



ELDER LAW FOR THE RETIREE
ASU Retiree Association
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What is Elder Law?

Elder law is best defined by who we serve rather than any specific type of legal services

- Seniors
- Family members of seniors
- Persons with Disabilities
- Everyone!



Common Elder Law Practice Areas

- Estate planning
- Post-death Probate and Trust administration
- Fiduciary representation (medical and financial)
- Long term care asset protection planning
- Medicaid (ALTCS) and VA Aid & Attendance Pension benefits planning and applications
- Guardianship/Conservatorship
- Financial exploitation

Elder Law Myths

- I am not “old enough” to need an elder law attorney
- I won't need public benefits to pay for long term care so I don't need an elder law attorney
- A lawyer will cost too much
- A traditional estate planning attorney can handle issues that may arise prior to my death related to incapacity, medical advocacy, etc.
- My kids will know what I want and follow my directions on their own
- Elder law attorney is only for elder abuse/exploitation matters

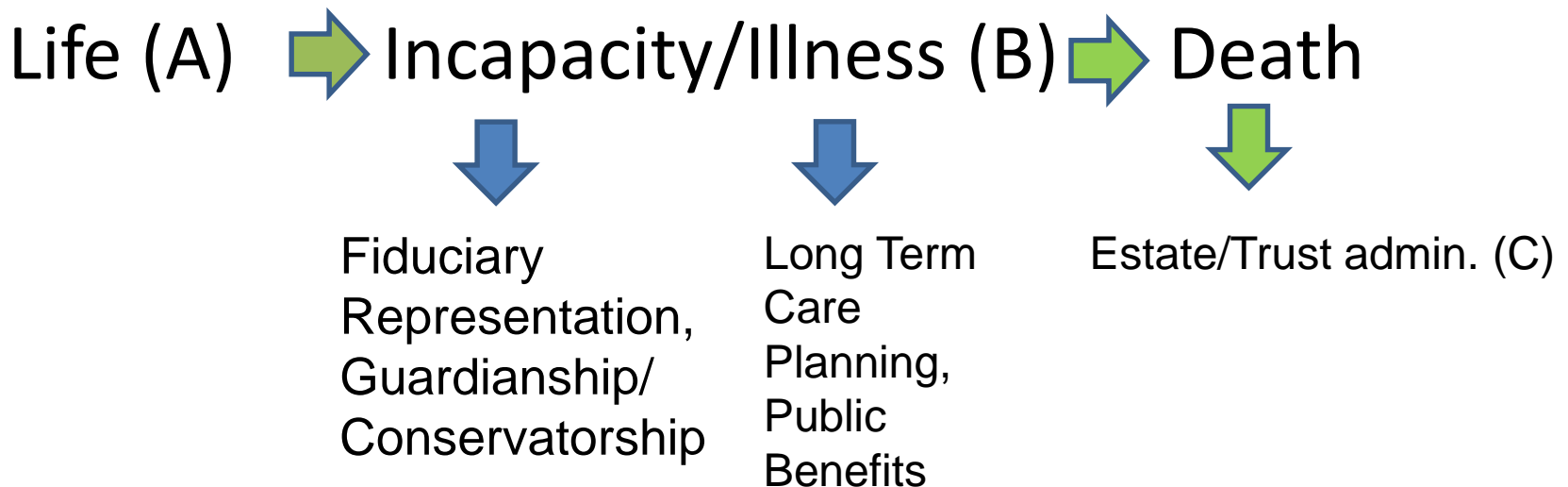
“I wish I had known about you sooner!”

Estate Planning Attorney vs. Elder Law Attorney

Estate Planning Attorney:

Life (A) → Death (B) → Estate/Trust admin.(C)

Elder Law Attorney:



Estate Planning Documents

Health Care Power of Attorney



Mental Health Power of Attorney



Living Will



Financial Power of Attorney



Last Will and Testament



Trust

Incapacitated Without Proper Estate Planning in Place?



Death Without Proper Estate Planning in Place?



Top 10 Estate Planning Mistakes

#1 Procrastination	#6 No Contingency Planning
#2 DIY project	#7 Blended Family issues
#3 Failure to update	#8 Lack of incapacity planning
#4 Beneficiary Designation problems	#9 Not using a Trust
#5 Trust not properly funded	#10 Failure to leave the bread crumbs

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

Who Will Need Long Term Care?

The world's population is aging at a faster rate than ever before and people are living longer. Every day until 2030, 10,000 Baby Boomers will turn 65 and it is estimated that 7 out of 10 people will require long term care in their lifetime.



What does long term care (LTC) cost?

TYPE OF CARE	AVG. MONTHLY COST IN PHX*
Homemaker Services	\$5,005
Home Health Aide	\$5,005
Adult Day Health Care	\$2,427
Assisted Living Facility	\$3,500
Skilled Nursing Facility	\$6,327 semi-private room \$9,338 private room

*Genworth 2019 Cost of Care Survey, conducted by CareScout®

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



Options for Paying for Long Term Care

- Private Pay (your savings)
- Long Term Care Insurance or investment
- Government Benefits
 - Medicaid (Arizona Long Term Care System - ALTCS)
 - VA (VA Aid & Attendance Pension)



When Can ALTCS help?

- Elderly individual needs long term care and family is concerned about affording care
- Under age 65 disabled adult needs long term care and concerned about affording care
- Minor child with long term care needs



What is ALTCS?

Arizona Long Term Care System

- **Medicaid-not Medicare**
- A branch of AHCCCS (Arizona's Medicaid program)





5 ALTCS URBAN LEGENDS

QUIZ

- | | | |
|------|-------|--|
| True | False | I do not need a lawyer, or lawyer will cost “too much” |
| True | False | ALTCS is only for “indigent” people |
| True | False | AHCCCS/ALTCS will take my house |
| True | False | I am married and have to spend ½ our money to qualify one spouse |
| True | False | Applicant will be ineligible for 5 years if there is any prior gift/transfer of assets |

ALTCS – LTC Coverage

- Personal Care/Attendant Care at home
- Respite care
- Adult Day Care
- Care facilities
 - assisted living, memory care, skilled nursing, group homes,
- Behavioral health services
- Medicare Part B premium
- DME
- Homemaker services
- Housekeeping
- Meal preparation and delivery
- Transportation assistance-medical
- Personal emergency response services
- Home modifications
- Home health care



ALTCS – Eligibility Criteria

1. Citizenship

2. Medical

Elderly/Physically disabled

Developmentally disabled

3. Financial

Income and Resources dependent upon marital status

4. Placement

Home or ALTCS approved living arrangement



ALTCS – Medical Eligibility

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



ALTCS – Medical Eligibility

ADLs

- medications
- dressing
- bathing
- mobility
- toileting
- grooming
- feeding



- Medical Diagnosis
 - Alzheimer's Disease
 - Dementia
 - Paralysis
 - Oxygen dependence
- Continence
- Communication/visually impaired
- Orientation
- Behaviors (wander, aggression, resistive)

ALTCS – Financial Eligibility

- Income
- Resources



ALTCS – 2020 Income Limits

- **Gross income limits:**



Less than \$2,349 *for the applicant*, or \$4,698 for *couple* **Income Only Trust** (aka Miller Trust) can be used to meet income limit where income exceeds limits above, but is less than average cost of skilled nursing care (\$7,429.58 in Maricopa Co.)

Note: DDD ALTCS – no deeming of parents' income

ALTCS – 2020 Resource Limits

- Applicant must have under \$2,000 in countable assets, plus Applicant's Spouse may keep ½ (subject to maximum of \$128,640 and minimum of \$25,728) 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
- Anything above resource limit must be spent down

Note: With proper planning persons who do not already meet resource criteria still can while preserving assets and avoiding both TEFRA liens and AHCCCS estate recovery.

GET READY!



Exempt Assets



- Home property (\$595,000 equity limit for applicant)
- Vehicle
- Irrevocable Prepaid Burial Plan or \$1,500 Burial Expense Account
- Burial Plot
- Household and personal effects
- Cash value of all life insurance policies with face value less than \$1,500
- Medicaid compliant annuity (not your everyday annuity!)
- Special Needs Trust [42 USC 1396pd(4)(A)]

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 \$7,429.58 gifted ALTCS will impose a 1 month penalty period (Maricopa County, 2020), beginning the month the ALTCS application would otherwise have been approved.

ALTCS – What is Share of Cost?

- Monthly “Co-pay”
- Paid to the care facility
- Based on applicant’s income
 - Applicant keeps Personal Needs Allowance
 - \$2,349.00 HCBS
 - \$117.45 skilled nursing
 - Out-of-pocket medical expenses (if any)
 - Spousal allowance
 - The remaining income is the Share of Cost
- Never more than the provider’s capped rate



ALTCS Planning

ADVANCED PLANNING
VS.
CRISIS PLANNING



ALTCS – Asset Protection

Advance Planning Examples



- Married and single persons: gift to a person (risk analysis) or irrevocable trust and wait 5 years to apply for ALTCS
- Married persons: advance estate planning*
- Married persons: Put home into a revocable trust to inflate countable net worth (CSRA) prior to need for paid care

**Always want to get estate planning documents in order!*

ALTCS – Asset Protection

Crisis Planning: “Spend down” examples

- Pay expenses/debts
- Establish a Special Needs Trust, if under age 65
- Purchase non-countable assets or convert existing countable assets to non-countable
 - E.g., burial policy, Medicaid-compliant annuity, personal items, trust work
- Gift (with or without penalty)
 - No penalty for gifts to spouse or disabled child on SSDI or SSI benefits



ALTCS – Asset Protection

- Legal authority as Agent under **Power of Attorney** (with **specific** language included to gift, or transfer funds in anticipation of Medicaid) or as **Guardian/Conservator** is required (case law supports gifts/spenddown by conservator).
- Crisis planning is NOT possible without specific legal authority.

ALTCS – Estate Recovery & Liens

Estate Recovery

- Attempt to recover payments made by ALTCS for LTC and medical expenses, offset by the Share of Cost paid by the Customer
- Probate assets/Small Estate Affidavit transfers only
- Unmarried
- Over age 55
- No disabled/dependent children

TEFRA Lien

- Real property titled in Customer's name
- Customer in SNF for > 90 days
- Unmarried
- No disabled/dependent children
- Over age 55

Estate Recovery/Lien Avoidance

Estate Recovery

- Use non-probate transfer strategy for all of applicant's assets:
 - Jointly titled accounts
 - Pay on Death Designations
 - Beneficiary Deed to real property
 - Beneficiary designations to individuals (not estate) on insurance policies
- If applicant is married, spouse should use Will with discretionary testamentary trust fbo applicant spouse in case spouse dies first.

TEFRA Lien

- Avoid SNF placement for applicant, if possible
- If applicant is married, transfer applicant's interest in real property to spouse (no transfer penalty for gifts between spouses)



5 ALTCS Urban Legends



QUIZ ANSWERS

True

False

I don't need a lawyer.

True, IF you want delays in approval, a denial, or you do not want to maximize asset protection. Over 70% of ALTCS applications are denied. The benefits of proper legal advice and assistance with the application process always outweighs the costs.

5 ALTCS Urban Legends



QUIZ ANSWERS

True False ALTCS is only for “indigent” people.

Single and Married applicants may have significant “exempt” assets, plus allowed countable assets. With proper advance planning, it is often possible to preserve and protect significant assets.

5 ALTCS Urban Legends



QUIZ ANSWERS

True

False

AHCCCS/ALTCS will take my house.

Not necessarily. In most instances and with proper advance planning lien and estate recovery against real property can be avoided.



5 ALTCS Urban Legends

QUIZ ANSWERS

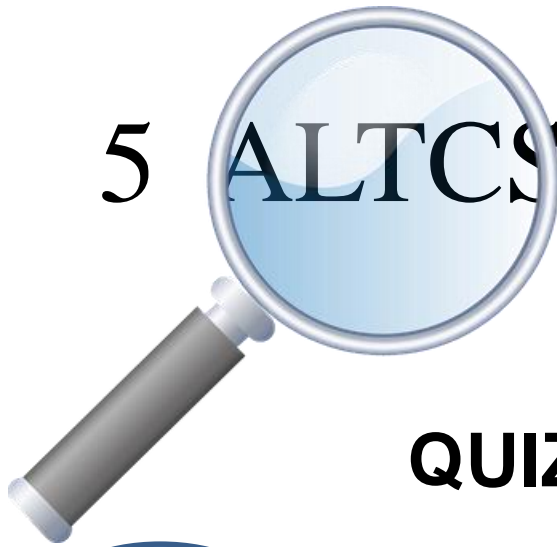
True

False

I am married and have to spend $\frac{1}{2}$ our money to qualify one spouse

A community spouse may keep $\frac{1}{2}$ of the countable assets (CSRA), subject to a minimum and maximum, but with proper planning may also be able to spend-down in a way to protect and preserve all or a significant portion of the other $\frac{1}{2}$

5 ALTCS Urban Legends



QUIZ ANSWERS

True

False

Applicant will be ineligible for 5 years if there is any gift/transfer of assets

While it is true there is a 5 year look back period, the penalty period is based upon the value of the uncompensated gift/transfer made to a non-spouse. In Maricopa County, for every \$7,429.58 there is one month penalty period, beginning month of application to ALTCS when application would have been approved, except for the gift/transfer. For example, a \$20,000 gift would result in a 2.7 month penalty ($\$20,000 \div \$7,429.58$).

VETERANS AID & ATTENDANCE PENSION

- **Monthly cash benefit intended to reimburse veterans and their surviving spouses for medical and care expenses**
 - Care in any setting
 - Must actually be paying for significant medical/care expenses



VA Aid & Attendance Pension

VA Maximum Monthly A&A Pension Rates

2020 Rates	Annual Benefit
Single Veteran	\$22,938 (\$1,911.50/mo)
Married Veteran	\$27,194 (\$2,266.17/mo)
Widow of Veteran	\$14,761 (\$1,230.08/mo)

VA 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 of \$129,094
- Plus allowed exempt assets



VA Aid & Attendance Pension

Transfer Penalty

Gifts/transfer penalty after 10/18/18

3 year Look Back Period

Penalty for Assets exceeding Net Worth Limit



Helpful Resources:

Private Information Guide: The Personal and Financial Organizer Paperback – August 23, 2019

by [Stephanie A. Bivens](#) (Author)

[See all 2 formats and editions](#)

Paperback
\$14.95

1 New from \$14.95

If something happened to you, would your loved ones be able to quickly locate your important information and legal documents or know how to handle your medical or financial affairs? The Private Information Guide provides one place for you to record and organize all your personal, legal, financial, and medical information. Estate planning documents are important, but only part of the puzzle. Once completed, this organizer will contain critical information necessary to assist in the continuity of your medical care and management of financial matters in the event of your serious illness or disability and

Paying for Long Term Care in Arizona with Free Government Benefits Paperback – February 5, 2020

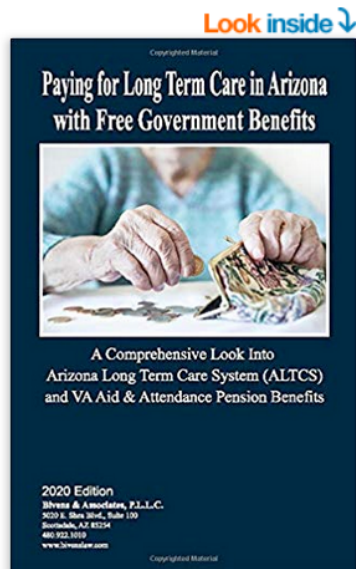
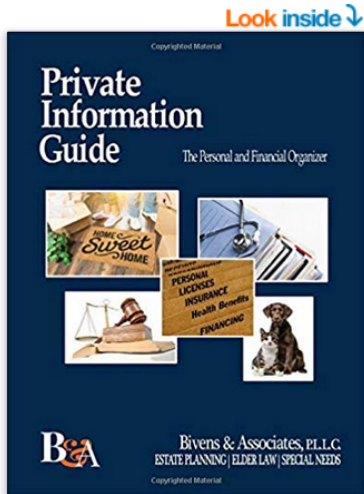
by [Stephanie A Bivens](#) (Author)

[See all formats and editions](#)

Paperback
\$11.95

1 New from \$11.95

Can you afford \$5,000 or more per month for long-term care for yourself or a loved one? If this question causes you concern, you need to know about and understand the government benefits available to help pay for long-term care! Whether you or your loved one needs long-term care right now or might in the future in Arizona, this book is a must-read. For over 20 years, I have practiced elder law and helped hundreds of families navigate through the Arizona Long Term Care System (ALTCS) and Veteran's Administration Aid & Attendance Pension benefits programs while preserving millions in assets and achieving quality care for my clients. Unfortunately, I have seen first hand poor outcomes when families





Thank you

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