

ELDER LAW AND ESTATE PLANNING BASICS

PRESENTED BY JANE-MARIE SCHAEFFER

ESTATE PLANNING & ELDER LAW
ATTORNEY

HERZOG
LAW FIRM

www.herzoglaw.com

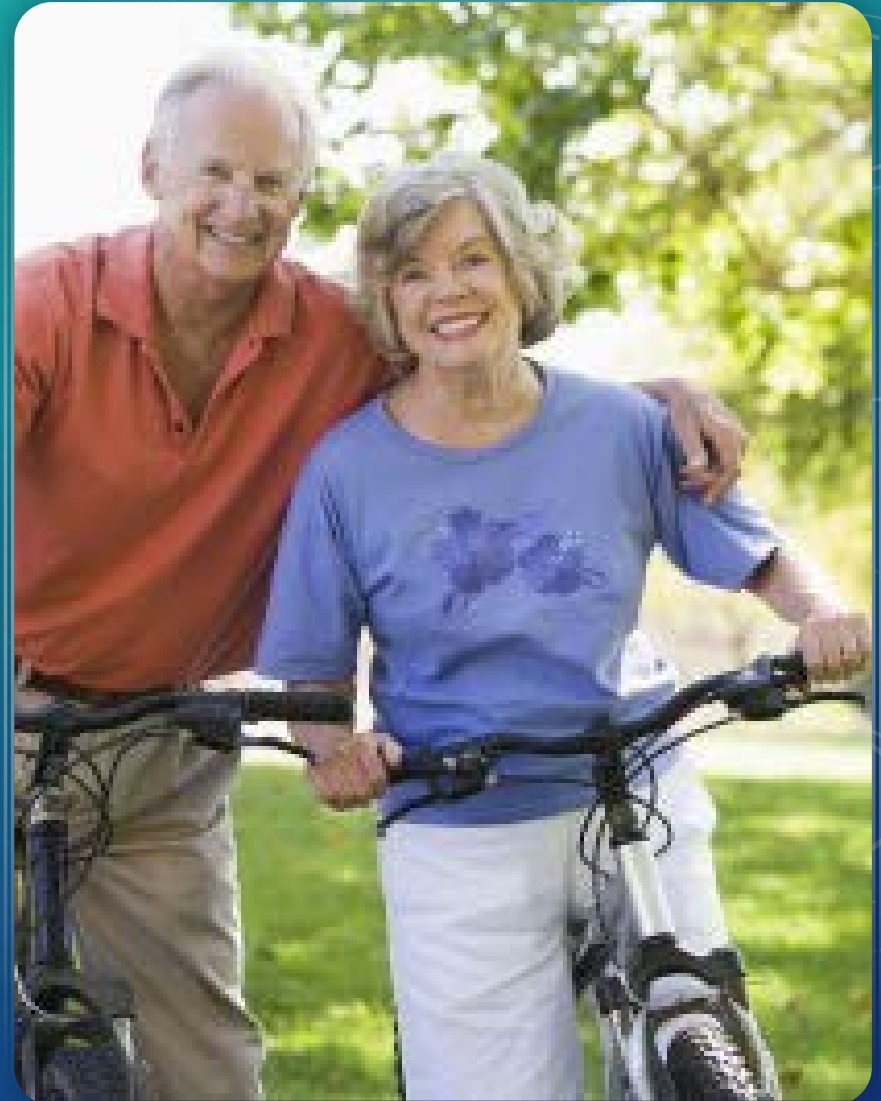
WHAT IS ELDER LAW?



- **Choosing someone to help you make health care decisions**
- **Getting help managing your finances**
- **Choosing someone to manage your affairs if you become incapacitated**
- **Putting an estate plan into place**
- **Planning ahead for your long term care needs**

EVERYBODY NEEDS LONG TERM CARE

- **The number of seniors needing long term care is growing as Baby Boomers turn age 65**
- **There are currently 44.7 million people in America age 65 and older, representing 14.1% of the US population, and that number is expected to double by 2060**
- **Currently an estimated 12 million people need long term care, and that is estimated to grow to 27 million people by 2050**
- **The lifetime probability of becoming disabled is 68% for people age 65 or older**





HOW DO I PLAN FOR LONG TERM CARE?



**Where do you want
to receive services?**



**Who will provide
your care?**



**How will you pay for
your care?**



LONG TERM CARE COSTS

- **Home Care**
 - unpaid home care – spouse, children, family, friends
 - paid home health aides – average cost \$30 per hour, costs vary depending on number of hours you need
- **Assisted Living**
 - costs can range from \$4,000 per month to \$7,000 per month, depending on the level of assistance you need
- **Nursing Home**
 - average cost is \$15,000 per month

FUNDING SOURCES FOR LONG TERM CARE



- Medicare
- Private Pay
- Long Term Care Insurance
- Medicaid
- Veteran's Benefits
- Respite Programs

MEDICARE – WHAT DOES IT COVER?

- **Hospital Stays**
- **Short term stay in nursing home following a hospitalization**
 - First 20 days, Medicare pays 100 %
 - Days 21-100, Co-Pay of \$185.50
 - No coverage after 100 days
- **Limited Home Care Coverage following a hospitalization**
 - Average 4-5 hours per week for a few weeks
- **No coverage for custodial care at home**



LONG TERM CARE INSURANCE- THE BASICS

- Elimination Period – 30, 60 , 90 days
 - Benefit Period – typically 2 to 5 years
 - Eligibility to Begin Receiving Benefits
 - Need assistance with 2 out of 6 ADLs or
 - Cognitive Impairment
- Daily Benefit Amount – amount policy pays for care
- Usually 2 rates
 - one if in nursing home / one if at home
 - Ex. \$300/per day benefit
 - limited to 50% \$150 per day for home care
- Type of Reimbursement – cash reimbursement
- cash to you or payment directly to nursing home or provider

LONG TERM CARE INSURANCE

- Hybrid Policies – combination of long term care policy and life insurance
 - If need long term care, can access death benefit amount to pay for long term care
 - If don't need long term care, acts as a life insurance policy and provides a death benefit to your heirs





MEDICAID

Medicaid:

is a program for the needy – need to be financially eligible to qualify

- In addition to financial eligibility, must be over age 65 or disabled
- What does Medicaid pay for?
 - Home Care
 - Assisted Living
 - Nursing Home Care



MEDICAID INCOME AND ASSET LIMITS

	Institutionalized Spouse	Community Spouse
Income	\$50	\$3,259
Assets	\$15,900	\$74,820

EXEMPT ASSETS

Principal Residence

Burial Plot

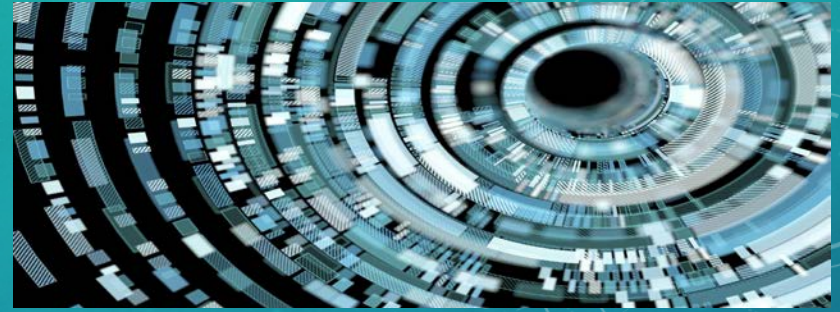
Pre-paid
irrevocable burial
contract

Life Insurance
Policy with a face
value up to \$1,500

One automobile

Retirement
Accounts in
Periodic Payment
Status

TRANSFER OF ASSETS



- There is a lookback period for transfers of assets
- Any transfers for no consideration – **gifts** – are counted
- A penalty period is calculated based on the amount of transfers during the lookback period
- During the penalty period you are ineligible for Medicaid benefits



LOOKBACK PERIOD

Nursing Home applications
5 years

Community Medicaid applications
2 ½ years
(starting 4/1/2021)

EXEMPT TRANSFERS



- Transfers to Spouse
- Transfer to Disabled Child
- Transfer of Home to a Caregiver Child

IRREVOCABLE TRUSTS

- An Irrevocable Trust can be used to protect your assets and pass them to your children, if you plan far enough in advance.
- The trust must be created and funded before you need to apply for Medicaid to avoid the lookback period.





IRREVOCABLE TRUSTS

What is an Irrevocable Trust?

- Grantor – one who creates and funds the trust
- Trustee – person in charge of the trust
- Beneficiary – person who received the assets in the trust



IRREVOCABLE TRUSTS

- **Trustee** – cannot be you or your spouse – can be children or other relatives. You reserve the right to change the trustee.
- **Principal Residence** – you maintain a life estate in your house
- **Trust Income** – you receive all the income from the trust
- **Trust Principal** – You cannot receive principal distributions from the trust (unless you do a Partial Revocation of Trust)
- **Upon your death** – trust assets go to your beneficiary/s



FUNDING YOUR IRREVOCABLE TRUST

What assets should you place into your trust?

- Home
- Stocks
- Bonds
- Investment accounts
- Life Insurance with Cash Value
- Extra Savings, Money Market or CDs

What assets to keep out of your trust?

- Checking account
- Money to live on, fun money, walking around money



CRISIS PLANNING

What if you need nursing home care before
the 5 years have passed since you transferred
assets?

A close-up, shallow depth-of-field photograph of white chess pieces on a chessboard. The king and queen are prominent in the center, with several pawns in the foreground. The background is bright and out of focus.

CRISIS PLANNING STRATEGIES

- Partial Revocation of Trust
- Transfer assets to spouse and spousal refusal
- Gift/Promissory Note plan – can save about ½ of assets

OTHER ESTATE PLANNING DOCUMENTS

Power of Attorney
Health Care Proxy
Will



POWER OF ATTORNEY

- Principal (you) appoints an Agent (spouse, child, friend) to manage your financial and legal affairs if you become incapacitated
- If there is no Power of Attorney and you become incapacitated, then you must petition the court to have a Guardian appointed

HEALTH CARE PROXY

Health Care Proxy

Allows you to appoint an agent (family or friend) to make health care decisions for you if you become incapacitated

Living Will

This is a separate document that can be signed separately or with your Health Care Proxy that gives your agent your wishes as to end of life care



LAST WILL AND TESTAMENT

Your Last Will and Testament directs who receives your property after your death

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graph TD; A[Your Last Will and Testament directs who receives your property after your death] --> B[Executor-- person who oversees everything, gathers assets, pays debts and then distributes balance to beneficiaries]; B --> C[Probate Process -- your will must be submitted to court, appropriate people notified of the existence of the will, and if no objections the court appoints an Executor.];
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Executor-- person who oversees everything, gathers assets, pays debts and then distributes balance to beneficiaries

Probate Process -- your will must be submitted to court, appropriate people notified of the existence of the will, and if no objections the court appoints an Executor.

PROBATE AND NON-PROBATE PROPERTY



- **Probate property**
 - Individual Bank Accounts
 - Real Property owned individually
 - Accounts without beneficiaries
- **Non-probate Property**
 - Joint bank accounts
 - Real Estate owned jointly
 - Retirement accounts with named beneficiaries
 - Life Insurance with named beneficiaries

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