



(Embracing) Elder Care Law Planning and (Preventing) Elder Financial Abuse

Presented by

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More than 30 years as an estate planning, elder law, and special needs planning attorney.

- Elder Law Specialist (CELA) since the mid-90s
- Licensed to practice in Tennessee and Georgia
- *Best Lawyers in America* "Chattanooga Trusts and Estates Lawyer of the Year," 2014, 2018, 2020

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"HONESTLY? I PREFERRED WHEN WE DIDN'T TALK ABOUT THE ELEPHANT"

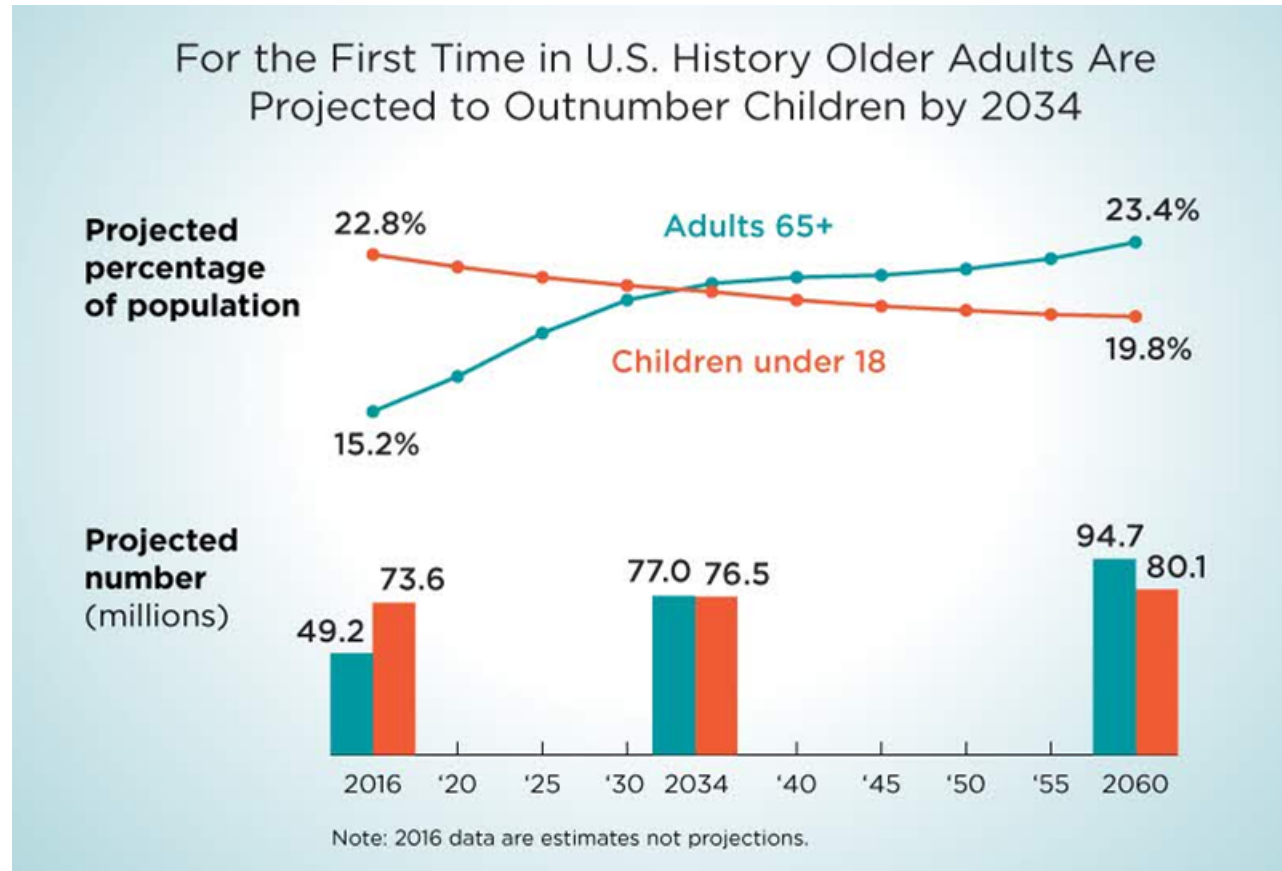
Changing Demographics

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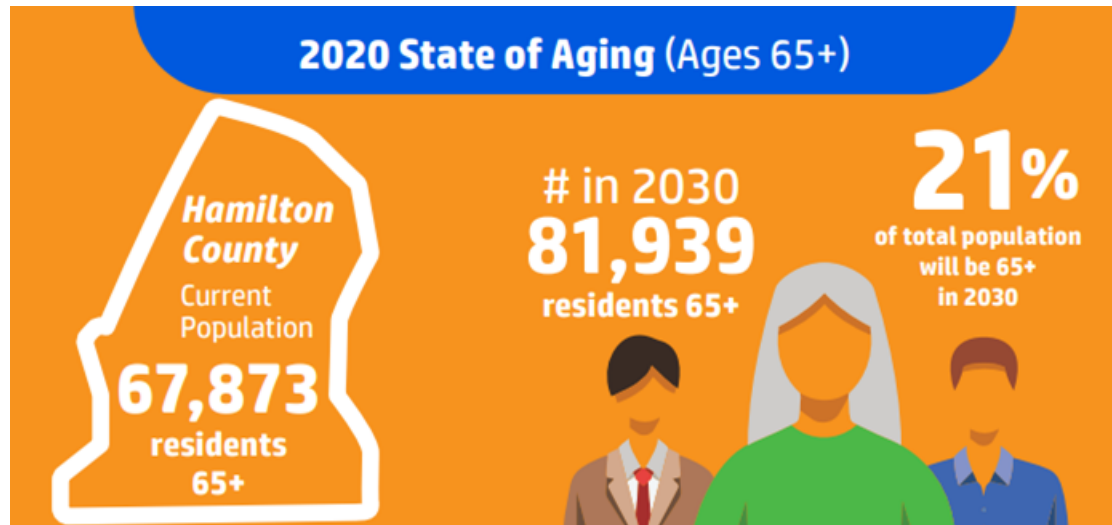
2030: all baby boomers (born 1964 or before) older than 65

2034: people 65+ outnumber those under age 18



Changing Demographics

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Changing Demographics

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2020 US POPULATION: 331 MILLION*

54 million* are 65 or older

7 million* are 85 or older

CENTENARIANS: 100 YEARS OR OLDER

Number increased from 53,000 in 2010 to

Over 90,000 in 2020.

SUPERCENTENARIANS: 110 OR OLDER

~60- 70

*Numbers are rounded to the nearest million

(Lack of) Family Ties

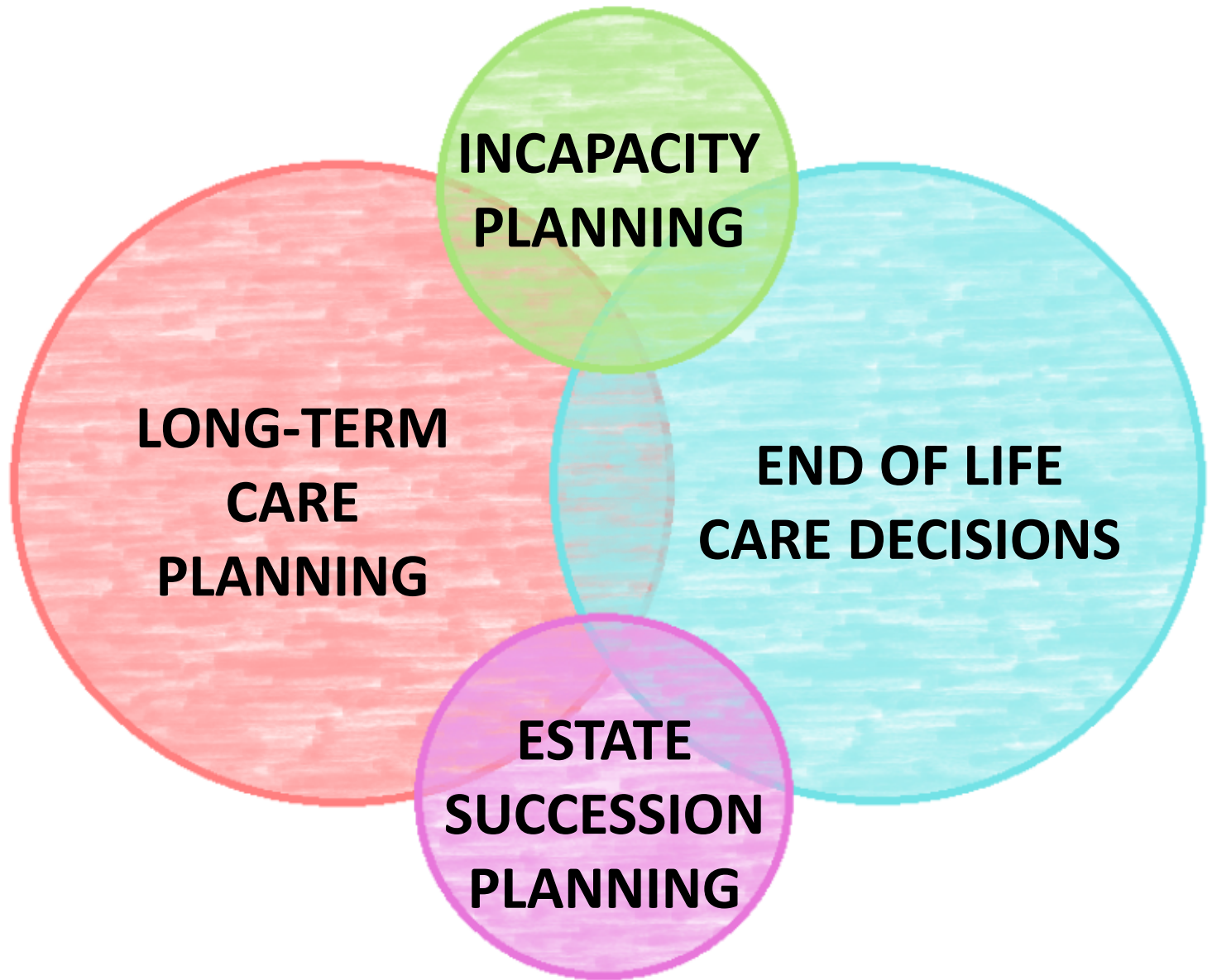
Elder Orphans/Solo Agers:

By **2050**, people 65+ will represent 20% of the American population (87.6 million).

Almost **2 million** will likely be an elder orphan/solo ager.

Another **19 million** are at risk of being an elder orphan/solo ager.





Incapacity Planning

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Incapacity Documents

Financial Power of Attorney/GDPOA:

Document appointing someone (agent) to manage financial or business affairs an individual

Advance Directive for Health Care/ADHC/HCPOA:

Provides for appointment of health care agent; usually also indicates end of life philosophy and preferences

POST (TN) or POLST (GA)

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- The POLST or POST form is a Universal Do Not Resuscitate (DNR) Order
- Complements, but does not replace Health Care Power of Attorney, Living Will, and/or ADHC

ADHC vs. POST/POLST

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ADHC—FUTURE PLANS:

ADHC is NOT a Do Not Resuscitate Order

POST/POLST—HERE AND NOW:

POST can be a DNR Order



What If There Are No Incapacity Documents and Person Can't Make Decisions?



Surrogate Designation

Order of preference for surrogate designation (may give consideration)

- Spouse, unless legally separated
- Adult child
- Parent
- Adult sibling
- Any other adult relative
- **Any other adult who satisfies the surrogate qualifications**



Criteria for Selecting

- Appears best able to make decisions according to the patient's wishes, best interests, and values;
- Had regular contact with the patient prior to and during the incapacitating illness;
- Available to visit the patient during illness;
- Available to engage in face-to-face contact with the health care providers to fully participate in decision making;
- Exhibits special care and concern for patient;
- Willing to serve; and
- **Not a person subject to a protective order that directs the person not to have contact with the patient**



Who Cannot be a Surrogate?

- Treating healthcare provider or operator of a health care facility, unless they consults with and obtains recommendations from an institution's ethics mechanism; or obtains concurrence from a second physician not directly involved in patient's care
- An employee of either of the above, unless the employee
 - is a relative of the patient by blood, marriage or adoption
 - satisfies the other surrogate qualifications



Conservatorship (TN)

Complicated and Expensive

FILE A PETITION: filing fee will vary

MEDICAL EXAM: physician/psychologist's sworn statement (within 90 days of petition filing)

NOTIFICATION OF HEARING: Ward is served legal documents

APPOINTMENT OF GUARDIAN AD LITEM (GAL): impartial party to investigate facts and report to the court to determine Ward's welfare

HEARING: generally 7 – 60 days from service or appointment of GAL

APPOINTMENT OF CONSERVATOR



Long-Term Care (LTC) Planning

Medicare=Health Insurance

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Should you apply @ 65? YES!

Unless you have access to group health coverage through your or your spouse's current employment or retiree insurance

You can apply between 3 months before and 3 months after your 65th birthday.



Medicare Choice 1

- Sign up for original Medicare which includes Medicare **Part A** (Hospital Insurance) and **Part B** (Medical Insurance)
- Choose a **Part D** plan with prescription drug coverage
- Decide on Medicare Supplement Insurance (**Medigap Policy**)



Medicare Choice 2

Sign up for a **Medicare Advantage Plan**

- Many Medicare Advantage Plans do not allow use of a Medigap policy
- They take the place of Part A and Part B, but still follow all the Medicare guidelines
- Usually includes Medicare prescription drug coverage (Part D) as part of the plan, but individuals must check the formulary



Medicare Advantage Plans

Many of the plans are a PPO or a HMO.

A PPO has an in-network list of providers.

An HMO requires the individual to have a primary care physician who makes all referrals to specialists and facilities.

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What is Long-Term Care?

- Services and support people need when chronic illness, physical infirmity, or cognitive disability have reduced their capacity to care for themselves
- May include assistance with activities of daily living (ADLs), such as ...
 - Eating
 - Dressing
 - Toileting
 - Managing a home
 - Preparing food
 - Managing medication

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In-Home Care Type

Average cost
for U.S.

HOME HEALTH CARE: Includes care such as that received from a skilled nurse; wound care, patient and caregiver education, nutrition therapy, injections, monitoring of illness and health stability, monitoring of medical equipment, and communication with your doctor(s).

(40-44 hours per week)

\$24/hourly

**\$54,912
annually**

HOMEMAKER SERVICES (non-medical care): Includes daily household activities and chores such as meal preparation, light housework, laundry, making bed, changing linens, errand running, and appointment companion.

(40-44 hours per week)

**\$53,768
annually**

ADULT DAY CARE (non-medical care): Provide supervision and social activities in a structured setting during daytime hours.

(40 hours per week)

**\$19,236
annually**

CARE TYPE	NATIONAL MONTHLY AVERAGE	TENNESSEE MONTHLY AVERAGE	GEORGIA MONTHLY AVERAGE
Nursing Home Dual occupancy, rate per person	\$7,989	\$7,284	\$6,924
Nursing Home Private room	\$9,086	\$7,848	\$7,388

10% of people over age 65 have Alzheimer's dementia;

Patients requiring dementia care can spend an average of **\$1,200 more per month meeting care needs.**

\$350,174 – Estimated lifetime cost of care for someone with dementia

Does Medicare Pay For Long Term Care?

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Assisted Living

No Medicare—Paid by long term care policy benefits or out-of-pocket

Skilled Nursing Home Care

Medicare pays for a limited amount of skilled nursing rehabilitation; otherwise paid by long term care policy benefits or out-of-pocket

Non-Skilled Nursing Home Care (MOST people)

No Medicare—Paid by long term care policy benefits or out-of-pocket

Non-Skilled Care at home (caregivers)

No Medicare—Paid by long term care policy benefits or out-of-pocket

Aid and Attendance Allowance for Veterans or Surviving Spouses

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- Wartime Service
- Discharge paperwork in order (DD214)
- Help needed with ADLs
- generally, over 65
- Significant care costs already, **ESPECIALLY PEOPLE IN ASSISTED LIVING**

V.A. Net Worth Limit: Bright Line Test

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From December 1, 2020, to November 30, 2021 the net worth limit to qualify is **\$130,0773**.

- Assets are the fair market value of all property that an individual owns, including all real and personal property
 - Excludes the value of the primary residence
 - (single family unit + 2 acres)
 - Excludes personal effects consistent with reasonable mode of life (appliances and family transportation vehicle).

VA Now Has Look Back Period for Transfers/Gifting

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The look back for gifting is 3 years but not beyond October 18, 2018.

- VA presumes that an asset transfer made during the look back period was for the purpose of decreasing net worth to establish Pension entitlement.
- Transfer for less than fair market value means selling, conveying, gifting or exchanging an asset for an amount less than fair market value

Calculating the Penalty Period

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The penalty period constitutes the following:

- **Begins on the first day of the month following the date of the last transfer,**
- Calculated by dividing the total covered asset amount by the monthly penalty rate and rounding down. The resulting whole number is the number of months VA will not pay Pension.

Veterans Pension Rate Table 2021

MAXIMUM ANNUAL PENSION RATE (MAPR) CATEGORY	AMOUNT
VETERANS WITH NO DEPENDENTS	MAPR amount is:
Do not qualify for Housebound or Aid and Attendance benefits	\$13,931
Housebound benefits	\$17,024
Aid and Attendance benefits	\$23,238
VETERANS WITH 1 DEPENDENT	
Do not qualify for Housebound or Aid and Attendance benefits	\$18,243
Housebound benefits	\$21,337
Aid and Attendance benefits	\$27,549

If you have more than one dependent, add \$2,382 to your MAPR amount for each additional dependent.

Long Term Care Insurance

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- The only insurance policy that covers extended care in a skilled nursing facility or assisted living facility
- Often have a waiting period from the time the services are requested to the time the coverage starts
- The individual must meet the criteria relating to his/her inability to perform activities of daily living.

Nursing Home Placement and Payment

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- Nursing home placement is based on a medical, mental, and physical criteria.
 - Very frail elderly needing custodial care are **not** target clients, especially with complications.
- Most nursing home patient go from Medicare (rehab) to private pay to Medicaid.
- Medicaid is the payer of last resort, and an unmarried patient may only have \$2,000 in the bank to qualify for the benefit.

Is Medicaid Planning Worthy Of Consideration?

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Crisis Medicaid Planning

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If individual has not done advance planning, sheltering assets is typically very difficult under current rules.

- 5 year look back on gifting, doesn't start to run until in facility/out of assets
- Limited spousal asset protection
- Advanced techniques stopped by real world consideration (always will be denied, must appeal)
- Estate Recovery
- Consider placement in GA
- Sheltering possible if child with special needs



Advance Medicaid Planning

- Consider a **Medicaid Compliant Trust** to protect assets and preserve for family IF elder can wait for care for 5 YEARS AND/OR has other assets that can be used for care during first 5 years
 - Typically Grantor Trust
 - Not for Beginners
 - "The Devil is in the Details"
 - Loss of control

Medicaid Compliant Trust

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- Ideal candidate: 70s, good health
- Consider Long Term Care insurance if healthy
- Home modifications (AVOID FALLS)
 - One level
 - Grab bars, etc.

What Are The Options For Care Near The End Of Life?

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Best End of Life Care

~80% of Americans say they would prefer to die in their home.

Palliative care: specialized medical care for people with serious illnesses. Focuses on relief from the symptoms and stress of a serious illness. Goal is to improve quality of life for both the patient and the family.

Hospice care: specialized care for patients diagnosed with a prognosis of 6 months or less to live. Offers care for the whole person focusing on symptom management and pain control

Planning For Disposition Of Assets After Death (Estate Succession Planning)



Wills and Revocable Living Trusts

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- If you want to vary the distribution for the intestate statutes
- If you want to control who the executor will be
- If you want to reduce possible family conflicts involved with the distribution of the estate
- If you want to reduce possible unintended consequences
- Be sure asset configuration and beneficiary designations match the legal documents!

Providing For The Surviving Spouse

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If client holds everything jointly with spouse when he/she dies, what happens if survivor later goes to the nursing home?

Don't do an "I Love You" Will.

Instead:

- Divide/separate assets between spouses
- Make a protective trust in the will of each—no 5 year look back

Coordinate Estate Plan and Asset Titles

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- Important for professional team to know details of all assets and make sure asset titles are coordinated with the estate succession plan as set forth in Will or RTA
 - FMV
 - Account numbers
 - Who is on the account?
 - Beneficiary designations?

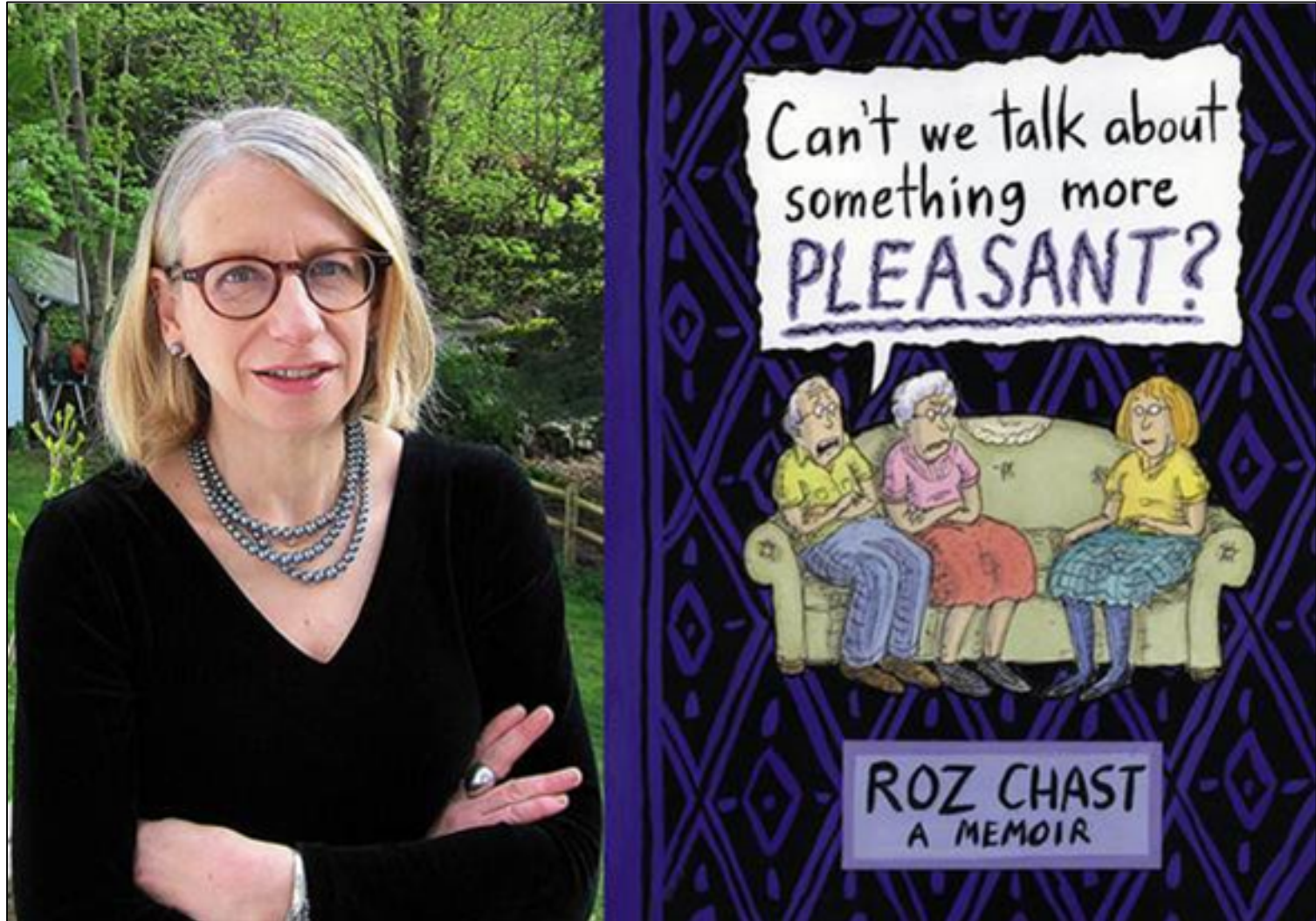


Retirement Accounts

- Beware the Secure Act!
 - Generally means heirs will have 10 years after death to withdraw and pay tax
 - Consider alternatives well in advance
 - Best income tax result may not be best result over all

To End on a Lighter Note...

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Two things about my childhood: ① I was an only child; and ② my parents were a lot older than other kids' parents.



And even when they really were a zillion, they-and I- never talked about "the future."



Why tempt fate?



Disclaimer

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