



# LEGAL AID FOR SENIORS

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**LEGAL AID SERVICES  
OF OKLAHOMA, INC.**   
*Making Equal Justice for All a Reality*

# Topics Covered

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- Financial Hardships
- Financial Exploitation
- Raising Grandchildren
- Legal Documents
  - Power of Attorney
  - Advance Directives
- Rising Dementia
  - Effects on Legal Documents
- Guardianships
- Estate Planning



# Financial Hardship

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- Can come for many reasons
- What can collection agencies do?
  - They can sue you in Court
  - They can get a Judgment against you if they prove it is your debt
  - They CANNOT take your Social Security and most pensions
    - (only the government can garnish its own money)
  - They can obtain a lien on your property
    - They CANNOT kick you out of your house
- Collectors will threaten everything you own BUT be educated on what your rights are
  - They can only call you a limited number of times a day and only during certain house
  - There is no debtors prison (it was abolished in 1833)



# Financial Hardship

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- If you put something up for collateral on a loan, it can legally be taken
- PayDay loans are a last resort
  - They typically are 400% interest APR
  - Companies will sue but cannot collect Social Security Funds
- Manage your debts based on what you need to live
  - Don't pay credit cards and skip one of your medications or food





# Raising Grandchildren

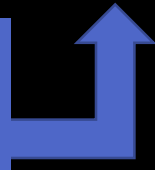
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- What Legal Documents do I need?
  - Guardianship and Letters of Guardianship
    - Involves going through the Court process
    - If DHS is involved can be referred to Legal Aid through Contract
      - Must be an open case
  - Power of Attorney
    - Power of attorney to delegate Parental or Legal Custodian Powers
      - Doesn't include power to consent to marriage, adoption, abortion or termination of parental rights
    - Under Oklahoma Law 10 O.S. §701 voted into Law in 2014
    - Will give POA over child(ren) for up to one year and can be revoked at any time

# What Legal Documents would I use?

- Durable Power of Attorney

**NEW LAWS**  
as of  
**11/1/21**



- Advance Directives
- Guardianships when necessary
- Wills and other Estate Planning Tools



# Power of Attorney

- Durable vs Non-Durable
  - Durable stays in effect once Principal loses capacity
- Allows appointed Agent to act on behalf of the Principal for various things
- Can be executed easily without an attorney necessary
- Principal must have capacity



Power of Attorney



**NEW**

# Changes to Durable Power of Attorney

- House Bill 2548 went into Law on November 1, 2021
  - Created the Uniform Power of Attorney Act (OK Stat. Title 58 Chapter 29 §3001-§3045)
- New Form Templates for Power of Attorney available at §3041
  - Form for Agent Certifying Facts of Power Attorney at §3042

## Most Notable Changes

Eliminates ability to make Healthcare Decisions completely

Witnesses may not be necessary

Can be electronically signed

POA is presumed genuine if signature in front of Notary



# Advance Directive for Healthcare

## Living Will

- Another name for Advance Directive

## Appoints Health Care Proxy

- Someone that can make Healthcare Decisions on your behalf

## Organ Donation

- You can specify any special organ donation requests

## Life Support

- Allows you to make end of Life Decisions as to artificial food and hydration, etc.

## Execution

- Must be signed in front of two witnesses
- No notary required



Really Important with Changes to Power of Attorney Law

# Dementia is Going to Affect Most of us...



Peggy Hoskins  
Dec 10, 1934-June 8, 2012

1 in 3 Seniors dies with Alz or another dementia\*

11.3% of those 65+ has Alz or Dementia\*

Between 2000-2019 Deaths from Alz & Dementia increased 145%\*

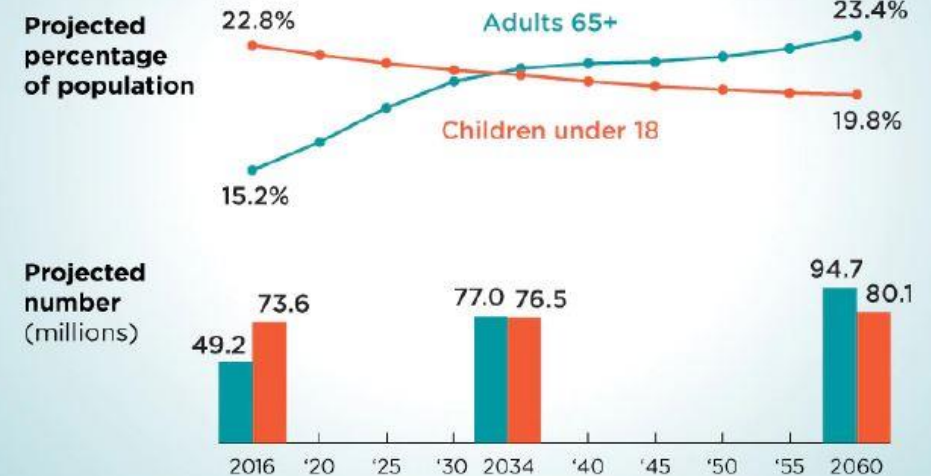
By 2030, 1 in 5 residents will be 65+



## An Aging Nation

Projected Number of Children and Older Adults

For the First Time in U.S. History Older Adults Are Projected to Outnumber Children by 2034



Note: 2016 data are estimates not projections.

United States®  
**Census**  
Bureau

U.S. Department of Commerce  
U.S. CENSUS BUREAU  
[census.gov](http://census.gov)

Source: National Population  
Projections, 2017  
[www.census.gov/programs-surveys/popproj.html](http://www.census.gov/programs-surveys/popproj.html)

\*Statistics from alz.org

# Capacity with Dementia?



- Statute Def. – has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance
- Case Law Definitions
  - Scott v. Scott, 131 Okl. 144, 268 P. 245, 247 – “Grantor should have the ability to understand the nature and effect of the act in which he is engaged”
  - Antle v. Hartman, 193 Okl. 524, 145 P.2d 756 – “Fragmentary evidence of isolated instances indicating failing memory was insufficient to overcome evidence that grantor was mentally competent”
- No clear cut yes or no, but just having a diagnosis does not mean no capacity

# **Elder exploitation is abundant**

- **1 in 20 adults indicated some form of financial exploitation**
- **The Elder population is the fastest growing population**
- **3<sup>rd</sup> fastest growing job is home care personnel**
  - **Often minimal background checks**
- **Comparable to how DV was treated 30 years ago compared to today**
  - **Very often underreported because of shame or fear**
  - **Not given high priority by some law enforcement or seen as a civil matter**

**Things are getting better and in November of 2007 new laws were put in place by the Oklahoma Legislature**

# **What if I suspect financial exploitation**

## **When is a report required?**

- **Reasonable cause to believe vulnerable adult is suffering from financial exploitation**

**Who do you tell? DHS 1-800-522-3511 or local PD**

## **Who is required to report?**

- **Doctors**
- **EMT's and other medical professionals**
- **Social workers and mental health professionals**
- **Law enforcement**
- **Long-Term Care facility personnel**
  - **Staff of nursing homes**
  - **Day centers**
  - **Assisted living**
  - **Residential care facilities**
- **Person entering into transactions with a caretaker of an elderly person**
- **Community Service Workers**
- **Municipal Employees**

# **Signs of financial exploitation**

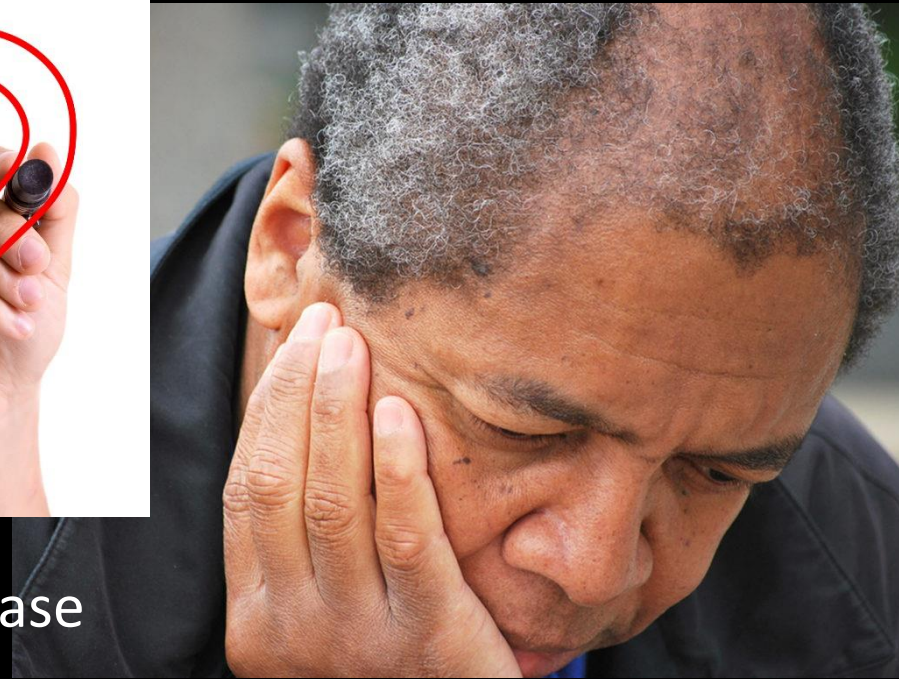
- **Frequent expensive gifts from vulnerable adult to caregiver**
- **Vulnerable adult's belongings, papers or credit cards go missing**
- **Numerous unpaid bills**
- **A Power of Attorney or Will appears when it vulnerable adult seems incapable of writing such**
- **Signing over deeds to property**
- **Caregiver's name added to bank account**
- **Vulnerable adult is unaware of monthly income**
- **Vulnerable adult signs on a loan**
- **Frequent checks made out to cash, unusual bank activity**
- **Signatures that do not resemble Vulnerable Adult's signature**
- **New acquaintances expressing undying affection or calling them Mom or Dad**



## GUARDIANSHIP

- Granted by a Court over an adult considered mentally incapacitated as a matter of law
- Guardian can be required to provide a bond depending on the worth of the estate
- Can be reviewed by the Court on a yearly basis to determine if assets and estate are being managed correctly
- Usually Preventable





- Honest Answer...It depends on the case
- With New Law...Advance Directive needs to be in place
- Must take into consideration all facts and situations to determine what is best
  - Relatives who are likely to handle things
  - Ability to handle assets and property prior to incapacity
  - Each situation will be unique...
- Usually Guardianship is a last resort when nothing else has been planned
- IMPORTANT – you want to have something in place



Trust

# ESTATE PLANNING

Wills

Revocable  
& Living  
Trust

Alternatives  
to Wills and  
Trusts



# WILLS

- A will is a written instrument by which you provide for the disposition of your property after your death. In Oklahoma, if you are of sound mind and 18 years or older, you may dispose of your property by will.
- How to Create One
  - Using online form is NOT recommended
  - Can be completed by licensed attorney
- Holographic Will
  - OK Law allows handwritten will
  - Does not need to be witnessed or notarized
- Wills can be filed with County Clerk or Court Clerk



# Let's Talk Probate

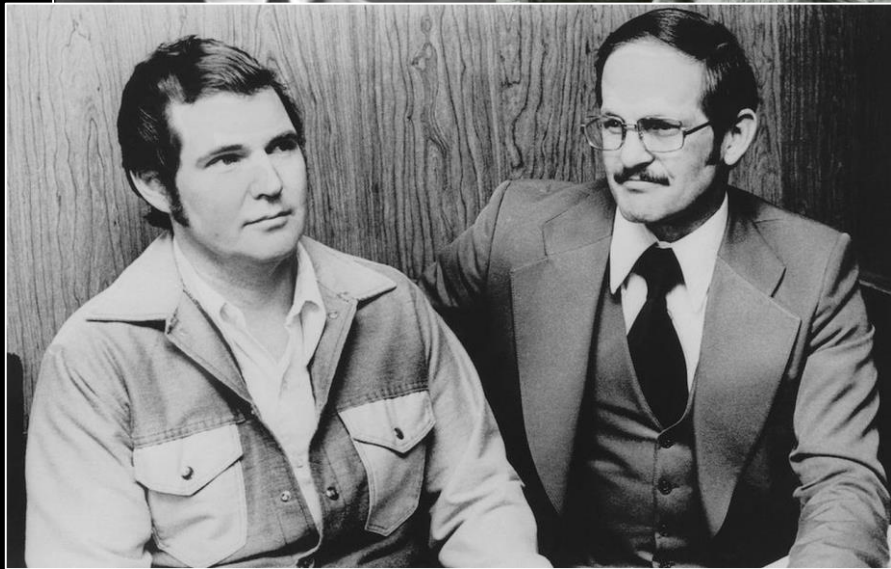
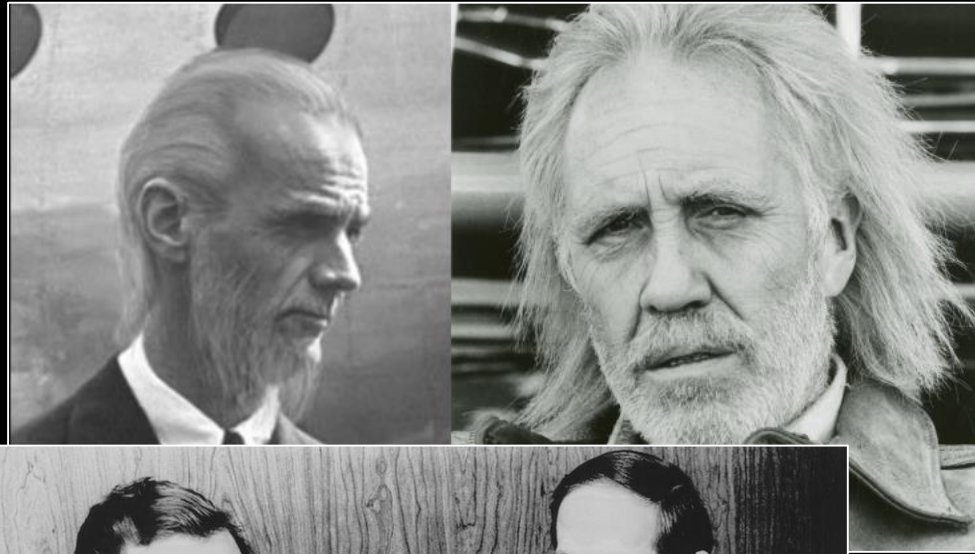
- What is Probate
  - Definition - n. a general term for the entire process of administration of estates of dead persons, including those without wills, with court supervision. \*
- Process in 6 steps
  - Step 1 – Petition the Court and request appointment of Executor (personal rep)
  - Step 2 – Notice
  - Step 3 – Hearing
    - Chance for any objection by any party
  - Step 4 – ID Assets, Pay Debt, Value Assets
  - Step 5 – Executor files accounting w/ court and assets begin to be distributed
  - Step 6 – All property is legally transferred, and the estate is closed.

\*Black's Law Dictionary

# What about everything else?

- Holographic Wills
  - 84 O.S. §54 - §55
- Family Heirlooms, antiques, keepsakes and other nice items
- Create a safeguard for those items in a Holographic Will
  - In OK, you can write your own will
- You can designate the person to receive your treasured items

# Mormon Will



← Melvin Dummar

- Howard Hughes, billionaire recluse, died in 1976 apparently leaving no Will
- Search for the Hughes Will intensified and speculation that a Holographic Will existed somewhere. This was confirmed by Hughes' Attorney who said he had asked of holographic Wills validity.
- A Will appeared on the Desk in the Mormon Church HQ in Salt Lake City that was deemed to have probably been written by Hughes
- The Will gave \$156 Million to Melvin Dummar, a small gas station owner, who had once given Hughes a ride into Vegas when Hughes' car broke down
- It was later determined that Dummar had forged the Will by looking at The Hoax, a book about the forged autobiography of Howard Hughes
- It took a 7 month trial and millions of the Hughes Estate to prove his handwriting had changed and this was another Hoax

A photograph of a document titled "LIVING TRUST" in large, bold, black letters. The document is on a white sheet of paper, which is placed on a brown paper folder. A silver paperclip is on the left side of the document, and a wooden gavel is on the right side. The background is a dark, curved shape.

# LIVING TRUST

## Revocable and Living Trusts

- A revocable or living trust is a written document providing for the management of your property which becomes effective while you are living.
- A trust is set up for a trustee to manage your property for your benefit during your lifetime or in the event of your incapacity
- How are they created
  - Using online forms are NOT recommended
  - Contacting a local attorney to set this up is best
  - There is no option to create or write your own trust like you can a Will
- Trusts need to be continually updated and maintained to ensure all of your assets and property are correctly titled and listed

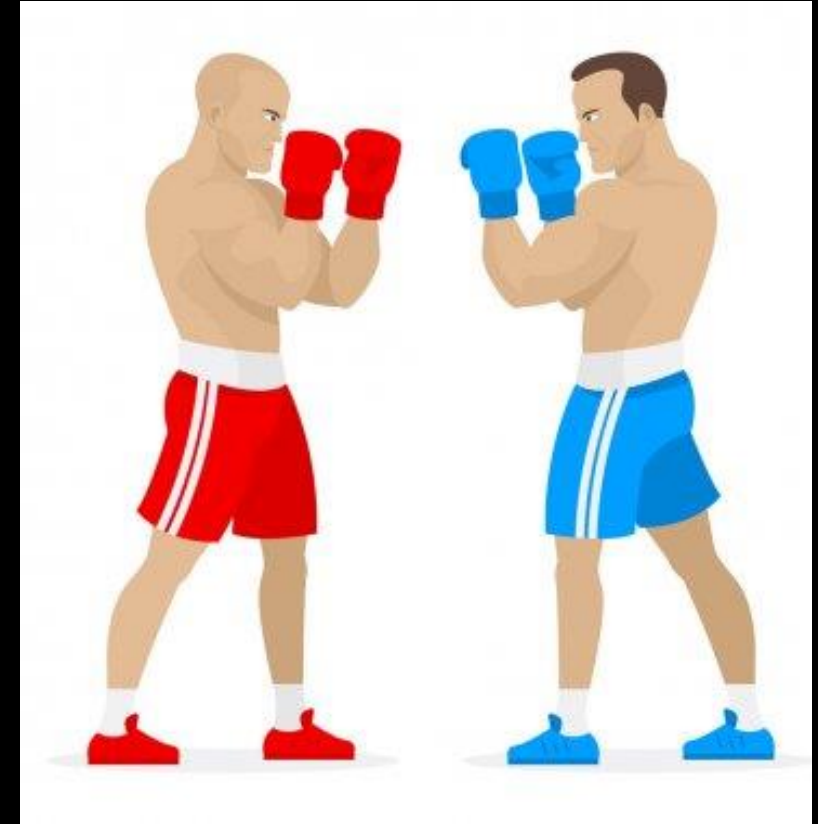
# WILL

- Cost less to prepare
- Easier to prepare
- Does not need to be updated as often as a Trust
  - If property is not correctly titled or included in a Trust, it then must be probated and can not be distributed through the Trust

VS

# Trust

- Your estate does not go to Probate Court
- Trust is a private document, and a list of your assets will not become public record
- You can continue the Trust after your death for the benefit of a spouse or child
  - Especially useful if spouse or child is disabled



# Alternatives

## Payable on Death Accounts

- Allows you to place a beneficiary on all accounts and CDs

## Small Estate Affidavits

- Available for accounts under \$50,000
- DMV Title Distribution Affidavits

## Transfer-on-Death Deed

- Originally enacted in 2008
- Allows the bequeathing/giving of your property to someone after you die without probate!
- Form is similar to a Quit Claim Deed and is kept on file at County Clerk
- Can be revoked at any time prior to death
- Allows transfer of property subject to inheritance taxes and any existing liens



**KEEP  
IT  
SIMPLE**



**“If you fail to plan,  
you are planning to  
fail.”**

*- Benjamin Franklin*



# Questions?



## Resources:

[www.oklaw.org](http://www.oklaw.org) – Legal Aid Information Site

[www.okbar.org](http://www.okbar.org) – Senior Law Resource Center

Legal Aid Services of Oklahoma, Inc.

Application Line 1-888-534-5243

Senior App Line (60+) 1-855-488-6814

Online App: [oklegalconnect.org](http://oklegalconnect.org)