

GREAT NEWS: The Longer You Live,
the Longer You Live!

BAD NEWS: The Longer You Live, the
Longer You Live!

*Helping Clients Prepare For and Journey
Through Long-Term Care Challenges*



HERB CHAVERS
A Professional Law Corporation
SOLUTIONS FOR PEACE OF MIND

What We Will Discuss Tonight:

- ▶ What is Estate Planning For Elderly Clients All About?
- ▶ Elder Care Journey and Demographics
- ▶ Long-Term Care Challenges
 - Cost of Long-Term Care
 - Options to Pay For Long-Term Care
- ▶ Signs to Look Out For
- ▶ Team Approach
 - Legal Issues
 - Financial Issues
 - Accounting Issues

What is Estate Planning For Elderly Clients All About?

- ▶ We want to maintain control of our assets while we are alive and well;
- ▶ Make sure we and our loved ones are taken care of should one or both of us become disabled or incapacitated;
- ▶ Upon our passing, we want to
 - Give what we have
 - To whom we want
 - When we want
 - The way that we want
- ▶ In the most efficient manner while avoiding the hassles and delays of court involvement; and
- ▶ All at the lowest possible overall cost to us and those we love.



Demographics – National

- ▶ Baby Boom 1946 to 1964
 - 75 million • average 10,000 turning 65 per day
- ▶ Baby Bust 1965 to 1984
 - 80 million
- ▶ Echo Boom 1985 to 2004
 - 86 million



Demographics – California

Percentage Increase of the Elderly Population In California: 1990 to 2020

- ▶ The elderly age group will have an overall increase of 112 percent during the period from 1990 to 2020. More than half the counties will have over a 100 percent increase in this age group. Eleven of these counties will have growth rates of over 150 percent. These counties are located throughout the central and southern areas of the State. *The influence of the 60 and over age group on California is expected to emerge most strongly between 2000 to 2020 (emphasis added).*



Demographics – California

Percentage Increase of the Elderly Population In California: 1990 to 2020 (Continued)

- ▶ The oldest old age group will increase at even a faster rate than the elderly, having an overall increase of 143 percent during the period from 1990 to 2020. Of the State's 58 counties, 38 will have increases of more than 150 percent, 26 will have increases of more than 200 percent, and 11 will have over a 300 percent increase in the number of persons aged 85 and older. Of these 11 counties, all but one are located in the central and northern areas of the State. ***Counties can expect to experience even higher growth rates after 2020*** (emphasis added). In particular, the influence of the 85 and over age group on California will emerge most strongly between 2030 to 2040 as the first of the baby boomers reach 85 years of age.

https://www.aging.ca.gov/Data_and_Statistics/Facts_About_Elderly/#Percentage

Demographics – California

Percentage Increase of the Oldest Old Population Aged 85 and Over, Years 1990 – 2020 in Southern California:

- ▶ Los Angeles & Orange County to grow between 50.0 to 149.9%
- ▶ San Bernardino County to grow between 150.0 to 199.9%
- ▶ Riverside County to grow between 200.0 to 299.9%

Source: California Department of Aging @
<https://www.aging.ca.gov/images/Programs/Data/CMap02.gif>



Demographics – Orange County

- ▶ As of 2010, there are 496,404 people 60 years and older living in Orange County (16.5% of the total county population)
- ▶ There are 766,000 Baby Boomers in Orange County (people born between 1946 and 1964) and they began turning 60 in 2006
- ▶ The largest percentage of growth in the older adult (60+) population since 2000 came in the 60–64 age cohort, with an increase of 52.2 percent.
 - 65–74 cohort increased 26.1%
 - 75–84 cohort increased by 15%
 - 85+ cohort increased by 45.2%

Source: U.S. Census 2010



Long-Term Care Challenges

► Costs of Long-Term Care

- At-Home
 - Family Members (Indirect cost to Family Member)
 - \$15.00 to \$25.00 per hour
 - \$6,000 to \$13,000 per month
- Assisted Living
 - \$2,500 to \$10,000 per month
- Skilled Nursing Facility
 - Average Private Pay Rate (APPR) for California
 - \$8,189.00 per month
 - \$98,258.00 per year
 - \$294,804 for 3 years



Long-Term Care Challenges

► Options to Pay For Long-Term Care

- Private Pay
 - Client's Monthly Income
 - Client's Cash & Investments
 - Reverse Mortgage
 - Family Members (out-of-pocket or personal services)
- Long-Term Care Insurance
- Medicare
- Veteran's Benefits (Assisted Living Care)
- Medi-Cal Long-Term Care Benefits (Skilled Nursing Facilities)





Long-Term Care Challenges

► Options to Pay For Long-Term Care

◦ Medicare

- Myth: Medicare covers skilled care
- Truth:
 - 100% for 20 days (following hospital admission)
 - Co-pay for next 80 days
- “Improvement Standard” replaced with “Need for skilled care”





Long-Term Care Challenges

► Options to Pay For Long-Term Care

- Veteran's Benefits
 - Special Monthly Pension Benefit Program aka Aid & Attendance
 - Reimbursement of unreimbursed medical expenses
 - Wartime Service (During a Period of War)
 - Needs Based
 - Income (for VA purposes)
 - Assets (Current/New Law)
 - Look-back period (Current/New Law)
- Burial/Internment Benefits
- Availability of DD-214



Medi-Cal: Long-Term Care

- ▶ Income
 - Share of Costs
 - Well Spouse – \$2,981.00 (MMMNA)
- ▶ Assets
 - Unmarried @ \$2,000.00
 - Married – Incapacitated Spouse (2,000.00) + Well Spouse (Community Spouse Resource Allowance (CSRA) – (\$119,220.00))
- ▶ Exempt assets
- ▶ Crisis planning
- ▶ Proactive planning (Be Prepared!)
- ▶ Look-back period (Current/Pending Law)
- ▶ Gifting (Current/Pending Law)
- ▶ Estate recovery (Current/New Law)



Signs to Look Out For

- ▶ Capacity
 - Memory
 - Looping
- ▶ Vision
- ▶ Smell
- ▶ Hearing
- ▶ Appetite
- ▶ Car accidents
- ▶ Chronic pain
- ▶ Daily Living Activities (ADLs)
 - Eating
 - Bathing/Hygiene
 - Dressing
 - Grooming
 - Mobility
 - Toileting/Continence
- ▶ Falling
- ▶ Depression

Team Approach

A team approach provides better client service

- ▶ Elder law lawyer (Not a Dabbler)
- ▶ Financial advisor
- ▶ Accountant
- ▶ Real estate agent
- ▶ Physician
- ▶ Geriatric care managers



Mutual Goals

- ▶ Preserve income
- ▶ Plan for retirement
- ▶ Minimize taxes
- ▶ Protect assets
- ▶ Plan for long-term care
- ▶ Transfer the most amount of assets to beneficiaries



Elder Law Services

- ▶ Revocable Trust
- ▶ Irrevocable Trust
- ▶ Pour-Over Wills
- ▶ Financial Powers of Attorney
- ▶ Advance Health Care Directive
- ▶ HIPAA Authorization
- ▶ Caregiver Agreements
- ▶ Mental Health
- ▶ Long-Term Care
- ▶ Health Care
- ▶ Age discrimination
- ▶ Social Security
- ▶ Medicare
- ▶ Medicare – Dispel the Myth
- ▶ Medi-Cal aka Medicaid
- ▶ Veteran's benefits
- ▶ Elder abuse and fraud
- ▶ Trust administration
 - During Incapacity
 - Upon Death
- ▶ Conservatorship Proceedings
- ▶ Probate Proceedings

Elder Law Services

► Ethics:

- Who is the Client?
- Authority to discuss certain aspects with family members and other advisors?
- Successor Decision Makers Authorized to Engage Attorney?
- What if a client objects to being deemed mentally incapacitated?



Elder Law Services

- ▶ **Revocable Trusts** (properly funded)
 - Avoid Conservatorship Proceedings
 - Determination of Incapacity?
 - Avoid Probate Proceedings
 - Long-Term Care Planning
 - Ramifications of a B or C Trust
 - Power to Withdraw (unfund the trust)
 - Pour-Back Provisions to Provide for *Disabled* Spouse
 - Estate Recovery by Department of Health Care Services
 - Current Law
 - New Law (January 1, 2017)

Elder Law Services

▶ Irrevocable Trusts aka IDGTs

- Allows Clients to Preserve Assets to Supplement their Care instead of Spending Down
- Preserve's Section 121 Exclusion if Residence Sold During Clients Life
- Preserve's Step up in Basis if Assets Sold After Clients deaths
- Preserves Clients Assets from Children's:
 - Creditors
 - Divorcing Spouses
 - Premature Death
- Allows Clients to Depend Upon More Responsible Children During Incapacity While Providing For All Children Upon Death

Elder Law Services

▶ Special Needs Trust

- If Married, for Incapacitated Spouse (Testamentary via a Will)
- For Disabled Children/Grandchildren

▶ Pour-Over Will

- Pour-Over Provisions to Trust (RLT or IDGT)
- Spousal Special Needs Trust if Assets from RLT Pour-Back to Estate

Elder Law Services

► Financial Powers of Attorney

- Effectiveness – Springing or Immediate?
- Employment of Principals Attorney
- Authority to Amend Trust? If **yes**, must be permitted within the Trust (Unlimited or Limited authority to amend Trust?)
- Authority of Agent to Deal With Spouse
- Nomination of Conservator
- Authority in Regards to U.S. Mail
- Authority to deal With Government Agencies
- Authority to Confirm Clients Intent to Return Home
- Authority to Change or Maintain Domicile and/or Residency

Elder Law Services

► Financial Powers of Attorneys (Continued)

- Authority to Withdraw (unfund) Assets from Revocable Trust – Authorization Must be Included in the RLT
- Authority to Make Unlimited Gifting
 - To Whom (Spouse/All Children/Certain Children)
 - Manner of Gifts (Outright or in Trust)
- Authority to Create RLT/MAPT/VAPT (IDGT)
- Specific Authority in Regards to Personal Residence
 - Transfer of Personal Residence
 - Pay off, partly or in full, encumbrance on Personal Residence
 - Make Improvements to Personal Residence

Elder Law Services

- ▶ **Financial Powers of Attorney** (Continued)
 - Use Nonexempt Assets to Purchase Exempt Assets
 - Authority of Agent to Make Gifts to Agent
 - Authority of Agent to Self-Deal
 - Authority to Enter Into Personal Care Contracts
 - Authority to Sign Application for Medi-Cal Benefits
 - Authority to Make and Pay for Pre-Need Burial Arrangements (burial plot, vault, or crypt, irrevocable burial trust or prepaid burial contract)
 - Authority to Enforce Proceedings for Long-Term Care Planning

Elder Law Services

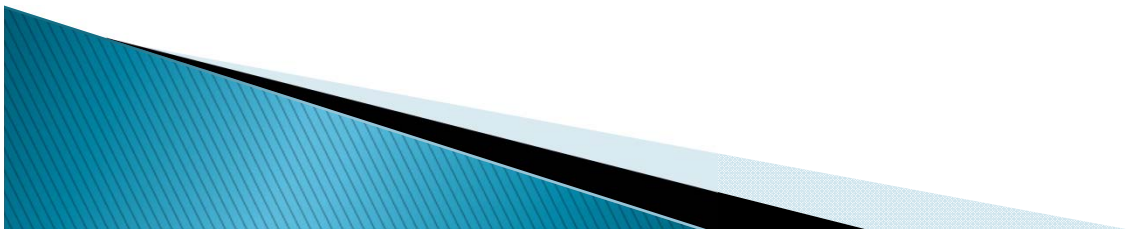
► Health Care

- Caregiver Agreements
 - Professional Service
 - Individuals:
 - Employee
 - Independent Contractor
 - Over time rules
 - Workers Compensation
- Decision Makers When Clients Are Incapacitated
- Advance Health Care Directives
- HIPPA Authorization
 - Limited Access
 - Unlimited Access
- Physician Orders For Life-Sustaining Treatment (POLST) – Authority of Agent to Sign on Behalf of Clients?
- Do Not Resuscitate (DNR) Form – Authority of Agent to Sign on Behalf of Clients?

Elder Law Services

▶ Health Care

- Final Arrangements
 - Body/Organ/Tissue Donation
 - Burial or Cremation
 - Memorial Instructions
 - National Cemeteries (DD-214)



Finance Related Questions

Ask your clients:

- ▶ Do you have a trust?
 - When was it created?
 - Has it been reviewed lately?
- ▶ Do you have financial powers of attorney?
- ▶ Who will manage your finances?
- ▶ What is total value of your estate?
- ▶ How will they pay for long-term care?
 - Private Pay
 - Long-Term Care insurance
 - Government Benefits
- ▶ Do you have a significant IRA?
- ▶ Are you expecting an inheritance or settlement?

Financial Related Services

- ▶ Counselling as to When to Begin Receiving Social Security
- ▶ Preservation of Assets
- ▶ Income Stream vs Growth
- ▶ 1st to Die Wealth Replacement Life Insurance Policy
- ▶ Long-Term Care Insurance
- ▶ Life Insurance Policy “Linked” with Long-Term Care Benefits
- ▶ Conversion of Life Insurance Policy into Long-Term Care Benefit Plan



Financial Related Services

▶ Annuities

- Medi-Cal (immediate & actuarially sound)
- VA Pension and Aid and Attendance
 - Immediate Annuity – treated as income
 - Tax Deferred – treated as an asset

▶ Reverse Mortgage

▶ Preservation of IRAs via Standalone IRA trusts

▶ Special Needs Trusts (For Surviving Spouse and/or Child)

- Growth vs Income Stream
- Funding via Life Insurance Policies

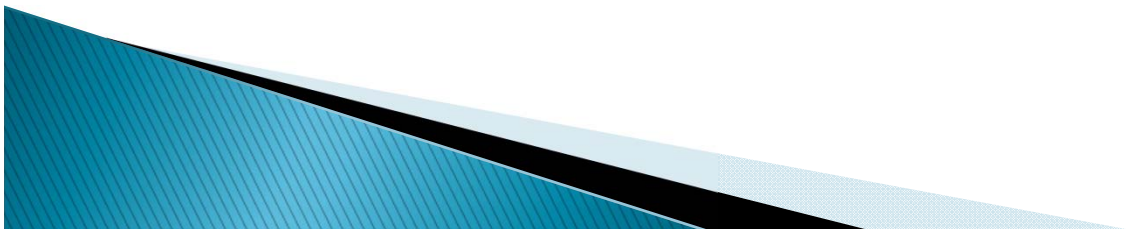


Accounting Services

- ▶ Client's Incapacity?
 - Authority to Act on Clients Behalf with IRS/FTB
- ▶ Budgeting and Bookkeeping Services
 - Client
 - Family Members Assisting Client
- ▶ Employment of Caregivers
- ▶ Gift Tax Returns
- ▶ Income Tax Returns
 - Individuals (Proper Deductions/1099s)
 - Grantor IRTs
 - Nongrantor IRTs

Accounting Services

- ▶ Probate & Trust Administration
 - Final Income Tax Returns
 - Fiduciary Income Tax Returns
 - Accounting Schedules
 - Bookkeeping Services



Health Care Related Questions

Ask your clients:

- ▶ Who Do You Want to Make Decisions For You When You Can't Make them Yourself?
- ▶ Do you have an Advanced Health Care Directive?
- ▶ Do you have a HIPAA Authorization?
 - Are your AHCD/HIPAA Authorization readily available?
 - Do your Agents have access to them?
- ▶ Is living at home getting difficult?
- ▶ Do you have long-term care insurance?
- ▶ Can you afford to private pay for care?
- ▶ Have you thought about public benefits for long-term care needs?
- ▶ Are You or Spouse (Deceased Spouse) a Veteran?

Planning

Start planning now

- ▶ Trust (RLT/IRT)
- ▶ Durable Power of Attorney (Just in Case Provisions)
- ▶ Advanced Health Care Directive
- ▶ HIPAA Authorization
- ▶ Long-Term Care (At Home/Assisted Living/SNFs)
- ▶ Court costs and time
- ▶ Family planning

Capacity



Thank You

Herb Chavers

Herb Chavers, *a Professional Law Corporation*

5041 La Mart Drive, Suite 240

Riverside, California 92507

(951) 369-1335

Herb@Chaverslaw.com

www.Chaverslaw.com



HERB CHAVERS
A Professional Law Corporation
SOLUTIONS FOR PEACE OF MIND