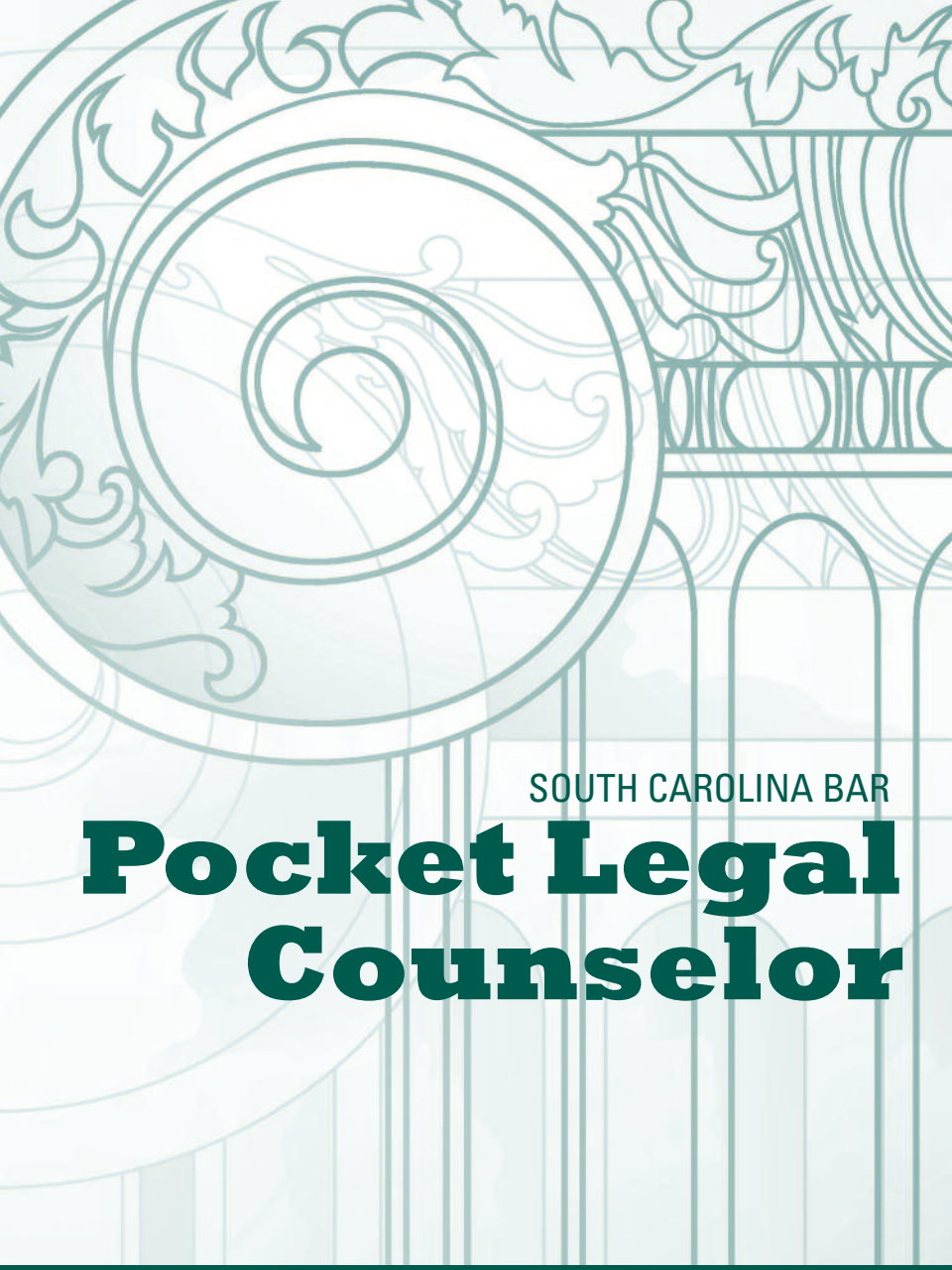

SOUTH CAROLINA BAR

Pocket Legal Counselor

INFORMATION YOU NEED FOR LIFE'S LEGAL ISSUES

Contents

Alternative Ways to Resolve Disputes

Mediation and arbitration in South Carolina

WHAT IS ALTERNATIVE DISPUTE RESOLUTION (ADR)?

You don't have to go to court to solve a problem with an insurance company, a business, your employer or your neighbor. Even if you are getting divorced, you may be able to use arbitration or mediation to settle all or some of your case. ADR is a term used to describe arbitration, mediation and other ways of discussing and resolving disputes outside the courts.

ADR has become popular because: it can reduce costs, time and stress for all parties; it can help people resolve their own differences without a judge or jury doing it for them; it can preserve business and personal relationships hurt by lawsuits; and the process typically takes place in a private setting versus a public courtroom.

WHAT IS MEDIATION?

In mediation, conflicting parties meet informally with a trained, impartial mediator without going to court. The mediator helps the opposing parties reach a voluntary settlement that works for both sides. The mediator does not make decisions and does not require a party to accept a particular settlement, so the parties maintain control of the outcome. If an agreement cannot be reached, the parties may proceed to court. However, comments made by the parties or their representatives during the mediation may not be used in court.

In mediation, all decisions are made by the parties themselves. Most issues can be mediated—personal injury, employment, family, probate, business and neighborhood disputes. The mediation

process varies in length depending on the type of problem and the willingness of the parties to reach a resolution.

WHAT IS ARBITRATION?

In arbitration, a qualified neutral person (the "arbitrator") makes a decision for the parties. The arbitrator's decision can be binding (final) or nonbinding (not final). Both civil and family issues can be arbitrated.

HOW DO ATTORNEYS WORK WITH ARBITRATORS AND MEDIATORS?

Arbitrators and mediators are neutral and will not give legal advice. In simple cases, you may be able to use arbitration or mediation without an attorney. More often you will need an attorney who will help you prepare your case and will participate in the arbitration or mediation. Attorneys take sides; mediators and arbitrators do not.

In civil cases, attorneys generally are present with clients in mediation for one or two meetings. In family mediation, parties usually meet with the mediator with or without attorneys in several "conferences" or meetings. ADR is rarely used in criminal cases.

HOW IS ADR USED IN SOUTH CAROLINA?

Most arbitration and mediation in South Carolina is voluntary. Clients and attorneys select a neutral arbitrator or mediator for each case. Some business and insurance contracts provide for arbitration or mediation of disputes.

Pilot programs in several counties require most civil cases and family court cases to be mediated before a trial will be scheduled. All issues with few exceptions must be mediated in these counties. It is anticipated that other counties will be added to the pilot programs. Rules established by the Supreme Court set out guidelines for how mediation works in circuit and family courts.

WHAT IS THE COST OF ADR?

Fees for arbitration and mediation services are usually divided between the parties and, like other professional fees, are usually charged on an hourly basis and set by agreement with the parties. Some pilot program fees are set by court rules. Some arbitrators and mediators offer services for a reduced fee to low income people. Do not be embarrassed to ask up front what the fees and cost might be.

HOW DO I SELECT AN ARBITRATOR OR MEDIATOR?

Many arbitrators have received training through the South Carolina Bar or the American Arbitration Association. Also, many mediators have completed an approved 40-hour training course in civil or family mediation from these or other organizations.

Just as you would do when choosing a lawyer or any other professional service provider, you should ask about training and experience. Your lawyer may be able to recommend an arbitrator or a mediator. Contact the following organization for lists of arbitrators and mediators and other useful information.

South Carolina Commission on Alternative Dispute Resolution
South Carolina Board of Arbitrator and Mediator Certification
South Carolina Bar
P.O. Box 608
Columbia, SC 29202
Phone: (803) 799-4015
Fax: (803) 799-5290
www.scbar.org/adr

Auto Collisions

BE PREPARED

Because collisions happen to even the best of drivers, everyone should be prepared to take certain actions immediately afterward. Many legal problems can be avoided if the persons involved take a few basic steps.

Those steps can be summarized as follows:

- call law enforcement (dial 911);
- assist, but do not move, the injured;
- move your vehicle to the side if obstructing traffic;
- get names, addresses and telephone numbers of witnesses and the other driver;
- make notes, take photos with your phone or camera; and
- consult an attorney and notify your insurance carrier

CALL A LAW ENFORCEMENT OFFICER: (DIAL 911)

You may dial 911 and report the collision to the operator who will usually notify law enforcement and dispatch an ambulance if needed. If you are not able to utilize the 911 feature you should notify the local police department if the collision occurs in the city. If the collision occurs outside city limits, notify the county sheriff's office or the South Carolina Highway Patrol. Even in minor collisions where it does not appear that anyone has suffered serious injuries or property damage, it is best to notify the authorities immediately. The responding officer will fill out and provide you with a form known as a FR-10 that you must give to your insurance company when you report the collision to it.

ASSIST BUT DO NOT MOVE THE INJURED

If someone is seriously injured, call 911 and request medical assistance immediately. It is best not to move an injured person since doing so may cause further injury or permanent paralysis. It is best

to try to keep the injured person calm and await professional help from EMS or law enforcement. If the person is bleeding profusely, apply direct pressure to the wound. Only remove the person from the vehicle or area if necessary to prevent further jeopardy such as a burning vehicle, etc.

SECURE THE SCENE

In South Carolina, drivers involved in an auto collision where a person is injured or property is damaged must stop their vehicles at the scene of the collision or as close as possible without obstructing traffic.

Take all possible precautions to prevent further collisions by subsequent traffic and ensure the safety of everyone including those involved in the initial collision. Station someone to warn, stop or safely direct any approaching vehicles. At dusk, dawn or night, use flares and reflectors and/or flashlights to secure the area and warn approaching traffic.

OBTAIN NAMES OF THE OTHER DRIVER AND ALL WITNESSES

Get the names, address and telephone number of the other driver, their passengers and all witnesses to the collision. Also try to obtain the other driver's insurance information if possible. After writing down the names, telephone numbers and addresses of all witnesses, ask the witnesses to write down what they saw, if possible. Keeping a small notepad and pencil in your glovebox is a good idea so you will be ready to write down this information.

TAKE NOTES ABOUT THE COLLISION

Make your own written notes on all significant circumstances concerning the collision. Complete the collision information form on pages 9 and 10 in this booklet as soon as possible after the collision. Take photos of the scene and the vehicles with any camera available, including your telephone camera, before the vehicles are

moved. Write down any observations and statements of or about the other driver that may explain why the collision occurred, such as: texting, using cell phone, distracted by other passengers, etc.

REMAIN AT THE SCENE

Unless injuries make it necessary for you to leave the scene of the collision, remain there until the police have told you that you are free to go and you have completed the above steps.

COMMENTING ON THE COLLISION

South Carolina law requires the driver of any vehicle involved in a collision to give his or her name and address, provide the registration number of the vehicle he or she is driving and to show his or her driver's license to the other driver and law enforcement officers.

You are obligated to assist law enforcement officers in their investigation. However, be aware that any statement you make can be used against you and you are not required to admit to wrongdoing. You should not admit or sign any written statements without first conferring with your attorney. An insurance company adjustor is not a law enforcement officer. It is highly recommended that you not give a recorded statement to any insurance company representative until after you have spoken with your attorney.

FILE REPORTS

South Carolina requires drivers or owners of cars involved in collisions to file a Form FR-10 within 15 days with the South Carolina Department of Motor Vehicles. This requirement is normally fulfilled by your insurance agent who files the FR-10 you provide him.

NOTIFY YOUR INSURANCE COMPANY/SEEK LEGAL COUNSEL

If you do not promptly notify your insurance company of your collision it may affect your rights. Following the collision, you have a duty to cooperate with your insurance company; however, you

have no duty to give statements or sign any forms given to you by any of the other drivers' insurance companies. Remember, any statement you make may be used as an admission against you. Be cautious in dealing with persons offering to adjust your case or trying to hurry you into a settlement. It is strongly recommended that you contact an attorney and seek legal advice as soon as possible after the collision. Once you sign a release, your ability to pursue any damage claim for injuries or property damage may be ended forever. If the other party or the opposing insurance company offers a settlement or asks you to sign a release, it may be in your best interest to talk to a lawyer. You can lose valuable rights in signing a release.

The at-fault driver's insurance company is obligated to compensate you for the damages their driver has caused you. Therefore you should keep records of all expenses that you experience as a result of the collision, including all of your doctor bills and medication expenses, special accommodations required by your injuries such as wheel chair ramps, walkers, etc., mileage to attend your doctor's appointments, rental car bills, time you lose from work and other expenses. You are also entitled to compensation for the interference in your life that has been caused by the at-fault driver. It is helpful to your doctor in treating your injuries and you in determining that amount if you record on a calendar on a day by day basis following the collision how you feel, what your pain level is, and any problems you are experiencing as a result of the collision.

ACCIDENT INFORMATION FORM

The other driver and his or her car:

Name _____

Street address _____

City _____ State _____ Zip _____

Vehicle registration/year/license number _____

Make/model of car _____ Year _____

Does driver appear to have been drinking? _____

Any statement made by other driver as to cause of accident: _____

_____

Passengers in other car:

Name _____

Address _____

Name _____

Address _____

All possible witnesses to any fact:

Name _____

Phone _____

Address _____

Name _____

Phone _____

Address _____

Conditions noted immediately after the accident:

Position of your car after accident _____

_____

Position of other car after accident _____

_____

Location of any tire marks, blood, broken glass, dirt, etc. on road or side of road _____

_____

Location of point of impact in relation to center of road or some physical object _____
Did your car skid? _____If so, how many feet?_____
Did other car skid?_____If so, how many feet?_____
Road conditions_____
Traffic conditions_____
Weather conditions_____
Traffic controls (traffic lights, stop signs, etc.) _____
Place of impact on other car _____
Name/address of wrecker that removed other car _____
Other conditions that affected accident _____

The following should be filled out at the scene or shortly after leaving the scene.

Date of accident _____ Time _____
Location of accident _____
Type of road (grade, curve, etc.) _____
Speed of your car just before accident _____
Speed of other car just before accident _____
Direction of your car _____
Direction of other car _____
Were you turning? _____
Was other driver turning? _____
Did the other driver signal properly (with arm, horn, lights, etc.)?
_____
If at night, were the other vehicle's lights on? _____
How far away from you was the other car when you first saw it?
_____
Other pertinent facts _____
_____
_____
_____
_____

Bankruptcy

Bankruptcy is a system of laws for adjustment of debt. The U.S. Bankruptcy Code offers several alternative approaches to debt relief, and the rules for each approach are included in a different chapter of the Code. The approaches typically used by individuals are Chapter 7 and Chapter 13. An individual may file either of these forms of bankruptcy alone or jointly with his or her spouse.

Bankruptcy involves a blend of state and federal laws. Federal law sets the basic rules and mechanics of bankruptcy, and federal bankruptcy judges supervise the process. However, state law governs basic property rights and determines what property a debtor can exempt. For this reason, the practical effect of bankruptcy may differ from one state to another.

CHAPTER 7

The usual purpose of Chapter 7 is to discharge unsecured debts, making them legally unenforceable. This includes most credit cards, medical bills, charge accounts and personal loans. It also includes any amount of debt remaining after a repossession or foreclosure.

Chapter 7 usually provides limited help with secured debts like car loans or mortgages, where the creditor has a lien on some item of property ("collateral"). This is because liens typically survive Chapter 7. So if the debtor wishes to keep the collateral—say, the car or the home—he or she must continue to pay the debt. Chapter 7 typically does not change the terms of a secured debt—the payoff, the interest rate or the payment schedule—and doesn't provide any organized method of catching up if the debtor is behind. However, if the debtor is current with a secured debt and can maintain the payments, it is usually feasible to retain the collateral.

In a few special circumstances, Chapter 7 does offer some relief from secured debts.

- If the collateral is not needed, the debtor can surrender it in full

satisfaction of the debt, canceling any debt that would otherwise remain after the collateral is sold.

- If the collateral is worth less than the payoff on the account, the debtor can redeem the collateral for its value but must pay that amount in a lump sum.
- Through a process called lien avoidance, the debtor can often treat a judgment debt or a consumer finance company loan as unsecured, discharging the debt in full.

In exchange for relief from debt, the debtor must give up any non-exempt assets—at least in theory. A trustee is appointed by the court to identify and liquidate non-exempt property. In most cases, though, the trustee is unable to sell anything. Trustees can reach assets only where the equity—the value of the property after deducting any pre-existing liens—exceeds the debtor's exemptions.

Exemption laws specify the types and values of property a debtor may protect from creditors or trustees. In South Carolina, exemption limits are automatically adjusted every two years. Beginning July 2014, they include:

- $58,225 of the value of a home (or, alternatively, $5,825 in cash or equivalents)
- $5,825 of value in a motor vehicle
- $4,625 in household goods
- $1,175 in jewelry
- in some cases, $5,825 in any property (the "wild card" exemption)

In addition, certain assets, such as most retirement accounts, social security entitlement and veterans benefits, are exempt in full, regardless of value.

Where a married couple jointly own some item, they may combine their exemptions, effectively doubling the protection. To illustrate, if a couple owns a home worth $150,000 that is subject to a $50,000 mortgage, their combined homestead exemptions ($116,450) would cover their entire equity ($100,000), effectively preventing the trustee from selling the home. The debtors must finish paying the

mortgage, but if they do, they remain the owners.

Chapter 7 is usually a brief process. Typically the debtor receives a discharge about three months after the case is filed. After that, creditors are prohibited from collecting discharged debts.

Chapter 7 is intended for those who cannot afford to pay their debts. If a debtor has enough disposable income to pay a meaningful part of the unsecured debt, he or she may be ineligible for a Chapter 7 discharge.

CHAPTER 13

Chapter 13 represents a quite different approach. The debtor must file a plan requiring payments toward all debts over three to five years. The plan sets a fixed dollar amount the debtor will pay every month to a Chapter 13 trustee. When the plan is approved, the trustee disburses these funds among the various creditors according to the treatment provided for each in the plan.

Chapter 13 is a longer and usually more expensive process but is especially useful for people with certain types of debt problems.

- Debtors who are significantly behind on mortgage payments may be able to catch up over an extended period while protected from foreclosure.
- A debtor with important non-exempt assets may prevent them from being liquidated, as would occur in Chapter 7, by paying equivalent value to creditors through the plan.
- A Chapter 13 plan can also give the debtor an extended time to catch up with problem debts that Chapter 7 does not handle, including past-due taxes, alimony or child support.

In general, Chapter 13 debtors must fund their plans adequately to pay their secured debts in full, including any arrearages on mortgages, but may often pay unsecured debt at a few cents on the dollar. The debtor's assets and disposable income usually determine how much unsecured creditors receive. But in all cases, the debtor's plan must show good faith toward creditors.

LIMITS AND DISADVANTAGES

Bankruptcy requires a complete disclosure of debts, assets, income and financial history. Debtors who are not completely honest, or who have tried to defraud creditors in the past, may be denied a discharge.

In addition, debtors cannot discharge certain special debts. These include alimony, support and other domestic obligations; student loans; certain tax debts; and debts associated with misconduct such as fraud, intentional injury to others, or mishandling entrusted money or property.

Bankruptcy can affect a debtor's credit standing. Federal law allows credit reporting agencies to include bankruptcy on a credit history for up to 10 years after the case is filed. But bankruptcy can also eliminate debt that otherwise would continue to be reported as delinquent.

Buying a Home

Buying a home involves complex considerations. Once you have decided on the area in which you wish to live, you can save time and frustration by working with an experienced real estate broker.

THE CONTRACT

After you have found a home you want to buy, the real estate agent or owner will ask you to make an offer. This is done by signing a proposed "contract." If you submit a proposed contract and the other party makes changes to it, then they have made a counter-offer, and you do not have a contract unless you agree upon the changes that they have proposed. When both you and the seller have signed a document and both have agreed to any proposed changes in this document, you create long-term binding relationship by entering into a contract. Any verbal agreements concerning the sale of real estate are not legally enforceable.

You should consult your lawyer before you sign the contract, and give him or her a chance to review the proposed document.

The contract will cover many matters, but it must at least include the price, the amount of earnest money, a description of the property and other conditions and terms of the sale. It also should specify the costs for which you will be responsible at closing. A review of the contract by your lawyer can help you avoid overlooking any important considerations.

Depending on the terms of the contract, the earnest money you pay at the time the contract is signed may or may not be refundable if the transaction is not completed. Your failure to comply with the contract also may expose you to a claim for damages or other legal action. Your lawyer can make sure the contract accurately represents the intent of the parties and protects your interests.

Special terms or conditions should be set forth separately. For example, the contract should also specify every item of personal

property that is being sold with the house. Only those items specified in the contract bind the parties. The seller must provide to you as a buyer a property condition disclosure statement that must be completed prior to signing a contract of sale. If you are interested in having an independent inspection of the property, this should be stated as well as how you and the seller will be affected by any negative findings in the inspection. Some real estate companies offer home warranty policies that will cover buyers for losses occurring to appliances and home systems soon after closing. These policies may be paid for by either the seller (to sweeten the deal) or the buyer. Check to see if such a policy is available to you at closing.

AGENCY

Many buyers do not realize that the real estate agent listing the home is the legal agent for the seller and is responsible to the seller and not to the buyer. For this reason, the buyer may be unrepresented unless he or she has retained another real estate broker or his or her own lawyer. However, the buyer and seller may consent in writing for the listing agent to represent them both.

CASUALTY AND FLOOD INSURANCE

You will need to carry insurance to protect you from risks of loss and potential liability. Approximately 30 days before closing, you should consult an insurance agent. The insurance must be purchased before the date of closing and must be acceptable to your mortgage lender.

FINANCING

In addition to the down payment, which includes the earnest money you pay when you sign the contract and the amount you pay at closing, another important consideration is your monthly mortgage payment. That payment will include principal and interest on the amount you borrowed. Mortgage payments frequently include one-

twelfth of the anticipated property taxes and insurance premiums for the coming year. This money is paid into what is called an escrow account, and the lender pays the taxes and insurance from this account as they come due.

Mortgage insurance, which protects the lender from your failure to pay, may also be included in the monthly payment. Discuss all these factors with the lender when you apply for the loan. The lender should give you an estimate of the costs that will be charged to you.

SURVEY

A complete and precise description of the property you are purchasing is important. Disputes often arise at the closing and even after the sale because of inaccurate or inadequate property descriptions in the contract or deed. It is important that a survey be made and a plat prepared by a licensed surveyor to locate the boundary lines of the property, the location of improvements that are constructed on the property and any easements, encroachments or projections.

TERMITE LETTER

Generally, the seller is required to provide proof that the property has been inspected for termites. It is recommended that you request this letter before closing so that any problems can be addressed.

TITLE INSURANCE

Lenders require mortgagee title insurance coverage. This one-time premium is paid at the closing and insures the validity of the lender's lien on your property. For an additional cost, you may obtain an owner's title insurance policy.

The lawyer's examination of the title obviously can only cover matters that appear on the public records. Title insurance, however, protects you against many matters that may not appear of

record or that may not be apparent from a record examination. The possibilities may include rights someone has acquired by usage and even forged documents in the chain of ownership. Before the closing, you should discuss title insurance with your attorney.

CLOSING

Your bank is required to inform you of your right to select your own attorney and not only one from its list. Once you have made your selection, your lawyer and his/her staff will tie together the many processes and requirements that go into the closing, including:

- making the required examination of the public records to determine the quality of the seller's title (usually a period of 40 to 60 years is required);
- gathering all the information necessary to prepare the documents that itemize the terms of the sales transaction, including taxes, insurance, closing costs, mortgage amounts and additional agreements between the parties;
- preparing all the legal documents;
- explaining and supervising the signing of all papers;
- recording the necessary documents with the proper authorities; and
- certifying the completed transaction to the lender and the title insurance company.

At the closing, your lawyer will explain the purpose, importance and effect of each document that you are required to sign.

TAX CONSIDERATIONS

Every sales transaction involves tax considerations for both buyers and sellers. Proper structuring of the transaction may result in substantial savings and should help you avoid future problems. Before the purchase, you should discuss tax considerations with your lawyer or accountant.

Children and the Law

No relationship is more important than the one between a parent and a child. Many laws affect this relationship, including laws about:

- the duties of parents to their children;
- how fatherhood is proven;
- child abuse and neglect;
- how parents can lose their rights to their children;
- how children can become free of their parents' control (emancipation); and
- when children can make contracts.

PARENTAL DUTIES

Parents must see that their children have enough food, clothing, shelter, medical care and education. They must protect their children from harm.

Parents may be liable for damages up to $5,000 if their children harm others or damage property.

BEING PART OF A FAMILY

Children may become part of a family by:

- being born to a married or unmarried couple;
- a court ruling naming the child's father; and
- adoption through the family court.

CHILDREN'S BENEFITS

When the law recognizes a child's parents, the child may get many benefits, including

- Social Security death, disability or retirement benefits;
- estate or property claims;
- veterans' benefits;
- workers' compensation;
- insurance;

- pensions;
- claims for wrongful death; and
- knowledge of family health problems.

The family court can order parents to pay child support until a child is 18 or even longer if the child has disabilities.

PARENTS AND THE GOVERNMENT

Parents may choose their family's religion, education and lifestyle. They have the right to raise their children with little governmental interference. However, parents must not:

- abuse their children physically or sexually;
- punish their children in such a way that they suffer harm (spanking must not cause physical harm); or
- neglect their children. Parents must provide the necessities of life. The government cannot remove children from the home just because the family is poor.

Most people who work with children are required by law to tell the Department of Social Services (DSS) if they think a child is being harmed. DSS then investigates the charge. If DSS can keep the child safe at home with the family, it must try to do so. DSS should only take a child from the home when that child is in significant or eminent danger.

IF THE GOVERNMENT GETS INVOLVED

Listed below are events that may happen if DSS or law enforcement believes that a child is being harmed or is at great risk of being harmed.

- The child may be taken into emergency or protective custody.
- The family court could hold a probable cause hearing in 72 hours.
- The family court must appoint a lawyer for parents who cannot afford one and request one.
- The family court will appoint a guardian *ad litem* for the child to help the court determine what is best for the child.

- DSS must create a placement plan to get the family back together if possible.
- DSS should arrange for frequent visits between child and parent, when appropriate.
- If the child is in foster care, the Foster Care Review Board should review the case regularly.
- If parents do not follow family court orders, they may lose all rights to their children.
- Parents who are mentally ill, mentally challenged or who need other help should get special assistance from DSS.

In all situations involving the placement of a child, the court's primary concern is the best interest of the child.

CHILDREN'S RIGHTS AND DUTIES

Children usually become adults at age 18. However, there are some exceptions.

- Schools must provide special education to children who need it until age 21.
- Parents may seek guardianship in probate court for children over age 18 who cannot care for themselves.

Some situations may allow children to become legal adults earlier than age 18.

- Children may remove themselves from the custody of their parents by obtaining employment, joining the armed forces or otherwise becoming self-sufficient. The family court must grant the emancipation order.
- Marriage also emancipates children. Children may marry at the age of 16 with the consent of a parent or guardian. A pregnant girl who is under the legal age, with parent or guardian consent, may marry the father of her child without the consent of the father's parent or guardian.

Children under age 18 have the right to:

- Contract for higher education with or without parental consent.

However, they cannot contract for unnecessary items such as stereo equipment.

CHILDREN'S HEALTH CARE

- Health care personnel may provide a child with life-saving measures that do not require an operation without parental consent.
- Health care personnel may provide services to children, including operations, when essential to save the children's lives.
- Children over age 16 can consent to health services that do not involve an operation.
- Children over age 16 may seek treatment for mental illness or drug and alcohol dependency without parental consent.
- Children under 18 must have the consent of a parent, guardian or person acting as a parent to get an abortion unless they are emancipated. If no one will consent, the minor may apply to family court for permission. Consent is not necessary in an emergency or if the pregnancy is the result of incest.

Choosing the Right Lawyer

The South Carolina Bar knows it can be hard to find the right kind of lawyer for you and your legal matters. This section can help you with your search.

It is important to shop around to find the right lawyer. Ask friends, relatives and co-workers for the names of lawyers they have used.

You can also call the South Carolina Bar Lawyer Referral Service, which can give you the name of a lawyer who is willing to consult and advise you at a discounted rate of $50 for the first 30 minute consultation. If additional legal service is needed, the fee is something you and your lawyer will need to agree on.

You may call the Lawyer Referral Service at 1-800-868-2284 (statewide) or (803) 799-7100 in Richland and Lexington counties, or access the service online at www.scbar.org/lrs.

For criminal cases, each county in South Carolina has a public defender office that provides free legal services to indigent defendants. In determining whether you are eligible for free services from the public defender's office, you must file an application with either the clerk of court or the public defender for your county. Such factors as your income, size of family and special financial needs will determine if you qualify for public defender services. Your local public defender or clerk of court will determine if you qualify for these services.

People who cannot afford to pay for a lawyer in non-criminal matters should contact the Legal Aid Telephone Intake Service (LATIS) at 1-888-346-5592 (statewide) or (803) 744-9430 in the Columbia area. LATIS can refer you to an appropriate source for additional assistance or answers to questions.

FIRST MEETINGS

Once you have chosen a lawyer, there are several things you

should think about before your first meeting.

- Think about your case or legal matter so that you are prepared to answer the lawyer's questions.
- Make note of the spelling of names, dates and other information that the lawyer may need.
- Write down some basic questions for the lawyer. For example, "What is your experience in this area of law?"
- Gather any written materials relating to your legal situation, such as traffic tickets, deeds, wills and letters from the opposing side.
- Expect to discuss the entire legal matter honestly, not just those parts that make you look good. Without the whole picture, your lawyer cannot properly represent you.

Don't be afraid to ask the lawyer:

- What result should I expect in this legal matter? Is there a good chance I can get what I want, or should I just consider letting this matter go?
- How long is it going to take to resolve this matter?
- Can we set up a payment schedule?
- Will I be billed for time we spend talking on the telephone? Does that rate include your staff and expenses? What is billable time?

If there is something that you are wondering about, ask.

FEE AGREEMENTS

It is important for you and your lawyer to agree on what you will pay for the services the lawyer will perform. This way, both of you will know what to expect as you work together on your case.

The basic factor in most fees lawyers charge is the amount of time spent on a particular problem. A lawyer's professional services differ from those of a doctor or a dentist—much of the work is done when the client is not present.

When you hire a lawyer, you are also hiring the entire law office to work for you. The fee you pay will depend on the time it takes to prepare your legal matter and who works on it. The fee can also in-

clude the difficulty of the matter; the documents or pleadings that must be drafted; the number of letters, phone calls and interviews; the research; and the number and length of court appearances.

A lawyer may agree to represent you on a contingency fee basis. This means that the lawyer's fee is due only if a settlement or recovery is achieved. The fee is based on a percentage of the amount recovered, with the exception of certain expenses.

You should discuss the costs of legal services at your first meeting with the lawyer and reach an agreement. Do not hesitate to discuss fees at any time. If you have questions regarding a bill, talk to your lawyer.

Ask for a written statement of the fees and costs involved as well as any other costs relating to the legal matter. When the matter is resolved, your lawyer should provide you with a written settlement statement that shows the total amount you paid and what it covered. This may include the lawyer's fee, other costs, any outstanding bills from physicians or hospitals and any liens.

LEGAL FEES

The time for payment of legal fees depends on the type of legal service performed. Your lawyer may require you to pay a retainer and an advance on expenses before beginning work on the case. Many lawyers bill on a monthly basis.

Some lawyers may allow you to charge your legal fee or costs on a credit card. If you don't know if you will be able to pay on time, talk to your lawyer.

WORKING TOGETHER

Working closely with another person can sometimes be difficult. Add to that the tension of being involved in a legal matter, and you have the potential for any number of crossed signals and misunderstandings. To have a good working relationship with your lawyer, remember to:

- keep your lawyer informed of your current address and phone number and any new information that may be pertinent to your legal matter;
- ask questions when there is something you don't understand;
- maintain a realistic view of the progress and outcome of your legal matter;
- call your lawyer only as needed (when you have new information about your case), remembering that your lawyer may not be able to return your call immediately; and
- pay your bill.

Your lawyer is committed to treating you with respect and courtesy and to:

- charge a reasonable fee and explain in advance what that fee covers and when you will be billed;
- return your telephone calls promptly; and
- keep you informed and provide you with copies of important papers.

Most people who hire lawyers find that they are effective, honest and hardworking. By following some of these tips and by communicating clearly, you should have a good experience with your lawyer.

WHEN DO I NEED A LAWYER?

- Have I tried to resolve this matter by speaking directly with "the other side" and failed?
- Am I being threatened with legal action?
- Do I need someone to champion my cause or speak for me?
- Have I been served with papers (summons, warrant or subpoena)?
- Does my opponent have a lawyer?
- Is the outcome worth the cost of hiring a lawyer?
- Am I involved in a legal matter of importance to me (buying or selling a home, signing a contract, starting a business, writing a will, etc.)?

If you answered "yes" to any of these questions, you should consult a lawyer.

Consumer Debt

Do you owe someone money? Having trouble paying off your debt? This section can help you understand your rights as a consumer debtor.

WHAT HAPPENS IF YOU GET BEHIND ON PAYMENTS TO A CREDITOR?

If you are more than 10 days late in making a payment, the creditor may send you a letter—called the Notice of Right to Cure—giving you 20 days to catch up. If you don't, the creditor can repossess anything used as collateral or sue you for the balance due.

HOW MANY "RIGHT TO CURE" NOTICES MUST A CREDITOR SEND ME?

The creditor is only required to give you one Notice of Right to Cure during the term of a close-ended loan like a car loan. If you received this notice in the past but caught up your payments and later get behind again, your creditor can immediately sue for the balance owed or repossess the collateral without giving you any further notice. If you have a revolving credit or credit card debt, the creditor must send a notice once every 12 months. If you refinance the debt with the same creditor, you should receive a new notice if you miss payments.

CAN A CREDITOR REPOSSESS WITHOUT EVER SENDING A NOTICE OF RIGHT TO CURE?

You are not entitled to a Notice of Right to Cure if you have broken your contract in another way besides missing payments. For example, if the creditor can prove that the collateral is in danger or that you are moving it out of state without the creditor's permission, the creditor may repossess without sending any notice.

WHAT IF THE CREDITOR TRIES TO REPOSSESS?

The creditor can:

- ask you for the goods (but you do not have to turn them over);

- take your car from your driveway or from the street if you do not object or protest; or
- sue you to get the goods or the car.

The creditor cannot:

- enter your home without permission or a court order, even if the contract says he or she can, or
- take your car out of a closed garage.

IS FURNITURE COLLATERAL FOR A DEBT?

Only if the debt is for buying the furniture. If you refinance or get a loan, the creditor cannot use your furniture or appliances as collateral.

CAN YOU BE PUT IN JAIL FOR MISSING PAYMENTS?

As a general rule, no. But you might go to jail for writing bad checks or disobeying court orders to pay money (including child support). You can also go to jail for selling or giving away the collateral on the debt, but not for pledging it to more than one finance company.

HOW FAR CAN A CREDITOR GO TO COLLECT?

A creditor can do any of the following:

- send you letters (but not postcards);
- telephone you, but not at unusual times and not collect, unless you agree to accept the call;
- talk to your family, employer, friends or neighbors to locate you—but not to discuss your debt;
- talk about your debt with anyone who has a valid business need, such as a credit bureau;
- call your employer to confirm your employment—but a creditor cannot call you at work if your employer does not allow such calls; or
- sue you or threaten to sue, in most cases.

A CREDITOR CANNOT:

- threaten to sue you if the creditor has no intention or right to sue or

- garnish or threaten to garnish your wages. In some cases, however, your wages can be garnished such as to collect child support or for debts owed to a local, state or federal government.

Also, it is illegal for creditors to:

- tell you anything that is not true;
- harass or threaten you, curse or use dirty language;
- use fake legal papers or pretend to be a lawyer or a government official;
- demand sexual favors;
- ignore your request to stop contacting you, if the person calling represents a collection agency;
- contact you directly if you have a lawyer to represent you about the debt; or
- deposit a post-dated check early if the creditor agreed to hold it (writing post-dated checks is not advisable; you must notify the bank if you do).

SHOULD YOU REFINANCE?

There is no easy answer. You need to weigh the savings you get from a lower interest rate with any fees you pay to refinance. When you refinance, a new finance charge is added to what you already owe, sometimes increasing your monthly payment. If you're already having trouble making payments, this won't help. First, ask your creditor to reduce your montly payments. Many creditors will work with you if your problem is temporary.

IF YOU RETURN GOODS YOU BOUGHT ON CREDIT AND THE CREDITOR HAS A LIEN ON THE GOODS, OR IF YOU LET THE CREDITOR REPOSSESS, WILL THAT CANCEL YOUR DEBT?

Maybe. If returned goods are sold at an amount greater than the amount owed, the debt may be cancelled. If the sale brings less than the balance of the debt, you will owe the difference. You should contact a lawyer or the S.C. Department of Consumer Affairs to determine

if any other circumstances surrounding the sale will affect your debt.

IF YOU COSIGN SOMEONE ELSE'S DEBT, WHAT HAPPENS IF THEY DON'T PAY?

A creditor can ask you to pay the entire debt for which you cosign, unless the creditor did not give you a special cosigner's notice required by law. If you cosign a debt for your spouse, the law is more complicated. A lawyer can explain your liability for your spouse's debts.

DEFINITIONS

- Consumer–person who uses credit for personal, family or household purposes—not for business purposes.
- Creditor–a person or company to whom you owe money.
- Debtor–a person who owes a creditor money.
- Collateral–whatever the creditor has a lien or mortgage on, usually your car or your house. Furniture, appliances, one radio or one television set are not collateral, unless the debt is for buying any of these things.
- Repossess–to take back property that has a lien on it, with or without a court order.
- Balance–the amount you currently owe a creditor.
- Refinance–to pay off a current loan with money from a new loan.
- Debt Collector–generally, a person or company that collects debts for other people or companies. May also be the original creditor.

IF YOU NEED HELP:

If you wish to file a complaint with the South Carolina Department of Consumer Affairs, visit www.scconsumer.gov or call 1-800-922-1594 or (803) 734-4200 in the Columbia area.

If you have a very low income, you may be able to get help from your local legal aid office. Contact the Legal Aid Telephone Intake Service (LATIS) at 1-888-346-5592 (statewide) or (803) 744-9430 in the Columbia area.

Divorce

FAMILY COURTS

In South Carolina, the family court handles all marital litigation having to do with divorce, separation (known as Decree of Separate Support and Maintenance), issues of custody and support (which can include child support and alimony), division of marital property, and allocation of marital debts.

The family court can also grant a request to allow someone to resume use of a maiden or previous name.

DIVORCE

In South Carolina there are five grounds for divorce: separation (which begins the day you and your spouse begin living in separate homes) with no cohabitation of the spouses for at least one year (the "no-fault divorce"); adultery; physical cruelty; habitual drunkenness (by use of alcohol or narcotic drugs); and desertion. The proof required for the court to grant a divorce on one of these five grounds will depend on your circumstances. Testimony from a third party or other evidence will probably be required to establish that the grounds for divorce have been met.

Before a family court judge can grant a divorce, he/she must (1) ask you (and your spouse, if your spouse is present) if reconciliation is possible; and (2) make a specific finding that reconciliation is not possible.

SEPARATION

If you and your spouse have separated (begun living in separate homes) but you do not yet have one of the above grounds to ask for a divorce, you can file for a "Decree of Separate Maintenance and Support," in which you can ask the family court to decide the same issues it would decide in a divorce action, except for the issue of divorce itself.

AGREEMENTS

By working together or with the assistance of trained mediators, spouses may be able to agree on issues without court intervention. When such agreements are reached, they have "settled" their case, and their lawyers will present the agreement to the court and ask the judge to approve the agreement. If (after asking both spouses some questions) the judge finds the agreement fair, reasonable, voluntary and in the best interests of any children involved, then the agreement will be adopted as an official court order that is signed by the judge.

EQUITABLE DIVISION

The decision on how to divide marital property or assets is called "Equitable Division." Marital property usually includes all assets such as real estate, investments, personal property or debts that have been acquired during the marriage, although there are certain exceptions, such as inherited property or gifts from outside the marriage, which are not marital property. Your lawyer will advise you on what is considered marital property.

You should be prepared to provide your lawyer with a list of all of the assets you and your spouse have, when and how these assets were acquired, the approximate value of each asset, and any debts either spouse may have. You should also locate copies of recent tax returns and insurance policies and be able to estimate your monthly living expenses when you first meet with your lawyer.

How an asset or debt is titled does not dictate who gets that asset or who is responsible for that debt. The family court will consider a number of factors in deciding how to divide any/all marital assets including but not limited to the length of the marriage; ages, health and education of each spouse; contributions by each spouse, etc.

CUSTODY AND VISITATION

When parents cannot agree on who should have custody of their

minor children, then the court must decide. Custody litigation is expensive and often very emotional. Both parents should look honestly at their new living conditions, available time and other resources and consider carefully what would be in the children's best interests. Because neither parent automatically has a legal right to custody, the court will consider a number of factors in order to decide what custody or placement is in the best interests of any children. The family court may order sole custody to one parent, or joint or shared custody to both parents. The court may also differentiate between legal custody (or decision making authority) and physical custody (where the children live or visit and when).

While a judge may consider the child's preference in deciding, the weight given to the child's preference depends upon the child's age, maturity and ability to express his/her opinions. And the child's preference is only one of many factors a judge considers when deciding custody or placement of the child.

Minor children may be appointed guardians *ad litem* to represent them in court. Guardians *ad litem* represent the children's interests and conduct independent investigations to provide information to the judge, who makes any final decision about custody or placement.

After a final custody or visitation order is entered, the provisions can be changed by the court if substantial changes in circumstances occur.

SUPPORT

Alimony and separate support and maintenance are forms of spousal support. Either spouse may be entitled to monetary support from the other spouse. The court can award different forms of payment, including lump sum payments or installments. The length of time spousal support is paid and the amount that is paid depends on the facts and circumstances of each case. In deciding whether to award support, as well as what kind of support and how much sup-

port to award, the court must consider a number of different factors, including the ages, health, work history and incomes of each spouse; the future living expenses and needs of each spouse; the lifestyle the spouses had during their marriage; and other factors.

Both parents are responsible for financially supporting their children. A noncustodial parent or parent with less placement of the children usually will be required to pay a specific amount of child support to the other parent. In determining the amount of child support, the court will typically use the Child Support Guidelines to calculate support based on the gross income of the parents; the number of children; work related day care costs for the children; and costs for the children's insurance. The court can order that child support be paid directly to a parent or require that it be paid through the clerk of court along with a collection fee. Some employers can arrange for payroll deduction for child support payments and send them directly to the clerk of court.

PROCEDURE

The process officially begins with the filing and service of a summons and complaint (listing what the plaintiff, or party starting the suit, wants). The defendant (party on whom the summons and complaint are served) has 30 days after being served to file a written response (answer) and to request any other relief (counterclaim) he or she wants.

A temporary hearing may be held shortly after pleadings are filed to decide any issues that need immediate attention, such as custody of the children; payment of child and/or spousal support; maintenance of health insurance; possession of the home or other assets, etc. The temporary hearing is typically only 15 minutes long, and the only information that can be provided to the judge at the hearing are background information; a proposed parenting plan; a current financial declaration; and affidavits (limited to eight pages).

After the temporary order is issued, that order remains in place

until a final hearing is held. The court may order the parties to attend mediation to try and reach a final agreement, especially custody and visitation. The court may also require the parties attend a parenting course that deals with families going through a divorce.

If the parties cannot ultimately settle their differences, a final hearing will be held where the judge will take testimony and rule on all the issues presented to the court, and issue a final order with his/her decision. The length of the final hearing will depend on what issues the judge has to decide, the number of witnesses who will testify and the amount of evidence to be introduced.

YOUR LAWYER'S ROLE IN YOUR DIVORCE PROCESS

A lawyer's job is to represent your interests in legal proceedings and in court. When you are properly advised of your legal rights and obligations, you can better understand and decide whether you should settle your case and what your divorce settlement should include.

Your lawyer can also advise you on how the court would likely proceed if you cannot settle your case. By giving you both practical and legal advice, your lawyer can help guide you through the divorce process. Keep in mind that one lawyer cannot represent both you and your spouse.

While many lawyers have a specific fee for a simple, uncontested divorce, the fee for most divorces depends on the amount of time a lawyer and staff must spend working on the case and the hourly rate(s) that are charged for these services. This will depend on whether the case is contested and whether there are issues of custody, support and property division. In certain cases, the court can order one spouse to pay all or part of the other spouse's legal fees and related expenses. In others, each spouse may be required to pay his or her own fees.

Your lawyer should discuss the charges involved in a case and any payment options before a commitment to representation is made.

Getting Arrested

WHAT IS AN ARREST?

An arrest is the actual restraint of an individual or an individual's submission to the custody of a law enforcement officer. If arrested, you have legal rights that protect you from being treated unfairly.

IF YOU ARE ARRESTED

Remember, anything you say may be used against you in court.

You have a right to:

- refuse to answer any questions or stop answering questions at any point;
- consult a lawyer (if you cannot afford a lawyer, one will be appointed for you by the court);
- a bond hearing; and
- notify one person.

When arrested, you should not:

- resist a law enforcement officer;
- talk back to the officer or be disorderly; or
- refuse entry for a lawful arrest or lawful search by a law enforcement officer.

FOR WHAT CAN YOU BE ARRESTED?

You can be arrested for the violation of any criminal law, whether a felony, a misdemeanor or even driving infractions. A felony is a serious crime such as murder, burglary or robbery. Felonies may be punishable by fine, imprisonment or, in the case of capital murder, death. A misdemeanor, or any crime not classified as a felony, is punishable by fine or imprisonment. Examples include simple assault, driving under the influence, trespassing or minor drug charges. An infraction is a violation of an ordinance or regulation, such as a traffic rule.

WHAT IS A WARRANT?

A warrant is a court order issued by a magistrate or municipal judge based on sworn information showing probable cause that you have committed a crime. The information may be supplied by a law enforcement officer or any citizen. The warrant requires that an individual be arrested and brought before a judge. If an officer has a warrant for your arrest, the officer must tell you this, give you a copy and tell you why you are being arrested.

Do not resist arrest. If you do, the officer may use any necessary force to arrest you, such as breaking open a door or window. However, after you have been restrained, the officer cannot continue to use force. Even if you are not guilty, it is a crime to resist arrest. In the end, if you have been falsely arrested, you may have some remedy.

MUST YOU SUBMIT TO A SEARCH OR TEST?

After a lawful arrest, an officer has a right to search you and your belongings, including your car if you are arrested in it. However, the officer generally has no legal right to then go to your home to search it unless a search warrant is granted by a judge or you give your permission for that search.

If an officer has reasonable cause to believe you are operating a motor vehicle under the influence of alcohol or drugs, he or she may ask you to take a Breathalyzer test. You may demand the opportunity to take a blood test too, but at your own expense. If you cannot give a breath sample because of injuries or unconsciousness, a blood or urine sample may be taken. You may refuse the breath, blood or urine test, but if you do, your driver's license will be suspended for six months even if you are not guilty of a crime. If you submit to the test, the results may be used as evidence against you. A refusal is also admissible as evidence against you. You also have the right to refuse the field sobriety tests.

WHAT ARE YOUR RIGHTS AFTER ARREST?

After being arrested, you are taken to a police station. A record of your arrest and the charge must be entered promptly in an "arrest book." Your constitutional right to remain silent allows you to refuse to answer any questions, sign any statements or take any tests concerning the crime without a court order. You may have the assistance of a lawyer at all times, but you must request one. If you cannot afford a lawyer, one will be appointed for you. You may waive these rights and make statements, sign papers and take any tests. But remember, any information obtained from you voluntarily, and without the use of force or intimidation, may be used against you in court. You may still refuse to answer questions and request a lawyer at any time, even if you have already answered questions.

A verbal or written admission of guilt is a confession and may be used as evidence during a trial. A law enforcement officer has no legal authority to induce you to confess or admit guilt either by force, threats or promises of leniency or no prosecution. The promise of an officer to help you or to intervene with the court in exchange for a confession is not binding on the officer, but may be considered on the issue of voluntariness.

BAIL

After you are arrested, you have the right to a prompt bail hearing. Bail is the posting of money, property or other security to ensure your appearance in court. Some cases require security, and some require only a personal guarantee. In South Carolina, you may be released by signing your own personal recognizance bond unless a judge finds that your release is unreasonably dangerous to the community or that you may not return to court voluntarily for your trial. In most cases, you are entitled to bail in an amount and under conditions set by the judge.

Once bail terms are set, any person with security acceptable to the court may post bail. If a family member or friend cannot post

your bail, a professional bondsman may do so for a fee. Make sure you know and understand the cost of this bond and that it is nonrefundable. A list of bondsmen is often kept at police stations. Under certain circumstances, the judge may allow you to post 10 percent of the bail with the court. This is refundable.

It is a crime for a bondsman to refer you to a specific lawyer or law firm.

In most cases, you may be released on bail and remain on bail until the case is called for a plea or trial.

WHAT ARE YOUR RIGHTS IN COURT?

At the bail hearing, the court must inform you of the charge and of your right to have a lawyer and a preliminary hearing in cases in general sessions court. You must be allowed reasonable time to obtain a lawyer. If you cannot afford to hire a lawyer, the court must appoint one for you if you are facing the possibility of a jail sentence.

You may also request a preliminary hearing. If you do not request a preliminary hearing, you have waived that right. At this hearing, if the judge finds there is probable cause that you committed the crime, he or she will refer your case to the grand jury for possible indictment and trial in general sessions court. If not, your case will be dismissed, although the solicitor's office may still send your case to the grand jury for possible indictment.

WHAT HAPPENS IN COURT?

When you are required to appear in municipal or magistrate's court, you must enter a plea of guilty or not guilty. If you plead guilty, you will be sentenced. If you plead not guilty, you may be tried either by a judge or a jury. You or your lawyer must request a jury trial.

If you are required to appear in general sessions court, you can plead guilty or not guilty. If you plead guilty, your plea will be taken, and you will be sentenced at a designated time. If you plead not

guilty, your case will be scheduled for a jury trial at a future date. You must notify the court and your lawyer of any changes in your address so they can let you know when your case is scheduled.

Everyone is entitled to plead guilty or not guilty. The burden is on the state to prove guilt beyond a reasonable doubt. Remember, every person is presumed innocent unless they plead guilty or are proven guilty at trial.

How Do I Find a Lawyer?

THE SOUTH CAROLINA BAR'S LAWYER REFERRAL SERVICE CAN HELP.

Whether you are buying or selling a home, starting a business or writing a will, legal problems can be confusing when you don't know where to turn for help. The South Carolina Bar's Lawyer Referral Service (LRS) can help you find the right lawyer.

LRS members have agreed to charge no more than $50 for an initial 30-minute consultation. There is no obligation for you or the lawyer to go beyond the first appointment.

Available 9 a.m. to 5 p.m.
Monday through Friday
(800) 868-2284 (statewide)
or (803) 799-7100
(Columbia/Lexington)
or available 24 hours a day at
www.scbar.org/lrs

Judicial System

MAGISTRATE'S COURT

Magistrate's court, sometimes referred to as small claims court, hears civil and criminal cases. Magistrates are appointed by the governor and have the authority to hear civil cases involving claims up to $7,500. In some cases, such as landlord-tenant disputes, the claims can be more than $7,500. A magistrate's court case will come to trial more quickly than it would in circuit court. Magistrates also have the authority to hear criminal cases for offenses subject to fines of $500 or less plus assessments or imprisonment of 30 days or less. Magistrates commonly hear cases involving traffic violations and other minor offenses. They set bail, conduct preliminary hearings and issue arrest and search warrants. Appeals from magistrate's court are heard by circuit court.

MUNICIPAL COURT

Not all cities have municipal courts, which have criminal jurisdiction over all offenses and municipal ordinances subject to fines of $500 or less or imprisonment of 30 days or less. Municipal judges are selected by the council of the municipality for no more than four years. Appeals from municipal court are heard by circuit court.

FAMILY COURT

Family court is the only court that hears domestic dispute cases. The family court grants divorces, distributes property between the husband and wife and sets alimony. It also determines custody, orders child support, sets visitation, terminates parental rights and finalizes adoptions. The family court hears paternity disputes and holds emergency hearings in abuse and neglect cases. The family court has the power to hear most criminal cases involving juveniles under 17. However, serious criminal charges may be transferred to circuit court where the juvenile will be tried as an adult. There are

no jury trials in family court. Family court judges are elected by the legislature to six year terms. Appeals from the family court are heard by the Court of Appeals.

PROBATE COURT

Probate court has authority over the property of a person who dies with or without a will. The probate judge makes sure the proper procedures for distributing the property and paying any creditors are followed. This authority includes deciding who inherits the property if someone contests a will. Probate court protects people under age 18 by approving certain lawsuit settlements. It also helps protect people who cannot protect themselves because of mental or serious physical illness. If someone is suffering from mental illness, probate court has the authority to commit them to a mental hospital. Probate court also issues marriage licenses and approves settlements involved in wrongful death and survival actions. Only limited jury trials are available in probate court. Therefore, some cases involving at least $5,000 can be sent to circuit court. Probate judges are elected by voters to four year terms. Appeals from probate court are to circuit court.

MASTER-IN-EQUITY

Masters, who are appointed by the governor for terms of six years in counties with 100,000 residents, may be full-time or part-time and are paid by the county. Masters have jurisdiction in equity matters referred by the circuit court. They have the power and authority of the circuit court, sitting without a jury, to regulate all proceedings in every hearing before them. Cases decided by masters may be appealed to the Court of Appeals or Supreme Court, as provided by the S.C. Appellate Court Rules.

WORKERS' COMPENSATION COMMISSION

The Commission has the power to hear disputes concerning cover-

age under the Workers' Compensation Act. The Act, covering most employees, covers medical bills from work-related injuries and provides compensation for time lost from work. Generally, no hearing is necessary. When a dispute arises, however, a commissioner hears the case. Either party may then appeal to the full commission. Afterwards, an appeal is to the circuit court.

ADMINISTRATIVE LAW COURT

The Administrative Law Court was created to hear cases from various state departments and commissions, including cases from professional and occupational licensing boards or commissions within the Department of Labor, Licensing and Regulation. Judges in the Administrative Law Court are elected by the legislature to five year terms. Appeals are heard by the Court of Appeals.

CIRCUIT COURT

The circuit court has the broadest powers of all South Carolina courts. Most lawsuits are heard by a circuit court judge. Civil lawsuits are heard in the common pleas division. Criminal lawsuits are heard in the general sessions division. The circuit court also hears appeals from probate court, magistrate's court, municpal court and the Workers' Compensation Commission. Some cases filed in the common pleas division, such as boundary disputes, may be sent to a master-in-equity if the parties agree to do so. Generally, no jury is available after the case is transferred. Circuit court judges are elected by the legislature to six year terms. Appeals from the circuit court are heard by the Court of Appeals.

COURT OF APPEALS

The Court of Appeals hears appeals from the Administrative Law Court, family court, circuit court and sometimes masters-in-equity. Instead of one judge, a case is argued to a panel of three judges. The Court of Appeals focuses on certain legal issues; a party does

not get to try a case again. A person must write a brief discussing any problem with the lower court's decision. The judges then read the briefs and transcripts of earlier hearings and review any exhibits. Sometimes, the judges will ask for a short oral argument from the parties involved. After a decision is made, the judges send an opinion to the parties explaining the reasons for the decision. Generally, the Court of Appeals either affirms or reverses and remands the decision of the original court. If the decision is reversed and remanded, the parties must usually try the case again in the original court. The Court of Appeals consists of a chief judge and eight associate judges who are elected by the legislature to six year terms.

SUPREME COURT

The Supreme Court is the state's highest court and hears appeals from the Court of Appeals. The Court does not hear all of the cases it is asked to hear. If the Court decides to hear a case, the parties must follow the same procedure used by the Court of Appeals. The Court hears some appeals directly from circuit court, such as death penalty cases and cases involving the constitutionality of a state statute. If a case was originally filed in a federal court, that court may ask the Supreme Court to answer specific questions based on South Carolina law. In limited situations, an order from the Court will be reviewed by the U.S. Supreme Court. The Supreme Court is composed of a Chief Justice and four Justices who are elected by the General Assembly for terms of 10 years. The terms are staggered, and a justice may be re-elected to any number of terms. The Court also is the rule-making authority for the unified judicial system, and it controls the admission to practice law and discipline of lawyers.

Planning for the Elderly and People with Disabilities

Senior citizens and those with disabilities must deal with many legal issues. In recent years, there has been a growing awareness of the need to address these issues, and there is now an area of practice known as elder law. Elder law is specifically designed to address the particular concerns of older citizens and those with disabilities. By looking at the whole picture, a plan can be developed to carry out your wishes to the greatest extent possible.

WHAT ARE SOME OF THE CONCERNS YOU, THE CLIENT, MAY HAVE AND HOW CAN THEY BE ADDRESSED?

- **Long-term care planning**—You may need help in assessing long-term care needs and getting recommendations to ensure your wishes are carried out.
- **Spousal impoverishment issues**—One of the greatest concerns is what will happen to your spouse should long-term care be required. Federal and state laws provide some protection of assets for the benefit of the community spouse. Planning ahead will allow you to maximize the amount that can be protected.
- **Medicaid qualification**—If it is likely that you will need Medicaid benefits to cover the cost of long-term care or to provide for basic health care, it is important to know the qualification criteria and to plan accordingly. There are strategies that can be used to reduce countable resources, protect assets and speed up eligibility for Medicaid.
- **Disability planning**—Should you become incompetent, someone must handle your financial affairs and make personal care and

health care decisions for you. To plan for such circumstances, a durable power of attorney for property and a health care power of attorney are the most important tools. You appoint an agent to act on your behalf. This agent has the legal authority to make decisions for you. A living will can also be used to express your wishes concerning withholding or withdrawal of life support.

- **Conservatorships and guardianships**—In the event that you become incapacitated without appointing an agent under a durable power of attorney, it may be necessary to have a conservator appointed to manage your assets and a guardian appointed to make health care decisions for you.
- **Supplemental Needs Trusts**—If you are providing for a disabled family member, you will want that person to be protected in case you die or become disabled. One way to ensure continued security for the disabled person is to establish a Supplemental Needs Trust as part of your estate plan. This trust is intended to preserve government benefits and to provide extras to the person without jeopardizing his or her eligibility for government benefits.
- **Special Needs Trusts**—When a disabled person needs to qualify for Medicaid or maintain Medicaid eligibility and receives a personal injury settlement or an inheritance, these funds can often be placed in a Special Needs Trust, which can be used for the benefit of the disabled person without causing a loss of Medicaid benefits. Because the rules are complex, you will need a lawyer to guide you through the process.
- **General estate planning**—Like everyone else, you need a current will to carry out the disposition of your estate in accordance with your wishes.
- **Government benefits**—It is important to know what government benefits are available to you. These could include Social Security retirement benefits, Social Security Disability, Supplemental Security Income, Medicare, Medicaid, food stamps, housing subsidies and VA benefits. Consulting with a lawyer who is

knowledgeable in these areas may allow you to access assistance more readily.

- **Reverse mortgages**—If you own a home and wish to remain at home, the home may be used as a source of additional income to make repairs and accommodations or to help pay for in-home care. Unlike the standard mortgage, no repayment is required until you die or no longer occupy the home. Although oftentimes beneficial, the advice of an attorney is needed to help you decide if the advantages outweigh the disadvantages after analyzing your particular factual situation.
- **Estate administration**—When you die, your estate is usually administered through probate court. Legal assistance may be helpful in probating the will, resolving creditor claims, transferring title to real estate, filing estate tax and income tax returns and making distributions to your heirs.
- **Nursing home issues**—When a person needs nursing home care, there are numerous admission documents to be signed. It is helpful to have a lawyer knowledgeable in this area review the documents and advise the client before signing. After admission to a nursing home, there are often issues relating to residents' rights and the nursing home's obligations to the resident and family. Sometimes these issues revolve around the quality of care being administered or the method of payment for care. There are numerous state and federal laws in place to protect the rights of the nursing home resident, to assure quality care and to prevent discrimination based on whether a resident is paying privately or receiving government assistance.

WHY DO YOU NEED AN ELDER LAW ATTORNEY?

Many people wait too long before seeking legal advice. When planning for disability, it is important that the plan be made early while you are still competent to express your wishes regarding care. A prime example of this is the difference in cost between a durable

power of attorney and a conservatorship.

While you are competent, you can sign a durable power of attorney selecting the person you wish to act on your behalf for a fraction of the cost of having to bring a conservatorship action after you are incapacitated. Even more important than the cost consideration is the fact that you are no longer in control of the selection process after incapacity.

By planning ahead and consulting an elder law attorney, you may be able to save substantial sums of money, protect family property and access additional benefits or services to meet your needs.

Tenants' Rights

WHAT IS THE SOUTH CAROLINA RESIDENTIAL LANDLORD-TENANT ACT?

It is a law passed in 1986 that protects South Carolina house, apartment and room renters and their landlords. If you live in government-assisted housing, this law protects you and you may also have additional protections under federal law.

DO I HAVE TO HAVE A WRITTEN LEASE BEFORE THE LAW WILL APPLY?

No. This law applies whether or not you have a written lease. Both oral and written agreements to rent are considered valid leases. To be enforceable, your lease must be fair, honest and reasonable to both the landlord and tenant.

DOES THE LAW APPLY TO ME?

This law applies to all renters, roomers, landlords and those who act for them, except:

- hospitals, group homes, schools or other institutions;
- employees of the landlord who receive housing for their work and live on the worksite;
- tenants who own or partly own the unit;
- units in a motel or hotel or where the landlord pays special tax on the room.

There are other exceptions to the law. If you have questions, please call a lawyer.

DO I NEED A LAWYER IF I HAVE A PROBLEM WITH MY LANDLORD?

Maybe. First you should try to tell your landlord in writing about the problem. (Be sure to keep a copy for your own records.) If this does not help, you may want to file a claim against him in magistrate's

court if the claim is under $7,500. If your claim is over $7,500, you will probably need the help of a lawyer to file in circuit court.

IS THERE ANY LIMIT TO HOW MUCH RENT I CAN BE CHARGED?

There is no rent control in South Carolina unless you live in housing where your rent is based on your income.

DOES THIS LAW HELP ME IF I HAVE BEEN DISCRIMINATED AGAINST IN RENTING AN APARTMENT?

Not this particular law, but other laws do. If you feel you have been discriminated against, you should call the HUD Housing Discrimination Hotline. The toll-free number is: 1-800-669-9777.

WHAT SHOULD BE INCLUDED IN MY RENTAL AGREEMENT?

Your rental agreement should include the amount of rent to be paid, the date the rent is due, and the rights and duties of both the tenant and the landlord. It is important to always read your lease and make sure you understand everything it says. Keep your rental agreement in a safe place so you can find it easily.

WHAT SHOULD NOT BE INCLUDED IN THE RENTAL AGREEMENT?

It is illegal to include any conditions that make you give up any of your rights under the law. Illegal conditions cannot be enforced. You may sue your landlord in court and get money damages and reasonable attorney's fees.

CAN A LEASE BE ENFORCED WITHOUT EITHER THE TENANT'S OR THE LANDLORD'S SIGNATURE?

Yes. If the landlord gives you a copy of the lease, you move in, pay the rent, and the landlord accepts the rent, the lease is valid even without the signature.

CAN THE LANDLORD MAKE NEW RULES AFTER I MOVE IN?

Yes. You must receive notice of rules when you move in or when rules are made. They must be reasonable, clear and fair. The landlord cannot use the rules to avoid his responsibilities under the law. However, if you feel like the new rules change your rental agreement, you should write to the landlord within 30 days and tell him/her you object to the new rules.

HOW MUCH NOTICE MUST BE GIVEN BEFORE EITHER THE LANDLORD OR THE TENANT CAN END THE LEASE?

If your lease is written, the amount of notice should be stated in the lease. If you have an oral agreement, either the landlord or the tenant may end the lease by giving notice to the other party. Proper notice is seven days if you rent by the week or 30 days if you rent by the month. The notice must be in writing.

WHAT IS A SECURITY DEPOSIT?

It is the tenant's money or property held by the landlord in case there are damages to the unit or the tenant doesn't pay the rent.

HOW DO I GET MY SECURITY DEPOSIT BACK WHEN I MOVE?

When the lease has expired and you have moved out, ask for your deposit back and give the landlord your new address in writing. Your landlord should return your deposit within 30 days.

WHEN CAN A LANDLORD KEEP MY SECURITY DEPOSIT?

Your landlord must give you an itemized list for any amounts deducted from your security deposit. This includes accrued rent or damages to the unit, for example. Normal wear and tear should not be deducted from your security deposit.

WHAT HAPPENS TO MY SECURITY DEPOSIT IF THE LANDLORD SELLS THE PLACE I AM RENTING?

You still have a right to get your security deposit back when the rental agreement ends.

WHAT ARE MY RESPONSIBILITIES AS A TENANT?

You are responsible to pay rent on the date it is due; to not harm the landlord's property or disturb the other tenants; to do your part to keep the unit safe and clean; and to take responsibility for your guests' actions.

WHAT IS RENT?

Rent is any payment for use of the rental unit. This payment includes late charges, but not security deposits or any other charges.

IF I DON'T PAY THE RENT, WHAT CAN THE LANDLORD DO?

He must send you a written demand giving you five days to pay the overdue rent. If the rent is not paid within these five days, the landlord can go to the magistrate to bring a case against you and try to evict you.

Check your lease! Your landlord does not have to give you a written demand for the overdue rent if your lease says in big print that no such notice will be given.

If you have a written rental agreement, your landlord only has to give you a written notice for the overdue rent once during the period.

IF I HAVE NOT PAID MY RENT, CAN THE LANDLORD TAKE ANY OF MY PROPERTY?

Only if the landlord goes to the magistrate and has you served with a distress warrant allowing her to hold your property. Some property cannot be taken. If you are served with a distress warrant, you should see a lawyer immediately.

MY LANDLORD WANTS TO EVICT ME BECAUSE MY CHILDREN HAVE BEEN LEAVING GARBAGE OUTSIDE THE DUMPSTER, AND

HE CLAIMS IT IS ATTRACTING RATS. CAN HE DO THIS?
Yes.

SOMETIMES MY FRIEND COMES OVER AND CREATES A DISTURBANCE, KICKING IN THE DOOR, BREAKING WINDOWS, ETC. CAN I BE FORCED TO MOVE OUT?
Maybe. It depends on how often this happens or how serious it is.

I CAN'T AFFORD TO HAVE MY WATER TURNED ON RIGHT NOW. CAN I BE FORCED TO MOVE OUT?
Yes, because the plumbing will not work, and it is illegal to live in unsanitary conditions.

MY LANDLORD CAME IN TO FIX MY SINK AND LEFT ME A NOTE THAT MY HOUSE IS A HEALTH HAZARD, AND UNLESS I STRAIGHTEN IT UP HE WILL EVICT ME. CAN HE DO THIS?
Not if your apartment is only messy. If your house is rat or roach infested because of how you keep it, then he can.

HOW DO I NOTIFY THE LANDLORD IF I HAVE A COMPLAINT?
The landlord should provide you the name of a person to contact if you have problems. Written notice can be given at her place of business where the rental agreement was made or at any place where you pay your rent. Oral notice can also be given, but it is better to put the complaint in writing.

CAN MY LANDLORD EVICT ME WITHOUT GOING TO COURT?
No. Any other method, like locking you out or turning off the utilities, is illegal. If the landlord tries to evict you in an illegal way, you may be able to stay in the house and get damages and attorney's fees from the landlord.

IF MY LANDLORD GOES TO COURT TO EVICT ME, WHAT CAN I DO?

If you are served with eviction papers, you should go to a lawyer right away. You only have 10 days from the date you are served to respond to the eviction notice. If you do not respond, the magistrate will issue an order to put you out, called an ejectment order.

Before you go to court, think of any defenses you might have. For example, if your landlord knew that your apartment was in bad shape before your rent was due and had time to repair but did not, you should tell the judge. The magistrate may let you stay if you can show that your apartment is not worth the rent the landlord wants for it, and the judge may reduce your rent payment to reflect the reduced value.

CAN MY LANDLORD EVICT ME FOR COMPLAINING ABOUT THE CONDITION OF MY APARTMENT?

No. It is illegal for a landlord to try to get even with you for complaining.

CAN THE LANDLORD EVICT ME IF I'VE BEEN ACCUSED OF A CRIME?

No, she must prove you committed the crime.

CAN THE LANDLORD EVICT ME IF I AM CRIMINALLY CONVICTED FOR BREAKING THE LAW IN MY HOME?

Probably. You cannot use your home for illegal activities, and you cannot allow your family or anyone else to use it for illegal purposes.

WHAT ARE THE LANDLORD'S DUTIES?

The landlord cannot interfere with your use of the property. The landlord must make all of the repairs and keep the unit in a livable condition. If you live in an apartment building, the landlord also has to keep all common areas, like stairs, hallways, yards and the parking lot, in a safe condition.

CAN THE LANDLORD REFUSE TO MAKE REPAIRS IF I'M LATE OR BEHIND IN PAYING RENT?

No, the landlord must follow the law and state and local building and housing codes, which generally require the property be kept in good shape. The landlord must make running hot and cold water and heat available, and must keep electrical plugs, plumbing and ventilation in safe, working order. The landlord must also maintain and keep in reasonably good and safe working condition the appliances that came with the apartment.

ARE THERE ANY EXCEPTIONS TO THE LANDLORD'S DUTIES?

Yes. You and your landlord can agree in writing for you to fix certain things in the unit as long as the landlord is not trying to avoid making repairs he has to make under the law.

HOW CAN I GET THE LANDLORD TO MAKE REPAIRS IF I CAN'T CONTACT HER?

When you agree to rent the unit, the landlord must give you in writing the name of a person to contact if you have problems with the unit.

IF THE LANDLORD WON'T MAKE REPAIRS AND I WANT TO MOVE, WHAT SHOULD I DO?

Give your landlord written notice of the problems and warn him that if the problems are not fixed in 14 days or within a reasonable time, you will move. If the landlord still does not make repairs, you can move and will no longer owe him any more rent. He must still return your security deposit if there are no reasons to hold it.

IF THE LANDLORD WON'T MAKE REPAIRS AND I CAN'T MOVE, WHAT SHOULD I DO?

You can take your landlord to court and ask a judge to order your landlord to make the needed repairs. You can talk with a lawyer about doing this for you.

WHAT IF I WANT TO STAY BUT MY LANDLORD SAYS SHE CAN'T MAKE THE REPAIRS UNLESS I MOVE?

You can go to court and ask for money damages caused by your having to move because the landlord will not repair. These damages can be things such as moving costs and higher rent at another apartment. The judge will decide if you get the money damages.

WHAT CAN THE LANDLORD DO IF I DAMAGE HIS PROPERTY?

The landlord can send you written notice that the damage must be repaired within 14 days. If you do not have the repairs made within 14 days, the landlord may enter the apartment and make the repairs and may also go to court to evict you.

DOES THE LANDLORD HAVE A RIGHT TO COME INTO MY HOME WHENEVER SHE WANTS?

No. In most cases, she must give you 24 hours notice unless there is an emergency in the unit that needs to be fixed. Examples of emergencies are fires or broken pipes. If the landlord enters without following the law, you may want to consult an attorney.

Trust Kits

Estate planning is complicated. There are a host of legally recognized arrangements and documents that may be used in a person's estate plan, such as:

- joint property ownership,
- beneficiary designations,
- wills and
- a variety of different types of trusts.

All of these have both strengths and weaknesses, depending on the situation for which they are used. You need careful and accurate advice about which of these will work best for you.

Unfortunately, you will probably not receive objective advice if you buy a "trust kit" (i.e., standardized "fill-in-the-blank" trust forms). Before deciding if you need a trust or purchasing a trust kit, you should first understand what a trust can and cannot do for you.

Buying a "trust kit" may be a significant financial mistake that can interrupt your life and the lives of those you love.

WHAT IS A TRUST?

A trust is a legal contract by which you, the "grantor," give your assets to a "trustee" who manages and uses them to care for your "beneficiaries," based on the terms of your written trust document.

There are many types of trusts, and each may be used for a different purpose. For example, you may set up an "irrevocable" or unchangeable trust for tax purposes, or you may set up a trust to care for someone else, such as a disabled adult child.

You also may set up a trust to care for yourself during your lifetime and then to care for others after your death. Usually in this

case, you specify that you can "revoke" or change the trust at any time. Trusts like these often are called "living" trusts, although lawyers, financial managers and the IRS usually refer to them as revocable trusts.

A revocable trust allows your trustee or successor trustee to care for you if you become disabled. It also allows your trustee to care for others as you specify in your trust document. At your death, assets already transferred to your trust during your lifetime will avoid probate court proceedings. Depending on the size of their estates, married couples may also avoid or delay federal estate taxes if special trust language has been included.

TRUST DISADVANTAGES

Not everyone benefits from a trust. Trusts are generally far more complex and more expensive than wills. For some people, the cost of having a trust properly prepared and funded is more than it will cost to have their property go through probate after their death. Also, you must pay the cost of preparing the trust up front, while probate expenses are deducted from your beneficiaries' shares after your death.

Trusts must also be formally administered. The trust document must be drawn up and properly signed, and your assets must be transferred into the trust. Anything not placed in the trust may still be required to go through the probate process. You must also name a successor trustee, who may ask for an ongoing fee, to serve after your death or disability. Trusts can also pose problems with eligibility for Medicaid, a government benefit that pays for nursing home care.

In short, there are both strengths and weaknesses to using trusts. You should not consider a trust without expert advice to determine if a trust is necessary for you.

THE PROBLEM WITH "TRUST KITS"

Trusts and probate court fees are foreign to most individuals. Con-

sequently, people are vulnerable to sales pitches from fast-talking, door-to-door salespeople and telephone solicitors offering "trust kit" packages.

People who fear probate and believe it is very expensive fall prey to the stories of how courts and lawyers will take everything they own unless they buy a trust kit. The trust kit sellers, trying to gain credibility, may use names similar to existing, legitimate organizations that provide services to seniors.

Potential trust kit customers are usually visited in their homes. The salesperson offers to fill in information on preprinted trust forms, promising to have the information typed and returned for signature and witnessing. At the initial visit, partial or full payment is usually required.

Improperly drafted or administered trust kits have created problems in South Carolina. These trust kits can be far more expensive than hiring a lawyer and having your estate planning handled correctly.

Because trust kits consist of pre-printed forms, the purchaser's financial or personal circumstances are not considered. Trust kit companies have gone out of business, either voluntarily or after legal action, making them unavailable to make changes needed resulting from personal or financial circumstances or changes in the law.

Wills

Anyone who owns property and wants to control who receives the property after his or her death should have a will, regardless of the value of the property. Of course, the larger the estate, the greater the necessity for expert estate planning and for a valid, up-to-date will.

REASONS TO HAVE A WILL

- With a will, you decide how your property will be distributed. You may make any disposition of your property that is not inconsistent with the laws or contrary to the policy of the state of South Carolina. Protective provisions of the South Carolina Probate Code grant a spouse who is left out of a will an election to take a one-third share of the "probate estate" under certain circumstances. A similar provision grants a share to a child who is left out of a parent's will written before the child's birth in some circumstances. If you die without a valid will, your assets will be distributed according to a rigid statutory formula that makes no allowances for your personal wishes. The state statute may direct that your property be distributed differently than you would have distributed it under a will.
- A well-prepared will may reduce your estate taxes. However, after death, less can be done to alter the tax status of an estate. The tax consequences depend, of course, on the individual characteristics of each case and should be discussed with your lawyer. Not all estates are subject to estate taxes.
- With a will, you can choose individual(s), a bank or a trust company to serve as the personal representative (executor) of your estate and manage and settle your estate according to the law and the terms of your will. If there is no will, a court-appointed administrator serves as a personal representative.
- With a will, you can save unnecessary expenses involved in the administration of an intestate (dying without a will) estate. Bonds

may be required of court-appointed administrators, and many times this expense is avoided by simply stating in your will that your personal representative need not give bond. Real estate and other assets can be sold without court proceedings if your will authorizes such sales.

- Parents can suggest in their wills the names of those people who they want to be guardians for the person and property of a minor child or an incapacitated adult, although such suggestions are not binding on the court.
- In a will, you can establish trusts to lower taxes and to control both the financial management and the ultimate takers of your property.
- You can also make gifts to charity in your will.

WHAT IF YOU DIE WITHOUT A WILL?

If you fail to make a will, South Carolina's intestacy statutes will determine who gets your property. The court will appoint an administrator, from persons designated by law, to manage and settle your estate.

Often the cost of administering an estate without a will is greater than if the person had planned the estate with a will. Your property will not go to the state, however, unless you have no known relatives.

WHAT ARE THE REQUIREMENTS?

A will is the legal declaration of a person's disposition of his or her property after death. The laws of each state set forth the formal requirements for a will in that state. In South Carolina:

1. You, the maker of the will (called the testator), must be at least 18 years old or be married.
2. You must be of sound mind to know your estate, the objects of your natural affection and to whom you wish to leave your estate.
3. The will must be in writing.
4. Your will must be witnessed by two witnesses in the special man-

ner provided by law.
5. It is necessary to follow exactly the technical formalities required for executing a will.

HOW LONG IS A WILL VALID?

A will is valid until changed or revoked as allowed by the law. No will becomes final until the death of the testator, and it may be changed or added to by the testator by drawing a new will or by drawing a "codicil," which is simply an addition or amendment executed with the same formalities as a will. A will's terms cannot be changed by writing something in after the will is signed.

Certain changes in the circumstances of the testator after the signing of a will, such as the testator's marriage or divorce, will revoke all or some portions of the will unless the will states it is made in the contemplation of such an event. Changes in the circumstances of a testator require careful analysis and reconsideration of all provisions of the will and often make a change in the will advisable.

CAN JOINT OWNERSHIP BE A WILL SUBSTITUTE?

No. While joint ownership in some cases is a useful legal device, joint ownership is not a substitute for a will. Joint ownership may result in adverse tax consequences, and joint ownership does not provide for the distribution of the property in the event that joint owners die at the same time.

DOES A WILL INCREASE PROBATE EXPENSES?

No. When a person dies, the distribution of his or her property usually must be administered by the probate court. This is true whether the person dies with or without a will. Therefore, the existence of a will does not increase probate expenses. In fact, a will frequently reduces expenses compared with dying without a will.

If there is real or personal property that would pass by will or descent, the probate court has the jurisdiction to either rule on the

will or determine the legal heirs. Thus, even if you do not have a will, your heirs must go to court to administer your estate or to obtain a determination that administration is unnecessary.

SOME SUGGESTIONS

- When you prepare your will, it is very important to review what you own and the exact ownership name and also to review your beneficiary designations on file for any life insurance, IRAs and other retirement accounts and annuities.
- If you have moved to South Carolina from another state, it would be wise to have your will reviewed by a South Carolina lawyer. However, a will that was properly signed and valid in another state generally will be recognized as valid in South Carolina.
- Be sure that you sign your will in the presence of your lawyer, who knows exactly how and in what order the will should be signed. No matter how perfectly a will is prepared, unless it is properly signed and witnessed in strict compliance with the laws of South Carolina, the will may be entirely void.
- There were sweeping changes in both state and federal estate and gift tax laws in 2001, 2010 and 2012. The entire South Carolina Probate Code was rewritten, effective July 1, 1987, and it has been amended many times since its enactment, including the adoption of the South Carolina Trust Code, effective January 1, 2006. In 2013, the General Assembly enacted omnibus legislation—effective January 1, 2014—that amended the existing South Carolina Probate Code. If your present will has not been reviewed by your lawyer since the passage of these laws, it should be reviewed to determine what, if any, action should be taken. Your will should be reviewed if you have personal or financial changes, such as the death of a spouse.

WHO SHOULD PREPARE A WILL?

The drafting of a will involves making decisions that require profes-

sional judgment that can be obtained only by years of training, experience and study. A practicing lawyer can help you avoid the innumerable pitfalls and advise you of the course that best suits your individual situation.

Workers' Compensation

The South Carolina Workers' Compensation Act provides a system for workers injured on the job to receive medical care and financial benefits without having to prove anyone was at fault.

The law applies to most workers who work for an employer with four or more employees regularly employed in the same business. However, some workers are exempt.

If the employee is hurt on the job, benefits provided by the laws are the worker's only remedy. Under most circumstances, employees who are covered by the Act cannot sue an employer for injuries received on the job. However, if a third party, such as the manufacturer of a defective machine, is responsible for the injury, then the employee can sue the third party and also file a workers' compensation claim.

Another example would be a worker who is injured on the job in an auto accident by a driver who works for another company. The injured worker could file a workers' compensation claim and bring a separate action against the driver of the vehicle that caused the injury. When a worker recovers money from a third party, he or she must reimburse the workers' compensation insurance company for any benefits received. Usually, the carrier will not expect to be paid back dollar-for-dollar.

BENEFITS

Primary benefits are provided to an injured worker. The worker is paid something for the time he or she is out of work. However, workers are not entitled to compensation for the first seven days they cannot work, unless the disability period extends for more than 14 days. The worker's medical expenses are paid by the em-

ployer or the employer's insurance company. Workers' compensation also pays when certain parts of the body are permanently injured, even if the worker can still perform the job requirements. For example, a worker who suffers a back injury on the job is entitled to compensation for the permanent back injury — even if there is only a partial loss of use and the injury does not keep the worker from returning to the job.

HOW WILL I BE COMPENSATED?

Workers who qualify for workers' compensation receive two-thirds of their average salary, not to exceed a maximum weekly amount that is set by the Workers' Compensation Commission.

Benefits paid under the Act are not taxable. Benefits are payable for a maximum of 500 weeks for all injuries except those that result in brain damage or cause the worker to be paraplegic or quadriplegic. For these types of injuries, benefits are paid for the lifetime of the worker.

If an employee returns to light duty or works part-time during recovery and the wages are less than the amount normally received, the employee is entitled to compensation for two-thirds of the difference between his or her normal salary before the injury and the amount received for light duty until maximum medical improvement is reached.

All medical expenses for a job-related injury can be paid by workers' compensation even if the worker does not miss any work.

WHAT TYPES OF ACCIDENTS ARE COVERED?

To be eligible for workers' compensation benefits, the worker must have been injured while working within the scope of his or her employment. Generally, any injury suffered by an employee at the employer's place of business during working hours qualifies. An injury that occurs while traveling to and from work usually does not qualify. However, if the employer provides transportation to a work site

and the injury occurs while in route, the injury is within the scope of employment. Whether an accident occurs within the scope of employment depends on how much control the employer had over the circumstances when the accident occurred.

The workers' compensation laws cover such accidents as falling from a high place or getting foreign matter in an eye. Compensation is also provided for injuries caused by normal work requirements, including back injuries from lifting, occupational diseases resulting from exposure to harmful substances in the workplace and physical and emotional problems resulting from job-related pressures.

The employer may not be responsible if it is proven that the injury was caused by intoxication from alcohol or drugs or if the employee failed to use safety equipment provided by the employer.

WHAT DO I DO IF AN ACCIDENT OCCURS?

If injured on the job, a worker should immediately report the injury to a supervisor. Under the workers' compensation laws, the employer has the right to choose which doctor treats an injured employee. The employee must accept the treatment provided or lose the right to compensation until he or she agrees to accept the treatment. The employee has the right to see his or her own physician but is responsible for the costs.

When reporting an accident, the worker should note the time, place and circumstances, the extent of the injuries and names of witnesses. The worker also should keep a copy of this information in case the employer later denies the workers' compensation claim. The employer's workers' compensation insurance company will pay the doctor directly. If the worker is disabled more than seven days, the insurance company normally will begin making payments to the worker within several weeks after the injury.

The worker must report an injury to the employer within 90 days. To receive benefits, a claim must be filed within two years of

the date of the injury. Some circumstances may extend time limits.

THE COMMISSION

The South Carolina Workers' Compensation Commission has seven members who are appointed by the governor. Every claim is assigned to a commissioner, who will hold a hearing within several months to determine if the claim is valid. The commissioner may also decide if the employee is entitled to any benefits; if temporary benefits should be continued or stopped; if an employee is capable of returning to work; and the award for any permanent disability. The Commission is located at 1333 Main St., Ste. 500, Columbia SC, 29201. (803) 737-5700.

SHOULD A LAWYER BE HIRED ON EVERY WORKERS' COMP CASE?

Many on-the-job accidents may not result in claims for which the injured worker needs to be represented by a lawyer. However, because many lawyers do not charge a fee for an initial consultation on a personal injury or workers' compensation case, any employee who is injured on the job should speak with a lawyer to understand his or her rights under the workers' compensation system.

When going to consult a lawyer, the injured worker should take as much information as possible. This information should include:

- the worker's social security number, address, telephone number, education and job history and a description of the worker's job;
- the employer's address and type of business;
- the names, addresses and telephone numbers of all potential witnesses;
- the names, addresses and telephone numbers of any doctors consulted; and
- as much information as possible about the accident and any similar accidents sustained by the worker or by any other employees.

LAWYERS' FEES

Before a lawyer can charge a fee on a workers' compensation case, the fee must be approved by the South Carolina Workers' Compensation Commission. The Commission's rules require that no lawyer's fee exceed one-third of the amount recovered. The one-third must be based on the amount disputed and may not be calculated on weekly benefits the employer voluntarily paid to the injured worker.

GENERAL INFORMATION:

www.scbar.org/public

The South Carolina Bar is dedicated to advancing justice, professionalism and understanding of the law. Please visit www.scbar.org/public for information on free services offered to the public, including legal clinics, publications and other Bar programs and services.

South Carolina Bar Lawyer Referral Service

If you need a lawyer, contact the South Carolina Bar Lawyer Referral Service from 9 a.m. to 5 p.m. Monday through Friday. Call 1-800-868-2284; if you are in Richland or Lexington counties, call 799-7100. Access the Lawyer Referral Service online at www.scbar.org/lrs

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