Home Improvement:** It may sound like a good deal. A repairman will fix your roof with "leftover" materials from another job. You pay cash—and he does a shoddy job or nothing at all. Or, a plumber fixes your clogged toilet and presents you with a \$10,000 bill. Before hiring a contractor, get several estimates, check references and put everything in writing. Be aware that your home cannot be used as collateral in a home improvement contract if you are 65 or older. (BPC § 7159.2; CC § 1804.1(j)) Contact the Contractors State License Board (see *Resources*) to check the contractor's license and any past complaints. Such contractors must be licensed. Never pay more than the maximum allowed by law (usually 10 per cent of the repair price or \$1,000, whichever is less) before the work is done. For additional tips, contact the licensing board for a copy of *What You Should Know Before You Hire a Contractor* (also available online).

■ **Medicare Fraud:** Never give your Medicare number to a stranger. Always check your Medicare statement to verify that you actually received the services charged to Medicare. If you suspect provider fraud, call Medicare. And to report suspected Medi-Cal provider fraud, call the Bureau of Medi-Cal Fraud and Elder Abuse in the state Attorney General's Office. (See *Resources*.)

■ **Living Trust Mills:** Beware of "trust mill" marketing schemes in which salespeople pose as specialists in estate planning to gain your trust and confidence. These unqualified "experts" seek to obtain your personal financial information with the ulterior motive of selling you both a living trust and an annuity, which may not be appropriate for you. Such tactics may violate insurance code laws and laws prohibiting the unauthorized practice of law. To report a scam, call your local district attorney's office or the California Department of Insurance. (See *Resources*.)

■ **Telemarketing/Mail/Internet Fraud:** It can be difficult to distinguish legitimate telemarketers and e-mail solicitations from those that are not. Never provide personal information or send money to solicitors who contact you first. Instead, just hang up or insist on calling the individual back after you have had time to check out the solicitation. Also, steer clear of any caller or mailer announcing that you have won a sweepstakes or foreign lottery and simply need to pay a "fee" or "tax" to collect your winnings. (The cross-border sale or purchase of lottery tickets is illegal—and so is any advance charge for collecting the prize.) For information on filing a complaint, contact the state Attorney General's Office (ag.ca.gov/contact/). To file a complaint alleging Internet fraud, go to ic3.gov.

Many other kinds of scams and schemes hurt seniors as well. Be on

the lookout for credit repair/credit card insurance scams, real estate predatory lending (see *Dealing with Debt*), annuity fraud, and STOLI or SPINLIFE life insurance schemes (for information on these schemes, go to insurance.ca.gov).

AVOID INVESTMENT SCAMS

Don't invest until you investigate. Call the Department of Corporations' toll-free number at 1-866-ASK-CORP (275-2677) before purchasing any type of financial product.

Don't invest right away: Slow down and take your time. Most fraud occurs because the con artist talks the victim into making a "rushed" decision.

Don't be too trusting. Remember, appearances can be deceiving.

Don't invest more than you can afford to lose. How much are you willing to lose if the investment turns out to be a scam? If you lose everything you have, what will you do?

Don't believe "guaranteed" large rates of return on your investment. There are always risks to investing.

Don't invest until you complete the "four C's": Consider your options. Compare the offer to others. Consult with someone you trust. Call the Department of Corporations' toll-free number listed above.

Source: California Department of Corporations, Seniors Against Investment Fraud (SAIF)

How can I avoid being solicited by telemarketers and marketing mail?

You can register your telephone numbers (including your cell phone number) with the National Do-Not-Call Registry, which is managed by the Federal Trade Commission (FTC). To register, call 1-888-382-1222 or go to the Web site (donotcall.gov). You can also ask telemarketers to put you on their "do not call" lists. If they keep calling you, report them to the FTC. (See *Resources*.)

In addition, tell businesses not to sell your name to other companies. To remove your name from mailing lists, go to dmachoice.org and register online or download a form request and mail it to: Direct Marketing Association Inc. at: DMA Choice, DMA, Box 643, Carmel, NY 10512. To remove your e-mail address from marketing lists, go to dmachoice.org and click on *Register for eMPS*. You can also "opt out" of the credit agencies' pre-approved credit offer mailing lists. Simply call 1-888-5-OPTOUT (567-8688) or opt out online at optoutprescreen.com.

Check out those "senior specialists."

Be wary of those who tout themselves as specialists offering insurance and financial advice to seniors. Some simply use senior-related titles and designations to pose as experts. They may not have had any relevant training or experience at all. That fancy title may just be a marketing ploy to get your business.

A new law, however, now prohibits insurance brokers and agents from using a "senior designation" to mislead consumers. And they can no longer use any senior-related certification, credential or professional designation unless it meets certain criteria and has been approved by the California Insurance Commissioner. (IC 787.1(b)(c)) To check on a senior designation, call the Department of Insurance's licensing division at 1-800-967-9331. Or, if you have questions about an insurance offer, scheme or agent, call 1-800-927-HELP (4357).

Another new law, effective in July 2009, prohibits broker-dealers and investment advisors (and their agents and representatives) from using any "senior specific" certification, credential or professional designation that could be misleading. (Corp. § 25243.5) For more information on "senior" specialists and advisors, go to sec.gov (click on *For Seniors*).

What is identity theft?

Identity theft is the unauthorized use of someone's personal data (a driver's license or Social Security number, for example) for any unlawful purpose, such as to obtain credit cards, loans or services. (PC § 530.5) It is a fast-growing crime that strikes some 8.3 million Americans each year and costs businesses, financial institutions and consumers billions of dollars.

Identity thieves may rummage through your trash, steal your wallet or skim encoded data from your credit card. Or they might go *phishing* (this refers to the use of misleading e-mails and fraudulent Web sites to trick Internet users into revealing personal data). Or they might plant *spyware*—software that collects personal information as it is keyed into your computer.

To keep tabs on your credit, request a free credit report annually from each of the three major credit bureaus (See *Resources*). To order your free annual reports, call 1-877-322-8228 or visit the program's Web site at annualcreditreport.com.

If you fall victim to an identity thief, take action immediately (see *Protect Your Identity* on p.12) For more information, visit the Web sites run by the FTC (ftc.gov), the Privacy

Rights Clearinghouse (privacyrights.org), California's Office of Privacy Protection (privacy.ca.gov), the Identity Theft Resource Center (idtheftcenter.org) and the California Attorney General's Office (ag.ca.gov/idtheft).

How do I keep my Social Security number confidential?

PROTECT YOUR IDENTITY

If you are a victim of identity theft:

- Call the credit agencies listed in *Resources* (page 15), put a fraud alert on your credit report and request a free credit report. (CC §§ 1785.11.1)
- File a police report.
- File a complaint with the Federal Trade Commission (FTC) and obtain an FTC ID Theft Affidavit. (See *Resources*.)
- Fill out the ID Theft Affidavit and send it by certified mail (with a copy of the police report) to all businesses where a new account was opened.
- Call the Attorney General's ID Theft Hotline (1-888-880-0240) only if: you have filed a police report *and* are facing criminal charges or a criminal record stemming from the theft of your identity *or* are seeking to sue a creditor to establish yourself as an identity theft victim.
- If your mail is stolen, contact the U.S. Post Office. If your Social Security card is lost or stolen, call the Social Security fraud hotline. (See *Resources*.) If your driver's license is stolen, call the local DMV (or call the DMV fraud control hotline at 1-866-658-5758).

It may be difficult. Increasingly, however, the law is providing you with added protection. For example, state law prohibits any business or individual—with the exception of a state or local government agency—from publicly displaying your Social Security number. Nor can your number be printed on any card required to access products or services. Your health care provider can no longer print your Social Security number on your identification card. And you cannot be required to transmit your number over the Internet unless the connection is "secure" or "encrypted." (CC §§ 1798.85 *et seq*) For more information, call the Department of Consumer Affairs' Office of Privacy Protection. (See *Resources*.)

What should I do if someone steals my credit card?

Notify the credit card company immediately. If someone runs up your credit card or uses your debit card without authorization, you are only liable for up to \$50 if you promptly contact the company. (CC §§ 1747.10, 1748.31) It is also important to file a police report to document the loss and your response.

What should I do if I receive mail-order merchandise that I never ordered?

If you did not order it, it is considered an unconditional gift and you do not have to pay for it—or return it. (CC § 1584.5)

GETTING

DIVORCED OR

REMARIED

Seniors own the bulk of the state's wealth in savings, home equity and other property. At this point in your life, you may have more at stake when you change your marital status. Or, you may be a widow living on Social Security income alone. If you choose to remarry, be aware of your decision's potential impact on your finances.

If I get divorced, can I still get Social Security benefits on my husband's work record?

Yes, if your ex-husband is receiving benefits or is deceased. However, you must have been married for at least 10 years and you must remain single. In addition, if your ex-husband is 62 years old or

older and has not applied for benefits, you can still receive benefits on his record as long as you are at least 62 as well. You must, however, be divorced and single for at least two years before seeking such benefits.

Will I continue to receive Social Security benefits as a widow (or widower) if I remarry?

Yes, if you are at least 60 when you remarry. (A widow or widower isn't actually eligible for benefits until age 60 or, if disabled, until 50.) Or you could apply to receive benefits based on your new spouse's work record instead if those benefits would be higher. If you remarry before turning 60, however, you will be ineligible for widow's benefits throughout your marriage. For more information, call Social Security.

Do I need to change my will in order to remove my ex-spouse or former partner as a beneficiary?

Unless your will states otherwise, your divorce or termination of your domestic partnership automatically revokes any provisions naming your ex-spouse or partner as a beneficiary or as an executor, trustee, conservator or guardian. (Prob. §§ 6122, 6122.1) You would, however, have to change the beneficiary designations for your life insurance and individual retirement accounts.

Will I pay higher taxes if I remarry?

No, not if your joint income is less than \$98,000 a year. The so-called marriage penalty has been on the decline since 2005 for those in the lower-income tax brackets. At higher income levels, however, getting married may increase your tax bill.

RAISING YOUR

GRANDCHILDREN

Some 6.2 million children in this country currently live under a grandparent's care. Drug addiction, family violence, abandonment, poverty and other reasons may be to blame. But in raising your grandchildren, simply opening your home to them may not be enough. Taking responsibility for a child can involve complicated legal options, requirements and rights.

Do I have any rights if my grandchild winds up in the foster care system?

Yes. The county social worker and court must give you (or any aunt, uncle or sibling) preferential consideration when deciding where to place the child. You and your home must meet certain standards, but, as a grandparent, you would not need a license. Also, a judge could authorize you to make decisions regarding the child's medical care and education as well. And you might be eligible for foster care payments, depending on certain criteria. In some counties, families in your situation can also get support services such as respite, legal assistance, mentoring and transportation, as well as tutoring and recreational activities for the child, through the state's Kinship Support Services Program (KSSP). For more information, go to www.dss.cahwnet.gov (click on *Find Services* and *Foster Care*, then *Kinship Care*).

Should I seek guardianship of my grandchildren if I am raising them?

It depends on the situation. If it appears that the children will remain in your care, you may want to consider becoming their *legal guardian*. This does not terminate the parents' parental rights and obligations, but it does give you legal *custody*. This means that you would have the legal right to make many decisions regarding their education and care.

If, however, the parents are only temporarily unable to care for the children, it may be sufficient to simply fill out a *Caregiver's Authorization Affidavit*. (FC § 6550) This would allow you to get them into school and authorize school-related medical care.

How do I become a guardian?

You can file a petition in court for appointment as guardian. Or,

the child, if he or she is at least 12, can file the petition. (Prob. § 1510) A court-ordered, confidential investigation will take place. The judge may place the child in your custody if he or she finds that it would be in the child's "best interests." (Prob. § 1514) However, if either parent objects to the guardianship, the judge will not appoint you guardian unless he or she finds that granting custody to the parent would be "detrimental" to the child and that the guardianship would be in the child's best interests. (FC § 3041)

Is there any financial assistance available for my grandchildren?

Yes. If you are caring for a grandchild or other young relative, you may apply for CalWORKs benefits for yourself and the child if you meet certain eligibility requirements. (WIC §§ 11200-11215) And if you are seeking benefits for the child alone—not yourself—your employment status will have no bearing on the child's eligibility. (Nor is there a maximum time allowance for receiving such benefits.) Or you might be eligible for foster care payments. Contact your local social services office for more information.



Or, if your grandchild has been living with you as a ward or dependent of the court and you become that child's legal guardian, you may qualify for the *Kinship Guardianship Assistance Payment (Kin-GAP) Program*. Under this program, if you meet certain criteria, you may receive monthly payments at the basic foster care rate. (WIC §§ 11360-11376)

Do I have any right to visit my grandchildren?

Again, it depends on the situation. If either parent has died, for example, the child's siblings, aunts and uncles, and grandparents may be granted reasonable visitation if it is, as the judge sees it, in the child's best interests. (FC § 3102) A grandparent may also be granted visitation if the child's parents are divorced or legally separated. (FC § 3103)

A grandparent may not, however, file a petition for visitation if the child's parents are married unless: the parents are separated, one has disappeared for at least a month, one parent joins in the grandparent's petition or the child is not living with either parent. (FC § 3104)

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

First, assess your mother's particular needs. (See *Hiring Help in the Home* below.) She may qualify for *In-Home Supportive Services (IHSS)* if she has very limited resources. IHSS is a Medi-Cal program that pays for in-home assistance when it is necessary to ensure the elder person's safety. (WIC § 12300 *et seq*) To locate IHSS, call your local Area Agency on Aging.

If she does not qualify for IHSS and simply needs assistance with daily tasks, you could hire a caregiver through a *home care agency* or *home care referral company*. Or, you could hire someone on your own. However, if you are the caregiver's direct employer, you will be responsible for paying employment taxes and workers' compensation.

But whether you hire someone through an agency or on your own, be extremely cautious, seek referrals and ask a lot of questions. Such caregivers are not regulated by anyone.

Caregivers who provide medical care, however, must be licensed or certified. You can hire such caregivers through a *licensed home health care agency*. Home health care agencies, certified home health aides, certified nurse assistants, registered nurses, nurse practitioners and licensed vocational nurses all must be licensed or certified by the state. The Department of Public Health can verify a caregiver's license or certificate or refer you to the appropriate agency. (See *Resources*.)

Will Medicare cover the costs of a caregiver?

It depends. If a doctor prescribes medically necessary home health care for a homebound senior, Medicare will cover some of the costs. (You must use a Medicare-approved home health agency.) Medicare will not, however, pay for a caregiver who provides non-medical assistance. This is one reason why some seniors and their loved ones invest in long-term care insurance. (See *Obtaining Health Care and Benefits*.)

What other assistance is available for those who are elderly and homebound?

You can get hot meals delivered to your home through *Meals on Wheels*. And to give caregivers a break, *respite care* is available. Check into *Adult Day Care Centers* and *Adult Day Care Health Centers (ADHC)*. In addition, community care facilities may fill unused beds on a short-term basis to provide respite care for seniors who need 24-hour supervision. (HSC § 1505.5)

Where can I find information on nursing homes?

Contact your local long-term care Ombudsman. Then go online to canhr.org (California Advocates for Nursing Home Reform) and calnhs.org (California Nursing Home Search). And check out Medicare's online "Nursing Home Compare," which rates some 16,000 Medicare and/or Medicaid-certified nursing homes based on health inspection results, quality measures and staffing levels. Simply go to medicare.gov and scroll down to *Compare Nursing Homes in Your Area*. A Medicare guide on choosing a nursing home is available online as well.

To verify the license of a nursing home or other licensed long-term care facility or to find out if any serious violations have occurred at a particular facility, call the Department of Public Health licensing and certification unit at 1-800-236-9747.

FINDING A CAREGIVER OR NURSING HOME

Studies suggest that Americans age 65 and older are less likely to be chronically disabled or living in a nursing home today than seniors of the same age were two decades ago. Still, there may come a time when you can no longer manage on your own. You may simply need help with daily grooming, bathing, preparing meals—or just getting around. Or, you may need round-the-clock care in a nursing home. There are options available.

HIRING HELP IN THE HOME

Assess your needs. Do you simply need help with such daily activities as bathing and preparing meals? Or do you need medical or skilled nursing care as well? How much can you afford to pay?

Ask a lot of questions. Does the agency screen and train caregivers? Do caregivers undergo a criminal background check? (A certified home health aide, for example, must pass such scrutiny and cannot have certain convictions.) Does the agency handle taxes and insurance? Are the agency and worker bonded? Will Medicare, Medi-Cal or your private insurance cover any costs?

Find out your responsibilities. What taxes will you have to pay if you hire the worker on your own? See the Employment Development Department publication *Household Employer's Guide*. To obtain a copy, call 1-888-745-3886 or go to www.edd.ca.gov (click on *Forms & Publications*).

Seek referrals from a trustworthy source. Avoid using a "help wanted" ad to hire a caregiver. You do not know the background—or motives—of those who respond. Be wary of individual caregiver ads seeking employment. For lists of home care agencies and home health care agencies, contact your local Area Agency on Aging.

Consider taking some additional precautions if you do hire someone. It might be wise, for example, to move your valuables to another location for safekeeping—or at least lock them up. Seniors have lost many precious belongings to dishonest caregivers.

Will Medicare pay some of my mother's nursing home expenses?

Possibly, but not for longer than 100 days and only if your mother requires skilled care. In addition, Medicare would only cover part of the costs. After the first 20 days, your mother would have to make a co-payment of \$133.50 a day. If she qualifies for Medi-Cal, however, more assistance may be available. Generally, Medi-Cal covers longer stays in a nursing home. For more information, you could contact Medicare or your local HICAP advisor. (See *Resources*.)

If my elderly mother gives away her assets, will Medi-Cal pay for a nursing home?

Your mother should obtain legal advice before giving away any assets. In determining eligibility, Medi-Cal reviews each individual's past finances to see what, if any, assets have been given away or transferred for less than fair market value. Reviewers currently (in mid-2009) look back over a 30-month period, and will begin looking back over 60 months once new regulations have been adopted. The new regulations will then penalize all asset transfers (unless it would cause a substantial hardship). Until the state adopts the new regulations, however, transfers made within the past 30 months may or may not cause periods of ineligibility. If your mother has very few assets, she may already qualify for at least partial coverage. Check with your county welfare department or an elder law attorney to learn more about meeting Medi-Cal's eligibility requirements.



Is there any assistance available if I take time off work to care for my ailing mother?

Yes, possibly. California's Paid Family Leave Program—a State Disability Insurance (SDI) Program—insurance may provide you with up to six weeks of pay if you take time off work to care for a seriously ill child, spouse, parent or domestic partner, or to bond with a new child. (UIC § 3301(a)) For more information, call the California Employment Development Department's Paid Family Leave Program at 1-877-BE-THERE (238-4373) or go to the Paid Family Leave Collaborative's Web site at paidfamilyleave.org.

The law also allows workers, if they meet certain criteria, to take a leave of absence for up to 12 weeks during a 12-month period if a parent, spouse or child is undergoing treatment in a hospital, hospice or other health care facility. (*Family and Medical Leave Act, California Family Rights Act*, GC § 12945.2; UIC § 3300(d))

Am I legally required to support my penniless, bedridden father?

Maybe. If you have been taking care of him—or have promised to take care of him—you are legally required to continue giving your best effort. You cannot just leave him helpless in his home. (FC §§ 4400, 4401; PC § 270c) If you do fall short, your father or the county (on his behalf) can seek such support from you. (FC § 4404) If, however, your father abandoned you for at least two years when you were a child, you may not be required to care for him now. Nor would you be liable for supporting him if he is receiving certain governmental aid. (WIC § 12350)

What is hospice care?

Hospice care is a program—usually a mix of physical, emotional, spiritual and practical care—for the terminally ill. It may take place in a patient's home or in a specially designed facility. A doctor's sign-off is required for participation. And payment is often on a sliding scale based on income. Medicare covers hospice care as does Medi-Cal and other insurance programs.

LOSING A SPOUSE OR PARENT

You may be overwhelmed with grief right now. You may want to leave the administrative matters for a later day. But there are notifications and legal steps that should not be postponed.

- Make funeral and burial arrangements.
- Obtain several copies of the death certificate.
- Gather relevant documents, such as the will, insurance policies, trusts, and stock, bank account and annuity statements.
- Contact the Social Security Administration (if the deceased was an eligible recipient).
- Send a notification and death certificate to the director of public health (if the deceased was a Medi-Cal recipient) within 90 days after the death.
- Notify any life insurance companies of the death.
- Contact the trustee of any trust and/or the attorney who prepared it.
- Contact the executor of the will and/or the attorney who prepared it.
- Call the administrator of the decedent's pension plan.
- Notify the decedent's banks and financial institutions.
- Contact credit card companies.
- Be sure that insurance or Medicare claims have been processed before paying any medical bills.

GETTING LEGAL HELP

Every county has free legal services for seniors under the federal *Older Americans Act*. The programs differ, however, and their criteria for accepting cases vary as well. These programs typically assist those in the greatest need, such as seniors facing eviction or the loss of public benefits.

If your county's legal services program cannot assist you, ask a friend, co-worker or business associate to recommend a lawyer. Or call a State Bar-certified lawyer referral service. For an online list of certified referral services, go to the State Bar's Web site at calbar.ca.gov/lrs. Or call 1-866-44-CA-LAW (442-2529) for a recorded message with the phone numbers of certified services in your county. Out-of-state callers can call 415-538-2250 to hear the same message. Or check the Yellow Pages of your telephone directory for a listing.

The State Bar also certifies "specialists" in 11 legal areas. For lists of specialists, go to californiaspecialist.org. (Keep in mind, however, that there are experienced attorneys who do not seek such certification.) And for more information on finding an attorney, order a free copy of the State Bar pamphlet *How Can I Find and Hire the Right Lawyer?* (See *Resources*.)

If you are a California resident age 60 or older, you may get free legal advice by calling the Senior Legal Hotline (see *Resources*). If you have a legal problem, it is best to consult a qualified attorney. But if you cannot afford to hire a lawyer, there are other resources. You could, for example, seek guidance from your county law librarian. Law librarians cannot give legal advice, but they can direct you to the appropriate resources and legal forms for your matter. You will also find useful information on many legal topics on California's legal services Web site (LawHelpCalifornia.org) and the California Courts' self-help Web page (courtainfo.ca.gov).

For additional copies of "Seniors and the Law," please e-mail your request (including your name, mailing address, phone number and number of copies desired) to: seniors@calbar.ca.gov. Or, mail your request to: "Seniors and the Law," Office of Media and Information Services, The State Bar of California, 180 Howard St., San Francisco, CA 94105-1639.

RESOURCES

AARP (aarp.org)

1-888-687-AARP (687-2277) (information and services for seniors)

Administration on Aging (www.aoa.gov)**Alzheimer's Association (alz.org)**

1-800-272-3900 (24-hour helpline)

California Advocates for Nursing Home Reform (canhr.org)1-800-474-1116 (consumer line) (**nursinghomeguide.org**)**California Attorney General's Office (ag.ca.gov)**1-800-952-5225 (public inquiry)
1-888-880-0240 (identity theft victims facing criminal charges)
1-916-445-2021 (charitable trust registration)
1-800-722-0432 (Medi-Cal provider fraud, elder abuse)**California Department of Aging (www.aging.ca.gov)**

1-800-510-2020 (referrals to local Area Agencies on Aging and HICAP)

California Department of Consumer Affairs (dca.ca.gov)1-800-952-5210 (public inquiries, consumer complaints, license checks)
1-866-785-9663 (Office of Privacy Protection—**privacy.ca.gov**)
1-916-574-7870 (Cemetery and Funeral Bureau—**cfb.ca.gov**)**California Department of Corporations (www.corp.ca.gov)**1-866-275-2677 (investment advisors, financial planners' license checks)
(Seniors Against Investment Fraud (SAIF))**California Department of Fair Employment and Housing (www.dfeh.ca.gov)**1-800-884-1684 (employment discrimination complaints)
1-800-233-3212 (housing discrimination complaints)**California Department of Health Care Services (dhcs.ca.gov)**(Medi-Cal, IHSS, MSSP information)
1-800-822-6222 / **stopmedicalfraud@dhcs.ca.gov** (to report Medi-Cal fraud)**California Department of Insurance (insurance.ca.gov)**1-800-927-HELP (927-4357) (claim problems, annuity and insurance scams)
1-866-60-AUTO-1 (602-8861) (state's low-cost auto insurance program)**California Department of Managed Health Care (hmohelp.ca.gov)**

1-888-HMO-2219 (466-2219) (questions, complaints about HMOs)

California Department of Public Health (cdph.ca.gov)1-800-236-9747 (licensing and certification information)
1-866-447-4518 (nursing home resident rights)**California Department of Social Services (www.cdss.ca.gov)**(Residential care facilities, adult day programs - **cclcd.ca.gov**)
(Continuing care retirement community oversight - **calccrc.ca.gov**)**California Employment Development Department (www.edd.ca.gov)**1-877-BE-THERE (238-4373) (Paid Family Leave Program)
1-888-745-3886 (to order the *Household Employer's Guide*)**California Medical Board (medbd.ca.gov)**

1-800-633-2322 ("Check Your Doctor" and complaints against physicians)

California Registry (calregistry.com)

1-800-777-7575 (information on some senior assisted living arrangements)

California State Controller's Office (sco.ca.gov)1-800-992-4647 (unclaimed property—**searchthevault.com**)
1-800-952-5661 (property tax postponement)
1-916-445-6321 (information on estate and gift taxes)**Contractors State License Board (www.cslb.ca.gov)**

1-800-321-2752 (license checks, publication requests)

Eldercare Locator Service (www.eldercare.gov)

1-800-677-1116 (referral to your local Area Agency on Aging)

Federal Deposit Insurance Corporation (www.fdic.gov)

1-877-275-3342 (information and publications)

Federal Trade Commission (ftc.gov)1-877-438-4338 (hotline for identity theft complaints, ID Theft Affidavits)
1-877-382-4357 (information and consumer complaints)**Franchise Tax Board (ftb.ca.gov)**1-800-338-0505 (Taxpayer assistance)
1-800-868-4171 (Homeowner and Renter Assistance Program)**Health Insurance Counseling and Advocacy Program (HICAP) (cahealthadvocates.org)**

1-800-434-0222 (medicare and long-term care insurance information)

Homeownership Preservation Foundation (995hope.org)

1-888-995-HOPE (assistance for homeowners facing foreclosure)

Internal Revenue Service (www.irs.gov)

1-800-829-1040 (tax information and forms)

Medicare (medicare.gov)1-800-633-4227 (Information, provider fraud, approved nursing homes)
1-877-772-3379 (*Part D* fraud, waste or abuse hotline)
1-866-800-8749 (California Medicare beneficiary complaints—**hsag.com**)**Mobilehome Ombudsman (hcd.ca.gov)**

1-800-952-5275 (information, complaints)

Paid Family Leave Collaborative (paidfamilyleave.org)

1-800-880-8047 (LAS-Employment Law Center Work and Family line)

Railroad Retirement Board (rrb.gov)

1-877-772-5772 (referrals to local offices)

Senior Legal Hotline (seniorlegalhotline.org)1-800-222-1753 (legal advice for seniors)
1-916-551-2140 (Sacramento residents)**Social Security Administration (socialsecurity.gov)**1-800-772-1213 (earnings/benefits status, referrals to local offices)
1-800-269-0271 (Social Security fraud, waste and abuse hotline)**The State Bar of California (calbar.ca.gov)**1-800-843-9053 (license checks, complaints regarding attorney conduct)
1-888-460-7364 (Senior information line)
1-888-875-LAWS (5297) (information on ordering publications by mail)
pamphlets@calbar.ca.gov (to order pamphlets or request order form)
seniors@calbar.ca.gov (to order more copies of *Seniors and the Law*)**U.S. Department of Housing and Urban Development (www.hud.gov)**1-800-569-4287 (referral to housing counseling agencies)
1-800-347-3739 (housing discrimination: information, complaint filing)
1-800-225-5342 (FHA Resource Center, foreclosure information)**U.S. Department of Veterans Affairs (va.gov)**

1-800-827-1000 (information, location of nearest office)

U.S. Equal Employment Opportunity Commission (eeoc.gov)

1-800-669-4000 (information, employment discrimination complaints)

U.S. Securities and Exchange Commission (sec.gov)

1-800-732-0330 (savings and investment information for seniors)

REPORT FRAUD / REQUEST CREDIT REPORTS**Experian (experian.com)**

1-888-397-3742 (fraud alerts and credit reports)

Trans Union (transunion.com)

1-800-680-7289 (fraud alerts) / 1-800-916-8800 (credit reports)

Equifax (equifax.com)

1-800-525-6285 (fraud alerts) / 1-800-685-1111 (credit reports)

Produced by the State Bar of California's Office of Media and Information Services with a grant from the California Bar Foundation.

Dean Kinley, Director of the Office of Media and Information Services • Nancy McCarthy, Editor and General Manager, California Bar Journal • Kathleen Beitiks, Web Editor

Kristina Horton Flaherty, Writer/Editor, *Seniors and the Law* • Diane Curtis, Public Information Officer

David Cunningham, Production Coordinator • Edsil Basa, Publications Fulfillment

We extend a special thanks to attorney Helen Karr, whose commitment and painstaking research were crucial to the development of this guide. We also greatly appreciate the volunteer assistance of the State Bar's Committee on the Delivery of Legal Services (Legal Assistance for Seniors staff members Millie Gee, Katharine Hsiao, Esther Milbury, Jessica Soske, Robin Yamate, Naomi Young, CAPI Advocate Marianna Aue and HICAP Program Manager Janet VanDeusen and National Senior Citizen's Law Center attorney Jeanne Finberg); the bar's Committee on Senior Lawyers (Walton Phillips); the bar's Trusts and Estates Section (May Lee Tong, Carmen Alberio and Peter S. Stern); and the Housing and Economic Rights Advocates (Maeve Elise Brown). We thank attorneys Joan Virginia Allen and Fred Alan Jones for their input as well. The guide was illustrated by Don Asmussen.

© 2003, 2006, 2009 The State Bar of California, All rights reserved. No part of this work may be reproduced, stored in a retrieval system or transmitted in any medium without prior written permission. Permission is hereby granted to reproduce this work for educational use only.

Seniors & The Law



THE CALIFORNIA BAR FOUNDATION is proud to partner with the State Bar of California to educate seniors about their rights and the legal challenges they may face. *Seniors & The Law: A Guide for Maturing Californians* provides valuable information about the many laws, benefits, and services available to seniors. We invite you to share this guide with seniors, their adult children and caregivers, community organizations, and others who serve the elderly as a helpful resource on issues of importance to California's growing senior population.

With the generous support of our law firm, corporate, and individual donors, the Foundation acts as a catalyst for building a better justice system through our grant and scholarship programs. We champion full and equal access to the law, invest in the next generation of California's lawyers, educate citizens about their rights and responsibilities, and promote philanthropy throughout the legal community.

If you would like to support *Seniors & The Law* and its sister education guides, *Kids and the Law: An A-to-Z Guide for Parents* and *When You Become 18: A Survival Guide for Teenagers*, as well as the Foundation's other worthy programs, please join our efforts by making a tax-deductible contribution to the Foundation today.

Warmest regards,

A handwritten signature in red ink that reads "Mario Camara".

Mario Camara, President
California Bar Foundation

To order additional copies of *Seniors & The Law*, please send your request to seniors@calbar.ca.gov.

Join us in showing the community you care.

Please send your tax-deductible gift to:

California Bar Foundation
180 Howard Street
San Francisco, CA 94105

Or make a gift online at www.calbarfoundation.org

The Foundation is able to sponsor this publication and our grant and scholarship programs thanks to the support of thousands of generous donors, including the following law firms:

Akin Gump Strauss Hauer & Feld LLP
Buchalter Nemer, A Professional Corporation
Cox, Castle & Nicholson LLP
Fenwick & West LLP
Fulbright & Jaworski L.L.P.
Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation
Howrey LLP
Keesal, Young & Logan, A Professional Corporation
Keker & Van Nest LLP
Lim, Ruger & Kim Foundation
Milstein, Adelman & Kreger, LLP
Morgan, Lewis & Bockius LLP
The Morrison & Foerster Foundation
Munger, Tolles & Olson LLP
Orrick, Herrington & Sutcliffe Foundation
Paul, Hastings, Janofsky & Walker LLP
Reed Smith LLP
Seyfarth Shaw LLP
The Sidley Austin Foundation
Skadden, Arps, Slate, Meagher & Flom LLP
Sonnenschein, Nath & Rosenthal, LLP
Wilson Sonsini Goodrich & Rosati Foundation

Building a better justice system

California Bar Foundation • 180 Howard Street • San Francisco, CA 94105 • info@calbarfoundation.org