

Elder Law 101

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A stack of four smooth, dark stones is balanced on a beach. The stones are dark and polished, with the top stone being the smallest and the bottom one the largest. The background is a soft, out-of-focus sunset with warm orange and yellow light. The text is overlaid on the right side of the image.

“The longer I live, the more
beautiful life becomes”

Frank Lloyd Wright



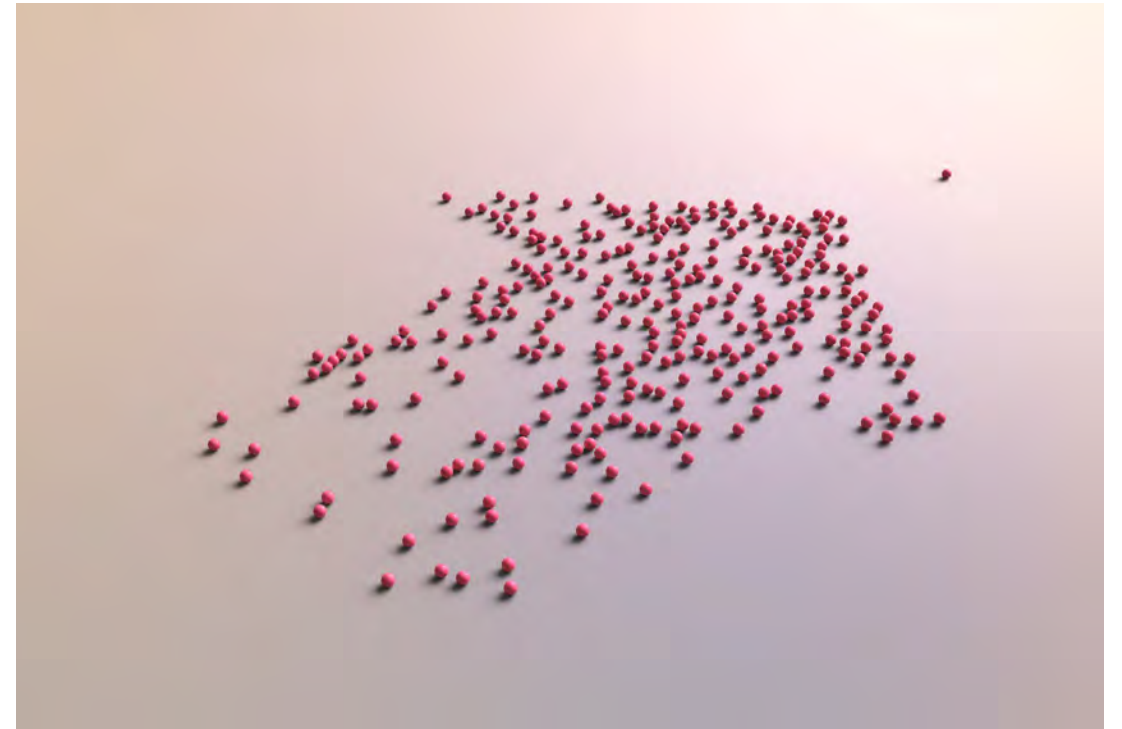
What is Elder Law?


- **Elder Law is a field of law dealing with the unique issues that affect older adults**

<https://www.thebalance.com/what-is-elder-law-3504992>

Where We are Heading: Objectives

- Learn about basic legal issues, services and underlying laws that commonly apply to older Georgians.
- Understand how to avoid legal problems
 - Identify the most frequent areas of fraud and the steps you can take to avoid difficulties
- Understand when you might need a lawyer, learn how to select, what to expect, and how to prepare for a successful representation
 - Identify situations where you might seek legal advice; when and how the internet can help, and what to avoid.



A serene sunset scene over a calm body of water. The sun is a bright, glowing orb on the horizon, casting a long, shimmering reflection down the center of the water. The sky is a mix of soft oranges, yellows, and hints of purple, with some light clouds. In the foreground, a sandy beach is visible, with gentle waves lapping at the shore. The overall mood is peaceful and contemplative.

“The afternoon
knows what the
morning never
suspected”

-Robert Frost

But First, a Little Background

- **NEGA Elderly Legal Assistance Program**
- **State Division of Aging Services**
- **AARP Economic Security and Consumer Representative**
- **Georgia Senior Legal Hotline**
- **University of Georgia School of Law (Mediation and Elder Law)**




Let's Jump In!

- Planning (you've already learned about that) ☒
- Health (Medicare Plans, Medicaid LTC, LTC Insurance, Supplemental/Medigap, Part D)
- Discrimination (Age, Disability, Work)
- Fraud, Abuse, Exploitation
- Housing (Home, AL, PCH, LTCFs, CCRCs)
- Legal Help- how and when to seek





“It is health that is wealth and
not pieces of gold & silver”
-Mahatma Gandhi

A collection of yellow dice with various emoji faces, including happy, sad, surprised, and angry expressions, scattered on a light-colored wooden surface. The dice are arranged in a way that shows multiple faces of different emotions.

Health Care in Retirement (Legal Strategies/Issues)

- Avoiding issues works best (educate yourself)
- Get Help Picking a Plan (Georgia CARES)
- A note on Advantage Plans . .
- “If it sounds too good to be true . . .”
- Triggers to know (e.g., hospitalization)
- If you are denied, you can appeal

What It Might Look Like

- Jane, who is 67 and lives alone, was discharged from the hospital and a waiting ambulance drove her home. Two weeks later she received a bill for hundreds of dollars.
- Insurance wouldn't pay because the ambulance ride home was not "medically necessary."





Medicare

- Lucy, who is 84, became dehydrated on a hot day and fainted. She was taken to the emergency room and admitted to the hospital on “observation status.” Two days later she is discharged to a rehabilitation facility for therapy and services to help her recover.
- Medicare refuses to pay because she was not hospitalized for the time necessary to trigger coverage for rehab.

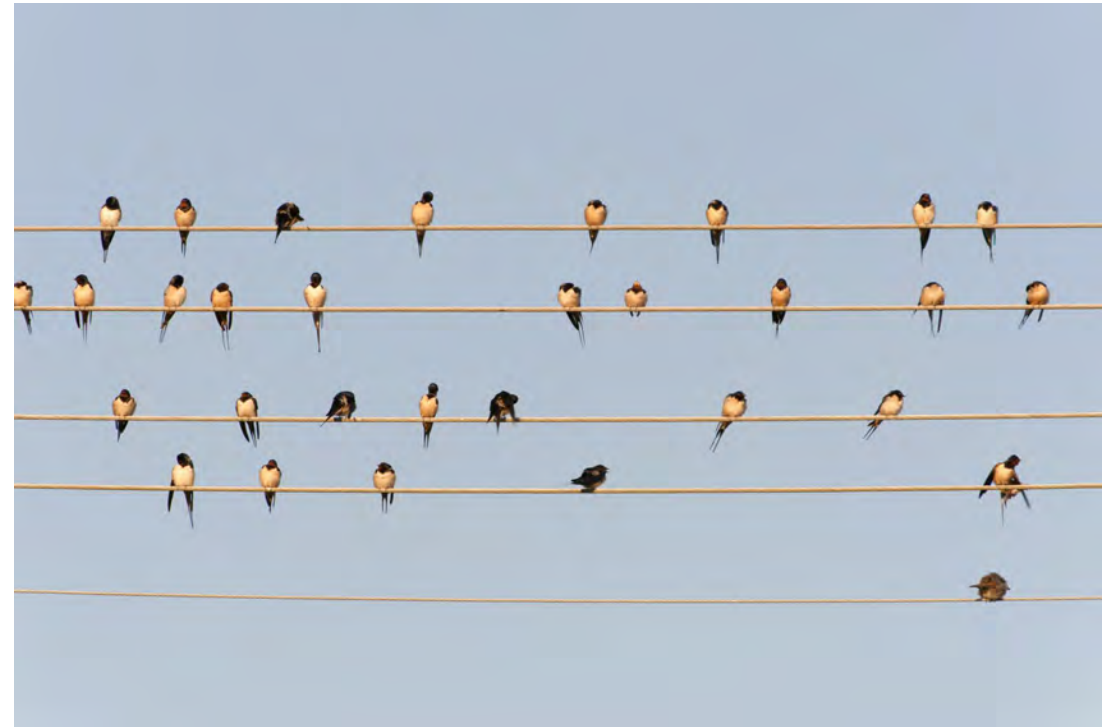
State and Federal Laws Cover How We Get Our Health Care

- Federal laws include:
 - Medicare (Parts A, B, Advantage, D, appeals, supplemental, etc.)
 - PSDA
 - Medicaid and Waiver Approvals
 - HIIPAA
- Georgia laws include:
 - Medical Consent Act
 - HC Powers of Attorney/Advance Directives/POLSTs
 - Georgia's choices in administering Medicaid



-Eric Berne

“The moment a little boy is concerned with which is a jay and which is a sparrow, he can no longer see the birds or hear them sing.”





Discrimination

- State and Federal Laws
- Age
- Disability (ADA)
- Work ADEA (RFOA)
- Housing FHA

What It Might Look Like:

- Jerry is 63 and works in construction. He hurt his back and received workers compensation benefits while he recovered. Two days after he returned to the job site, he was terminated.
- His employer said the reason was that he could no longer operate the heavy equipment necessary for the job.



Accommodations

- Elizabeth and her friends loved to have weekend brunches together. They were excited to try a new Chinese restaurant for dim sum. When they arrived, Elizabeth was told that she couldn't enter the building because she had a service animal (a dog.) They left and went for Mexican food instead.



State and Federal Laws Address Age-Related Discrimination

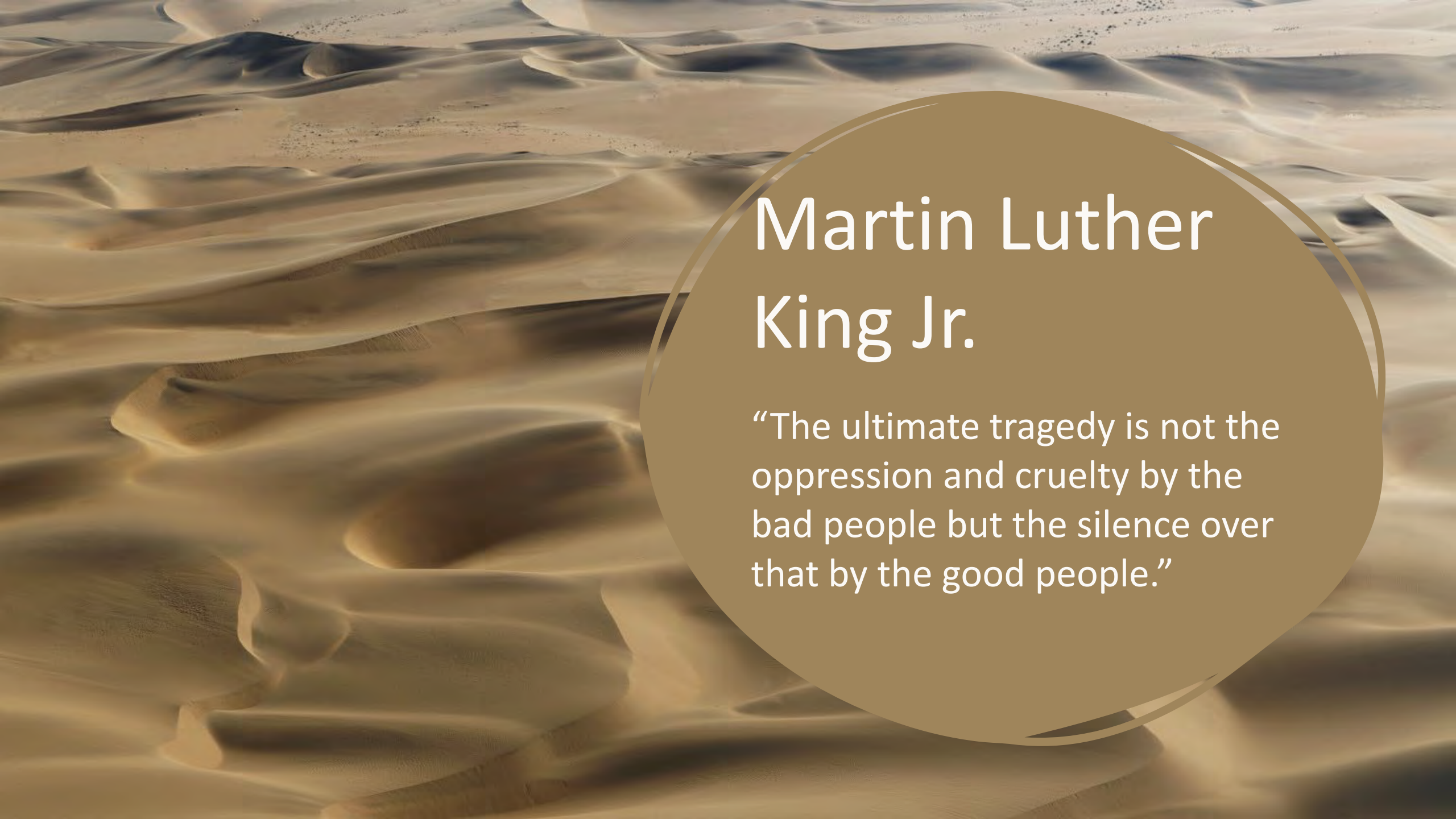
- Federal Laws Addressing Discrimination include:
 - Age Discrimination in Employment Act (20+ employees, EEOC administers complaints, issues right to sue letters, RFOA)
 - Americans with Americans with Disabilities Act (15+ employees, Public and Private Access to services)
 - Fair Housing Act (Federal and Georgia laws, covers disability but not age, housing complexes, sales, not necessarily single- family units)
 - Section 504 of Rehabilitation Act (covers disabilities)
 - FMLA (protection if need time off for caregiving)



State and Federal Laws Address Age-Related Discrimination

- State Laws that cover age discrimination include:
 - Georgia Age Discrimination Act
 - Georgia Prohibition of Age Discrimination in Employment
 - Georgia Equal Employment for Persons with Disabilities Code
 - Fair Employment Practices Act
 - Also, check for Local ordinances/enforcement





Martin Luther King Jr.

“The ultimate tragedy is not the oppression and cruelty by the bad people but the silence over that by the good people.”

Elder Abuse, Fraud, Exploitation

- **Family-related**
- **Consumer**
- **Internet**
- **Identity Theft**
- **Investment**
- **In LTCFs**



What It Might Look Like:

- Joseph and his grandson Lucas had always been close. When Lucas needed a car to get to his job, Joseph co-signed the loan because Lucas promised to pay. After one week, Lucas quit his job and left with the car on a cross country trip. Joseph was notified that the car payments were past due, and they were repossessing the car.



Caregiver Abuse

- Pablo was in his 90s and suffered from cognitive impairment. He was disoriented and at times, difficult to manage. A visitor from church came by to see him and noticed he had bruises on his face and arms. The facility said that he fell out of bed and had to be restrained.



Online Dangers

- Frank, who is 82, had worked for years on a collection of stories for a book he planned to publish. One day, he clicked on a link in an email from a friend that caused malware to take over his computer. His files were all locked and he was told he must pay a “ransom” in bitcoin to get his files released.



State and Federal Laws Address Elder Abuse

- Federal Laws and Programs

- Elder Justice Act
- NH Reform Law (OBRA 87)
- Medicare
- Older Americans Act Programs
- Medicaid and Medicare Fraud Units
- FINRA (Sales of Complex Financial Products)
- SEC, FTC, CFPB, Postal Inspector, etc.


- State Laws and Programs

- Elder Abuse Reporting (mandatory reporters + permissive)
- Adult Protective Services
- Criminal Laws Covering Abuse, Neglect and Financial Exploitation of older Georgians
- Criminal Laws Protecting All Georgians
- Laws applying to health care facilities



Common Financial Frauds

- Relative stuck overseas
- Phishing/Suspicious links, texts or calls
- Bank Examiner/Pigeon Drop
- Identity theft
- Bank/Credit Card fraud
- Sweepstakes/Prizes
- Telemarketing/Targeted Online Marketing



Funeral Homes and Cemeteries

- Regulated by GA SOS (State Board of Funeral Services, State Board of Cemeterians)
- Federal Trade Commission
- “Funeral Rule” refers to federal requirements for practice, goods and services. Prohibits misrepresentations and overselling


Who Can Help/Remedies?

- **Planning!**
- **Adult Protective Services**
- **GBI/SOS/Attorney General**
- **Local Law Enforcement**
- **FTC, Postal Service, SEC, CFPB, etc.**
- **Civil Lawsuits**
- **Criminal Cases**



“Home is any four walls that enclose
the right person”
-Helen Rowland





Legal Issues Involving Your Home

- Home Repair/ 2nd Mortgage Fraud
- The “Travelers” Scam
- Reverse Mortgages
- Signing your home to a caregiver for future promises
- Homeowner Association conflicts
- Code violations

What It Might Look Like

- Mabel has lived in her home for over 40 years. One day a pickup truck pulled into her driveway. The man inside told her he had left over asphalt from a previous job and he would repair the crack for a great price. She signed some paperwork to start the work and later learned that there was a second mortgage on her beloved home.



Accessory Dwelling Units

- Martha was ready to move closer to her family. Her daughter and son-in-law built a lovely small house on their property that was just perfect for her. Before she moved in, the neighbors called the HOA, and then called the County, and the family was told the dwelling was not in compliance with zoning laws and uses for the association.



Housing and Aging

- **Staying at home**
 - Family caregivers
 - In home care (private duty or agency)
 - Villages/Sage Concepts
 - ADUs
- **Personal Care Homes**
- **Assisted Living**
- **LTCFs**
- **CCRCs**



State and Federal Laws that Address Housing & LTC

- Federal Laws include:
 - Medicare
 - Medicaid,
 - The Nursing Home Reform Act (OBRA 87)
- Supreme Court decision in Olmstead (Medicaid waiver funds used to fund in-home care)
- State Laws include:
 - Georgia Bill of Rights for Long-term Care Residents
 - Disabled Adults and Elder Persons Protection Act
 - Personal Care Home Regulations/Enforcement
 - Georgia Department of Community Health Residential Care and Assisted Living Regulations
 - Long-term Care Ombudsman Program
 - Georgia Fair Business Practices Act

Dave Barry

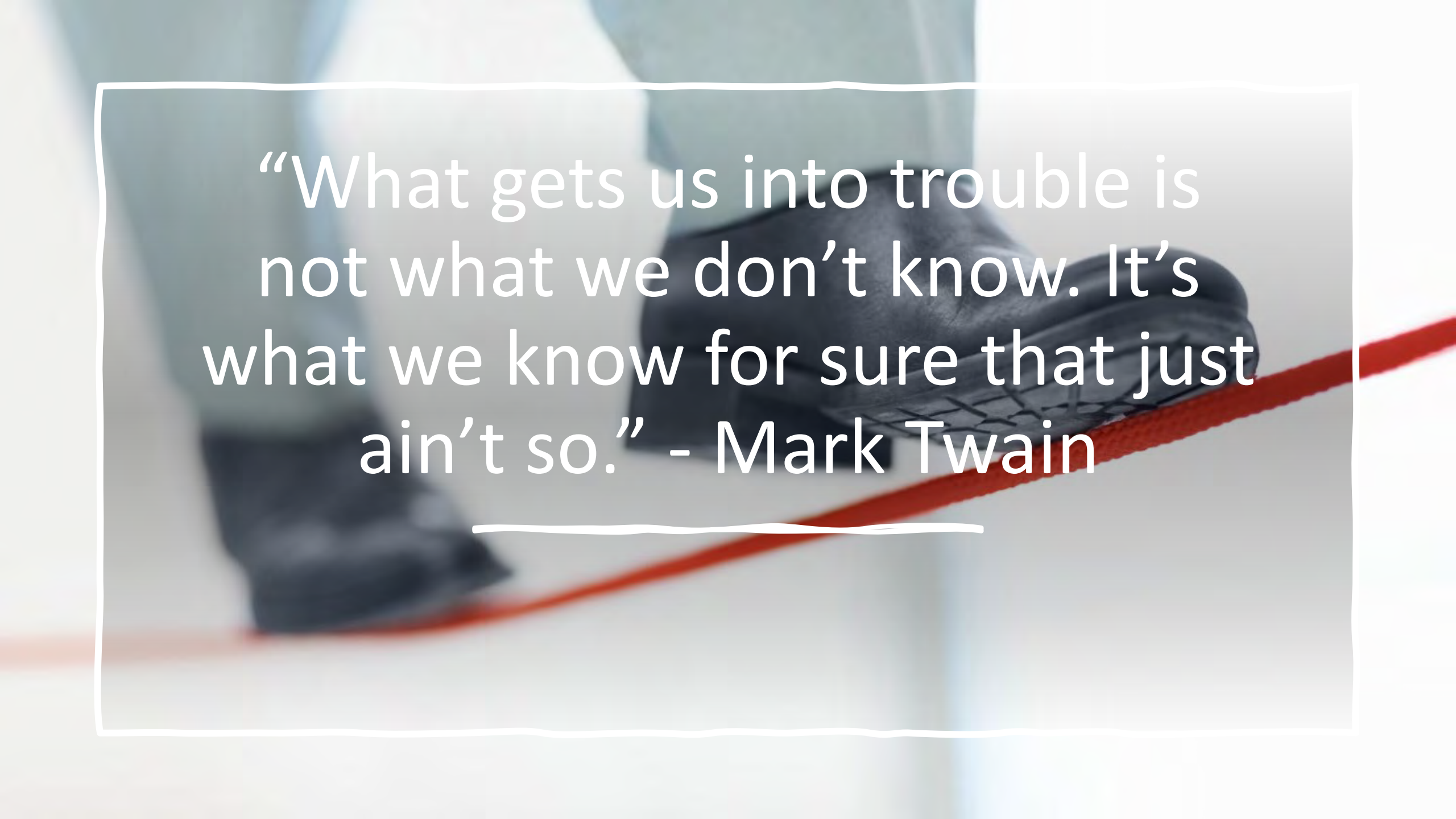
“The one thing that unites all human beings, regardless of age, gender, religion, economic status, or ethnic background, is that, deep down inside, we all believe that we are above-average drivers.”



Driving- When and How to Stop Driving?

- Be open and honest about concerns
- Ask the doctor to address
- Assess vision and depth perception
- Consider liability issues/protecting others
- AARP Smart Driver Course
- Defensive Driving classes
- Hooray for ride shares/cabs



A blurred background image showing a person's legs and feet as they walk a tightrope. The person is wearing light blue trousers and dark shoes. A bright red rope is stretched diagonally across the frame. The text is overlaid on this image.

“What gets us into trouble is not what we don’t know. It’s what we know for sure that just ain’t so.” - Mark Twain

Avoiding Problems

- Take your time and do research before committing
- Get advice (SDM)
- Read the fine print
- If it sounds too good . . .
- Understand your rights under a contract
- How will disputes be resolved?
- Timing to challenge



Do I Need a Lawyer?

- GeorgiaLegalAid.org
- Internet Help
(georgia.freelegalanswers.org)
- Georgia Senior Legal Hotline
- ELAP
- Local or State Bar
Sections/NAELA/NOSSCR
- Dispute Resolution Options



Preparing to Meet with a Lawyer

- Think about your problem, goals, and objectives before your first contact
- Flat fee v. contingencies
- Review the representation agreement
- Be prepared with paperwork
- Be mindful of deadlines!



First Things First . . .

- Who is the client? You?
You and your spouse? An
older family member?
- Duty of confidentiality
- No conflicts of interest
- Allowing you to direct the
representation
- Unbundled Services are a
growing option





Dispute Resolution Options

- Mediation (Civil cases, Domestic cases, Probate cases)
- Arbitration (mandatory binding arbitration is contained in many NH and consumer contracts)
- Early Neutral Evaluation/Non-binding arbitration
- Supported decision-making
- Restorative Justice

The Lawyer Is the Issue!

- Be a good consumer
- Do your research
- Prepare with your goals/objectives
- Listen with an open mind
- State Bar of Georgia (Fee Disputes)
- Ethics Complaints to State Bar



Resources

Georgia Focused Legal Information:

- Overview of Common Questions and Areas of Law

<https://www.georgialegalaid.org/>

- Publications Page at GA Division of Aging Services

<https://aging.georgia.gov/about-us/publications>

- County Court Self-Help Websites, Council of Probate Judges

<https://georgiacourts.gov/probate/>



Questions?

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The End.

Thank You!