

*Elder Needs, Options and Abuse for CPAs,
Mandated Reporters, and Other Interested People*

California Certified Public Accountants Education Foundation
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Presentation Contents Overview

- Assistance Needs and Options: Who, What, When, Where, and Why.
- Elder Abuse: Financial, Physical/Care and Emotional/Mental Abuse.
- Mental Capacity Issues.
- Risk Management and Liability Mitigation; What You Can Do.
- Mandated Reporters of Elder Abuse.
- Family Dynamics, Disputes and Dispute Resolution.

Question for the Audience:

- What information are you interested in getting out of this presentation?
- Reminder: You can ask questions and make comments during the presentation.

Assistance Needs and Options:

- Start with an Evaluation of the Needs and Options:
 - Physical.
 - Mental.
 - Medical.
 - Financial.
 - Housing.
 - Do you need to obtain a professional condition and care assessment?

Assistance Needs and Options:

- Housing Options:
 - At-home care; caregiver options.
 - Board and care.
 - Skilled nursing facility (SNF).
 - Continuing care community.
 - Life care community.
 - Dementia facility.
 - Attachment #1, nursing home regulations.
 - Medi-Cal and planning.
 - Reverse mortgages.

Question for the Audience:

- Do you have any questions or comments about housing options or issues?

Assistance Needs and Options:

- Financial Power of Attorney:
 - See generally, Cal. Probate Code (“PC”) §§4000-4545.
 - An attorney in fact is a fiduciary to the principal.
 - Standard of care, if not compensated: gross negligence.
 - Any interested person can question the actions of the attorney in fact, and petition the court. PC §4540.
 - Investment decisions. Be qualified, get advice, or both.
 - Must keep records of transactions. PC §4236.
 - Can petition the court for instructions; discharge v. minimum 3 year statute of limitations, unless notice and waiver or consent); etc. Any interested person can petition. PC §§4540-4541.

Question for the Audience:

- Do you have any questions or comments about financial power of attorney situations?

Assistance Needs and Options:

- Advance Directive and End of Life Issues:
 - An attorney in fact is a fiduciary to the principal. See generally, PC §§4600-4806.
 - Petition to the court for instructions; discharge, etc. Any interested person can petition. PC §§4765-66.
 - Advance directives (DPA healthcare; living Will). PC §§4670-4743.
 - Legal applications: care refusal; care withdrawal.
 - PC §4684.
 - *Conservatorship of Wendland* (2001) 26 Cal. 4th 519.
 - (Continued on next page).

Assistance Needs and Options:

- Advance Directive and End of Life Issues:
(Continued)
 - Do not resuscitate. PC §§4780-4786.
 - Capacity and healthcare petition if no conservator. PC §§3200-3212.
 - Designation of healthcare surrogate. PC §§4711-4717.

Question for the Audience:

- Do you have any questions or comments about advance directives or end of life situations?

Assistance Needs and Options:

- Trusts, Trustees and Beneficiaries:
 - See generally, PC §§15000-19403.
 - A trustee is a fiduciary to the beneficiaries, who must use his or her special skills. PC §§16000-16042.
 - A beneficiary also owes limited duties to the trust and the other beneficiaries.
 - Follow the terms of the trust, statutes and cases.
 - Specific statutory powers. PC §§16200-16249.
 - Discretionary powers are not absolute. PC §§16080-16082.
 - (Continued on next page).

Assistance Needs and Options:

- Trusts, Trustees and Beneficiaries:
(Continued)
 - Investment decisions. Be qualified, get advice, or both. Act as a prudent investor would. PC §§16945-16954.
 - Court involvement and processes:
 - Jurisdiction, probate department.
 - Venue.
 - Petition for instructions. PC §§17200, et seq.
 - Discharge v. minimum 3 year statute of limitations unless notice and waiver or consent.
 - Accountings. PC §§16060-16064; 1060-1064.
 - (Continued on next page).

Assistance Needs and Options:

- Trusts, Trustees and Beneficiaries:
(Continued)
 - Trustee notice of irrevocable trust; change of trustee of an irrevocable trust. PC §§16061.5-16061.7.
 - Trustee notice of proposed action. PC §§ 16500-16504.
 - No contest clauses; petition to determine not a contest. PC §§ 21300-21322.
 - Fees: trustee; attorney; investment advice.
 - Select additional issues: proration of taxes; petition for interpretation of trust; petition to reform trust, etc.
 - Attachment #2, *Trustee Responsibilities, Beneficiary Rights and Elder Law*.

Question for the Audience:

- Do you have any questions or comments about trust, trustee or beneficiary situations?

Assistance Needs and Options:

- Cash Accounts; Joint Account Holders:
 - Ownership during life, and after death.
 - Non-depositing joint account holder duties.

Assistance Needs and Options:

- Conservatorship of the Person:
 - See generally, PC §§1800-1969.
 - Duties.
 - Of the person: daily living needs, medical and care.
 - Can oversee the financial activities of the trustee.
 - Placement.
 - Court approval may be required for a different location or change in level of security.
 - Medications.
 - Court approval may be required.
 - (Continued on next page).

Assistance Needs and Options:

- Conservatorship of the Person:
(Continued)
 - Court involvement and processes:
 - Jurisdiction, probate department.
 - Venue.
 - Petition for instructions.
 - Fees: conservator; attorney; other people.
 - Attachment #3, *California Dementia Treatment and Placement*.

Question for the Audience:

- Do you have any questions or comments about conservatorship of the person situations?

Assistance Needs and Options:

- Conservatorship of the Estate:
 - Cal. Probate Code §§1800-1969.
 - Conservator duties; fiduciary.
 - Investment decisions. Be qualified, get advice, or both.
 - Court involvement and processes:
 - Jurisdiction, probate department.
 - Venue.
 - Reports to the court.
 - Petition for instructions.
 - Accountings.
 - Discharge v. minimum 3 year statute of limitations.
 - Fees, conservator; attorney; investment advice.
 - See prior financial power of attorney and trust slides for additional references.

Question for the Audience:

- Do you have any questions or comments about conservatorship of the estate situations?

Assistance Needs and Options:

- Caregiver Issues:
 - A fiduciary, attorney in fact, or conservator may have responsibilities overseeing the caregiver(s).
 - Available at-home caregivers are difficult to find.
 - High turnover.
 - Expensive.
 - Payroll, insurance, and tax withholding issues.
 - Overtime pay.
 - Ability to influence the elder and related statutory limitations on donative transfers (inheritance) to care custodians. See PC §21350(a)(6); W&I Code §15610.17.

Assistance Needs and Options:

- State and County Services; Links:
 - Adult Protective Services,
http://www.dss.cahwnet.gov/cdssweb/AdultProte_175.htm
 - Long-term care ombudsman, <http://www.aging.ca.gov>
 - Nursing home licensing,
<http://www.dhs.ca.gov/lnc/NHAP/default.htm>
 - Long-term care insurance, <http://www.dhs.ca.gov/cpltc>
 - Medi-Cal, <http://www.dhs.ca.gov/medi-cal>
 - Continuing care communities,
<http://www.dss.ca.cahwnet.gov/pdf/PUB240Internet.pdf>
 - Health insurance counseling,
<http://www.aging.ca.gov/html/programs/hicap.html>
 - RCFE, http://ccl.d.ca.gov/Residentia_1752.htm

Elder Abuse: Financial, Physical/Care and Emotional/Mental:

- Overview, Attachment #4, *Elder Abuse: Financial, Physical and Emotional/Mental.*
- Definition of Elder or Dependent Adult Abuse: Cal. Welfare and Institutions (“W&I”) Code §15610.07
- An Elder is Age 65 or Older; a Dependent Adult is Age 18 to 64. W&I Code §§15610.27; 15610.23.

Elder Abuse: Financial, Physical/Care and Emotional/Mental:

- Financial Elder Abuse:
 - Definition of financial abuse. W&I Code §15610.30.
 - Indicators of possible financial abuse.
 - Select specific and hypothetical situations.

Elder Abuse: Financial, Physical/Care and Emotional/Mental:

- Select Specific and Hypothetical Financial Elder Abuse Situations:
 - Delta corvette case.
 - San Francisco board and care case.
 - San Mateo caregiver case.

Question for the Audience:

- Do you have any questions or comments about financial elder abuse or situations?

Elder Abuse: Financial, Physical/Care and Emotional/Mental:

- Physical/Care Elder Abuse:
 - Definitions of physical/care abuse:
 - W&I Code §15610.63 (physical abuse).
 - W&I Code §15610.57 (neglect).
 - W&I Code §15610.05 (abandonment).
 - Cal. Penal Code §368 (criminal physical elder abuse).
 - Indicators of possible physical/care abuse.
 - Select specific and hypothetical situations (next page).

Elder Abuse: Financial, Physical/Care and Emotional/Mental:

- Select Specific and Hypothetical Physical/Care Elder Abuse Situations:
 - Nursing home beating case.
 - Nursing home hooyer lift case.
 - Failure to follow care plan.

Question for the Audience:

- Do you have any questions or comments about physical/care elder abuse or situations?

Elder Abuse: Financial, Physical/Care and Emotional/Mental:

- Emotional/Mental Elder Abuse:
 - Legal definitions of emotional/mental abuse:
 - W&I Code §15610.53 (mental suffering).
 - W&I Code §15610.43 (isolation).
 - Indicators of possible emotional/mental abuse.
 - Select specific and hypothetical situations (next page).

Elder Abuse: Financial, Physical/Care and Emotional/Mental:

- Select Specific and Hypothetical Emotional/Mental Elder Abuse Situations:
 - San Mateo caregiver case (isolation).
 - Other: no one will take care of you.

Question for the Audience:

- Do you have any questions or comments about emotional/mental elder abuse or situations?

Mental Capacity Issues:

- Legal Mental Capacity:
 - PC §§810-813.
 - Cal. Civil Code §§38-41.
 - Generally, ability to understand issues, understand options and make decisions.
 - Undue influence.
 - Mistaken belief or understanding.
 - Out of character decision.
- Is there a Requirement to Evaluate Client Mental Capacity; Related Issues.

Mandated Reporters of Elder Abuse:

- W&I Code §§15630-32.
- Who are Mandated Reporters?
- Is a CPA a Mandated Reporter?

Risk Management and Liability

Mitigation; What You Can/Can't Do:

- Who is Your Client?
- Working With Other Professionals; Reliance.
- Ability to Communicate with Client; Client Ability to Understand.
- Possible Duties to Interested Persons; Heirs; Beneficiaries.
- Agency: Is there a Duty to Seek Help or Take Action for an Elder Client in Need, or Possibly Being Abused?
- Possible Confidentiality Issues.
- What if Uncertain?
- How Can Help be Requested?

Question for the Audience:

- Do you have any questions or comments about capacity, risk management or liability mitigation topics?

Family Dynamics, Disputes and Dispute Resolution

- Only One Comment:

Trust, estate, conservatorship and elder law disputes are the probate version of divorce; try to resolve the dispute before it goes to court, and then try again to resolve the dispute before it has to go to trial.

- See Mediation Materials at <http://davidtate.us>.

*****The End*****

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