



# The Ins and Outs of Estate Planning & Elder Law

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Alzheimer's LA - Early Memory Loss Conference  
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# Roadmap for Today:

- ✓ *Teach you something new*
- ✓ Step 1: Estate Planning 101 + *Fatal Flaws*
- ✓ 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...**

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.

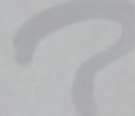
# Polling Questions

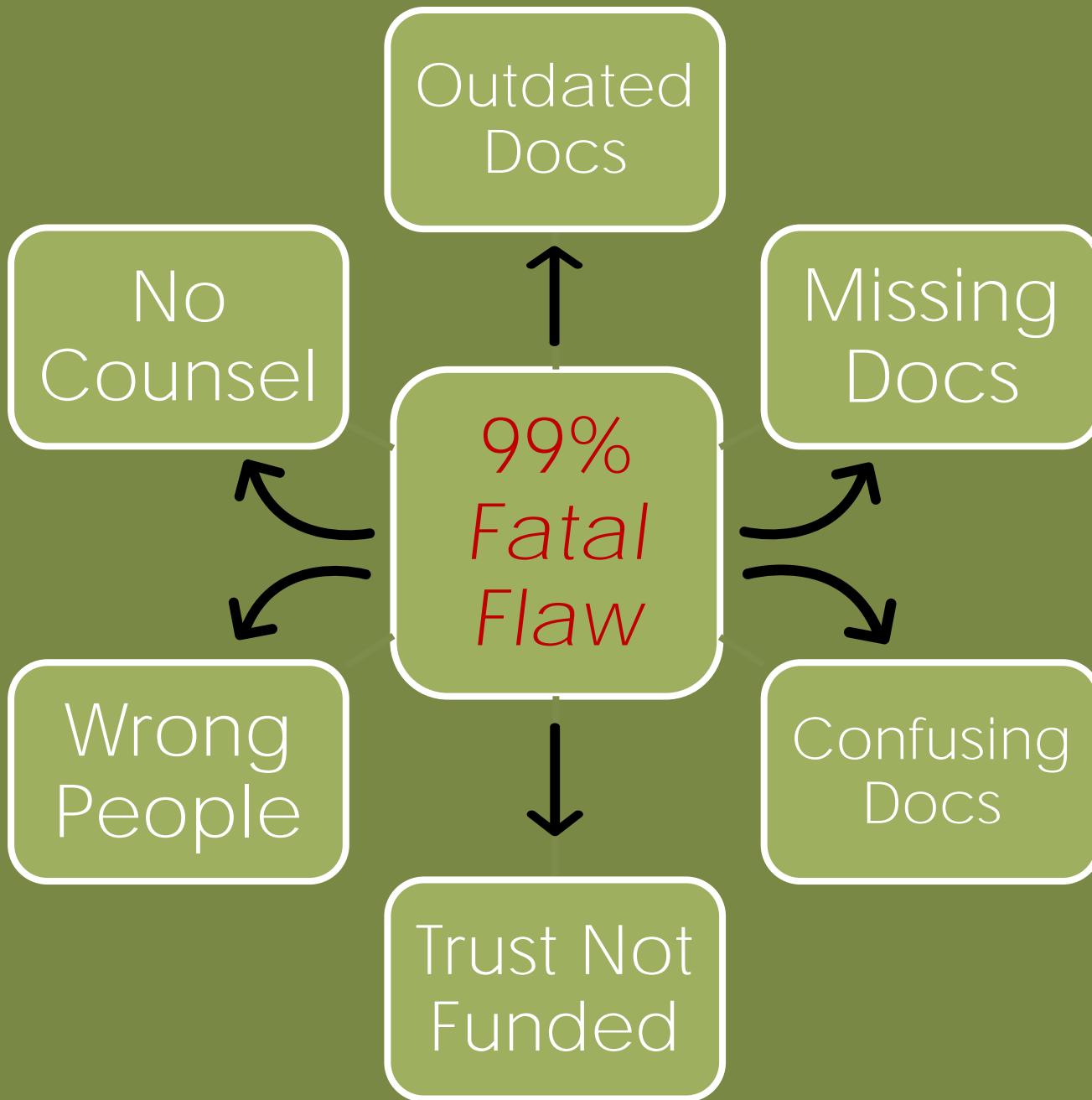
1. How many people have an estate plan?

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







# 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 life changes over time + you will need help along the way.



A blurred background image of a person lying in a hospital bed. The person's arm is visible, wearing a blue hospital gown. A clear plastic tube, likely for an IV or oxygen, is connected to their hand. The hand is holding a white medical device, possibly a pulse oximeter. The overall scene is dimly lit, with a soft focus on the medical equipment and the person's hand.

What if YOU

become  
incapacitated?

# *Fatal Flaws*

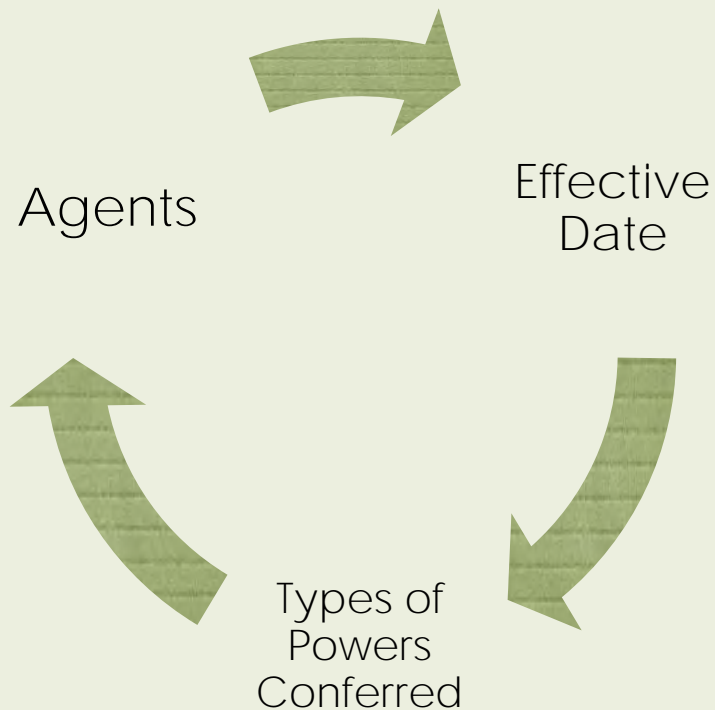
## Advance Health Care Directives



1. Wrong agents
2. Springing powers
3. No HIPAA/CMIA
4. Insufficient details
5. No POLST

# *Fatal Flaws*

## Durable Powers of Attorney



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1. Wrong/co-agents

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2. Springing powers

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3. No gifting/access to SP

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4. No access: Logins/PWs

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5. **Each financial institution!**

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# 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!





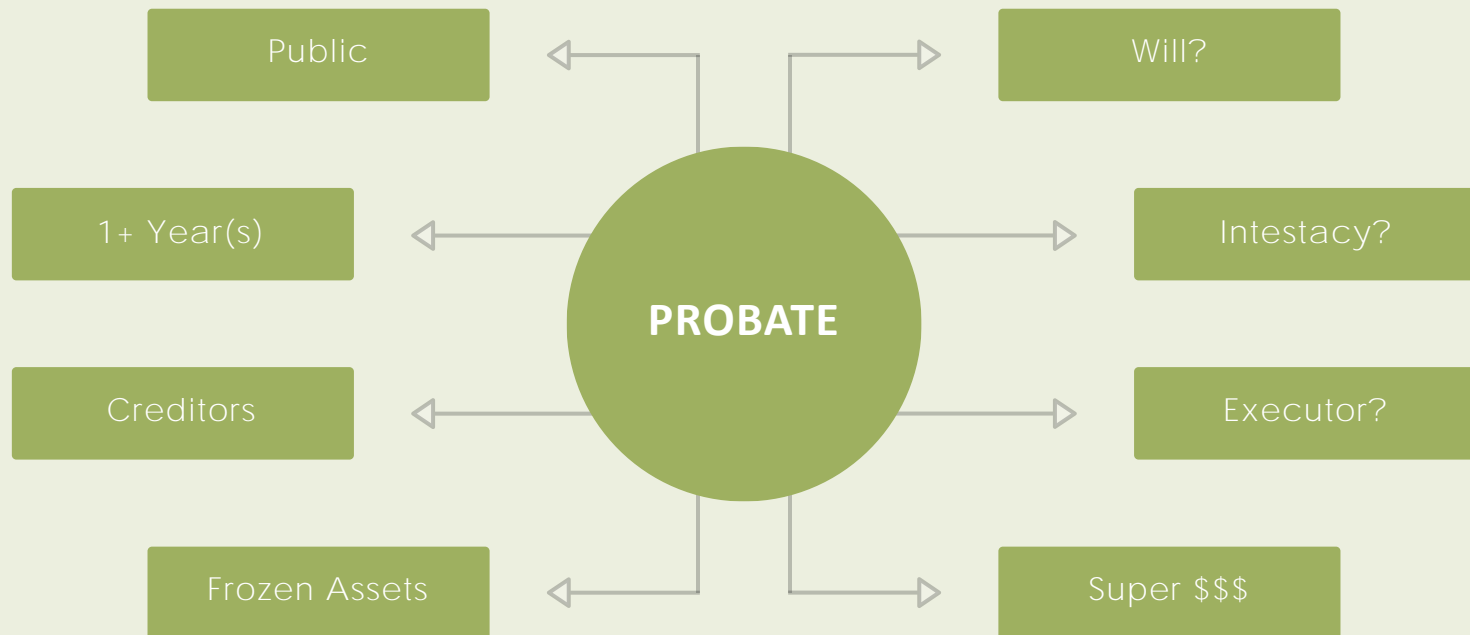
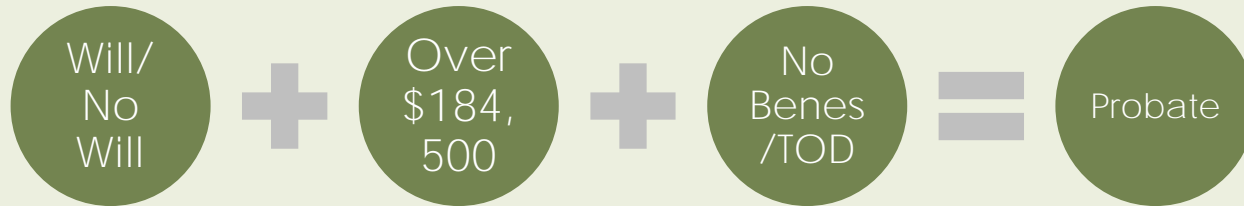
## Will

- ~ UNDER \$184,500
- ~ Accurate beneficiary designations
- ~ Given outright
- ~ No minor kids

## Trust

- ~ Real estate
- ~ Given over time
- ~ Kids/grandkids

# What is Probate?



# What Will Probate Cost?

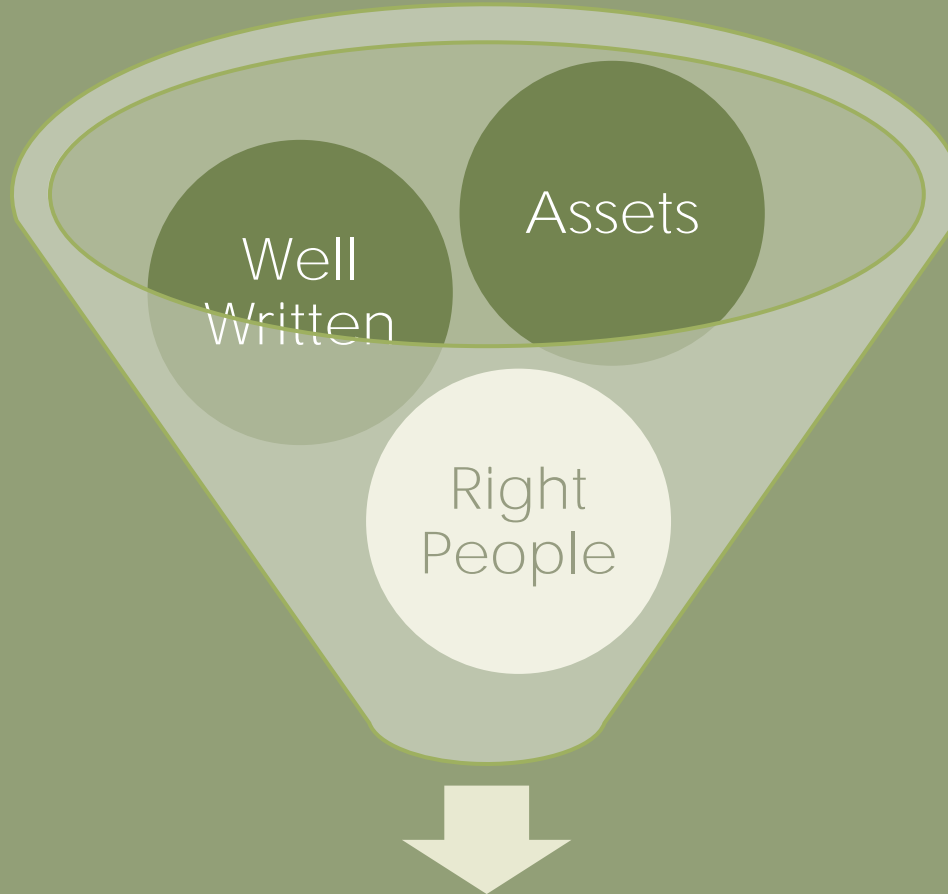
Probate is  
triggered  
at \$184,500

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!



Planned Giving

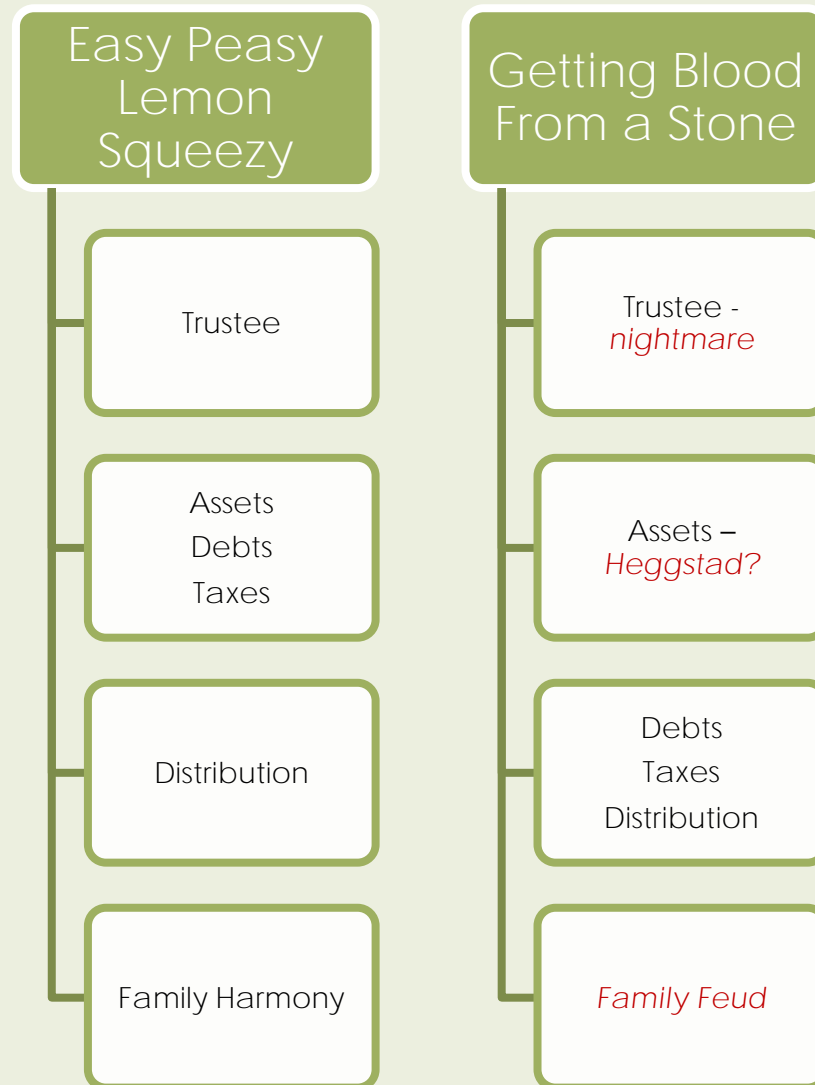
*Remember Alz LA  
in your Will or Trust!*

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sklappholz@alzla.org  
323.930.6208

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

**Control From the Grave**

# Trust Administration



# *Fatal Flaws*

## Trusts

1. Successor trustee issues
2. Funding incomplete
3. Documents are ambiguous
4. Financial abuse – who has access
5. Mandatory A/B split
6. No trust protector
7. 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**.

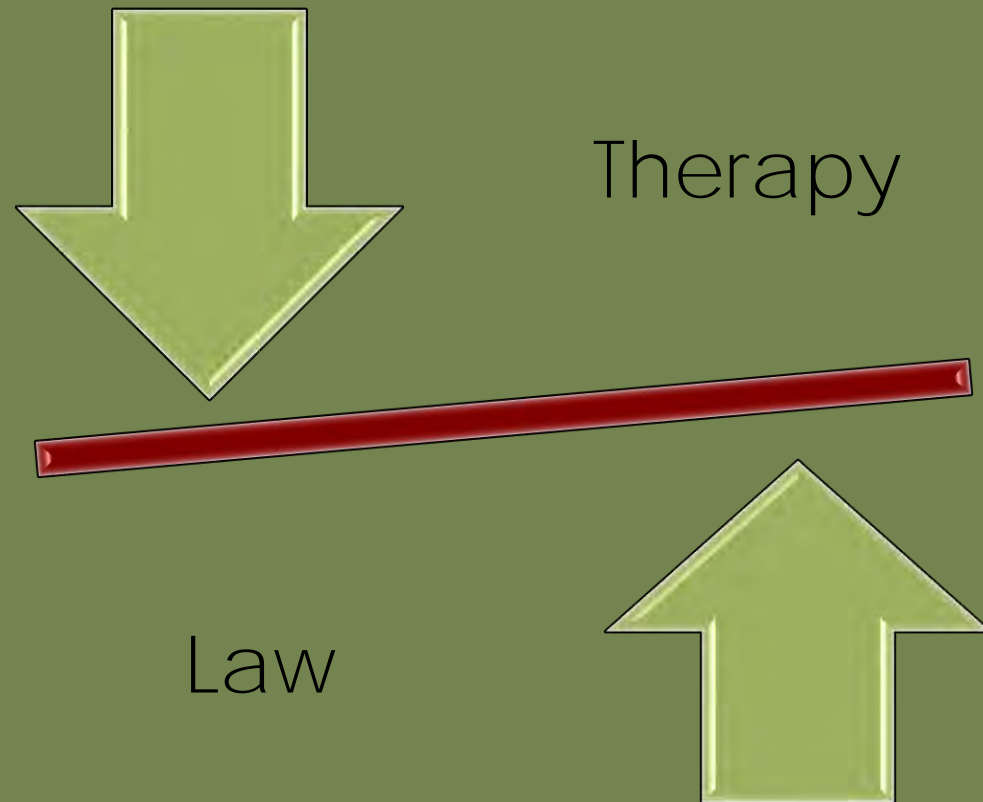
**Myth:** My spouse or kids will be able to handle things automatically

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 (as of July 2022 – applicant's assets - \$130,000 + spouse's assets \$148,620 or couple applicant - \$195,000. In 2024, there will be no asset limit.)

- BEWARE: Quality of care, Eligibility, 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!

**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

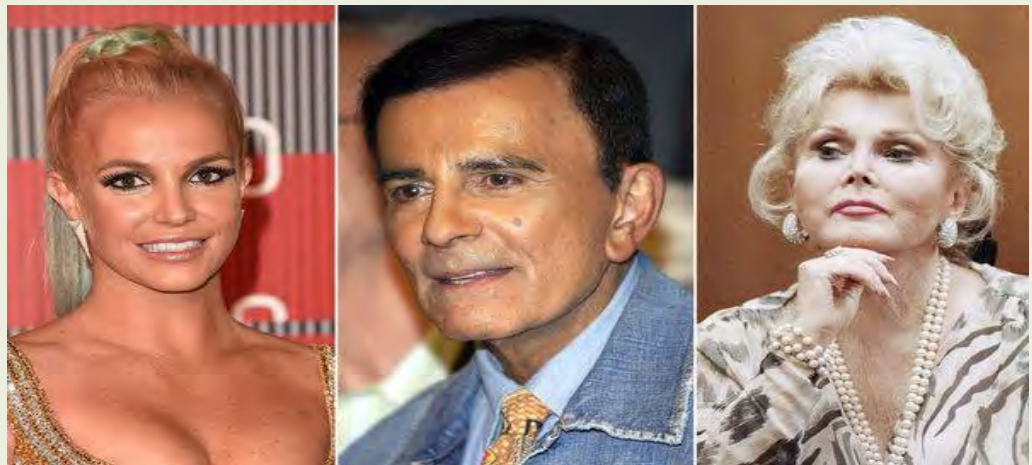


# What is Conservatorship?



## 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)\*

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 the form, the legally recognized decisionmaker acknowledges that this request 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: \_\_\_\_\_ 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 1/1/2008, 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





# #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 is savvy with Medi-Cal, 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





# Goldfarb & Luu

Estate Planning & Elder Law,  
*done differently.*

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