

Changes and Choices

Information for Seniors Living in Newfoundland and Labrador



PUBLIC LEGAL INFORMATION
Association of NL

Message from the Executive Director (Acting)



Public Legal Information Association of NL (PLIAN) is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. We provide public legal education and information services with the intention of increasing access to justice. To learn more about our services, please visit our website at www.publiclegalinfo.com or call us toll-free at 1-888-660-7788.

Much of the information in *Changes and Choices* is included as a result of the type of inquiries received by PLIAN from the public. It is our hope that the information provided will benefit seniors by increasing their knowledge of legal rights, legal responsibilities and available services in the community, thereby helping them make better informed decisions.

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The information contained in this publication is general in nature and should not be considered legal advice.

K. Brochille

Table of Contents

Introduction	1
HOUSING DECISIONS	2
Staying in Your Own Home	3
Co-operative Housing	6
Retirement Communities and Retirement Homes	7
Long Term Care	8
Reverse Mortgages	12
SENIORS PLANNING FOR WHEN THEY CANNOT MANAGE THEIR OWN AFFAIRS	14
Enduring Power of Attorney	15
Guardianship	17
Advance Health Care Directives	20
CONSUMER PROTECTION FOR SENIORS	24
Financial Abuse	25
Fraud	28
Entering into Contracts	33
Joint Bank Accounts	41
Co-signing Loans, Credit Cards, etc	43



Introduction

If you are a senior living in Newfoundland and Labrador, *Changes and Choices* is for you. Its aim is to provide general information about issues that become of particular interest to persons later in life, although younger people may benefit from reading it. This publication covers a variety of subjects including topics related to housing decisions, estate planning and consumer protection for seniors.

It is our hope that this publication will benefit seniors by helping them to increase their understanding of legal rights, legal responsibilities, and available services in the community, thereby helping them to make better informed decisions. The information provided may also be of interest to families of seniors and persons of any age who wish to plan ahead. This publication will also be an added resource for service providers who work with seniors.

PLIAN has other publications that may be of particular interest to seniors and families of seniors including:

- *Seniors and the Law in Newfoundland and Labrador*
- *Wills & Estates: Help! Where Do I Start?*
- *Executor's Guide*

All are available at no cost and are accessible online at www.publiclegalinfo.com. Printed copies can be requested by contacting PLIAN. Contact information is available on the last page of this publication.



Housing Decisions

Housing is an important topic for people of all ages to consider. However, it is especially important in the event you reach a point in your life where you are no longer able to live independently. Questions often arise about which options may exist in such circumstances and what the implications are for these options. For example, you may wonder if you will be forced to sell your home if you enter into a long term care facility. That question, along with many others, will be addressed in this publication.

In this section, we provide a description of some of the possible housing options for seniors. This list is not exhaustive but it does cover some of the more common options. It is important for you as a senior to be well informed about housing options so that you can make the best decision possible in order to meet your personal needs.

PLIAN is pleased to announce that it will have a publication on the topic of residential tenancies available on its website in early 2014. This may be of interest to seniors who rent accommodations.

Staying in Your Own Home

This option is best suited for people who are able to live independently or can remain in their homes with support. Some seniors live long lives in their own homes without ever needing any extra assistance, while others may require assistance. For example, some seniors have family or friends who can provide help when required. It could be help in the form of assistance with personal care, housekeeping, making meals, or gardening. This support tends to be less formal and is often provided without cost to seniors.

There are various formalized programs to help seniors who want to stay in their own homes, but need assistance with some tasks of daily living. For example, there are programs offering various types of home supports such as aid with personal care, housekeeping, meals and providing respite help for caregivers. For more information about which home support services are available, contact your local Regional Health Authority. If you contact the Regional Health Authority, normally an appointment will be arranged for a nurse or social worker to meet with you (and possibly your family) to determine which services are needed and whether you qualify for a home support subsidy.

There are other programs that may be available to seniors who want to remain in their own homes. The Seniors Resource Centre of Newfoundland and Labrador has a comprehensive publication entitled “Seniors Guide to Programs and Services in Newfoundland and Labrador”, which includes helpful information about various programs and services available for seniors living in our province. For a copy of their publication, their contact information is listed below. The Guide is also available on their website under the “publications” section.

Seniors Resource Centre of Newfoundland and Labrador

Suite W100, 370 Torbay Road

St. John's, NL A1A 3W8

Tel: 709-737-2333, Toll-Free: 1-800-563-5599

Fax: 709-737-3717

E-mail: info@seniorsresource.ca

Website: www.seniorsresource.ca

Staying in Your Own Home (continued)

The Government of Canada has a website that contains information specifically for seniors about various services and benefits offered through the federal government. The website address is www.seniors.gc.ca. If you don't have access to a computer, there is also a toll-free number which can be called for general information. The number is 1-800-622-6232.

New Relationships

Seniors will sometimes enter into new relationships later in life and decide to move in together with their new partner. If the couple decides to marry and move into one of their existing homes together, both seniors should be aware of the legal implications. For example, unless a married couple agrees otherwise, both spouses are entitled to an equal share of the matrimonial home regardless of whether it was previously owned by only one spouse, how and when it was acquired, or if it was purchased in only one name. Married spouses own the home as joint tenants, which means that both have equal ownership rights to the property. If one spouse dies, the surviving spouse gets the house and land automatically. An additional requirement of this joint ownership is that both must agree in writing whenever the matrimonial home and land is to be sold or mortgaged. If the couple separates after marriage, both spouses are entitled to live in the matrimonial home. If one moves out, the person who remains is not allowed to change the locks or deny the other access to the home, unless he or she has bought out the other's interest in the home or has a court order that allows him/her to stay in the home but orders the other spouse to leave.



In some cases, a couple may decide to live together but not get married. People will often refer to this as living "common law". Generally speaking, a common law relationship is when two people, of the same or opposite sex, live together in a conjugal relationship.

Staying in Your Own Home (continued)

In other words, it is a marriage-like relationship but it is not a legal marriage. There are significant differences between marriages and common law relationships, especially when it comes to property. For example, as was stated earlier, married spouses are entitled to an equal share of the matrimonial home (unless they've agreed otherwise). However, this rule does NOT automatically apply to common law couples in our province, no matter how long they have lived together. Some common law couples choose to enter into a co-habitation agreement which is a contract that determines their rights and obligations during cohabitation, on ceasing to cohabit, or on death.

Unless the couple has agreed otherwise, when a common law relationship ends, each partner is presumed to own only those things that he or she purchased or that are registered in his/her name. This can mean that one partner might leave the relationship with nothing. For example, if the house is registered in the name of only one spouse then that person is presumed to own the house. In cases such as this, disputes over property division often end up in court. A court may order that property be divided if it is shown that one person contributed financially to it, or contributed in a way that allowed the other person to accumulate property. The longer the relationship has been going on, the greater the chances are that the court will consider dividing the assets.

There are many legal implications of choosing to live with a new partner, either as a married couple or as a common law couple. Above we have touched on just some of the possible implications when it comes to home ownership. It is highly advisable to speak with a lawyer in order to determine your specific rights and obligations. The lawyer may suggest that you enter into a domestic agreement (such as a co-habitation agreement) in order to best protect your rights. If you would like more general information about family law in Newfoundland and Labrador, please contact Public Legal Information Association of Newfoundland and Labrador. Our contact information can be found on the last page of this publication.

Co-operative Housing

A housing co-operative is a legal entity set up under the Newfoundland and Labrador provincial *Co-operatives Act* to provide housing to its members. The ownership structure is very different from other types of housing. Members share in the ownership and must agree to follow by-laws or rules and pay a monthly fee which is determined by the co-op. When a person moves into a co-operative housing unit, he/she normally signs an occupancy agreement or lease setting out the conditions by which he/she must abide. The *Residential Tenancies Act* does not apply to co-operatives. For more information about co-operative housing, see contact information below for the Co-op Housing Association of Newfoundland and Labrador (CHANAL).

Co-op Housing Association of Newfoundland and Labrador (CHANAL)

- This organization serves and represents the housing co-operatives of NL.

75 Barbour Drive, Suite 204

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Tel.: 709-747-5615



Retirement Communities

There are some housing complexes which are tailored specifically for seniors. Such complexes may be made up of houses, apartments, townhomes or condos. In these communities, seniors can still enjoy the benefits of home ownership while living in a setting that caters to seniors. There are often minimum age requirements as to who can live in such a community or building. The services offered are intended to appeal to older residents. Home care is not normally included; however, there may be housekeeping and gardening services. For more information about retirement communities, contact a real estate agent in your area.

Retirement Homes

Retirement homes are privately owned businesses that sell various combinations of accommodations, support services and personal care to consumers. Most retirement homes are for-profit organizations and, as a general rule, are not funded or regulated by provincial/territorial governments. Residents are responsible for paying the cost of such accommodations and associated services.

Long Term Care

There are some seniors who will require greater assistance in daily living than home service supports can provide. In such situations, long term care may be a viable option. Long term care in Newfoundland and Labrador can be provided in a variety of ways: long term care facilities (also called nursing homes), in select hospital/health centres (with combined long term and acute care services) and through personal care homes.

Long Term Care Facilities

Long term care facilities (nursing homes) in the Newfoundland and Labrador provide residential care and accommodations to residents who have high care needs and require on-site professional nursing services. The Regional Health Authorities (RHAs) are responsible for conducting assessments to determine whether potential residents require the level of care offered at a nursing home, as well as meet the other eligibility criteria. Call your local RHA for further information about eligibility.

Services provided by long term care facilities generally include, but are not limited to:

- Professional nursing care, medical services, and social work services.
- Personal care services designed to meet the physical, emotional, social, spiritual and intellectual needs of residents.
- Nutritional services designed to provide safe, nutritious and quality meals to meet the nutritional, therapeutic and social needs of residents.
- Clean, comfortable, safe residential accommodations.
- Pharmacy services including documentation on medication procurement, storage, administration and record keeping.
- Therapeutic rehabilitative and restorative services that are designed to meet the assessed needs of the residents.
- Pastoral Care services based on the identification of spiritual needs and preferences of residents and families.
- Volunteer services designed to enhance residents' quality of life.

Long Term Care (continued)

There are Operational Standards for long term care facilities located in Newfoundland and Labrador. The Operational Standards contain comprehensive information regarding the running of such facilities. Contact your local Regional Health Authority to inquire about accessing a copy. When a person enters into a long term facility, they will be asked to sign an agreement that outlines the expectations regarding the provision and acceptance of services. Persons who enter such a facility (and their families) should also receive written information about the Residents' Bill of Rights.

At the time of the printing of this publication, the maximum contribution an individual would make towards the cost of care in a long-term care facility is \$2,800 per month. Individuals who have the resources to pay this monthly rate are considered private paying. A financial assessment can be completed for people who feel they cannot afford to pay that cost. The financial assessment will determine if a person is eligible to receive a subsidy toward their client contribution. The subsidy may cover the full amount or a portion of the private pay monthly rate of \$2,800.

For more information about long term care facilities, contact your Regional Health Authority. Below is a listing of telephone contact information for persons with inquiries about long term care.

Eastern Regional Health Authority

Intake Worker: 709-752-4835

Western Regional Health Authority

Assessment and Placement Coordinator:
709-643-8713

Labrador Grenfell Regional Health Authority

Long Term Care Social Worker:
709-454-0376

Central Regional Health Authority

*Facility Placement Coordinator
(for nursing homes):* 709-256-8992

*Personal Care Home Coordinator
(Central East):*
709-256-8989

*Personal Care Home Coordinator
(Central West):*
709-489-8856

Long Term Care (continued)

Personal Care Homes

Long term care services are also available through privately owned and operated personal care homes. These homes are for seniors and older adults who need assistance with daily living. Individuals who are admitted to personal care homes do not require on-site health or nursing services but may require the service of a visiting professional. These homes are regulated by the provincial government. There is a manual setting out Operational Standards for personal care homes in Newfoundland and Labrador which is available on the website of the Department of Health and Community Services. The Department also has a listing of personal care homes across the province. Any individual wishing to reside in a personal care home must be assessed and deemed appropriate by staff of the Regional Health Authority.

There is no pre-determined rate that all personal care homes must charge across the province. It depends on the home in question to determine how much they charge. However, if someone cannot afford the cost of a personal care home, a financial assessment is completed by the RHA to determine whether a government subsidy may be available. While most homes accept subsidized residents, it is the decision of the personal care home operator whether or not to accept an individual at the government subsidized rate.

Financial Implications of Entering Into a Long Term Care Facility or Personal Care Home

The question often arises about the financial implications of entering a long term care facility or personal care home. For those people requesting subsidization from the provincial government there is a financial assessment process that they must undergo to determine if they are eligible for a subsidy. People who can afford to pay the monthly rate for the facility do not have to undergo a financial assessment. If a financial assessment is done and the applicant is approved for a subsidy, the resident is reassessed annually (at a minimum) to ensure they continue to meet the financial eligibility requirements.

Long Term Care (continued)

The question also arises whether subsidized residents are allowed to keep funds or whether all their money must go towards the cost of their care at the facility. According to the current standards, at the time of the printing of this publication, a single subsidized individual can keep up to \$10,000 and couple can keep up to \$20,000 in liquid assets.

Liquid assets include a possession or valuable that is in the form of cash, or can easily be converted to cash without losing much, if any, of its value. The following are a few examples:

- Cash
- Bank accounts
- Guaranteed income certificates (Regional Health Authorities may work with you to maximize funds where penalties apply to early liquidation)
- Bonds

If a resident's liquid assets are above the allowed amount, they are required to pay the monthly private pay rate in a long term care facility (i.e., \$2800 per month according to current standards) or personal care home (i.e., the cost charged by the home is set by the home itself). If they have less than the liquid asset amount allowed, their income (less some expenses or debts) will be taken into consideration when determining their contribution toward the cost of their care and accommodation.

A common question asked is whether a subsidized resident will be forced to sell his/her home upon entering a long term care facility or a personal care home. The answer is no. A subsidized resident does not have to sell his/her home in such circumstances. However, any income received from renting or selling the home is to be considered in the financial assessment and may affect whether the resident is eligible for a subsidy.

For more specific questions about financial eligibility and how the Financial Assessment Policy is applied, contact your Regional Health Authority.



Reverse Mortgages

A reverse mortgage is a loan that is designed for senior homeowners. This type of mortgage allows homeowners to turn the portion of their home that is debt-free (called equity) into cash without having to sell the home or make mortgage payments. There are various ways a lender may provide the cash to the borrower (such as through a lump sum payment, monthly payments, a line of credit, etc). Some seniors may choose to use the money to cover daily expenses, home repairs, home care, travel, etc.

Most reverse mortgages do not have to be repaid until the borrower sells the house, moves out of the house, or dies. At that time the entire loan must be paid back, plus interest. This is usually accomplished through the sale of the property.

Reverse mortgages may be an option for cash-strapped seniors who need to access money. In Canada, the money received from a reverse mortgage is not taxable. As well, the money received does not affect the Old Age Security or Guaranteed Income Supplement benefits that a senior may be receiving.

On the other hand, reverse mortgages can be expensive. There can be significant upfront costs. The interest rates tend to be higher than rates for traditional mortgages. The equity in the home is depleted as long as the senior has a reverse mortgage.

Reverse Mortgages (continued)

In this section, we have highlighted just some of the considerations when it comes to reverse mortgages. When deciding whether or not to get a reverse mortgage, it is important to gather information and become fully informed of their advantages and disadvantages. Not all reverse mortgages are the same, so it is important to know the specific conditions that are involved.

The Financial Consumer Agency of Canada, which is a federal government agency, has a publication entitled “Understanding Reverse Mortgages”. This publication addresses some of the advantages, disadvantages, tips to keep in mind, questions to ask a lender, among other useful information. This helpful publication can be accessed online via the agency’s website or you can call to request a free copy through the mail. Below is the contact information for the agency.

Financial Consumer Agency of Canada

427 Laurier Avenue West, 6th Floor

Ottawa ON, K1R 1B9

Telephone: For services in English: 1-866-461-FCAC (3222)

For services in French: 1-866-461-ACFC (2232)

Website: www.fcac-acfc.gc.ca

Canada Mortgage and Housing Corporation also has a publication on the topic of reverse mortgages. It can be accessed on their website at www.cmhc-schl.gc.ca.



Seniors Planning for When They Cannot Manage Their Own Affairs

All people, regardless of age, should think about and prepare for the possibility that they may lose the ability to manage their own affairs at some point in the future. There are legal documents and processes that can be undertaken to address such situations. It may be hard for you to think about this possibility, however, it is better to consider this in advance and take the necessary precautionary steps to ensure you are properly protected. If advance measures are not taken, families are often left in turmoil trying to determine how to proceed. In this section we will discuss Enduring Power of Attorney, Guardianship, and Advance Health Care Directives.

Enduring Power of Attorney

A Power of Attorney is a written document that gives a person or persons the legal authority to act for someone else in relation to financial matters. The power granted can be for a specific purpose or for a specific period of time or it can be very general. The person who gives someone else control over their financial affairs is called the “donor”. A person who is given control over the donor’s financial affairs is called the “attorney”, even though that person may not be an actual attorney. A Power of Attorney is no longer valid if the donor loses his/her legal capacity, unless the donor has given an Enduring Power of Attorney.

An Enduring Power of Attorney is a special kind of Power of Attorney that continues to be valid if the donor becomes legally incapacitated. This means the donor is no longer mentally capable of understanding the effects of his or her actions. Making an Enduring Power of Attorney lets you decide who will manage your financial affairs when you are no longer mentally competent to make decisions. It can be a very important estate planning tool. It should be remembered that the powers granted under a Power of Attorney, including one that is enduring, ends when the donor dies.

In Newfoundland and Labrador, the requirements for making a valid Enduring Power of Attorney are set out in a law called the *Enduring Powers of Attorney Act*. The law requires that to be an Enduring Power of Attorney, the document must state that it applies during the legal incapacity of the donor. An Enduring Power of Attorney needs to be signed by both the donor and a witness. The witness cannot be the person being given the Power of Attorney or that person’s spouse. These are only some of the legal requirements. There are additional requirements set out in the *Enduring Powers of Attorney Act*.

When choosing to name an attorney under an Enduring Power of Attorney, you can consider appointing a friend or a close family member. This person should be someone who is trustworthy, as well as willing and able to manage financial affairs for you. The person chosen to be an attorney must be at least 19 years of age. The attorney’s duties are based on what is contained in the Enduring Power of Attorney. You can grant the attorney the authority to do anything in relation to your finances that you may do yourself or the powers can be more restricted.

Enduring Power of Attorney (continued)

The attorney has a duty to act in a way that protects your best interests. It may be a good idea to have the named attorney regularly provide a review of your financial affairs to someone else named in the document. This can help reassure you and your family that the powers granted under the Enduring Power of Attorney document to the named attorney are not being abused. When making an Enduring Power of Attorney, you can specify when it takes effect. For example, it can take effect as soon as it is signed, on a specific date, or when a specific event takes place, such as, when you become unable to manage your own affairs.

As long as you are legally capable, you can change your Enduring Power of Attorney, or cancel it entirely. If you are already legally incapacitated and an Enduring Power of Attorney is in place, a person with an interest in your estate can apply to the court to have the person acting as the attorney changed.

If the named attorney becomes legally incapacitated, then a person with an interest in the estate or another person named by the court can apply to have the named attorney removed and substituted with another person. Legal incapacity means the person suffers from a mental disorder that makes him/her unable to understand the nature and effect of his/her actions.

A valid Enduring Power of Attorney can be prepared without a lawyer, however, a lawyer's advice can be extremely helpful. When you make an Enduring Power of Attorney, you are appointing someone to take control of your finances. This is an important responsibility. A lawyer can help prepare this document in a way that protects your interests.

If you do not have an Enduring Power of Attorney and become incapable of managing your own financial affairs, an application can be made under the provincial *Mentally Disabled Persons' Estates Act* in order to have a guardian appointed for you. The Act says what people may be entitled to bring forward such an application. The person making an application to have a guardian appointed can propose a guardian in the application. In some cases, the Public Trustee may be appointed to act as the guardian.

Guardianship

Guardianship is a court process whereby a person of the age of majority or a party (such as the Public Trustee or a trust company) is given the legal authority and responsibility to make decisions on behalf of someone else. There can be different reasons why a court-appointed decision maker may be required. In the case of adults, for example, it may be done where an adult is no longer capable of managing their own affairs (financial and/or personal).

Please note that according to the website of the Supreme Court of Newfoundland and Labrador, if a person intends to apply for guardianship of a person that is a status Indian or is entitled to be registered as a status Indian, the Department of Aboriginal Affairs and Northern Development Canada should be contacted.

The decision-making authority of a guardian may be limited to financial matters (i.e. Guardianship of the Estate) or may include the power to make decisions about the personal welfare of another person (i.e. Guardianship of the Person). In some cases, one party may be granted both types of guardianship. Consideration should be given to who is best suited to be appointed as the decision-maker. In Newfoundland and Labrador, a separate application must be made for each type of guardianship.

In Newfoundland and Labrador, applications for Guardianship are made to the Supreme Court of Newfoundland and Labrador. That court's website (www.court.nl.ca/supreme/general/wills.html) contains information relevant to guardianship, including links to the necessary forms. The website also includes contact information for the Supreme Court locations across the province.

Next we will discuss the two different types of guardianship that can be granted in relation to senior adults.

Guardianship (continued)

Guardianship of the Estate (Adults)

A party may seek to be appointed as Guardian of an Estate for an adult who is incapable of handling his/her financial affairs. Such an adult may not be able to properly manage his/her financial affairs because of a mental illness or other medical condition, or have a diminished capacity because of advanced age. In such a case, a party may seek to be appointed as guardian of that person's estate.

In some cases, people may have already put in place a document called an Enduring Power of Attorney (discussed in the previous section of this publication) which appoints someone else to act on his/her behalf for financial matters in the event of their own incapacity. An Enduring Power of Attorney can only be drafted while the donor (i.e. the person who gives someone else control over their financial affairs) is legally competent. Applications for Guardianship of the Estate normally arise where there is no existing Enduring Power of Attorney already in place. If an Enduring Power of Attorney does exist, the person considering making an application for guardianship should speak with a lawyer to discuss how this may affect their application, or whether such a guardianship application is even necessary.

In cases where guardianship of the estate is sought for a mentally disabled adult, the *Mentally Disabled Persons' Estates Act* applies. This law provides a definition of a mentally disabled person for the purposes of the Act and sets out the duties and responsibilities of an appointed guardian. The court order appointing the guardian may also contain more specific details on the authority of the guardian.

A guardian must always consider what is in the best interests of the person he/she is representing. A guardian cannot use the property for personal benefit; he/she is simply acting on behalf of the person he/she is representing. Guardianship of the Estate does not give the guardian authority to make decisions with respect to personal affairs of the donor such as health care since decision-making authority is limited to financial matters.

Guardianship (continued)

Guardianship of the Person (Adults)

Guardianship of the Person is applied for when an adult is not able to make decisions with respect to his/her personal welfare (i.e., health care, social activities, employment, etc). A person may not be able to communicate his/her wishes and therefore needs a guardian to speak on his/her behalf. Guardianship of the Person does not give a guardian authority to make decisions with respect to financial affairs.

If a guardian is given personal decision making authority, that authority is limited to the specific matters listed in the court order. Granting decision-making authority to a guardian over all decisions is very rare. Guardians must act in the best interests of the person he/she is representing, and for that person's benefit or welfare only.

In some cases, there may already be an existing Advance Health Care Directive (to be discussed in the next section of this publication) for the person who is now unable to make decisions. This is a legal document that gives instructions for a person's health care and/or names someone else to act as a substitute decision maker for health care matters if the person becomes unable to do so. If an Advance Health Care Directive does exist, the person making the application for guardianship should speak with a lawyer to discuss how this may affect the application.



Advance Health Care Directives

An Advance Health Care Directive is a document that allows you (the donor) to give instructions about your future medical care and/or appoint an individual or individuals to make health care decisions for you if you are no longer able. The person named to make health care decisions for you when you are no longer able is called a substitute decision maker.

An Advance Health Care Directive only comes into effect and only remains in effect when you (the donor) are not competent to make your own health care decisions or are incapable of communicating these decisions. This may be because of a permanent mental incapacity, like advanced Alzheimer's, or it could be because of a temporary physical condition, for example, unconsciousness.

An Advance Health Care Directive gives you greater control over your health care when you are no longer able to make health care decisions. It can also relieve loved ones of the burden of guessing what your health care decisions would be.

You can name a substitute decision maker in an Advance Health Care Directive. This person will be responsible for communicating instructions that you have put in the directive to health care professionals, and, when necessary, this person will make health care decisions for you. If you already have an Enduring Power of Attorney it is a good idea to ensure that your substitute decision maker and your attorney can work together. There are some health care decisions, for example, selecting a long term care facility, that are also financial decisions.

Advance Health Care Directives (continued)

The person named as the substitute decision maker must agree, in writing, to accept this role. The named substitute decision maker must be at least 19 years of age and competent to make health care decisions. This person should be someone you trust, and someone who understands and respects your wishes regarding your health care. It is helpful if this person has a good relationship and communicates well with your family and health care professionals.

The substitute decision maker is required to make health care decisions for you based not on his or her own beliefs, but based on what he or she thinks you would want. You may also want to name a back-up substitute decision maker in case your original choice is unwilling or unable to act for some unforeseen reason. If the person named as the substitute decision maker is unwilling or unable to act, and there is no alternate named in the directive, the *Advance Health Care Directives Act* will dictate who will be asked to act as substitute decision maker in his or her place. The rest of the Advance Health Care directive will remain valid.

To make an Advance Health Care Directive, the donor must normally be 16 years of age and competent to make a health care decision. An Advance Health Care Directive must be in writing and must be signed by you (the donor) and at least two independent witnesses. The witnesses cannot include your appointed substitute decision maker or his/her spouse. If you are not able to sign, someone else can sign for you and you must acknowledge this signature in the presence of at least two independent witnesses.

If you become unable to make health care decisions for yourself and do not have an Advance Health Care Directive, the *Advance Health Care Directives Act* sets out a list of who will be asked to act as the substitute decision maker and the order of persons who are authorized to fulfill that role.

A lawyer is not required to make a valid Advance Health Care Directive, however, a lawyer's advice can be extremely helpful. A lawyer can help ensure that the words used in the Advance Health Care Directive have the intended legal meaning and the Advance Health Care Directive meets the legal requirements.

Advance Health Care Directives (continued)

It is a good idea for you to consult with your doctor and other health care professionals when making an Advance Health Care Directive. Doctors can explain medical terms and treatments and can help you anticipate what health care decisions you or your substitute decision maker may face in the future.

The Newfoundland and Labrador Departments of Health and Community Services and Justice created a publication entitled *It's Your Decision* that includes a form that can be filled out as an Advance Health Care Directive. Contact your Regional Health Authority to request a copy of that publication.

An Advance Health Care Directive can be changed or cancelled at any time, as long as you still have capacity. You can change the instructions in an existing Advance Health Care Directive by making a new directive. The new Advance Health Care Directive will cancel any earlier directives. You can cancel a directive by writing a document saying that you want the directive to be cancelled. This must be signed by you and two witnesses. You can also cancel a directive by intentionally destroying the original or by having someone else destroy it for you in your presence.

It is a good idea to review an Advance Health Care Directive regularly. If your instructions regarding your health care change, you should consider making a new directive. You may also want to update the directive if the named substitute decision maker is no longer able to take that role, for example if that person moves away or dies. If you are married and name your spouse as the substitute decision maker but are later divorced, the part of the Advance Health Care Directive naming that spouse will be considered cancelled, unless the directive expressly states that it will continue in such circumstances.

You should keep the original of your Advance Health Care Directive in a safe place. As well, you should give copies of the directive to your doctor and your substitute decision maker and make sure these people know where the original can be found. It is also a good idea for you to keep a copy of the Advance Health Care Directive in your wallet in case you need emergency medical treatment.

Advance Health Care Directives (continued)

Another option would be to include a piece of paper in your wallet indicating that you have an Advance Health Care Directive, where it can be found, and the name of your substitute decision maker along with his/her telephone number.

See below for some circumstances in which an Advance Health Care Directive does not apply.

Emergency Treatment: A health care professional normally has a duty to take all reasonable steps to find out if an incompetent or uncommunicative patient has named a substitute decision maker who is available. However, in cases of emergency health care, a health care professional may proceed with treatments that are medically necessary to preserve the patient's health or life, if a delay in obtaining consent from the substitute decision maker would pose a significant risk to the patient.

Involuntary Psychiatric Treatment: Neither a donor nor a named substitute decision maker has the authority to refuse involuntary psychiatric treatment or involuntary admission to a psychiatric facility. If a person must undergo involuntary psychiatric treatment he/she is entitled to name a Patient Representative. This person will be able to monitor the patient's treatment and health care professionals must consult with this person when making treatment decisions. This person does not, however, have the right to make health care decisions for the patient. The Newfoundland and Labrador Department of Health and Community Services has online information on patient representatives, including a brochure. Here is a link to that information:

www.health.gov.nl.ca/health/mentalhealth/mentalhealthact_supports.html

Future health care is a topic that all people, including seniors, should consider. An Advance Health Care Directive is a tool to help prepare for a time when a person might not be able to make or communicate health care decisions. Consideration should also be given to future medical expenses and whether additional health insurance coverage might be needed.



Consumer Protection for Seniors

In this section of the publication, we will look at a variety of topics including financial abuse, fraud, entering into consumer contracts, joint bank accounts, as well as co-signing loans or credit cards for others. Seniors need to be well informed so that they can better protect themselves against possible abuse.

Financial Abuse

Elder abuse is a single or repeated act, or lack of appropriate action, occurring in any relationship where there is an expectation of trust that causes harm or distress to an older person. This definition has been adopted by the World Health Organization. There are different types of elder abuse that exist including physical abuse (including sexual abuse), psychological or emotional abuse, neglect and financial abuse. In this publication, we will focus on financial abuse, although if there is one form of abuse present, it will often be accompanied by other forms.

Financial abuse of seniors is the theft or misuse of a senior's money, property or assets. Some of the activities that could constitute such abuse include:

- Theft of money and property
- Misuse of money and property
- Withholding of funds
- Forging a seniors signature on cheques or other documents
- Unduly influencing a senior to change his/her will
- Forcing a senior to sell property
- Misusing a Power of Attorney

Financial abuse is extremely serious, especially when it involves seniors. There are laws, at both the provincial and federal levels, that are meant to protect seniors against abuse. Such abuse can be criminal and police may choose to lay charges depending on the circumstances. If a person is found guilty of committing a crime against an older person and the offence has a significant impact on the victim considering the victim's age and other personal circumstances (such as health and financial situation), the *Criminal Code of Canada* recognizes that the offender should be sentenced (punished) more harshly by the courts. This recognizes the seriousness of abuse against seniors.

The Newfoundland and Labrador *Adult Protection Act* (not yet in force at the time of the printing of this publication) does address financial abuse, as well as other forms of abuse and neglect.

Financial Abuse (continued)

An abusive person is usually someone known to the victim. There is normally an imbalance of power – the victim depends on the abuser for something, and the abuser has control and influence over the senior somehow. Abusers will often isolate the senior from friends, neighbours and caring family members.

An abuser might be anyone including:

- A spouse
- A family member
- A friend
- Any caregiver (paid or unpaid)
- Anyone working for an elderly person
- Staff in a facility where elderly person lives
- A stranger
- A landlord

As a senior you need to take steps to try to protect yourself from financial abuse. There are various strategies to do this including the following:

- Get informed! You need to learn about Power of Attorney, wills, joint bank accounts, etc. Don't put it off.
- Protect your banking and financial information.
- Talk to experts. You should speak with a lawyer and/or financial advisor to discuss how to best protect yourself against financial abuse in the future.

Financial Abuse (continued)

There are various sources of help for seniors who may be victims of, or at risk of, financial abuse. Below is a list of some community resources that may be of assistance:

- Police will receive complaints of abuse (including financial), investigate and lay charges when warranted.
- Public Legal Information Association of NL (PLIAN) has a toll-free legal information telephone line and Lawyer Referral Service that operates from 9 am to noon on weekdays, and many publications that may be of assistance. PLIAN also provides community presentations. Call 1-888-660-7788 (toll-free).
- The Seniors Resource Centre of Newfoundland and Labrador has a toll-free information and referral line that is answered by trained volunteers. Call 1-800-563-5599 (toll-free).
- There is 24-hour support offered on the toll-free provincial mental health line to help those feeling stressed and overwhelmed by their situation. Call 1-800-737-4668 (toll-free).
- To contact your Regional Health Authority for support with elder abuse concerns, please call:

Eastern Health:

Rural Avalon - 709-786-5245

St. John's - 709-752-4885

Bonavista/Clareville/Burin Peninsula - 709-466-5707

Central Health: 709-651-6340

Western Health: 709-634-5551, ext. 226

Labrador Grenfell Health: 709-454-0372



Fraud

Fraud is an intentional deception for the purpose of personal gain or to damage another person. Some types of frauds are referred to as scams or schemes.

Nowadays, fraud is frequently committed through the use of computer technology. Some seniors may be particularly vulnerable because they may not be computer savvy. Caution should be used when accessing the internet. There are some general tips to keep in mind when using a computer to purchase items, do banking or just browse the internet. Sites beginning with 'https' are generally more secure to use than sites beginning with 'http'. Do not use public Wi-Fi or public computers to do online banking or shopping. Ensure you have up to date virus protection software on your computer. Be careful when typing in website addresses on your internet browser. The addresses for fraudulent websites are sometimes created to closely resemble the spelling of legitimate sites.

In this section we will describe some of the different types of fraud that can occur.

Identity Theft

Identity theft happens when someone steals your personal or financial information and uses it to identify themselves as you. This information can then be used to make requests or authorize transactions in your financial accounts.

Some possible signs that your identity has been stolen are:

- Your bills and account statements don't arrive as usual.
- Collection agencies or creditors call about accounts you don't have or bills that you have already paid.
- A creditor informs you that an application for credit was received with your name and address, for which you did not apply.

Fraud (continued)

- A credit-granting institution informs you that you have been approved for or denied credit for which you have not applied.
- Your banking statements show withdrawals or other transactions you didn't make.
- You are denied credit even though you believe you have a good credit record.
- You receive credit card statements or other bills in your name for which you did not apply.
- Your credit report shows debts that are not yours.

The RCMP website (www.rcmp.gc.ca) as well as the Canadian Anti-Fraud Centre offer helpful information about identity theft, as well as tips for preventing it. The Canadian Anti-Fraud Centre can be reached via the contact information listed below:

Website: www.antifraudcentre-centreantifraude.ca

Call toll Free: 1-888-495-8501

E-mail: info@antifraudcentre.ca

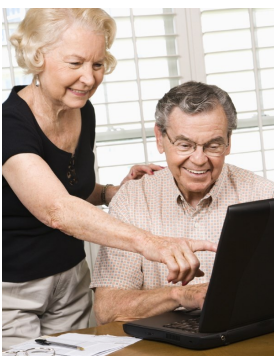
Telemarketing Scams

These types of scams involve the use of the telephone to defraud people. An example of such a scam involves a fraudster calling to notify that a prize (for example, a trip or money) has been won by the recipient of the call. The fraudster will sometimes say that a processing fee has to be paid before the prize can be claimed. In some cases, after that fee is paid, the fraudster disappears and the “winner” gets nothing. In other cases, it is stated that the prize will only be released or money deposited if the “winner” provides his/her personal banking information. The fraudster will disappear once the banking information is provided and the supposed prize is never provided. There are all sorts of different telemarketing scams. For more information on some of the more common scams, visit the RCMP website. Please keep in mind that if something sounds too good to be true, it likely is.

Fraud (continued)

Phishing and Vishing

Phishing (pronounced ‘fishing’) and vishing are two types of scams that are used to attempt to trick people into providing personal information (often banking information) that will then be used fraudulently against them. The fraudsters may try to withdraw money from the victim’s bank account, use credit cards or open new accounts.



Phishing is a general term for e-mails, text messages and websites fabricated and sent by criminals and designed to look like they come from well-known and trusted businesses, financial institutions and government agencies in an attempt to collect personal, financial and sensitive information. Victims will then provide personal information believing that it is being submitted to a legitimate organization. A common type of phishing scheme is when a victim receives an e-mail believing it to be from his/her banking institution. When he/she opens the e-mail, he/she is directed to click on a link that is supposed to be for the bank. However, when the link is clicked, the victim is unknowingly diverted to a fraudulent site and asked to provide personal banking information.

Vishing is the telephone equivalent of phishing. A victim will receive a call from a criminal who pretends to be calling from a legitimate organization. The victim will be connected to an automated service that may ask for personal information to be entered using the victim’s telephone keypad. Once this information is obtained, the criminal will attempt to use the collected information fraudulently.



Fraud (continued)

Phishing and Vishing (continued)

The Financial Consumer Agency of Canada provides suggested steps to take if you suspect someone is trying to get your personal information either by phishing or vishing. First, you should not give any personal information until you have verified whether the company is legitimate. If someone phones you to ask you for personal information, ask for the person's name, employee number, the name of the organization and the phone number where he or she can be reached. Then take the following steps:

- Look up the organization's telephone number or website yourself. Look at the back of your credit card statements or other legitimate documents to see if the telephone number or website address matches the one you were given.
- Call the company by using the phone number you have looked up yourself to verify that the person that has contacted you is indeed a member of the company's staff.
- Contact the Better Business Bureau at 1-902-422-6581 (serving the Atlantic provinces) and ask questions about the company.

Credit Card/Debit Card Fraud

Credit card/debit card fraud happens when someone steals your credit card or debit card, card information, or Personal Identification Number (PIN), and uses it without your permission to make purchases or to withdraw money from an automated bank machine (ABM).

Fraud (continued)

What to do if fraud happens to you?

The websites of the Financial Consumer Agency of Canada and the RCMP contain helpful information on what to do if you are a victim of fraud. It is recommended that you start a written log of what happened and how you first noticed the fraud. Keep all documentation that you think may be helpful in the investigation. Then, follow the steps below, taking notes on the people you spoke with and exactly what they said:

- Contact your local police and file a police report.
- Contact the financial institutions, credit card companies, phone companies, and other lenders for any accounts you suspect may have been opened or tampered with.
- Contact the two credit bureaus in Canada: Equifax (1-800-465-7166) and TransUnion (1-800-663-9980). Ask that a "Fraud Alert" be placed in your credit file. At the same time, order copies of your credit report (there is no charge if sent by mail) and review them. Make sure all the accounts and debts that show up on your report are yours. Report any incorrect information to the credit bureaus.
- Contact the Canadian Anti Fraud Centre (CAFC) toll free at 1-888-495-8501— an anti-fraud call centre that collects and analyzes information on fraud, and assists law enforcement agencies in investigations.
- Contact Reporting Economic Crime Online (RECOL) through www.recol.ca. This website is a joint initiative of international, federal and provincial law enforcement agencies, regulators and private commercial organizations that have a legitimate interest in getting copies of complaints related to economic crime.



Entering into Consumer Contracts– Buyer Beware!

Contracts are entered into on a daily basis. People will often sign on the dotted line before fully reading the contract terms or “small print”. Anyone can fall victim to unscrupulous scammers who will use pressure tactics in order to get that signature on a contract. The fact is that contracts, once signed, can be extremely difficult to get out of (if at all). Expense may have to be spent on court costs, lawyer’s fees, etc. Such expenses could be avoided in the first place, if people took the time to read and understand the contractual terms that they are agreeing to. It is not necessary to rush into an agreement or contract. The possible implications of doing so while not fully informed of the contract’s contents can be very detrimental. Buyers beware! The onus is on the parties signing the contract to be informed of what they are agreeing to. Do not depend on the other party to tell you what the terms mean. It is often a good idea to have the contract reviewed by an outside professional (such as a lawyer) who does not have a vested interest in getting it signed.

In some cases, people choose not to enter into written agreements, but, instead, have verbal agreements. Such agreements can often lead to misunderstandings if the terms are not clearly understood by the parties involved. Verbal agreements can be enforced by a court. However, if a dispute arises, it can be difficult to prove what contract terms were agreed to because either side to the contract may have a different understanding of those terms.

Entering into Consumer Contracts (continued)

Caution needs to be used when entering into any type of agreement or contract, whether written or verbal. The Financial Consumer Agency of Canada has a publication entitled “Before You Sign any Contract: 10 Things You Need to Know”. It is an extremely helpful and concise document that is worth reviewing. If you would like a copy, you can contact the organization. Its contact details are listed below. The publication is also available on its website.

Financial Consumer Agency of Canada

427 Laurier Avenue West, 6th Floor

Ottawa ON, K1R 1B9

Telephone: For services in English: 1-866-461-FCAC (3222)

For services in French: 1-866-461-ACFC (2232)

Website: <http://www.fcac-acfc.gc.ca>

Next we will discuss some specific types of contracts that may be of particular interest to seniors.

Entering into Consumer Contracts (continued)

Door-to-Door Sales

Also known as direct selling, this type of sales involves a person literally knocking door-to-door to sell products or services. Typically people think of vacuum sales or the selling of encyclopaedias when envisioning this type of selling arrangement. However, there are many other items or services that might be sold through door-to-door sales. This type of sales is not as common as it used to be, but does still occur.



Industry Canada's Consumer Affairs Office has produced a Consumer Handbook that includes helpful information for consumers, including some helpful tips for dealing with door-to-door selling. It can be accessed online at www.consumerinformation.ca. These tips are reproduced below:

- Ask to see the salesperson's company issued identification and seller's license or registration. Make note of his or her name, the name and address of the company, and whether the salesperson carries proper identification.
- Don't be pressured into buying anything. Watch for the warning signs: an offer of a free gift if you buy a product, an offer that is only good that day or a claim that a neighbour just made a purchase.
- If you are interested in the product, ask for sales literature and then call or visit local stores that sell the same merchandise to compare prices. Some door-to-door products may be overpriced.
- If you feel threatened or intimidated, ask the person to leave. Don't leave the person unattended in any room of your home. When you are suspicious, immediately report the incident to the police.

Entering into Consumer Contracts (continued)

Door-to-Door Sales (continued)

Door-to-door sales in Newfoundland and Labrador are regulated by the provincial government. Most people doing such sales need a licence under provincial legislation. However, there are some exceptions to the licensing requirement.

If a product or service is purchased from a door-to-door salesperson, buyers may cancel their contract from the day they enter the contract until 10 days after receiving a copy of the contract. During this time, a buyer does not need a reason to cancel.

For more information about door-to-door sales in Newfoundland and Labrador, contact the Consumer Affairs Division.

Consumer Affairs Division

Service NL

149 Smallwood Drive

Motor Registration Building

P.O. Box 8700

St. John's, NL

A1B 4J6

Tel: (709) 729-2600

Fax: (709) 729-6998

Toll Free: 1-877-968-2600

E-mail: consumeraffairsaccount@gov.nl.ca

Entering into Consumer Contracts (continued)

Cell Phone Contracts

Cell phones are being used by more and more seniors. The contracts associated with such phones may seem complicated and lengthy. However, there have been some recent changes to Newfoundland and Labrador law intended to simplify the way such contracts are presented to consumers, to protect their interests and to allow consumers to make informed decisions when choosing a service provider.



On September 27, 2012, amendments to the provincial *Consumer Protection and Business Practices Act* came into effect that apply to distance service contracts entered into on or after September 27, 2012. Distance service contracts include contracts for cell phones (as well as residential phones, internet, cable and satellite television and security systems).

The amendments that impact cell phone contracts are extensive. For example, service providers are now required to disclose specific information regarding the terms and conditions of such contracts. There are now specific rules that apply for cancellation of a cell phone contract and limits on the amount that can be charged for a cancellation fee depending on the type of contract. Companies are not allowed to include clauses that state the contract will automatically renew upon expiry of the contract, unless the contract is for an indeterminate period of time (such as month to month). There are restrictions on if and how a service provider or a cell phone user can change the terms of a contract. Companies are required to disclose total monthly costs (excluding taxes) in their advertising, thereby helping consumers to make better informed decisions. These are just some of the ways that the amendments to the *Consumer Protection and Business Practices Act* have impacted cell phone contracts. A detailed summary of frequently asked questions associated with the amendments to this law can be accessed online at www.servicenl.gov.nl.ca/consumer/consumer_affairs/distance_service_contracts.html

Entering into Consumer Contracts (continued)

The *Consumer Protection and Business Practices Act* can be accessed online at <http://assembly.nl.ca/Legislation/sr/statutes/c31-1.htm>.

If you have any questions about the changes to the *Consumer Protection and Business Practices Act* and its impact on cell phone contracts in our province, please contact Consumer Affairs Division. Their contact information is listed below.

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Tel: (709) 729-2600; Fax: (709) 729-6998

Toll Free: 1-877-968-2600

E-mail: consumeraffairsaccount@gov.nl.ca

Other changes are coming as a result of the “Wireless Code” that will impact cell phone contracts in Canada. This Code from the Canadian Radio-television and Telecommunications Commission (CRTC) applies to new contracts for cellphones and other personal mobile devices as of December 2, 2013. Among other things, individual and small business consumers will be able to:

- terminate their wireless contracts after two years without cancellation fees, even if they have signed on for a longer term,
- cap extra data charges at \$50/month and international data roaming charges at \$100/month,
- have their cellphones unlocked after 90 days, or immediately if they paid for the device in full, and
- receive a contract that is easy to read and understand.

For more information on the Wireless Code contact the CRTC at 1-877-249-CRTC (2782) or visit their website at www.crtc.gc.ca.

Entering into Consumer Contracts (continued)



Buying or Leasing a Vehicle

The purchase or lease of vehicle (new or used) can be a significant expense, especially for seniors on a fixed budget. Buyers must use due diligence and take the proper precautions to ensure their interests are properly protected before making such a purchase. Some buyers assume there is a cooling off period after the purchase of a vehicle in which a buyer can change his/her mind and automatically return the vehicle and cancel the contract. This is not correct. Unless the seller/dealer provides such a written guarantee, there is no automatic refund. The buyer is responsible for having the vehicle checked before buying it to ensure that it is in good working order. Some car dealers will offer a safety inspection and transfer of the vehicle as a part of the purchase. A safety inspection must be done under the requirements of Newfoundland and Labrador's Motor Registration Division when a vehicle is transferred. However, it is not a requirement that the seller offer a safety inspection and some sellers will leave it up to the buyer to get the inspection done after the sale is completed. Even if the seller offers a safety inspection as part of the sale, a buyer should still consider having the vehicle inspected by his/her own mechanic before agreeing to buy it.

It is essential that buyers know and understand the terms that they are agreeing to under a contract to purchase or lease a vehicle. Never feel pressured to rush into a contract. If a senior is no longer able to drive because of health issues, he/she will normally still be required to make car or lease payments (if the vehicle is financed) even if the car is no longer being driven.

Entering into Consumer Contracts (continued)

Buying or Leasing a Vehicle

The options for a person in that position may be to sell the vehicle or have someone else take over the lease payments. If this is a concern for you as a senior, you should raise it with the seller and/or financing company in advance who may be able to offer a shorter term for the sales contract or lease. They may also offer tips or suggestions for consideration in the event you do find yourself in this situation.

Newfoundland and Labrador Consumer Affairs has some helpful information for people considering purchasing or leasing a vehicle including a Consumer Guide on this topic. Their contact information is listed below.

Consumer Affairs Division

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Joint Bank Accounts

Some seniors will choose to enter into joint banking arrangements with others (often adult children) later in life simply for the purpose of convenience. For example, a senior may do this so that the joint account holder can then do banking on the senior's behalf or pay bills, purchase groceries, etc. You should use extreme caution if entering into joint bank arrangements with anyone, including adult children. There is the potential for financial abuse to occur. You may not feel comfortable considering this potential, especially when your own family members are involved, however, the reality is that such abuse does happen and you need to ensure you are protected. Another consideration if you are thinking about entering into such an arrangement is the potential for the money in a joint bank account to be vulnerable to seizure by creditors for debts owed by the other joint bank account holder.

There are often misconceptions about what happens to the money in a joint bank account after a senior dies and the other party is not a spouse. If a senior has placed money in a joint bank account for convenience and named that other person as the joint account holder, that account will not necessarily be considered to be the asset of the joint account holder when the senior dies. What happens to the money in such an account is normally determined by the senior's intention. Whether the senior wants the account to be gifted to the person named on the account, or to form part of the senior's estate, he/she should make that intention clear (for example, stating it in a will). If the beneficiaries of the estate cannot agree on what was the deceased's intention, the issue will normally be determined by a court.

Joint Bank Accounts (continued)

You as a senior need to ensure you are well informed of all the potential risks and implications of entering into a joint bank account. You should speak with your banking institution, financial advisor and/or a lawyer before entering into such an arrangement.

Co-signing Loans, Credit Cards, Etc.

Seniors are sometimes asked to co-sign loans, credit cards or lines of credit for adult children or other family members (such as grandchildren). Seniors need to use extreme caution before agreeing to take on such a role. It is a big responsibility and could put them in a very vulnerable position if the other person fails to pay on the money owing. A co-signer becomes a joint borrower and the lender can seek the money owed from any joint borrower. Hence, the senior could be on the hook for money owed even if he/she never used any of it or benefitted from it. As well, his/her credit rating could be affected if the money is not paid back in time.

If you co-sign for a loan, credit card or line of credit from a federally regulated institution, you have the right to receive information about the loan (including a copy of the credit agreement and monthly statements). This way you as the co-signer can keep track of whether payments are being regularly made and whether any of the conditions of the agreement have changed.

Decisions to co-sign should not be taken lightly. If you are asked to do this, you should consult with the lender, your own financial advisor, and possibly a lawyer to explore the possible implications of doing so. Any documents should be closely reviewed before signing so you are fully aware and understand what it is that you are agreeing to.



PUBLIC LEGAL INFORMATION
Association of NL

Public Legal Information Association of NL (PLIAN) is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. We provide public legal education and information services with the intent of increasing access to justice.

Contact Information

Suite 227, 31 Peet Street, Tara Place • St. John's, NL • A1B 3W8 Canada
Tel: (709) 722-2643 (line operates between 9 am and noon on weekdays);
Toll-free: 1-888-660-7788 (line operates between 9 am and noon on weekdays)
Fax: (709) 722-0054
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