The Ins and Outs of Estate Planning & Elder Law

Presented by
Goldfarb & Luu P.C.
Estate Planning & Elder Law Attorneys
UCLA Memory Support Group
November 15th, 2023

UCLA Memory Support Group

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

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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

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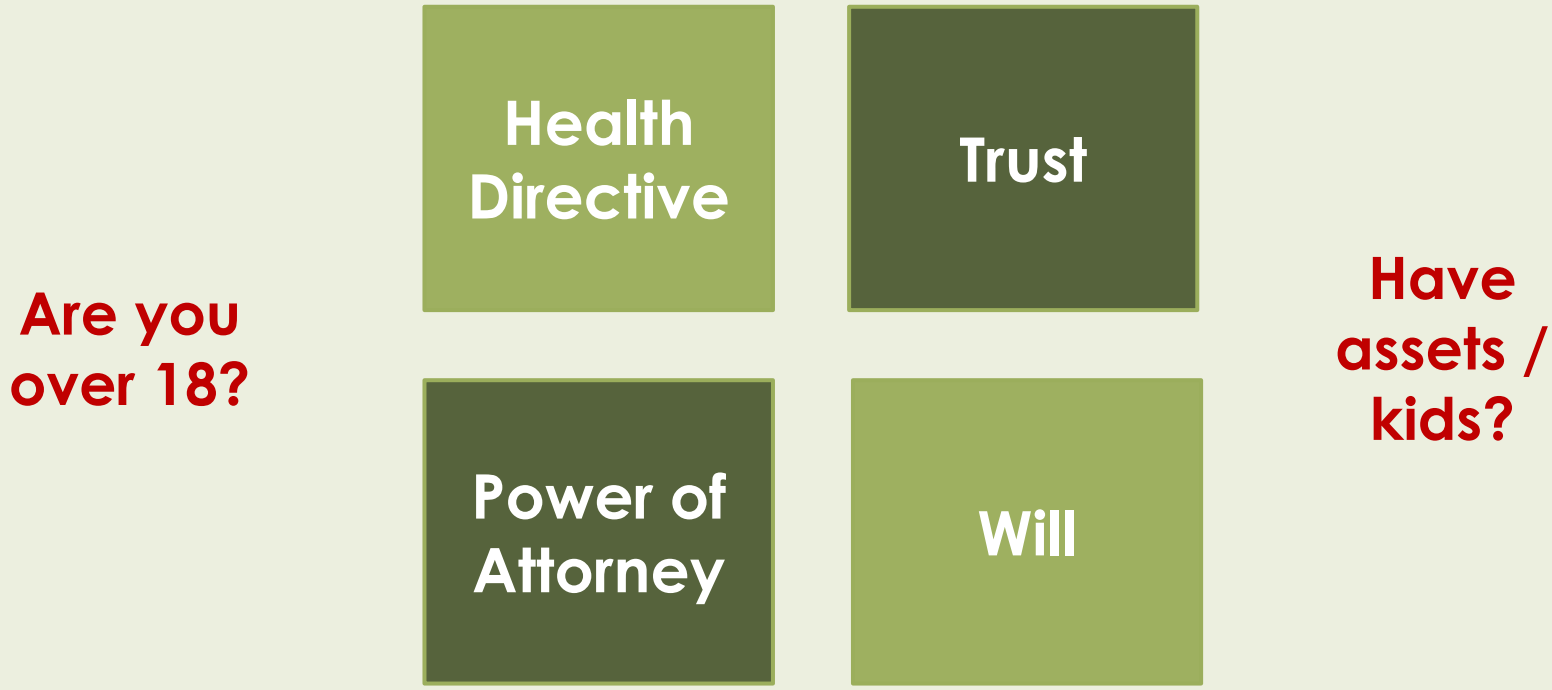
Estate Planning 101

Ways YOU Should Plan
So Your Family Doesn't HAVE TO…



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

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Polling Questions

1. How many people have an estate plan?

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

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The Problem

1) People don't have a plan when needed

2) The plan doesn't work when needed

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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.

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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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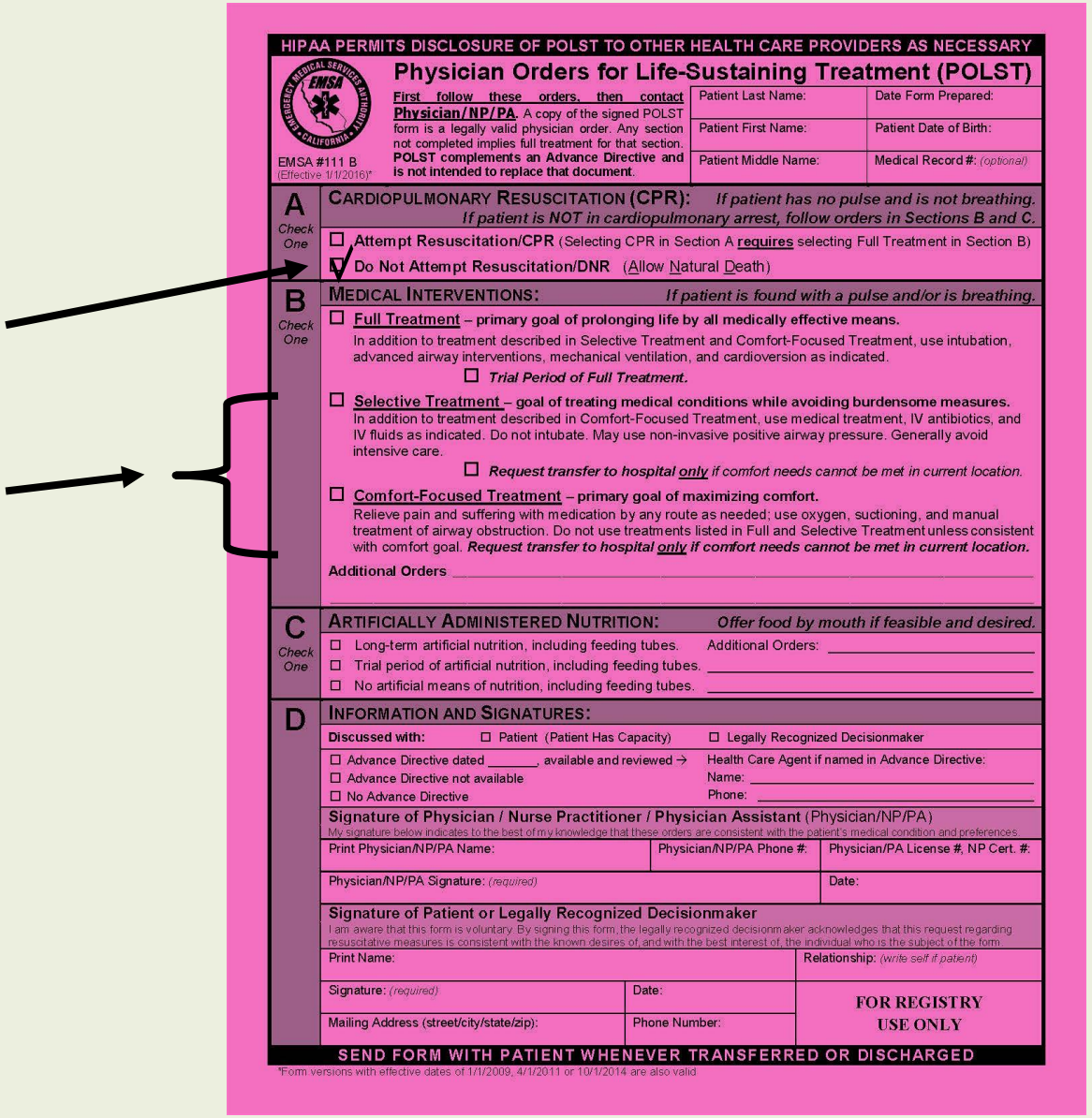
Create a POLST



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

Physician Orders for Life-Sustaining Treatment (POLST)

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

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.**

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

A *Check One*

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.*

☐ **Attempt Resuscitation/CPR** (Selecting CPR in Section A **requires** selecting Full Treatment in Section B)

☑ **Do Not Attempt Resuscitation/DNR** (Allow Natural Death)

B *Check One*

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 intubation, 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 *Check One*

ARTIFICIALLY ADMINISTERED NUTRITION: *Offer food by mouth if feasible and desired.*

☐ 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:
☐ Advance Directive not available Name: _____
☐ No Advance Directive Phone: _____

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:	FOR REGISTRY USE ONLY
Mailing Address (street/city/state/zip):	Phone Number:	

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.

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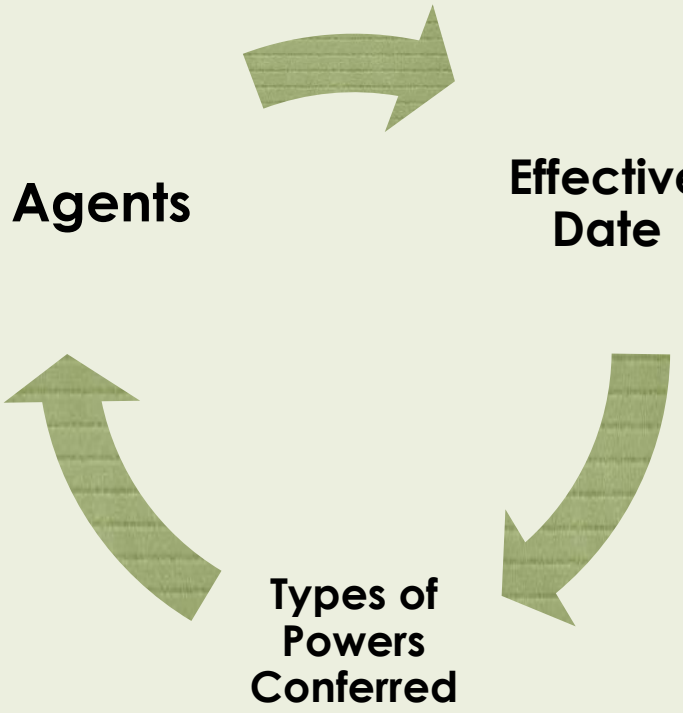
Fatal Flaws

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!

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What happens after you pass away?

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Will

~ UNDER $184,500

~ Accurate beneficiary designations

~ Given outright

~ No minor kids

Trust

~ Real estate

~ Given over time

~ Kids/grandkids

~ Special needs

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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?

IMPORTANT

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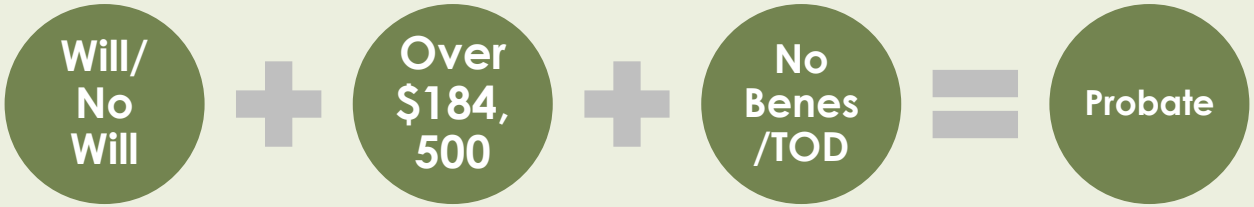
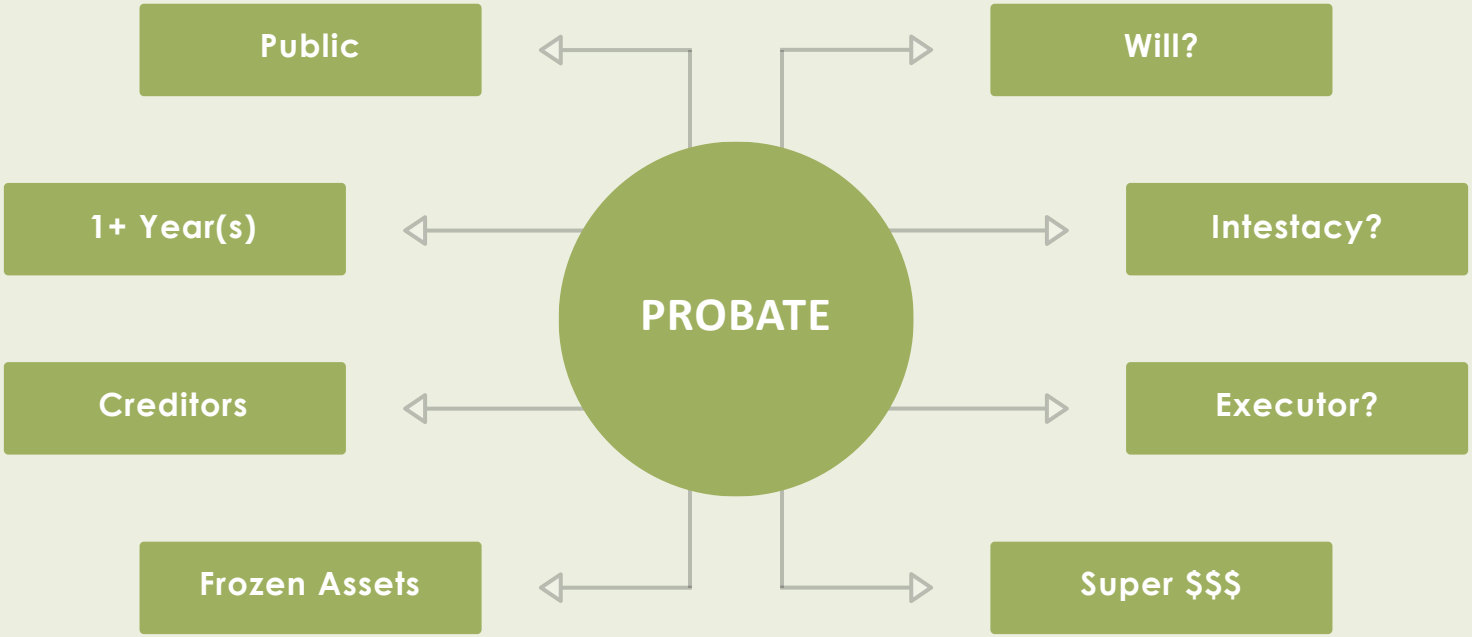
What is Probate?





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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

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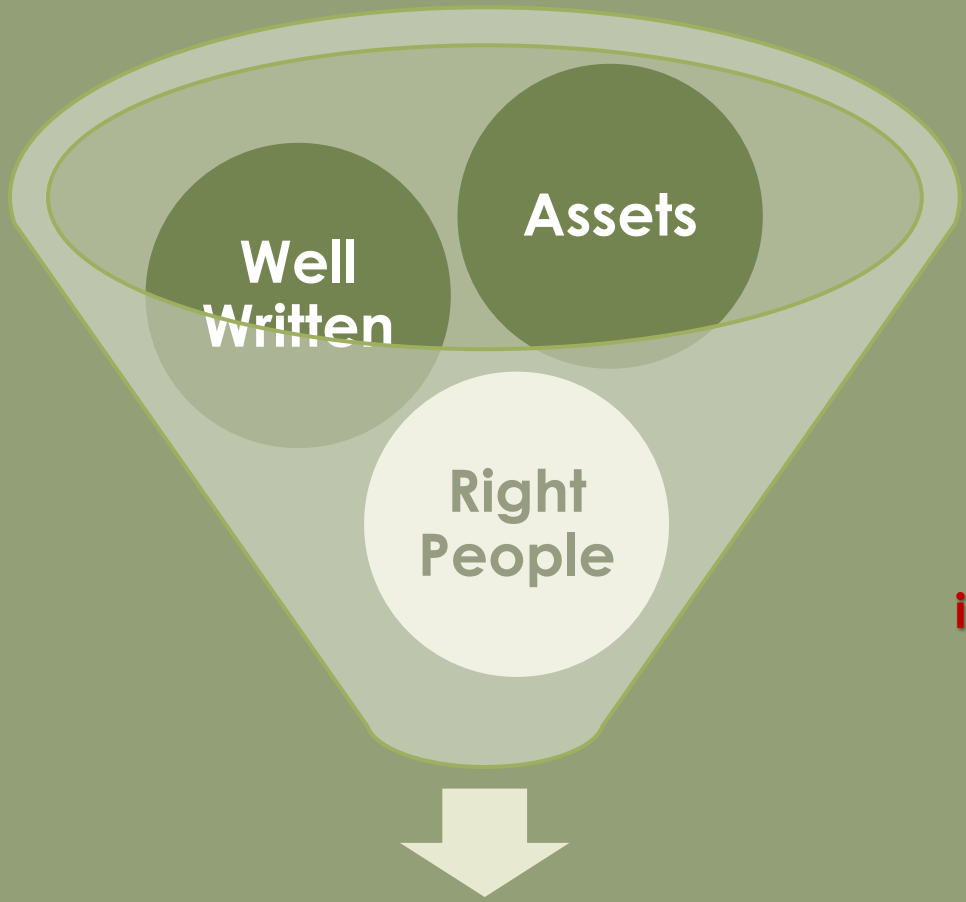
Avoid Probate, Get A Trust!

Planned Giving

Remember **UCLA Memory Support Group** *in your Will or Trust!*



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

Control From the Grave

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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

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Trust Administration

Hire a Lawyer to Help!

Easy Peasy Lemon Squeezy	Getting Blood From a Stone
Trustee	Trustee - ***nightmare***
Assets Debts Taxes	Assets – ***Heggstad?***
Distribution	Debts Taxes Distribution
Family Harmony	***Family Feud***

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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!

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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

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Step 2:
This is for your loved one

Elder Law,
doing the best you can

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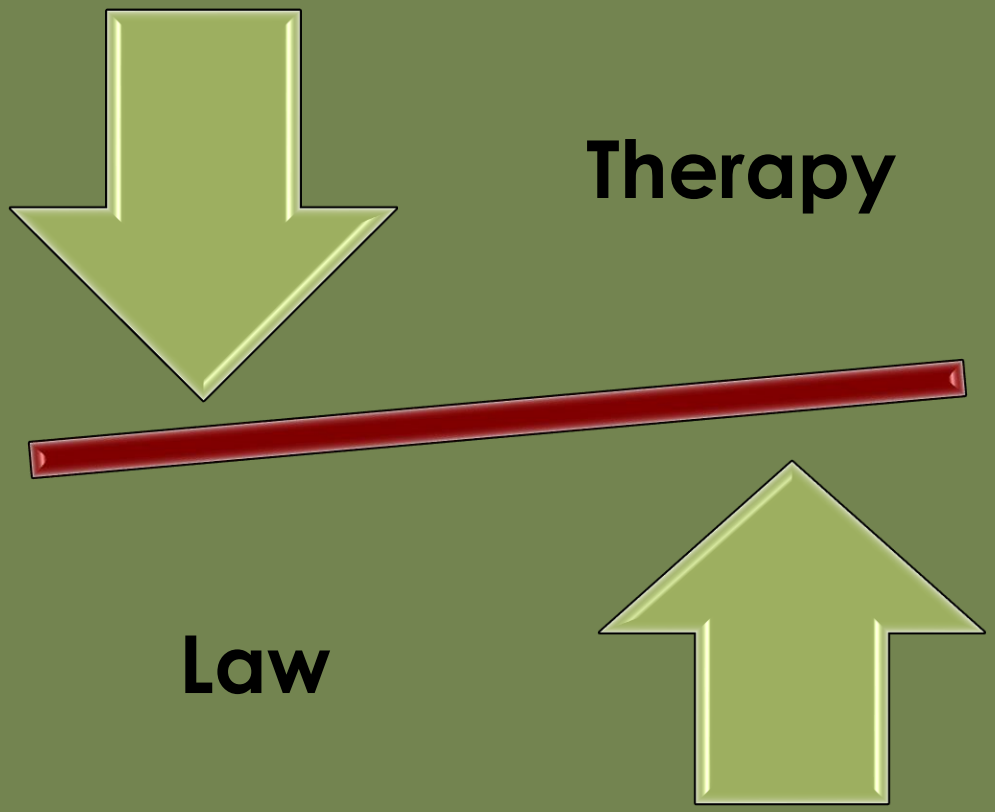
Elder Law begins when people start needing *extra* help…



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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

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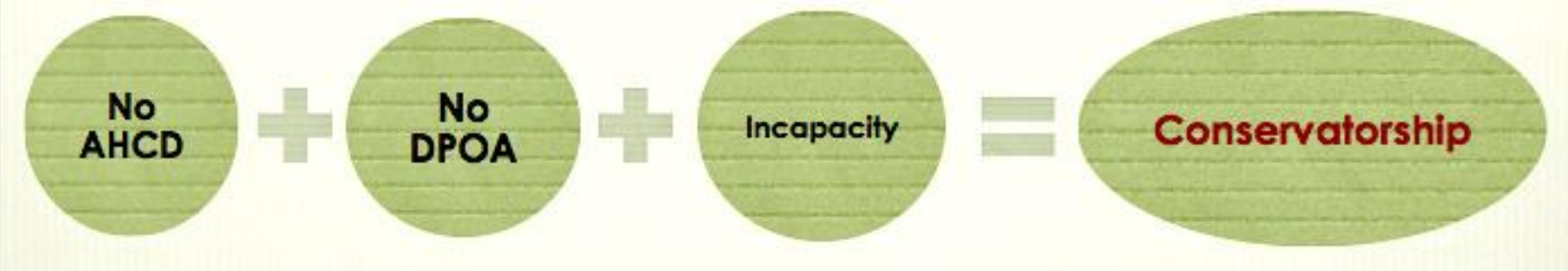
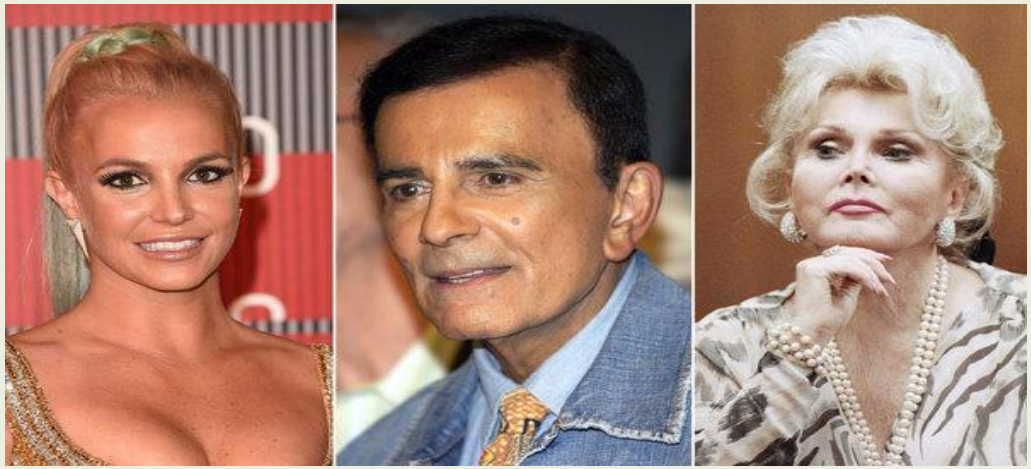
What is Conservatorship?



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.

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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?

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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

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)

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PROBLEM:
Grey Area in the Law

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

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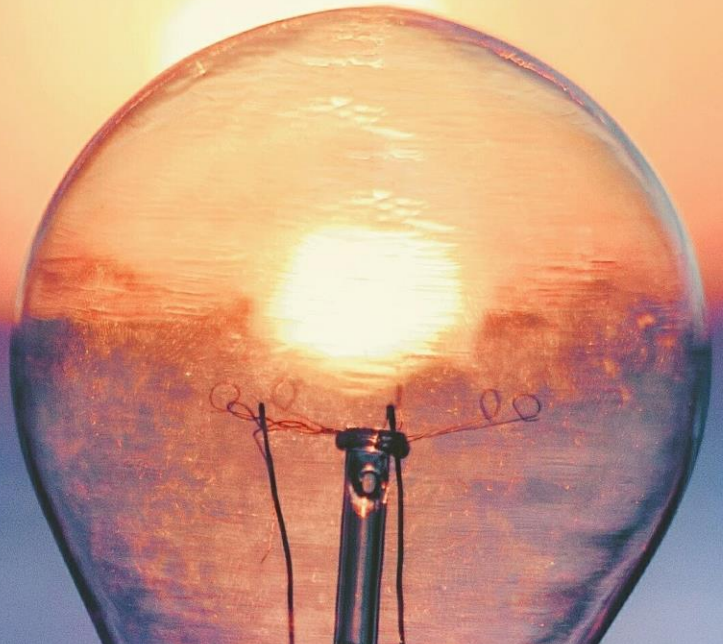
SOLUTION

An outside-of-the-box problem solving elder law firm



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For those who still have capacity to make legal, financial and medical decisions

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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 UCLA Memory Support Group!

Myth: Their situation is simple so I can use online DIY options.

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For those who are unable to make decisions (incapacitated)

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Estate Planning

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

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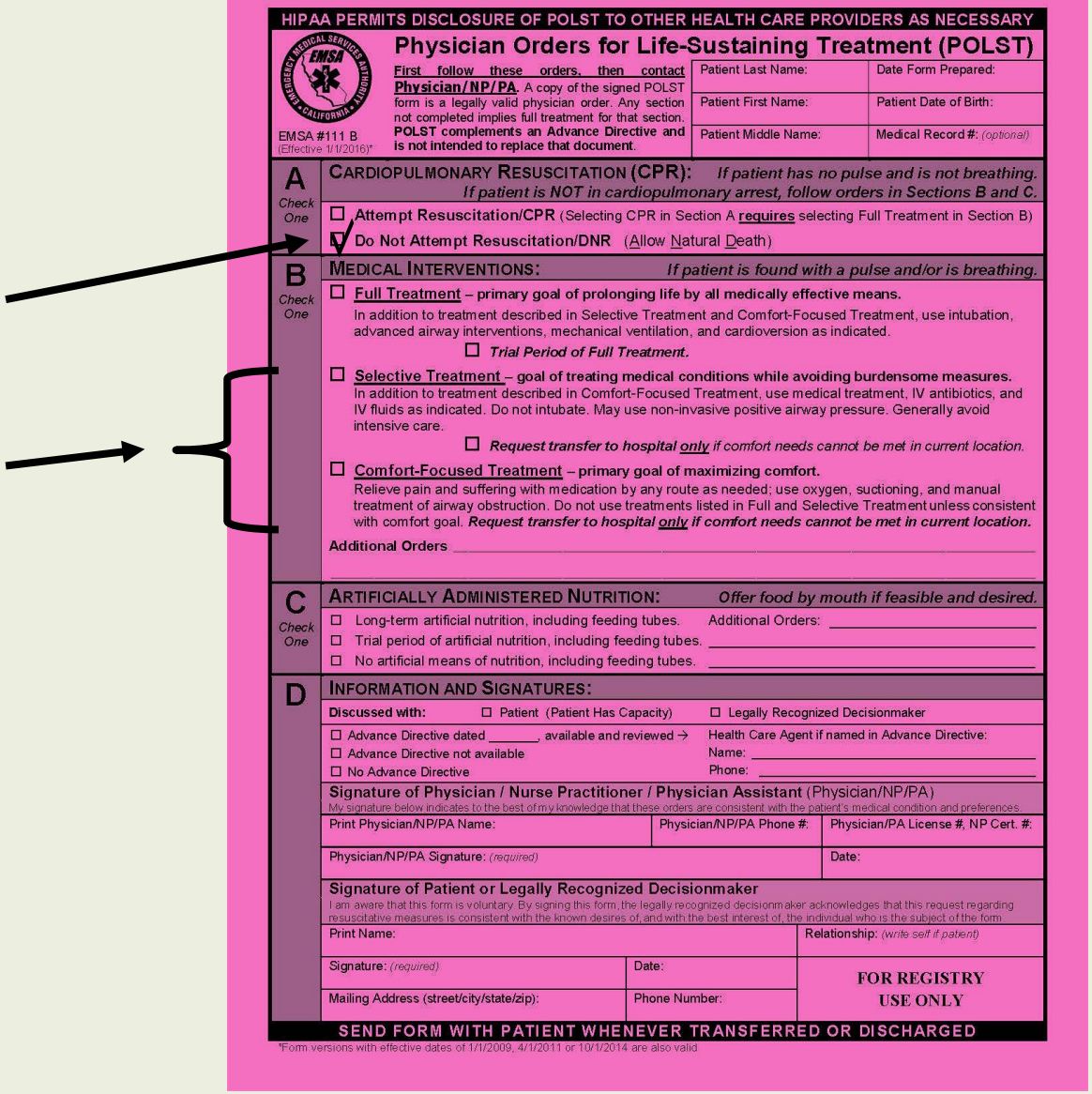
#1 Create a POLST



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Additional Orders _____

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Additional Orders: _____

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

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

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:	FOR REGISTRY USE ONLY
Mailing Address (street/city/state/zip):	Phone Number:	

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.

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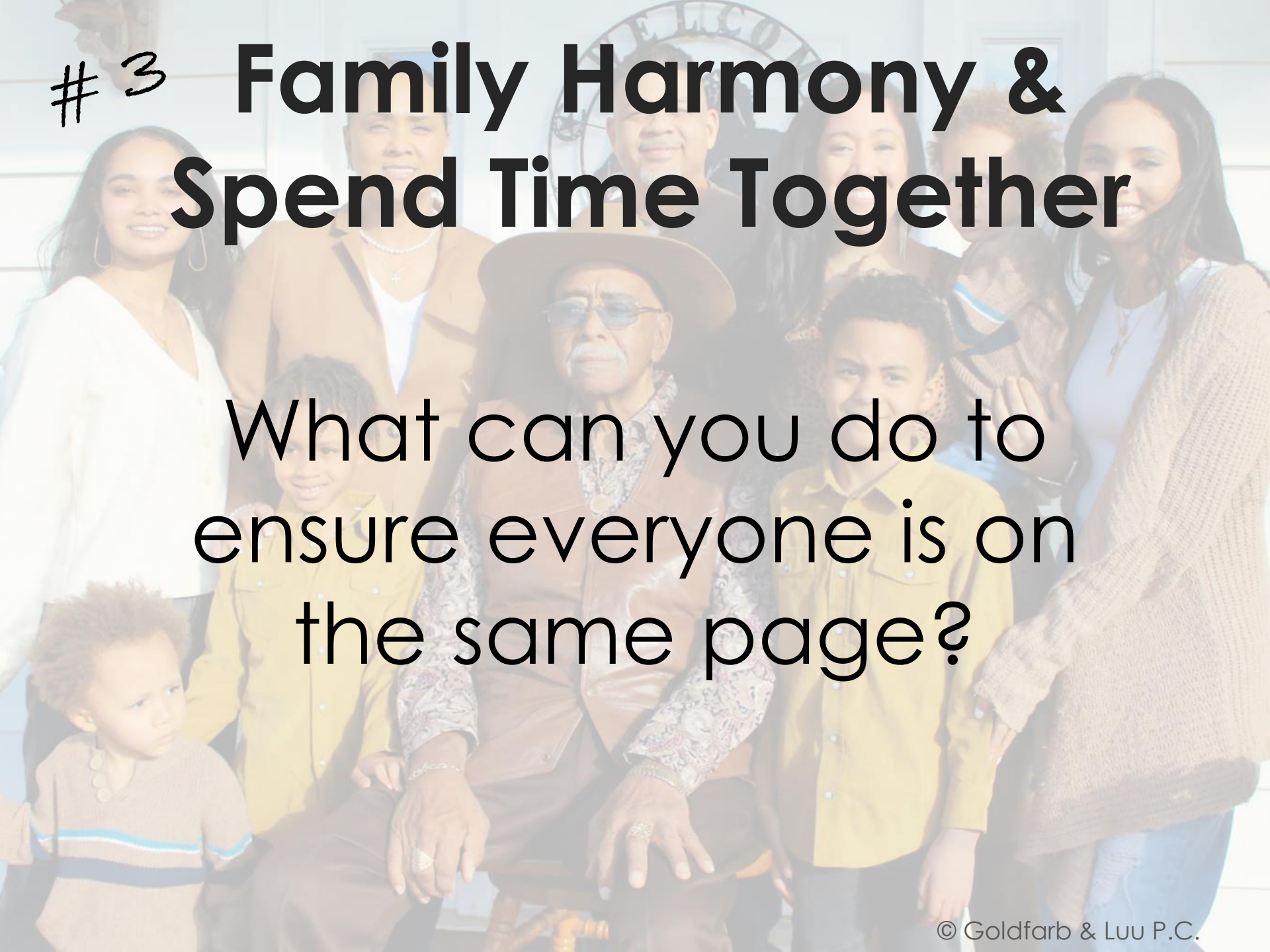

#3

Family Harmony & Spend Time Together

What can you do to ensure everyone is on the same page?

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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

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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

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Remember, Court Sucks!

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A Gift to My Dearest Loved Ones

A regularly updated estate plan

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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!

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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.

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