



Estate Planning & Elder Law for Everyone

**Presented by
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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

A group of diverse people are shown laughing and smiling outdoors. In the foreground, a woman with curly hair is laughing heartily. Behind her, several other people, including a man in a blue shirt and a woman in a white shirt, are also laughing. The background is filled with green foliage and a bright, sunny atmosphere.

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**...

**Are you
over 18?**

**Health
Directive**

Trust

**Have
assets /
kids?**

**Power of
Attorney**

Will

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Outdated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.



A photograph of a person lying in a hospital bed, partially covered by a light blue blanket. A medical professional wearing blue gloves is attending to the person's arm, which has an IV line inserted. The person's hand is holding a pulse oximeter. The background is blurred, showing a red wall and another person's arm.

What if **YOU**

become incapacitated?

Stacy & Vinny



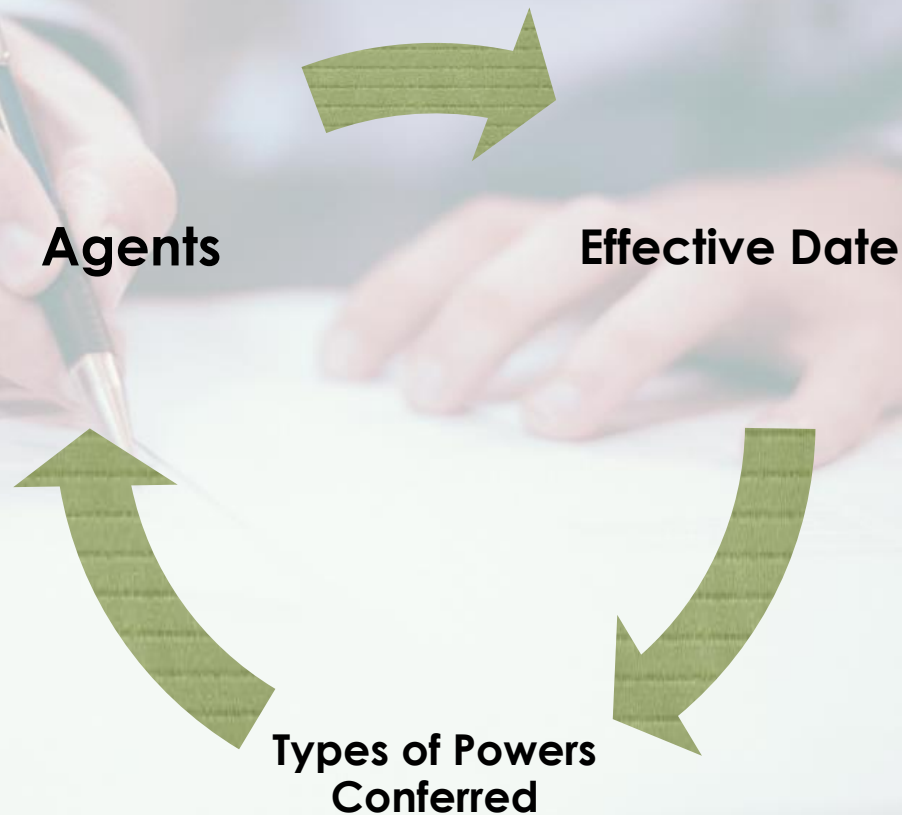
Goldfarb & Luu's Advance Directive



AHCD Issues

1. Wrong agents / Co-agents
2. Springing powers
3. Missing HIPAA / CMIA waivers
4. Insufficient details

Durable Power of Attorney for Finance



Gifting / Separate Property

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.

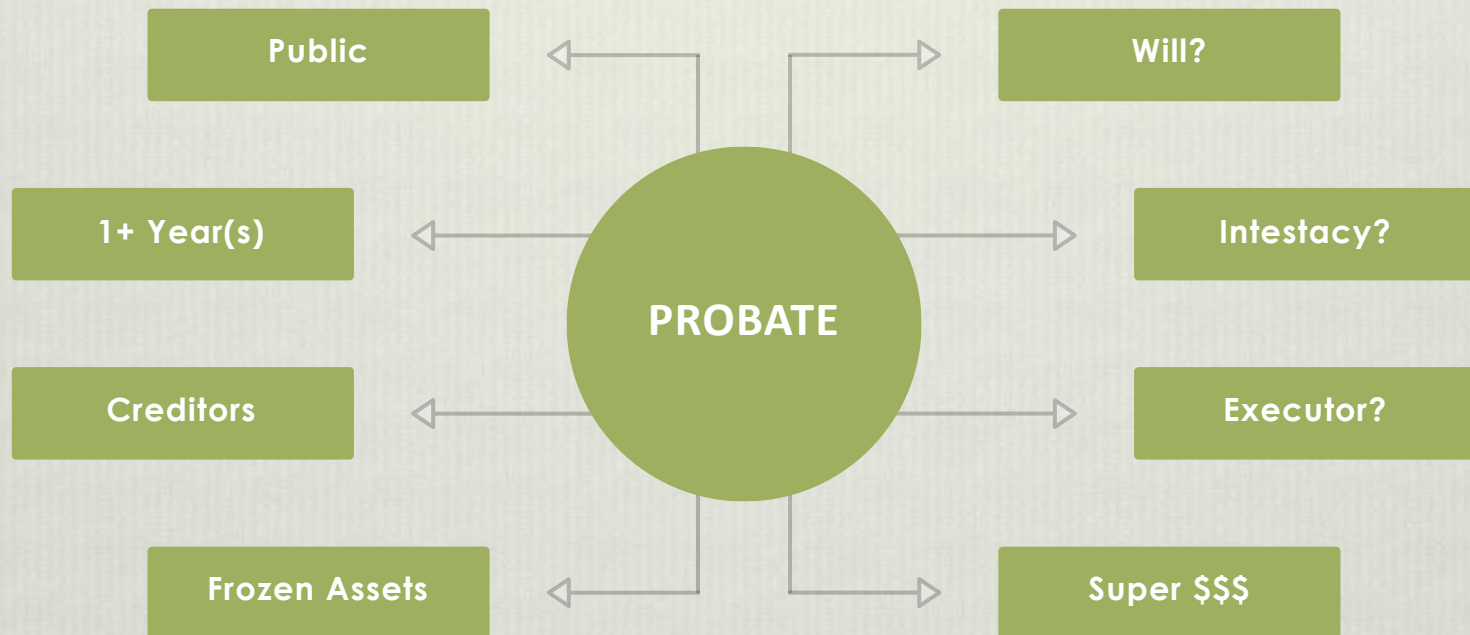
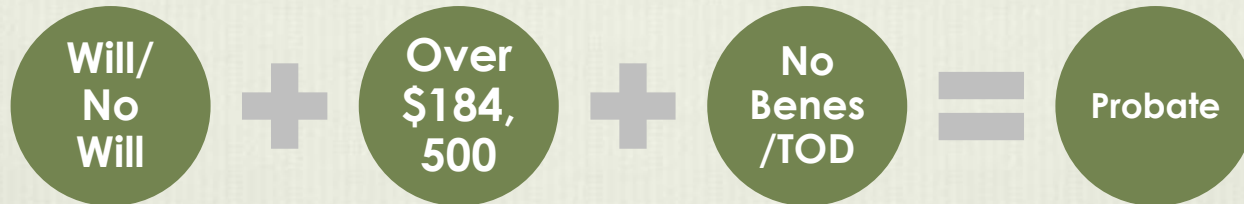
of course!



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?



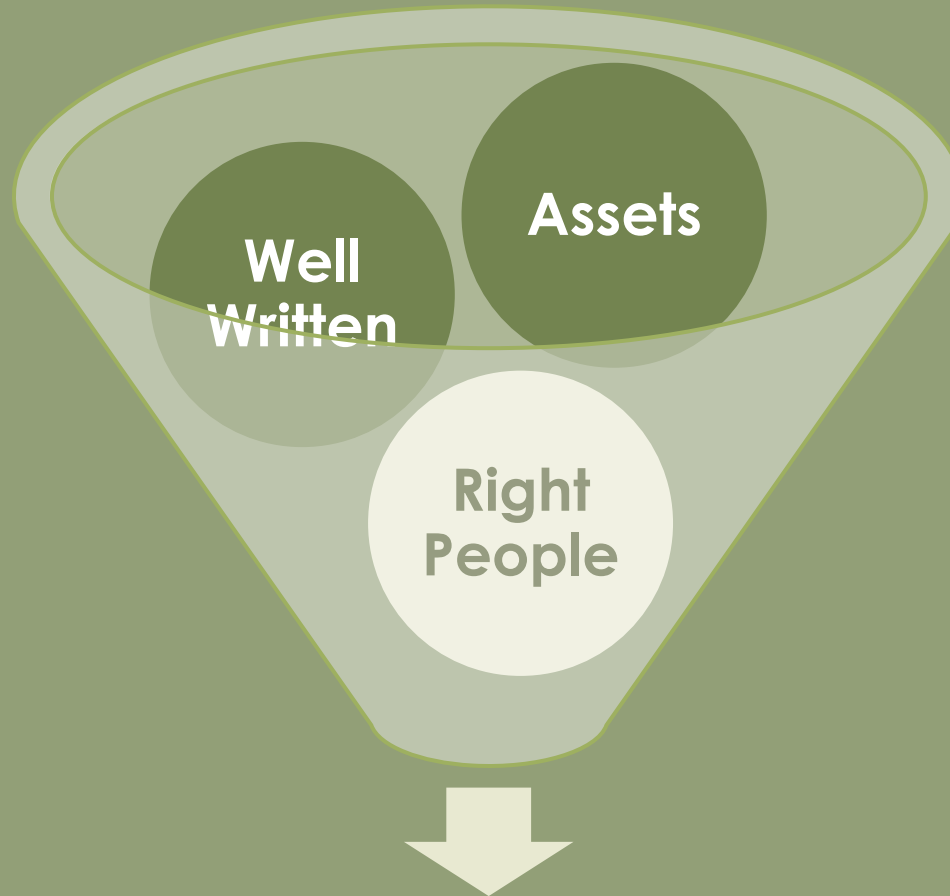
What Will Probate Cost?

**Probate is
triggered
at \$184,500**

① VALUE OF YOUR ESTATE	② PROBATE FEES WITHOUT A TRUST	③ PROBATE FEES WITH A TRUST
\$200,000	\$14,000	\$0
\$300,000	\$18,000	\$0
\$400,000	\$22,000	\$0
\$500,000	\$26,000	\$0
\$600,000	\$30,000	\$0
\$700,000	\$34,000	\$0
\$800,000	\$38,000	\$0
\$900,000	\$42,000	\$0
\$1,000,000	\$46,000	\$0
\$1,500,000	\$56,000	\$0
\$2,000,000	\$66,000	\$0
\$3,000,000	\$86,000	\$0

**Increases
with the
size of your
estate**

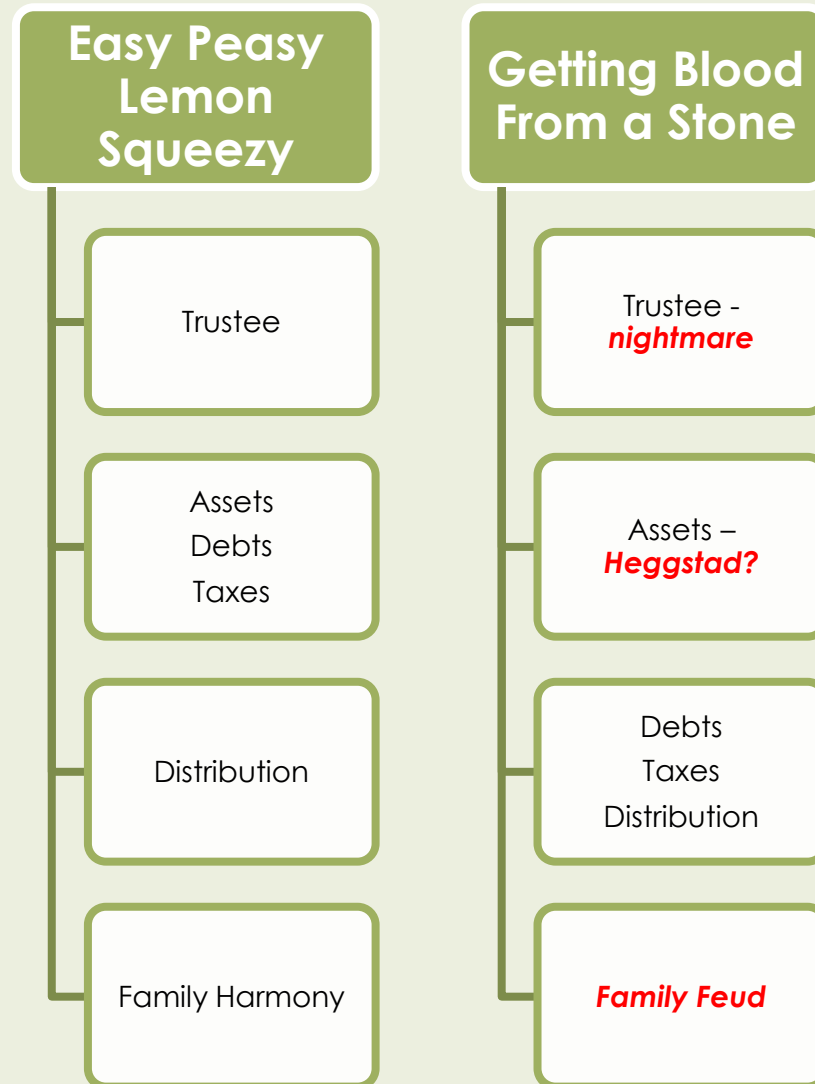
Avoid Probate, Get A Trust!



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

Control From the Grave

Trust Administration



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

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**.

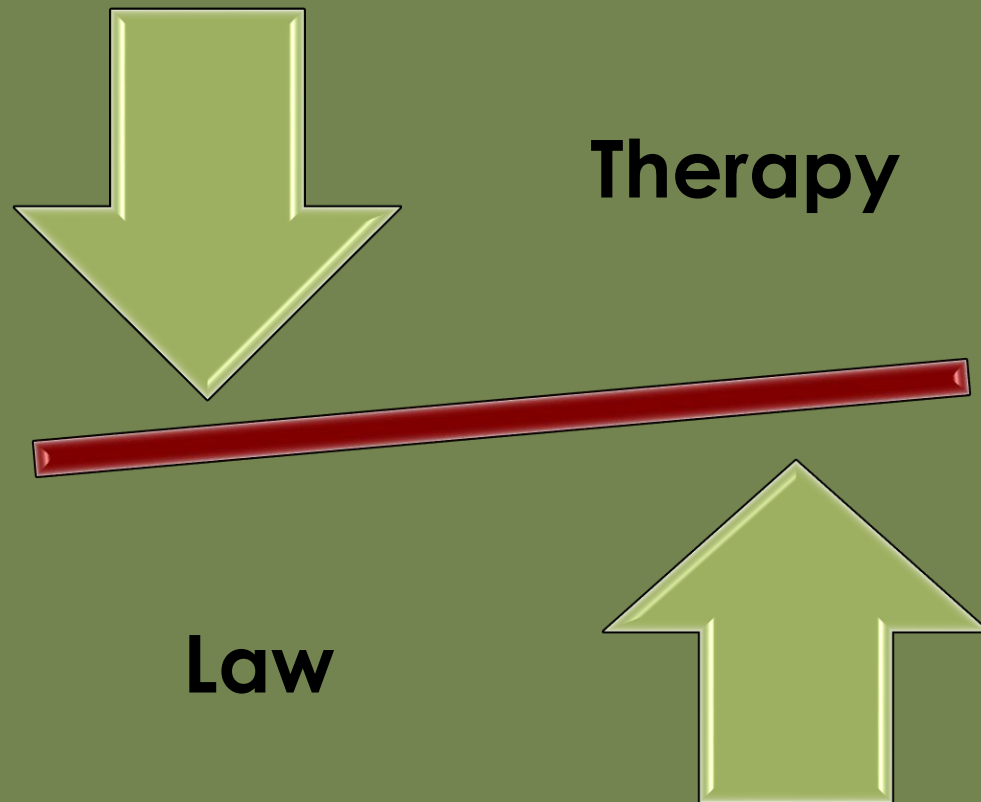
Myth: My spouse or kids will be able to handle things automatically

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!

Caregiver is **overwhelmed** by the complex medical, financial and legal systems

Elderly person is difficult and/or there is **family drama**

Elderly person doesn't have **capacity**

Elderly person is running out of **money**

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

*Myth:
Medicare
will cover
the cost
my care!*

→ 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)

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

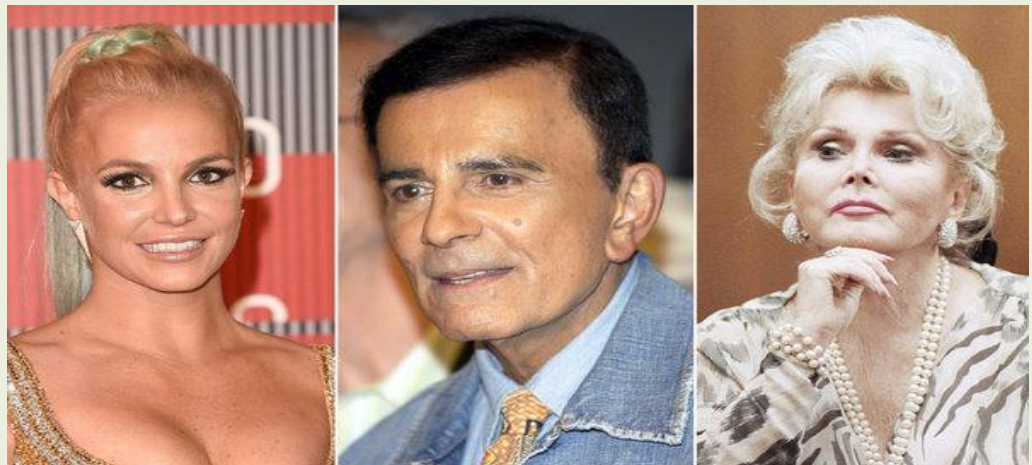
- Can't create EP docs →
Conservatorship
- Can't update EP docs →
3 Immediate Actions

What is Conservatorship?



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.



Judge decides:

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

Conservatorship Issues

1. Super expensive, permanent court intervention - annual accounting.
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 ...

#1

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.

EMSA #111 B
(Effective 1/1/2016)*

EMSA
EMERGENCY MEDICAL SERVICES
CALIFORNIA

Patient Last Name:	Date Form Prepared:
Patient First Name:	Patient Date of Birth:
Patient Middle Name:	Medical Record #: (optional)

A **CARDIOPULMONARY RESUSCITATION (CPR):** *If patient has no pulse and is not breathing. If patient is NOT in cardiopulmonary arrest, follow orders in Sections B and C.*

Check One

☐ 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.*

Check One

☐ **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 intubation, advanced airway interventions, mechanical ventilation, and cardioversion as indicated.

☐ **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.

☐ **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.

☐ Trial Period of Full Treatment.

☐ 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.*

Check One

☐ Long-term artificial nutrition, including feeding tubes. Additional Orders: _____

☐ 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 → Health Care Agent if named in Advance Directive:
Name: _____
Phone: _____

☐ Advance Directive not available

☐ No Advance Directive

Signature of Physician / Nurse Practitioner / Physician Assistant (Physician/NP/PA)
My signature below indicates to the best of my knowledge that these orders are consistent with the patient's medical condition and preferences.

Print Physician/NP/PA Name: _____ Physician/NP/PA Phone #: _____ Physician/PA License #, NP Cert. #: _____

Physician/NP/PA Signature: (required) _____ Date: _____

Signature of Patient or Legally Recognized Decisionmaker
I am aware that this form is voluntary. By signing this form, the legally recognized decisionmaker acknowledges that this request regarding resuscitative 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: _____ Relationship: (write self if patient) _____

Signature: (required) _____ Date: _____

Mailing Address (street/city/state/zip): _____ Phone Number: _____

FOR REGISTRY USE ONLY

SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED

*Form versions with effective dates of 1/1/2009, 4/1/2011 or 10/1/2014 are also valid.

#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 or 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?

IMPORTANT

A multi-generational family portrait featuring an older man with a mustache and glasses, wearing a brown hat and vest, seated in the center. He is surrounded by several women and children of various ages. The background is a light-colored wall with a circular decorative element. The entire image has a semi-transparent white overlay containing text.

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

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



Don't assume family & friends are prepared... share what you've learned today with others!

- ☐ Questions & Resources

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



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done differently.

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