



# **Estate Planning and Elder Law: What You Really Need to Know**

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ASU Retiree Association**

**Stephanie Bivens, C.E.L.A.**

*Certified Elder Law Attorney, by the National Elder Law Foundation*

Bivens & Associates, P.L.L.C.

5020 E. Shea Blvd., Suite 100

(480) 922-1010

[Stephanie@bivenslaw.com](mailto:Stephanie@bivenslaw.com)

[www.bivenslaw.com](http://www.bivenslaw.com)



# Stephanie A. Bivens, CELA, Esq.

- B.S. & J.D., Arizona State University, Cum Laude
- Admitted to State Bar of Arizona
- Certified Elder Law Attorney by National Elder Law Foundation
- Arizona Fiduciary Association
- National Academy of Elder Law Attorneys
- Academy of Special Needs Planners
- Wealth Counsel
- Maricopa County Bar Trust & Estate Section
- Arizona Women Lawyers Association
- East Valley Adult Resources Board Member
- Kappa Alpha Theta Board Member
- AZ Foundation for Women, PAC Member



# Estate Planning Mistake #1

## Procrastination

*“By failing to prepare,  
you are preparing to Fail.”*



# Estate Planning Documents

Health Care Power of Attorney



Mental Health Power of Attorney



Living Will



Financial Power of Attorney



Last Will and Testament



Trust

# No Estate Planning Documents?





# Estate Planning Mistake #2

## DIY- Do It Yourself Planning

**DO IT YOURSELF**



# Estate Planning Mistake #3

## Failure to Update Estate Planning Documents

Change in Assets



Death



Birth



Illness



Move



Marriage

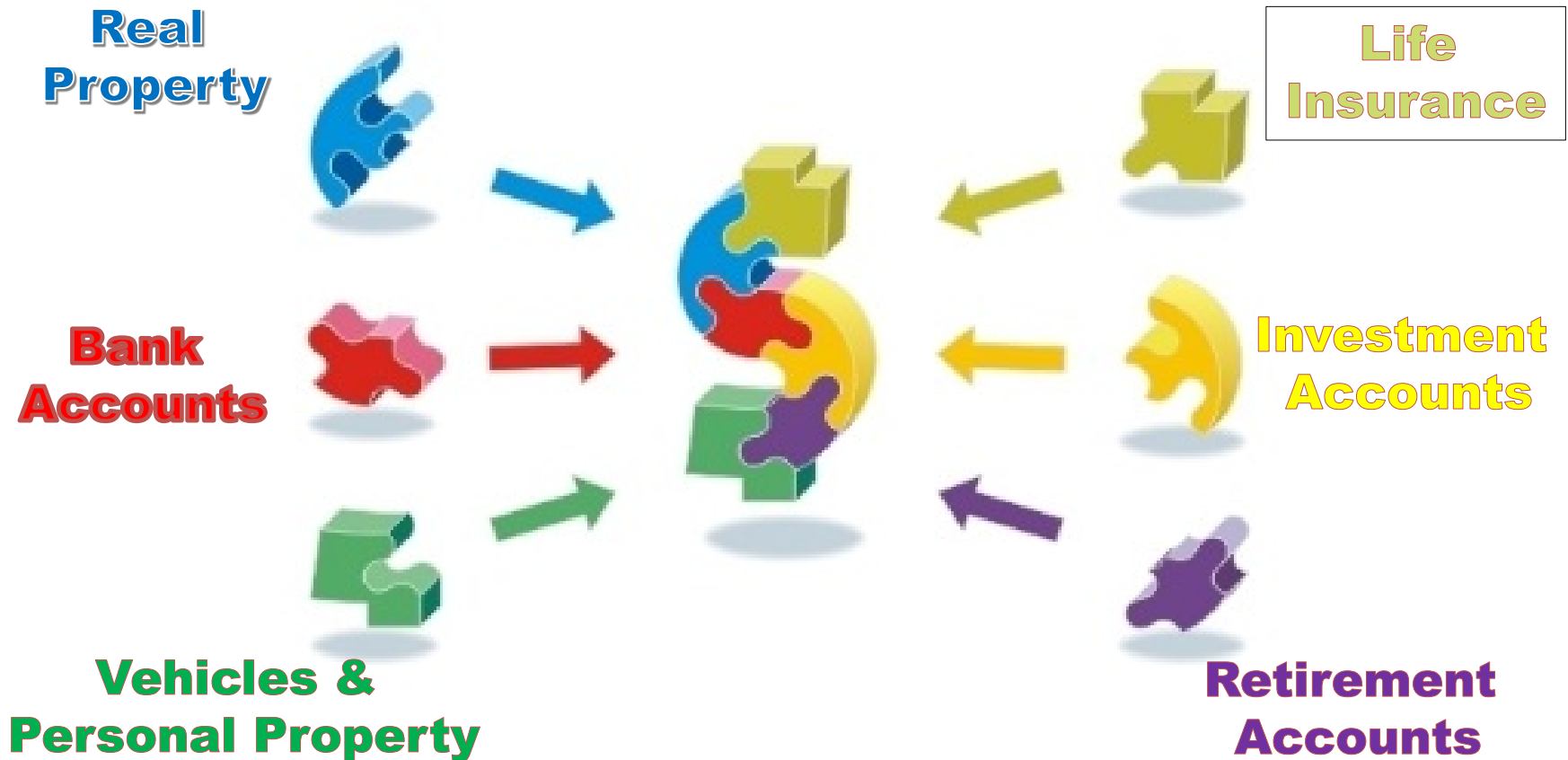


Divorce



# Estate Planning Mistake #4

## Failure to Coordinate Overall Plan





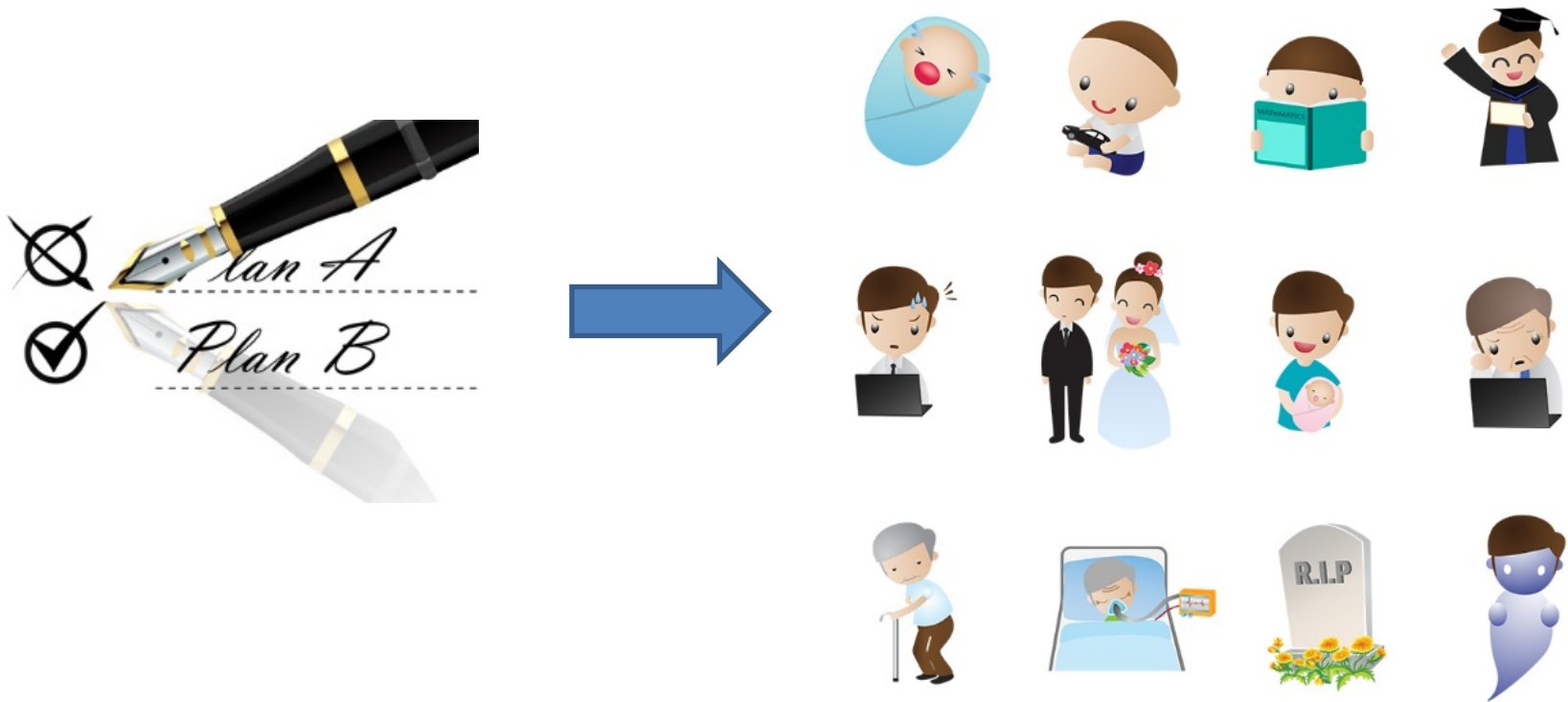
# Estate Planning Mistake #5

## Failure to Properly Fund Your Trust



# Estate Planning Mistake #6

## Failure to Plan for Contingencies



# Estate Planning Mistake #7

## Failure to Consider Blended Family Issues



# Estate Planning Mistake #8

## Failure to Plan for Potential Incapacity



# Estate Planning Mistake #9

## Failure to Consider Using a Trust



# Estate Planning Mistake #10

## Failure to Leave the “Bread Crumbs”



**Private  
Information  
Guide** The Personal and Financial Organizer

**B**  
**A**

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ESTATE PLANNING | ELDER LAW | SPECIAL NEEDS



# Long Term Care: What is it?

- Care necessary if you can no longer perform ADL's by yourself due to a chronic illness, injury, disability or the aging process.
  - Bathing, Dressing, Grooming, Transferring, Toileting, Eating
- This type of care is not intended to cure you.
- You can receive long term care services at home, a nursing home, or another long term care facility, such as adult care home, assisted living facility, or memory care.



Eating



Bathing



Dressing



Transferring



Toileting



Walking or  
moving around

# What does long term care (LTC) cost?

TYPE OF CARE	AVG. MONTHLY COST IN PHX*
Homemaker Services	\$4,767
Home Health Aide	\$4,767
Adult Day Health Care	\$2,167
Assisted Living Facility	\$3,850
Skilled Nursing Facility	\$6,540 semi-private room \$8,459 private room

\*Genworth 2018 Cost of Care Survey, , conducted by CareScout, June 2018 (Phoenix Area, AZ)

MEMORY CARE was not surveyed -typical memory care ranges \$5,500-\$7,000/month.



# Options for Paying for Long Term Care



- Private Pay (your income & savings)- *consult with your financial advisor*
- LTC Insurance policy or Annuity with LTC rider-*in place before diagnosis*
- Government Benefits- *consult with an elder law attorney*
  - Arizona Long Term Care System (“ALTCS”) (insurance)
  - VA Aid & Attendance Pension (\$\$\$)

# Arizona Long Term Care System (ALTCS)

Medicaid/ AHCCCS program

The State's HMO Insurance for long term care

Any type of care setting, as long as care providers are "in-network"

**Home Assistance**

**Assisted Living**

**Group Homes**

**Memory Care**

**Skilled Nursing**

**Adult Day Care**

**Respite Care**

# ALTCS – Medical Eligibility

- At risk of institutionalization
  - i.e., can't live independently
- Require assistance with Activities of Daily Living (ADLs)

## ADLs

- Medications
- dressing
- bathing
- mobility
- toileting
- grooming
- feeding



# ALTCS – Financial Eligibility

- Income Limit
- Resource Limit





# ALTCS – Income Eligibility

- Income Limits
  - \$2,313.00 for the applicant, or less than \$4,626.00 combined for both spouses in 2019
- Income Only Trust (aka Miller Trust)
  - Allows persons to meet income criteria if income is below average cost of skilled nursing care (\$7,134.44 in Maricopa Co. for 2019) but exceeds limit above.

*Income is rarely a barrier to qualifying for ALTCS.*

# ALTCS – 2019 Resource Eligibility

- Applicant must have under \$2,000 in countable assets, plus Applicant's Spouse may keep ½ (subject to maximum of \$126,420 and minimum of \$25,284) of the couple's countable assets as of the month the applicant spouse first met medical criteria.
- Applicant and spouse may also have exempt assets: primary residence, vehicle, personal property, burial plans.
- Anything above the Resource Limit must be “spent-down”-  
*Note: With proper planning (with an experienced Elder Law attorney) persons who do not already meet resource criteria still can while preserving assets and avoiding both TEFRA liens and AHCCCS estate recovery.*



# ALTCs – 5 Year Look-Back & Penalty Period



- **Look Back Rule:** Has the applicant or spouse made any gifts in the last 5 years? If so, ALTCS assumes the applicant was intended to impoverish himself for the purpose of qualifying for ALTCS and will impose the resulting penalty period.
- **Penalty Period:** For every \$7,134.44 gifted ALTCS will impose a 1 month penalty period (Maricopa County, 2019), beginning the month the ALTCS application would otherwise have been approved.

# VETERANS AID & ATTENDANCE PENSION

- **Monthly cash benefit intended to reimburse veterans and their surviving spouses for medical and care expenses**
  - \$\$ can be used for any care expenses
  - Must actually be paying for significant medical/care expenses



# VA BENEFITS – A&A

## VA Maximum Monthly A&A Pension Rates

2019 Rates	Annual Benefit- Tax Free
Single Veteran	\$22,577 (\$1,881/mo)
Married Veteran	\$226,766 (\$2,230/mo)
Widow of Veteran	\$14,529 (\$1,210/mo)

# VA BENEFITS Aid & Attendance Pension

## Eligibility Criteria

### **Military Service**

- 90 days active duty, 1 day during period of war

### **Medical**

- Require the aid of another person to perform activities of daily living OR be blind or meet other specific visual acuity requirements OR be a patient in a nursing home because of physical and/or mental incapacity.

### **Income**

- Net Income reduced by care/medical expenses over 5% of Maximum Annual Pension Rate (MAPR)

### **Resources**

- Net worth limit \$ 127,061.00
- Plus allowed exempt assets

### **Transfer Penalty**

Gifts/transfer penalty after 10/18/18





# B&A at a Glance

## Serving AZ since 2004

Practice Exclusively in Estate Planning, Elder Law, and Special Needs Planning including:

- Drafting Estate Planning Documents
- Probate & Trust Administration
- Business Formation
- Long Term Care Planning
- Asset Protection Planning
- Special Needs Trusts
- Guardianships/Conservatorships
- ALTCS Benefits



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# Thank you

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