# How to SURVIVE

## Being a Sandwich Generation Kid

## and Care for Your Parents Without Going Broke or Insane

by
Heather Chubb, Esq.

# How to Survive Being a Sandwich Generation Kid and Care for Your Parents Without Going Broke or Insane

# About the Author

**Heather Chubb: A Dedicated, Caring Advisor**

Heather R. Chubb is a Life Transitions Lawyer based in the Sacramento, California, area. She founded The Chubb Law Firm in 1999 because she saw the need for a different approach to estate planning; an approach that is straight forward, easy, and above all understandable. Heather believes that there is nothing worse than a plan that takes a team of lawyers to decipher it. Because she truly listens to her clients, Heather is able to transform clients' visions into plans that meet their desires and exceed their expectations.

While each of her clients has different needs and objectives; they all have in common the goal of protecting those they love, keeping control for as long as possible, making the most of assets they worked hard to acquire, and having a trusted advisor they can call with their life transition questions.

As the name implies, life transitions planning isn't a one-time event, but a series of steps that change and vary depending upon your goals and stage of life. Ensuring your plan is up-to-date is essential to its proper functioning and to helping your family and loved ones avoid delays, and unnecessary costs.

Heather is a member of the State Bar of California Trusts and Estate section, WealthCounsel, LLC, a national organization of professionals who design sophisticated planning techniques for individuals and families, and the Advisors Forum, a national organization of wealth planning professionals dedicated to collaborative comprehensive planning.

Heather lives in Fair Oaks with her husband, their two sons and two cats. Before receiving her law degree from the University of the Pacific McGeorge School of Law, cum laude, Heather received a Bachelor Science in Chemical Engineering and worked as an environmental consultant. Her hobbies include gourmet cooking, gardening, and photography. She and her family also enjoy fly-fishing and camping.

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Imagine you're dropping your kids off at school and your cell phone rings. It's the hospital ER. Your mom has fallen and broken her hip and your dad is panicking. He wants you to come home immediately to help. But their home is 2 states away and you have a big presentation this afternoon. You're worried about your parents, your boss, your kids and how to pay for it all. You've just become part of the Sandwich Generation!

What exactly is the "Sandwich Generation?" The Merriam-Webster dictionary defines it as a generation of people who are caring for their aging parents while supporting their own children(or getting ready for them to leave the nest).

Americans are living longer, and people are starting their families later. According to the Pew Research Center, 1 out of every 8 Americans, ages 40 to 60, is raising a child and caring for a parent at home. Even more challenging, 7 to 10 million Americans are caring for their aging parents long distance.

Baby Boomers are at the heart of this group. And many times, their scenarios can be tricky. Becoming a member of the Sandwich Generation often happens fast and unexpectedly. And once you join its ranks most of the training is on-the-job.

If you are part of the Sandwich Generation your plate is beyond full. Do you know where to turn to or even what to do? What are the most important things you need to know to help your parents in a way that still makes them feel like independent adults? How do you even start a conversation with your parents about all of this? And how can you pull this all off and still keep your sanity?

Unfortunately, much of the information available to seniors and their families about receiving care isn't sought out or given to them until the last minute. This often forces decisions that are made too quickly without the benefit of good research. Time, money and emotions are wasted because of a lack of knowledge or time constraints.

## I wrote this report to provide you with the guidance you need to keep your sanity and make great decisions for your loved ones during such trying times.

The major concerns currently facing those in the “Sandwich Generation” include:

- Approaching a parent who is struggling with health issues, physical impairment or general decline
- Knowing how to become an advocate for your parents (do your parents have the right tools in place to help you do this important job?)
- Talking to your parents about their finances (it helps to know what they have, how to protect it, and if they have a plan in place)
- Figuring out the right type of care for your parents and how to pay for it
- Understanding the difference between Medicare, Medi-Cal (Medicaid) and Long-Term Care

## How To Start the Conversation

Starting the conversation is often the hardest part of helping your parents. Make sure your parents know that you are there to assist them and that you want to help preserve their choices. It’s important for you to understand things from your parents’ point of view. Sharing your own preferences and plans for yourself can be a good way to open the door and stimulate discussion. You could also start by talking about a recent life event.

The biggest fear aging parents have is losing their independence. When you have a concern, it may be tempting to intercede. It’s better, however, to avoid taking over.

Keep the lines of communication open and come up with a plan together. Your parents must have a say in their overall care plan. What if you come across an issue that you just don’t feel comfortable or safe handling on your own? In that case, consider involving the professional community - a primary care physician, a gerontologist, home care specialist, or elder care attorney.

## Now You're the Advocate – The Importance of Advance Healthcare Directives and The Greater Importance of Knowing How to Use Them

All your life your parents have been your advocate. When you were little they taught you how to be independent. They laid the foundation for who you are and they were there for you when you needed them. Now it's your turn. The most important document you need to advocate for your parents is an Advance Healthcare Directive (AHCD). In this legal document your parents name a hand selected and trusted person to make medical decisions for them and speak for them if they are incapacitated or otherwise unable to speak for themselves. These decisions cover a wide variety of actions from making doctor's appointments to making end of life decisions (i.e., "pulling the plug").

But just having this document is not enough and all AHCDs are not created equal. It is essential that you, as the decision-maker (aka "agent" in legal terms), understand your rights under this document, as well as your parents' rights and their healthcare wishes. Most of those rights are described right in the document so you need to really read and understand it, as do your parents, so they understand the importance of leaving instructions and information to carry out their wishes should something happen to them.

Because it is impossible to include instructions for every situation within the AHCD, you need to have discussions with your parents about their healthcare wishes. And, this is not a one-time discussion. Over the last few decades advances in medical technology have created an environment where people can be kept "alive" much longer. But there is a big difference between being "alive" and have a quality life. Discuss with your parents what quality of life means to them. If you're having difficulty describing quality of life or potential situations try going through the information in the POLST form. POLST stands for Physicians Orders for Life Sustaining Treatment and is used by doctors when patients are considered to be within 6 months of the end of their life. You can find the California POLST form at http://finalchoices.org/polst.php. This discussion will help your parents avoid unwanted medical intervention and hospitalizations.

The most commonly used AHCD in California is the one created by the California Medical Association (CMA). Unfortunately, while it is widely recognized and accepted by the healthcare community, it leaves much to be desired. It is a bare bones, fill-in-the-blanks kind of document and does not provide enough information to base your wishes on. Even worse, it creates a false sense of security in believing

your Advance Health Care Directives are truly taken care of. This is compounded by the fact that families often don't talk about these issues. And if you can't talk with your family, you probably can't and won't talk with your doctor or other medical professionals about these issues either.

On top of that and perhaps even more unfortunate, members of the medical profession don't always know what to do with an AHCD, and may even ignore it. Therefore, in advocating for your parents, it is extremely important that the medical staff understands you are in charge of mom or dad's care if they are incapacitated or diagnosed with dementia. In California once a determination of incapacity has been made it must be included in the medical chart along with the name of the person authorized to make healthcare decisions. The existence of an AHCD must also be recorded in the medical record and a copy of the Directive placed in the chart.

Now that you know this, it is up to you to make sure that it happens and the medical professionals know who to direct inquiries to. Unfortunately, due to understaffing and sometimes even lack of knowledge of the realities of dementia, it is a fairly common occurrence for medical staff to forget that a dementia or incapacitated patient may be able to respond appropriately to questions and still not have real knowledge about what is being asked. It is imperative that the medical staff not take direction from your parent. Discuss with your parents' doctor and the hospital or care facility staff the procedures they use for dementia patients. As an example, in some facilities dementia patients are given colorcoded ID bracelets. Once you determine what's supposed to happen you will still need to put your advocate hat on and check in periodically to make sure the procedures are actually being followed.

In addition to AHCD, HIPAA is the other acronym you need to know. HIPAA stands for the Health Insurance Portability and Accountability Act. This well-intended law was enacted to protect an individual's private medical information from prying eyes. Implementation of the law goes a bit too far, creating a roadblock between your parents' doctor and your ability to get medical information you need to ensure your parents' well-being.

At its core, this law prevents the doctor and even the health insurance company from talking to you about your parents' condition and needs without your parents' prior authorization. The good news is now that you know about this roadblock there is something you can do about it.

Make sure that your parents' AHCD includes HIPAA authorization language or a "HIPAA Release or Medical Records Release" (most AHCDs created prior to 2006 don't).

Better yet, make sure they have a stand-alone HIPAA Authorization form completed while they are still enjoying a sound mind and great health.

Then when the time comes, you will be able to easily talk to your parents' doctor and coordinate their care.

## Finances and Estate Planning– They're Not Dirty Words and it IS Your Business

I know it's uncomfortable, but you really need to talk to your parents about their finances. In order to help them protect their wealth, or know whether that is even a priority for them, it helps to know what they have and if they have a plan in place.

Don't make the common mistake of thinking that Estate Planning is just for rich people and only about death and taxes. Sure, when you've acquired a lot of wealth you have more issues and need more tools, but even people with modest estates (and we all have an estate) need planning. But, it's not all about dying and where the stuff goes. Death planning is only half of the solution. What if you are still alive, but can't make decisions for yourself because of aging or illness or a traumatic accident? Who will be there to help you out? Who will legally be able to speak for you or help you manage your assets? And will your family be able to even talk to your doctor to find out what's wrong with you?

Without the proper legal documents you and your family will need to seek the help of the probate court through a process called "conservatorship." Because the court is involved, this process is necessarily public and ongoing court supervision is required. Keep control by making sure you have the proper legal documents in place. For disability or incapacity planning an Advance Healthcare Directive, HIPAA Authorization and something called a Financial Durable Power of Attorney (DPA) are a must.

The DPA is similar to the AHCD in that the creator (or principal) names a hand selected, trusted person to help them, this time with managing finances. The DPA covers all sorts of financial topics from paying bills and managing the checkbook to ensuring that taxes get filed and government benefits can be obtained.

When it comes to your parents, Estate Planning is really about making sure that they stay in control and that their wishes are known. It's about creating a roadmap to make it easy for you to care for your parents in the way they want and make transitions as hassle-free as possible. In short, it's a map for both you and your parents and a gift of thoughtfulness and respect.

## When Once Isn't Enough

Don't let your parents make the other common mistake of thinking that just because they have an estate plan it meets their current needs. As we age, plans need to shift and include provisions to allow for additional planning to take place if we are incapacitated. Without the right provisions and authorities, additional planning will not be an option unless you can get the court to approve it. As you can imagine, because of the public nature of the process, courts take a very conservative approach (judges are concerned about ending up on the front page of the paper) and the likelihood of approval of planning to protect assets is small.

The most common situation where additional planning is needed after someone becomes incapacitated is for Medi-Cal or Veteran's benefit eligibility planning. This type of planning typically involves rearranging or changing ownership of assets. Without the appropriate authorizations in the trust and DPA, your parents ability to complete eligibility planning may be hampered and possibly not even an option (See the example in the section"Getting Your Ducks in a Row").

In some instances this type of planning can be done with a short time frame, but the rules for Medi-Cal planning will be changing, as soon as 2011, and that will necessitate longer time lines, as much as five years in advance of the need!

Having a rock solid estate plan that contemplates future needs will be a life saver.

## Medicare, Medi-Cal and Cover the Cost of Long-Term Care

While there are a variety of ways to pay for long-term care, it is important to think ahead about how you will fund the care you get. Understanding the difference between these programs is critical to helping your parents get the care they need. Before we go much further it's important to understand just what long-term care means because it's going to create the greatest number of issues for you and your parents.

***Long-term care*** refers to medical and non-medical care for a person who has a chronic illness or disability. The need for long-term care, also known as custodial care, occurs when you need medical care but you are unlikely to get any better. For example, as we age our bodies simply start to wear out and fall apart. This may result in limited mobility, loss of independence and the need for assistance with every day activities such as dressing, bathing and eating. Or we may need help with everyday activities due to diminished mental abilities and confusion.

Things that used to come naturally, such as turning off the stove when you are done, or remembering that you turned the stove on to make lunch are suddenly gone. The need for long-term care may also arise due to a sudden medical incident such as a heart attack or stroke, which even after the patient reaches "full recovery," leaves them unable to care for themselves.

Most often long-term care is non-medical in nature and assists with support services such as activities of daily living like dressing, bathing, and using the bathroom. Long-term care can be provided at home, in the community, in assisted living or in nursing homes.

***Difference Between Medicare and Medi-Cal*** There is a very large difference between Medicare and Medi-Cal (Medicaid) and people confuse the two all the time. So which program is which and what do they cover?

Medicare is a federally funded entitlement program to provide health insurance primarily to Americans over the age of 65 and many individuals with disabilities. There are several parts to Medicare: Part A covers hospital bills, post-hospital nursing home stays and home health care, Part B covers medical insurance and pays most basic doctor and lab costs, and some out-patient medical services, including medical equipment and supplies, home health care, and physical therapy, and Part D covers some of the costs of prescription medication.

Medi-Cal (Medicaid) on the other hand is a federal program, administered by the State of California, that pays for certain health services and nursing home care for older people with low incomes and limited assets. It also pays for some long-term care services at home and in the community. Medi-Cal covers a broader range of services and people than Medicare, including children, pregnant women, parents of eligible children, seniors and individuals with disabilities. Its greatest difference from Medicare is that Medi-Cal is based on need and financial resources. In order to qualify a person must fall into a covered group and meet the financial needs test.

***Medicare generally doesn't pay for long-term care.*** Medicare also doesn't pay for help with activities of daily living or other care that most people can do themselves or can be provided by family. Medicare only covers a small amount of the nursing home care provided in the United States, and only under very limited circumstances, making the hope of Medicare paying the bill quite difficult. Medicare pays for 20 days of full coverage if you go into a skilled nursing facility after at least three days in the hospital, so long as you are receiving skilled care as opposed to custodial care. If you still need skilled care after the first 20 days, you can get up to additional 80 days of partial coverage from Medicare. When the Medicare coverage ceases, you will have to pay out-of-pocket unless you have private long-term care insurance or qualify for Medicaid ("Medi-Cal" in California) benefits.

**If you need "custodial care" rather than care associated with an injury or illness Medicare won't pay a dime.** Custodial care is defined by Medicare as help with activities of daily living, like dressing, bathing, going to the bathroom and eating. This is the kind of care that can be safely and reasonably provided by people without professional skills or training – like your family. Custodial care is also called "long-term care" and is the type of care that most people will need as they approach the end of their lives.

If you need custodial care there are a couple of alternatives to pay for it. First, you could purchase long-term care insurance – provided you are healthy enough and can afford the high premiums. Many policies can also be used to pay for assisted living and in home care, as well as skilled nursing care. Second, you can pay for everything directly out of your pocket.

Finally, if you qualify, Medi-Cal and Veterans Benefits will pay for your care under certain circumstances.

As you can see, planning for long-term care requires thinking about possible future health care needs. It is important that your parents look at all of their choices. They will have more control over decisions and be able to stay independent if they do. It is important to think about longterm care before the need for care arises or before a crisis occurs. Even with good advance planning, making long-term care decisions can be hard.

## Getting Your Ducks in a Row

An organized estate is one of the greatest gifts parents can give their family. But it is not enough to just have an “estate plan” since the wrong kind of plan will just create more problems than it will solve.

If your parents are contemplating long-term care, it is extremely unlikely that their current will or trust is enough to provide for them in this situation. Unfortunately, a “basic” will or even complicated trusts that were created to avoid estate taxes are not enough and do not contain the right protections. Furthermore, estate planning documents that non-elder care attorneys create tend to focus on after-death distributions and sophisticated tax planning, with little or no thought given to how affairs should be managed in case of disability. Oftentimes the conversation about planning for long-term care or using Medi-Cal to pay is initiated by the child rather than mom or dad. The conversation is prompted because mom and/or dad need more care than the family can provide and can no longer safely live in their own home. Once in a facility, whether it is a board and care home, assisted living, or skilled nursing home their funds will be used up at a furious rate, anywhere from $3,000 - $10,000 per month depending on the facility and level of care needed. The family is overwhelmed.

Let’s look at a common situation. In 1997 mom and dad, who are in good health and well into retirement go to a lawyer to create an estate plan. They put in place a trust, will, advance healthcare directive and financial Durable Power of Attorney. They take all the steps necessary to change the ownership of their assets and all are owned by their trust. Mom dies in 2008 after a short illness. Dad develops Alzheimer’s disease then falls and breaks his hip at age 89. He will never be able to return to live independently in his own home.

At first, Medicare picks up part of the tab, but once the doctor determines that dad is stable and rehab won’t help him anymore dad’s care changes from acute (paid for by Medicare and supplements) to long-term and now Medicare no longer pays. Daughter sees dad’s funds rushing out the door and seeks advice on what can be done to qualify dad for Medi-Cal. At this time dad owns two pieces of property and has about $35,000 in the bank. Daughter is concerned because she can’t access dad’s bank account to pay his bills (due to lack of understanding of how the trust works she thinks she only becomes successor trustee when dad and mom both die) and the bank won’t accept dad’s Durable Power of Attorney because the accounts are in the trust.

In order to qualify dad for Medi-Cal we need to be able to get the assets out of dad's (or the trust's) name by giving them away in the right way. BUT dad no longer has the capacity to change his plan and the legal documents do not contain the right authorities and instructions. The trust does not let the trustee gift assets and even though the assets can be taken out of the trust and put into dad's name, the power of attorney only has limited gifting powers. So it is not legally possible to do what is needed and the plan fails because it was not created to envision this situation. In this case dad's physical condition was also deteriorating quickly, eliminating going to court as a solution. Daughter will need to begin liquidating assets to pay for dad's care.

Does that mean that the attorney mom and dad went to committed malpractice? Probably not. The issue of long-term care was likely never even considered. The plan was created with other goals in mind, in particular reducing estate taxes. **Mom and dad were doing well and their plan was perfectly adequate for their needs right up until their life and their needs changed. Unfortunately, because they thought of the plan as something they didn't need to revisit, holes developed and now this plan will cost dad thousands of dollars unnecessarily.** Even when you factor in the cost of updating the plan several times over the 13 years that it was in place, that cost is nothing compared to paying for one month of long-term care at the average rate of $7,000 per month, until the money is spent and dad can qualify for Medi-Cal.

## The 5 Legal Documents Your Parents (and You!) Need

There are five basic building blocks that every estate plan should contain. These 5 building blocks make all the difference between being able to help your parents in a thoughtful private way as opposed to exposing them to the public scrutiny of the court system.

1. **Will.** A will determines who gets your money and other property upon your death. The will also identifies the person, known as an executor, who will gather up your assets, pay your debts and then distribute your assets. Without a will, the state laws and courts make those decisions. An elder law attorney will also know how to create a will that contains provisions that will protect mom's assets (and allow her to qualify for Medi-Cal) when dad dies.

2. **Trust.** A trust is a very powerful estate planning tool that can help families avoid the time and expense of dealing with the probate court. It also provides estate tax planning, and in some circumstances, it will protect assets from lawsuits and divorce. A trust can also provide centralized management of your assets if you become incapacitated. Yet because a trust is nothing more than a collection of words on paper, a person is still needed to physically carry out its instructions. This person is called the trustee and they are charged with managing the trust assets for the beneficiary and following the trust's instructions for allowing the beneficiary access to the assets. The beneficiary is the person who is entitled to use or receive the trust assets.

   Trusts come in two varieties – revocable and irrevocable. The revocable trust is the cornerstone of many foundational estate plans, while the irrevocable trust is used for more advanced planning, including Medi-Cal planning. A well-drafted revocable trust allows the trustmaker (also called the trustor, settler, or grantor) to hand-pick the trustee who will manage the trust assets for the trustmaker if the trustmaker becomes incapacitated.

3. **Financial Durable Power of Attorney.** A Durable Power of Attorney (DPA) allows you to appoint someone to handle financial matters. This person is called your "Agent." A Durable Power of Attorney allows the agent to continue to handle financial matters if your become incapacitated. If the DPA is not "durable" its powers will terminate when you become incapacitated. These financial actions can range from helping mom and dad with their banking, paying their bills, and making sure their taxes are completed and filed, to defending or starting a lawsuit, running a business, and selling property. The DPA also provides authorization to take care of life insurance policies and retirement account and deal with government agencies. It is powerful and broad in scope and unfortunately, easily abused. The DPA terminates when the principal dies.

   If you have a trust, you need to be aware that there are some financial actions that may need to be taken that have nothing to do with the trust. In that case the DPA becomes an essential companion to the trust and allows your entire world of financial actions to be covered when you are incapacitated.

4. **Advance Healthcare Directive.** The Advance Healthcare Directive identifies who will make healthcare decisions if you are unable to do so for yourself. The powers in the Directive can be very broad and include everything from choosing where you will live, to authorizing medical procedures, and making end-of-life decisions. A good Directive along with conversation will allow you to become a true advocate for your parents and get them the care they need.

5. **HIPAA Authorization.** HIPAA is the nickname for a law that protects your personal medical information from prying eyes. It also makes it nearly impossible for your family members to talk to your doctor about your health. A HIPAA Authorization allows you to identify the people that you want to have access to your information.

## Eight Common Trust Mistakes

Many people have set up revocable trusts to avoid going through probate. But without the right guidance and periodic review, the trust will fail to meet expectations. Below are 8 Common Trust Mistakes to be conscious of so your trust does not fail when your family needs it the most:

1. **Failing to update your trust.** Your trust and the rest of your estate plan are only as good as the goals and circumstances they were based on. There's a reason these trusts are sometimes referred to as "Living Trusts." They must be living, breathing, changing documents to keep up with your life. Let's face it, life changes. You will not be the same person at 60 that you were at 20 and your needs at 80 will be different still. Your life changes, your goals change, your finances change and the law changes. All that change can have an impact on your plan and if your plan doesn't keep up with your needs your family could face unnecessary expenses, hassles, and frustration.

2. **Failing to own assets in the name of the trust.** If your assets – which include houses, bank accounts, investment accounts, CDs, life insurance and retirement accounts -- are not owned in the right way your entire estate plan may be worthless. At best it will not work the way you intended and will create unnecessary work and added grief for your loved ones. It may even require the use of the probate court!

3. **Using form documents.** Form documents and Do-It-Yourself (DIY) tools are only as good as the person who created them. Any form is necessarily "one-size fits all," and any DIY tool must be geared to the masses. Because they need to be all things to all people these forms often don't serve anyone well. And being generic the forms may not include all the terms that are important for your situation (or required by your state law!). Unfortunately, you may not find out for a long time and even then you may not be aware of the deficiencies. That will be the purview of your family.

   While this may be an easy and inexpensive way to get your documents in place, it can create a false sense of security. If you look at all of the costs involved – the initial cost of creating the plan, the cost of updating it (or not) and the cost of administering the plan upon incapacity or death, you will see that the upfront "savings" evaporate in the overall larger picture. These costs come in the form of additional time and hassles for your family, attorney and other professional fees, and even unnecessarily spending all your assets for care. And if you are really concerned with making sure your ducks are in a row and making things as easy as possible for your family in a time of crisis, then time spent working with a professional will more than pay for itself.

4. **Choosing the wrong trustee.** The wrong person in the role of trustee is a recipe for disaster. When choosing a trustee you must make sure that they are suitable. I've seen it time and time again. Families choose the oldest child simply because they are the oldest. There is no thought about whether this child is a good financial manager or how he gets along with his siblings. Thoughtless choices can have negative consequences. Like the child who becomes trustee and doesn't follow the trust's rules or uses the trust funds not for mom and dad, but for their own purposes. Or the family where the children don't get along. Putting one in a position of power can make an already rocky situation even worse.

   Your trustee must be above all things trustworthy and good with their own money. They need to remember that they are in a position of trust and honor and act accordingly.

5. **Thinking your trust protects you from your creditors.** A revocable trust will not protect your assets. Simply by its nature, it is an extension of you. You manage it, you are the beneficiary and you created it. That's too much control to provide protection.

6. **Thinking that assets in your revocable trust escape estate taxes.** The only assets that escape estate taxes are the assets you don't own and don't have control over. A revocable trust can be useful in ensuring that a married couple will use both spouses' estate tax exemption, but beyond the exemption, the revocable trust provides no protection from estate taxes.

7. **Thinking your trust will protect your assets if you need Medi-Cal.** Medi-Cal (and Medicaid) treat the assets in your trust just like other assets that are in your name.

   Worse yet, in some states if your house is in your trust it no longer qualifies as an exempt asset and will count against you for qualification purposes. (For more about Medi-Cal planning issues see "Getting Your Ducks In A Row," above)

8. **Not understanding how your trust works and thinking things will take care of themselves.** A trust is not a magic book, but you wouldn't know it by talking to people. It is very common for a joint trust set up for a married couple to split into 2 trusts upon the death of the first spouse. Those 2 trusts do different things and contain different instructions. Often one trust is set up to provide protection over the assets from lawsuits or divorce. BUT they don't automatically create themselves. When the first spouse dies there are actions that are needed to ensure that the right assets are moved into the 2 trusts and that the surviving spouse knows the rules for the trusts. Not knowing the rules or how the trusts work can cost you thousands of dollars and override the protections they contain.

## Trusts Mills, Annuities and Other Scams that Rob Your Parents of Their Money

Elder abuse is a growing problem. The ugly truth is that our elders are targeted and victimized by both strangers and family members. What may have begun as a legitimate planning or investment tool has now become a scam when used without regard to need or appropriateness.

Let's look at each of them and briefly discuss how to help your parents keep what they worked so hard for over the years:

**Annuities –**

Annuities can seem like a cure all for clients – they love them, because they seem to guarantee income. However, in a lot of cases, the client doesn't understand exactly how annuities work. It sounds as though it will offer equity returns with no downside, but seldom does the client learn about the details. Almost all contracts have a provision that sets the maximum return you can have in a year – which means you can only access so much of your money. Annuities also are high paying for the sales-rep or advisor offering them: normally in excess of 10% of your money.

And if you want to get your money out – watch out! You can, but there will be a price called a surrender charge if the annuity is cashed in before a specific period of time. That period may run anywhere from 1 to 12 years. Typical surrender charges start at 7% in the first year of the contract, and decline by 1% per year thereafter until it reaches zero. The charge is made against the value of the investment when the annuity is surrendered, and its purpose (other than simply to make money for the insurance company) is to discourage a short-term investment by the purchaser. Annuities are bad for your beneficiaries. Unlike life insurance the proceeds of annuities come with income tax consequences. By their nature any distribution from an annuity is comprised of principal, the amount that was initially put into it, and income, growth on the principal. If mom and dad never took distributions from the annuity then all that built up income lands in the lap of the beneficiaries. You would think that holding on to an investment would mean the gain is taxed as capital gain, hopefully long-term at a rate of 15%. Guess again. With an annuity all the gain is taxed as ordinary income – 15% to 35% depending on your tax bracket.

**Trust Mills –**

What is the problem with these so called 'Trust Mills'? In most cases, the trusts consumers are sold are simply boilerplate documents ("one-size-fits-all"), which do not address the personal and unique estate planning needs of the client. To top it all off, the fees are often similar and sometimes higher than those a competent lawyer would charge for a customized plan and specialized advice. Remember – in most cases, trust mill sales agents aren't attorneys or experts in estate law. Their documents don't necessarily follow the law of your state and if they do not follow proper procedure then your documents could be subject to challenge. Oftentimes the documents will not be explained and consumers do not understand how they work. It will also be left up to the consumer to make sure that the trust gets "funded." An unfunded or partially funded trust can mean probate for your family.

**Medi-Cal Application/Eligibility –**

If you look at the application for Medi-Cal you might think that it is easy to apply and qualify. But the application is a one size fits all type that poses questions about children, employment and other questions that generally don't apply to long term care situations. And there are nearly a dozen required forms to accompany the application. The rules for qualifying are complicated and based on income and resource (asset) limitations, with 2 kinds of resources – exempt and non-exempt.

And if you want to rearrange assets to put yourself in a qualifying position, you better know what you are doing. If not, you could end up with no assets and be ineligible to receive benefits at the same time! Now how are you going to pay for your care?

There are only four general techniques for rearranging assets:

- Conversions of property from one form to another
- Transfer of property
- Spend down of property
- Fair hearings or court orders to expand spousal allowances.

There are many organizations out there who want to help you with your application. They speak to senior groups all the time and many are associated with trust mills. The problem with them is the suggested approach to make seniors eligible: liquidation of all countable resources (and sometimes exempt resources as well) and purchase of annuities, sometimes even the wrong type, with the proceeds. They use fear and uncertainty to motivate seniors to take action and they tend to push for an immediate response.

When you seek advice and assistance for Medi-Cal eligibility planning you should feel comfortable with the person or organization you are working with. You should be treated with respect and all your questions should be answered. If the only solution seems to be buying an annuity, run the other way.

**Long-Term Care Insurance -**

There are four major concerns when it comes to getting long-term care insurance, with the first being cost. Costs can fluctuate depending on the issuer, the breadth of coverage, etc. For example, someone in their 50s could pay premiums of anywhere between $844 and $6,900 a year, whereas someone in their 70s may be paying $2,650-$9,900 a year.

The second concern is that premiums are often much higher the later you apply in life. Again, compare insurance for someone in their 40 or 50's at $1,700 annually versus $5,700 if you buy at 70. In this situation, buying insurance before you reach the golden years can save you from great expenses down the road.

Third, your claim could be denied. A lot of times, when long term care insurers cannot raise rates they will decline coverage in hope that their clients will be too sick to fight for it.

Finally, your insurer could go under. If you are one of the people who buy coverage earlier in life, you unfortunately run the risk of having your insurance company going belly up. If this happens, it is very difficult to predict what is going to happen to your policy.

**Reverse Mortgages –**

Reverse mortgages, also known as a reverse-annuity mortgage or home-equity conversion mortgage is an arrangement where a homeowner age 62 or older borrows against the equity in her home and receives a regular monthly tax-free payment or lump sum payment from the lender. This "loan" does not have to be paid back until the borrower (equity owner) dies or sells the home or moves out for 12 months. And if the equity owner's spouse is younger than 62 he or she will be forced to sell the house or otherwise pay back the reverse mortgage!

However when this occurs, the reverse mortgage loan must be repaid completely including the interest and the other charges. Is it worth sacrificing the ownership of your home? Think about it – the mortgage company, while charging a significant amount of interest, practically owns your house. Yet, you are still liable for the taxes, insurance, maintenance, etc.

There is one other circumstance that triggers the loan pay back and usually comes as a big surprise to people. If you get sick and need long-term care and can no longer live in your home, the loan comes due. That may not be a problem if you sell the home to pay back the loan and then use the proceeds to pay for your care. But what if Medi-Cal is paying for your care? You qualified because the only asset you owned is your home and it doesn't count for Medi-Cal qualification. But sell that home and now you are over the resource limit. Medi-Cal will no longer pay for you and you'll need to spend your life savings just to pay for your care.

## Stepping Up In Your Role as a Sandwich Generation Kid

Now that you have read this report, you have the tools and information you need to begin advocating for your parents' care. While the days of communicating one-on-one with your parents' doctor may be gone and further frustrated by HIPAA forms, Medi-Cal constraints and complicated legal speak, that does not mean you can't get mom or dad the help they want and deserve by using your own "legal arsenal" provided by the information above.

Survival skills are necessary for all aspects of life – not just the day to day living. Now that you know some of the ins and outs of being part of the 'Sandwich Generation' I hope you can ride the wave of middle age more comfortably.

## Getting Help

As you've probably realized in reading this report, there are many aspects of caring for your aging parents that require the assistance of a qualified estate planning attorney.

But let's be honest, meeting with an attorney on your parents' behalf can be nerve-wracking. You may feel as though an attorney who specializes in elder care issues will try to sell you services you do not understand, or even need, at such a vulnerable time in your parents' life.

And while there are a number of "document mills" or attorneys out there who will send you off with a plan that may ultimately fail when your family needs it the most, there are also a number of great lawyers and law firms in California who will go above and beyond to thoroughly care for your parents through the remaining stages of their life. The Chubb Law Firm is one of those firms. We believe in the importance of establishing lifetime relationships with our clients (as opposed to one-time transactions). This philosophy ultimately allows us to keep clients' estate plans current as their life, and the law, changes through the years.

We also strive to educate our clients on estate planning before any "purchasing" decisions are made to ensure they fully understand the law, the reasoning behind the law and the consequences of each and every estate planning option. We believe an empowered client is best positioned to make end-of-life decisions for mom or dad—and we are happy to extend that information, regardless of whether or not you work with our firm.

For readers of this report, the education process has just gotten easier than ever! To reward you for taking the time to educate yourself on your duties as a Sandwich Generation Kid, **I would like to offer you a FREE Peace of Mind Planning Session (normally $750) with me at our Sacramento Estate Planning and Elder Law Firm.**

Together in this session we will review your parents' current situation (or plan if they have one), their assets and their wishes to determine whether or not you and your family are truly protected should something unexpected happen. I will also teach you how to maximize your parents' assets and inheritance without sacrificing their ability to qualify for Medi-Cal in the future.

Simply call (916) 241-9661 and use the code SGR10 to redeem your free session. However, these appointments are limited to 10 sessions per month so make the call today!

To helping you find peace of mind,

Heather

Heather R. Chubb
Life Transitions Lawyer