

Taking Care of Business: Protecting Yourself and Your Assets



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This guide has been prepared as a public service by the New York City Department for the Aging. It is intended to provide the reader with an overview of some legal and financial issues.

The guide is not intended to give the reader an in-depth understanding of the areas of law discussed herein, nor is it intended to substitute for legal advice. **Therefore, prior to making any decisions regarding these issues, the reader is advised to seek professional help.** You may contact your local Bar Association's Lawyer Referral Service.

TAKING CARE OF BUSINESS: PROTECTING YOURSELF AND YOUR ASSETS

Older New Yorkers are often targeted for financial exploitation by telephone and mail solicitors, home improvement contractors, neighbors, acquaintances, and even their own family members. Abusers particularly like to prey on older people, who they believe are good victims because they are generally more trusting, more polite to strangers, and seem to be less resistant to pressure.

Listed here are strategies to protect yourself and resources to help you. Also included in this booklet are financial definitions and legal terms you should understand to help you better manage your money and your personal affairs.

Remember that prevention is always the best strategy and having a sound financial plan in place for the future will ensure that your assets are protected.

If you have any questions or concerns, please contact the Elderly Crime Victims Resource Center of the New York City Department for the Aging by dialing 311, or 212-NEW-YORK if calling from outside New York City.

TIPS TO HELP YOU AVOID BECOMING A VICTIM OF EXPLOITATION

- If someone is assisting you with your bills and writing out your checks, make sure that you **do not sign blank checks**. Have that person write out the check first. Then you should confirm the amount, and sign the check. Make sure that the person who is assisting you is trustworthy, and also have another person review your account just to make sure. If you do not understand the transactions and want someone else to take care of your finances, consider signing a *Power of Attorney* or having a *representative payee* appointed to help you. Do not wait until you are exploited or need the court to appoint a *guardian* for you.
- If someone has forged a check, credit card receipt, or taken money from your account using an ATM card or debit card, contact the bank immediately. Your liabilities in these cases may be limited because the law protects against these forgeries.
- Consult an attorney about any real estate transaction impacting on your ability to remain in your home. Be especially cautious if someone promises you life-long care in exchange for your home. If you have already signed over property to someone, make sure this was your intent and that you understand the implications of it, by consulting an attorney. You need to be sure all agreements are in writing to be protected.
- The Power of Attorney can be a very powerful legal document. All of your assets, including your home and other real property, may be covered by it. Do not give Power of Attorney to anyone who threatens you, who you do not trust completely, or anyone who is involved with drugs, alcohol, is unemployed and financially dependent on you, or who has a mental illness.
- Your will is an important document that should reflect your wishes. If you have changed your will because you were coerced or pressured by someone, changes can be made again. Consult an attorney.
- If you have a *joint account*, make sure you trust that person completely and that he or she is acting in your behalf. If you suspect the other person, or persons, is taking money inappropriately from your account, contact your bank manager. Among a number of remedies, it might be better to consider putting a small amount of money, not all of your savings, in a *convenience account* to manage your household expenses.
- Telemarketing and mail frauds are big businesses. It is always better not to respond to unknown contractors, salespeople, and charities. Deal with people and charities that you are familiar with and that are recommended by friends and relatives. Never send money, or buy anything, to enter a contest.

- Discussing financial issues with someone you trust is of prime importance. Someone who is financially independent and trustworthy can help you with the objectivity you need.

- There are many forms of elder abuse. Be aware that one of the most common forms is psychological/emotional abuse involving name calling, insults, threats and other demeaning and controlling behaviors that cause you mental anguish and despair in an attempt to get you to give the abuser your assets.

Other forms of elder abuse include physical abuse (slapping, bruising, sexual coercion, cutting, or forcibly restraining); neglect (the refusal or failure to carry out care-taking responsibility such as withholding food, medicine, or aids such as glasses or dentures); and abandonment.

Orders of Protection from Family or Criminal Court can help with these forms of abuse. The New York City Department for the Aging Elderly Crime Victims Resource Center can help you obtain one.

The definitions of the italicized words above are on the following pages.

LEGAL AND FINANCIAL PLANNING INSTRUMENTS

Financial elder abuse takes a variety of forms such as fraudulent use of credit cards, misappropriation of cash, abuse of joint bank accounts, abuse of Powers of Attorney and the illegal conveyance of property or assets. The following are some legal and financial instruments you may want to consider.

DIRECT DEPOSIT

Direct or automatic deposit into your bank account protects against loss, theft, or the destruction of your checks. To arrange for the direct deposit of government funds, file a standard authorization form that can be obtained from your bank or the government agency from which you are receiving benefits. Contact the source of any non-government payments, such as retirement benefits, for information on its direct deposit procedures.

JOINT BANK ACCOUNT

A joint bank account is an account opened and maintained by two or more individuals, who are the owners, for the purpose of depositing and withdrawing funds by any one of them. The person or persons with whom a joint account is opened should be chosen carefully, since they can legally withdraw all of the money in the account. The money in the account is payable to the survivor or survivors upon the death of one of them.

CONVENIENCE ACCOUNT

A convenience account is an account owned and maintained in the name of the depositor, who is the sole owner. The owner can authorize access to the account to one or more persons, who are the convenience signers. The convenience signer(s) can perform any banking transaction in this account for the convenience of the depositor. Funds on deposit, including additions and interest accruals, always remain the property of the owner.

REPRESENTATIVE PAYEE

A representative payee is a person or agency that is approved to receive benefit checks such as Social Security, Railroad Retirement, or Veterans Benefits in your behalf. This is especially helpful if you are beginning to have difficulty managing your financial affairs and now need a trusted relative, friend, or agency to assist you. The representative payee receives only specified benefit checks and does not have access to any of your other assets. All benefit payments must be used in your behalf. Arranging for a representative payee is done by contacting the federal agency that provides the benefit check.

POWER OF ATTORNEY

What is a Power of Attorney? A Power of Attorney is a legal instrument by which a person authorizes another person, often a family member, to act on his or her behalf as the agent.

Why Would I Sign a Power of Attorney? A Power of Attorney allows the agent to act on your behalf when you are unable to act yourself. The Power of Attorney can deal with a wide range of financial and property matters, ranging from the management of a single bank account to buying and selling assets, including real estate.

Whom Should I Name As an Agent? You should choose someone you can trust and who will act in your best interest.

How Can I Limit the Power the Agent Will Have? You may customize the Power of Attorney or you can give your agent unlimited powers. The agent has no rights to your assets. You decide how much control you want your agent to have before you sign a Power of Attorney.

Types of Powers of Attorney to consider are:

A **durable Power of Attorney** - Gives the agent authority to act on behalf of the client even after the individual becomes incapacitated.

A **nondurable Power of Attorney** - Gives the agent authority to act on behalf of the client only before the individual becomes incapacitated, but not after.

A **springing durable Power of Attorney** - Effective in the future when the person becomes incapacitated, or meets another specified condition. It is important to clearly specify what criteria will be used to determine when and under what circumstances the agent will become empowered.

A **specific Power of Attorney** - A Power of Attorney used by most banks, insurance companies, and stock brokerage firms. These companies may be resistant to accepting forms other than their own Power of Attorney. If this method is used, a separate Power of Attorney form may be required for each account and safety deposit box.

Note: If you own property in other states, then Powers of Attorney drafted according to the laws of those states should also be completed. Please seek legal advice in these matters.

In New York State you cannot use a Power of Attorney to give someone the power to make health care decisions for you. You must sign a separate document known as a *Health Care Proxy*.

A Power of Attorney form may be obtained from a stationery store. But, it is best to seek legal advice **before** it is completed.

How Can I Revoke a Power of Attorney? A Revocation of a Power of Attorney can be signed if you no longer want the person to act as your agent. As long as you retain the capacity to make legal decisions, you can revoke your Power of Attorney. Make sure that the former agent receives a copy of the revocation, as well as any banks, brokerage firms, or anyone else who would honor the Power of Attorney. File a copy with your county clerk if you own real estate that could be sold under the Power of Attorney.

TRANSFERS OF REAL PROPERTY

Beware of people who promise life-long care in exchange for your property. When considering transfer of a home and/or any interest in real estate, **seek legal advice** and understand the implications of the transfer.

MANAGING YOUR PERSONAL AFFAIRS

Like most people, you may find it difficult to face the possibility of future physical, mental or financial deterioration or the possibility of becoming dependent on someone else. However, it is wise to make all decisions about these possibilities and how you would like matters handled, while you are reasonably healthy. Please consult an attorney regarding the following legal procedures:

HEALTH CARE PROXY

What is a Health Care Proxy? New York's Health Care Proxy Law allows for the appointment of a person you know and trust and called the **health care agent** to act on your behalf and to participate in the health care decision-making process just as you would. The agent can make decisions only after your attending physician has determined that you have sustained the loss of your capacity to make health care decisions. The agent must have specific knowledge of your wishes with respect to hydration (receiving intravenous fluids) and artificial nutrition (receiving intravenous feeding) through the Health Care Proxy form or a separate **living will**.

Copies of the Health Care Proxy should be given to the health care agent, the patient's doctor, home health care provider agency, hospital, family lawyer, and other family members or close friends.

How Can a Health Care Proxy Be Revoked? By notifying the health care agent in writing or by executing a new Health Care Proxy, or by designating an expiration period on the proxy.

Where Do I Obtain a Health Care Proxy? From your local Department of Health agency, hospital, doctor, or attorney.

LIVING WILL

The Living Will allows a person to declare his or her wishes regarding the use of technologically advanced medical care and procedures that can delay death when a person has a terminal illness or condition. New York State does not have a law that recognizes Living Wills, but the courts have upheld the right of an individual to decline life-sustaining treatment when this decision has been clearly indicated in advance in a Living Will. Consult an attorney, since Living Wills must meet certain legal standards in court. Your Living Will should be consistent with your Health Care Proxy. The Living Will should be discussed with personal physicians, family members, caregivers and your Health Care Proxy agent. They should have copies of it along with the Health Care Proxy, and it should be available when the need arises. It should be reviewed periodically.

What is the Primary Difference Between a Living Will and a Health Care Proxy? A Living Will provides an expression of your wishes and instruction about life-sustaining treatment. The agent acting under the Health Care Proxy can make routine decisions regarding health care, as well as decisions regarding life-sustaining treatment.

GUARDIANSHIP

When is a Guardian Appointed? A guardian is a person appointed by the courts to take care of and oversee the personal needs and/or property of individuals who are incapacitated. This course of action is pursued when an individual has become unable to take care of his personal needs and/or property and he/she has made no provisions for handling personal or money management decisions.

Note: Only a court of law can determine if a guardian should be appointed.

LEGAL SERVICES

The worst time to select an attorney is when one is in dire need of an attorney's services. Ask family, friends, or someone you trust for a referral. Have more than one referral on hand.

STRATEGIES FOR PROTECTING YOUR ASSETS

The best way to avoid becoming a victim of exploitation is to avoid trouble in the first place.

TELEMARKETING

- The use of a telephone answering machine virtually eliminates sales calls, and the use of a caller ID registers unknown names and unknown numbers before you pick up the phone.
- When you receive a sales call and do not want to be called again, ask the solicitor to put your name on the "do not call" list. Federal law says that once you have requested this, telemarketers must comply. **If they call back, take their name and number and write down the date and time of the call.**
- You can request the Direct Marketing Association to take off your name from mail sales lists. It may not eliminate all mail, but it will help. Contact 212-768-7277, ext. 1500. **Allow about three months for your name to be removed.**
- The Federal government created the national registry to make it easier and more efficient for you to stop getting telemarketing calls you don't want. You can register your phone number online at www.donotcall.gov or call toll free, 1-888-382-1222 (TTY 1-866-290-4236), from the number you wish to register. Registration is free.

CHARITY SOLICITATIONS

When a charity that you are not familiar with telephones you for a donation, ask for its New York State charities registration number. Then ask the caller to send you something in the mail that you can read and think about before making a donation.

- All legitimate charities must be registered with the NY State Department of Law, Charities Bureau. To check this you can call 1-212-416-8401.

Questions to ask the Charities Bureau:

- Is the charity registered?
- How long has it been registered for?
- What percentage of the money actually goes to the charity?
- Does the charity pay someone to solicit for it?
- Have any complaints been filed against this charity?

HOME IMPROVEMENT: BE ALERT

It is always better to get a referral for work from someone you know who has been satisfied with the work done. Do not yield to pressure or special "one day only" offers from contractors. Ask them for their license number. All home improvement contractors in New York City must be licensed. To find out if a contractor is reliable, you can call:

- NYC Department of Consumer Affairs by dialing 311 (212-NEW-YORK if calling from outside the 5 boroughs). Ask to speak to a representative. They can tell you, at no cost, whether the contractor is licensed, and if there are any complaints against him.
- The Better Business Bureau at 212-533-7500. Alternatively, you can obtain the company's complaint records by mailing an inquiry to 30 East 33 Street, 12 Floor, New York, NY 10016 or by performing an online search at www.bbb.org.

Always insist on written estimates and a full description of the work to be done. Be wary of any contractor who tries to arrange special loans or mortgages for you. Seniors have lost their homes in home improvement scams.

IF YOU ARE HOMEBOUND, BE AWARE

If you are threatened by a home care attendant, if the attendant is stealing from you, or items are missing from your home, contact your home care agency or the Elderly Crime Victims Resource Center immediately by dialing 311.

In addition:

- Say "no" to home health attendants who want to make long distance calls or ask for money or gifts.
- Get receipts for purchases made for you and make sure you get the appropriate change back.
- If an attendant promises to care for you for the rest of your life when you sign your home over to him or her, contact the above resources or your family attorney immediately.

LONG DISTANCE CARRIERS: LISTEN CAREFULLY

Many calls you receive today are from competitive long distance companies making all kinds of offers to entice you to buy service from them. Once you decide which carrier you will choose, make sure that is the one you receive. Be wary of being "slammed," or illegally changed from one long distance carrier to another - check your monthly bill.

If "slamming" does happen, call 212-416-8345, the NY State Attorney General's office. They can provide you with the appropriate address for making your written complaint. You can also write directly to The Public Service Commission, Consumer Service Division, 3 Empire State Plaza, Albany, NY 12223.

MAIL SOLICITATIONS

Be wary of mail stating that you have won a prize or a free vacation and all you have to do is send a fee for processing, mailing, etc. - it is probably not legitimate. **NEVER SEND MONEY AND NEVER GIVE OUT YOUR SOCIAL SECURITY NUMBER!**

If you have been a victim of mail fraud, call 1-800-372-8347. Your complaint will be handled by the appropriate region of the U.S. Postal Inspector and the division that handles the state where the company is located.

If you know that the company originates in NY State, report all mail fraud in writing to:

Criminal Investigations Service Center
ATTN: Mail Fraud
222 S. Riverside Plaza, Suite 1250
Chicago, IL 60606-6100

Include your name, address, phone number; the name, address and phone number of where you sent the money; a summary of what happened; and a copy of your cashed check.

HELP FOR CRIME VICTIMS

Crime and fear of crime are a powerful deterrent to the well-being of older New Yorkers, to their sense of independence and productivity. In the event that you are a victim of a crime, you should seek the expertise and hands-on help of the NYC Department for the Aging and the NYS Crime Victims Board.

NEW YORK CITY DEPARTMENT FOR THE AGING'S ELDERLY CRIME VICTIMS RESOURCE CENTER

The Department for the Aging directly, and through a network of community-based agencies, sponsors crime prevention activities for older New Yorkers and provides counseling and supportive services to elderly victims of crime and elder abuse in New York City.

Department for the Aging staff provide direct services to clients 60 and older who are victims of elder abuse. The Department also conducts professional training for social workers, health care providers, police and other law enforcement personnel on how to recognize, report, and get help for this crime.

NEW YORK STATE CRIME VICTIMS BOARD

The New York State Crime Victims Board has a threefold mission: to provide compensation to victims for certain unreimbursed expenses related to their victimization; to fund local community-based programs to provide direct services to crime victims; and to advocate for crime victims in New York State.

The Crime Victims Board may be able to reimburse you for your direct out-of-pocket expenses resulting from the crime. These expenses may include the repair or replacement of damaged property, including essential personal property necessary to your health, safety, and well-being (e.g. glasses, cane, walker, etc.); loss of earnings or support; medical bills or other services not covered by insurance or benefit programs; transportation expenses for necessary court appearances in connection with the prosecution of the crime; counseling expenses; emergency shelter costs; crime scene clean-up; or funeral bills.

To obtain copies of the Board's brochure and claim form, call or write:

**New York State Crime Victims Board
55 Hanson Place, 10th floor
Brooklyn, NY 11217
(718) 923-4325**

We thank the Young Lawyers Section of the New York State Bar Association for some source material from the "Senior Citizens Handbook: A Guide to Programs and Laws Affecting Older New Yorkers."

NEW YORK CITY DEPARTMENT FOR THE AGING
ELDERLY CRIME VICTIMS RESOURCE CENTER
2 LAFAYETTE STREET
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FOR INFORMATION ON ALL CITY SERVICES:



WWW.NYC.GOV/AGING

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