Consumer’s Guide to New Jersey Law

A Free Public Education Service from the New Jersey State Bar Foundation

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This booklet is issued as a public education service by the New Jersey State Bar Foundation and does not constitute legal advice, which should only be given by your attorney. The contents pertain only to the laws of the State of New Jersey. This booklet was updated in January 2000 and reflects laws in effect at that time.

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Public understanding of our legal system, the rights it guarantees us and the role of each citizen are essential to preserving our democracy. Since 1958, the New Jersey State Bar Foundation has taken an active role in educating the public about our legal system (and New Jersey law in particular), stressing its place in our nation’s history and its influence upon our lives.

To help you better understand your legal rights and responsibilities, the New Jersey State Bar Foundation is pleased to present this free Consumer’s Guide to New Jersey Law. We hope this booklet will provide you with some basic information about different areas of the law that touch our day-to-day lives. The Consumer’s Guide to New Jersey Law is made possible by funding from the IOLTA Fund of the Bar of New Jersey.

The Foundation presents many exciting and award-winning public programs. We furnish free materials and services to people of all ages and varied interests. Our public education programs are models for promoting understanding of the law. The New Jersey Law Center, which houses the Foundation, was designed with the public in mind. For more information, see the section on Foundation services at the end of this booklet.
What are some problems I might have?

Buying or selling a home is a major transaction. In fact, purchasing a home will probably be the largest single investment you’ll ever make.

Because the transfer of property in New Jersey is very complicated, there are many serious problems that might crop up when you are buying or selling real estate. For example:

- Missing heirs, forgers, invalid divorces, irregular foreclosures and other unexpected complications can leave the legal ownership of the property up in the air, even though the deed appears to transfer full title.
- You may not be able to determine personally beforehand whether the property has any serious physical defects like water conditions, structural problems, inadequate electrical wiring, termite infestation or radon contamination.
- The seller’s title to the property may be burdened with mortgages, easements, unpaid taxes or other liens.
- The description or survey of the property may be either inadequate or incorrect. You may actually be acquiring less property than you think you are.
- All important details of the transaction may not be included in the contract of sale. Even if you have verbally agreed upon an item, if it’s left out of the contract, it’s unenforceable.
- Deed or zoning restrictions may prevent you from using the property as you’d like.

What is the contract of sale?

A contract of sale is an agreement for the purchase and sale of real estate. This is the most important piece of paper involved in any real estate transaction because it sets the rights and responsibilities of the purchaser and the seller.

The contract may be called a binder, a broker’s agreement, a memorandum of sale or a deposit receipt. Whatever it’s called, if the paper contains the essential parts of a contract, it is a legal contract of sale. After this is signed, no further “formal” or “legal” contract is needed to bind you. From then on, any dispute between the buyer and seller will be settled by referring to the provisions of the contract.

The parties to a real estate contract prepared by a licensed real estate broker have three business days to have the contract reviewed by their respective attorneys. The attorney can have the contract amended or even cancel the contract provided that the attorney is afforded the opportunity to review the contract and consult with you in a timely fashion.

For your own protection, it is important to consult your attorney within three business days after signing a broker-prepared contract for the sale or purchase of real estate.

How can a lawyer help?

When you retain the services of an attorney, he or she will guide you through all aspects of the real estate transaction. For example, an attorney can help the purchaser by:

- Preparing, reviewing and explaining the contract of sale; and amending it, if necessary within the three-day period.
- Helping you to get answers to questions concerning termite, structural, and radon inspections, the zoning status of the property, restrictions on property use and property insurance.
- Assisting you with your mortgage commitment and explaining your prepayment rights.
- Ordering and then reviewing the survey and all title searches that will define the description, location and legal ownership of the property.
- Helping to settle any title problems.
- Settling any problems regarding the transfer of occupancy, closing date, and possession.
- Determining adjustments for taxes and other costs.
- Preparing the final closing statement and other documents.
- Representing you and advising you at the closing and making sure that your interests are properly protected. The closing is the meeting at which such documents as the seller’s deed and affidavit of title and the note and mortgage are signed. The balance of the selling price is paid to the seller at that time.
- Recording the deed and mortgage and canceling any existing mortgages and liens.
- Obtaining title insurance policies covering your ownership interest and the mortgage interest of the lending institution.
- Delivering all important documents to you for safekeeping after closing.

The seller’s attorney can help by:

- Preparing, reviewing and explaining the contract of sale; and likewise amending this contract, if necessary, within the three-day period.
- Gathering important title information for the purchaser’s lawyer. This will help speed the search and survey process.
- Resolving any title problems revealed by the searches.
- Cooperating with the purchaser’s attorney in settling possession and closing date problems.
- Helping you to determine the correct balance due on your mortgage.
- Cooperating with the purchaser’s attorney in preparing the final closing statement.
- Preparing the deed, affidavit of title, survey affidavit and other necessary documents.
- Representing you at the closing and making sure that you receive the correct proceeds from the sale.
What fees and charges are involved in buying or selling real estate?

Here are some important points to remember about real estate fees and charges:

- Funds paid to your attorney are divided into two parts. These are (1) the attorney’s fee and (2) reimbursement for the cost of searches, surveys, recording costs and title insurance premiums.
- In addition, lender’s charges, including the application fees and other charges and escrows for taxes and insurance required by the lender, must be paid by the purchaser.
- Real estate brokers generally charge a commission to the seller based on a percentage of the sale price. Some brokers do not represent the seller but represent the buyer and charge a commission to the buyer. The broker will disclose this information to the seller and buyer.
- Homeowner’s insurance provides coverage against liability for fire, theft, accidents and so on. You must pay a yearly premium to continue your coverage.
- Flood insurance may be required or recommended in some areas. For this coverage you must pay a yearly premium.
- Title insurance is insurance against title defects that didn’t show up in the public record. The premium is paid at the closing and the coverage continues as long as you own your home.
- Realty transfer tax (generally paid by the seller).

What is the Truth in Renting Act?

This law provides for the preparation, updating and distribution of a statement of rights and responsibilities of landlords and tenants in New Jersey as well as “landlord disclosure statement.” Landlords are required to distribute a rights and responsibilities statement to all tenants with a rental term of at least one month who are to live in residences with at least three units, unless the landlord lives in one of the three apartments. The Truth in Renting statement is meant to be an informational document; it isn’t exhaustive or detailed. Anyone who wishes to take action based on the statement should contact an attorney or the Office of Landlord/Tenant Information, State Department of Community Affairs, PO Box 805, Trenton, NJ 08625-0805, 609-292-4174; a county legal services agency; or a landlord/tenant or mobile home organization.

For more information, or for a copy of the Truth in Renting booklet, contact the Office of Landlord/Tenant Information in Trenton. There is a fee of $1.50 for the booklet.

What happens if my security deposit isn’t returned to me when I move?

If a landlord doesn’t return your security deposit within 30 days, you may sue. If the tenant is successful, the court may award double the amount owed, plus full court costs. The court also may award reasonable attorney’s fees.

What else could happen to a security deposit?

It can be applied toward unpaid rent or other charges that you owe, or to the cost of repairing any damage that you caused to your rented premises.

If a landlord does not return your security deposit within 30 days or provide you with a written explanation of the damages and charges that justify the non-return of the security deposit, you may sue. If the amount of damage caused by a tenant is greater than the security deposit, a landlord may sue the tenant for the additional money.

If a building is sold, the original landlord must turn over the deposit plus any interest that has been earned to the new landlord and let the tenant know (by registered or certified mail) that the new landlord will be responsible for it.

(See the section of this booklet dealing with small claims court for information on suits under $2,000.)

What New Jersey laws forbidding discrimination apply to landlords and tenants?

The New Jersey Law Against Discrimination requires equal treatment regardless of race, creed, color, national origin, ancestry, age, sex, marital status, affectional or sexual orientation, familial status, or physical condition. Discrimination complaints should be reported to the Division on Civil Rights, New Jersey Department of Law and Public Safety. Regional phone numbers and addresses follow:
Unreasonable discrimination in renting or leasing a dwelling to a family with children also is prohibited, as is refusing to rent or seeking to void a lease to someone because of the birth of a child. New Jersey law also prohibits discrimination based on a tenant's source of lawful income. To file a complaint, contact your attorney or the nearest regional Office of the Division on Civil Rights for more information.

What if I don't pay my rent?
If a tenant has not paid rent that is due within the time permitted by any grace period provided by the lease or by state law, a landlord can file a complaint to evict the tenant in Landlord/Tenant Court (Special Civil Part-Landlord/Tenant Division). The tenant can prevent eviction by paying all the money due the landlord plus the landlord's court costs (filing and service fees) to the landlord or to the clerk of the court on or before the day of court.

A landlord is prohibited from taking a residential tenant's possessions for non-payment of rent.

Is there rent control in New Jersey?
Not on a statewide basis. However, a rent increase must not be unconscionable and must comply with state law and municipal ordinances.

New Jersey law provides that a tenant is entitled to written notice of any rent increase whether or not there is a rent control ordinance in effect in the town or city. The notice should be sufficiently in advance of the time the new rent goes into effect so that the tenant has an opportunity to decide whether to pay the increase. A lease may require a longer period of time, but the minimum required by state law for a month-to-month tenancy is a one-month advance notice of the increase.

Who has to take care of the dwelling?
In general, a tenant must protect and preserve a landlord's property. A tenant must notify a landlord when there are conditions that must be repaired. You must return a property to your landlord in generally the same condition as you received it, except for normal wear and tear.

In turn, the landlord must keep the property in livable condition. The state Supreme Court has held that a landlord offering a dwelling unit for rent implies that it is in livable condition. It is understood that a landlord will repair damage to vital facilities caused by normal wear and tear.

Are there heat standards for apartments?
Yes. The landlord is responsible for maintaining the heating system. Every unit must contain facilities that will provide and maintain heat at 68 degrees Fahrenheit from October 1 to May 1.

The landlord must also supply the fuel source to operate the heating system if it serves multiple units. A landlord and tenant can agree that the tenant will pay the bill to supply the heat to a unit when the unit is served by separate heating equipment and a separate bill can be given.

For emergency action in the event of failure to supply the required heat, contact the person designated in your lease or in the landlord's registration statement. If this does not work, contact your municipal health officer or the Office of Landlord/Tenant Information in Trenton.

Can I be evicted?
A landlord may recover possession of a property only through proper legal channels. There are a number of causes for eviction. Each cause, except for failure to pay rent, must be described in written form to a tenant. Depending on the cause, a certain amount of time must pass between the delivery of the notice and the eviction action.

In some cases, a landlord is required to give a tenant a preliminary written notice to stop an act. Only when a tenant continues that act after the first notice does a landlord have cause for eviction.

Some common causes for eviction, notice requirements and time before legal action for eviction are as follows:
- Failure to pay rent. (No written notice is required; legal action may be started immediately.)
- Continued disorderly conduct after written notice to cease. (Legal action may begin three days after a second written notice.)
- Destruction, damage or injury to premises willfully or through gross negligence. (Legal action may begin three days after written notice.)
- Substantial violation of rules and regulations after a written notice to cease. (The rules must have been accepted by the tenant or made a part of the lease at the beginning of the lease term. Legal action may begin one month after the second written notice.)
- Habitual failure to pay rent on time. (If the tenant has paid rent late on multiple occasions, the landlord must send written notices as required by law prior to commencing a legal action for eviction.)

For a complete list, contact the Department of Community Affairs or consult your attorney.
Where can I get help with marital problems?
An attorney, religious leader or social agency can refer you to a marriage counselor, psychologist or special service group for advice about solving family problems. If separation or divorce cannot be avoided or is in your best interest, an attorney can guide you in the steps that are necessary to protect your rights.

What will a lawyer talk about during the first conference?
In most cases, a lawyer will discuss several topics, including:
- The possibility of solving marital problems through counseling.
- Assistance to you as a parent in meeting your children’s needs.
- Dissolving the marriage by divorce.
- Financial matters involving child support, alimony, real estate and personal property.
- Legal rights of the parties.
- Court procedures.
- Procedures in the lawyer’s office for handling the case.
- Legal fees and court costs.
- Mediation as an alternative to trial.

How is a divorce started?
The lawyer for the person seeking the divorce will file a formal document (called a complaint) with the appropriate court. This complaint includes information on the marriage, residency, present living arrangements, children of the marriage, previous court actions (if there are any) relating to the marriage, and the specific cause claimed for seeking a divorce. A copy of the complaint will be served on the spouse, either by mail or in person by the sheriff, or on the spouse’s attorney.

What should I do if my spouse has filed for divorce?
You should consult an attorney for advice right away. You may contest the reason claimed for the divorce, or contest child custody, support, alimony, and/or property division by filing the proper papers and appearing in court.

Or you may allow the case to be decided by default if you do not contest the basis for the divorce or you have no children or property, and you do not need any support. However, you will be bound by the judge’s decision. Failure to follow court orders could result in jail time, fines, community service, damages and payment of the other person’s legal fees. It is generally not advisable to allow a case to be decided by default without input from you.

Even if you and your spouse have reached an agreement on support, alimony, property distribution, or other issues, each of you should seek a review of the agreement by your own independent attorney. Your attorney will let you know what your rights are, choices you can make and any possible consequences of actions you might take.

How long does it take to get a divorce?
The time it takes to get a divorce depends on many factors, including the degree to which you and your spouse have agreed on related matters, and on the current backlog of matrimonial cases in your county. Your lawyer can offer some general guidance on the length of delay that you might expect in your divorce. A general guide, however, is that if both the husband and wife have agreed on all aspects of the divorce, a final court ruling will usually take three or four months. If aspects of the case are contested, a final decision may take anywhere from eight or nine months to several years, depending upon the complexity of the case and the backlog in your county.

Will the court make any temporary decisions?
If it’s necessary, the court can make temporary decisions about: custody of minor children; alimony and child support; who will live in the home that you and your spouse shared; disposal of property to ensure payments of support or to protect a spouse’s share in the property; visitation rights for the spouse who doesn’t have physical custody of the children; and any other temporary orders at the request of a spouse or because the judge believes it will be in the best interest of justice.

What happens while I’m waiting for the court decision on a final divorce?
After all papers are filed, there is usually a delay of at least several months before a judge can hear the case. During this time, the attorneys for both sides exchange information and financial documents in your case, and try to help the parties settle financial questions and other differences. The husband and wife may sign a written statement agreeing to a particular division of marital property, child custody, support, alimony and other financial matters.

What are the grounds for divorce in New Jersey?
Under New Jersey law, a divorce may be granted for any of the following causes:
- Adultery.
- Willful and continued desertion for 12 or more months. Either physical desertion or refusal to have sexual relations with the other spouse may establish this cause.
Extreme cruelty, including any physical or mental cruelty that endangers your safety or health, or which makes continued living together improper or unreasonable. The law requires, however, that no complaint for extreme cruelty can be filed with the court until at least three months after the last act of cruelty listed in the complaint.

Separation, if separate and different places of living have been maintained for at least 18 consecutive months or more and there is no reasonable prospect of reconciliation.

Voluntarily induced addiction or habituation to a narcotic drug or habitual drunkenness for 12 or more consecutive months.

Mental illness that resulted in the spouse being kept in an institution for 24 or more consecutive months after the marriage was begun.

Imprisonment of the spouse for 18 or more consecutive months after the marriage was begun. (This cause for divorce can be charged after the defendant's release from prison only if the husband and wife have not resumed living together after imprisonment ended.)

Deviant sexual conduct voluntarily performed by the defendant without the consent of the spouse. Incompatibility is not grounds for divorce in New Jersey.

What is a “no fault” divorce?

“No fault” is the term some people use to describe a divorce based on separation in different homes for 18 or more consecutive months. If a husband and wife have lived separate and apart for that length of time, either may file for divorce. You must be separated for 18 months before you can file for divorce under “no fault” since the length of the separation is the grounds for the divorce. All of the other causes are fault grounds—and fault must be testified to.

Who will get custody of the children?

The welfare of minor children is of major concern to the court. Both parents must participate in a mandatory Parents’ Education Program. Property rights and welfare of the adults involved are secondary. Neither parent is entitled to custody of any children automatically. Divorcing parents may come to an agreement by themselves as to custody and parenting time arrangements. If the court decides these matters, the judge must consider many factors that will be discussed in court at a hearing. The factors include the age and sex of the children, compatibility with each parent, ability of the parent to care for the children, the personal conduct of each parent and the preference of the children, who may be interviewed by the court. Courts maintain mediation programs to assist the parties in resolving these issues for themselves. Custody orders may take several forms including sole custody; joint legal and/or joint physical custody; split custody; or any other arrangement which is in the children’s best interest.

Will there be alimony? Support?

If you and your spouse cannot reach an agreement on these issues, the judge will decide these and other issues after receiving all the evidence including the needs of the parties; the income and/or earning potential of each party; the length of the marriage and the lifestyle of the marriage. You are required to file a financial disclosure form called a Case Information Statement. Your lawyer will help you make your needs and wishes clear to the judge.

Who will get the property?

In New Jersey each spouse is entitled to a fair share of all property acquired during the marriage. If there is no agreement by you and your spouse, the judge will decide on an “equitable distribution” of property after hearing testimony. Equitable distribution is not necessarily a 50%-50% division because New Jersey laws do not establish “community property.”

When is a divorce final?

When the judge issues an order declaring that a marriage has ended under the laws of New Jersey, the divorce is final, subject only to an appeal of that decision.

Are all arrangements final after the judge has made the decree?

Not necessarily. After a divorce is final, changes in some arrangements (like custody, visitation and support) may be considered if either party can show a judge that circumstances have changed substantially. Equitable distribution is usually not modifiable.

A modification in support arrangements may be called for if there have been changed circumstances that substantially hurt the dependent spouse’s ability to maintain the standard of living which was reflected in the original decree. Criteria that may influence the court to order a modification might include inflation, a decrease or increase in either party’s income, illness, disability, the decision of the dependent spouse to live with another person or a new job. Be aware, though, that each individual case will be considered upon the circumstances of that case.
Domestic Violence

What should I do if I am beaten or abused by my spouse, companion, family member or lover?

- Call the police.
- Make sure you have access to whatever house and car keys you plan to use plus money.
- Go to a safe place for the night (which may be someplace other than your home such as a friend, neighbor, relative, or a local shelter for battered victims).
- If you believe that you or your children are in danger of being beaten or abused, and that you may have to leave the home, keep a small bag packed with essentials for you and/or your children including copies of important documents such as birth certificates, insurance cards, driver’s license and passports.
- If you are physically injured, go to a doctor or hospital emergency room and tell them what happened to you.

What are my rights?

You have the right to go to the Family Part of the Superior Court and file a complaint requesting an order called a temporary restraining order, which may protect you from further abuse by providing relief including, but not limited to, the following: forbidding your attacker from entering the home you live in, or having contact with you or your relatives, or bothering you at work; requiring your attacker to pay support for you and/or your children including copies of important documents such as birth certificates, insurance cards, driver’s license and passports.

You have the right to file a criminal complaint against your attacker.

You have the right to be informed of available remedies by the law enforcement officer who responded to your call. You have the right to assistance from the court clerk in filing the domestic violence complaint.

On weekends, holidays and other times when the courts are closed, the law enforcement officer who responded to your call can help you get in touch with a judge who can give you a TRO.

If you would like a lawyer to help you protect your rights, and if you do not already know a lawyer, you may obtain the name of an attorney by calling a county bar association Lawyer Referral Service.

For help in finding emergency shelter, counseling, or other services, call the New Jersey Division on Women’s Domestic Violence hotline toll-free at 1-800-572-7233 any time, any day. Bilingual and TDD equipped.

For further assistance, contact the New Jersey Division on Women’s Domestic Violence Prevention Program at 609-292-8840. Staff members take crisis calls and can refer you to contacts in your county.

What is the Prevention of Domestic Violence Act?

In 1981 the New Jersey State Legislature passed the Prevention of Domestic Violence Act in order to assure the victims of domestic violence the maximum protection from abuse that the law could provide. The Legislature intended to stress with this legislation that the overriding public policy is to protect the victim.

On August 14, 1991, then Governor James Florio signed into law the Prevention of Domestic Violence Act of 1991, designed to improve the 1981 Act based on information gathered at public hearings on domestic violence and the experience and input of dozens of experts including victim advocates, police, prosecutors and court personnel.

Since 1991 the Act has been further amended and strengthened. The following improvements to the 1981 Act have been made:

- Adds homicide, terrorist threats and criminal trespass to the existing list of crimes which constitute domestic violence, including assault, kidnapping, criminal restraint, false imprisonment, sexual assault, sexual sexual contact, lewdness, criminal mischief, burglary, harassment and stalking.

- Expands the definition of victim of domestic violence to include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any person who is a present or former household member, or a person with whom the victim has a child in common. There is no requirement that the parties be household members who are of the opposite sex or related by blood. A victim also includes a person in a dating relationship or expecting a child with the alleged abuser.

- Mandates training on domestic violence for judges, police and their staffs.

- Mandates arrest in circumstances where there is probable cause to believe that a person violated a restraining order or where a weapon was involved in the commission of the offense. The Act provides guidelines for determining which party is the victim and assures the right to relief for victims who use reasonable force in acts of self-defense.

- Requires the court to presume that the best interest of children is served by awarding custody to the non-abusive parent when determining custody in the context of a domestic violence hearing. It further provides for the safety of the victim and the children by requiring specific visitation arrangements.

- Establishes a minimum 30-day term of imprisonment for a person convicted of a second or subsequent non-indictable violation of a restraining order.
The Act further offers immunity to officers making an arrest under the provisions of the Act. Under the Act, a law enforcement officer may inquire as to the presence of weapons on the premises and seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury. Although the seized weapons can be returned to the owner, the prosecutor can request an order to revoke all permits, licenses and other authorizations for the use, possession or ownership of such weapons.

For more information about domestic violence, see *Domestic Violence: A Guide to the Legal Rights of Battered Women in New Jersey*, sponsored by Legal Services of New Jersey and the State Bar Foundation. This publication is available on the Foundation’s website at www.njsbf.org.

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**Child Abuse**

**How do I report child abuse?**

New Jersey law states, “Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately to the Division of Youth and Family Services (DYFS) by telephone or otherwise.” (N.J.S.A. 9:6-8.10)

Trained family service specialists in each local DYFS district office receive, screen, evaluate and investigate reports of child abuse and neglect in order to ensure the safety of children and protect them from imminent harm.

Reports of child abuse, neglect or abandonment should be made to your nearest DYFS district office during business hours. However, you can call a toll-free statewide hotline, 1-800-792-8610, 24 hours a day, seven days a week. Where possible, information should include names and addresses of the child and his or her parent(s) or guardian(s), the child’s age, the nature and extent of the child’s injuries, abuse or maltreatment and any other information the person believes may be helpful with respect to the child abuse and the identity of the perpetrator.

All records of child abuse and all information obtained by the Division of Youth and Family Services in investigating such reports, including the name of the person reporting, are confidential under state law (N.J.S.A. 9:6-8a), and can only be released under strictly limited circumstances listed in the law.

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**Wills**

**What is a will?**

A will is a written document that directs how your probate estate (such as real property, stocks, bonds and bank accounts that are held in your individual name and your personal effects) will be distributed after your death. A will also states who will administer your estate (i.e., an executor). It can also appoint a guardian for minors or mentally incapacitated children and a trustee if you create a trust in your will.

It is important to note that the probate estate does not include assets held jointly with right of survivorship, which pass to a survivor, regardless of what your will provides. Retirement plans and insurance proceeds do not pass in accordance with your will unless the estate is the beneficiary.

**Do I need a will?**

Yes, if you want your own wishes to govern who will receive your property and who will manage your estate.

**What if I die without a will?**

If you die without a will, New Jersey’s statutes will determine how your probate estate will be distributed. If you are married with children, your spouse will not inherit everything. If your spouse is the parent of all of your children, your spouse will receive the first $50,000 and the balance will be split equally between your spouse and your children. If any of your children have a parent other than your surviving spouse, your entire estate will be split equally between your spouse and your children. If you are not married and have no descendants, your parents will inherit your estate, or if neither of your parents is living, other specified family members will inherit your estate.

If you die without a will, an administrator will be appointed to manage your estate. Generally, a family member will be appointed by the court as the administrator and will typically have to pay for a surety bond before being authorized to serve.

If your children are minors, their inheritance will generally be held by a court-appointed guardian of their property. The guardian is most often the surviving parent and generally must obtain a surety bond, which is a cost that can be avoided with a will. Funds held by a guardian are turned over to your child when the child is 18. If you want the funds held for a child to a later age, you will need to make such provisions in your will by creating a trust and appointing a trustee.
Can I prevent my spouse from getting my property?

Possibly. You can disinherit your spouse in your will. However, certain laws exist to protect a spouse if this happens. For example, New Jersey provides a surviving spouse with a right to take an elective share (which is up to one-third of certain assets), but there are several conditions that must be satisfied before a spouse is entitled to an elective share. If you and your spouse executed a valid prenuptial agreement waiving the right to an elective share or if grounds for divorce exist at the time of your death, your spouse will not be entitled to an elective share.

Property that you own jointly with right of survivorship with your spouse, as well as any life insurance, IRAs, 401(k) plans and similar retirement plans for which you designate your spouse as the beneficiary, will pass to your spouse regardless of what your will says.

May I change my will?

Certainly. A will may be changed or revoked in its entirety prior to your death provided that you have the mental capacity to change or modify it. To do so, you must either create a new will or execute an amendment, which is known as a codicil.

How much does it cost to make a will?

The cost will vary according to each person's needs. Unfortunately, many individuals get inadequate generic wills when they are looking for a bargain. An attorney should analyze your personal situation prior to preparing your will.

Can a will save money?

Absolutely. A will can eliminate the requirement of a surety bond, which will save money in even modest estates. For larger estates, a properly drafted will can often reduce federal estate taxes and New Jersey inheritance taxes by establishing trusts and providing directions as to how long a beneficiary must survive you in order to inherit under your will.

How do I make a will?

A will must be in writing and follow requirements established by New Jersey statutes. A will may be executed by a competent person who is at least 18 in the presence of two witnesses who sign the will as such. The will may also be “self-proved,” which means that the person making the will and the two witnesses acknowledge certain facts before a Notary Public or other person authorized to take acknowledgments. If it is self-proved, it will not be necessary for either of the witnesses to make statements regarding the execution of the will when it is offered for probate after your death. Because a self-proved will simplifies the process after your death, it is preferable to follow this procedure.

A will that is not witnessed by two persons may be valid only if the signature and material provisions of the will are in your own handwriting. Such a will is called a holographic will. Although preparing your own will may sound attractive to you, the procedure for getting this type of will admitted to probate after your death is far more complex, time-consuming and expensive than the procedure for getting a will that is properly executed and witnessed admitted to probate.

It is recommended that a will be prepared by an attorney experienced in estate planning. If a will is vague or creates questions regarding interpretation, or fails to provide for a contingency, it could be subject to expensive court proceedings.

What is a living will and should I sign one?

The term “living will” has a special meaning and should not be confused with your will which passes property to loved ones. Like a will, it is in writing, but it contains instructions for your medical care if a time comes when you cannot personally make decisions about your care. If you do not have a living will, now is the right time to consider signing one.

You have the right to decide whether to accept or reject medical treatment when you are ill. Because of temporary or permanent loss of mental capacity, many of us would be unable to exercise our rights to participate in those decisions. A clear statement of your wishes, particularly with respect to the administration or withholding of medical procedures, will be binding on physicians and other health care providers.
Can victims of violent crimes receive compensation from the state?
Yes, under certain conditions. Every defendant in the State of New Jersey who has pled guilty to any crime is charged an extra penalty. This penalty, along with additional tax dollars, is deposited into a fund to provide as many victims of violent crimes as possible with some compensation.

What is the Victims of Crime Compensation Board?
The board has been set up to help victims of violent crimes who are suffering personal injuries. The board will compensate qualifying innocent victims for non-reimbursable medical expenses and wage losses that were caused by injuries suffered in a crime.

Violent Crime Compensation

Who can file a claim?
If you were injured on or after November 1, 1971; or are the surviving spouse or child of a person who died as the direct result of a crime; or are a relative who was dependent on such a victim, you can file for a claim. However, if you are the person who was responsible for the crime upon which a claim is based or an accomplice or a member of the family of such a person, you’re not eligible for compensation.

What requirements do I have to meet?
Your application for compensation will be considered by the board only if a crime caused personal physical injuries to you or death to the victim. Also, police records must show that the crime was reported to the police within 90 days and the claim must be filed within two years of the date of the injury or death.
When can I be arrested?
A police officer may arrest you if the officer has a warrant for your arrest, or if the officer does not have a warrant for your arrest but sees you violate or attempt to violate the law. An officer may also arrest you if he or she has probable cause to believe that you have committed a crime. This means that even if the officer was not present when the crime was committed, if the officer has reasonably good reliable information that you were the person who committed a crime, he or she may act on that information.

What is an arrest warrant?
An arrest warrant is a court order allowing law enforcement to place into custody (i.e., place under arrest) the person named in the warrant. It is usually a statement setting forth the probable cause to believe that the person named in the warrant committed a crime. If you ask, the police are required to show you the warrant.

Can the police use force to arrest me?
If you resist a lawful arrest, the police officer can use all reasonable force to arrest you. However, after you have been restrained, the officer cannot continue to use force.

What if I am innocent?
Even if you think you are not guilty, it is a crime to resist an officer who arrests you lawfully. Do not talk back or act disorderly. If it turns out that you have been arrested illegally, the law gives you the right to seek money damages from the wrongdoers.

If the police officer does not have a search warrant, do I have to submit to a search?
A police officer, subsequent to a lawful arrest, has a right to search your person. Under certain circumstances, automobiles that you may have been in and the surrounding area in which you were arrested may be subject to a search. You may not resist the officer but you are under no obligation to sign a consent authorizing a police officer to search anything. You should not, however, resist or interfere with the police officer’s conduct. The vindication of your rights, if they have been violated, will come later.

Do I have to submit to a chemical test?
New Jersey law allows an officer who has reasonable cause to believe you are drinking or under the influence of a drug while operating a motor vehicle on public roads, to request that you take a chemical test. If you refuse, your driver’s license may be suspended for six months. If you submit to the test, the result may be used in evidence against you for that particular charge.

What happens after I am arrested?
After an arrest is made, normally you will be taken to the police station where you will be processed and “booked.” If your arrest is for a minor offense, you will probably be released right from the police station. If the arrest is for a more serious offense, you will be transported to a holding facility such as county jail, and will be held there pending the review of your bail status by a judge. You have a right to call your lawyer and you have a right to consult with a lawyer.

Do I have to answer any questions?
It is your right under the Constitution of the United States to refuse to answer any questions, sign any statements, or take any tests concerning the crime. You may have the aid and advice of a lawyer at all times. (This includes a public defender if you can’t afford a private attorney in New Jersey.) After identifying yourself, you may refuse to make any further statements. Of course, you may give up these rights. You may, if you choose, make statements, sign papers and take tests. Any information obtained from you voluntarily, and without the use of force or intimidation, may normally be used against you in court. When you are arrested, under the Miranda decision, the arresting officer has the obligation to advise you of all of these rights.

An oral admission of guilt is a confession and may be admissible as evidence in a trial and may produce a conviction, the same as a written, signed confession.
Am I required to purchase insurance for my car?

Yes. The law requires the owner of every automobile registered or principally garaged in New Jersey to maintain an insurance policy. When you purchase a new policy or renew an old policy, you will be provided with a Buyer's Guide that will contain a brief description of all mandatory and optional coverages and a Coverage Selection Form so that you can indicate your choices of coverage.

What types of automobile insurance policies are available?

The law requires you to elect either a standard or a basic policy. A standard policy provides bodily injury (BI) and property damage (PD) liability coverage, personal injury protection (PIP) coverage and uninsured (UM)/underinsured (UIM) motorist coverage. A basic policy provides only limited amounts of property damage liability and PIP coverage.

What happens to the money I have with me?

Practices vary. A receipt or list should be made of the money and property taken from you when you are booked, and you should be entitled to a copy. This money will usually be returned to you unless the prosecuting authorities believe it is the fruit of criminal activities. Under these circumstances, they may seek to forfeit money or goods that they have taken from you. Prosecutors often seize and retain cars. Some prosecutors have seized houses and boats. The law allows the state to seize criminal proceeds and instrumentalities of criminal conduct.

When do I go before the court?

After arrest and booking, you must be taken before the proper court as soon as practicable.

Should I have a lawyer with me?

It is always advisable to speak with an attorney and to have him or her with you when you appear in court. The judge must inform you of all the charges and of your right to have a lawyer if you do not have one. The judge must allow you a reasonable time to send for a lawyer, even to the point of postponing the hearing so that you can obtain one. If you have no money, the judge, in municipal court, will provide one from an assigned list. If the charges are serious, you may be entitled to representation by the Office of the Public Defender upon proper application and financial qualification.

What if I do not know a lawyer?

If you do not have an attorney, or do not know how to select a lawyer to help you, it may be possible for you to be referred to a lawyer through your county bar association's lawyer referral service.

Your right to legal counsel if you are arrested is a fundamental one in our country. This right is so important that if you are charged with a serious crime, and cannot afford to hire a lawyer, the court must see that a lawyer is appointed for you.
What is liability coverage?

The purpose of liability insurance is to pay damages to any persons who are injured or whose property is damaged due to your negligent operation of any automobile or due to the negligent operation of your automobile by you or by anyone else with your permission. In addition, liability insurance protects your assets if an injured person makes a claim against you, a resident member of your family or the operator of your automobile.

How much liability insurance am I required to purchase?

If you select a standard policy, you are required to purchase bodily injury liability coverage in the amount of $15,000 per person/$30,000 per accident and property damage liability coverage of $5,000. Your insurance company must offer you additional coverage up to $250,000 per person/$500,000 per accident for bodily injury and $100,000 for property damage or $500,000 single limit.

If you select a basic policy, you are required to purchase only property damage liability coverage of $5,000. You may elect optional bodily injury liability coverage in the amount of $10,000 for injury to one or more persons in any one accident.

Should I elect a basic policy?

No. A basic policy without the option provides no bodily injury liability coverage and will place your assets at risk. If a judgment is entered against you for monetary damages for someone else’s pain and suffering or economic loss, you will be responsible for paying the judgment yourself. You will be subject to a levy against your property and an execution against your wages. If you cannot pay the judgment, you will have a debt against your credit record for 20 years, lose your driver’s license and be prohibited from registering a car in your name.

In addition, if someone makes a claim against you or if you are sued, your insurance company will not provide or pay for a lawyer to defend you, even if you feel that you were not at fault for the accident. You will be required to hire and pay for your own attorney to represent you or to defend yourself. If you do not appear in court, a default judgment may be entered against you for monetary damages.

Do I have the right to make a claim if I am injured in an automobile accident?

If you purchase a standard policy, you will be required to elect a lawsuit option that will affect your right to make a claim against a negligent driver. You may choose either the “no limitation on lawsuit option” or the “limitation on lawsuit option.” If you purchase a basic policy, you will be assigned the “limitation on lawsuit option” automatically.

What is the “no limitation on lawsuit option?”

If you elect the “no limitation on lawsuit option” (sometimes called “no threshold”), you are allowed to make a claim against a negligent driver for any injuries that you sustain in an automobile accident.

What is the “limitation on lawsuit option?”

If you elect the “limitation on lawsuit option” (sometimes called the “verbal threshold”), you are not permitted to make a claim against a negligent driver for pain and suffering unless you have sustained one of the following six types of injury:

- Death.
- Dismemberment.
- Significant disfigurement or significant scarring.
- A displaced fracture.
- Loss of a fetus.
- Permanent injury where a body part or organ has not healed to function normally and will not heal to function normally with further medical treatment.

Does my choice of the lawsuit option apply to anyone else?

Yes. Your choice of lawsuit option applies to your spouse and any children who live with you (who do not have their own insurance coverage). If you choose the “limitation on lawsuit option,” they will also lose the right to make a claim for injuries sustained in an automobile accident unless their injuries qualify under the threshold that you selected.

What happens if I do not purchase liability insurance for my automobile?

The owner of an uninsured automobile is subject to serious civil and criminal penalties including fines up to $5,000; loss of driver’s license for two years; community service for 30 days; and imprisonment for 14 days. In addition, you would not be permitted to sue a careless driver for any injuries that you sustained in an accident, including pain and suffering and economic loss, even if you were not at fault for the accident.

What is personal injury protection (PIP) coverage?

The New Jersey No Fault Act requires your automobile insurance policy to include PIP coverage for you or any resident family member who is injured in any automobile accident. In addition, PIP coverage is provided to any person who drives your car with your permission, to any passenger in your car and to any pedestrian struck by your car.
Does PIP coverage provide for the payment of medical bills?

Yes. If you purchase a standard policy, your insurance company is required to pay reasonable and necessary medical expenses up to $250,000 per person per accident; however, you may elect lower limits of medical expense benefits in the amounts of $15,000; $50,000; $75,000 or $150,000. If you select a basic policy, your medical expense benefits will be limited to $15,000.

Are the medical expense benefits provided by PIP coverage subject to any deductibles or copayments?

Yes. The payment of medical bills is subject to a statutory deductible of $250 and a copayment of 20 percent up to $5,000 per person per accident. This means that you may be required to pay $1,200 of the first $5,000 of medical expenses. In addition, you may elect higher deductibles in the amounts of $500, $1,000, $2,000 and $2,500. If so, you will be required to pay more of your own medical bills.

Does PIP coverage provide any other benefits?

Yes. If you purchase a standard policy, you will receive “additional” PIP benefits including an income continuation benefit of $100 a week for 52 weeks; essential family or household services of $12 a day for 365 days; a death benefit; and funeral expenses of $1,000. You may purchase additional income continuation benefits up to $700 a week for two years or as long as the disability persists; essential services of $20 a day for two years; funeral expenses of $2000; and an additional death benefit of $10,000. On the other hand, you may choose to exclude all “additional” PIP benefits. If you select a basic policy, you will not receive any “additional” PIP benefits.

What happens if I am involved in an accident with a person who is uninsured or unidentified (hit-and-run)?

A standard policy provides uninsured motorist (UM) coverage in the amount of $15,000 per person/$30,000 per accident. You may purchase additional UM coverage up to $250,000 per person/$500,000 per accident or $500,000 single limit (as long as you have the same amount of liability insurance). A basic policy does not provide any uninsured motorist coverage.

What happens if I am involved in an accident with a person who has inadequate insurance coverage?

If you are injured in an accident, you may make a claim against the negligent driver for your pain and suffering and economic loss and you may file a lawsuit to obtain a monetary judgment. However, the insurance company that insures the negligent driver will not be responsible to pay any damages above their policy limit. Since many owners maintain only the minimum liability limits of $15/30,000 and since basic policyholders have no bodily injury liability coverage, you might decide to obtain your own insurance coverage to protect yourself and your family. You may purchase underinsured motorist (UIM) coverage in the same amounts as your uninsured motorist coverage—up to $250,000 per person/$500,000 per accident or $500,000 single limit (as long as you have the same amount of liability insurance). A basic policy does not provide any underinsured motorist coverage.

What is the responsibility of my insurance company or my insurance broker or agent?

Your insurance company is required to provide you with a copy of the Buyer’s Guide and the Coverage Selection Form. Your insurance company and their representatives (your broker or agent) are not responsible for the choices that you make for coverage, as long as you are provided all of the minimum coverage required by law. If you purchase inadequate coverage, you cannot sue your insurance company, broker or agent unless you were damaged as the result of their gross negligence.

How much insurance coverage should I purchase for my automobile?

You should elect a standard policy with PIP coverage of $250,000 for medical expenses. In addition, it is important that you purchase adequate liability coverage to protect your assets if a claim is made against you and adequate uninsured/underinsured motorist coverage if you are injured by a person who is uninsured or has less insurance than you do. The law requires minimum liability and uninsured/underinsured motorist coverage of $15/30,000; however, most people purchase higher limits of coverage such as $100/300,000; $250/500,000 or $500,000 single limit.

Is there any other type of liability insurance that provides coverage for my automobile?

Yes. A personal catastrophe liability umbrella provides insurance coverage if a claim is made against you or any resident family member for injuries sustained by another person for any reason anywhere in the world. This type of insurance will provide additional coverage if a claim is made against you due to the negligent operation of a motor vehicle. The standard umbrella provides liability coverage of $1 million.
On Being a Witness

What does a witness do in court?

Your job as a witness is to provide your honest recollection of the information that you have about the case. All participants in a trial are anxious to learn the truth, which means that witnesses are needed to provide their own best description of what they know. Of course, there may not be complete agreement among witnesses. The attorneys involved will ask probing questions in their effort to provide all important information to the court. Sometimes the questions are difficult for the witness to answer. However, you should notify your insurance company, agent or broker that you have been involved in an accident. Third, you should consult with an attorney as soon as possible to make sure that your legal rights are protected.

What about the day I appear in court?

Check with the party or attorney who subpoenaed you the day before you are scheduled to testify to make sure your appearance is needed.

Lemon Law

Who is covered under the New Car Lemon Law?

Any consumer who buys, leases, or registers a new passenger car or motorcycle in the State of New Jersey is covered by the Lemon Law. The consumer is protected for two years after the original delivery date of the vehicle, or for the first 18,000 miles of use, whichever comes first.

How do I know if my car is a lemon?

A new motor vehicle is presumed to be a lemon if it has one or more defects that continue to exist after three attempts at repair or after the vehicle has been out of service for a total of 20 calendar days.

To qualify under the Lemon Law, the defect must substantially impair the use, value or safety of the vehicle.

What about used cars?

The New Jersey Used Car Lemon Law, which covers only used passenger motor vehicles purchased from used car dealers on or after July 3, 1996, requires used car dealers to provide their customers with warranties. The length of the warranty depends on the used motor vehicle’s mileage. If a motor vehicle has 24,000 miles or less, the dealer must provide the customer with a warranty for 90 days or 3,000 miles, whichever comes first. If a motor vehicle has more than 24,000 miles, but less than 60,000 miles, the dealer must provide the customer with a warranty lasting 60 days or 2,000 miles, whichever comes first. If a motor vehicle has between 60,000 and 100,000 miles, the dealer must provide the customer with a warranty for 30 days or 1,000 miles, whichever comes first.

Cars not covered by this law include:

- Motor vehicles sold for less than $3,000.
- Motor vehicles that are more than seven model years old.
- Motor vehicles that have been declared a total loss by an insurance company.
- Motor vehicles that have odometer readings of more than 100,000 miles.
- Motor vehicles that were not purchased from a dealer.

In negotiating a better price for the vehicle, consumers may waive their right to a warranty. The vehicle must have more than 60,000 miles on its odometer and the waiver must be in writing.

There is also a Lemon Law for motorized wheelchairs and scooters which requires manufacturers to give a one-year warranty on such equipment.

For more details on your rights under all three Lemon Laws, contact the Lemon Law Unit, Division of Consumer Affairs, 153 Halsey St., Newark, NJ 07102, 973-504-6226.

What should I do if I am involved in an accident?

First, you should call the police. If the police have not come to the scene of the accident, you must make certain that the accident has been reported to the police. Second, provide the customer with a warranty lasting 60 days or 2,000 miles, whichever comes first. If a motor vehicle has between 60,000 and 100,000 miles, the dealer must provide the customer with a warranty for 30 days or 1,000 miles, whichever comes first.

What about the day I appear in court?

Check with the party or attorney who subpoenaed you the day before you are scheduled to testify to make sure your appearance is needed.
What are my rights in municipal court?

- You have the right to be represented by an attorney.
- You have the right to be assigned an attorney (upon written application to this court and for which there may be a fee) if you are charged with an indictable offense and the judge determines that you cannot afford an attorney, or you are charged with a non-indictable offense and the judge determines you cannot afford an attorney and there is a likelihood that if you are convicted you will either go to jail, receive a substantial fine or your driver’s license will be suspended.
- You will have, following the day you appear in court and plead “not guilty” (“the arraignment” date), ample time to consult with your attorney and prepare a proper defense.
- You have the right to be informed of the charges against you.
- You have the right to remain silent concerning the charges against you and not testify in the trial of your case, but anything you say may be held against you.
- You may plead guilty or not guilty to the non-indictable charges against you. Samples of non-indictable charges are traffic offenses, disorderly persons offenses and violations of ordinances. If you are charged with an indictable offense, the judge cannot ask for your plea because the local county prosecutor must first decide whether he or she wants to refer the case to the county grand jury. If the case is not referred to the grand jury, it will then be remanded to municipal court as a downgraded, non-indictable offense and treated accordingly. If, however, the matter is referred to the grand jury, you will receive notice some time thereafter as to whether you have been indicted or not. There are, additionally, certain indictable offenses that may be tried by the judge if you waive indictment and trial by jury in writing. You have the right to be informed if you have been charged with such an offense.
- You are presumed to be innocent until proven guilty beyond a reasonable doubt.
- You have the right to testify or not to testify in your behalf.
- You have the right to call or subpoena witnesses to testify in your behalf.

What do I do if I intend to plead not guilty?

If you come to court for a traffic offense and you have not previously notified the court of your intention to plead not guilty, speak to the court clerk immediately. If the officer or others involved can be contacted to testify, your case may be heard. If they cannot be reached, you will have to make another court appearance at a later date.

If you plead not guilty, you and the witnesses will be placed under oath to speak the truth. It is necessary for the prosecution to prove the charges against you. Your attorney has the right to ask the prosecution’s witnesses any question pertaining to the charges. If you do not have an attorney, you will be required to ask questions directly of the witness.
What is small claims court?

Small claims court is the place where people have a fast, inexpensive way of suing someone for small amounts of money owed to them. It is properly called the Small Claims Section of the Special Civil Part of the Superior Court, Law Division.

Do I need a lawyer in small claims court?

Not necessarily. People can present their own cases without a lawyer in small claims court. Rules in these courts are simpler than in any other state court in New Jersey.

When should I go to small claims?

Your case can be heard in small claims court if your claim is for $2,000 or less* and if your case is based on one of the following:

- A contract or agreement. Either may be implied, oral, or in writing. You should be aware, however, that certain types of agreements cannot be enforced in a court of law and provide a basis for a monetary recovery unless that agreement is in writing. For example, a contract for the sale of goods in the amount of $500 or more is not enforceable unless, generally, it is in writing.
- Damage to property caused by someone’s negligent driving of an auto vehicle.
- A landlord/tenant dispute concerned with the return of all or a part of a security deposit.
- Claims for back rent.
- Return of money used as a down payment.
- Damage to or loss of property.

Who can use small claims court?

If you are 18 years old or older, you are eligible to file a suit in small claims court. If you are under 18, a parent or guardian may file and present your case for you.

Where is small claims court?

Generally, your suit should be filed in the county where the defendant is located or resides. The clerk of the court can give you more specific information.

How much does it cost to sue in small claims court?

The cost is $12 plus mileage for the distance a constable must travel to deliver the papers to the person whom you are suing or $3 for service of the summons and complaint by mail**, and $2 for each additional defendant.

- Consumer complaints for defective merchandise or faulty workmanship.
- Payment for work performed.
- Claims based on bad checks.

(Professional malpractice, probate, Family Division and Tax Court matters cannot be filed in the Small Claims Section of the Special Civil Part.)

appeal. Appeals in practically all instances will be heard by the Law Division of the Superior Court.

When you plead guilty, it is not necessary to have a trial. You have admitted that you have violated the law. However, you may then explain to the judge any extenuating circumstances. The judge will then assess the penalty.

At the time you plead guilty to a traffic offense, you may ask the judge to “seal the record.” This means that your guilty plea cannot be used against you in any other type of legal proceeding, such as a civil lawsuit alleging automobile negligence.

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* Except in Union County, which does not have a Small Claims Section in the Special Civil Part.

** A proposal to raise this fee to $4 is pending.
Can I declare bankruptcy?

If you have a large number of debts that were honestly incurred and want a fresh start, it may be advisable to talk to an attorney about declaring bankruptcy.

Once every six years, you are entitled to file a petition to discharge your debts if you are unable to pay them. This means that you would be released from the obligation of repaying most of your debts (taxes, alimony and support are some exceptions) so that you may wipe the slate clean or engage in business without being liable for the repayment of the earlier debts.

Does this mean I have to give up all of my possessions?

No. Despite the fact that filing for bankruptcy causes a debtor’s property to be subject to the claims of creditors, certain property is exempt from claims by creditors and can therefore be retained by the debtor. Some examples are:

- Up to $16,150 in value in real property used by the debtor as a residence.
- Up to $2,575 in value in one motor vehicle.
- Up to $1,075 in value in jewelry.
- Up to $8,625 in aggregate value in household furnishings, goods, wearing apparel and related property.

Credit and You

What are my credit rights?

If you apply for credit, the Equal Credit Opportunity Act generally bars creditors from discriminating against you based on your race, color, religion, national origin, sex, marital status, age, the fact that you may receive public assistance or the fact that you have used any of your legal rights as a consumer. You are entitled to this protection whether the credit for which you apply is for your personal, family or household use or for a business or commercial purpose. To comply with the act, creditors must follow certain rules when taking, evaluating and turning down an application. A creditor who does not follow these rules subjects itself to civil liability to an applicant for actual and punitive damages.

What can a creditor ask me when I apply?

The Act prevents a creditor from asking you about your spouse or former spouse, unless your spouse or former spouse will be permitted to use or be liable on the account, or you plan to repay the credit using the spouse’s income or alimony, child support or maintenance payments. If you are applying for unsecured credit in your name only, a creditor cannot ask you if you are married. You also cannot be asked whether any income shown on your application comes from alimony, child support or maintenance payments unless you are told that you do not have to include that income on your application if you do not want it considered in determining whether you are creditworthy. A creditor cannot inquire about sex, race, color, religion or national origin of an applicant. A creditor also may not ask about your birth control practices or child-bearing or -rearing plans.

Can a creditor consider when it evaluates my application?

In deciding whether you are creditworthy, a creditor cannot use assumptions as to the likelihood you will bear children in the future. Also, if you are applying for credit for your personal, family or household use, the creditor cannot take into account whether a telephone is listed in your name (although it may consider whether there is a telephone in your home). The creditor may not refuse to consider income you derive from part-time work or from retirement benefits and must also consider alimony, child

There are additional exemptions that a debtor can utilize depending upon the nature of his or her assets.

Can my debt be paid a little at a time instead of all at once?

Yes. If you have a regular source of income, you can choose to pay off all or part of your debts in installments, correct mortgage defaults, and string out payments like back taxes. To file under this law, which is called “Chapter 13,” you must have sufficient income to pay all or a portion of your debts. This is especially helpful for people who operate their own business, retired debtors who collect a pension and Social Security, or even welfare recipients.

Can bankruptcy be used as a protection against foreclosure on my mortgage?

Possibly. When a bankruptcy petition is filed, creditors are not allowed to continue or commence an action against the debtor, including a foreclosure action, without obtaining permission from the Bankruptcy Court. Generally, filing for relief under Chapter 13 of the Bankruptcy Code will allow a debtor to cure mortgage defaults and reinstate the mortgage.

For more information about bankruptcy, see the New Jersey State Bar Foundation’s free pamphlet entitled A Basic Guide to Personal Bankruptcy available online at www.njsbf.org.

Bankruptcy

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The Act prevents a creditor from asking you about your spouse or former spouse, unless your spouse or former spouse will be permitted to use or be liable on the account, or you plan to repay the credit using the spouse’s income or alimony, child support or maintenance payments. If you are applying for unsecured credit in your name only, a creditor cannot ask you if you are married. You also cannot be asked whether any income shown on your application comes from alimony, child support or maintenance payments unless you are told that you do not have to include that income on your application if you do not want it considered in determining whether you are creditworthy. A creditor cannot inquire about sex, race, color, religion or national origin of an applicant. A creditor also may not ask about your birth control practices or child-bearing or -rearing plans.

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Can my debt be paid a little at a time instead of all at once?

Yes. If you have a regular source of income, you can choose to pay off all or part of your debts in installments, correct mortgage defaults, and string out payments like back taxes. To file under this law, which is called “Chapter 13,” you must have sufficient income to pay all or a portion of your debts. This is especially helpful for people who operate their own business, retired debtors who collect a pension and Social Security, or even welfare recipients.

Can bankruptcy be used as a protection against foreclosure on my mortgage?

Possibly. When a bankruptcy petition is filed, creditors are not allowed to continue or commence an action against the debtor, including a foreclosure action, without obtaining permission from the Bankruptcy Court. Generally, filing for relief under Chapter 13 of the Bankruptcy Code will allow a debtor to cure mortgage defaults and reinstate the mortgage.

For more information about bankruptcy, see the New Jersey State Bar Foundation’s free pamphlet entitled A Basic Guide to Personal Bankruptcy available online at www.njsbf.org.

Bankruptcy

Can I declare bankruptcy?

If you have a large number of debts that were honestly incurred and want a fresh start, it may be advisable to talk to an attorney about declaring bankruptcy.

Once every six years, you are entitled to file a petition to discharge your debts if you are unable to pay them. This means that you would be released from the obligation of repaying most of your debts (taxes, alimony and support are some exceptions) so that you may wipe the slate clean or engage in business without being liable for the repayment of the earlier debts.

Does this mean I have to give up all of my possessions?

No. Despite the fact that filing for bankruptcy causes a debtor’s property to be subject to the claims of creditors, certain property is exempt from claims by creditors and can therefore be retained by the debtor. Some examples are:

- Up to $16,150 in value in real property used by the debtor as a residence.
- Up to $2,575 in value in one motor vehicle.
- Up to $1,075 in value in jewelry.
- Up to $8,625 in aggregate value in household furnishings, goods, wearing apparel and related property.

Credit and You

What are my credit rights?

If you apply for credit, the Equal Credit Opportunity Act generally bars a creditor from discriminating against you based on your race, color, religion, national origin, sex, marital status, age, the fact that you may receive public assistance or the fact that you have used any of your legal rights as a consumer. You are entitled to this protection whether the credit for which you apply is for your personal, family or household use or for a business or commercial purpose. To comply with the act, creditors must follow certain rules when taking, evaluating and turning down an application. A creditor who does not follow these rules subjects itself to civil liability to an applicant for actual and punitive damages.

What can a creditor ask me when I apply?

The Act prevents a creditor from asking you about your spouse or former spouse, unless your spouse or former spouse will be permitted to use or be liable on the account, or you plan to repay the credit using the spouse’s income or alimony, child support or maintenance payments. If you are applying for unsecured credit in your name only, a creditor cannot ask you if you are married. You also cannot be asked whether any income shown on your application comes from alimony, child support or maintenance payments unless you are told that you do not have to include that income on your application if you do not want it considered in determining whether you are creditworthy. A creditor cannot inquire about sex, race, color, religion or national origin of an applicant. A creditor also may not ask about your birth control practices or child-bearing or -rearing plans.

What can a creditor consider when it evaluates my application?

In deciding whether you are creditworthy, a creditor cannot use assumptions as to the likelihood you will bear children in the future. Also, if you are applying for credit for your personal, family or household use, the creditor cannot take into account whether a telephone is listed in your name (although it may consider whether there is a telephone in your home). The creditor may not refuse to consider income you derive from part-time work or from retirement benefits and must also consider alimony, child

There are additional exemptions that a debtor can utilize depending upon the nature of his or her assets.

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For more information about bankruptcy, see the New Jersey State Bar Foundation’s free pamphlet entitled A Basic Guide to Personal Bankruptcy available online at www.njsbf.org.
How do I get a visa to go to the United States?

Generally, aliens who want to come to the United States must first obtain a visa from the American Embassy, Consular Section, in their home country. There are two kinds of visas: immigrant visas for those aliens eligible to live permanently in the United States, and non-immigrant visas for those aliens coming temporarily such as visitors, students or temporary workers. There is a numerical limit on the amount of immigrant visas that can be issued each year, not including immediate relatives, special immigrants and refugees. With minor exceptions, there is no numerical limit in the amount of non-immigrants who can come to the United States each year. The most notable exception is H-1B Temporary Workers in a specialty (professional) occupation which has reached its numerical limit in recent years.

The Immigration and Naturalization Service has a district office in Newark and a suboffice in Cherry Hill. These offices process applications for immigrant visas, adjustment of status, asylum requests, naturalization petitions and applications for work authorization. The Newark office is located at 970 Broad St., Room 136, Newark, NJ 07102, 973-645-4400. The Cherry Hill office is located at 1886 Greentree Road, Cherry Hill, NJ 08003, 856-424-7712.

After an alien has obtained immigrant status as evidenced by an I-551 alien registration receipt card, more commonly known as a “green card,” he or she can file for naturalization after five years of continuous residence in the United States (three years in the case of a marriage to a U.S. citizen if residing together). Naturalization petitions (Form N-400) can be filed in the place where the alien has resided for at least three months. An administrative hearing is then scheduled approximately one year or more after filing the petition. After a showing of ability to speak, read and write English and some understanding of U.S. history and civics, the alien is sworn in as a U.S. citizen. Some of the benefits of citizenship include the right to vote, eligibility for certain federal and state jobs, protection from employment discrimination, and freedom from the fear of possible deportation.
**What are removal proceedings?**

Removal procedures (previously called deportation) can be instituted by the Immigration and Naturalization Service against aliens found in the United States who entered without inspection or who overstayed their non-immigrant visas. While these proceedings are not criminal in nature, there are certain procedural due process safeguards that attach. For example, the alien has the right to have an attorney present at his or her own expense, the right to notice of the charges, to present exculpatory evidence in his or her own behalf, to cross-examine government witnesses, to obtain a written decision and the right to appeal.

Removal proceedings are also conducted for aliens subject to exclusion when stopped at the border or border checkpoints, i.e. airports, inspection stations, etc., and who have not yet been admitted into the United States. Although also called removal proceedings, the relief available to those subject to grounds of exclusion is more limited. Certain aliens seeking admission may be summarily excluded without hearing. However, generally some aliens in removal proceedings may request adjustment of status, political asylum, cancellation of removal or voluntary departure. Recent changes in the law have severely limited relief from removal for aliens previously convicted of a crime. If you or an alien friend are facing removal proceedings, you should contact an experienced immigration attorney. If you cannot afford an attorney, contact a community-based legal services organization.

**What is the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996?**

In addition to the creation of a single “removal” proceeding, the IIRIRA, passed on September 30, 1996, created penalties for those whose presence in the United States is considered unlawful. Someone who has been in the United States for more than 180 days after April 1, 1997 in an unlawful status is prohibited from reentering the United States for a period of three years. Someone whose presence has been unlawful for more than one year after April 1, 1997 is prohibited from returning for a period of 10 years. Although a waiver of these penalties may be available, it is extremely limited. A waiver is available only to an alien who is the spouse or son or daughter of a United States citizen or of a permanent resident if the alien could show hardship to such relative. Other changes in the law remove the availability of section 245 (i) of the Immigration and Nationality Act, which gave the opportunity for many aliens to obtain permanent residency in the United States without leaving. Yet another law provides for special relief for Nicaraguans and Cubans who have been in the United States before December 1, 1995.

For further information contact the local offices of your U.S. Senator or congressional representative.

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**Employment Discrimination**

*Note: The following area of law is changing and evolving rapidly. Because this brief summary cannot cover all aspects and changes, you should not rely upon this for legal advice. Consult an attorney to learn the full scope of your rights.*

**What is “At Will” employment?**

Employment in New Jersey is generally considered to be “at will.” That is, you may quit your employment at any time and your employer may terminate your employment at any time for a good reason, a bad reason or no reason, as long as the reason is not prohibited by statute or public policy or is contrary to an agreement or a contract.

**How do I know if I have an agreement or contract of employment limiting my employer’s ability to fire me?**

In certain circumstances, a contract of employment between you and your employer may arise limiting your employer’s ability to fire you to those situations where he or she has cause. These contracts can be either express or implied. Express contracts usually are in the form of written agreements that expressly state the terms of employment. Implied contracts most frequently arise from employee manuals or handbooks distributed to employees, even though most employers do not intend that any employment contract arise from such a manual. In deciding whether an employment contract has arisen from an employee manual, the court will decide whether a reasonable employee would have read the language of the manual as a promise that employment would be terminated only for cause.

An employer may avoid a contractual commitment by setting forth in the manual in a clear and conspicuous manner that the handbook is not intended to be a contract and you may be fired at the will of the company.

In addition, an employer may not fire you where to do so would violate public policy. The public policy must be expressed clearly in a law, regulation or court decision. This protects you from being discharged when you act contrary to your employer’s desires but pursuant to a public policy. For example, an employer would violate public policy if he or she fired you for opposing his or her violation of the law.
Does New Jersey law prohibit employment discrimination?

The New Jersey Law Against Discrimination prohibits employers from discriminating against you on the basis of age, sex, race, national origin, color, creed, handicap, sexual orientation, and other protected categories. An employer may not treat you differently because of any of these characteristics in terms of hiring, promotion, compensation, discipline, discharge or any other term or condition of employment. However, an employer does have the option of treating you differently on the basis of your qualifications, job performance, or some other legitimate business reason. If your employer creates or allows a discriminatory work atmosphere, you may be deemed constructively discharged due to an employment discrimination if you quit your job as a result of the unbearable atmosphere. Employers also are prohibited from maintaining any policy or practice that does not discriminate on its face, but which has a disproportionate negative effect on individuals in the protected categories.

As to sexual harassment, the law states that not only do you not have to tolerate unwelcome sexual conduct or sexual advances in order to keep your job or get a raise, promotion, or other benefit of employment, but it also prohibits an employer from causing or allowing a working environment that is sexually hostile, offensive or intimidating to the “reasonable woman.” The prohibition against a hostile work environment applies equally to other categories of prohibited discrimination.

Employers also are prohibited from discriminating against female employees on the basis of pregnancy. As long as a pregnant woman can still work, she cannot be forced to leave her job. Pregnancy must be treated the same as any other disability treated by the employer. Employers in certain situations may be required to give you time off from work necessary or related to childbirth.

An employer may not discriminate against you because of a handicap that does not prevent you from performing your job. The law also protects employees with “perceived” handicaps. An employer must reasonably accommodate your handicap before he or she decides you cannot perform the job. A protected handicap can either be mental or physical. AIDS and some other contagious diseases are considered handicaps under current law in New Jersey. In such instances, despite the handicap, it may be determined that you are not able to perform the job requirements because your handicap is a “direct threat” to the health and safety of yourself and your coworkers. In order to demonstrate “direct threat,” the employer must be able to demonstrate that there is a high probability of significant harm if the employee is allowed to work.

The Supreme Court of New Jersey has held that alcoholism is a handicap.

What should I do if I feel I’ve been a victim of employment discrimination?

You can file a complaint with the New Jersey Division on Civil Rights, 31 Clinton Street, PO Box 46001, Newark, New Jersey 07102, 973-648-2700. You also may file a complaint in court. Strict time limits define the period within which you must file a complaint.

You should be aware that from time to time, the law is either changed by the New Jersey Legislature or interpreted differently by the courts.

What is the Family Leave Act?

New Jersey’s Family Leave Act requires employers with 50 or more employees to provide eligible employees with up to 12 weeks of unpaid leave every two years for the birth or adoption of a child or to care for a seriously ill family member. The New Jersey law does not require employers to maintain an employee’s health benefits while on leave.

In addition, on August 5, 1993 the federal Family and Medical Leave Act became effective and requires employers with 50 or more employees to provide eligible employees with 12 weeks of unpaid leave every year for the birth, adoption or foster care placement of a child with the employee, to care for a seriously ill family member or for the employee’s own serious health condition. The federal law requires the continuation of health benefits during the leave period.

Leave taken under both the New Jersey and federal law may be taken all at once or on a reduced or intermittent schedule. Upon return from leave, the employee must be restored to the same or an equivalent position.

Where the provisions of the federal and the New Jersey laws conflict, an employer must comply with the law providing greater leave rights. In addition, if leave qualifies as both federal and state leave, the leave used counts against an employee’s entitlement under both laws.

What is the Conscientious Employee Protection Act?

If you discover that your employer is violating the law, he or she may not retaliate against you if you report the activity to a supervisor or a government official or refuse to participate in the activity. The law also forbids your employer from retaliating against you because you participated in an investigation into alleged illegal activity by your employer. Retaliation includes firing, suspension, demotion, and any other actions that have a negative effect on your employment.
**When do I need a lawyer?**

This really depends on your situation. Don’t just think about seeing an attorney after something happens. Try to anticipate problems. Generally, you should think about talking to a lawyer about such events as:

- Planning to leave your property and/or assets to your family upon your death.
- Serious accidents.
- Deaths.
- Marriage, divorce or adoptions.
- Changes in your finances.
- Buying, selling or losing real estate or personal property.
- Business transactions.
- Civil or criminal lawsuits.
- Appearances, applications or appeals to government agencies or boards (zoning, variance, subdivision).
- Planning for incapacity due to illness, mental disease or impending surgery of yourself or a loved one.
- Entering into a contract for substantial home improvements.
- Leaving an employment position.

**When I get a lawyer, what can I expect?**

In most cases, lawyers follow a careful step-by-step process that may include:

- Conferring with you, the client, to pinpoint the problem.
- Gathering and analyzing all available facts and information.
- Interviewing everyone involved in the case.
- Studying law and previous decisions that may apply to your case.
- Recommending what you should or should not do, possibly writing letters, drafting legal documents and so forth.

**If it may be a court matter:**

- Preparing legal arguments for presentation in court.
- Negotiating a settlement if both sides can reach an agreement.
- Presenting your side of the case and your witnesses in court.
- Appealing the court’s decision if your case is rejected.

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**Americans With Disabilities Act**

**What is the Americans With Disabilities Act?**

The Americans with Disabilities Act (ADA) was enacted in 1990 (PL 101-336). It extends provisions of the Civil Rights Act of 1964 to people with disabilities. ADA prohibits discrimination on the basis of disability in public and private sector employment, in state and local government activities, in public accommodations and services, and in transportation provided by public and private entities. ADA also includes provisions for telecommunication relay services.

The New Jersey State Bar Foundation, in cooperation with the Essex County Bar Association and its Committee on the Rights of Persons with Disabilities, publishes a free booklet on this subject entitled *Disability Law: A Legal Primer*. The booklet, which helps to explain laws concerning persons with disabilities, may be obtained by calling 1-800-FREE LAW or viewed on the Foundation’s website at www.njsbf.org.

For additional information on ADA, contact the U.S. Department of Justice at 1-800-514-0301 (Voice), and 1-800-514-0383 (TDD—Telecommunications Device for the Deaf).

For related information about legal issues affecting New Jersey residents with disabilities, the Community Health Law Project (CHLP) may be able to help. CHLP is a special public interest legal aid corporation that provides legal and advocacy services exclusively to people with disabilities and the elderly. Services include direct individual legal services, education, training, information and referral.

CHLP also has unique legal programs for people with disabilities who have been discriminated against because of architectural, transportation and communications barriers, and those who have encountered discrimination in seeking community housing because of disability.

CHLP’s statewide administrative office address, telephone, fax and TTY (teletypewriter) numbers follow: 185 Valley Street, South Orange, NJ 07079, telephone: 973-275-1175, fax: 973-275-5210, TTY: 973-275-1721.

Branch office addresses and phone numbers follow:

- 225 East State Street, Trenton, NJ 08608   609-392-5553, TTY 609-392-5369.
- Station House Office Building, 900 Haddon Avenue, Suite 400, Collingswood, NJ 08108   856-858-9500 (voice and TTY).
- 650 Bloomfield Avenue, Bloomfield, NJ 07003   973-680-5599, TTY 973-680-1116.

**Finding a Lawyer**

**When do I need a lawyer?**

This really depends on your situation. Don’t just think about seeing an attorney after something happens. Try to anticipate problems. Generally, you should think about talking to a lawyer about such events as:

- Planning to leave your property and/or assets to your family upon your death.
- Serious accidents.
- Deaths.
- Marriage, divorce or adoptions.
- Changes in your finances.
- Buying, selling or losing real estate or personal property.
- Business transactions.
- Civil or criminal lawsuits.
- Appearances, applications or appeals to government agencies or boards (zoning, variance, subdivision).
- Planning for incapacity due to illness, mental disease or impending surgery of yourself or a loved one.
- Entering into a contract for substantial home improvements.
- Leaving an employment position.
How should I choose a lawyer?

It might be unwise to choose a lawyer purely on a dollar basis. Here are some sound ways to find someone to represent you:

- Talk to an attorney who has represented you in the past. Even if your lawyer does not handle this type of case, he or she may be able to recommend an attorney who does, and would be able to contribute his or her detailed knowledge of your problem. If you are moving, he or she can often recommend a legal adviser near your new home.
- Talk to friends who have been to a lawyer. People who are happy with their attorney are often good references. Lawyers depend on good client relations and word-of-mouth referrals for new business.
- Call your county bar association’s Lawyer Referral Service. You can arrange for an initial legal consultation at a modest cost through this service.
- Consult a law directory, such as Martindale-Hubbell, which should be available at your local library.

How do I ensure a good lawyer-client relationship?

Remember, good legal assistance is not a one-way street. You have to cooperate with your lawyer if you really want to be helped. The attorney-client relationship is privileged and confidential, so don’t hesitate to take your lawyer into your confidence. Here are some important tips to follow:

- Don’t withhold information from your lawyer.
- Give him or her an objective statement of all the facts.
- Don’t look for simple, quick answers to complex questions. Lawyers are justifiably cautious in drawing conclusions or answering questions about complicated legal problems. They know that cases are rarely “open and shut.”
- Let your attorney know about any new developments in your case.
- Don’t hesitate to ask questions about any matter relevant to your case. Remember, though, lawyers are not doctors, psychiatrists, marriage counselors or financial advisers.
- Work with your attorney. If you don’t understand why something should be done or have doubts about some action your lawyer recommends, ask questions and get an explanation.
- Be patient—don’t look for instant results. Trust your lawyer to follow through on the case, but don’t hesitate to ask for progress reports from time to time. You always have a right to know what your lawyer is doing for you.
- Don’t fall into the trap of expecting the same result on your case as obtained by a friend or neighbor on their case; no two cases are alike.

What about legal fees?

The time, study, experience and attention your attorney gives your problem all influence the legal fees. A lawyer invests thousands of dollars on such things as education, staff, books and journals, rent and insurance. Consequently, a lawyer must set a charge for his or her services that is both reasonable and adequate to cover his or her own investment.

Because no two legal matters are exactly the same, fees vary widely. Some factors involved are:

- The amount of time and labor spent on your problem. To a lawyer, time is money. Your lawyer should keep very careful records of the time he or she and the lawyer’s staff spend on your case. This varies according to the amount of experience, training and the workload of the attorney.
- Ability, experience and reputation also are important factors in determining a lawyer’s fee. If the attorney is well known as a leader in his or her field, the fee probably will be higher. Professionals do not work on a bid basis, so the cheapest lawyer may not be the best one to help you.
- The results obtained often are considered in setting the fee. Of course, unless a lawyer takes your case on a contingent fee basis, he or she will expect to be paid, no matter what the outcome. However, some lawyers will handle a lawsuit for money damages on the condition that they be allowed to take a percentage of the recovery if your suit is successful. Under a contingent arrangement, no fee is collected if a case is lost. The client still must pay out-of-pocket costs such as investigator fees, postage/phone/delivery costs, medical and hospital report costs, court filing fees and so forth.
- Office overhead also is a factor in setting fees. Remember that when you hire an attorney, you also hire his or her entire staff—secretaries, investigators and other employees. Usually, approximately 50 percent of the fee helps to pay for overhead.

In most matters an attorney must explain the basis for the fee arrangement in writing. Interest on unpaid balances can be charged, if part of the understanding as to fees. Often, a retainer (deposit) is required before an attorney starts work and you may need to replenish it as more work is done.

At times, a lawyer may not be able to set a fee in advance because it isn’t possible to tell beforehand how much work your case will entail. However, you usually can get a fair estimate of the costs from your lawyer, so don’t ever hesitate to talk about fees. It’s a good idea to talk about the fee on your first visit. Be frank and specific about the costs. If you can afford to spend a certain amount of money, make sure you tell the lawyer. Getting answers early will prevent unfortunate misunderstandings later.

Where else can I go for help?

If a private attorney cannot represent you in a matter, he or she may be able to help by referring you to an appropriate public agency, such as the Legal Services office in your county.
Handling Problems With a Lawyer

How can I make a complaint about a lawyer?

Talk to your lawyer: Regardless of the nature of your complaint, the fastest, most effective solution to many problems is to advise your lawyer of your concern. Discuss your feelings frankly with your lawyer. You’d be surprised how often a candid phone conversation or face-to-face meeting can quickly resolve a concern or misunderstanding.

Letters: If telephone calls or an in-person meeting with your attorney are unproductive, a letter to your attorney outlining your specific complaints may provide a useful record. This will also give your lawyer a clear explanation of your concerns and give him or her an opportunity to resolve the matter.

Other action: Assuming you have been unable to resolve your concern by the previously suggested methods, and you wish to take the matter further, it is important to determine the nature of your complaint.

A) If it is a fee dispute: If your complaint involves only a dispute over a lawyer’s fee, such as when you have reason to believe the fee is excessive, then you are entitled at your option to use the fee arbitration process established by the New Jersey Supreme Court. It is usually a simple, quick and inexpensive way to resolve the fee dispute. It also saves you from going to court. The local fee arbitration secretary will provide you with the necessary forms to file, and depending on the amount in dispute, you may need to pay a small filing fee. A hearing will be held providing you the opportunity to tell your side of the story. A written decision is usually given soon after the hearing.

B) If it is an ethics complaint: Claims against lawyers that you believe to involve dishonest, fraudulent or unprofessional conduct may be the grounds for an ethics investigation. The ethics grievance procedure set up by the New Jersey Supreme Court investigates and, if appropriate, disciplines serious attorney misconduct. Mere unhappiness with the result of a case, disappointment with your attorney for not returning several telephone calls, or anger over a legal bill do not, in themselves, form the basis for an ethics grievance.

How are ethics problems handled?

Upon receipt of your grievance alleging conduct by a lawyer, which, if proven, would be unethical, the secretary of the committee docket the case and assigns the matter for investigation. A written report of investigation is then submitted to the chair of the committee. If the chair determines that there is sufficient indication of unethical conduct, a formal complaint is prepared. The complaint is served upon the lawyer, who is then required to file a formal answer within 10 days of service. This step begins what is known as the hearing stage.

All formal matters are tried before a hearing panel consisting of at least three members, usually composed of either two lawyers and one public member or three lawyers. The procedure in disciplinary hearings is similar to that in court trials.

After the hearing is concluded, the panel deliberates and determines whether the complaint should be recommended for dismissal or whether some type of discipline is appropriate. The committee may recommend appropriate discipline, but that decision generally is made by the Disciplinary Review Board, which will review the matter and recommend appropriate discipline to the Supreme Court of New Jersey.

Where can I go for help?

Fee Disputes: Contact the fee arbitration section of the Office of Attorney Ethics of the Supreme Court of New Jersey, 840 Bear Tavern Road, West Trenton, NJ 08628 or PO Box 963, (609-530-4008) or the county bar association (listed in the local telephone directory) of the county in which your lawyer maintains his or her principal law office. They will advise you of the name, address and phone number of the secretary of the local district fee arbitration committee.

Ethics Complaints: Contact the Office of Attorney Ethics (see preceding phone number) or your local bar association (as mentioned above for fee disputes) and you will be provided with the name, address and phone number of the secretary of the appropriate local district ethics committee.

Loss of Your Money Through Dishonesty: In 1961 the New Jersey State Bar Association created what is now called the New Jersey Lawyers’ Fund for Client Protection. The fund is now a committee of the Supreme Court. It was established to reimburse clients who have suffered a loss due to dishonest conduct by a member of the New Jersey Bar. To file a claim, call 609-292-8008 or write to: New Jersey Lawyers’ Fund for Client Protection, Richard J. Hughes Justice Complex, PO Box 961, Trenton, NJ 08625. The fund is financed by New Jersey lawyers, who pay annual fees.
Compensation for Injuries on the Job

**How can I get compensation for injuries on the job?**

If your injury is related to your employment, you can recover payment regardless of whose “fault” the accident was by going to New Jersey’s Workers’ Compensation Court.

In cases involving injuries suffered in connection with employment, your lawyer will represent you without payment in advance. The fee is contingent upon a successful conclusion.

Under this arrangement, your lawyer will receive no fee if your case is lost. (Of course, you still must pay certain costs directly related to your lawsuit.) Under this fee arrangement, the lawyer must invest his or her own time, effort and office expenses without advance payment. This plan permits any injured worker, regardless of financial resources, to be represented by a private attorney in cases of this type. By law, your lawyer’s fee for representing you in a workers’ compensation case will be based on a percentage of the amount you receive, which will not exceed 20 percent, and is fixed by a judge of compensation upon conclusion of the case.

Legal Consequences of Substance Abuse

**What are the penalties for substance abuse?**

You already know that alcohol and drugs can damage your health and even lead to death. In addition to the significant medical and psychological consequences, substance abuse can also damage your future. For example, you might limit life’s basic opportunities, such as earning a living. Often, companies require pre-employment drug testing. If you test positively for drugs, you may be surprised to learn that some corporations will not hire you even if you are otherwise qualified.

How about your ability to travel from place to place by driving a car? This privilege can be lost. Did you know that the penalty for a **first** drunk driving offense in New Jersey is up to one year’s loss of driver’s license plus fines and possible jail time? The total fines, costs, fees and surcharges will exceed $3,500. You can lose your driver’s license for at least six months if you are convicted of any drug offense. It doesn’t matter if a car was used in committing the offense. As you can see, there are many legal consequences of substance abuse. The New Jersey State Bar Foundation wants you to know about them. For a free copy of *Legal Consequences of Substance Abuse*, call 1-800-FREE LAW or write to the New Jersey State Bar Foundation, One Constitution Square, New Brunswick, New Jersey 08901-1500. The pamphlet is also available in Spanish, and can be ordered in bulk for school and community groups. The English version of the pamphlet can be viewed on the Foundation’s website at www.njsbf.org.

Law Points for Senior Citizens

Numerous issues in law face senior citizens in their daily lives. Some of these issues can be perplexing. To help senior citizens better understand their rights, the New Jersey State Bar Foundation, in cooperation with the New Jersey Department of Health and Senior Services, Division of Senior Affairs, has published a pamphlet entitled *Law Points for Senior Citizens*. The pamphlet is free and deals with everything from age discrimination to Social Security to wills. It is also available on audio cassette for the blind and visually impaired or may be viewed on the Foundation’s website at www.njsbf.org. To obtain your complimentary copy, please call or write to the New Jersey State Bar Foundation. Bulk orders can be filled for senior citizen groups.
Free Services and Seminars

The New Jersey State Bar Foundation is a non-profit organization founded to carry out the charitable and educational purposes of the organized bar. Since 1988, the year continuous public education programming began, public response to the Foundation’s law-related educational programming has been overwhelming. All of our services and programs are available free of charge to the public.

The Foundation sponsors public seminars on topics such as landlord-tenant rights, divorce law, special education, law and disability, wills, buying and selling a house, and much more. Our free Speakers Bureau fills requests for lawyers to speak to New Jersey school and community groups. The Foundation also operates a Video Loan Library with more than 200 law-related titles.

As part of our efforts to educate children about the justice system, the Foundation sponsors mock trial programs for grades K–12. Mini-Court, the Foundation's newest activity, is for grades K–2. Our Mini-Court Teacher’s Guide features mock trial lesson plans that are fun and easy to use in class. This booklet also includes a glossary of legal terms in simple language, a courtroom diagram, a page to color, a resource section, an award certificate for students and more. The Foundation provides free copies for teachers of grades K–2 upon request.

Through the Foundation’s Law Fair Competition and Programs, students in grades 3 through 6 can learn about the law. In the Law Fair Competition, teachers and students are invited to submit original mock trial cases. The Foundation provides an instruction pamphlet and a booklet of past winning cases written by students. The competition winners are invited to perform their trials before audiences of third-to sixth-graders, who serve as jurors.

A similar mock trial program, Law Adventure, is available for students in grades 7 and 8. Thousands of elementary and middle school students participate in Law Fair and Law Adventure annually.

Also geared to middle school students, The Legal Eagle, the Foundation’s legal newspaper for kids is currently distributed to more than 1,500 schools across the state, reaching more than 190,000 students.

The Foundation’s Vincent J. Apruzzese High School Mock Trial Competition is one of the best in the nation. In this statewide competition, students play the roles of lawyers, witnesses and jurors. Since the program began in 1982, more than 48,000 high school students have learned the fundamentals of our court system while developing critical thinking and public speaking skills. The Foundation provides free workbooks with competition rules, procedures, score sheets and the mock trial case. Each year the Foundation sends our statewide championship team to represent New Jersey in the National High School Mock Championship. New Jersey is one of only a few states in the nation whose mock trial teams have won the national championship twice.

The Foundation also offers free conflict resolution and peer mediation training to teachers, both at the New Jersey Law Center in New Brunswick and on an in-service basis. Free conflict resolution and peer mediation guides are available for elementary, middle and high schools.

Every spring the Foundation conducts a Law-Related Education Conference for teachers of grades K–12. The conference features a wide variety of workshops and offers cutting-edge information in the field of law-related education. The New Jersey State Bar Foundation provides many law-related publications. These include the Consumer’s Guide to New Jersey Law, Law Points for Senior Citizens, Legal Consequences of Substance Abuse, and AIDS and the Law in New Jersey. Some of our publications are available in Spanish and on audio cassette for the blind and visually impaired.

For further information about the Foundation and its services, call toll-free 1-800-FREE LAW or visit our website at www.njsbf.org.
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