

This material is provided to answer general questions about the law in New York State. The information and forms were created to assist readers with general issues and not specific situations, and, as such, does not replace the legal advice or representation of an attorney. Because of this and because of unanticipated changes in the law, the Rural Law Center of New York (RLC) makes no claim that this information will achieve the results you desire. Also, the RLC disclaims any responsibility for actions taken based on this material. If you are seeking advice about a specific legal issue, you should contact an attorney licensed to practice in New York State

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# **New York State Senior Citizen Legal Resource Guide**

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# **New York State Senior Citizen Legal Resource Guide**

Many seniors in rural areas face difficult legal issues, but they often do not have access to the information needed to make good choices. In preparing this Legal Resource Guide, the Rural Law Center of New York, Inc. hopes to provide some basic legal information for New York's rural seniors to help ease their minds and assist them in determining an appropriate response to a problem. The guide answers many questions commonly received from seniors at legal services offices, and is organized by subject area as noted in the Table of Contents.

Please note that this guide provides only general information, and does not serve as legal advice. We recommend that seniors with legal problems consult with an attorney.

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# **NYS Senior Citizen Legal Resource Guide**

(Prepared by the Rural Law Center of New York, Inc. Contact the Rural Law Center at 22 U.S. Oval, Suite 203, Plattsburgh, NY 12903. Tel: (518) 561-5460; Fax: (518) 561-5468; and on the web at [www.rurallawcenter.org](http://www.rurallawcenter.org).)

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# Housing

## Basic Tenants' Rights

### What can I do when I receive a Notice of Eviction?

In New York State, most evictions are based upon one of the following three grounds: 1) because the tenant did not pay rent, 2) because the tenant violated a provision of the lease, or 3) because the landlord is terminating the tenancy. For each of these grounds, the landlord must give the tenant a notice.

**If a landlord wants to evict a tenant on the basis of failure to pay rent, he/she must give the tenant a 3 day demand for rent.** The demand must tell the tenant how much rent is owed and for which period of time. The demand must state that if the tenant does not pay the rent within the 3 days that an eviction proceeding will be commenced.

**If a landlord wants to evict a tenant on the basis of lease violation, the landlord must serve the tenant with a notice describing the lease violation,** that the landlord has terminated the lease on the basis of the lease violation as of a certain date and that an eviction proceeding will be commenced if the person is not out by that date.

**If a landlord wants to evict a tenant on the basis of termination of tenancy, the landlord must serve a tenant who rents on a month-to-month basis with a least one month's notice** that the tenant can no longer live in the apartment/house after a specified date. The notice must also state that the landlord will commence eviction proceedings if the tenant is not out by that date.

**IMPORTANT: When a tenant receives any of the above notices, the landlord cannot evict the tenant by himself/herself if the tenant does not leave by the date of the notice. The landlord has to go to court to start an eviction proceeding. Thus, if the notice says you must be out by a certain date and you are not out by that date, the landlord will still have to go to court.**

When you receive a notice from the landlord, you may want to pay the rent owed, talk to the landlord about correcting the lease violations, or negotiate with the landlord about a date certain to be out of the apartment/house.

## **What can I do when I receive a Notice of Petition and Petition in an eviction proceeding?**

**To begin an eviction proceeding, the landlord must serve a tenant with a Notice of Petition and Petition.** The Notice of Petition basically tells the tenant that an eviction proceeding has been started and when and where the court date is. The Petition must tell the facts that the landlord proposes to prove in the eviction case. The landlord must fill these papers out correctly or the tenant can ask the court to dismiss the case. Ask a lawyer to review the paperwork to see if it has been filled out correctly. Make sure to go to the court date.

**IMPORTANT: If you do not appear on the date and time at the court indicated on the Notice of Petition, the judge will probably issue a default judgment against you. This means the judge will issue an order granting all of the relief that the landlord has requested. Even if a tenant does not have a defense, he/she may be able to ask the judge for more time to move to a different location.**

## **What are possible defenses I may have in an eviction proceeding as a tenant?**

A tenant may have one of the following defenses:

- 1) The initial notice or Notice of Petition and Petition were not served correctly;
- 2) The initial notice or Notice of Petition and Petition were not written correctly by the landlord;
- 3) The tenant has the money to pay the rent (the tenant should bring his/her money with any late fees and interest to the court);
- 4) The landlord accepted rent after the date set by the landlord as the end of the tenancy. (For example, if the landlord says you have to be out by April 30<sup>th</sup> and then accepts May's rent, the landlord will have to issue another notice before proceeding to court);
- 5) The landlord is evicting the tenant in retaliation for the tenant's complaint to a governmental agency about the landlord's alleged violation of a health and safety code;
- 6) The landlord knew about the lease violation for a long period of time and did not take action. (For example, the tenant could argue the landlord knew the tenant had a cat for one year but did not do anything about it, and therefore, waived his/her right to use that fact as a ground for the eviction).
- 7) The landlord violated the warranty of habitability by not providing the tenant with a safe, decent, habitable rental unit (Real Property Law Section 235-b). Therefore, the tenant is entitled to some amount of rent abatement.

**IMPORTANT: If you think you have a defense, you should consult with an attorney to determine how to correctly raise these defenses.**

## **What if I cannot find an attorney to represent me by the first court date?**

You should appear in court at the correct date and time. You can ask the judge for an

adjournment to obtain an attorney. Usually, the judge will grant one adjournment to give you time to try to find an attorney. Call the local legal services office. If you do not qualify, call several attorneys in your area and ask how much they would charge to represent you.

### **What will happen to me after the judge orders an eviction?**

The Sheriff must serve you with a warrant of eviction. The eviction cannot take place until 72 hours after the tenant has been served with the warrant of eviction. If the tenant is still in the apartment after the 72 hour period, the Sheriff can remove the tenant and the tenant's belongings and place them on the curb.

### **What can I do if my landlord refuses to return my security deposit?**

If a landlord refuses to return a tenant's security deposit, the tenant can file a Small Claims Court action against the landlord. To file a Small Claims Court action, go to the local city/town or village court clerk and ask for a form. The fee to file this claim is \$15 (\$10 in Town and village courts) if the tenant is asking for \$1000 or less or \$20 (\$15 in Town and Village courts) if the tenant is asking for an amount greater than \$1000. The limit for a small claims action is \$5000, except in Town and Village courts, where the limit is \$3000. You can find a guide on Small Claims at [www.rurallawcenter.org](http://www.rurallawcenter.org).

**IMPORTANT:** A tenant who files a claim against the landlord for a security deposit should be prepared for the landlord to file a counterclaim against the tenant for damages to the apartment or house in an amount far greater than the amount of the security deposit. The tenant should have proof through photos or witnesses that he/she did not damage the apartment or leave the apartment dirty, etc.

### **What can I do if my landlord will not make necessary repairs?**

A landlord has to provide a tenant with a safe, decent and habitable place to live. If a landlord fails to provide heat, hot water, proper plumbing, etc., a tenant may have a claim against the landlord for breach of Warranty of Habitability.

If the landlord refuses to make a repair and the problem causes a risk to the tenant's health or safety, the tenant should consult with an attorney. With proper legal advice, the tenant may take the following steps:

- 1) Write the landlord a letter describing the problem and asking that the problem be fixed. State that if the repair is not made within a reasonable period of time (give a specific date), the tenant will gather estimates and use rent money to make the repair.
- 2) If the problem is not fixed by the date specified, the tenant could gather at least 3 estimates. Hire the contractor with the lowest estimate. Obtain a detailed receipt as to the work that was performed. Send copies of the estimates and receipt to the landlord. Deduct the amount of the repair from the rent.

**IMPORTANT: If a tenant deducts money from the rent for a repair, the landlord can start an eviction proceeding against that tenant for non-payment of rent. The tenant will need to show all paperwork to the judge (letter to landlord telling the landlord what the tenant intends to do, estimates and receipt). The judge will decide if the tenant has provided sufficient evidence to stop the eviction.**

If a tenant withholds rent until the repair is done, the tenant should not spend any of the rent money withheld. If the landlord starts an eviction proceeding against that tenant for not paying rent, the tenant will have the money to pay the rent if the judge does not find that there was a breach of the Warranty of Habitability or if the judge finds that the rent should be lowered for less than the full amount.

### **What can I do if my landlord turns off the electricity?**

If your landlord is responsible to pay for electricity and has the electricity turned off, you should:

- Contact the landlord and ask for the electricity to be turned on;
- Contact the utility company and ask for the electricity to be turned on;
- Contact the Health Department and ask for assistance for the power to be turned back on.

### **What can I do if the landlord turns off my water?**

If your landlord is responsible to pay for water and has the water turned off, you should:

- Contact the landlord and ask for the water to be turned on;
- Contact the utility company and ask for the water to be turned on;
- Contact the Health Department and ask for assistance to get your water back on.

### **What can I do if my landlord discriminates against me?**

The federal Fair Housing Act prohibits housing discrimination on the basis of sex, family status (children under 18), race, color, national origin, religion, and disability. If you believe you have been treated unfairly, call the U.S. Department of Housing & Urban Development (HUD) at 800-669-9777.

You can also assert your fair housing rights under New York State Law.

## **Mobile Home Park Tenants' Rights**

### **Are mobile home park residents entitled to a written lease?**

Before moving into a mobile home park, a tenant must be offered the chance to sign a written lease for at least one year. Tenants must sign the lease within 30 days of receiving a proposed lease from the owner. If the lease is not signed, the tenant is a month-to-month tenant. At the end

of the 1 year lease, if the tenant is in good standing, the tenant should be offered a written lease for the next year.

### **When can the landlord of a mobile home park increase the rent?**

Before moving into a mobile home park, a tenant must be offered the chance to sign a written lease for at least one year. This means the tenant will be guaranteed a certain rent for that time period. If a tenant has no lease, the owner can increase the rent upon 90 days written notice.

### **When can the landlord of a mobile home park evict a tenant?**

Tenants who do not own their own mobile home can be evicted at the end of their lease or upon 30 days notice if they are a month-to-month tenant. The landlord does not have to have a reason for evicting them.

Tenants with a lease who are tenants of “good standing” must be offered a renewal of the lease for at least one year. This offer must be made more than 90 days before the termination date of the prior lease. If a tenant is not in good standing, the park owner must give the tenant 30 days written notice to correct any problems. The tenant must correct the problems at least five days before the owner’s deadline to offer a new lease. Tenants must sign the lease within 30 days of receiving a proposed lease from the owner. If the lease is not signed, the tenant is a month-to-month tenant.

A landlord can commence eviction proceedings against a tenant who has failed to pay the rent after giving a tenant a written demand for rent at least 30 days before starting the eviction proceeding.

A landlord can commence eviction proceedings against a tenant who has violated a lease term or valid mobile home park rules and regulations. To proceed on this ground, the landlord must first give the tenant written notice that he/she has 10 days to correct the violation. If the problem is not corrected within 10 days, the owner may serve a notice to vacate within 30 days. These notices must be provided before the landlord can commence an eviction action.

### **If a judge issues an order of eviction against a tenant in a mobile home park, how much time does the tenant have to move out?**

If a tenant does not own the mobile home, the tenant will be evicted by the Sheriff if the tenant is not out within 72 hours of being served with the warrant of eviction.

If a tenant owns his/her own mobile home and the tenant is being evicted for non-payment of rent, the tenant must be out within 30 days of being served with the warrant eviction.

If a tenant owns his/her own mobile home and the tenant is being evicted for violating a term of

the lease, the tenant usually must be out within 90 days of being served with the warrant of eviction.

## **Land Contracts**

### **What is a Land Contract?**

A Land Contract is a contract between the buyer and seller of a piece of property. Under the terms of Land Contracts, the buyer makes regular payments to the seller, but does not have the deed transferred until all payments are made.

### **What should I do before I sign a land contract?**

- 1) Contact an attorney who will represent your interests;
- 2) Do a Title Search (make sure the seller is the owner of the property, the taxes are paid up, there are no liens against the property such as a mortgage or judgment and the seller has good title to the property);
- 3) Hire an Inspector (make sure there are no serious structural and/or environmental problems);
- 4) Make sure the proposed land contract is able to be recorded by the County Clerk's office (a recordable land contract must have a description of the property exactly as the property is described in the deed and the land contract must be signed in front of a notary public in the same form used to acknowledge a deed).

### **What should I do if I have a problem with my land contract?**

- 1) Contact an attorney.
- 2) Do not abandon the home.
- 3) If the owner commences an action to evict you, contact an attorney. Many times an owner will start an action to evict a buyer on a land contract. This action does not belong in the city, town or village justice court. You may need an attorney to argue that this kind of case must be heard in Supreme Court.

## **Home Ownership**

### **Where can I find resources to help rehabilitate/repair my home?**

Communities and non-profits may receive funding from the New York State Community Development Block Grant Program (CDBG) or HOME Program to provide residents with rehabilitation assistance. You may also receive help with repairs that improve energy utilization by contacting the local weatherization program if you qualify for the program. This program is usually administered by your local community action program. Eligible applicants may also obtain funds to repair through their local Department of Social Services.

To determine whether your community has received these funds and how to apply, you may contact the nearest HUD-certified housing counseling agency. Call 1-800-569-4287 to find the nearest Housing Counseling Agency.

### **What is a reverse mortgage or Home Equity Conversion Mortgage?**

A Home Equity Conversion Mortgage is a program designed to allow seniors to change the equity in their home into cash while the senior continues to reside in the home. The terms of payment can be for a fixed period of time or allow the senior to remain in his/her home for the rest of his/her life. You should consult with an attorney or housing counseling agent before entering one of these programs.

### **What can I do if I cannot afford my mortgage payments anymore?**

You should contact an attorney or housing counselor immediately to evaluate your options. Call 1-800-569-4287 to find the nearest Housing Counseling Agency. You may have several options, including 1) ask for a hardship period, 2) work out a repayment plan, 3) refinance the loan, or 4) sell the property.

### **What can I do if I receive a Summons and Complaint to foreclose my home?**

If you are served a Summons and Complaint, you should carefully read the Summons. The Summons will tell you how many days you have to answer the Complaint from the day which you were served. Most Summons give you 20 days to answer the Complaint. You should contact an attorney immediately to determine if you have any defenses to the claims.

**IMPORTANT: If you do not answer the Complaint within the number of days specified, the judge can issue a default judgment against you. This means the judge can grant the person or company who started the law suit all of the relief he/she requested.**

An answer is more than just a letter. It is a legal document that states your responses to the allegations made in the complaint and raises any defenses you may have. Your original answer must be filed with the Clerk's office. A copy must be served on the attorney for the party that started the court action.

**IMPORTANT: If you think you have a defense to a court action or if you are going to lose your home, you should contact an attorney immediately to respond correctly to the court action.**

### **What can I do if a contractor is not doing the work promised?**

You should notify the contractor immediately in writing as to what is the problem. Specify if the

wrong materials are being used or how the work is being done incorrectly. State clearly what you want the contractor to do at that point: for example; stop any further work, correct mistakes, etc. Stop any further payment until the work continues as promised in the written contract or until you come to an acceptable written agreement with the contractor as to how the work should proceed. Consult an attorney. You may need to go to Small Claims Court to recover monies already paid if you are unable to reach an agreement with the contractor. You may also want to contact the Attorney General's Office in your area to file a complaint. See [www.oag.state.ny.us](http://www.oag.state.ny.us) to find the closest regional office.

**IMPORTANT: If you did not receive a written contract and the work performed was for more than \$500, you may want to write a letter to rescind and cancel the contract for the work. Under New York State law, you are entitled to receive a written contract before work is performed with a right to cancel the contract within 3 days of receipt for most home improvement work.**

# Advance Planning

## Power of Attorney in New York State

### BACKGROUND

A Power of Attorney is a powerful legal document that allows a person (the Principal) to grant certain legal powers to a person of his or her choosing (the Agent). Generally, a Power of Attorney gives the person you choose the power to manage your assets and financial affairs while you are still alive. This legal document must be signed when the Principal has the full capacity to understand the powers being given. If the document is a durable Power of Attorney, the powers granted will continue even if the Principal becomes incapacitated.

### CHANGES TO THE LAW

As of September 1, 2009 there are major changes in the law concerning Powers of Attorney in New York State. These changes in the law were made specifically to protect the Principal. The new law makes sure that the Principal completely understands the powers that he or she is giving to the Agent. These powers include the granting of power to transfer assets or make gifts, as well as to change beneficiaries on life insurance policies, annuities and retirement accounts. If you signed a Power of Attorney prior to September 1, 2009, your document remains valid and in full effect.

### OUR SUGGESTION

Since the change in the law is so significant, we strongly suggest that you consult an attorney if you wish to execute a Power of Attorney in New York. As you can see in the brief description above, the new Power of Attorney law is much more complicated and should be carefully considered and executed with legal advice. Although, the new law was enacted in order to offer the fullest possible protections, each situation is unique and can be best addressed with the assistance of an attorney.

## Health Care Proxy

### What is a Health Care Proxy?

A Health Care Proxy Form is a document that specifies your wishes for how you want to be treated if you are so seriously ill that you cannot make those decisions yourself. A Health Care Proxy is the legal term for the person that you designate to make your health care decisions when you are no longer able to do so.

## Where can I get a form?

You can obtain forms at no charge from several locations. You can obtain forms from the Internet. You can usually obtain forms from your local Office for the Aging. You can also obtain forms from the Rural Law Center of New York, Inc. (toll-free 866-324-1183 or by e-mail at [contact@rurallawcenter.org](mailto:contact@rurallawcenter.org)).

**IMPORTANT: While New York State does not have an official Health Care Proxy form, you should obtain a form that is based upon New York law.**

## How do I fill out the form?

While forms will vary slightly, they all require the same information. You will have to state your name and address and the name and address of the person you appoint to be your health care proxy. You should also appoint an alternate to serve as your health care proxy if the person you have selected is unable to serve. You should then state how you would like the power to be administered. For example: My health care agent shall have all lawful authority permissible to make health care decisions for me, including the authority to consent, or withdraw consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or treat my physical or mental condition, EXCEPT, if at any time I should have an incurable injury, disease or illness, which is a terminal condition, and the application of life-sustaining procedures or machinery would serve only to prolong the moment of my death, I direct that such procedures or machinery not be used, and that I be permitted to die naturally and I further direct that my health care agent take all actions necessary to allow me to die such a natural death. I specifically direct that should I have an incurable injury, disease or illness, which is a terminal condition, I do not wish to have artificial nutrition and hydration used as a treatment.

**IMPORTANT: In New York State, the Health Care Proxy form must be signed and dated by the person writing it. The form must also be signed and dated by two witnesses. The person being appointed as the Health Care Proxy should not be one of the witnesses. In New York State, if you do not state your wishes regarding artificial nutrition and hydration clearly, your proxy will be unable to ask health care providers to withhold these from you.**

## Where should I keep the form?

You should make several copies of the completed form. You should give a copy to your health care providers and to the person you named as your Health Care Proxy. You may also want to give copies to your attorney, close friends and family members. You should keep original for yourself in a safe place. If a copy does not fit into your purse or wallet, you should have a card in your wallet giving information about the existence and location of your Health Care Proxy form.

## What if I change my mind?

If you wish to make changes concerning your **Health Care Proxy Form**, you should first revoke

your original in writing and, if possible, destroy all copies. Fill out a new **Health Care Proxy Form**. Make sure that your health care providers and family are informed of the changes and, if you desire, have copies of the new document.

## **Wills**

### **What is a will?**

A will is a legal document that specifies how you wish to pass on your property at your death.

### **Do I have to go to an attorney to write a will?**

You may decide that you feel more confident if a lawyer prepares your will, especially if your estate is complicated. However, an attorney is not absolutely necessary. If you choose to do your own will, you must be sure to follow New York State required procedures for signatures and witnesses.

### **What happens if I do not write a will?**

If you do not have a will, New York State law determines how your property will be distributed amongst surviving relatives. If you have no surviving relatives, your property will revert to the State.

### **Where can I obtain directions on how to write a will?**

There are several places you can receive directions free of charge. You may obtain them from sites on the Internet. You may also obtain them from the Rural Law Center of New York (toll-free 866-324-1183, or on our website at [www.rurallawcenter.org](http://www.rurallawcenter.org)).

**IMPORTANT: In order to be valid in New York State, you need to ask at least two adult witnesses to be present for your signing of the will. The witnesses cannot be anyone that you have named as a beneficiary in the will. In front of the witnesses and before you sign, you need to say out loud, “This is my Last Will and Testament that I am signing and it represents my wishes for distribution of my property at the time of my death.” Ask the witnesses to watch you sign, and then have each of them sign as WITNESSES. Your witnesses do not need to read the contents of the will. The will does not need to be notarized. However, it is a good practice to have your WITNESSES sign a SELF-PROVING AFFIDAVIT in front of a notary public stating that they signed as your witnesses on your request to avoid problems in probate court.**

## **Estates**

### **After a person dies, whom do I have to notify?**

After a person dies, you should notify the following:

1. Social Security Administration;
2. Tax Authorities;
3. Pension/Retirement;
4. Bank;
5. Credit Card Companies;
6. Utility Companies;
7. Department of Motor Vehicles.

Many of these entities will require a certified copy of the death certificate.

### **How do I get the authority to distribute the assets of an estate?**

In order to disburse the assets of the estate, the executor will need to obtain LETTERS TESTAMENTARY. Once you obtain these letters as executor, you will have exclusive and continuing power to administer the estate.

### **When someone dies, is there property family members can take right away?**

Some property will pass by law. For example, if two people own property as “JOINT TENANTS” or “TENANTS BY THE ENTIRETY” and one person dies, the other person will automatically own the property. The surviving person should file a certified copy of the death certificate with the County Clerk’s office and may want to have a new deed prepared. Similarly if two people are named on a joint bank account, the surviving person is entitled to all of the funds in that account.

If the person is survived by a spouse or is not survived by a spouse, but by children under the age of 21, the spouse or child can receive several assets from the estate as “FAMILY EXEMPTIONS.” These exemptions include:

- 1) One motor vehicle valued at less than \$15,000. (The spouse would need to bring a certified copy of death certificate to the Department of Motor Vehicles to have the title transferred);
- 2) Household goods valued less than \$10,000;
- 3) Domestic animals or farm machinery valued less than \$15,000;
- 4) Money or other personal property valued less than \$15,000.

### **When do I have to probate a will?**

If there is property remaining after the property has passed by matter of law (jointly owned

property) or distributed through family exemptions, the estate must be probated or administered through a court proceeding.

### **How do you probate a will?**

A will is probated in the Surrogate's Court in the county where the deceased lived. There are two types of probate procedures.

1. If the estate is less than \$30,000 and there is no real property, you can go through the Small Estate Procedure.
2. If the estate is more than \$30,000 and/or there is real property involved, you must go through the regular probate procedure.

### **Do you need an attorney to probate a will?**

Administering an estate is a complex procedure. You should consult an attorney. You should note that if you hire an attorney to represent you in executing the will, the attorney's fees and costs of the administration will normally be paid by the estate.

# Public Benefits

## Food Stamps

### How do I apply for Food Stamps?

Food Stamps provide financial assistance to low-income households to meet their nutrition needs. You can apply for food stamps by filling out an application form. You can obtain an application form by going to your local Department of Social Services or by calling your local Department of Social Services and asking them to mail you a copy.

**IMPORTANT: You should turn in your application right away. If your application is approved, your benefits will be issued as of the date you filed your application. You do not need to fill out the application completely to turn it in. You can just write your name, address and sign and date the form to file the application.**

### Do I have to go to the Department of Social Services to apply?

No, you can just mail the form. Usually, Food Stamp rules require every applicant for benefits to go to a face-to-face interview. However, if you cannot attend the interview, you can appoint an authorized representative to attend the meeting for you and bring the necessary information. If you do not have someone who can go for you and you are elderly or disabled, the local Department of Services can waive the face-to-face interview and do the interview over the telephone or send a worker to your home.

### What are the eligibility requirements?

The eligibility requirements are complicated. If you think you need Food Stamps, you should apply. In general, a household cannot have more than \$2,000 in resources (\$3,000 if the household includes someone who is elderly or disabled). Several items do not count towards resources such as: the house you live in, 1 licensed vehicle per adult member of household, pension and retirement funds (with some exceptions), life insurance, and one burial plot per person. In regards to income, households with an elderly or disabled person must meet net income guidelines. The net household income cannot exceed 100% of the poverty level to qualify.

### What do I need to do once I start receiving Food Stamps?

Once you receive Food Stamps, you should respond to any written requests from the Department of Social Services. You should comply with the desertification requirements. You should notify

the local Department of Social Services in writing immediately if there are any changes in your household income or composition (someone moving in or out of the household).

## **SSI (Supplemental Security Income)**

### **How do I apply for SSI benefits?**

You can apply for SSI benefits at the nearest Social Security Administration (SSA) Office. You can find the nearest SSA office by calling 1-800-325-0778 or on the Internet at: [www.ssa.gov](http://www.ssa.gov).

In order to qualify for SSI, you must be disabled, blind, or over age 65. SSI defines a disabled person as one who has a physical or mental problem that prevents him/her from working and is expected to last more than 12 months or to result in death.

To qualify for SSI, there are resource and income limits.

When you qualify for SSI, you will probably also qualify for Medicaid and Food Stamps.

### **What can I do if SSA said that I had an overpayment of my SSI benefits and wants to be paid back?**

An overpayment occurs when you receive more money for a month than the amount you were entitled to receive. This can happen when:

- you do not report a required change (like an increase in income or a change of who is living with you) as required;
- the office makes a mistake;
- your income is more than you thought it would be;
- you have excess resources.

If there is an overpayment, the SSA will send you a letter and tell you that they propose to take 10% of your SSI checks until the overpayment has been paid. If you do not think that you were overpaid benefits, you have the right to request a reconsideration.

**IMPORTANT: If you request a reconsideration within 10 days of the date on the SSA notice about the overpayment, you will receive your regular SSI check until a decision is made.**

**IMPORTANT: Even if you agree that you were overpaid, but you think that the overpayment was not your fault, you can ask for a waiver of overpayment. This means you are asking SSA to not collect the overpayment. To request a WAIVER, you need to fill out FORM SSA-632 (Request for Waiver). You can obtain this form by going to the local office or calling the office and asking them to send you a copy. To get a WAIVER, you will**

**need to show that the overpayment was NOT your fault and that you do not have the income to pay the overpayment because you need all of your income to meet your basic living expenses and it would be a hardship to pay.**

**IMPORTANT: You have the right to look at your file if you are not sure why the overpayment occurred.**

### **What do I do to be a representative payee?**

Generally, the person who wishes you to become his/her representative payee should contact the local SSA office (Call 1-800-772-1213 to find the local office) and tell them he/she wants you to be his/her representative payee. You should submit a letter stating that you are willing to be that person's representative payee. You probably will have to attend an interview at the local SSA office.

### **What can I do to change my representative payee?**

To change your representative payee, you can fill out an application at your local SSA office. The new person you would like to be appointed should submit a letter stating they are willing to be your representative payee.

## **Medicaid**

### **What can I do to afford nursing home care?**

One way to afford nursing home care is to qualify for Medicaid. To qualify, you will need to meet income and resource limits. These limits are low. Sometimes, you may be able to qualify for Medicaid by paying a certain amount of your medical bills each month. This is called a spend down.

If you have a spouse that needs to go into a nursing home, you may qualify for the spousal impoverishment program. In this federal program, the spouse at-home is able to keep a house to live in, car and a much higher amount of income and resources than is allowed under the regular Medicaid program. To find out more about this program, you should contact your local Department of Social Services' Medicaid unit.

### **How do I obtain reimbursement for transportation through Medicaid?**

If you are a Medicaid recipient and you need transportation to get to a doctor, you can request Medicaid to provide you with transportation. You may be able to obtain reimbursement for a friend or family member to drive you to your medical appointment. However, please note you must obtain prior approval from the local Department of Social Services office to receive this

reimbursement of costs related to a friend or family member taking you to your medical appointment.

### **How do I obtain durable medical equipment through Medicaid?**

A Medicaid recipient is eligible to obtain Durable Medical Equipment (such as a wheelchair, special bed, special shower, etc.) if it is “medically necessary.” In order to obtain this kind of equipment through Medicaid, you will first need the support of your medical provider or even better, several of your providers. You can then go to an approved vendor of Durable Medical Equipment. The vendor with your medical providers will help you decide what kind of equipment you need. The vendor will then send a prior approval request to the Department of Health for the equipment. The request will include the proof of medical necessity (generally paperwork signed by your doctors). The request should also indicate that the equipment being requested is the least costly alternative to meet your unique needs. It is a good idea to supplement this paperwork with letters of support from as many as possible of the health professionals with whom you have contact. You may also want to include letters of support from others who know you and your need for the equipment well such as employers, personal care aides, relatives, and case managers. Once the forms are submitted by the vendor, you should receive notice as to whether the Department of Health is going to grant, deny or modify your request within 21 days. If the Department of Health denies or modifies your request, you can ask for a fair hearing.

### **How can I transfer assets and still qualify for Medicaid?**

This is a complicated area of the law. You should consult an attorney in regards to this matter. In general, Medicaid will look to see if an applicant made any financial transactions within the required time period before applying for Medicaid coverage. Medicaid imposes a period of ineligibility for non-exempt transfers that were not made for fair market value. There are several types of transfers that are exempt from the application of the penalty period. There are some transfers that have a longer “look back” period such as certain annuities.

## **Utilities**

### **How do I apply for HEAP (Home Energy Assistance Program)?**

You should contact your local Department of Social Services. Depending on your income, you need to apply for the program through the local Department of Social Services or another community agency. For more information on utility matters, please go to the Public Utility Law Project’s website at [www.pulp.tc](http://www.pulp.tc).

### **When can the utility company turn off my electricity?**

A utility company can turn off your service:

- If you did not pay for any charges for services that were given to you in the last 12 months;
- If you did not pay a deposit lawfully required;
- If you did not make payments under a Deferred Payment Plan;
- If you failed to pay for any equipment or installation charges associated with the start of services.

If any of the above occurs, before shutting off your service the utility company must give you a notice in writing that it plans to shut off your service on a certain date. You must receive this notice at least 15 days before the date set for shut-off.

For more information on utility matters, please go to the Public Utility Law Project's website at [www.pulp.tc](http://www.pulp.tc).

### **Can they turn off my electricity if I am disabled?**

There are two situations where a utility cannot cut off your electricity if you are disabled:

- 1) If you are a recipient of SSI and reside alone, then the utility cannot cut off your electricity at any time through out the year whether electricity is used to heat the apartment/home or not.
- 2) If anyone is in household whose medical condition will be aggravated by the absence of electricity and has a letter from a doctor stating the nature of the medical impairments and that the condition will be aggravated by the loss of electricity.

For more information on utility matters, please go to the Public Utility Law Project's website at [www.pulp.tc](http://www.pulp.tc).

### **Can they turn off my electricity in the winter time?**

Yes, the utility company can usually turn off your electricity if you have defaulted on payments and have received the correct notices except the company may not turn off your electricity if you are disabled in certain circumstances and if the company has not followed the correct procedures.

For more information on utility matters, please go to the Public Utility Law Project's website at [www.pulp.tc](http://www.pulp.tc).

### **What can I do to stop a utility shut-off?**

To stop a utility shut-off, you can take one or more of the following actions:

- Make a payment agreement with utility company. If you have not defaulted on payment on a Deferred Payment Agreement with the company, the utility company must offer you a repayment plan. Your terms can be as low as no down payment and only \$10 above your current bill.

- Apply for emergency HEAP;
- Apply to agencies for assistance, such as churches or the Red Cross;
- Apply to the local Department of Social Services for Emergency Assistance to Adults if you are a SSI recipient;
- Apply to the local Department of Social Services for Social Services Law Section 131-s Utility Assistance (this authorizes payment of the last 4 months of utility bills to prevent a termination and possibly a guarantee of payment for the next 6 months of utility bills).

**IMPORTANT: If you are paying back owed money on a Deferred Payment Plan and are paying the lowest amount of \$10 above the current bill, do not miss a payment. If you miss a payment, the company does not have to give you another chance to get back on the payment plan. If you are paying on a Deferred Payment Plan and can no longer make payments due to a change in circumstances outside your control, contact the utility company right away and ask for the terms of the agreement to be changed.**

For more information on utility matters, please go to the Public Utility Law Project's website at [www.pulp.tc](http://www.pulp.tc).

### **How can I get power turned on when I owe a back bill?**

You have several options. You should be able to receive service if you:

- Pay the money owed on the back bill.
- Make a payment agreement to pay what you owe in smaller payments over a period of time. (The utility company must negotiate with you).
- Are a recipient of SSI or public assistance or have applied for such benefits and the local Social Services office has agreed to pay at least some of the amount of your prior bill and agreed to provide a guarantee to the utility company to pay future payments on your behalf if you are unable to pay.
- Will be living with someone who was not a customer of record or who does not owe a back bill and put the utility bill in his/her name.
- You may want to investigate whether you can obtain electricity through another utility company (Energy Service Company). You can go to [www.dps.state.ny.us/eschoice.htm](http://www.dps.state.ny.us/eschoice.htm) to obtain more information about this.

For more information on utility matters, please go to the Public Utility Law Project's website at [www.pulp.tc](http://www.pulp.tc).

# Consumer Rights

## How can I stop telemarketers from calling me?

To stop telemarketers from calling you, you can place yourself on the New York State DO NOT CALL registry by calling 1-800-622-5569. You can also place yourself on the federal list by calling 1-888-382-1222.

## What can I do if I can no longer pay my bills?

If you owe money on a debt and are no longer able to make the payments, you may want to take some of the following steps:

- Tell the company about the problems you are having and ask for an extra month or couple of months to make the next payment;
- Ask the company or another company if you can refinance the loan or renegotiate the terms (interest rate, minimum monthly payment, or term of the loan) to make the payments feasible for you to pay;
- Ask the company if it would be willing to accept back the merchandise you purchased and cancel the balance due;
- Regularly inform the company as to your circumstances. You may want to contact a housing counseling agency for further advice. You can find the nearest housing counseling agency by calling 1-800-569-4287.

## What can I do if I can no longer pay my mortgage?

If you owe money on a mortgage and are no longer able to make the payments, you may want to take some of the following steps:

- Tell the company about the problems you are having and ask for an extra month or couple of months to make the next payment;
- Ask the company or another company if you can refinance the loan or renegotiate the terms (interest rate, minimum monthly payment, or term of the loan) to make the payments feasible for you to pay;
- Sell your home;
- Ask the company if it would be willing to have you give the house to them and agree that you do not owe any additional money on the outstanding balance of the mortgage;
- Regularly inform the company as to your circumstances;
- Investigate whether filing for bankruptcy through Chapter 13 would help you.

Protecting your home from foreclosure is important. You should speak with an attorney or

housing counselor immediately. You can find the nearest housing counseling agency by calling HUD at 1-800-569-4287.

**IMPORTANT: Do not ignore any court papers you may receive regarding a foreclosure. Get any promises made from the mortgage company in writing.**

### **What can I do to stop debt collectors from harassing me?**

Federal law protects consumers against abusive treatment by debt collectors. **Debt collectors cannot:**

- Contact you if you tell the agency in writing to stop further contact;
- Contact you before 8 a.m. or after 9 p.m.;
- Contact you at work if the agency is told that your employer does not allow that communication;
- Contact other people (such as employers, relatives or neighbors) about the debt except to obtain your address and telephone number;
- Contact you if you are represented by an attorney in this matter;
- Be harassing and/or abusive.

To stop them from harassing you, you should write a letter to the debt collector requesting that there be no further contact with you. There is a fillable sample letter in the “Managing Your Debt” section of [www.rurallawcenter.org](http://www.rurallawcenter.org) website. If the abusive actions continue, you may have an action under federal law against the debt collector. If this occurs, you should consult with an attorney.

**IMPORTANT: Please note that if a debt collector receives a letter asking you not to contact them any further, you may encourage them to start a law suit against you for the amount owed.**

### **What should I do if I get a summons and complaint in the mail?**

If a creditor starts a law suit against you, you will receive a summons and complaint in the mail. You should read the documents carefully. The summons will indicate how many days you have to file an answer (or legal response) to the complaint. You will probably have 10 or 20 days to answer the complaint from the date you were served. If you do not file an answer within this time period, the judge will probably enter a default judgment against you. This means that the creditor will be able to obtain all of the relief requested against you.

When you receive a summons and complaint, you should quickly contact an attorney to determine if you have any defenses to the matter. If you have some defenses (such as the amount requested is incorrect or the merchandise was defective) you need to file the answer within the time period specified and assert your defenses. If you cannot get an attorney to represent you, you should fill out the sample answer form in the “Managing Your Debt” section of [www.rurallawcenter.org](http://www.rurallawcenter.org) and file it rather than default.

## What can creditors do after a judgment is issued against me?

If a creditor starts a law suit against you and wins, the court will issue a decision or judgment against you stating how much you owe the creditor. When the creditor obtains the judgment, the creditor can try to collect the money from you. There are several ways a creditor can try to collect the money:

1. Garnish your wages;
2. Seize your bank account; or
3. Place a lien on any property you own (like a car, house or piece of property).

## How much and what kind of income can the creditor garnish?

Generally, a creditor can only seize 10% of your income (more can be taken out for child support obligations). Only one creditor can garnish your wages at a time.

The creditor cannot garnish your wages if they are less than 30 times the hourly minimum wage per week. The following income cannot be garnished by a creditor (except to enforce a child support order, to recoup overpaid governmental benefits, or to pay for government student loans in certain circumstances:

- Any public assistance benefits;
- Your SSI check;
- Your Social Security Check;
- Your unemployment check;
- Your Veterans Administration check;
- Child support or spousal support ordered by a court.

## When can a creditor take money from my bank account?

A creditor can freeze and then seize any funds from your bank account that are not from a protected source. You will probably not receive notice before your account is frozen. As soon as you find that your account is frozen, you should contact any person to whom you issued a check to try to avoid bounced check fees.

Funds in your bank account cannot be frozen or seized if they can be shown to be from one of the protected sources listed in answer to the previous question. If the only funds in the account are from a protected source, contact the creditor's attorney right away with proof that the only deposits made into the account are from the protected income source. You will probably need to show proof of receipt of the protected funds (such as your SSI award letter and several months of bank statements which you can obtain from the bank).

**IMPORTANT: It is more difficult to show the account only has protected funds in it if you make other deposits into the account. Please note that while the creditor should release the hold after you submit sufficient proof, you still may be subject to bank fees and bounced check fees. You can negotiate with the bank to try to eliminate or reduce these fees.**

## Can I go to jail if I don't pay my bills?

You cannot be sent to jail just for not being able to pay your bills.

**IMPORTANT: Please note you can be sent to jail for a period of time if you willfully fail to pay child support.**

## Automobiles

### What can I do if I cannot make payments on my car loan?

If you cannot make payments on your car loan, you may want to take one of the following steps:

- Contact the loan company and ask if you can miss your payments for a month or two and add those payments to the end of the loan;
- Contact the loan company and ask if you can renegotiate the terms of the loan (interest rate, term of the loan, monthly payment, etc.);
- Contact another loan company and see if you can refinance the loan on better terms;
- Call the loan company and ask if you surrender the car, will they agree to not seek a deficiency judgment (the difference between what the loan company can reasonably obtain for your car and the amount remaining on the loan) and to not include the default on your credit report (if you take this step, be sure to obtain all promises in writing).

If you are not able to take any of the above and cannot make payments, your car may be repossessed by the loan company. In New York State, there is self-help repossession for cars meaning that the loan company does not need to go to court to seize your car as long as the company has a valid security interest in the car and you defaulted on the loan. The company does not need to give you prior notice of repossession. However, the company cannot breach the peace in the act of repossessing your car. Within 72 hours of the repossession, the company must give you a written notice stating that the car was repossessed and the amount of money you need to pay to obtain your car and reinstate the loan. If you think your car is going to be repossessed, you may want to make sure that you have no personal belongings in the car.

**IMPORTANT: Make sure to obtain any promises from the loan company in writing.**

### If I give my car back, do I stop being responsible for the loan?

In general, if you just give your car back, the loan company will sell your car at an auction. They will then go to court against you for the difference between what the company obtained at the

auction and the remainder of the amount on your loan. In order to avoid this, you should not give your car back voluntarily until you obtain a written promise from the loan company that upon return of the car, you will not owe any remaining amount on the loan.

### **What can I do if something is wrong with my new car?**

New York State has a New Car Lemon Law that helps consumers who buy cars that turn out to be “lemons.” Cars that are covered by this law include:

- 1) Cars that were covered by the manufacturer’s new car warranty at the time of original delivery; and
- 2) Cars that were purchased, leased or transferred within the earlier of the first 18,000 miles or two years from the date of original delivery; and
- 3) Cars that were either purchased, leased or transferred in New York or those that are presently registered in New York; and
- 4) Cars that are primarily used for personal purposes.

To exercise your rights under this law, you should immediately report any problem you are having with the car to the manufacturer and its authorized dealer in writing. You should keep copies of these letters. If the car is not repaired at all or within a reasonable number of attempts and the manufacturer or dealer refuses to refund the full purchase price or offer a comparable replacement car, you can participate in an arbitration program or sue the manufacturer directly in court.

To find out more information about the New York Lemon Law, the Attorney General’s Office publishes an informative guide which you can obtain at the local office in your area or on the Internet at [www.oag.state.ny.us](http://www.oag.state.ny.us).

### **What can I do if something is wrong with my used car?**

New York State has a Used Car Lemon Law that helps consumers who buy certain used cars that turn out to be “lemons.” Cars are only covered by this law if they satisfy all of the following criteria:

- 1) Cars that were purchased, leased or transferred after the earlier of (a) two years from the date of original delivery, or (b) 18,000 miles of operation; and
- 2) Cars that were purchased, leased or transferred from a New York dealer; and
- 3) Cars that had a price of at least \$1500; and
- 4) Cars that have been driven less than 100,000 miles at the time of purchase or lease; and
- 5) Cars that are primarily used for personal purposes.

To exercise your rights under this law, you should immediately report any problem you are having with the car to the dealer in writing. You should keep copies of these letters.

Please note the warranty protection for used cars are relatively short. You must show that the

problems existed (the best way to do this is to notify the dealer of the problems) within the warranty period.

The warranty protection periods for used cars are as follows:

90 days or 4,000 miles for a car that had 18,001 to 36,000 miles at time of purchase;

60 days or 3,000 miles for a car that had 36,001 to 79,999 miles at time of purchase;

30 days or 1,000 miles for a car that had 80,000 to 100,000 miles at time of purchase.

If the problem arises and is reported within the warranty period and the car is not repaired at all or within a reasonable number of attempts and the dealer refuses to refund the full purchase price or offer a comparable replacement car, you can participate in an arbitration program or sue the manufacturer directly in court.

To find out more information about the New York Lemon Law, the Attorney General's Office publishes an informative guide which you can obtain at the local office in your area or on the Internet at [www.oag.state.ny.us](http://www.oag.state.ny.us).

**IMPORTANT: You do not need to have been given a written warranty for the warranty protections to apply.**

The warranty protections do not apply to cars bought from a private person. For these kinds of purchases, you can try to obtain relief through Small Claims Court.

# Family Law

## Grandparents' Rights

### **Do grandparents have visitation rights?**

While the exact status of New York's law on grandparent visitation is unclear due to a recent Supreme Court decision, grandparents generally can request visitation with grandchildren when either or both of the parents of the minor child or children has or have died or if there are conditions present "where equity would see fit to intervene." To meet this burden, grandparents must show that they have maintained or tried to maintain a sufficient relationship with the grandchild or children. The court will first make the decision as to whether the grandparent(s) have standing to request visitation. Then the court will make a decision as to whether the visitation is in the best interests of the child(ren).

### **If my grandchild wants to live with me, do I need an order of custody for him/her to go to school in my district?**

No. While a court order of custody or legal guardianship can be submitted to establish residence for the child's school, you can also establish residence through an affidavit by the grandparent and an affidavit by the parent.

The grandparent's affidavit should state how long the child has been living with him/her, how long the child intends to reside there, why the child resides there, that the grandparent provides the child's food, clothing and other necessities and that the grandparent assumes full responsibility for all matters relating to the child's education and medical care.

The custodial parent's affidavit should state the reasons why the child is not living with him/her, name the person who has custody and control of the child, state his/her understanding of the duration of the living arrangement, and that the parent has relinquished custody and control of the child to the custodian, including the right to make decisions pertaining to the health, education and welfare of the child.

### **If my grandchildren live with me, can they receive public benefits?**

Generally yes. You can obtain cash assistance through the **Temporary Assistance for Needy Families** from the local Department of Social Services for either just the grandchildren or the entire household.

You can obtain **Medicaid** for either just the grandchildren or the entire household.

You can obtain **Food Stamps** based upon household income, composition and expenses.

You can apply for **Child Health Plus** for the children, but the program will look at the caregiver's income.

You can also apply for **Earned Income Tax Credit** on behalf of the grandchildren living with you.

### **What can I do if I can't handle my grandchild of whom I have custody any more?**

There are several steps you could take. You could contact a social services organization or the local Department of Social Services to receive support, assistance and/or counseling in regards to the child. You could file a PINS (Persons in Need of Supervision) petition with the local Family Court to ask the family court and/or probation department for assistance with the child. However, you should note this could result in the child being placed in an outside home. You can contact the local Department of Social Services to place the child in foster care on a short term or long term basis.

## **Elder Abuse**

### **What can I do if my child or member of my household is harassing me?**

If your child is harassing you, you can take several steps.

- If you do not feel safe, you may want to find a local organization that offers services and shelter to victims of Domestic Violence by calling: 1-800-942-6906.
- You can also go to Family Court, file a Family Offense Petition (usually someone from the court or probation office can help you fill this out) and ask for an Order of Protection. If you are low-income, you may be eligible for a free court-appointed attorney in this proceeding.
- You can file a criminal complaint against your child. You may also obtain an Order of Protection. You may want to contact the Adult Protective Services unit at the local Department of Social Services.

### **What can I do if I think my representative payee is taking advantage of me?**

You can contact the Social Security Administration and tell them what is happening and ask them

to appoint a new representative payee. It is a good idea to have the name and address of another person whom you trust and is willing to be your representative payee.

## Guardianship

### **How can I become a guardian for someone?**

A guardian is someone who is given legal duty and authority by a court to care for a person and/or a person's property because the person does not have the capacity to make certain decisions for themselves.

Under New York State law, there are two kinds of guardianship. Article 17A of the Surrogate's Court Act describes the process to become a guardian for persons with mental retardation or development disabilities.

Article 81 of the Mental Hygiene Law describes the process to become a guardian for persons who are mentally incapacitated.

Article 17A guardianships involve a simpler process and give broader powers than Article 81 guardianships. To commence a 17A guardianship petition, you may go to the Surrogate's Court in the county where the incapacitated person resides and ask for a packet of forms. While you may be able to complete the forms yourself, consultation with an attorney is suggested.

An Article 81 guardianship petition is commenced in the County or Supreme Court where the incapacitated person resides. It is a complicated process. You need to consult with an attorney. The judge will look at the incapacitated individual's functional levels and decision-making abilities and decide whether to grant powers to a guardian and which specific powers to grant.

**IMPORTANT: If people sign advanced directives such as power-of-attorney forms and health care proxies before becoming incapacitated, they may not need to go through the complicated process of having a guardian appointed by the court.**

In addition, many low-income incapacitated individuals may not need to have a guardian appointed if someone is available to make medical decisions for them and be a representative payee for their SSI benefits.