The Ins and Outs of Estate Planning & Elder Law

Presented by
Goldfarb & Luu P.C.
Estate Planning & Elder Law Attorneys
Alzheimer’s LA - Early Memory Loss Conference
April 15th, 2023
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…

- Health Directive
- Trust
- 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
99% Fatal Flaw

- Outdated Docs
- Missing Docs
- Confusing Docs
- Wrong People
- Trust Not Funded
- No 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 life changes over time + you will need help along the way.
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

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Fatal Flaws

Durable Powers of Attorney

1. Wrong/co-agents
2. Springing powers
3. No gifting/access to SP
4. No access: Logins/PWs
5. Each financial institution!
What happens after you pass away?

...and I'm sure I can trust you not to fight over my money when I'm gone.
Will
~ UNDER $184,500
  ~ Accurate beneficiary designations
  ~ Given outright
  ~ No minor kids

Trust
~ Real estate
~ Given over time
~ Kids/ grandkids
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>
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<tbody>
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</tbody>
</table>

Increases with the size of your estate

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Avoid Probate, Get A Trust!

Control From the Grave

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

Planned Giving
Remember Alz LA in your Will or Trust!

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Well Written

Right People

Assets

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 - Heggstad?
- Debts
  - Taxes
  - Distribution
- Family Feud

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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

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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>Caregiver is overwhelmed by the complex medical, financial and legal systems</th>
<th>Elderly person is difficult and/or there is family drama</th>
<th>Elderly person doesn't have capacity</th>
<th>Elderly person is running out of money</th>
</tr>
</thead>
</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 (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)

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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!

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


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.

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)

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 treatment, IV antibiotics, and IV fluids as indicated. Do not intubate. May use non-invasive positive airway pressure. Generally avoid invasive care.
☐ 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 invasive 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.

ARTIFICIALLY ADMINISTERED NUTRITION:

☐ Long-term artificial nutrition, including feeding tubes.
☐ Trial period of artificial nutrition, including feeding tubes.
☐ No artificial means of nutrition, including feeding tubes.

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):

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

Signature of Patient or Legally Recognized Decisionmaker:

I am aware that this form authorizes bringing the patient to the hospital and that the patient does not wish to be resuscitated. I understand that this order will be followed until the patient either renews the order or revokes the order (if a legal representative) or the patient’s condition changes (if a patient). This order is intended to be temporary, and the patient’s decision may change.

Print Name: ______________________
Signature: ______________________
Mailing Address (Street/City/State/ZIP): ______________________
Phone Number: ______________________

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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?
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
- 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

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Estate Planning & Elder Law, done differently.