Estate Planning & Elder Law for Everyone

Presented by
Goldfarb & Luu P.C.
Estate Planning & Elder Law Attorneys
Alzheimer’s LA Early Memory Loss Conference
June 4, 2022
Roadmap for Today:

✓ Teach you something new

✓ Step 1: Take care of yourself first – Estate Planning 101

✓ Step 2: What is Elder Law?

✓ Step 3: Action Item Checklists, I have a favor to ask, Questions and Resources
Step 1: This is for YOU
Put Your Own Oxygen Mask On First
What is the Purpose of an Estate Plan?

A set of documents that together should

Honor Your Wishes
Avoid Court
Maintain Family Harmony

99% of the plans we review have a fatal flaw in one or all these areas
Estate Planning 101

Ways **YOU** Should Plan
So Your Family Doesn’t **HAVE TO**...

- Health Directive
- Trust
- Power of Attorney
- Will

Are you over 18?

Have assets / kids?

**Myth:** I don’t need an estate plan; my family will be able to handle things automatically.
Polling Questions

1. How many people have an estate plan?

2. How many have updated it in the past 3-5 years?
The Problem

1) People don’t have a plan when needed
2) The plan doesn’t work when needed
Over 99% of the EPs we see have a fatal flaw...

- Outdated Documents
- Missing Documents
- Poorly Written Documents
- Trust Is Not Funded
- Selected Wrong People
- Acted Without Good Counsel
The Solution

Find the **RIGHT law firm** to educate, empower & collaborate with you to create a plan that works when you need it.

This means you must have a **lifelong relationship** with the law firm because so much changes over time.
What if YOU become incapacitated?
AHCD Issues

1. Wrong agents / Co-agents
2. Springing powers
3. Missing HIPAA / CMIA waivers
4. Insufficient details
Durable Power of Attorney for Finance

Agents

Effective Date

Types of Powers Conferred

Gifting / Separate Property

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DPOA Issues

1. Wrong agents / Co-agents
2. Springing powers
3. No gifting / Ability to use separate property
4. No access: Logins/Passwords & Bills
What happens after you pass away?

...and I'm sure I can trust you not to fight over my money when I'm gone.
What Do You Need? Will vs. Trust

✓ If you have real estate or other valuable assets and have future beneficiaries who are young, not great with money or who may need a special needs trust, you should have a Trust.

✓ If you not, maybe a Will will suffice.
What is Probate?

Will/No Will + Over $184,500 + No Benes/TOD = Probate

Public

1+ Year(s)

Creditors

Frozen Assets

Will?

Intestacy?

Executor?

Super $$$

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# What Will Probate Cost?

Probate is triggered at $184,500.

<table>
<thead>
<tr>
<th>VALUE OF YOUR ESTATE</th>
<th>PROBATE FEES WITHOUT A TRUST</th>
<th>PROBATE FEES WITH A TRUST</th>
</tr>
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<tbody>
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<td>$200,000</td>
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</table>

Increases with the size of your estate.
Avoid Probate, Get A Trust!

Control From the Grave

Funding a trust = transferring assets from your name into the name of the trust.

Control From the Grave

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Trust Administration

Easy Peasy Lemon Squeezy
- Trustee
- Assets
  - Debts
  - Taxes
- Distribution
- Family Harmony

Getting Blood From a Stone
- Trustee - nightmare
- Assets – Hegstad?
- Debts
  - Taxes
  - Distribution
- Family Feud

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Will/Trust Issues

1. Wrong successor trustees / no successor trustee
2. Funding incomplete
3. Financial abuse – who has access to what accounts?
4. Mandatory A/B split
5. No trust protector
6. No one to care for pets
A Gift to My Dearest Loved Ones

A regularly updated estate plan

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Caregiver Burnout

Warning Signs

- Fatigue
- Sleep problems
- Depression
- Neglecting self
- Health issues
- Withdrawn
- Anxiety...

Prevention

- Learn resources
- Ask for help!
- Take breaks
- Self care
- Get away

Many caregivers die first!
6 Immediate Actions

1. Create your village and care for yourself.

2. Finish estate plan / update it.

3. Share your wishes with your family.

4. Assets – organize them, fund your trust and update beneficiaries.

5. List of logins, passwords & bills.

6. Make sure you’re properly insured.

Myth: My spouse or kids will be able to handle things automatically
Step 2:
This is for your **spouse or parent**

Elder Law,
doing the best you can
Elder Law begins when people start needing extra help…
# Common Issues:

Elder Law attorneys can help!

<table>
<thead>
<tr>
<th>Common Issue</th>
<th>Caregiver Issue</th>
<th>Elderly Person Issue</th>
<th>Elderly Person Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caregiver is overwhelmed by the complex medical, financial and legal systems</td>
<td>Elderly person is difficult and/or there is family drama</td>
<td>Elderly person doesn’t have capacity</td>
<td>Elderly person is running out of money</td>
</tr>
</tbody>
</table>

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A Sneak-Peek Into Long-Term Care Planning

➔ Long-Term Care

➢ Costs of care
  • Private caregiver – $130,000-$240,000 (private pay vs. agency)
  • Assisted Living – $67,000 (average)
  • Skilled Nursing – $111,000 (semi-private) or $132,000 (private)
  • Residential care home $36,000-$60,000+

➢ What covers it?
  • Private pay, Long Term Care insurance and Medi-Cal
  • Not Medicare (age 65) – only after hospital visit

➔ Medi-Cal (new rules as of July 2022 - $130,000 + $65,000 per household member)

➢ BEWARE: Quality of care, Eligibility ($2000/$137,400), SOC & Recovery

➔ VA Aid & Attendance / Housebound Benefits

➢ Net worth must be under $138,489 (= assets and annual income)
➢ 3-year lookback may trigger a 5-year penalty
➢ Must need help with ADLs, mostly bedridden, live in a SNF or extremely poor vision
➢ Maximum annual pension rate (-) Yearly income = VA Pension
  ➔ Approx MAPR - Single veteran ($24,610), married veteran w/ non-veteran spouse or dependent ($29,175), 2 veteran spouses ($39,036)

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For Your Spouse | Parent

Who still has capacity to make legal, financial and medical decisions
5 Immediate Actions

1. Get two capacity declarations for estate planning & potential reverse mortgage.

2. Finish estate plan / update it.

3. Make sure AHCDs/DPOAs are immediate.

4. Discuss “gifting” authority in DPOA with a lawyer for potential Medi-Cal planning.

5. Get in a support group like an Alzheimer’s LA Memory Club!

Myth: Their situation is simple so I can use online DIY options.
For Your Spouse | Parent

Who is unable to make decisions (incapacitated)
Estate Planning

➢ Can’t create EP docs → Conservatorship

➢ Can’t update EP docs → **3 Immediate Actions**
What is Conservatorship?

Judge decides:
Who takes care of you & your finances, voting, driving, etc.

Myth:
I don’t need an AHCD & DPOA now, my spouse or adult child will be able to handle my affairs when I need help.
Conservatorship Issues


2. Contested by other family or conservatee. Families often get torn apart.

3. This is a last resort! Is there a way to avoid it?

Next, 3 Immediate Action Steps ...
Create a POLST

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY

Physician Orders for Life-Sustaining Treatment (POLST)

First follow these orders, then contact Physician/NP/PA. A copy of the signed POLST form is a legally valid physician order. Any section not completed implies full treatment for that section.

POLST complements an Advance Directive and is not intended to replace that document.

A

CARDIOPULMONARY RESUSCITATION (CPR): If patient has no pulse and is not breathing.
   ☐ Attempt Resuscitation/CPR (Selecting CPR in Section A requires selecting Full Treatment in Section B)
   ☐ Do Not Attempt Resuscitation/DNR (Allow Natural Death)

B

MEDICAL INTERVENTIONS: If patient is found with a pulse and/or is breathing.
   ☐ Full Treatment – primary goal of prolonging life by all medically effective means.
      In addition to treatment described in Selective Treatment and Comfort-Focused Treatment, use medical treatments, advanced airway interventions, mechanical ventilation, and cardioversion as indicated.
      ☐ Trial Period of Full Treatment.
   ☐ Selective Treatment – goal of treating medical conditions while avoiding burdensome measures.
      In addition to treatment described in Comfort-Focused Treatment, use medical treatment, IV antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid intensive care.
      ☐ Request transfer to hospital only if comfort needs cannot be met in current location.
   ☐ Comfort-Focused Treatment – primary goal of maximizing comfort.
      Relieve pain and suffering with medication by any route as needed; use oxygen, suctioning, and manual treatment of airway obstruction. Do not use treatments listed in Full and Selective Treatment unless consistent with comfort goal. Request transfer to hospital only if comfort needs cannot be met in current location.
      Additional Orders

C

ARTIFICIALLY ADMINISTERED NUTRITION: Offer food by mouth if feasible and desired.
   ☐ Long-term artificial nutrition, including feeding tubes.
   ☐ Trial period of artificial nutrition, including feeding tubes.
   ☐ No artificial means of nutrition, including feeding tubes.

D

INFORMATION AND SIGNATURES:

Discussed with:
   ☐ Patient (Patient has Capacity) ☐ Legally Recognized Decisionmaker
   ☐ Advance Directive dated _____ available and reviewed 
   ☐ Advance Directive not available
   ☐ No Advance Directive
   ☐ Signature of Physician / Nurse Practitioner / Physician Assistant (Physician/NP/PA)

Signature of Physician/NP/PA Name: ____________________________ Date: __________
   Physician/NP/PA Signature: ____________________________ Phone: __________

Signature of Patient or Legally Recognized Decisionmaker

I am aware that this form is voluntary. By signing the form, the legally recognized decisionmaker acknowledges that this required regarding resuscitation measures is consistent with the known desires of and with the best interest of the individual who is the subject of the form.

Print Name: ____________________________ Date: __________
   Relationship: ____________________________ Phone Number: __________

SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED

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# 2 Marshall Assets

✓ **Assets in MY TRUST**
  - Actually re-titled or just mentioned in trust or in Schedules?
  - These assets go through the trust, others may not!
  - Grantor to resign as Trustee?

✓ **Assets in MY NAME**
  - DPOA immediate or springing? Right person?
  - Who has DPOA, agent, financial institutions?
  - Beneficiary: None, a person, the trust? Follow grantor’s intent?

✓ **Assets in MY NAME with SPOUSE or ADULT CHILD**
  - Grantor’s intent?
  - Enough assets to administer estate?
  - Family harmony?
# 3 Family Harmony & Spend Time Together

What can you do to ensure everyone is on the same page?
PROBLEM: Grey Area in the Law

People who have enough capacity to avoid Conservatorship but who are making terrible decisions / family drama
SOLUTION

An outside-of-the box problem solving elder law firm
Find Your A Team

✓ Elder law attorney who handles trust administration and probate
✓ End of life expert
✓ Memorial plan
✓ Support and counseling

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Remember, Court Sucks!
4 Things You Should Know

1. 99% of the estate plans we review have a fatal flaw. Many families have a false sense of security.

2. Family members on SSI/Medi-Cal need Special Need Trust provisions to protect benefits / inheritance.

3. S#%T happens! Don’t wait till it’s too late. Court sucks.

4. It’s easier than you think … give a gift to your family and feel the peace of mind you deserve.

You’ve got this!
Step 3: We’re Almost Done!

- Action Item Checklists
- Favor
- Questions & Resources

Don’t assume family & friends are prepared… share what you’ve learned today with others!
You Deserve The Best

✓ Counselors with compassion & expertise
✓ Lifelong relationships for your family
✓ Comprehensive, detailed & reality-based
✓ Plans that work when you need them
✓ Treat you like family
✓ Work with those who ❤️ what they do
Estate Planning & Elder Law, done differently.

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