

# Power of Attorney 101 – Financial and Health

A Very Very Very Broad Overview of the Topic

*Presented by*

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Principal – Burris Law





## Ariana Burris, Esq.

- Principal Attorney at Burriss Law
- Head of Trusts & Estates practice
- Specializes in estate planning, trust administration, and probate
- Particular focus on Prop 13 transfers of real property and special needs planning
- Mom, wife, and large dog enthusiast



# Large Dog in Question

- Max
- Age 5
- German Shepherd, Malinois, Husky Mix
- Interests include: chasing squirrels, tolerating a 6 year old, 10-12 naps per day
- Accomplishments: Burriss Law's employee of the month every month since June 2021

# 2013 Leading Causes of Death – U.S.

1. Heart Disease
2. Cancer
3. Chronic lower respiratory diseases
4. Unintentional Injuries – Accidents
5. Stroke
6. Alzheimer's disease
7. Diabetes
8. Influenza and pneumonia
9. Kidney disease
10. Suicide

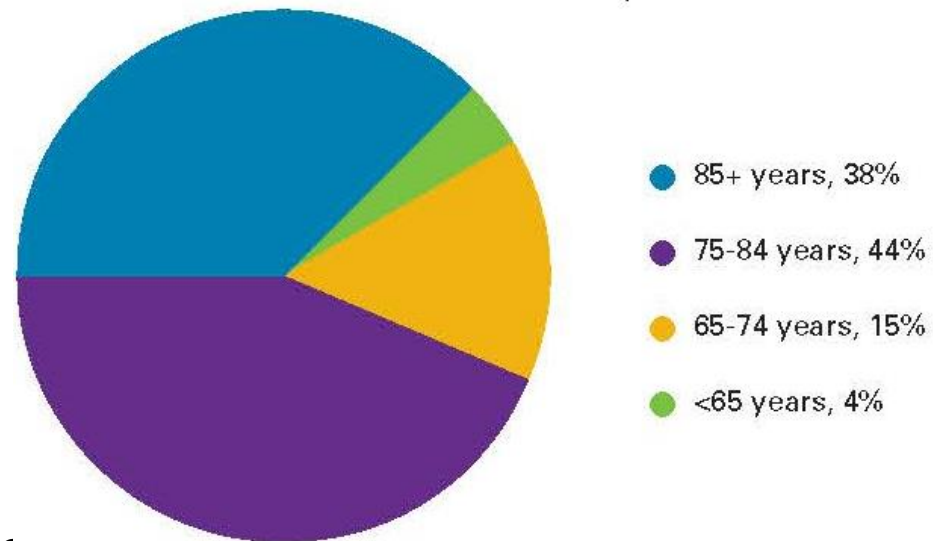
<http://www.cdc.gov/nchs/fastats/deaths.htm>

[http://www.cdc.gov/nchs/data\\_access/Vitalstatsonline.htm](http://www.cdc.gov/nchs/data_access/Vitalstatsonline.htm)

# Prevalence Data – U.S.

- Alzheimer's Disease – affects 1 in 9 people age 65 and older; 5.2 M Americans have it

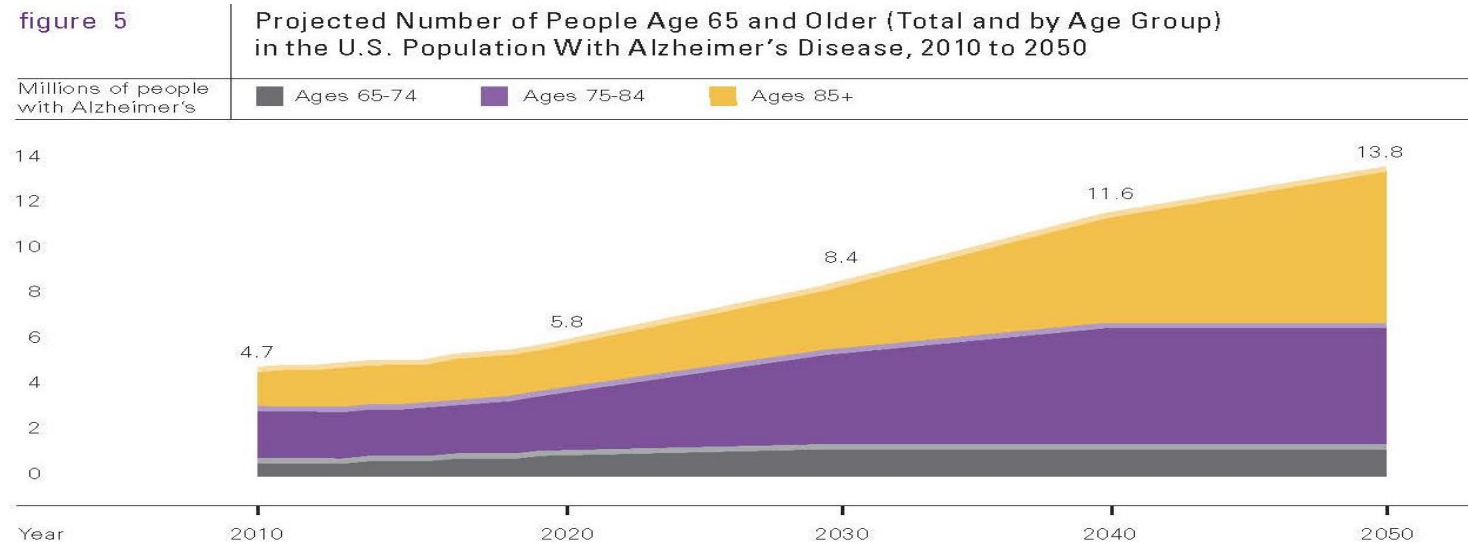
figure 1 | Proportion of People With Alzheimer's Disease in the United States by Age



- Percentages may not total 100 because of rounding.
- Alzheimer's Association, 2014 Alzheimer's Disease Facts and Figures, Alzheimer's & Dementia, Volume 10, Issue 2.

# Prevalence Data – U.S.

- Alzheimer's Disease
- The number affected will grow rapidly each year as the size and proportion of the population age 65 and older increases (aging boom generation).
- More women than men have it; almost 2/3 are women.
- Why? – women still live longer, but no evidence suggests women are more likely to develop it.



- Alzheimer's Association, 2014 Alzheimer's Disease Facts and Figures, Alzheimer's & Dementia, Volume 10, Issue 2.

# Prevalence Data – U.S.

- **Stroke** is a leading cause of serious long-term disability.
- In 2009, 34% of people hospitalized for stroke were younger than 65 years of age.
- Each year, more than 795,000 people in the U.S. have a stroke, costing an estimated \$36.5 billion each year for medical services, medications and missed days of work.
- **Common Risk Factors: High Blood Pressure, High Cholesterol, Smoking, Atrial Fibrillation – 49% of all Americans have at least one Risk Factor**

Go AS, Mozaffarian D, Roger VL, Benjamin EJ, Berry JD, Blaha MJ, et al. Heart disease and stroke statistics—2014 update: a report from the American Heart Association. *Circulation*. 2014;128

Hall MJ, Levant S, DeFrances CJ. [Hospitalization for stroke in U.S. hospitals, 1989–2009\[PDF-322K\]](#).

NCHS data brief, No. 95. Hyattsville, MD: National Center for Health Statistics; 2012

<http://www.cdc.gov/stroke/facts.htm>

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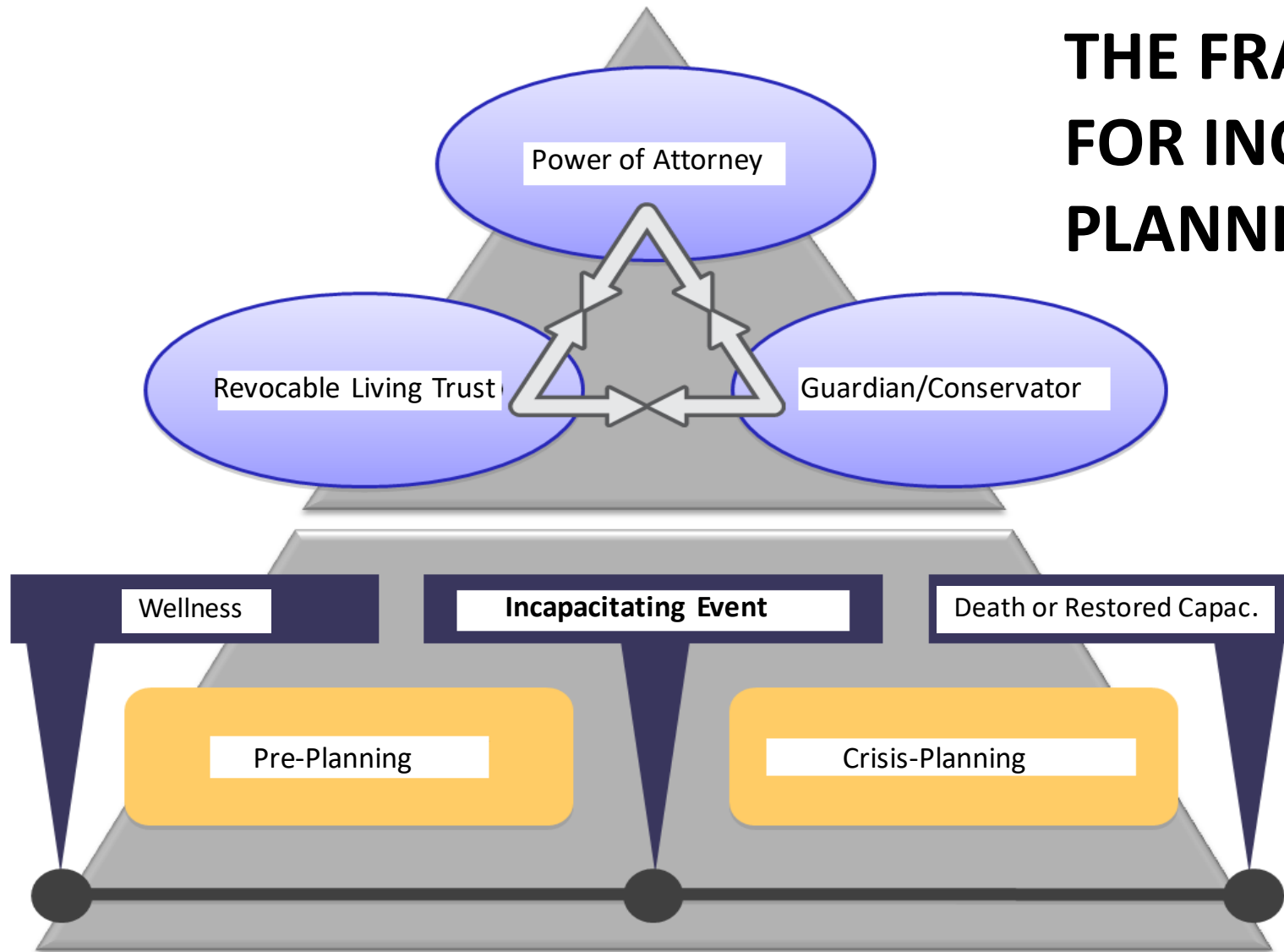
**I'LL CALL MY OWN PHONE SO I'LL  
KNOW WHERE IT IS**



**OH LOOK, A MISSED CALL!**



# THE FRAMEWORK FOR INCAPACITY PLANNING



# POWER OF ATTORNEY

Principal – Agent Relationship

(Semi-Private)

PRINCIPAL – “BOSS”



AGENT – “SERVANT”



# Powers of Attorney

## *POAs to Help Manage Incapacity:*

- ONE WAY STREETS
- POAs DO NOT Remove Rights from Principal
- Agent cannot overrule Principal
- Often contain inadequate instructions
- 3<sup>rd</sup> parties may be reluctant to honor
- 3<sup>rd</sup> parties see contents of POAs
- Often have no 'back up' agents
- Certain explicit authorities must be given and if absent, may be insufficient
- Requires Principal to be compliant under the POA

# REVOCABLE LIVING TRUST



Principal (Initial TRUSTEE) – Successor TRUSTEE

(Private transfer of authority)

INITIAL TRUSTEE – “BOSS”



SUCCESSOR TRUSTEE – REPLACEMENT PRINCIPAL

# Revocable Living Trust

*A Living Trust to Help Manage Incapacity:*

- Trustmaker names Successor Trustees
- Trustmaker specifies how “incapacity” or “disability” is determined; THE TRIGGER
- 3<sup>rd</sup> parties accept authority of successor trustees
- Trust remains private; disability management is private
- If assets funded to trust, can avoid a court conservatorship



# Court Guardianship/Conservatorship

Judge Relationship  
(Public)

JUDGE



Names a "Guardian &/or Conservator"



# Guardianship / Conservatorship

*Court Intervention to Help Manage Incapacity:*

- Person loses control – Judge decides
- Family may lose control
- Court requires hearing
- Rights are removed
- Formal inventories /accountings required until death or capacity restored
- Court may require bond
- Process can be expensive, burdensome
- Any interested party may petition for court action

# Common Planning Motivators

*We all know what they are:*

- Life threatening illness
- Recent accident
- Minor children
- Recent death of someone close
- Change in financial condition
- .... Went to a seminar....

**Motivators may center around general estate planning and death anxiety. Incapacity fears may not be articulated well by client.**



# TWO Basic Key Reasons for Incapacity Fear

1. “Loss of control” of one’s person and finances
2. What is *at stake* if loss of control occurs

# THE 2 QUESTIONS

1. *“Do you worry about losing control if you were to be incapacitated?”*
2. *“If you lose control because of incapacity, what are you most worried about happening?”*



# PRE-PLANNING vs. CRISIS PLANNING

- Pre-planning allows for continued decision-making without unnecessary interruption if incapacity occurs.
- Trusted successor decision-makers pre-selected to act; may also help avoid disputes
- Custom provisions in legal instruments already in place to follow
- If using a living trust, assets already funded to trust and Successor Trustee can manage right away

# PRE-PLANNING vs. CRISIS PLANNING

- Crisis Planning is never optimal and may place the newly incapacitated person, their estate and family in a tenuous position because:
  - Figuring out what to do is difficult in a time of crisis
  - Decision-making during a crisis are compromised due to grief, sadness, worry, lack of knowledge, lack of skill
  - Assets may be unnecessarily dissipated
  - In the absence of planning, court intervention may be only option
  - Increased potential for disputes

# Pre-Planning for Loss of Control

What tools help MAXIMIZE control?

## **Well- drafted POA's with applicable clauses**

- Pre-selection/ trusted individuals
- Protective clauses to decrease risk of financial abuse  
ie...serving agent provides accountings to principal and  
successor agents
- Home care clauses
- Whistle-blowing permission
- Agent removal
- Nominating guardians and conservators
- Provisions for Estate Planning

# Pre-Planning for Loss of Control

What tools help MAXIMIZE control?

## Using an Living Trust

- FUNDING THE TRUST WITH ASSETS **BEFORE** INCAPACITY – Why?
- Defining the Incapacity Determination
- Determining how a successor TEE is removed
- Addressing support distributions
- Using an advocate if incapacity determination in question

# Guardianship / Conservatorship

Removal of Rights May Be Necessary

IS THIS A CRISIS PLAN?

.....MAYBE



Generally, pre-planning for incapacity serves to avoid court intervention whenever possible.

# Incapacity Planning Summary

- Understanding and Using the Framework for Incapacity Planning
- How to Identify Specific Fears
- Communication of Thoughtful Options Addressing the Identified Specific Fears
- How Pre-Planning Facilitates Uninterrupted Decision-Making
- Alleviation of Client Fears
- (Don't forget about insurance - Disability, LTC)

**QUESTIONS???**