

# Discussion of Fiduciary Duty and California Trust, Estate & Conservatorship Cases for the Past Year

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## Estate of Giralдин

The Court held that remainder beneficiaries of a revocable trust lack standing to compel an accounting or bring an action against the third party trustee for the alleged wrongful actions or omissions to act of the trustee that occurred prior to the time that the trust became irrevocable. While the trust remained revocable, the trustee only owed a duty to the trustor. The beneficiaries alleged that during the time that the trust remained revocable, and the third party trustee was serving as trustee, the trustor lacked mental capacity to make competent decisions, including decisions involving how he wanted to use and invest trust assets, and that the trustee wrongfully permitted the trustor to make those decisions and to take those actions.

Estate of Giralдин contradicts and criticizes the California Court of Appeal First District's holding in Evangelho v. Presoto (1998) 67 Cal. App. 4th 615, which held in a similar revocable trust situation that the remainder beneficiaries do have standing to bring a claim against the trustee's actions that were taken while the trust was revocable.

California Court of  
Appeal, Fourth  
Appellate District,  
Case No. G041811,  
September 26, 2011

Will be cited for the proposition that there is no redress for wrongdoings against a deceased trustor or done against the trust while the trust was revocable.

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Court held:  
respondents lacked standing to claim the wrongdoer had breached duties owed to them during the period prior to the trustor's death as the wrongdoer owed the beneficiaries no such duties.

We express no opinion on the merit of any theoretical claims that might have been asserted on the deceased trustor's behalf. None were.

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Creates a split with the holding in Evangelho v. Presoto.

Seeks to create a bright line rule, perhaps ignoring that the Probate Court is a Court of Equity.

The holding might have been different if the claims had been brought on behalf of the deceased trustor; his successor in interest might have standing.

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### Case Takeaway:

The law is unsettled as different courts have held differently.

The remainder beneficiaries might still have claims and standing.

The estate representative and successor trustee probably still have standing and should consider pursuing claims, to be safe and not breach duties.

You will continue to see more of these situations, particularly with a rise in financial elder abuse.

## Andersen v. Hunt

The capacity to execute a trust is evaluated pursuant to Cal. Prob. Code §§810 to 813; however, “§§810 to 813 do not set out a single standard for contractual capacity, but rather provide that capacity to do a variety of acts, including to contract, make a will, or execute a trust, must be evaluated by a person’s ability to appreciate the consequences of the particular act he or she wishes to take.

More complicated decisions and transactions thus would appear to require greater mental function; less complicated decisions and transactions would appear to require less mental function.”

In the case of a simple trust or simple trust amendment, i.e., a less complicated decision, the standard that would be applied under §§810-813 is the standard applied under §6100.5 which govern the capacity to make a will or codicil.

California Court of  
Appeal, Second  
District, Case No.  
B221077, June 14,  
2011

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The court sought to distinguish the holdings in Goodman v. Zimmerman and Walton v. Bank of California (First District decisions) conflict with or contradict Andersen v. Hunt, stating that in those cases the proper standard by which to evaluate the capacity to make a trust or will was not in dispute.

Goodman v. Zimmerman (1994) 25 Cal. App. 4th 1667, 1673–1679, in which the court applied the §6100.5 standard for testamentary capacity to evaluate a decedent’s capacity to execute a new will and trust amendment.

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Walton v. Bank of California (1963) 218 Cal. App. 2d 527, 541, in which the court applied a higher standard to evaluate capacity to enter an irrevocable inter vivos trust, stating that a person lacking capacity to make an ordinary transfer of property has no capacity to create an *inter vivos* trust.

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The court in Andersen held that while the original trust document is complex, the amendments were not, as they only provided new percentages of the trust estate that each beneficiary would receive. Thus, the capacity should be evaluated under the lower §6100.5 standard, and not under a higher standard of mental functioning.

## Comments:

It seems to me that designating beneficiary percentages is not necessarily simple or lacking in complexity, but that the complexity of the action depends on all of the facts and circumstances including for example all of the relevant terms of trust, the assets, remainder interests, tax planning, natural beneficiary designations, etc., and the court’s bright line criteria is not appropriate.

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## Case Takeaway:

Different cases use different standards. Capacity is a facts and circumstances issue to determine on a case by case basis.

Standard: does the testator understand his or her options, what he or she is doing, and is the action natural to what he or she would typically do.

Capacity remains different than undue influence, fraud, or other improper actions.

## Bellows v. Bellows

In its November 2009 order the court ordered Trustee Frederick to provide an accounting of the trust assets and to distribute half of the assets to beneficiary Donald in 10 days.

Instead Frederick subsequently offered to give Donald a distribution plus half of the fees paid by the trust, i.e., \$6,718.25, provided that Donald did not file a petition.

Frederick forwarded a check to Donald for \$37,520.48, together with a letter advising that Donald is “authorized to negotiate the check when he has signed and returned the enclosed receipt of final distribution.”

The receipt included an acknowledgment that the payment represented “a final distribution of the trust estate.” Donald cashed the check, but did not sign and return the receipt.

Donald filed a motion to compel compliance with the court’s November 2009 order and distribution. Frederick argued the motion should be denied as Donald had cashed the check in full satisfaction of his claim for half the trust assets.

California Court of  
Appeal, First District,  
Case No. A128875,  
June 9, 2011

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The court held that Frederick as Trustee was required to make the distribution without any strings attached pursuant to §16004.5.

Section 16004.5(a): “A trustee may not require a beneficiary to relieve the trustee of liability as a condition for making a distribution or payment to, or for the benefit of, the beneficiary, if the distribution or payment is required by the trust instrument.”

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Note the §16004.5(b) exceptions:  
§16004.5(a) does not limit trustee's right to:  
(1) maintain a reserve for anticipated expenses; (2) seek a voluntary release or discharge of trustee's liability from the beneficiary; (3) require indemnification against a claim by a person other than the beneficiary; (4) withhold a portion of a required distribution that is reasonably in dispute; or (5) seek court or beneficiary approval of a trust accounting.

## Bellows v. Bellows

The court held that pursuant to §16004.5 Frederick as Trustee could not condition the payment on a release of liability, claims or other demands. Frederick was required to make the distribution to Donald without any strings attached.

However, §16004.5(b)(5) permits a trustee to seek beneficiary approval of an accounting of trust activities; under this section Frederick presumably could enter an agreement with Donald to resolve the attorney fee issue by distributing to Donald an agreed upon amount, if such an agreement could be reached. However, Frederick could not condition such an agreement on Donald releasing his right to an accounting or of other claims he might have against the trustee, or other issues in dispute.

### Case Takeaway:

Be careful that a request for a beneficiary to approve or consent to an action of the trustee does not state or imply that consent or approval is required before a required, undisputed distribution is made.

## Citizens Business Bank v. Carrano

A trust provided for assets to be distributed to a predeceased child's issue, which term the trust specifically defined as lineal descendants of all degrees, but expressly excluded persons adopted either into or out of the trustors' bloodline.

The issue was a predeceased son's child born out of wedlock would inherit.

The court held that the trust was not unambiguous for failure to address the "special case" of the predeceased child's out-of-wedlock offspring, and did not create a latent ambiguity, and was not in need of interpretation.

As the trustors were aware of their predeceased son's lifestyle and of the several children born to him out of wedlock but nonetheless failed to include trust language excluding such children as beneficiaries, absent the childrens' adoption into another home.

California Court of  
Appeal, Second  
District, Case No.  
B216632, November  
8, 2010

### Case Takeaway:

The court's determination is supported by the wording of the trust and knowledge of the son's children born out-of-wedlock.

Nevertheless, to be safe, a petition for instructions would be prudent.

## Hernandez v. Kieferle

The trial court invalidated a trust amendment designating the decedent's stepdaughter Claudine as the trustee and sole beneficiary of her stepmother Gertrude's estate. The designated beneficiary of the prior amendment, next door neighbor Florentina, contested the amendment under the Cal. Probate Code §21350 presumption that transfers to care custodians are the product of fraud, duress, menace or undue influence, arguing that Claudine as disqualified as a care custodian as Claudine lived with Gertrude and cared for her in the evenings. Gertrude's husband (Claudine's father) died 11 years prior to Gertrude.

Claudine argued that she was not disqualified as a care custodian pursuant to the §§21351(a) and (g) "heir" exceptions to §21350. The court held that the §§21351(a) and (g) exceptions applied and that Claudine was an "heir" pursuant to Cal. Probate Code §§44, 6402.2 and 6402.5 (issue of Gertrude's predeceased husband who died not more than 15 years prior) although her stepmother's estate did not actually contain property attributable to Claudine's father (who passed away 11 years prior).

California Court of  
Appeal, Second District,  
Case No. B229653,  
October 31, 2011

A person is an heir of the transferor for the "related by blood or marriage" exception to §21350 disinheritance if an intestate rule identifies the person as the transferor's successor, even if the estate does not include the type of property distributed under the rule—an heir is anyone who could inherit by intestate succession even if they don't inherit under the case.

## Soria v. Soria

Holding that beneficiaries could not recover Cal. Probate Code §17211(b) attorney's fees for a suit against a trustee for breach of fiduciary duty where the suit did not contest the trustee's account within the meaning of the statute.

Section 17211(b) does not permit recovery of attorney fees in this case because the grandchildren did not contest the trustee's account. Instead, the grandchildren pursued a civil action against the grandparents, alleging they breached their duties as trustees, and sought an injunction to compel the grandparents to produce an account. The very existence of a trust was in dispute. At trial, there was no contest of a trustee's account within the meaning of §17211(b). The court also held that the decision in *Leader v. Cords* (2010) 182 Cal.App.4th 1588 (see discussion that follows later in this presentation) was distinguishable and did not alter its conclusion the grandchildren could not recover attorney fees under §17211(b).

California Court of  
Appeal, Fourth  
District, Case No.  
G041661, June 14,  
2010

### Case Takeaway:

Section 17211 specifically pertains to the contest of a trustee's account—at least in Soria the court held that to recover attorneys fees there must specifically be a contest of the account—a petition alleging another claim or breach of fiduciary duty will not suffice.

## Donahue v. Donahue

Holding that a trustee is not entitled to payment of attorneys' fees and costs from the trust for the trustee's successful defense against a beneficiary's allegations where the trustee does not establish that the fees and costs were reasonable in amount, necessary to litigation, and for the benefit of the trust. The case was remanded to the trial court for evaluation of reasonableness. Fees and costs were millions of dollars.

"Besides thwarting meaningful appellate review, the lack of detail and explanation in the orders raises the concern the trial court utilized an overly deferential approach to the fee request. A trial court may not rubberstamp a request for attorney fees, but must determine the number of hours *reasonably* expended." "California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award." "The evidence should allow the court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended." Citations and sub-quotation marks omitted.

California Court of  
Appeal, Fourth  
District, Case No.  
G040628, February  
25, 2010

### Case Takeaway:

Even a successful trustee must establish the reasonableness of litigation attorneys fees and costs and that they were for the benefit of the trust.

And, the trial court must detail its findings that the fees and costs were appropriate.

## Leader v. Cords

Trust beneficiaries brought an action against the trustee for his failure to make distributions, which he refused to make until a collateral dispute was resolved. In part the collateral dispute involved jewelry that was not part of the trust estate. The trial court ordered the trustee to distribute one-half of the trust estate to the beneficiaries and one-half to himself.

The beneficiaries then petitioned to recover attorneys' fees under Cal. Probate Code §17211(b), which was denied. The appellate court reversed, holding that recovery of fees under §17211(b) should be viewed broadly—the action was to compel distribution. Section 17211(b) can allow recovery of attorneys' fees in a contest or dispute over a trustee's account. As the trustee's account disclosed the trust's assets and liabilities showing that the beneficiaries were entitled to a distribution for which they petitioned—the petition for distribution and breach of fiduciary duty at least in part related to the trustee's account.

California Court of  
Appeal, Fourth District,  
Case No. D055202,  
March 23, 2010

### Case Takeaway:

The same court as in Soria v. Soria, an action for breach of fiduciary duty, to establish that there was a trust, and to compel an account.

As the account in Leader supported that a distribution should be made, it was sufficiently an action relating to the account. Recovery of fees and costs requires careful review and planning.

## Rudnick v. Rudnick

If a trust beneficiary brings an unfounded suit against a trustee in bad faith, in the court's discretion, attorneys' fees can be awarded to the trustee in defending the action, and those fees can be charged against the beneficiary's trust interest. In dicta the court noted that it has been similarly held for beneficiaries who have incurred attorneys' fees to vindicate their position as a beneficiary.

The court's determination and the award amount (\$226,000) will only be reversed if the court abused its discretion.

Attorneys' fees were awarded to the trustee because the objections of the minority beneficiaries were not only denied, but their objections were also disingenuous and in bad faith.

The objecting beneficiaries intended to delay and prevent the trustee's sale of property (which had been approved by the majority beneficiaries) with arguments that lacked sufficient merit or that contradicted prior positions taken by the objecting beneficiaries. Bad faith was also evidenced as the beneficiaries would not stipulate to the record on appeal or to proceed by declaration, but instead insisted on an evidentiary hearing that lasted eight days.

California Court of Appeal, Fifth District, Case No. F056587, December 2, 2009

### Case Takeaway:

Attorneys fees are coverable against a beneficiary (or against a trustee) when legal actions taken are not only incorrect, but also in bad faith. Of course, what one court considers to be in bad faith, another court might not. Were the actions of the beneficiaries in bad faith?

## Lickter v. Lickter

Holding that the grandchildren of a decedent lacked standing to pursue an elder abuse action as the decedent's successors in interest because they lacked any interest in her estate that could be benefited or impaired by the action.

Just because petitioners were beneficiaries of decedent's trust did not make them "interested persons" for purposes of pursuing an elder abuse action. To be an "interested person" for the purpose of Cal. Prob. Code §48 — and, by extension, W & I Code §15657.3(d) — the person must have an interest that may be impaired, defeated, or benefited by the action.

Petitioners no longer had such an interest as they had already been paid their trust bequests.

The evidence also did not sufficiently support petitioners' Cal. Prob. Code §259 claim, wherein a person may be deemed to have predeceased a decedent when it is proven by clear and convincing evidence that the person is liable for physical abuse, neglect, or fiduciary abuse and acted in bad faith, the person's actions were reckless, oppressive, fraudulent, or malicious, and the decedent was unable to manage his or her financial resources or resist fraud or undue influence.

California Court of Appeal, Third District, Case No. C061782, October 27, 2010

### Case Takeaway:

This case helps to clarify and perhaps expands standing.

The decedent's successor in interest legal representative would have had standing to pursue the elder abuse action. The case apparently also holds that trust beneficiaries might also have standing if they could benefit from the action.

## Other Cases: The “Because You Never Know” Category

### Estate of Dito

The probate court found that Elenice was Frank’s surviving spouse pursuant to §21610, et seq. as an omitted spouse, and was entitled to a share of Frank’s estate as well as that both the prenuptial agreement and the surviving spouse’s waiver in it were invalid and unenforceable.

Frank’s daughter Barbara then initiated a probate court action, alleging that Elenice committed financial elder abuse against Frank and that as a result Elenice should be deemed to have predeceased Frank pursuant to Probate Code §259.

On appeal, the court held that the primary right at issue under §259 was Frank’s right to be free from abuse, which was distinct from the right of an omitted spouse pursuant to §21610. Further, §259 does not necessarily entirely disinherit an abuser who has other claims or rights that would allow her to inherit but rather restricts the abuser’s right to benefit from her abusive conduct. Thus, Barbara’s §259 claim did not affect or threaten the determination that Elenice was a surviving omitted spouse under §21610.

California Court of Appeal, First District, Case No. A128921, August 23, 2011

### Case Takeaway:

Probate Code §259, disinheritance of a person who has committed elder abuse, is a right of the abused to not be abused. Section 259 prohibits the abuser from inheriting as a result of his or her abuse, but does not prevent the abuser from inheriting under other legal rights that are unrelated to the abusive conduct.

## Bullock v. Philip Morris

The court affirmed a punitive damage award that is 16 times compensatory damages. The jury awarded \$850,000 for compensatory damages and \$13.8 million punitive damages.

As you may be aware, pursuant to modern case law guideposts (BMW of North America, Inc. v. Gore (1996) 517 U.S. 559; State Farm Mut. Automobile Ins. Co. v. Campbell (2003) 538 U.S. 408) punitive damage awards generally are allowed in the range of 3 to 4 times compensatory damages and as an outside measure should not exceed 9 times compensatory damages as punitive damages must bear reasonable relationship to compensatory damages.

However, in Bullock v. Philip Morris the court held that higher punitive damages are appropriate for reprehensible conduct and physical or mental injuries, thus opening the door for enhanced punitive damages in other cases that present reprehensible conduct and resulting injuries.

California Court of  
Appeal, Second District,  
Case No. B222596,  
August 17, 2011

### Case Takeaway:

Allows higher punitive damages as a multiple of compensatory damages (16 times) where reprehensible conduct causes physical or mental injuries. Punitive damages generally are limited to 3 to 4 times compensatory damages and cannot exceed 9 times. Expect Bullock to be cited in elder abuse cases.

Carter v. Prime Healthcare Paradise Valley, LLC

The primary issue was whether plaintiffs sufficiently pleaded a claim of physical elder abuse against a nursing home arising from the death of plaintiffs' father. The Court affirmed the trial court's dismissal of the complaint without leave to amend following defendants' demurrer.

To allege a claim of elder abuse plaintiffs must plead specific facts, not general allegations, evidencing oppression, fraud, malice or despicable conduct involving intentional, willful, conscious or reckless wrongdoing of a despicable or injurious nature with knowledge of possible serious resulting danger. Recklessness involves deliberate disregard of the high degree of probability that an injury will occur and rises to the level of a conscious choice of a course of action with knowledge of the serious danger to others.

Medical care physical elder abuse remedies in the nursing home context are only available for the egregious withholding of medical care for physical or mental needs—allegations of ordinary medical care negligence are not sufficient—the occurrence of a bedsore without more are not sufficient to survive a demurrer.

California Court of Appeal, Fourth District, Case No. D057852, August 12, 2011

Case Takeaway:

An important elder abuse pleading case that favors defendants.

Plaintiff must plead specific facts similar to the facts that would be required to recover on a claim for punitive damages.

For example, in the nursing home context, allegations of a bedsore without more will not suffice.

## Diaz v. Bukey

A trust contained an arbitration clause requiring that any dispute arising in connection with the trust, including disputes between a trustee and any beneficiary be resolved by negotiation, mediation and binding arbitration.

The trust became irrevocable on death of the second trustor to die, whereupon one of the trustors' daughters became successor trustee. A second daughter ("Diaz") who was a beneficiary of the trust filed a petition against the successor trustee for breach of fiduciary duty and for failure to provide an accounting and distributions. The successor trustee filed a demurrer and a petition for order compelling arbitration and stay of proceedings, asserting that the trust's arbitration clause required the claims to be resolved by arbitration.

On appeal, the court affirmed that although the second daughter (Diaz) who had filed the petition alleging breach of trustee duty was a beneficiary of the trust, the successor trustee could not enforce the trust's arbitration clause against Diaz because Diaz had objected to arbitration and Diaz was not a signatory to the arbitration clause.

California Court of  
Appeal, Second District,  
Case No. B225548, May  
10, 2011

### Case Takeaway:

A daughter who was a beneficiary of her deceased parents' trust could not be bound to the arbitration clause that her parents included in their trust because the daughter beneficiary was not a signatory to the clause.

Shouldn't she be bound to the clause if her parents so intended that she be bound if she wanted to inherit?

## Kircher v. Kircher

The court held that property held in joint tenancy by a husband and wife may be considered when determining the surviving wife's liability for the husband's debts after his death pursuant to Cal. Probate Code §§13550 and 13551. In this case the husband's wife became obligated to continue making support payments to the husband's former wife after the husband died.

California Court of Appeal, First District, Case No. A125733, November 4, 2010

### Case Takeaway:

Just to be aware of trust, estate and surviving spouse liability for the debts of and judgments against a debtor after the debtor's death. Post-death collection can be complicated.

## Estate of Kraus

Holding that any sufficiently interested party can petition for restitution of misappropriated funds under Cal. Probate Code §§850 et seq. (recovery of property claimed to belong to a decedent) and it is not necessary for it to have first been determined that the petitioning interested person will ultimately be entitled to receipt of the property.

The court also upheld application of §859 which states that a person who has in bad faith wrongfully taken, concealed, or disposed of property belonging to the estate of a decedent, shall be liable for twice the value of the property recovered.

Trust residuary beneficiaries filed a petition under Probate Code §§850, et seq. and 859 seeking restitution of funds that were taken from trust accounts. On October 22 David had Janice, his sister, execute a durable power of attorney in his favor. Janice had cancer and was semi-comatose at the time.

On October 23 David closed several of Janice's trust's bank accounts and appropriated the funds. Janice died on October 24. The probate court ordered David to return \$197,402 to a court appointed estate representative and pay statutory double damages of \$394,804.

California Court of  
Appeal, Second District,  
Case No. B213484, April  
27, 2010

## Estate of Winans

Holding that a certificate of independent review by legal counsel under Probate Code §§21350-21351 (relating to disallowed dispositions) is invalid if the counseling that the attorney does during the specific session and the attorney's independence are not sufficient, and if the counseling session is not sufficiently confidential (e.g., at least in private and with no presence or in and out by the disqualified person). This is an important case for estate planning attorneys.

The discussion between counsel and client must at least include not only the amount and type of property being transferred, but also the more complicated consequences including the transfer of property to a disqualified person and the denial of property to persons who the law regards as the more likely objects of the testator's bounty. Prior estate planning meetings between the client and counsel also are not necessarily included in the determination whether the independent review session is sufficient—in other words, consider that the court might look only at the review session itself to evaluate sufficiency and appropriateness, and not at other meetings between attorney and client.

California Court of  
Appeal, First District,  
Case No. A124263,  
March 25, 2010

## Conservatorship of Cornelius

Temporary conservator was entitled to recover her attorneys' fees and costs for the temporary conservatorship of her father although dismissing the permanent conservatorship.

A daughter was appointed temporary conservator of her father. The evidence established a need for the temporary conservatorship; but the father's situation then improved. After the father objected to the permanent conservatorship the daughter then dismissed the petition for permanent conservatorship and petitioned for attorneys' fees and costs. The court affirmed the daughter's recovery of attorneys' fees and costs, holding that §§2641(a) and 2642(a) make no distinction between temporary and permanent conservators.

"It is benefit to the conservatee, not establishment of a permanent conservatorship, that a court must look to in deciding whether a temporary conservator is entitled to reimbursement." "The relevant question is whether [the] temporary conservator . . . acted in good faith, based on the best interest of her father . . . in petitioning for conservatorship and in opposing his request to dissolve it."

California Court of  
Appeal, First District,  
Case No. A131495,  
November 15, 2011

## A Recent Email Message Re A Bank Trustee's Actions

Hi \_\_\_\_\_ -- I might be interested in speaking with them. Where are the clients located?

On \_\_\_\_\_, Nov \_\_\_\_\_, 2011 at \_\_\_\_\_ PM, \_\_\_\_\_  
<\_\_\_\_\_.com>wrote:

Dear All, I have a client here in Northern California who is a beneficiary of her "grandparents' trust", following the fairly recent death of her father. [\_\_\_\_\_ Bank] was the Trustee of the trust (for whatever reason I'm not sure) and shortly before her father's death they traded stocks that had been passed down from generation to generation. They had previously been instructed not to sell. The family is interested in finding out if there is any use trying to go after them as the sale was a huge detriment – they ended up paying lots of capital gains and had they held on until the death of her father the gains would have been avoided. Any referrals would be appreciated. Thanks, \_\_\_\_\_

## Case Takeaway, Options:

Consider trust terms:

-Investments allowable/prohibited

-Waiver and consent

-Trustee culpability—gross v. negligence

-Beneficiary limitation to object or bring claim

Only current beneficiary has standing to object

Beneficiary consent/waiver

Notice of intent to take action, §§16500 et seq.

Petition, instructions

Risk tolerance—act and live with the results

## INDICATORS OF POSSIBLE FINANCIAL ELDER ABUSE

Basically, possible elder or dependent adult financial abuse typically becomes apparent from a financial situation that appears to be unnatural or out of character for that specific customer, or for the typical similar person in society. So, what are some of the indicators that you might be looking for?

Increased or unusual banking activity.

An unusually, or out of the ordinary, large transaction.

The purchase of an unusual item or service.

Money being paid to or for the benefit of someone out of the ordinary. The person could be a stranger to the elder, a caregiver, a housekeeper, a neighbor, a friend, a gardener, or even a family member.

A change in account title or authority.

Someone improperly using his or her authority over the elder's account. Possible a trustee, attorney in fact, co-account holder, or other person.

## INDICATORS OF POSSIBLE FINANCIAL ELDER ABUSE (continued)

Unusual credit card transactions or balances.

A change in deed or real property title or ownership.

Unusual ATM activity.

Telemarketing and mail fraud; fake prizes; fake accidents; unnecessary purchases or home improvements; getting a windfall upon the payment of money or by providing information.

Risky, unnecessary or unusual investments, insurance, warranties or annuities.

Unusual people accompanying the elder; new or unusual acquaintances; new “friends,” boyfriends or girlfriends.

The elder not speaking for himself, or herself; or some other person directing the elder, the situation or the proposed transaction.

The elder acting in a secretive or evasive manner; or perhaps in an overly defensive or hostile manner in response to questions or even in response to typical conversations.

## INDICATORS OF POSSIBLE FINANCIAL ELDER ABUSE (continued)

The elder being forgetful, disorganized, disoriented, confused, or unaware of his or her surroundings or common events.

The elder acting paranoid or fearful about the bank, or about his or her accounts.

A change in the appearance, actions or demeanor of the elder; social withdrawal; unkempt; or health problems, including what is referred to as self abuse.

The elder being concerned about who will help or assist him or her, or take care of him or her.

Expressions of concern, pressure, worry or fear.

Excessive payment for a product or subscription, or for services; or payment for an unnecessary product or subscription, or for services.

Excessive or unnecessary borrowing by the elder, or someone on his or her behalf.

The elder wanting to avoid conversation.

## INDICATORS OF POSSIBLE FINANCIAL ELDER ABUSE (continued)

Unusual or unnatural Will, Trust, Power of Attorney, Deed or mortgage terms or documents; or unusual or unnatural changes in the terms or conditions of those documents; or the unusual or unnatural selection or nomination of the person to exercise authority in or over those documents.

Documents, checks, payments, etc., missing, misplaced or stolen.

The elder being evicted, or loss of utilities.

The elder becoming isolated from others, either because of other people causing that isolation, or because of the elder's lack of interest.

Forged, missing, or strange looking signatures.

Changes in financial institution.

Changes in account, IRA, or insurance beneficiaries.

Unpaid bills.

## INDICATORS OF POSSIBLE FINANCIAL ELDER ABUSE (continued)

The sudden appearance, assistance or interest of strangers, friends or relatives.

New people helping the elder around the house, or with the yard; home improvements.

Associating with much younger people.

Reluctance to discuss financial matters.

The elder's increasing tiredness or depression.

The sudden or unexplained transfer of assets.

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