



# **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**  
**June 1st, 2024**

THANK YOU

**Alzheimer's LA!**



# 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

A group of diverse people, including a woman with curly hair in a blue shirt and a man in a light blue shirt, are laughing and smiling outdoors. The background is a soft-focus view of trees and foliage, suggesting a park or garden setting. The overall mood is joyful and positive.

**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**

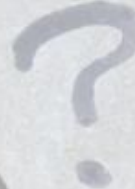
**Will**

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



# 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 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?**

# ***Fatal Flaws***

## **Advance Health Care Directives**



---

**1. Wrong agents**

---

---

**2. Springing powers**

---

---

**3. No HIPAA/CMIA**

---

---

**4. Insufficient details**

---


---

**5. No POLST**

---



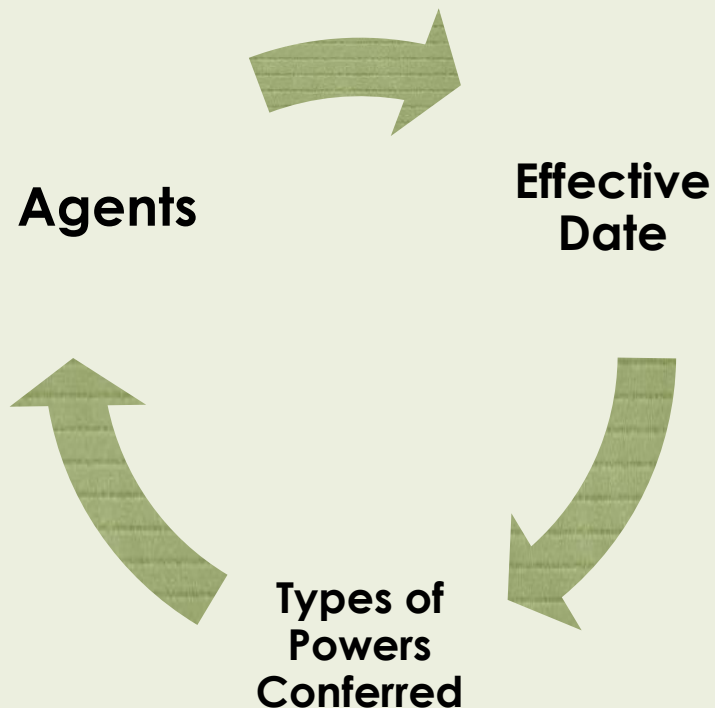
# Create a POLST

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY		
 <b>Physician Orders for Life-Sustaining Treatment (POLST)</b> <small>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.</small>		
Patient Last Name:		Date Form Prepared:
Patient First Name:		Patient Date of Birth:
Patient Middle Name:		Medical Record #: (optional)
<b>A</b> Check One	<b>CARDIOPULMONARY RESUSCITATION (CPR):</b> <i>If patient has no pulse and is not breathing. If patient is NOT in cardiopulmonary arrest, follow orders in Sections B and C.</i> <input type="checkbox"/> Attempt Resuscitation/CPR (Selecting CPR in Section A <u>requires</u> selecting Full Treatment in Section B) <input checked="" type="checkbox"/> Do Not Attempt Resuscitation/DNR (Allow Natural Death)	
<b>B</b> Check One	<b>MEDICAL INTERVENTIONS:</b> <i>If patient is found with a pulse and/or is breathing.</i> <input type="checkbox"/> <b>Full Treatment</b> – 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. <input type="checkbox"/> <i>Trial Period of Full Treatment.</i> <input type="checkbox"/> <b>Selective Treatment</b> – 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. <input type="checkbox"/> <i>Request transfer to hospital only if comfort needs cannot be met in current location.</i> <input type="checkbox"/> <b>Comfort-Focused Treatment</b> – 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. <i>Request transfer to hospital only if comfort needs cannot be met in current location.</i> Additional Orders _____	
<b>C</b> Check One	<b>ARTIFICIALLY ADMINISTERED NUTRITION:</b> <i>Offer food by mouth if feasible and desired.</i> <input type="checkbox"/> Long-term artificial nutrition, including feeding tubes. Additional Orders: _____ <input type="checkbox"/> Trial period of artificial nutrition, including feeding tubes. _____ <input type="checkbox"/> No artificial means of nutrition, including feeding tubes. _____	
<b>D</b>	<b>INFORMATION AND SIGNATURES:</b> Discussed with: <input type="checkbox"/> Patient (Patient Has Capacity) <input type="checkbox"/> Legally Recognized Decisionmaker <input type="checkbox"/> Advance Directive dated _____, available and reviewed → Health Care Agent if named in Advance Directive: <input type="checkbox"/> Advance Directive not available Name: _____ <input type="checkbox"/> No Advance Directive Phone: _____ <b>Signature of Physician / Nurse Practitioner / Physician Assistant (Physician/NP/PA)</b> <small>My signature below indicates to the best of my knowledge that these orders are consistent with the patient's medical condition and preferences.</small> Print Physician/NP/PA Name: _____ Physician/NP/PA Phone #: _____ Physician/PA License #, NP Cert. #: _____ Physician/NP/PA Signature: (required) _____ Date: _____ <b>Signature of Patient or Legally Recognized Decisionmaker</b> <small>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.</small> Print Name: _____ Relationship: (write self if patient) _____ Signature: (required) _____ Date: _____ Mailing Address (street/city/state/zip): _____ Phone Number: _____ <b>FOR REGISTRY USE ONLY</b>	
<b>SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED</b>		

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

# ***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.

of course!







## Will

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

## Trust

- ~ Real estate
- ~ Given over time
- ~ Kids/grandkids
- ~ **Special needs**

# 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**

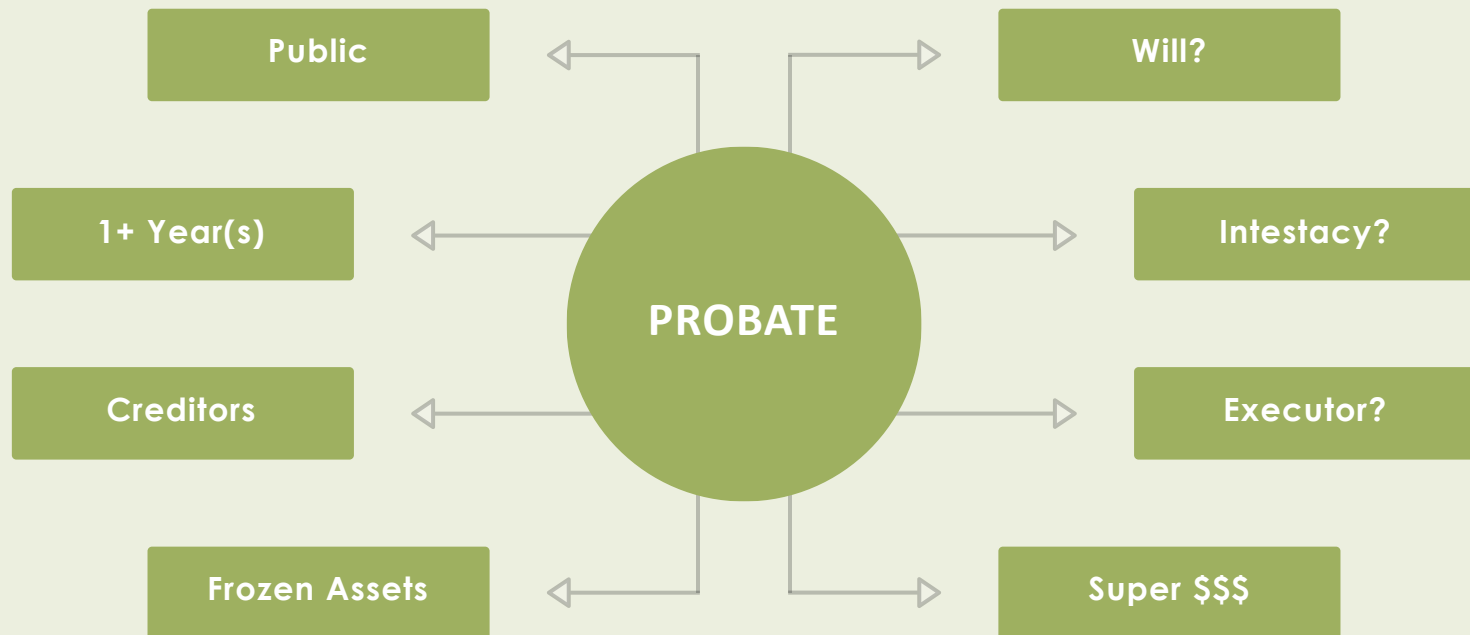
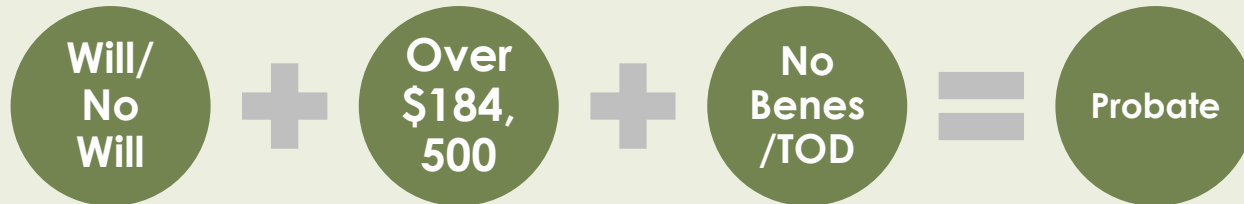
- DPOA immediate or springing? Right person?
- Who has DPOA, agent, financial institutions?
- Beneficiary: None or person, the trust? Follow grantor's intent?

## ✓ **Assets in MY NAME with SPOUSE or ADULT CHILD**

- Grantor's intent?
- Enough assets to administer estate?
- Family harmony?

**IMPORTANT**

# What is Probate?





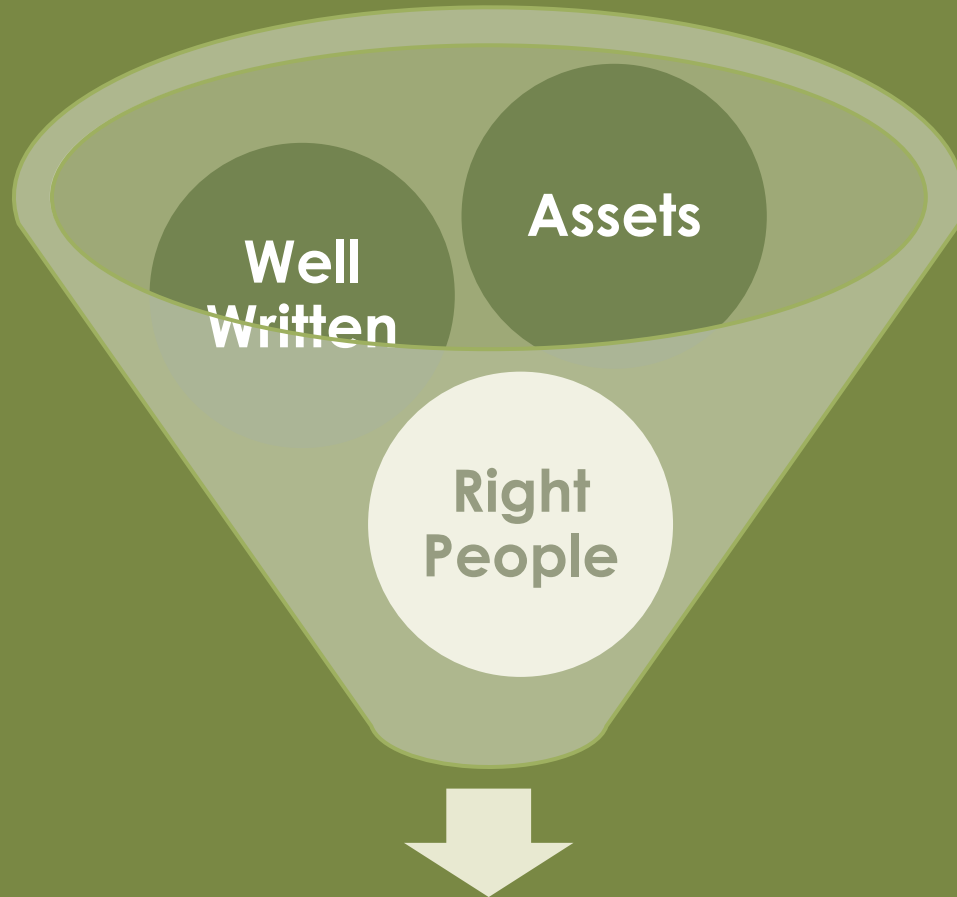
# What Will Probate Cost?

**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!*

Steven Klappholz  
sklappholz@alzla.org  
323.930.6208

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

**Control From the Grave**

# ***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
-



# Trust Administration

## Hire a Lawyer to Help!



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*

# 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:**

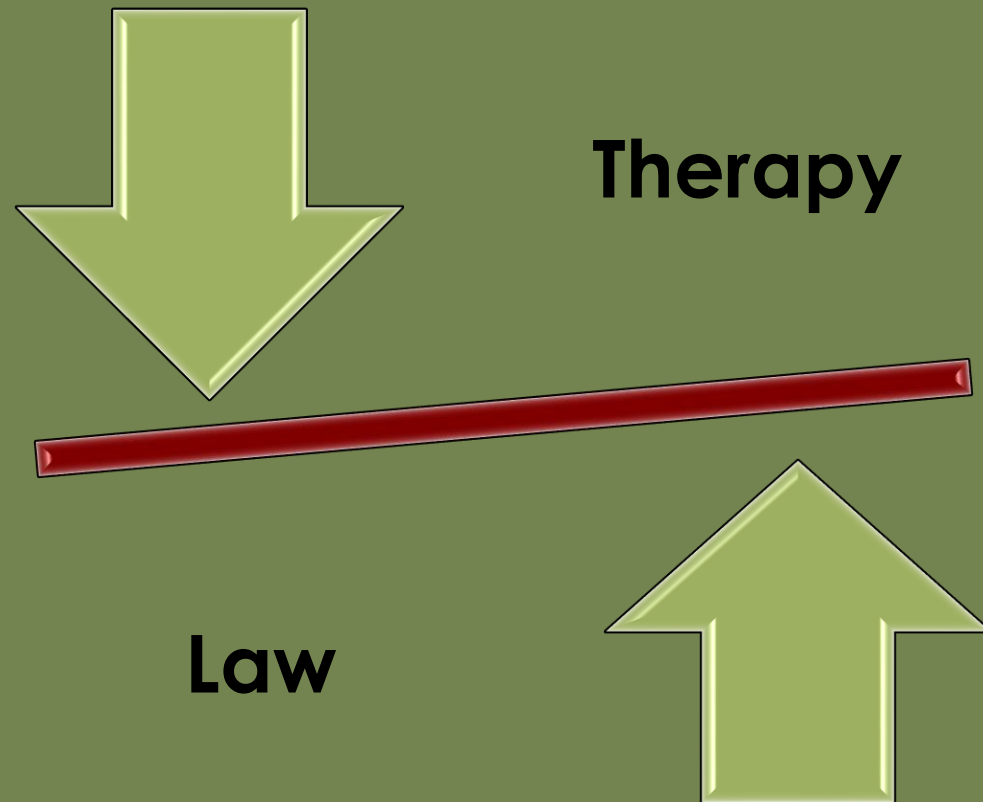
My spouse or kids will be able to handle things automatically



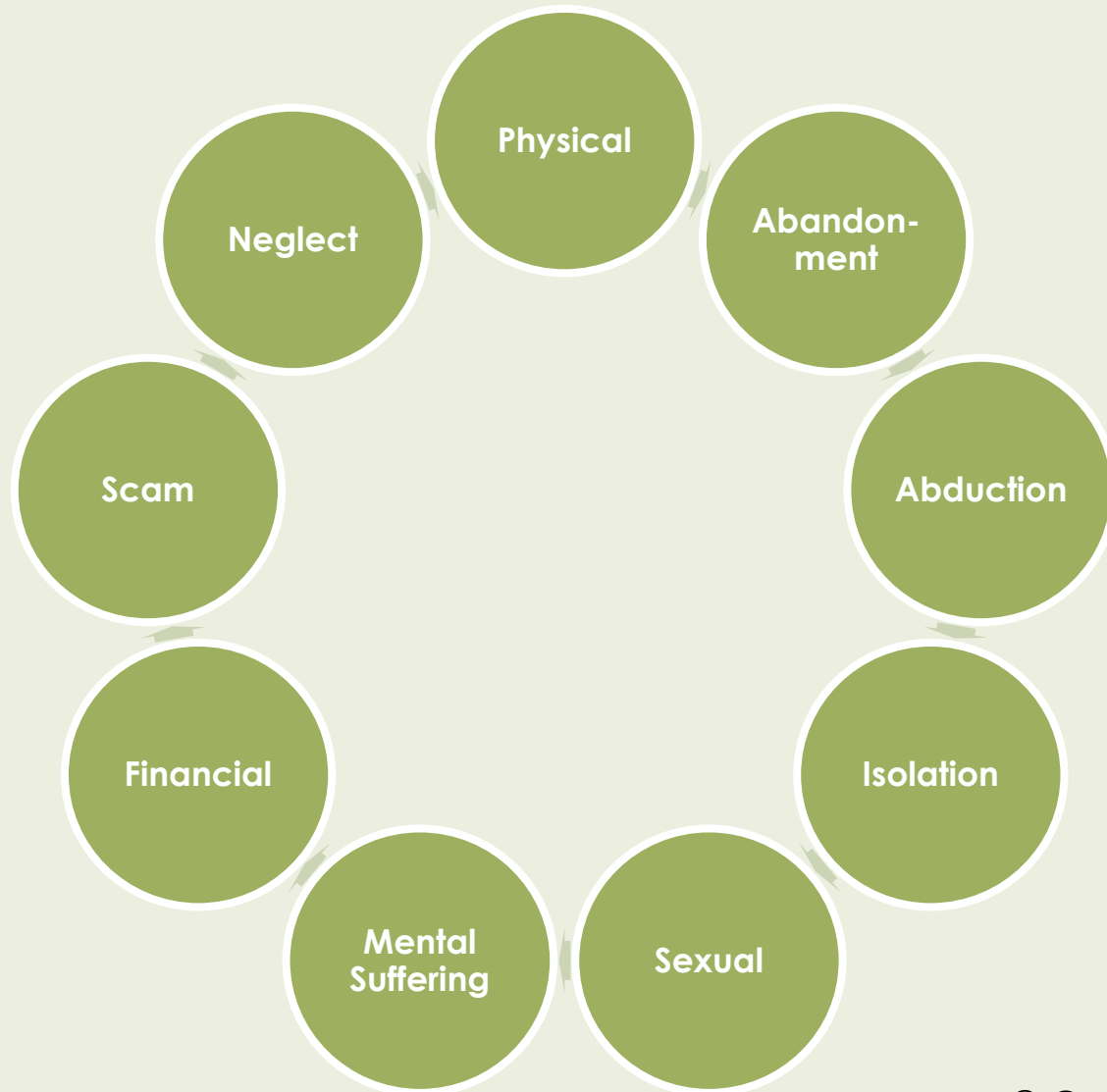
**Step 2:**  
**This is for your loved one**

Elder Law,  
doing the best you can

# Elder Law begins when people start needing *extra* help...



# 9 Main Types of Elder Abuse



# Common Issues:

## Elder Law attorneys can help!

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

Person who needs care is difficult and/or there is **family drama**

Person who needs care doesn't have **capacity**

Person who needs care is running out of **money**

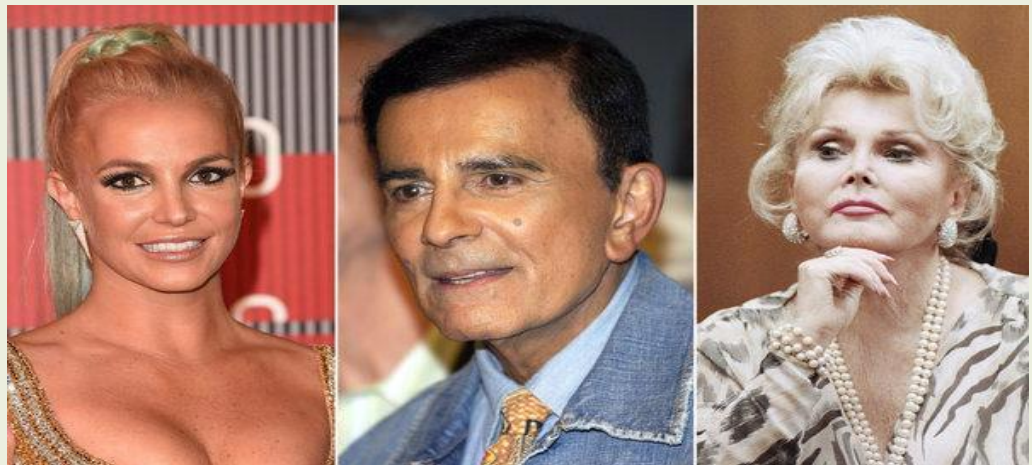


# What is Conservatorship?



## 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 ...

# 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 Jan 2024**, eligibility is based solely on income not assets.)

- **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)

# **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**





For those who still  
have **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 those who are  
unable to make  
decisions  
(incapacitated)

# Estate Planning

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

#1

# Create a POLST

HIPAA PERMITS DISCLOSURE OF POLST TO OTHER HEALTH CARE PROVIDERS AS NECESSARY		
 <b>Physician Orders for Life-Sustaining Treatment (POLST)</b> First follow these orders, then contact <b>Physician/NP/PA</b> . 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.		
Patient Last Name:		Date Form Prepared:
Patient First Name:		Patient Date of Birth:
Patient Middle Name:		Medical Record #: (optional)
<b>A</b> <b>CARDIOPULMONARY RESUSCITATION (CPR):</b> <i>If patient has no pulse and is not breathing. If patient is NOT in cardiopulmonary arrest, follow orders in Sections B and C.</i> Check One <input type="checkbox"/> Attempt Resuscitation/CPR (Selecting CPR in Section A <u>requires</u> selecting Full Treatment in Section B) <input checked="" type="checkbox"/> Do Not Attempt Resuscitation/DNR (Allow Natural Death)		
<b>B</b> <b>MEDICAL INTERVENTIONS:</b> <i>If patient is found with a pulse and/or is breathing.</i> Check One <input type="checkbox"/> <b>Full Treatment</b> – 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. <input type="checkbox"/> <b>Trial Period of Full Treatment.</b> <input type="checkbox"/> <b>Selective Treatment</b> – 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. <input type="checkbox"/> <b>Request transfer to hospital only if comfort needs cannot be met in current location.</b> <input type="checkbox"/> <b>Comfort-Focused Treatment</b> – 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. <b>Request transfer to hospital only if comfort needs cannot be met in current location.</b> Additional Orders: _____		
<b>C</b> <b>ARTIFICIALLY ADMINISTERED NUTRITION:</b> <i>Offer food by mouth if feasible and desired.</i> Check One <input type="checkbox"/> Long-term artificial nutrition, including feeding tubes. Additional Orders: _____ <input type="checkbox"/> Trial period of artificial nutrition, including feeding tubes. _____ <input type="checkbox"/> No artificial means of nutrition, including feeding tubes. _____		
<b>D</b> <b>INFORMATION AND SIGNATURES:</b> Discussed with: <input type="checkbox"/> Patient (Patient Has Capacity) <input type="checkbox"/> Legally Recognized Decisionmaker <input type="checkbox"/> Advance Directive dated _____, available and reviewed → Health Care Agent if named in Advance Directive: <input type="checkbox"/> Advance Directive not available Name: _____ <input type="checkbox"/> No Advance Directive Phone: _____ <b>Signature of Physician / Nurse Practitioner / Physician Assistant (Physician/NP/PA)</b> 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: _____ <b>Signature of Patient or Legally Recognized Decisionmaker</b> 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: _____ <div style="text-align: center;"><b>FOR REGISTRY USE ONLY</b></div>		
<b>SEND FORM WITH PATIENT WHENEVER TRANSFERRED OR DISCHARGED</b> <small>*Form versions with effective dates of 1/1/2009, 4/1/2011 or 10/1/2014 are also valid.</small>		



# #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 is covered with 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?

# 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

# 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



# Remember, Court Sucks!



# 4 Takeaways:

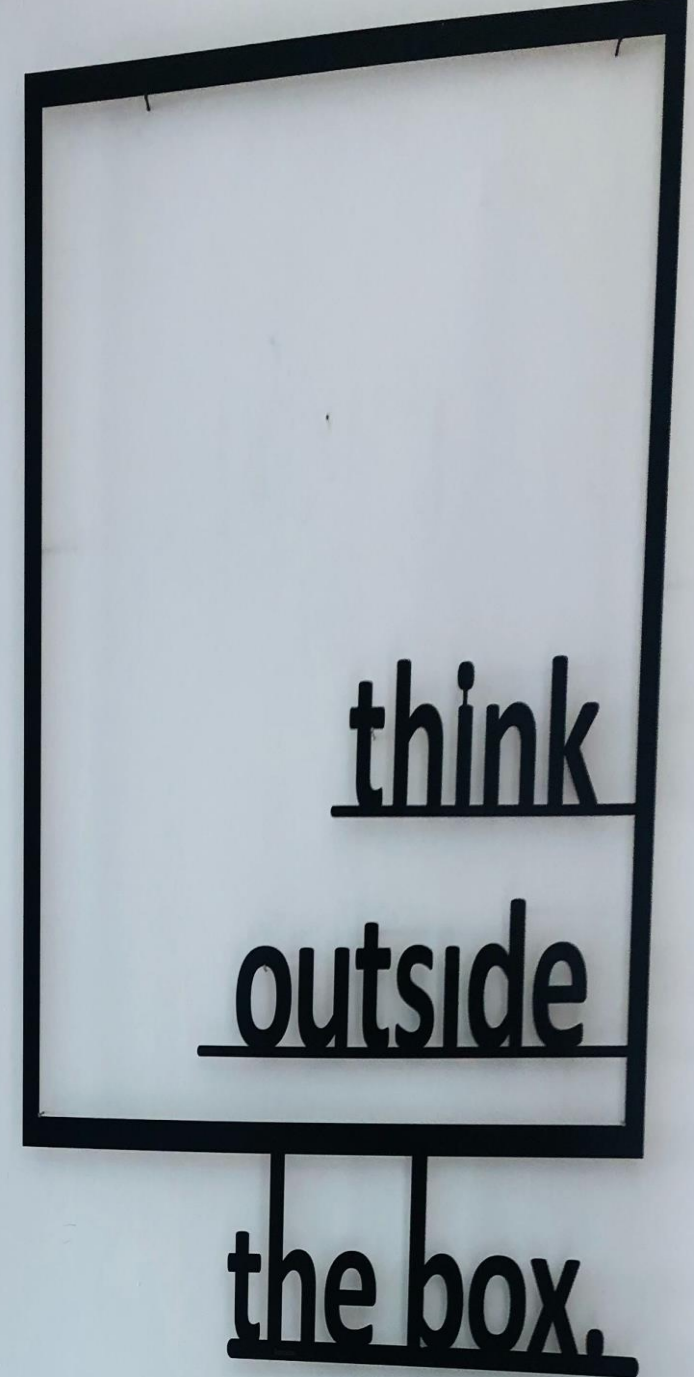
1. You REALLY need some level of estate planning. SH\*T happens! **Don't wait** till it's too late.
2. Family members on SSI/Medi-Cal need **Special Need Trust** provisions to protect benefits / inheritance.
3. Court sucks **99%** of the estate plans we review have a **fatal flaw**. Many families have a false sense of security.
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!**



# 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.*

800.489.1984

GoldfarbLuu.com



rebecca@  
goldfarbluu.com