

# WHAT THE FUTURE OF AGING MEANS TO ALL OF US: AN ERA OF POSSIBILITIES

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## INTRODUCTION

There is an oft-quoted phrase about certainty, that two things in life are certain: death and taxes.<sup>1</sup> I would like to build on that and offer that there are three certainties in life: *aging*, death, and taxes. One of the universals for all of us is aging. With the tick of the clock, each second, we grow older. Because aging is universal, it is important for us to recognize that the issues surrounding aging and the future of aging—programs, services, policies, people, however you consider it—affect us all. Thus, it may be said, aging is a common denominator for all of humanity.

It is also important to recognize that because aging affects all of us, as both individuals and professionals, we need to look at the issues and solutions horizontally rather than vertically by individual disciplines. For example, as an elder law attorney, the client's legal problems can be impacted by the client's health, housing situation, financial security, and more. So we need to recognize the interdisciplinary nature of the future and organize our thoughts in a broader way, rather than just by our respective disciplines. Others may view or organize this as a wheel, with aging as the center and the different disciplines as the spokes.

Some might refer to the aging cohort known as the Baby Boomers as a speeding freight train heading for us, while others have made more colorful

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1. Benjamin Franklin, *Letter of Jean Baptiste LeRoy*, 13 Nov. 1789, NOTABLE QUOTES, [http://www.notable-quotes.com/f/franklin\\_benjamin.html](http://www.notable-quotes.com/f/franklin_benjamin.html) (last visited Oct. 25, 2013).

references to silver tsunamis<sup>2</sup> and pigs in pythons.<sup>3</sup> One thing is for sure: the certainty of aging breeds uncertainty of responses and thus questions and possibilities, like a river, flow from this uncertainty that we are facing.

### I. WHY AGING? WHY NOW?

Aging is not a new phenomenon, so why are we so focused on the future of aging now? I will offer two opinions: longevity and Baby Boomers.<sup>4</sup> The law impacts every profession and we see the applicability of many laws and regulations in the field of aging. Elder law, the part of the legal profession that deals with clients who are older, has grown from its inception as a specialty practice area to a general practice area within which attorneys specialize.<sup>5</sup> There are still areas where the field of elder law is evolving. The evolution is likely driven by a number of factors, including demographics, longevity, population shifts, technology, health care, you name it.

Why just offer longevity and Baby Boomers as justifications for why the future of aging is now important to all of us? Put aside the personal perspective (we all should be concerned with how we age and quality of life); focus instead on the professional issues. Regardless of our profession, aging populations have an impact on it. Whether it is co-workers who are older, Boomers with caregiving responsibilities for their parents, the customer or client base, a service we provide or a product we sell, there are impacts all around us. We just have to recognize it. Aging, like the law, is ubiquitous.

When elder law was first recognized as a practice area, it was viewed as a niche practice or specialty practice area – something of a novelty. Now, more than twenty-five years later<sup>6</sup> elder law is a recognized practice area<sup>7</sup> and, as I like

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2. See, e.g., Alliance for Aging Research, *Preparing for the Silver Tsunami*, <http://www.agingresearch.org/newsletters/view/100> (July 1, 2006).

3. See *Pig in the Python Definition*, OXFORD DICTIONARIES, <http://www.oxforddictionaries.com/us/definition/english/pig-in-the-python> (last visited Nov. 3, 2013) (defining “pig in the python” as “a sharp statistical increase represented as a bulge in an otherwise level pattern, used especially with reference to the baby-boom generation regarded as having a gradual effect on consumer spending, society, etc. as they grow older. [[F]rom the shape of such an increase being likened to that of a pig swallowed by a python.]”).

4. Celeste Headlee, *Are We Ready for a Massive Aging Population?*, NPR NEWS (Aug. 12, 2013), <http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=211370947&m=211370940> (transcript available at <http://www.npr.org/templates/story/story.php?storyId=211370947>) (discussing Boomer’s impact on culture, among other things).

5. *Why an Elder or Special Needs Law Attorney?*, NAT’L ACAD. OF ELDER LAW ATTORNEYS, [http://www.naela.org/Public/About/Consumers/Why\\_and\\_Elder\\_Law\\_Attorney\\_is\\_a\\_Good\\_Choice/Public/About\\_NAELA/Fact\\_Sheets/Why\\_an\\_Elder\\_Law\\_Attorney\\_is\\_a\\_Good\\_Choice.aspx?hkey=6569dbbe-5362-4cfa-8752-bd890a8a6ec1](http://www.naela.org/Public/About/Consumers/Why_and_Elder_Law_Attorney_is_a_Good_Choice/Public/About_NAELA/Fact_Sheets/Why_an_Elder_Law_Attorney_is_a_Good_Choice.aspx?hkey=6569dbbe-5362-4cfa-8752-bd890a8a6ec1) (last visited Sept. 19, 2014).

6. The twenty-five plus years is a reference to the variances attributable to when elder law was “born.” The National Academy of Elder Law Attorneys (NAELA), a membership organization of attorneys who practice in the fields of elder and special needs law was established in 1987. See

to describe it, a general practice area within which elder law attorneys specialize.<sup>8</sup> Elder law is unique in that, unlike most other areas of the law, the practice is defined by the client (the elder or family member), rather than the subject area of law.<sup>9</sup> So if the practice is defined by the client, a seventy-five-year-old could have a family law problem, a contracts matter, or a personal injury matter, be a victim or perpetrator of a crime, need a zoning variance, wish to create an estate plan, etc. As a result, elder law can encompass it all, but not all elder law attorneys do it all. Thus, my perspective of elder law is that it is a general practice area within which attorneys specialize. This is an especially interesting thought when looking at developments outside of the law that impact the client base (technology, housing, health care, income security) and, in my view, what seems to be the move from generalization to specialization within the law.<sup>10</sup> What are the expectations of clients who seek the services of an elder law attorney and what does elder law mean?

#### I. IS IT ALL ABOUT AGE?

Jack Weinberg famously said “don’t trust anyone over thirty,”<sup>11</sup> but with time

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*About NAELA*, NAT’L ACAD. OF ELDER LAW ATTORNEYS, [http://www.naela.org/Public/About/Public/About\\_NAELA/About.aspx?hkey=3ae07a3c-c172-4565-a52b-091d49e31841](http://www.naela.org/Public/About/Public/About_NAELA/About.aspx?hkey=3ae07a3c-c172-4565-a52b-091d49e31841) (last visited Sept. 19, 2014) (providing more information about NAELA). The National Senior Citizens Law Center (NSCLC) was established in 1972. See *History*, NAT’L SENIOR LAW CITIZENS CTR., <http://www.nslc.org/index.php/about/what-we-do/history-2/> (last visited Sept. 19, 2014) (providing more information about NSCLC).

7. Thirty-nine state bars have elder law sections or committees on aging and disability. See Charles P. Sabatino, *The Longevity of Elder Law*, 33 BIFOCAL, Aug. 2012, [http://www.americanbar.org/publications/bifocal/vol\\_33/issue\\_6\\_aug2012/longevity\\_of\\_elder\\_law.html](http://www.americanbar.org/publications/bifocal/vol_33/issue_6_aug2012/longevity_of_elder_law.html). NAELA has 4,474 members and twenty-eight chapters. Email from Peter Wacht, Exec. Dir., NAELA, to author (on file with Author). The National Elder Law Foundation has over 400 attorneys certified in elder law. See *About NELF*, NAT’L ELDER LAW FOUND., <http://www.nelf.org/about-nelf> (last visited Nov. 3, 2013).

8. See Rebecca C. Morgan, *The Future of Elder Law Practice*, 37 WM. MITCHELL L. REV. 1, 6-7 (2010).

9. *Id.* at 7 (citing *Why an Elder or Special Needs Law Attorney?*, *supra* note 5).

10. See, e.g., *Standing Committee on Specialization*, AM. BAR ASS’N, [http://www.americanbar.org/groups/professional\\_responsibility/committees\\_commissions/specialization.html](http://www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization.html) (last visited Nov. 3, 2013) (governing certification). The committee lists certifying entities and states, with eight private organizations approved to certify attorneys in specific areas and noting that twelve states have state-sponsored certification. *Sources of Certification*, AM. BAR ASS’N, [http://www.americanbar.org/groups/professional\\_responsibility/committees\\_commissions/specialization/resources/resources\\_for\\_lawyers/sources\\_of\\_certification.html](http://www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization/resources/resources_for_lawyers/sources_of_certification.html) (last visited Oct. 25, 2013).

11. As part of U.C. Berkley’s Free Speech Movement in 1964, Jack Weinberg actually said, “We don’t trust anyone over thirty.” See Daily Planet Staff, *Don’t Trust Anyone over 30 Unless It’s Jack Weinberg*, BERKLEY DAILY PLANET, Apr. 6, 2000, at 1, available at <http://www.berkeleydailyplanet.com/issue/2000-04-06/article/759>.

and age, perspectives and priorities change. What is meant by “old” is something determined in the eye of the beholder. At what age is a person “old?” Is it age or ability that matters? Why all the fuss about the Baby Boomers?

Ah, the Baby Boomers.<sup>12</sup> That cohort of our population always seems to get a lot of press and other generations may wonder why the attention. Is it just their numbers or is there something “special” about them?<sup>13</sup> According to Ken Dychtwald<sup>14</sup> at the American Society on Aging’s 2012 *Aging in America* conference, “boomers change every stage of life through which they migrate.”<sup>15</sup>

In my view, it is very hard to speak definitively about a generation. Although its members may share common characteristics, they also have many differences, which will impact how they age. How a generation will age does not refer to aging chronologically or biologically, but whether its members keep working, whether they will retire with hobbies, their level of community engagement, etc.

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12. The Congressional Budget Office discussed the Baby Boomer generation and explained, Between 1946 and 1964 more than 75 million babies were born in the United States, forming a cohort that has come to be known as the baby-boom generation. The oldest people in the group turned 65 in 2011. The aging of that generation, in combination with increases in longevity and other factors, will cause the share of the population age 65 or older to grow rapidly from 2010 to 2030. The share of the population age 85 or older will grow rapidly beginning around 2030 and continuing until at least 2050.

CONGRESSIONAL BUDGET OFFICE, RISING DEMAND FOR LONG-TERM SERVICES AND SUPPORTS FOR ELDERLY PEOPLE 7 (2013) [hereinafter CBO], available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/44363-LTC.pdf>.

13. If you are a member of the Boomer generation like the Author, you will pick the latter rather than the former! See Neil Howe, *What Makes the Boomers the Boomers?*, GOVERNING (Sept. 2012), <http://www.governing.com/generations/government-management/gov-what-makes-boomers.html> (“[T]his generation began to manifest so many of the collective attitudes and behaviors for which they have since become famous: their individualism, their attraction to personal risk, their distrust of big institutions, their carelessness about material wealth, their cultivation of self, their die-hard moralism . . . . Compared to their parents’ generation, boomers have always lived on the edge. In their youth, they launched a behavioral trend toward personal risk-taking . . . . They’ve taken that ‘born to be wild’ streak—‘If I have to break the rules to do it my way, I will’—and stuck with it.”).

14. Dr. Dychtwald, among other things, is a futurist, noted author, and founding president and CEO of AgeWave. See *Keynote Presentations*, AGE WAVE, [http://www.agewave.com/keynote/keynote\\_speaker.php?k=1](http://www.agewave.com/keynote/keynote_speaker.php?k=1) (last visited Sept. 19, 2014).

15. Laura Rawley, *Baby Boomers Will Transform Aging In America*, Panel Says, HUFFPOST (Apr. 2, 2012), [http://www.huffingtonpost.com/2012/04/02/aging-in-america-baby-boomers-ariana-huffington\\_n\\_1397686.html](http://www.huffingtonpost.com/2012/04/02/aging-in-america-baby-boomers-ariana-huffington_n_1397686.html); see also, e.g., Celeste Headlee, *Are We Ready for a Massive Aging Population?*, NPR NEWS (Aug. 12, 2013) <http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=211370947&m=211370940> (transcript available at <http://www.npr.org/templates/story/story.php?storyId=211370947>) (discussing Boomer’s impact on culture, among other things).

### III. NEARLY 10,000 PEOPLE A DAY IN THE U.S. ARE TURNING SIXTY-FIVE:<sup>16</sup> LONGEVITY

Life expectancies are increasing.<sup>17</sup> So we can all expect to live longer than prior generations.<sup>18</sup> This is true not just for the Baby Boomers (no matter how special we may think we are), but for all generations.<sup>19</sup> As well, increased longevity of the population is not unique to the United States.<sup>20</sup> With longevity comes its own basket of issues. We may be living longer, but are those longer years well-lived? Are we facing chronic conditions, disability, or good health? We are not going to live forever. Many of us will find ourselves with “functional limitations,” that is “physical problems that limit a person’s ability to perform routine daily activities, such as eating, bathing, dressing, paying bills, and preparing meals.”<sup>21</sup> A fair number, almost thirty-three percent, of those at least age sixty-five, have a functional limitation, while for those of the oldest-old (age eighty-five and older), the number jumps to approximately sixty-six percent.<sup>22</sup> One study projected that for sixty-five-year olds, more than two-thirds of them will need help with functional limitations at some point in the remainder of their lives.<sup>23</sup>

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16. See *Baby Boomers Retire*, PEW RESEARCH CTR. (DEC. 29, 2010), <http://www.pewresearch.org/daily-number/baby-boomers-retire/>.

17. *Health & Aging*, NATIONAL INSTITUTE ON AGING, <http://www.nia.nih.gov/research/publication/global-health-and-aging/living-longer> (last visited Sept. 19, 2014).

18. *Id.*

19. See, e.g., U.S. DEP’T OF HEALTH & HUMAN SERVS., LIFE EXPECTANCY AT BIRTH, AT AGE 65, AND AT AGE 75, BY SEX, RACE, AND HISPANIC ORIGIN: UNITED STATES, SELECTED YEARS 1900-2010 (2013), available at <http://www.cdc.gov/nchs/data/hus/12.pdf#018>; U.S. CENSUS BUREAU, THE 2012 STATISTICAL ABSTRACT: BIRTHS, DEATHS, MARRIAGES & DIVORCES: LIFE EXPECTANCY (2012), available at [http://www.census.gov/compendia/statab/cats/births\\_deaths\\_marriages\\_divorces/life\\_expectancy.html](http://www.census.gov/compendia/statab/cats/births_deaths_marriages_divorces/life_expectancy.html).

20. Sabrina Tavernier, *Life Expectancy Rises Around the World, Study Finds*, N.Y. TIMES (Dec. 13, 2012), [http://www.nytimes.com/2012/12/14/health/worlds-population-living-longer-new-report-suggests.html?\\_r=0](http://www.nytimes.com/2012/12/14/health/worlds-population-living-longer-new-report-suggests.html?_r=0) (referencing *Global Burden of Disease Study 2010*, LANCET (Dec. 13, 2012), <http://www.thelancet.com/themed/global-burden-of-disease>).

21. CBO, *supra* note 12, at 1. As they age, people may also experience cognitive limitations, which are “losses in mental acuity that may also restrict a person’s ability to perform such activities.” *Id.*

22. *Id.* (citations omitted). The CBO report notes that the chance of having a functional limitation grows with age. *Id.* at 12. Of those aged sixty-five to seventy-four who live in the community, fewer than twenty percent reported a functional limitation, but of those at least age eighty-five, it jumps to almost three-times that amount. *Id.* Nearly one-third of those aged seventy-five to eighty-four have a functional limitation. *Id.* Those who need help with activities of daily living (ADLs) (fourteen percent of the sixty-five to seventy-four age group), need assistance with at least one ADL while forty-one percent of those at least eighty-five do. *Id.*

23. *Id.* at 1 (citing Peter Kemper et al., *Long-Term Care over an Uncertain Future: What Can Current Retirees Expect?*, 42 INQUIRY 335 (2005), <http://tinyurl.com/l9ml4a9>). The CBO goes

Should there be outer limits on longevity? How long a life is long enough? That was an interesting question that the Pew Research Foundation studied in a recent survey.<sup>24</sup> As we live longer, we have to think of issues that arise from a longer life span. Should retirement age be raised because we will live longer?<sup>25</sup> Will we outlive our savings? Will we need more health care? Consider how increases in longevity will redefine family relationships. Ken Dychwald in his presentation to the American Society on Aging, *Aging in America 2013* conference, spoke about the longevity revolution and gave the example of a family with six living generations.<sup>26</sup> In popular culture, adult caregivers who are supporting their children as well as their parents are often referred to as the sandwich generation.<sup>27</sup> Imagine the sandwich for six living generations.

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on to predict that if that estimate holds true, then the need for assistance with functional or cognitive limitations will greatly increase. *Id.*

24. CARY FUNK ET AL., *LIVING TO 120 AND BEYOND: AMERICANS' VIEWS ON AGING, MEDICAL ADVANCES AND RADICAL LIFE EXTENSION* (2013), available at <http://www.pewforum.org/files/2013/08/Radical-life-extension-full.pdf>.

25. See, e.g., GLENN R. SPRINGSTEAD, *DISTRIBUTIONAL EFFECTS OF ACCELERATING AND EXTENDING THE INCREASE IN THE FULL RETIREMENT AGE*, SOC. SEC. ADMIN., OFF. OF RET. & DISABILITY POLICY, POLICY BRIEF NO. 2011-01 (2011), available at <http://www.socialsecurity.gov/policy/docs/policybriefs/pb2011-01.html>; Off. of Ret. Policy, *Policy Option Projections: Retirement Age Increases*, <http://www.socialsecurity.gov/retirementpolicy/projections/increases-fra.html> (last visited Nov. 3, 2013).

26. Ken Dychwald, *Transforming Retirement: New Timing, Roles, Funding, Challenges/Opportunities and a New Purpose* (video 2013) (available at <http://asaging.org/asa-videos-general-sessions-aging-america>).

27. See PAUL TAYLOR ET AL., *THE SANDWICH GENERATION, RISING FINANCIAL BURDENS FOR MIDDLE-AGED AMERICANS*, PEW RESEARCH CENTER FOR SOCIAL & DEMOGRAPHIC TRENDS (2013) [hereinafter TAYLOR ET AL., *PEW SANDWICH*], available at [http://www.pewsocialtrends.org/files/2013/01/Sandwich\\_Generation\\_Report\\_FINAL\\_1-29.pdf](http://www.pewsocialtrends.org/files/2013/01/Sandwich_Generation_Report_FINAL_1-29.pdf). The “sandwich generation” is a phrase that refers to the adult who is caring (often in the terms of financial support) for an elderly relative while also supporting children. The adult is the filling in the sandwich, the children are one slice of bread, and the elderly relative the other. The Pew Research Center report on the Sandwich Generation defines it as:

those adults with at least one living parent age 65 or older and who are either raising a child younger than 18 or providing financial support (either primary support or some support in the past year) to a grown child age 18 or older. Stepmothers/stepfathers who “played an important role” in respondent’s life are included in cases where the mother/father is deceased. Stepchildren are included for respondents who volunteer that they have a stepchild and say they consider themselves to be his or her parent or guardian. . . .

*Id.* at 2 n.2. Sandwich generation

members are mostly middle-aged: 71% of this group is ages 40 to 59. An additional 19% are younger than 40 and 10% are age 60 or older. Men and women are equally likely to be members. . . . Hispanics are more likely than whites or blacks to be . . . [the sandwich generation]. More affluent adults . . . are more likely than less affluent

#### IV. A “NEW” HOUSING PARADIGM—AGING IN PLACE?

We are hearing a lot these days about “aging in place,” referring to a person’s desire to live and age in the same house.<sup>28</sup> Is this really a new paradigm? This is different than folks retiring and moving to a Sunbelt state.<sup>29</sup> The desire to grow older in one’s own home rather than being moved into a facility is not just a hopeful wish. Technology, architecture, and government programs, policies, regulations, and even zoning are making this possible now. In the past, the typical solution for folks who were not able to live independently at home was a long-term care facility such as a nursing home, or, for those with a lower level of needs, supportive housing.<sup>30</sup> Perhaps the method of payment (with government programs, especially Medicaid, paying for the care)<sup>31</sup> and fewer options available

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adults to be in the sandwich generation. . . . Married adults are more likely than unmarried adults to be sandwiched between their parents and their children . . .

*Id.* at 3.

This sandwich would look a lot like a “Dagwood Sandwich” made famous in the “Blondie” comic strip, which is described as:

a multi-layered sandwich with a variety of fillings. Used to denote a sandwich put together so as to attain such a tremendous size and infinite variety of contents as to stun the imagination, sight, and stomach of all but the original maker.

. . . [The] term . . . originated in the comic strips in the 1930s after a comic strip character named Dagwood Bumstead. According to the creator of the comic strip, Murat Bernard “Chic” Young . . . , the only thing that Dagwood could prepare in the kitchen was a mountainous pile of dissimilar leftovers precariously arranged between two slices of bread. Dagwood became known for his huge sandwiches he created on evening forays to the refrigerator.

*A History of the Dagwood Sandwich*, Whatscookingamerica.net, <http://whatscookingamerica.net/History/Sandwiches/DagwoodSandwich.htm> (last visited Sept. 7, 2013). A recipe by famous chef Emeril Lagasse on the Food Network website calls for ten slices of bread, among other ingredients. *Dagwood Stacked Sandwich*, FOODNETWORK, <http://www.foodnetwork.com/recipes/emiril-lagasse/dagwood-stacked-sandwich-recipe/index.html> (last visited Nov. 3, 2013).

28. Mark D. Bauer, *“Peter Pan” as Public Policy: Should Fifty-Five-Plus Age-Restricted Communities Continue to be Exempt from Civil Rights Laws and Substantive Federal Regulation?*, 21 ELDER L.J. 33, 43-44 (2013).

29. *Sun Belt*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/573594/Sun-Belt> (last visited Sept. 19, 2014) (explaining that the Sun Belt consists of fifteen states in the southern portion of the United States spanning from Virginia to Florida in the southeast, through Nevada in the southwest, and part of southern California).

30. See, e.g., Bauer, *supra* note 28, at 43; see also Eldercare Locator, DEP’T HEALTH & HUMANSERVS., [http://www.eldercare.gov/eldercare.net/public/resources/factsheets/govt\\_assisted\\_housing.aspx](http://www.eldercare.gov/eldercare.net/public/resources/factsheets/govt_assisted_housing.aspx) (last visited Aug. 24, 2014).

31. See, e.g., Jon Pynoos et al., *Aging in Place, Housing & the Law*, 16 ELDER L.J. 77, 84-85 (2008) (discussing, among other things, “[i]nstitutional bias against funding for in-home long-term care services” (citations omitted)).

are the reason for the default to a nursing home for long-term care. Recognizing the individual's desire to stay in the community,<sup>32</sup> funding of community care is increasing,<sup>33</sup> and so perhaps there will be more opportunities for individuals to age in place, or at least reside in a community setting rather than an institutional one.<sup>34</sup> Reports show a drop in the number of people residing in nursing homes with these individuals opting instead to reside in supportive housing, residential care facilities or their homes.<sup>35</sup>

Universal design is the design of homes and access so that everyone of different ages and abilities can live in and use the physical space.<sup>36</sup> This may mean that as we grow old, the thresholds at the doors will not trip us, the doorways are wide enough for a wheelchair, the bathrooms have grab bars, or are designed so they can be easily installed, etc.<sup>37</sup> A "new" housing paradigm—aging in place?

Architectural design made our homes livable. And with those homes built before this, remodeling is possible in many instances.<sup>38</sup> How does one pay for

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32. See, e.g., Anika Clark, *Elderly Population Is Rising, but Fewer End up in Nursing Homes*, SOUTHCOAST TODAY (Sept. 18, 2011), <http://www.southcoasttoday.com/apps/pbcs.dll/article?AID=/20110918/NEWS/109180326/-1/newsmap>.

33. See Press Release, U.S. Dep't of Health & Human Servs., Affordable Care Act Supports States in Strengthening Community Living (Feb. 22, 2011), available at <http://wayback.archive-it.org/3926/20140108162250/http://www.hhs.gov/news/press/2011pres/02/20110222h.html>; *Money Follows the Person*, CTRS. FOR MEDICARE & MEDICAID SERVS., <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Balancing/Money-Follows-the-Person.html> (last visited Nov. 3, 2013).

34. Donald Redfoot et al., *The Aging of the Baby Boom and the Growing Care Gap: A Look at Future Declines in the Availability of Family Caregivers*, INSIGHT ON THE ISSUES, Aug. 2013, at 4, available at [http://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/ltc/2013/baby-boom-and-the-growing-care-gap-insight-AARP-ppi-ltc.pdf](http://www.aarp.org/content/dam/aarp/research/public_policy_institute/ltc/2013/baby-boom-and-the-growing-care-gap-insight-AARP-ppi-ltc.pdf) (noting a twenty-six percent decline in Medicaid nursing home care from 1995 to 2010 and two-thirds increase in the number of individuals needing assistance with at least two ADLs living in the community).

35. CBO, *supra* note 12, at 2 (citing to the Medicare Current Beneficiary Survey (MCBS) which stated there was a ten percent drop in the number of elders living in nursing homes because more live-in supportive housing, residential care facilities or other care facilities and homes without supportive services. The MCBS noted that this is an even more significant trend for those of the oldest-old (eighty-five and older)).

36. See Rebecca C. Morgan, *From the Elder-Friendly Law Office to the Elder-Friendly Courtroom: Providing the Same Access and Justice for All*, 2 NAELAJ. 325, 327-28 (2006); CTR. FOR UNIVERSAL DESIGN, N.C. STATE UNIV., RESIDENTIAL REHABILITATION, REMODELING AND UNIVERSAL DESIGN (2006), available at [http://www.ncsu.edu/ncsu/design/cud/pubs\\_p/docs/residential\\_remodelinl.pdf](http://www.ncsu.edu/ncsu/design/cud/pubs_p/docs/residential_remodelinl.pdf).

37. CTR. FOR UNIVERSAL DESIGN, *supra* note 36.

38. See, e.g., DEBORAH MCCARTY & PHILIP B. STAFFORD, HOW TO DEVELOP A HOME MODIFICATION INITIATIVES: A COMMUNITY GUIDEBOOK (2010), available at <http://www.aarp.org/content/dam/aarp/livable-communities/act/housing/how-to-develop-a-home-modification-initiative-a-community-guidebook-aarp.pdf>; see also Howe, *supra* note 13 (stating "[t]he next



this type of remodel? Savings, home equity loans, reverse mortgages, or families?

The idea of staying at home is not limited to the individual. Some cities are part of the “livable” community or “communities for a lifetime” initiatives.<sup>39</sup> For example, the Indiana initiative<sup>40</sup> examined the “four domains” of a community that would be considered “elder-friendly.”<sup>41</sup> This aging in place concept for cities (rather than individuals) offers significant opportunities for local government to provide a cohesive plan for its citizens as they pass through all ages of life.<sup>42</sup> But are all cities jumping on the livable communities concept? Some have but not all.<sup>43</sup> According to one study looking at the role of municipal government with law and aging,<sup>44</sup> there is a chasm between ideas and implementation<sup>45</sup> with no significant momentum to the development of ordinances that facilitate the creation of (or modification into) an elder-friendly city with sufficient services

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decade promises to be the golden age of the home remodeler, as boomers with funds turn that circa-2000 pleasure-palace McMansion into a rambling circa-2020 extended-family home reminiscent of the rambling Depression-era residences in all those old Frank Capra movies.”).

39. For example, the Florida Department of Elder Affairs defines the communities for a lifetime as “a statewide initiative that assists Florida cities, towns and counties in planning and implementing improvements that benefit their residents, both youth and elder.” *Frequently Asked Questions*, COMMUNITIES FOR A LIFETIME, <http://www.communitiesforalifetime.org/faq.php> (last visited Nov. 1, 2013); see also, e.g., JOANNE BINETTE, AARP RESEARCH & STRATEGIC ANALYSIS, MAINTAINING INDEPENDENCE AND QUALITY OF LIFE: A LIVABLE COMMUNITY SURVEY IN INDIANAPOLIS, INDIANA (2011), available at <http://assets.aarp.org/rgcenter/il/livable-communities-indianapolis-general-indiana.pdf> (noting in the Executive Summary that a significant percentage of those fifty and over expressed a preference for staying at home and in Indianapolis for as long as they could).

40. See generally Ind. Univ., *About*, AGING INDIANA: PLANNING ELDER-FRIENDLY HOOSIER COMMUNITIES, <http://lifetimecommunities.org/about/> (last visited Sept. 10, 2014).

41. See Ind. Univ., *Community Planning Model*, COMMUNITIES FOR A LIFETIME, <http://lifetimecommunities.org/community%20planning%20model/index.html> (last visited Sept. 19, 2014) (mentioning that the four domains include responding to basic needs, furthering both civic and social engagement, maximizing health (physical and mental) and well-being and enhancing independence of those who are disabled or frail).

42. A. Kimberly Dayton & Israel Doron, *Municipal Elder Law: A Minnesota Perspective*, 20 ELDER L.J. 33, 43-44 (2012) [hereinafter Dayton & Doron, *Municipal Elder Law*].

43. *Id.* at 67-68 (explaining the Florida Communities for a Lifetime Project, the “Blue Zone” experiment in Albert Lea, Minnesota and the “Green House Project”).

44. A. Kimberly Dayton & Israel Doron, *Thinking Locally: Law, Aging & Municipal Government: Findings from a National Survey*, 21 TEMP. POL. & CIV. RTS. L. REV. 101, 108 (2012) [hereinafter Dayton & Doron, *Thinking Locally*] (noting that in the cities surveyed, there were over 1000 ordinances that somehow affected older persons and that a majority of cities passed a minimum of one ordinance concerning housing that affected elders).

45. *Id.* at 115 (citing to NICHOLAS FABER & DOUGLAS SHINKLE, AGING IN PLACE: A STATE SURVEY OF LIVABILITY POLICIES & PRACTICES vii (2011), available at <http://www.ncsl.org/documents/transportation/Aging-in-Place-2011.pdf>).

to allow residents to age in place.<sup>46</sup>

## V. ZONING FOR SERVICES

Even as we age in place and grow older, we still need services.<sup>47</sup> So this brings up the issues of zoning—at least in part because single-family zoning (instead of mixed use zoning or zoning to allow a la carte services or nearby services) limits the location of supportive housing or even aging in place. One can order most anything online these days, and some online companies can even deliver items, including groceries and medicines. So why would someone ever need to leave her home?<sup>48</sup> Concomitant with aging in place is the need for services to be geographically accessible and convenient to residents. This has led to Naturally Occurring Retirement Communities (NORCs).<sup>49</sup>

If the residents need a business and the business is willing, the local governments need to consider the zoning that allows the consumer-seller relationship to evolve.<sup>50</sup> Many local governments have zoning ordinances that will affect elders—these may focus on the type of housing or business, such as a health care facility.<sup>51</sup> Governments need to decide if they want their residents

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46. *Id.* at 116 (discussing these findings as consistent with earlier studies and ordinances that do exist and primarily focus on zoning, with many ordinances viewing age negatively and stereotyping).

47. *See, e.g.,* BINETTE, *supra* note 39, at 1-2 (discussing that almost three-fourths of those responding rated repair services and home health care as very important or extremely important, and transportation as important).

48. *See* Howe, *supra* note 13 (“The new elders are much more likely to choose to age in place, in the house where they already live, than to decamp to an existing retirement village. The boomer buzzword for this phenomenon will be NORC, or ‘naturally occurring retirement community.’”).

49. *See* Bauer, *supra* note 28, at 44 (“An important aging in place initiative is the phenomenon known as naturally occurring retirement communities (NORC). ‘Officially, the NORC designation now connotes a community that is bringing in necessary social services, and receives government funding to better address the needs of older residents,’ although the term is used casually to refer to many informal communities comprised largely of elders.”); *see also* NORCs: *An Aging in Place Initiative*, NORC NATIONAL INITIATIVE, <http://www.norcs.org/Section.aspx?id=1283> (last visited Nov. 1, 2013).

50. *See, e.g.,* Dayton & Doron, *Thinking Locally*, *supra* note 44, at 108 (noting that in the cities surveyed, there were over 1,000 ordinances that somehow affected older persons and that a majority of cities passed a minimum of one ordinance concerning housing that affected elders); *see also* Dayton & Doron, *Municipal Elder Law*, *supra* note 42, at 54-56 (discussing ordinances that impact housing for the elderly and giving the example of one city that has a “health care facility district.”).

51. *See, e.g.,* Dayton & Doron, *Thinking Locally*, *supra* note 44, at 113 (noting that in this national survey, almost all municipalities had zoning ordinances that would affect older persons, such as age-restricted housing, housing that provides supportive services, and long term care facilities); *see also* Dayton & Doron, *Municipal Elder Law*, *supra* note 42, at 38 (discussing uses

to stay as they age and if they do, then they need to offer the services for them to do so. There is a cost, as well as a benefit.

## VI. TECHNOLOGY

Technology can make us safer, keep us connected, make us smarter, and help us maintain our independence.<sup>52</sup> We can unlock and start our cars through our smart phones,<sup>53</sup> we can adjust our thermostats despite being a thousand miles away.<sup>54</sup> We can turn on lights, we can have stoves that shut off, we can have medical cottages, and wander guards, life alerts and medication reminders.<sup>55</sup> Do we ever again have to lose track of someone with Alzheimer's who wanders off? We have robots that can do tasks for us.<sup>56</sup> We can have robots provide care.<sup>57</sup> We can deliver health care remotely,<sup>58</sup> and who knows what the next generation of robots can do. We can have virtual dinners with our families, we can monitor caregivers' actions around our grandparents without them even knowing about it. Before long our cars will drive themselves.<sup>59</sup> We are not yet living the life of the Jetsons,<sup>60</sup> but we are getting closer.

Considering that Baby Boomers were born before the Internet was available to the public, it is hard to imagine a life without technology. Society continues to disprove the old adage, "you can't teach an old dog new tricks" with the growing use of technology among "elders." We are truly a "wired" society but clearly more for some than others. The United States of Aging survey<sup>61</sup> noted

of zoning and land use ordinances and their effect on "the basic human rights" of everyone).

52. Christina DesMarais, *Domestic Robots: Hi-Tech House Helpers*, PC WORLD (Apr. 16, 2012), [http://www.peworld.com/article/253882/domestic\\_robots\\_high\\_tech\\_house\\_helpers.html](http://www.peworld.com/article/253882/domestic_robots_high_tech_house_helpers.html).

53. See, e.g., Christina Warren, *Want to Remotely Start Your Car? There's an App for That* (Oct. 13, 2009), <http://mashable.com/2009/10/13/viper-smartstart/>.

54. See, e.g., Martin LaMonica, *Need a Better Thermostat? Look to Your SmartPhone*, (Jan. 19, 2012), <http://www.cnet.com/news/need-a-better-thermostat-look-to-your-smartphone/>.

55. See generally Heather Kelly, *Robots: The Future of Elder Care?*, CNN WHAT'S NEXT BLOG (July 19, 2013), <http://whatsnext.blogs.cnn.com/2013/07/19/robots-the-future-of-elder-care/>.

56. DesMarais, *supra* note 52.

57. Kelly, *supra* note 55.

58. *What Is Telemedicine?*, AM. TELEMEDICINE ASS'N, <http://www.americantelemed.org/learn/what-is-telemedicine> (last visited Nov. 3, 2013).

59. See, e.g., Davide Santo, *Making the Autonomous Car a Reality: Getting Drivers Ready Is Half the Battle*, WIRED (Oct. 17, 2013), <http://www.wired.com/insights/2013/10/making-the-autonomous-car-a-reality-getting-drivers-ready-is-half-the-battle/>.

60. See Matt Novak, *50 Years of the Jetsons: Why the Show Still Matters* (Sept. 19, 2012), available at <http://blogs.smithsonianmag.com/paleofuture/20102/09/50-years-of-the-jetsons-why-the-show-still-matters/>.

61. See generally THE UNITED STATES OF AGING, THE UNITED STATES OF AGING SURVEY: NATIONAL FINDINGS (2013) [hereinafter UNITED STATES OF AGING SURVEY], available at <http://www.ncoa.org/assets/files/pdf/united-states-of-aging/2013-survey/USA13-National-Fact-Sheet.pdf>.

that respondents felt technology was significant to help them keep in touch with relatives, friends and “the wider world,” and slightly more than one-third expressed a lack of knowledge on how to use technology.<sup>62</sup> Look around when you walk on the street – how many people do you see talking on their smart phones, listening to their personal music devices, or accessing data on their tablets? There are a number of studies tracking adults who use social media and technology. One such recent study<sup>63</sup> found that forty-three percent of individuals who are sixty-five and older and sixty percent of those fifty to sixty-four years old use a social networking site.<sup>64</sup>

Because of the capability and potential for technology to provide monitoring and care – freeing up human caregivers to work, among other things – it is critical for aging individuals to have access to the Internet and the equipment for their care and services. The ability to afford the Internet must be considered. Even though computers and smart phones at least seem to be ubiquitous, there are those who simply cannot afford being wired into the virtual world.<sup>65</sup> A study from the Pew Research Center’s Internet and American Life Project<sup>66</sup> noted the frequency with which caregivers accessed caregiving related information via the Internet, with almost sixty percent of caregivers finding caregiving resources available on the Internet – putting them in a better position in the provision of care – and slightly over fifty percent finding Internet resources helpful in managing their caregiver stress.<sup>67</sup>

Caregiving can be divided into two categories: informal, in which typically family members provide care, and formal, that is, for example, paid caregivers that provide the care.<sup>68</sup>

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62. *Id.* (noting that eighty-three of elders in the survey responded that it is “very or somewhat important” for elders to use technology compared with eighty-eight of those eighteen to fifty-nine years old).

63. JOANNA BRENNER & AARON SMITH, PEW INTERNET: PEW INTERNET & AMERICAN LIFE PROJECT, 72% OF ONLINE ADULTS ARE SOCIAL NETWORKING SITE USERS (Aug. 2013), *available at* <http://pewinternet.org/Reports/2013/social-networking-sites.aspx>.

64. *Id.* at 2.

65. UNITED STATES OF AGING SURVEY, *supra* note 61 (Although eighty-one percent of those elders in the low-income category replied that “technology is very or somewhat important in helping them stay in touch with family and friends” a significant amount (forty-seven percent) indicated the cost of technology stops them from using it. Only twenty-one percent of those elders who are eighty and older and thirty-five percent of those who have at least three health problems found cost as an obstacle.).

66. SUSANNAH FOX ET AL., PEW INTERNET: PEW INTERNET & AMERICAN LIFE PROJECT, FAMILY CAREGIVERS ARE WIRED FOR HEALTH (2013), *available at* <http://pewinternet.org/Reports/2013/Family-Caregivers.aspx>.

67. *Id.* at 3 (discussing summary of findings).

68. *Definitions*, FAMILY CAREGIVER ALLIANCE, <https://www.caregiver.org/definitions-0> (last visited Sept. 19, 2014) (“*Family (Informal) Caregiver*—any relative, partner, friend or neighbor who has a significant personal relationship with, and provides a broad range of assistance for, an older person or an adult with a chronic or disabling condition. These individuals may be primary

Consider the fiscal impact when informal caregivers are taken out of the work force to provide care,<sup>69</sup> and consider the fiscal impact when formal caregivers are providing care. Caregiving is a business.<sup>70</sup> All of us need to consider the impact of unpaid family caregiving. Although not faulting those who care for their

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or secondary caregivers and live with, or separately from, the person receiving care. *Formal Caregiver*—a provider associated with a formal service system, whether a paid worker or a volunteer.”); see also *Being a Caregiver*, JOHNS HOPKINS MED., [http://www.hopkinsmedicine.org/healthlibrary/conditions/adult/home\\_health\\_hospice\\_and\\_elder\\_care/being\\_a\\_caregiver\\_85,P00602/](http://www.hopkinsmedicine.org/healthlibrary/conditions/adult/home_health_hospice_and_elder_care/being_a_caregiver_85,P00602/) (last visited Sept. 19, 2014).

69. LYNN FEINBERG ET AL., VALUING THE INVALUABLE 2011 UPDATE THE GROWING CONTRIBUTIONS AND COSTS OF FAMILY CAREGIVING (2011), available at <http://assets.aarp.org/rgcenter/ppi/ltc/i51-caregiving.pdf>. There are two important perspectives to consider when examining the impact of family caregivers. One is the economic impact of working individuals providing unpaid caregiving and the other is the “value” of the unpaid caregiving. For the first, the report found:

[a] key theme to emerge from systematic reviews of family caregiving studies over the past 30 years is that family care can have negative effects on the caregivers’ own financial situation, retirement security, physical and emotional health, social networks, careers, and ability to keep their loved one at home. The impact is particularly severe for caregivers of individuals who have complex chronic health conditions and both functional and cognitive impairments.

*Id.* at 5.

Consider the financial outlays of the caregivers:

In 2009, more than one in four (27 percent) caregivers of adults reported a moderate to high degree of financial hardship as a result of caregiving. Another study found that one in four (24 percent) caregivers said they had cut back on care-related spending because of the economic downturn. One recent online survey found that six out of ten (60 percent) caregivers surveyed were concerned about the impact of providing care on their personal savings, and more than half (51 percent) said that the economic downturn had increased their stress about being able to care for their relative or close friend.

Many family caregivers make direct out-of-pocket expenditures to help support a family member or friend with a disability or chronic care needs. In one national survey of women, about one in five (21 percent) report that caregiving strains their household finances. A recent online survey found that more than four in ten (42 percent) caregivers spend more than \$5,000 a year on caregiving expenses.

*Id.* at 5-6 (citations omitted). The caregiver’s job can be impacted in various ways, including time off, altering the work schedule, or even leaving a job. *Id.* at 6.

70. See *id.* As noted above, there are two important perspectives to consider when examining the impact of family caregivers. Second is the “value” of the unpaid caregiving and the other is the economic impact of working individuals providing unpaid caregiving. The AARP report “estimates the economic value of family caregiving at \$450 billion in 2009 based on 42.1 million caregivers age 18 or older providing an average of 18.4 hours of care per week to care recipients age 18 or older, at an average value of \$11.16 per hour.” (this excludes children who help with caregiving, children who need caregiving or caregivers who do not help with ADLs). *Id.* at 2-3.

families, we have to realize that there is a fiscal impact and implications for the caregivers' own future as they age. For example:

Family caregivers can face financial hardships if they must leave the labor force owing to caregiving demands. Not only may they lose foregone earnings and Social Security benefits, but they also can lose job security and career mobility, and employment benefits such as health insurance and retirement savings. There is evidence that midlife working women who begin caring for aging parents reduce paid work hours . . . or leave the workplace entirely . . .

A recent analysis estimates that the lifetime income-related losses sustained by family caregivers age 50 and over who leave the workforce to care for a parent are about \$115,900 in wages, \$137,980 in Social Security benefits, and conservatively \$50,000 in pension benefits. These estimates range from a total of \$283,716 for men to \$324,044 for women, or \$303,880 on average, in lost income and benefits over a caregiver's lifetime . . .<sup>71</sup>

In one study from the Pew Research Center, many middle-aged individuals predicted an almost fifty percent chance of becoming the caregiver for an elderly relative,<sup>72</sup> thus becoming the filling in the sandwich of the sandwich generation.<sup>73</sup> The need for caregiving implicates living arrangements, arranging for health care, paying for health care, technology, autonomy, and, zoning.<sup>74</sup>

Think about caregiving for a moment – typically in the elder law scenario that involves the adult child, typically working, typically middle to late middle-aged, caring for the elderly relative. The sandwich generation<sup>75</sup> adds a child to the mix—whether a young child being raised by the parent or an adult child being

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71. *Id.* at 6.

72. TAYLOR ET AL., PEW SANDWICH, *supra* note 27, at 2-3.

73. *Id.* at 2 (“Adults who . . . have a living parent age 65 or older and are either raising a child under age 18 or supporting a grown child. . . .” (citations omitted)). The Boomers, by growing older, are growing out of the sandwich generation, although the “late Boomers” are still part of it. The Boomers are being replaced by the Gen Xers as the sandwich generation. *Id.* at 8. (“Since 2005, many Baby Boomers have aged out of the sandwich generation, and today adults who are part of Generation X are more likely than Baby Boomers to find themselves in this situation: 42% of Gen Xers have parent age 65 or older and a dependent child, compared with 33% of Boomers.” (citations omitted)).

74. Consider this example: Mom lives in her home and it is zoned for single-family dwellings. Daughter wants to move into the home to take care of Mom, but in order to maintain some independence, privacy and family harmony, wants to build an addition onto Mom's home with a separate entrance, separate kitchen, separate living quarters, etc. Is this allowable under the zoning? *See, e.g.,* Pynoos et. al, *supra* note 31, at 87-88, 101 (discussing, among other matters, zoning impact on accommodating a resident's special housing needs and how alternative housing options such as shared housing may violate zoning ordinances).

75. *See* TAYLOR ET AL., PEW SANDWICH, *supra* note 27.

supported by the parent—while the parent provides care or financial help to the elder. Thus, we see a multi-generational scenario with the adult in the middle.

In a survey done by the Pew Research Center, forty-seven percent of those who are in their forties and fifties (Gen X and late Boomers) “have a parent age 65 or older and are either raising a young child or financially supporting a grown child (age 18 or older).”<sup>76</sup> Further, fifteen percent of those who the study would consider “middle-aged” are financially supporting a child as well as an adult parent.<sup>77</sup> Make no mistake, the Boomers are still part of the sandwich generation, but because the Pew Trust uses sixty-five for the minimum age of the parent in the sandwich, at least the leading edge of the boomers have moved positions in the sandwich—from the filling to the slice of bread.<sup>78</sup> And all the boomers will move eventually from that filling position to that bread position. Instead of the caregivers, we will become the caregivees!

Who will be this next generation of caregivers? Remember how many Boomers there are compared to how many Gen Xers or Ys there are to be caregivers. A recent report studied what could be termed as the “caregiver support ratio.”<sup>79</sup> The problem highlighted in the study is, not unsurprisingly, that there will be fewer caregivers for those elder relatives as a result of the Boomers reaching the age where most individuals are more likely than not in need of a caregiver.<sup>80</sup> The age eighty and above is considered the “high-risk” age with a corresponding need for caregivers.<sup>81</sup> In fact, the United States is expected to hit “the 2030 problem,” that is providing long-term services and support for the Boomers.<sup>82</sup> So why is it a problem? It is a problem because family caregivers are traditionally the ones who provide the informal caregiving and helping a person age in place.<sup>83</sup> The fantasy and the reality of the situation are not even close: in the survey “[sixty-eight] percent of Americans believe that they will be able to rely on their families to meet their [long term services and supports] needs when they require help.”<sup>84</sup> As the report notes, that math does not add up. A large

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76. *Id.* at 1.

77. *Id.*

78. *Id.* at 8-9.

79. The “caregiver support ratio” is “the number of potential caregivers aged 45-64 for each person aged 80 and older . . . [which is] use[d] . . . to estimate the availability of family caregivers during the next few decades.” Redfoot et al., *supra* note 34. Ages forty-five to sixty-four was used as the typical ages to be caregivers, with the typical caregiver being “a 49-year-old woman who works outside the home and spends about 20 hours per week providing unpaid care to her mother for nearly 5 years. Nearly two-thirds of family caregivers are female (65 percent). More than 8 in 10 are caring for a relative or friend aged 50 or older.” *Id.* at 2 (citations omitted).

80. *Id.* at 5-7.

81. *Id.* at 6 (The report projects the caregiver ratio to drop “from 4.1 to 2.9 between 2030 and 2050.”).

82. *Id.* (citing James R. Knickman & Emily K. Snell, *The 2030 Problem: Caring for Aging Baby Boomers*, 37 HEALTH SERVS. RESEARCH 849, 849 (2002)).

83. *Id.* at 1.

84. *Id.* (citing T. THOMPSON ET AL., LONG TERM CARE: PERCEPTIONS, EXPERIENCES, AND

percentage of Americans think their families will be there to help, yet the number of family members will be decreasing at the same time the need for help increases.<sup>85</sup> In this era of “less government” (or maybe more accurately, distrust of government),<sup>86</sup> if there are not enough family caregivers to step up, will we need to rely on government programs and services to fill the gap? Will we revert to the concept of “poor houses”<sup>87</sup> and old folks homes or simply rely on charities, religious organizations and other non-profits to fill the gap?<sup>88</sup> Will we return to the default of nursing home placement for those individuals without family caregivers and the means to hire in-home help?<sup>89</sup>

Expectations and realities frequently don’t match and this instance is no exception. For example, in another survey, even though a number of respondents had concerns about losing independence as they age, they had not planned for the future.<sup>90</sup> I refer to this as the “ostrich approach,” or maybe the “pull the covers over your head” method – depending on your level of fear about aging.<sup>91</sup> Most people surveyed don’t really have a good sense of how much long-term care costs and what government programs cover.<sup>92</sup>

One result that probably justifies the “pulling the covers over your head” response (at least for the policy makers) is that people forty years old and over

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ATTITUDES AMONG AMERICANS AGE 40 OR OLDER 10 (2013), *available at* [http://www.apnorc.org/PDFs/Long%20Term%20Care/AP\\_NORC\\_Long%20Term%20Care%20Perception\\_FINAL%20REPORT.pdf](http://www.apnorc.org/PDFs/Long%20Term%20Care/AP_NORC_Long%20Term%20Care%20Perception_FINAL%20REPORT.pdf).

85. *Id.* at 1-6.

86. *See, e.g.*, PEW RESEARCH CTR., TRUST IN GOVERNMENT NEARS RECORD LOW, BUT MOST FEDERAL AGENCIES ARE VIEWED FAVORABLY 1 (2013), *available at* <http://www.people-press.org/files/legacy-pdf/10-18-13%20Trust%20in%20Govt%20Update.pdf>; JOY WILKE & Frank Newport, Fewer Americans Than Ever Trust Government to Handle Problems, GALLUP POLITICS (2013), *available at* <http://www.gallup.com/poll/164393/fewer-americans-ever-trust-gov-handle-problems.aspx>.

87. *See, e.g.*, John E. Hansan, *Poor Relief in the United States*, THE SOC. WELFARE HIST. PROJECT, <http://www.socialwelfarehistory.com/programs/poor-relief/> (last visited Oct. 28, 2013).

88. *See, e.g.*, Alfred Lubrano, *Charity Can’t Fill Holes in Aid to Poor*, PHILA. INQUIRER (May 2, 2013), *available at* [http://articles.philly.com/2013-05-02/news/38960249\\_1\\_charity-hunger-special-supplemental-nutrition-program](http://articles.philly.com/2013-05-02/news/38960249_1_charity-hunger-special-supplemental-nutrition-program).

89. *See* Pynoos et al, *supra* note 31, at 1.

90. T. THOMPSON ET AL, LONG TERM CARE: PERCEPTIONS, EXPERIENCES, AND ATTITUDES AMONG AMERICANS AGE 40 OR OLDER at 2 (2013), *available at* [http://www.apnorc.org/PDFs/Long%20Term%20Care/AP\\_NORC\\_Long%20Term%20Care%20Perception\\_FINAL%20REPORT.pdf](http://www.apnorc.org/PDFs/Long%20Term%20Care/AP_NORC_Long%20Term%20Care%20Perception_FINAL%20REPORT.pdf).

91. Three in ten individuals surveyed in the AP-NORC report reported that they “would rather not think about” getting older, while thirty-two percent were “somewhat comfortable” thinking about it and thirty-five percent “very comfortable.” *Id.*

92. *Id.* at 2; *see generally* SOCIETY OF ACTUARIES, KEY FINDINGS AND ISSUES: LONGEVITY: 2011 RISKS AND PROCESS OF RETIREMENT SURVEY REPORT (2012), *available at* [www.soa.org/files/research/projects/research-key-finding-longevity.pdf](http://www.soa.org/files/research/projects/research-key-finding-longevity.pdf) (discussing, among other things, that people underestimate their life expectancies).



believe their families will “be there for them as they age.”<sup>93</sup> This is where the wheels are going to fall off their expectations wagon. In this survey, “[s]ixty-eight percent . . . feel they can rely on their family a great deal or quite a bit in time of need. An additional 15 percent feel they can rely on their family a moderate amount.”<sup>94</sup> This is “in time of need.”<sup>95</sup> What about for aging? A higher number, seventy-seven percent, believe the respondent’s “spouse or partner will be there to help a great deal or quite a bit.”<sup>96</sup> “Forty-six percent . . . feel their children or grandchildren will provide a great deal or quite a bit of help.”<sup>97</sup> The filling in the sandwich is getting thinner and thinner. Here’s a serious thought:

[i]f fewer family members are available to provide everyday assistance to the growing numbers of frail older people, more people are likely to need institutional care—at great personal cost—as well as costs to health care and [long term services and support] programs. Greater reliance on fewer family caregivers to provide home—and community-based services could also add to costs borne by family members and close friends—in the form of increasing emotional and physical strain, competing demands of work and caregiving, and financial hardships.<sup>98</sup>

Interestingly, the *Pew Sandwich* report covers a shift regarding children—the increase in parents helping their adult children.<sup>99</sup> Yet there is a slight difference in opinion regarding to whom responsibility is owed, with the report noting “that the public places more value on support for aging parents than on support for grown children. Among all adults, 75% say adults have a responsibility to provide financial assistance to an elderly parent who is in need; only 52% say parents have a similar responsibility to support a grown child.”<sup>100</sup> Although there is strong support for helping the elderly parents, only about a quarter of those surveyed had done so.<sup>101</sup> The financial support of the aging parent is viewed as a long-term or ongoing event.<sup>102</sup>

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93. See THOMPSON ET AL., *supra* note 90, at 2.

94. *Id.* at 10.

95. *Id.*

96. *Id.*

97. *Id.*

98. Redfoot et al., *supra* note 34, at 2.

99. TAYLOR ET AL., *supra* note 27, at 1-2.

100. *Id.* at 2.

101. *Id.* at 5.

102. *Id.* (noting that seventy-two percent of caregivers who have provided parents with financial support reported using money for ongoing expenses). The report goes on to note that some elders give money to their middle-aged children, so this would be more akin to an open-faced sandwich. *Id.* at 6.

## VII. MORE ON ZONING

One of the more interesting areas of change and development involves housing, on a number of different fronts. In the elder law world, one of the main concerns for a client regarding housing was how the home was titled and whether that should be changed, whether as a tool for avoiding probate or as a ‘reward’ for a caregiver, or to appropriately reflect individual contributions. We began to see issues regarding zoning. Then it was reverse mortgages, public and private, home equity loans, co-signing for adult children, being upside down on a mortgage and facing foreclosure, and the housing bust of a few years back.<sup>103</sup> Now we still see those issues although hopefully the housing market is recovered and foreclosure proceedings are winding down, and more. There are some fascinating developments regarding housing that provide lessons and opportunities for all of us.

What does aging in place mean to the housing market? Will there be fewer homes for sale as fewer people decide to sell and move to the Sunbelt? Will people remain in urban areas or will they choose less dense communities? At least one study offered that the Baby Boomers would be likely to move into rural areas or smaller towns,<sup>104</sup> which changes the dynamics of what attracted them to the area in the first place, as well as creating policy decisions for governments. Yet, after the Great Recession, a more recent study found that that trend had not materialized and instead the Boomers were staying put.<sup>105</sup> Thus this could increase the need for services to allow Boomers to age in place and the need to

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103. See, e.g., Vikas Bajaj & Louise Story, *Mortgage Crisis Spreads Past Subprime Loans*, N.Y. TIMES (Feb. 12, 2008), [http://www.nytimes.com/2008/02/12/business/12credit.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/02/12/business/12credit.html?pagewanted=all&_r=0).

104. See JOHN CROMARTIE & PETER NELSON, U.S. DEP’T OF AGRIC., ECON. RESEARCH REPORT #79: BABY BOOM MIGRATION AND ITS IMPACT ON RURAL AMERICA 8-9 (2009).

105. Mark Mather & Beth Jarosz, *More U.S. Baby Boomers Staying Put* POPULATION REFERENCE BUREAU (June 2013), <http://www.prb.org/Publications/Articles/2013/us-babyboomers-staying-put.aspx>. The study looked at data from the United States Census Bureau. *Id.* The study notes that the “mobility rates dropped to their lowest levels in more than sixty years.” *Id.* (citations omitted). Although the report did not discover any reasons for the drop in moves by baby boomers, the report hypothesized that the reasons may include fewer job chances or less jobs in more rural areas, drops in home values, loss of stock portfolios, desire to stay near relatives, etc. *Id.* The relocation affected the typical retiree havens – the Sunbelt states. *Id.* This shift in projections from movement to staying put will have significant impacts in the more rural areas of the United States because of the loss of anticipated revenues. *Id.* (citations omitted); see also Howe, *supra* note 13 (“When the G.I. Generation retired, many of them packed up their bags, sold their homes and moved to retirement communities in sunny climes far away from their adult children. Most boomers won’t want that – partly because of the desire to be near their kids, and partly because, again, many boomers will continue working well past retirement age. The new elders are much more likely to choose to age in place, in the house where they already live, than to decamp to an existing retirement village.”).

remodel.<sup>106</sup>

Consider as well those “healthy” elders who purchase housing in an “active lifestyle,” “55+” or some other age-restricted community of some type and plan to live out their lives in that space.<sup>107</sup> What services are provided? Can the resident age in place there?<sup>108</sup> Are there sufficient services to transition the resident as she or he may need caregiving?

### VIII. TRANSPORTATION

Transportation is and will continue to be a significant issue for us as we age. Many cities lack public transportation that is available or even elder-friendly.<sup>109</sup> As one article noted, transportation is something cities need to consider when looking at the growing elder population.<sup>110</sup> There is a correlation between being

106. Howe, *supra* note 13. Howe explained:

For boomers, the most sought-after local communities will be renowned for their culture, their soul, their unique story, their authenticity—not, as it might have been for G.I. Generation retirees, for their wide roads, gleaming tiles and endless golf courses.

Many boomers will be congregating around universities and colleges, art and music hubs, and natural and historic landmarks.

107. *Id.* (“To the extent that boomers do move, they’ll be much less interested in exclusive elder communities. Many will prefer mixed-use urban quarters where they can be around young people. And of course many will be attracted to locales – university towns, art centers—where they can reaffirm their connection to the world of the mind and culture. Even when they do opt to move to active adult communities, they’ll choose to stay closer to home. Already, retirement-home developers have begun building fewer massive seniors-only projects in Arizona and Florida, and more smaller developments around various cities in the Northeast and Midwest. Wherever it’s located, though, the elder community of the next couple decades is likely to have fewer rules and more opt-out provisions. Forget those restrictions against kids living in the communities.”). *See also* Bauer, *supra* note 28.

108. Bauer, *supra* note 28, at 43-44; *see also* Howe, *supra* note 13 (noting that “Many will gather in intentional communities, cooperatives or just close groups of friends and neighbors and consider these their ‘family.’ Today, we habitually think of elders as defined by their lifetime marriages and nuclear families. Twenty years from now, we no longer will.”).

109. *See, e.g.,* Danielle Kurtzleben, *Baby Boom Retirements Bring Challenges to Cities and Localities*, U.S. NEWS (June 14, 2011), <http://www.usnews.com/news/best-cities/articles/2011/06/14/baby-boomer-retirement-bring-challenges-to-cities-and-localities--the-challenge-of-baby-boomer-retirement>.

110. *Id.* (discussing National Association of Area Agencies on Aging (N4A) 2011 report that found challenges regarding transportation rank second and housing third, behind budgetary challenges and also found a significant number of communities in the N4A report have yet to start offering “mobility management services” to their elder citizens, educating them about availability and access to transportation options); *see also* MELISSA ZORNITTA, TOD, AGING POPULATIONS, & HEALTH, *available at* <https://www.planning.org/resources/ontheradar/aging/pdf/NUtod.pdf> (“The aging population is becoming an increasingly pressing issue for communities. One approach planners are taking is to create more livable communities where people can easily age in place

able to age in place and the access to transportation.<sup>111</sup> We may not need to drive, but we do need to get where we need to go, if we aren't able to walk. So consider the types, cost and accessibility of public transportation. And consider the benefits when we get people out of their cars and using public transportation or even walking.<sup>112</sup> Our health, and the environment, will thank us.

We offer silver alerts when an elderly driver has disappeared. Lawyers may have to counsel the family about how to talk to dad about giving up the keys. What process should states use to test drivers who are elderly – age or ability?<sup>113</sup> This is a hot-button item when elders believe they are singled out based on age. States have taken different approaches on how to regulate drivers who have lost the ability to drive safely.<sup>114</sup> Local governments need to keep in mind that when removing driving as a transportation option, there may be significant ramifications to the individual no longer driving, including isolation, inability to obtain goods and services, etc. Certain social service programs and technology may ameliorate this issue, but we have to consider the availability of the services and the commonality of technology.

There is an opportunity for leaders to make their communities more livable for a lifetime by making their cities suitable for their residents, rather than automobiles. So here's a thought: design roads in a way to be more elder-friendly. Is it really too much to have street signs visible before you reach an intersection? If people are going to transport themselves using power chairs, curb cuts are a must and it would be great if these people didn't have to be in a busy road. So how about bike lanes and motorized chair lanes? Oh, and I would also like to have sidewalks everywhere so elders don't have to walk in the street, but those sidewalks need to be in good repair and wide enough to accommodate a wheelchair. While I'm at it, could we also have good streetlights? I am ok if they are solar powered, but could they at least provide light and be maintained? My list keeps growing.

#### IX. PAYING FOR A LONGER LIFE: HOW MUCH MONEY IS ENOUGH?

It is not a secret that people stop working once they reach a certain age, typically known as retirement, and have to live on some income source. Social Security has been considered by many to be the primary source of income,

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through Transit Oriented Development or TOD. Communities are looking to innovatively use this approach to transform development patterns and make a significant dent in addressing the needs of an aging population.”).

111. AMANDA LEHNING & ANNIE HARMON, LIVABLE COMMUNITY INDICATORS FOR SUSTAINABLE AGING IN PLACE 12-14 (2013), available at <https://www.metlife.com/assets/cao/mmi/publications/studies/2013/mmi-livable-communities-study.pdf>.

112. See Headlee, *supra* note 4 (statement of Richard Florida, “The best therapy we have is walking. Twenty, thirty minutes an hour a day. Human beings were built to walk.”).

113. See, e.g., Katherine Mikel, *Drivers' Licenses and Age Limits: Imposition of Driving Restrictions on Elderly Drivers*, 9 MARQ. ELDER'S ADVISOR 359 (2008).

114. *Id.* at 362-66.

although that is not its purpose.<sup>115</sup> In fact, the retirement income “portfolio,” if you will, has been likened to a three-legged stool with one leg Social Security, one leg private pensions, and the third leg, savings.<sup>116</sup> In a perfect world, that gives one a pretty good stool. But today’s world is far from perfect and each leg has its own “cracks.” This may result in a very wobbly stool, or maybe even a bi-legged stool or maybe just a footrest. Social Security is really viewed as replacing thirty-five percent of income upon retirement.<sup>117</sup>

Savings is subject to various vagaries and pressures of life.<sup>118</sup> Consider the Boomers, who seem to be notoriously poor savers<sup>119</sup> and who are also the current sandwich generation. They are taking care of their parents while raising their own children, perhaps helping both cohorts financially.<sup>120</sup> The Boomer caregivers may even have to take a hiatus from work to care for their children or their parents.<sup>121</sup> All of these will impact the ability to save.

Consider the family caregiver further. The value of this unpaid care from family members is astronomical.<sup>122</sup> Typically a spouse or daughter provides the care.<sup>123</sup> With the increasing number of women in the workforce,<sup>124</sup> a woman’s

115. See *Social Security Basic Facts*, SOCIAL SECURITY ADMINISTRATION (Apr. 2, 2014), <http://www.ssa.gov/pressoffice/basicfact.htm>; *Prepare for Your Financial Needs*, SOCIAL SECURITY ADMINISTRATION, <http://www.ssa.gov/retire2/r&m6.htm> (last visited Sept. 9, 2013) (noting that for a worker with “average earnings, . . . Social Security retirement benefits will replace only about 40 percent.”); see also Sudipto Banerjee, *Income Composition, Income Trends, and Income Shortfalls of Older Households*, 383 EMP. BENEFIT RESEARCH INST. 1, 5 (Feb. 2013), available at [http://www.ebri.org/pdf/briefspdf/EBRI\\_IB\\_02-13.No383.IncmEld.pdf](http://www.ebri.org/pdf/briefspdf/EBRI_IB_02-13.No383.IncmEld.pdf) (noting in study that to three age groups young-old (sixty-five to seventy-four), old (seventy-five to eighty-four) and old-old (eighty-five and above) Social Security is “most important source of income” with importance growing with the recipient’s age).

116. *The Three-Legged Stool Metaphor*, SOC. SEC. ADMIN., <http://www.ssa.gov/history/stool.html> (last visited Sept. 7, 2013); see also, e.g., Banerjee, *supra* note 115.

117. See NARI RHEE, *THE RETIREMENT SAVINGS CRISIS: IS IT WORSE THAN WE THINK?* (2013), available at [http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis\\_final.pdf](http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis_final.pdf) (with current formula for benefits, Social Security income replacement of thirty-five percent for average household).

118. See *id.* (noting that typical “working household” almost completely without savings for retirement).

119. See Howe, *supra* note 13 (“This generation began to manifest so many of the collective attitudes and behaviors for which they have since become famous: their individualism, their attraction to personal risk, their distrust of big institutions, their carelessness about material wealth, their cultivation of self, their die-hard moralism.”).

120. TAYLOR ET AL., *supra* note 27, at 4-7, 10-15.

121. See FEINBERG ET AL., *supra* note 69, at 6-7 (discussing, among other items, the dollar value of lost wages by family caregivers).

122. CBO, *supra* note 12, at 2 (noting that in 2011, the approximate value of that care was \$234 billion).

123. *Id.*

124. See, e.g., *Women in the Labor Force in 2010*, U.S. DEP’T OF LABOR, <http://www.dol.gov/>

decision to leave a job to care for her aging parent can have a significant impact on her ability to save for her own retirement.<sup>125</sup> For many years, workers who received work-based pensions were lucky to be covered by a defined benefits plan.<sup>126</sup> Over time, however, employers have changed the plans to defined contribution plans<sup>127</sup> and as a result, workers have less income from their pension plans for that leg of the stool.<sup>128</sup>

When you couple these issues with longevity, questions abound. Are people saving enough for retirement or their own future needs if they need supportive care?<sup>129</sup> Will people be able to afford to retire? With longevity increasing, will people outlive their retirement savings? Is there a “retirement savings crisis?”<sup>130</sup>

The second United States of Aging Survey<sup>131</sup> covered several issues in the national findings. Five cities were identified for the survey<sup>132</sup> and the groups surveyed were those sixty and older and those eighteen to fifty-nine.<sup>133</sup> Although the survey described the respondents as having a “positive outlook on their future and the aging process,”<sup>134</sup> the respondents did not share the same positive outlook about their communities’ ability to provide services to the growing senior

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wb/factsheets/Qf-laborforce-10.htm (last visited Nov. 3, 2013).

125. CBO, *supra* note 12, at 2 (citing Meredith B. Lilly et al., *Labor Market Work and Home Care’s Unpaid Caregivers: A Systematic Review of Labor Force Participation Rates, Predictors of Labor Market Withdrawal, and Hours of Work*, 85 MILBANK Q. 641 (2007), available at <http://tinyurl.com/m2djo97>).

126. *See, e.g., Retirement Plans, Benefits & Savings, Types of Retirement Plans*, U.S. DEP’T OF LABOR, <http://www.dol.gov/dol/topic/retirement/typesofplans.htm> (last visited Nov. 3, 2013) (discussing various types of retirement plans).

127. *Id.*; *see* RHEE, *supra* note 117, at 5 (noting that a significant majority of those who are “near retirement” (ages fifty-five to sixty-four) have a defined benefits plan while just over thirty percent of younger workers have such a plan).

128. RHEE, *supra* note 117.

129. The CBO report found that “[m]any, if not most, people do not make private financial preparations for their future [long-term services and supports] needs” for various reasons, including the lack of money to buy long term care insurance, a pre-existing health condition that renders them ineligible, concerns about the worth of such a policy; a mistaken belief that government programs will pay for their care; the view that they have saved enough, or that their families will care for them. CBO, *supra* note 12 (citations omitted).

130. *See, e.g.,* RHEE, *supra* note 117.

131. This survey was started in 2012 and was done by the National Council on Aging (NCOA), United Healthcare, and USA TODAY. The survey looks at the views of aging Americans on aging issues and how the U.S. can improve its positioning for the growing population of elders. UNITED STATES OF AGING SURVEY, *supra* note 61.

132. The cities were Birmingham, Alabama; Los Angeles, California; Orlando, Florida; Indianapolis, Indiana; and San Antonio, Texas. *Id.*

133. *Id.* The categories of elders surveyed included “older seniors” who were at least eighty years old, elders with low-incomes who were at least sixty with less than \$15,000 in household income, and elders sixty and older who have at least three chronic health problems.

134. *Id.*

population or about their individual future financial security.<sup>135</sup> Forty-one percent of those surveyed who were still employed responded that Social Security would be their main source of retirement income,<sup>136</sup> even though experts indicate that should not be the case.<sup>137</sup> More than half were concerned about outliving their retirement income and their savings.<sup>138</sup>

#### X. “AGING IS EVERYBODY’S BUSINESS”<sup>139</sup>

For local governments and businesses, providing access is critical. We all benefit from access, such as curb cuts, ramps, automatic door openers, sufficiently long walk lights, good signage, well-maintained roads, bicycle lanes, transportation, and more.<sup>140</sup> There needs to be a culture of positivity toward aging, recognizing that it is universal—we are talking about ourselves in ten, twenty, thirty, forty, or even a hundred years—and it is good business. This is a group effort and not just the role of the individual – local governments have a role in the way land is zoned, services are provided, and infrastructure is created. In other words, local governments can create walkable and people-friendly environments.<sup>141</sup> Consider this an opportunity, not a challenge. Do not take the cheap way out in redesigning the community. Remember, every day now through 2030, there are nearly ten thousand people turning sixty five.<sup>142</sup> They have to live somewhere.

So what would it take for cities to have the needed services and programs so that its residents can age successfully? Cities can continue to provide the services they typically provide, only with a focus that recognizes unique features for housing, transportation, job opportunities, safety, culture, values of various generations, and more.<sup>143</sup>

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135. *Id.*

136. *Id.* (This is compared to those aged eighteen to fifty-nine, twenty-three percent of whom indicated that Social Security would be their main income source).

137. *See, e.g.,* JACK VANDERHEI ET AL., RETIREMENT SECURITY IN THE UNITED STATES: CURRENT SOURCES, FUTURE PROSPECTS, AND LIKELY OUTCOMES OF CURRENT TRENDS (2006), available at [http://www.ebri.org/pdf/publications/books/ebri\\_rsus.pdf](http://www.ebri.org/pdf/publications/books/ebri_rsus.pdf).

138. UNITED STATES OF AGING SURVEY, *supra* note 61 (Fifty-three percent of seniors were very or somewhat concerned, compared to forty-four percent of older seniors and sixty-one percent of seniors with low income).

139. Headlee, *supra* note 4 (discussing Baby Boomers’ impact on American society).

140. *See, e.g., id.* (discussing the impact of the aging population on cities and services, and offering suggestions for accommodation).

141. Headlee, *supra* note 4 (Florida appeared on the show with Celeste Headlee and discussed how communities should change through land use to become more people-friendly).

142. *See Baby Boomers Retire, supra* note 16.

143. Anusuya Chatterjee, *Best Cities for Successful Aging*, MILKEN INST. (2012), <http://successfulaging.milkeninstitute.org/bcsa.html> (“[I]ndex identifies what these metros are doing right and creates a path other communities can follow to help their seniors remain healthy, active and engaged.”). The Institute defines successful aging for a community as

## CONCLUSION

Here is a sobering thought. Although I have covered a number of issues, I have not covered them all, nor have I covered in depth the ones I did discuss. Aging is happening to all of us – individuals, families, and communities, whether we are ready or not. It touches everyone to some degree. Rather than thinking of aging as a negative, consider it as an opportunity. There is an incredible chance for noteworthy and innovative leadership. Yes, we are certain there is uncertainty. But it brings us an era of possibilities. And besides, aging rocks!

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Liv[ing] in places that are safe, affordable, and comfortable . . . Be healthy and happy . . . Be financially secure and part of an economy that enables opportunity and entrepreneurship . . . Living arrangements that suit our needs . . . Mobility and access to convenient transportation systems that get us where we want and need to go . . . Be respected for our wisdom and experience; to be physically, intellectually, and culturally enriched; and to be connected to our families, friends, and communities.

*Id.*