

Attorney's Guide

Legal Counsel for the Elderly, Inc.

Legal Counsel for the Elderly (LCE) works to expand the availability of legal services to older people and to enhance the quality of existing services. Nationally, LCE supports the legal community with training, technical assistance, publications and volunteers, and provides direct legal and protective services to older persons. LCE also operates a full service law office for low-income older Washington, D.C. residents. LCE is a department of the nonprofit American Association of Retired Persons (AARP). LCE, Inc. publishes several publications for consumers. For a list of these publications, see the *Resource Lists* in the *Appendices* of the **Participant's Workbook**.

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The National Center for Preventive Law

The National Center for Preventive Law, Inc. (NCPL), is dedicated to advancing preventive law, in practice and in theory, in all of its places and forms. NCPL achieves its mission through education, research and development, information services, and by facilitating interaction among others interested in the field.

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**A Joint Project of the
National Center for Preventive Law, Inc.
and
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INTRODUCTION

This Guide serves two primary functions.

First, the guide will assist you to develop your presentation. This does not mean that you can simply walk into the workshop and read the guide to a group of attendees. Preparation is required. But, we have taken all practical steps to minimize your time and effort.

Second, and more important, the guide provides a standard framework for the workshop to assure reasonable consistency in the conduct of all seminars, regardless of the jurisdiction. The guide and seminar materials have been tested by legal professionals such as yourself to provide a uniformly high level of quality.

General Scope of the Seminar

The purpose of the Legal Checkup Seminar is diagnostic, not to provide "treatment." The program has been promoted using an analogy to a routine annual medical checkup, done to discover a hidden problem at the earliest stage, when the chance of successful treatment is best. The **Personal Plan** the participants are developing will be their guide (a "prescription") to pursuing further action as required to improve their legal "health."

The entire workshop should take about **two and a half hours**. It could run longer if the group is especially responsive. Obviously, that is not enough time to discuss every item in the Workbook in detail. Rather, the goal is to identify actual or potential legal problems and to create a **Personal Plan** for each attendee.

A Note on Conduct of the Seminar:

Any Attorney conducting a Legal Checkup seminar should carefully review and adhere to the rules of professional conduct in their state. Attorneys must be especially careful not to overreach or give the impression of improper solicitation when making presentations. When rules of ethical professional conduct do not specifically deal with seminars - which they probably will not - some precautionary steps should be considered:

- Attorneys should state at some point in the presentation that attendees are free to consult another attorney if they uncover a legal problem - they are under no obligation to hire the attorney conducting the seminar.
- If attorneys meet with an attendee at any time after the presentation, they may reiterate that while there is no rule that prohibits attendees from hiring them, there is no obligation to do so.

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PREPARATION

The most important step in preparation is to become thoroughly familiar with all of the program materials. They have been adapted to your state. This Guide was produced after the AARP staff had conducted a number of programs, so it is based on extensive experience in the field. If you have any questions or concerns regarding the materials, please call Lou Burdman at (800) 633-4496) or e-mail him at lburdman@aarp.org. Waiting until the last minute to identify a problem may disrupt the program. It is especially important for you to read the instructions to the participants. (Read Me first section of the Workbook).

Organizer materials include:

- ✓ This Attorney's Guide (including visuals)
- ✓ Coordinator's guide (for your staff or co-sponsoring agency's staff, includes a section on managing and marketing the program)

Participant materials include:

- ✓ Checkup Workbook
- ✓ "Questions to the Lawyer" response sheet
- ✓ Seminar Handouts (#1 - #5)

See the timeline for some idea of how to mark your calendar and plan your preparation.

GETTING STARTED

Who will coordinate the event?

The first thing to determine is whether you would like to both coordinate and conduct the program, or if you plan to work with a co-sponsoring agency. Your decision will be influenced by the following list of basic coordinator responsibilities:

- Advertising the program.
- Finding a suitable space.
- Pursuing participants, including mailing materials to them well in advance of the seminar.
- Collecting and distributing any fees.
- Photocopying all materials for the program, including the Participant's Workbook
- Supervising workshop logistics.

If you have any doubts about committing your office to these tasks, then consider working with an agency in the community, or with a National Federation of Paralegal Associations (NFPA) paralegal volunteer in your area. The NFPA has agreed to assist LSN attorneys with workshops on a pro bono basis, whenever possible. For more information on locating NFPA volunteers, contact Cindy Janicko at the LSN office at 800-633-4496 or at cjanicko@arp.org.

How do I recruit a Co-sponsoring Agency if I choose not to coordinate the event myself?

AARP and participating attorneys have used a wide variety of co-sponsoring agencies, some more successful than others. Difficulties can arise if co-sponsors cannot fulfill the criteria listed above. In an effort to provide basic information on these agencies, please examine the following list showing some common agencies and any potential problems:

- Hospitals. Hospital have co-sponsored some of our most successful Legal Checkups.
 - Photocopying in large volume is not a problem
 - Advertising is easily done through their own publications
 - They are familiar with other AARP programs such as 55 Alive and know how to organize handouts, etc.
 - Have space for the seminar readily available
 - Generally have good support staff
 - Often generate enough interest to hold several programs

Possible difficulties

- Finding the right person to set up the program can be difficult. Each hospital seems to have a difference name for the appropriate department. Some have Public Relations departments, some Community Programs, others Outreach and Priority Care. One can spend a lot of time on the telephone trying to track-down the right individual.

- Hospitals sometimes have frequent changes of staff. It can be frustrating to call to schedule a second or third checkup and be told the contact person no longer works there. This can mean having to start from the beginning.
- Senior Centers. Experience with senior centers is varied. Generally, the larger, more active centers are better organized and equipped to operate programs.
 - Space readily available
 - Advertisement is usually done with ease
 - Often familiar with other AARP seminars and how to run these programs

Possible difficulties:

- Reproduction of materials is often a problem
- Sometimes understaffed
- Depending on their client base, some centers have had trouble recruiting participants, who feel overwhelmed by the materials.
- Community Colleges. So far, these have also been very successful co-sponsors. However, AARP has not worked with enough of them to be able to list their particular traits and difficulties.
- Other Organizations. Other co-sponsoring agencies have included Area Agencies on Aging (AAA), churches, senior high rises, nursing and retirement facilities and smaller health care providers. While they have all sponsored successful programs, they tend to serve only the clients directly associated with their facility. This usually means that they will sponsor only one program where other organizations establish an on-going sponsorship.

Based on this list, finding a co-sponsoring agency can be as simple as looking up your local hospital, AAA, or senior center in the telephone book. Very often, even if your first attempt is not successful, many organizations will offer referrals.

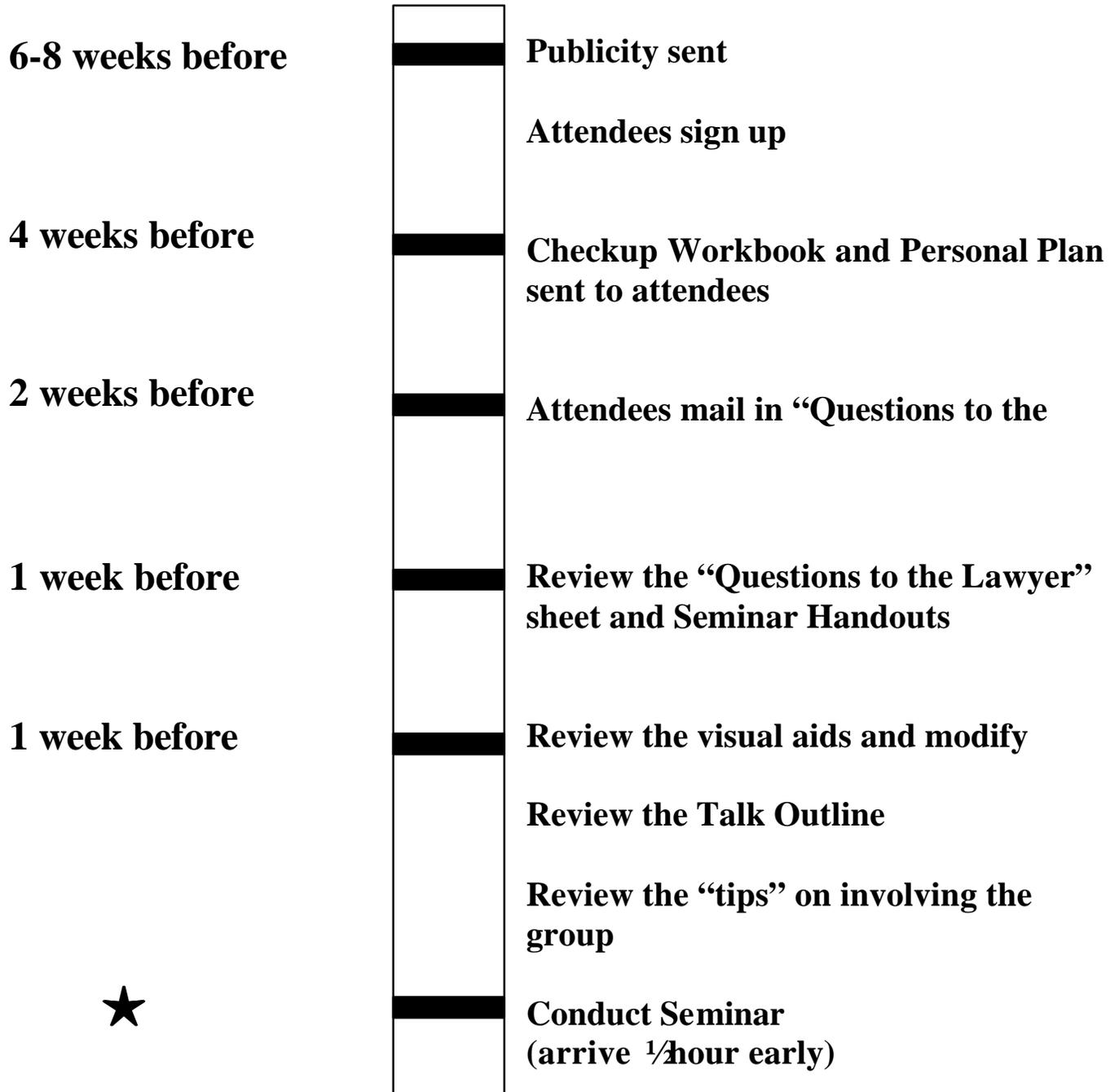
What materials should I send potential co-sponsors I am attempting to recruit?

Experience has shown that sending a lot of information in the beginning is overwhelming to the co-sponsor and results in delays. Most people will immediately take the time to read a four-page document, but a long document will be put aside until enough time is taken to examine it. This can be frustrating. We have had the most success sending only a copy of the “Dear Colleague” letter (see the appendix in this guide) which is four pages long and adequately explains the design and purpose of the program. Further information, including a copy of the workbook, can be sent upon request afterwards. We recommend following-up with potential co-sponsors in a timely fashion. Many organizations schedule programs months in advance, sometimes according to their fiscal year requirements. It is best to get a commitment as soon as possible.

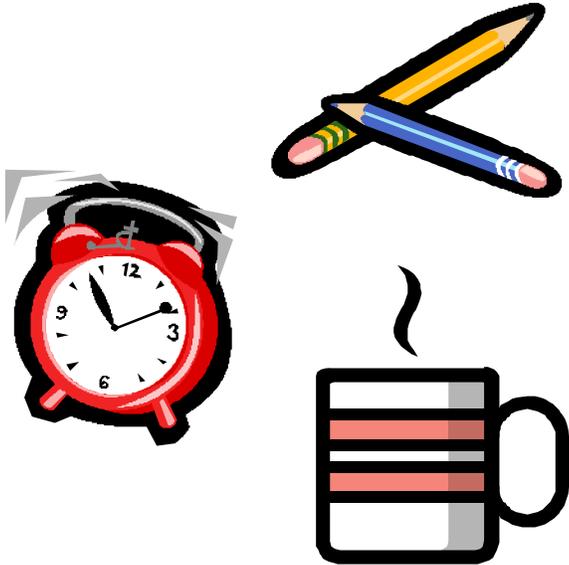
Do I also need to coordinate with AARP?

Please let staff at the Legal Services Network know of your plans to present a Seminar. Just e-mail Jane Margesson. It is also a good idea to let your State Representative of AARP know that you will be presenting a seminar. Jane will assist you in getting in touch with the right AARP state staff.

ATTORNEY PRESENTER TIMELINE



DIVISION OF RESPONSIBILITIES



Coordinator's Role

- Publicize the program
- Sign-up participants
- Distribute Workbook and Personal Plan
- Collect any Fees
- Collect the “Questions to the Lawyer”
- Provide a space, equipment and refreshments
- Provide visual aids
- Reproduce the handouts
- Attend the Seminar to handle logistics

Your Role

- Review “Questions to the Lawyer” sheets before the seminar
- Thoroughly review the Checkup Workbook and Handouts
- Prepare using the “Presentation Outline” and presentation tips
- Prepare Overhead Transparencies (see Appendix 2)
- Lead the 2-1/2 hour seminar



CHOOSING THE ISSUES TO COVER

Standard Issues to Cover

We suggest that you cover certain "core" issues and then solicit other issues as described below (generally limited to issues covered in the workbook. The "core" issues we suggest are:

- Record Keeping/Essential Documents
- Financial Powers of Attorney
- Health Care Advance Directives
- Wills and Trusts (brief)
- Joint Ownership

It is impossible to discuss every matter raised in the workbook in the course of a two and one half hour seminar. The "core" issues were chosen because they represent a very large number of problems that occur frequently. In addition, they have universal importance to anyone who might attend a Checkup Seminar regardless of socio-economic factors.

Additional Issues

You may wish to add some other information to meet the needs of a particular constituency. If you work with an outside co-sponsoring agency, the agency is likely to market to a particular constituency interested in certain issues. Once you have studied the materials you may want to make some choices regarding the addition of any information that might be important for the particular group who will be attending your seminar. This should be discussed with the co-sponsoring organization which is likely to be more familiar with overall needs and socio-economic factors of the potential audience. For example, a program in a low income area can stress landlord-tenant and/or public benefits more than some of the issues of joint ownership. Any such issues should be included at the proper place in the agenda (see the Presentation Outline).

Additional Issues from the Attendees *before* the seminar.

Attendees will be given the opportunity to write out questions using the "Questions to the Lawyer" form found in the workbook.

If you coordinate the seminar using staff from your office, the "Questions to the Lawyer" forms from the workbooks should be returned to your office at least one week before the seminar.

If you work with an outside co-sponsor, the attendees will be turning the "Questions to the Lawyer" forms in to the co-sponsor two weeks prior to the Seminar. You should contact the co-sponsor one and a half weeks before the seminar and have the "Questions to the Lawyer" forms sent to you to give you time to work any questions into your presentation.

In evaluating which questions you might want to include, consider:

- whether there are multiple questions about the same issue;
- whether the question is already covered in the materials;

- whether the question raises a point worth emphasizing in the seminar;
- whether there will be enough time.

Obviously, if there are a number of questions on any one issue, it ought to be discussed, regardless of the time. If you decide to include a question (and your answer), make a note to insert it in the appropriate place in the presentation.

Additional Issues from the Attendees *at* the seminar

The seminar design provides an opportunity to solicit topic items for the agenda. These topics are covered after the “core” topics in the second half of the agenda (see Presentation Outline).

EFFECTIVE PRESENTATION STYLE

Managing Your Time at the Seminar

Remember that time is a factor. While the two and a half hour estimate is not chiseled in stone, it is always best not to unduly tax the audience. This is a particular issue when presenting new topics. See the following tips on how to prepare as well as Appendix 1 for more information.

One break is standard, but if you feel the need to take more, consider adding a stand up and stretch break or a second break if you sense fatigue in the group. Your staff should be certain that the space used for the Seminar is available for extra time (generally 1/2 hour) you or the participants might care to spend.

Once again, remember that this is not a program to provide specific detailed advice to each individual in attendance. The issues discussed here are only for the purpose of calling attention to matters that attendees may need to follow up with on their own and provide information on how and where that might best be accomplished. Try not to get mired in the details of any subject. This is a particular challenge in the discussion of joint ownership.

Using "War Stories" to Teach Adults

Anecdotes, as long as they are not too long or complex, are an extremely effective way of bringing home a point to an audience of adults. A juicy "horror story" grabs the attention of the audience. Some examples have been included in the Presentation Outline. Most experienced attorneys have their own favorite tales to tell, and you should not hesitate to recount your own experiences when they are useful to illustrate a point.

Using Visual Aids to Teach Adults

We strongly recommend that you use a flip chart or overhead projector during your presentation. These are as much props for your benefit as they are a structure for the seminar group.

Appendix 2 contains overhead transparency models for the "core" issues portion of the presentation. These are designed to be copied onto transparencies using a regular copier. Any office supply store will have transparencies for plain paper copiers. It is essential that you pre-arrange the operation of any equipment, such as an overhead projector, with the site. Struggling with equipment as the group is waiting for the program to start is not a very good beginning.

Dealing with Requests for Individual Legal Advice

Although the attendees will have been advised that this seminar is not the place to discuss specific individual problems in detail, it is likely that there will be at least one person who will press you to respond to a personal issue. If an attendee has questions regarding their personal concerns (beyond providing the basis for useful illustrative examples for the group), it may be necessary to remind the person that this is not the setting for detailed advice. The best response is something like, "What is appropriate for one person may not be for another. Specific advice requires specific details of personal information that is impractical in a group setting. Time is too short and confusion can result if I advise you to do something that might be an exception to a general rule."

TIPS ON WORKING WITH OLDER CLIENTS IN A SEMINAR SETTING

- ✓ Keep in mind that as people age, the average person takes longer to learn new concepts. Many of the Legal Checkup concepts or terms may be new to the group.
- ✓ Define legal terms the first time you use them - refer to the Glossary Handout or write them on the overhead/flipchart.
- ✓ Take particular care not to block the view of the visuals and to project your voice. Some attendees may have hearing impairments.
- ✓ Refer participants to the pages in the Checkup Workbook as often as you can.
- ✓ Since you are encouraging people to analyze the situation and take action:
 - Allow extra time after posing the question
 - Repeat key concepts
 - Reinforce key concepts by using the visual aids
- ✓ Encourage people to be involved.
- ✓ Encourage questions from the group.
- ✓ Use the enclosed visual aids during your session (Appendix 2)
- ✓ Plan your remarks. A useful model for each topic segment would be:
 - Start with general background explanation and terms, *then offer*
 - An illustrative anecdote, *followed by*
 - Practical tips and discussion among the group
 - Ask for any related questions

PRESENTATION OUTLINE

As you will see, the outline is not a script; rather it is a guide to salient points you will want to cover. It is expected that all presenters using the materials will keep reasonably close to the basic outline. Of course that is not to say that it will answer every question or anticipate every issue that might arise. You will have to exercise your own professional judgment, consistent with the program goals, in addressing matters that come up in the course of the program.

The overhead transparencies are keyed to the Presentation Outline. Look for the **WORD** symbol in this outline that indicates that a prepared visual on that topic is available. If an overhead projector is not available, you can create these visuals (and others) on a flipchart.

10 min	INTRODUCTION
	<ul style="list-style-type: none"> ▪ Welcome and explanation of the program ▪ Introduce attorney and co-sponsor ▪ Explain the goals ▪ Walk through the agenda - solicit additional topics ▪ Quiz (with the entire group)
30 min	DISCUSSION OF "CORE" TOPICS
20 min	<i>BREAK</i>
60 min	COMPLETION OF WORKBOOKS/QUESTIONS
15 min	CONCLUSION (final review of Personal Plan)

INTRODUCTION (10 min)

Welcome and Introduction

INTRO

If you work with a co-sponsoring agency, you should arrange details with the local sponsor who will welcome the audience, introduce you, and so forth. Otherwise, you may provide information about yourself, your experience as an attorney, location, etc.

Review the Overall Program Goals

GOAL

1. Diagnosis\Identification of Legal Health Problems

Reemphasize the limited scope of the program (i.e. to focus on **diagnosis** of legal health problems). Treating specific problems is for each attendee to arrange privately. It is useful to make the analogy to a routine annual medical checkup. It is done to detect an illness at the earliest possible stage. Further "testing" and/or treatment is arranged when the Checkup reveals a potential problem.

2. To Assist the Group to Prevent or to Solve Legal Problems on Their Own

Provide extensive information regarding resources to help resolve problems that are identified, with an emphasis on self-help. Self-help materials are available from AARP Legal Services Network. A list is included in the Participant's Workbook.

3. Production of a Personal Plan

The program has been designed to lead each attendee to produce a Personal Plan (i.e., list of things that they need to attend to). The purpose of the plan is to:

- Encourage action to correct problems identified in the course of the checkup program.
- Highlight problems that can be resolved without the need for professional help from a lawyer, accountant, etc.
- Help attendees save time and money by identifying problems that do require professional help and to focus on those matters without getting into other issues that are either not significant or can be resolved by self-help.

Personal Plan Handout

The Personal Plan will be distributed with the workbook. Attendees are instructed to complete it as they go through the workbook. You might suggest that the attendees check off or jot down additional items, during the session. The goal is to use it as a reminder list of items they want to pursue after the seminar. There will also be time at the end for attendees to review the plans.

TIP

Allow a minute or so for attendees to review their plans before going on..

Advise the Audience Regarding Seminar Ground Rules

Individual Advice - You will not be providing specific legal advice to individual participants. However, you will be offering specific legal information in order to highlight problems in areas where hidden problems are common.

Questions - Make clear that questions should be limited to the specific topics being discussed at the moment. Jumping back and forth among the various issues will be extremely confusing. You can ask for general questions at the end of each topic of discussion. A general question and answer session can occur at the end of the seminar presentation. However you choose to handle questions, it is important not to be distracted to the point of losing your place in the presentation. Stay in control, as gently as possible, but firmly if necessary.

AGENDA

Walk Through the Agenda

Explain that you will cover certain "core" topics because they are the most common issues. Add other issues from the "Questions to the Lawyer" sheets and ask the group for any additional topics. Be realistic about what can be covered and remind them of the self-help materials that may cover the topics not discussed.

TIP *It is important to exercise some judgment in answering or avoiding a question. Sometimes the answer to a specific question will help you to make a point, perhaps leading you into a useful, brief anecdote. On the other hand, some questions will require answers that are specific to an attendee's affairs, have no relevance to the entire group and may be confusing or misleading.*

Conduct Quiz

The quiz is informal and is a nice lead-in to the rest of the program. It is also a way to get some sense of your audience. Ask the questions, get a show of hands. You do not need to be exact about counting responses. A second goal of the quiz is to quickly involve the group as active participants.

TIP *If attendees want to ask questions, try and maintain a "polite ruthlessness" here in order to avoid getting off track before the program really begins. Advise them to respond to the question as well as they can. Explain that the quiz is to provide you with information about the audience (i.e., did most of the audience get a lot accomplished, or did people have a struggle understanding the materials?).*

The Quiz

1. Did you answer all of the questions in the workbook that applied to you?
2. Did you find all of your personal records? (birth, death, marriage certificates)?
3. If not, have you arranged to get them after filling out the workbook?
4. Are your financial records in order, i.e. accounts, investments, insurance?
5. If no, did you organize or obtain them after filling out the workbook?
6. Do you have a durable power of attorney?
7. Do you have a health care directive?
8. Do you have a will (or trust) to disperse your assets after death?
9. If not, did you note that you need to do this on your personal plan?
10. How do you perceive your legal health *before* starting the workbook?
 good poor unsure?
11. How do you perceive your legal health now, before the start of the seminar?
 good poor unsure?

➤ SUBSTANTIVE CORE ISSUES (60 min)

Importance of Complete Records and Documents

TIP *Although the area of personal and financial records is important, the issues are fairly straight forward. It is not a place to spend a lot of time. It is a good idea to actually state this to the group. An anecdote or two, illustrating the problems when records are missing, or a mess, would be useful here.*

TIP *One way to involve the group (and move it along quickly) is to ask the group to generate the list of personal financial records and you will just fill in anything not mentioned.*

RECORD**Personal records include:**

- birth and/or adoption records;
- death records;
- marriage and/or divorce records;
- citizenship records, such as immigration/naturalization papers;
- military service and discharge; and
- any other record that might be applicable to the individual.

You may also need:

- proof of age (benefit applications);
- proof of citizenship;
- proof of kinship (rights of inheritance).

Financial records include:

- bank records, i.e. checking account, passbooks, statements;
- deed to home or other real estate (includes vacation homes, funeral plots);
- insurance policies: life, health, home, car investment records; certificates of deposit, stock or mutual fund shares, bonds;
- personal receipts,
- copies of tax returns;
- summaries of employee benefit and/or pension plans

Records are essential for:

- orderly financial management in event of sudden illness or disability;
- benefit applications that are based on financial eligibility standards;
- ease of estate administration and reduced costs in event of death.

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Client's husband, a dentist for many years, always in good health, suffered a massive heart attack and died in an intensive care unit several days later. They lived well, in a nice house, put two daughters through college, etc. When they go to the funeral home to make arrangements, C, already in shock, realizes for the first time that she has nothing but a checkbook with a few hundred dollars. She has no idea of anything with regard to insurance or investments. Panic sets in. The family is seriously concerned for her health. No records were found in the home. When she went to H's office, days after funeral, savings account passbooks, some certificates of deposit and a small life insurance policy were found, but they had no idea which banks they were in, or even if they were still in use. They checked a couple of local banks and were successful in locating one box. In it was a large life policy, a large number of savings bonds, long past maturity, some blue chip stock certificates. Months later, they got a bill from another bank for rent of a safe deposit box. When checked, it was found to contain thousands of dollars worth of diamonds and gold coins. The entire estate turned out to be worth well into six figures. But, the initial confusion caused extreme anxiety and suffering. And because of the lack of any planning, it cost C thousands in state inheritance taxes and probate costs. There is no good reason for problems like this to occur.

VITAL

Stress the need to locate and organize NOW, because such records are sometimes hard to find. If any record cannot be found, the individual may have to arrange an alternate method of proof. Note that the Department of Health produces an excellent publication called "Where to Write for Vital Records". It provides addresses/phone #/costs/information on where to find birth/death/divorce/marriage records in the U.S., U.S. territories and overseas. The overhead has the ordering specifics.

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Client (C), just turned 60, was widowed. She has to apply for Social Security widow's benefits, since she needs the income now. She never worked, so she has to apply on her dead husband's account. C was born in 1932. It turns out that the date of birth on her birth certificate clearly gives the date as 1982. C is obviously more than 10 years old, and thinks this is amusing, until a clerk at the Social Security Administration says that despite the obvious mistake, C still needs to prove her age. Her application will be delayed until this is straightened out. A couple of months later, after going through excruciating frustration dealing with various bureaucracies, trying to get the record corrected, or find alternate records, the matter was finally resolved and C was able to get her benefits.

TIP This cannot be emphasized too often: *Legal Health problems most frequently come to the surface on the heels of a major medical problem or the death of a loved one!* The stress on loved ones is multiplied when they have to cope not only with the emotional problems of the event, but with a series of legal problems. Imagine the stress when they can't find the basic information about the stricken relative needed to even begin to take the necessary action.

DOC**How Long Should Financial Records be Kept?**

Conventional wisdom is 6 years. This is fine for records like ordinary receipts and cancelled checks. It is also OK for income tax returns, although state or local statutes of limitations need to be checked. These statutes of limitations determine how long to keep records.

THERE ARE SOME EXTREMELY IMPORTANT EXCEPTIONS! Any records, contracts, receipts, cancelled checks, for any capital improvements on your home, or any other real estate you own, must be kept indefinitely. "Capital improvements" means additions, a new roof, garage, kitchen, bathroom, any improvement to a property that goes beyond repair, maintenance, or decoration. In addition any purchase records of financial investments, such as stocks or bonds, need to be held. These records are required to calculate possible capital gains or losses when the asset is sold. It is also wise to hold on to real estate tax receipts (or cancelled checks) and any other receipts that show payment of items that could create liens on real estate (e.g. water and sewage).

QUIZ**Financial Powers of Attorney****TIP**

Many individuals have failed to create a power of attorney because of some basic misconceptions. Use the following quiz to clarify these. Ask the group as a whole to call out true or false and explain the answer to each.

QUIZ**1. I must appoint an attorney-at-law as the attorney-in-fact. (F)**

An attorney-at-law is a lawyer, a person who has studied law and is licensed by the state to provide legal representation to members of the public. An attorney-in-fact can be any adult person you choose to represent your interests. The appointment must be in writing, and include a description of the authority being conveyed.

2. If I have more than one child, I should appoint all of them as co-attorneys in-fact. (F)

Many attendees ask, "Is it ok to name all my children as co-attorneys-in-fact?" Most states will allow appointment of co-attorneys-in-fact. But, this raises several problems. What if they disagree? If you co-appointees have a dispute, the purpose of the appointment is defeated. This could create a lot of problems, delays, and expensive court proceedings. There is also a problem of convenience, e.g. the requiring of multiple signatures in order to authorize any actions. Possible solution: naming one and then the other as an alternate; naming one for financial issues and the other for health care. Anyone preparing these documents, or a will, needs to seriously consider this matter. It is a poor idea to appoint two children who have a history of not getting along. The same question regarding appointment of co-executors arises with wills and trusts. The same basic caveat is appropriate.

3. If I designate an attorney-in-fact, I lose my right to handle my own affairs. (F)

The attorney-in-fact is an agent or helper to carry out the person's wishes, not to take over and insert the attorney-in-fact's own wishes. It is also useful to mention that an attorney-in-fact assumes a high level of responsibility in acting in the best interest of the principal, i.e. fiduciary obligation.

4. My attorney-in-fact cannot be held personally liable for my debts. (T)**5. The person I designate in my will has the legal authority of an attorney-in-fact if I become disabled during my lifetime. (F)**

POA**Durable financial powers of attorney provide:**

- Self-determination in the event of disability
- Avoidance of a guardianship (or equivalent procedure)

It should be mentioned that legal proceedings to appoint a guardian (or other surrogate) in the event of incapacity normally require an attorney, a hearing in court, and professional testimony from a physician or psychologist. This can be very costly as well as time consuming and inconvenient.

HCPOA**Health Care Power-of Attorney and Living Wills**

Provide self-determination by dictating directions for providing medical care in the event of catastrophic, disabling terminal illness or injury.

It is important to help avoid legal proceedings.

TIP *This is often an area of confusion due to use of multiple terms, i.e., living will, advance directive, health care power of attorney. Simplify the matter. Regardless of the term used, they are all written documents with instructions about medical care in the event of incapacity and, usually, terminal illness. When an agent is designated to make decisions if the principal cannot, it becomes a power of attorney regardless of the terminology. Advise the group of the appropriate terminology in your state.*

Attendees are likely to ask questions at the Seminar such as:

"Who should I appoint?"

"How do I treat my children equally?"

"What if I have nobody to appoint?"

These can be serious concerns and are not very easy to answer. Obviously, only the individual is able to make this decision.

TIP *A suggested response: Anyone you appoint to represent you in any capacity should be someone you trust to carry out your wishes. An appointee must be someone who is capable of doing whatever might need to be done in your interests. If you have no one you can designate, consider a professional, at least for the financial power of attorney. This could be a lawyer, accountant, banker, and possibly a private social worker or agency that provides this service. For health care decisions, it is not necessary to appoint an agent. If there is no one to appoint, you may prepare a directive stating your desires about care termination. Directives that do not designate an agent are legally valid and should be honored by health care providers. Some states have specific requirements regarding forms.*

- If your state does not have a combined form, suggest that they consider executing both documents
- Stress the importance of discussing the decisions with family, friends, doctor and clergy members. The agent should be well-informed as to the wishes of the principal.
- Stress the importance of giving copies to all relevant parties (especially upon entry into a hospital or nursing home) and in re-visiting the decision periodically if health changes or the agent moves, etc.
- Raise the issue that some religious affiliated hospitals and some physicians may not feel they can honor all requests, therefore an individual should discuss his/her wishes with the health providers before the document becomes necessary.
- Discuss the question of how to notify emergency response (ER) teams if the individual wishes to use a do-not-resuscitate clause.

HEIR

Wills

Describe what happens in your state if someone dies intestate.

Describe the value of a will.

- ✓ Designates who get assets after death.
- ✓ Designates a personal representative to take charge of administration.

TIP *A surprising number of people think that if they have bequeathed property to someone in their will, the designated legatee has some immediate rights that prevent the testator from selling or otherwise divesting the asset. Advise that this is not the case. Attendees may ask specific personal questions here, about trusts as well as wills. Avoid this as politely as possible. See comments related below.*

- Generally, compare a will to a living trust.

TRUST

Trusts

The visual lists some of the pros and cons of a living trust. Describe trusts in general and compare with a will.

TIP *There has been a lot of publicity about the "horror" of probate and the "advantages" of a living trust. Some of it has been overdone, and much has been used to sell books, do-it-yourself kits and forms. Don't get too specific here. It is best to make clear that the benefits of a trust over a will can only be accurately assessed on the basis of a detailed picture of an individual's or couple's financial situation. Caution in the use of self-help kits and forms should be advised.*

Also note that:

- a trust is an alternative to a will
- a trust can be especially useful for bank accounts, certificates of deposit and savings bonds that can be put into tentative trusts by a simple "payable on death" or "in trust for" designation.
- since a trust is not filed with the court, there is a greater degree of privacy than with a will
- need to re-title assets
- assets being more quickly available with a trust does not mean immediately available - may be delayed until any creditor issues sorted out (check local law/practice)

BREAK

This has turned out to be a convenient place for a break in other seminars. At least one break is essential. You will have to exercise your own judgment as to the right moment. The break need not be longer than ten minutes or so.

JOINT

Joint Ownership

TIP *Use the visual to give a general overview of the distinctions and then address the issues noted. Trying to explain the nuance of tenancy by the entirety, joint tenancy with survivorship, and tenancy in common to an audience of law people can be a humbling experience. Despite that, it is included here because problems associated with misunderstanding of the consequences of joint ownership are high on the list of hidden legal health problems. The problems fall into the general areas of access, survivorship (and inheritance tax), and creation. This is an area where it is easy to get bogged down in detail, or the specific problem of an attendee who has a question. It is important to remain firm in avoiding this. Attendees who think they may have a problem should be advised to write down the exact wording on the account or document of title and note on their "personal plan" to check with an attorney for specific information and/or advice.*

Access to joint assets: who can sell, trade, cash in, etc.? In general, all parties to a joint asset must consent, in writing, to any activity that affects their ownership (however, see comments below on bank accounts).

E X A M P L E

Mrs. X was advised to add her daughter's name to the deed to her home after x's husband died. This was done. Two years later, X met a gentleman at the local senior citizen center. They decided to sell their homes and buy a condominium in Florida, where they intended to live together. Both had experienced difficult situations with their deceased spouses' final illnesses, so they decided to avoid concern about spouse's financial responsibility in the even of long term medical care by not getting married. X's daughter was very upset at the thought of her mother "living in sin." She refused to consent to any sale of the home. X was shocked to find out that her daughter could refuse consent. She had thought that the addition of her daughter's name was solely for X's own convenience.

- The general rule can usually be changed by agreement of the parties to the joint asset, by written agreement and/or by specifying the arrangement in the document of title.
- Most banks use account deposit agreements, affecting all types of bank accounts and certificates of deposit, which allow any single joint owner to withdraw all or part of the funds from the account (the exact opposite of the "general rule).

Survivorship: what happens when a joint owner dies?

A right of survivorship usually has to be specified in the document of title (or by statute). It means that the surviving joint owner or owners get the property. **THIS NORMALLY SUPERSEDES THE TERMS OF A WILL!**

TIP *One of the most common legal health problems involves people who set up joint ownership with right of survivorship with a non-spouse, usually one of their children. Although this is done to avoid probate and/or inheritance tax, they often assume that when they die, the surviving joint owner still has to comply with the terms of a will, that provides for equal distribution of assets among all children. They are very upset to find out that the survivor has no legal obligation to do this.*

- No right of survivorship means that a deceased joint owner's share goes to the deceased owner's heirs, whoever they may be. This is a possible problem, creating the potential for common ownership of an asset between or among people who may not be connected.
- Inheritance or death taxes. Many states assess inheritance taxes on the value of assets that pass to a person as a result of another's death. People set up joint ownerships with others, usually children, to avoid at least some of the tax. This causes unanticipated problems if the child dies first and the original owner is now faced with the possibility of having to pay tax on what had been their own assets, or at least (if permitted by state law) going through some legal process to establish that the original assets were theirs.

Creating Joint Ownership by Adding Names (other than a spouse) to the title to any asset should never be done routinely. It is possible to avoid probate and/or reduce death taxes with joint ownership. However there are risks in doing this that should be understood before taking action. These are matters where it is best to seek competent professional advice.

☛ **TOPICS IDENTIFIED BY ATTENDEES (30 min)**

This is a point at which each attorney or co-sponsor presenter can include information on anything deemed necessary and appropriate to meet the needs of the attendees at any particular program. You may wish to include information about public benefits or landlord/tenant problems. It is also the place to address any of the written questions which were submitted but did not fit into any other category covered in the seminar.

PLEASE REMEMBER TO STAY WITHIN THE CHECKUP PROGRAM GOALS AND FORMAT. LIMIT SPECIFIC INFORMATION TO WHAT IS NECESSARY IN ORDER TO DIAGNOSE A POTENTIAL LEGAL ILLNESS. YOU SHOULD STAY WITHIN THE BOUNDARIES OF THE WRITTEN MATERIALS.

☛ **GENERAL QUESTIONS AND ANSWERS**

If time permits, invite attendees to ask questions on what concerns them. Stay generally within the boundaries of the program materials, goals, and objectives.

☛ **CONCLUSION: THE WORKBOOK AND THE PERSONAL PLAN**

Using what has been learned about legal health, where does the attendee go from here? Advise them that they should:

- **Examine the Personal Plan** they have produced as a result of filling out the list at the back of the workbook. The questions and the list of things to do is the individual's diagnosis of legal health problems which may require attention.
- **Arrange to obtain** any personal or financial documents noted on the plan as missing.
- **Review the Workbook Sections** related to their questions; see if the information sheds any light on their problem or suggests a resource where they can resolve the problem on their own.
- **Seek Professional Help** from an attorney if necessary. Consult the information supplied in the materials on the other resources for assistance. Don't shy away from getting help if they are not sure of their answers or if they think they need legal documents prepared. A relatively small investment now may save a great deal later.

(It is important that you make it clear to the attendees that they are under no obligation to hire you. You should also note that while you participate in the AARP Legal Services Network, this does not mean you are employed or endorsed by AARP. If one of the attendees schedules an appointment, reiterate that they have no obligation as a result of the seminar to hire you)

Maintain Records. Review the “life change” section of the workbook. Once personal records are in order keep them that way. As changes occur in life, be certain to consider legal health and seek a checkup as appropriate.

 **ENDING**

Remind attendees about the resources listed in the workbook if more information is desired.

Thank everyone for attending.