

The Guardian



Message from the Advisory Committee Chair



Hello Consumers, Colleagues, and Friends,

Please join me in welcoming our new Bureau Chief, Julia Ansel. The Fiduciary Bureau staff continues to work hard, as there

are continuing improvements. Thank you! And a special welcome to our three new Advisory Committee members: Prescott Cole, Senior Staff Attorney at the California Advocates for Nursing Home Reform; Kathleen Thomson, Supervising Court Investigator at the Solano County Superior Court, and Diana Amaya who works for Hispanas Organized for Political Equality. As we have three new members joining us, we are saying goodbye to our long time committee member, Donna Estacio. Thank you for your time and attention to this work, Donna, you will be missed!

Inside this e-newsletter you will find information about the workings of our licensing bureau and things you should know about working with Professional Fiduciaries. Please take a look at the Bureau's Website and submit any questions you may have (more about this in the "Ask Angie" column).

Your estate plan is a critical tool to protect your quality of life when everything

changes. Illness, accidents, or winning the lottery are just some of the things that can happen in anyone's life, causing upheaval and unexpected changes. Not only must you have a professionally drafted plan, you must select the appropriate person to carry out your wishes when you cannot do so yourself. Don't assume that your children or friends can do an effective job, as whoever you select must take on 100 percent liability for everything in your estate.

Please consider a Professional Fiduciary instead of a loved one or friend to serve you. The tax, legal, financial, and medical decisions are often difficult and burdensome; and without training and objectivity, we've seen families and friendships fall apart. Worse, the Probate Courts have suffered budget cuts and straightening things out after the fact is very expensive and can take a very long time.

Seek out and interview a few Professional Fiduciaries in your area. You can find them at www.Fiduciary.ca.gov under "License Verification." You can enter your city, county, or search by last name if you have already been referred by a professional but wish to verify the license status.

Seeing everyone with a great back-up plan,

Marguerite Lorenz, CTFA, CLPF #319

DEPARTMENT OF CONSUMER AFFAIRS

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PROFESSIONAL FIDUCIARIES BUREAU

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Message from the Bureau Chief

On behalf of the Professional Fiduciaries Bureau, I present to you the second edition of our biannual newsletter.

The Bureau has been specifically mandated to develop applications for licensure, conduct applicant criminal background checks, collect applicants' fingerprint submissions, establish licensure examination requirements, develop licensure educational requirements, collect payment of licensing fees, and collect licensees' annual statements. The Bureau has also been directed to develop a Professional Fiduciaries Code of Ethics. Our mission is to protect consumers through licensing, education, and enforcement by ensuring the competency and ethical standards of Professional Fiduciaries.

I want to take this opportunity to tell you that I am thrilled and honored to have been appointed as Chief of the Professional Fiduciaries Bureau. As the new Chief, I have learned a great deal about operations of the Department of Consumer Affairs and the Bureau. I would like to thank Gil DeLuna, former Acting Bureau Chief, for his dedication to the Bureau over the past few years and for setting a foundation to allow us to achieve continued success. All licensees should be aware that the staff at the Bureau is absolutely exceptional. They have been warm, welcoming, and generous with their time and knowledge, as I have embraced this new role.

As some of you may know, I am, like most of you, a licensed Professional Fiduciary. I have completed the conservatorship and trustee certification programs at California State University at Fullerton. I interned in Sacramento for an experienced fiduciary, and I have had clients of my own. I have a good understanding of the challenges you face as professionals in this industry. I recognize the amount of liability and responsibility associated in your line of work, but I also recognize the

fulfillment and personal reward that comes from serving fiduciary clients. My commitment to the Bureau and consumers is unwavering. At the onset of my appointment by the Governor, I signed a letter of recusal, stating that I will no longer involve myself in providing fiduciary services to clients.

In August of 2013, the Bureau held a strategic planning session. I was grateful to be part of the planning meeting and I am committed to putting our plan into action by inviting our Advisory Board to an action planning meeting in early 2014. To fulfill our mission, we must follow a realistic and achievable plan that focuses on accountability and attainable goals which are measurable and quantifiable. An action plan will create accountability for accomplishing these goals and it will assist in identifying the necessary steps required to turn the Bureau's vision into a reality.

I would like to thank Bureau staff and the Advisory Committee for their contribution to the fall/winter edition of the *Guardian* e-newsletter. Your dedication and support of the Bureau is greatly appreciated.

We are always open to feedback from you, the licensees. If you have any issues you would like to see addressed in subsequent editions of our e-newsletter please send them to us at fiduciary@dca.ca.gov. This newsletter is for all of you, and we welcome your comments and suggestions.

As I mentioned previously, I am excited about my new role here at the Bureau. Aside from this e-newsletter, you are also welcome to contact us with any questions or concerns you have. Our door is always open and we welcome a healthy dialogue between the Bureau and its licensee constituency. Looking to the future, the Bureau's goal is to continue to protect vulnerable consumers, while at the same time providing applicants and licensees with exceptional service.

Please note this e-newsletter can be found on our Website. We hope you find it informative.

Warm Regards,
Julia G. Ansel, Chief

What is your Successor Trustee expected to do?

By Marguerite Lorenz, CTFA, CLPF #319

You are the first Trustee of your Trust, and you are always the Trustor, even when you become incapacitated, resign or die. As the Trustee, a major goal in trust administration is to make informed decisions and to document those decisions so as to report to the appropriate parties. Serving as the Successor Trustee is a big job.

Trustors often have trouble assessing the abilities of their loved ones. Since family members and friends may lack training and sufficient time to get the work done and may have deep emotions in the situation, it can be helpful to the whole family to explore the Trustor's expectations and the ability of the Trustor's selected Successors to meet those expectations.

To help you make a reasonable selection as to who will serve, consider these questions, whether your potential Successor is a professional or not:

1. **Does my Successor Trustee have experience and expertise in handling finances? Good accounting and bookkeeping skills? Trust and estate tax experience?**
2. **Will my Successor Trustee remain objective, responsive, and compatible with all beneficiaries of the trust and other members of the family?**
3. **Will my Successor Trustee be able to devote sufficient time to the management of the trust, unburdened by other obligations such as a job or a family for three years or more?**

4. **Is my Successor Trustee also a beneficiary, causing a "natural conflict of interest"?**

Many Trustors don't ask their child if he or she wants the responsibility. Once a Trustor has selected the right Successor Trustee, he or she should be willing to allow that Successor to learn the Trustor's financial details, health concerns and quality of life values. If you cannot talk comfortably about your needs and wishes with your named Successor, please consider selecting someone else. Check www.fiduciary.ca.gov for a list of Licensed Professional Fiduciaries in your zip code area or county. I suggest that you interview all of your potential Successors and name at least two in succession to you. Please consult with a qualified Estate Planning Attorney to review or complete your estate plan.

Band together and combat unlicensed activity

Licensed California professionals personify quality, pride, and trust.

It's the stuff that California's professionals are made of. It's what they value. Quality. Pride. Trust. Unlicensed practitioners pose a threat to you and your business. Why?

- Unlicensed individuals and businesses operate illegally.
- They do not follow acceptable standards or abide by a code of ethics.
- They offer little or no recourse for dissatisfied customers.
- They hurt the economy because unlicensed businesses often do not pay taxes.
- They steal business away from legitimate businesses and professionals who follow the rules.
- They pose a risk to consumers by committing fraud.
- They undermine their industry's credibility.

To report unlicensed activity you can send an e-mail to fiduciary@dca.ca.gov, an anonymous fax to (916) 574-8645, or call (916) 574-7340.

What is the Department of Consumer Affairs (DCA)?

The Professional Fiduciaries Bureau is one of many regulatory entities housed under DCA. DCA's mission is to protect and serve the interests of California consumers.

DCA at a Glance

The Department of Consumer Affairs is here to protect and serve California consumers while ensuring a competent and fair marketplace. DCA helps consumers learn how to protect themselves from unscrupulous and unqualified individuals. The Department also protects professionals from unfair competition by unlicensed practitioners.

DCA Today

To protect and serve consumers, DCA issues licenses in more than 100 business and 200 professional categories, including doctors, dentists, contractors, cosmetologists, and automotive repair facilities. DCA includes 41 regulatory entities (25 boards, nine bureaus, four committees, two programs, and one commission). These entities establish minimum qualifications and levels of competency for licensure. They also license, register, or certify practitioners, investigate complaints, and discipline violators. The committees, commission, and boards are semiautonomous bodies whose members are appointed by the Governor and the Legislature. DCA provides them administrative support. DCA's operations are funded exclusively by license fees.



DCA Past

One of the California Legislature's earliest efforts to protect the public was through the passage of the Medical Practice Act in 1876. The Act was designed to regulate the State's medical industry, which up to that time had operated virtually unchecked. Over the following 30 years, the State regulated more professions. By the late 1920s, 10 State boards were in existence under the Department of Vocational and Professional Standards. The Department licensed or certified accountants, architects, barbers, cosmetologists, dentists, embalmers, optometrists, pharmacists, physicians, and veterinarians. The Consumer Affairs Act of 1970 gave the Department its current name.

DCA Tomorrow

The Department of Consumer Affairs is dedicated to enhancing individual consumer access to services and resources. The Department will expand its role as a primary resource on consumer issues. To help fulfill its mission of promoting and protecting the interests of consumers, DCA will continue to build and maintain effective relationships with:

- Consumer and public interest groups.
- The business and professional community.
- Law enforcement agencies.
- Other government agencies.

ASK ANGIE

Angie is the Bureau's expert when it comes to answering questions related to our functions. We always like to hear from you, both simple and difficult questions that we can publicize for all to see. This forum will be used specifically for this purpose. We may not be able to answer all your questions because we cannot give legal advice, but we welcome questions about applications, licensing, renewals, complaints, enforcement, and related matters. Email your questions to us at fiduciary@dca.ca.gov with ASK ANGIE in the subject line. You will receive a direct response, and if the question becomes one of the Bureau's frequently asked questions, it will appear in our next e-newsletter. Here are some of the questions often asked:

From Applicants:

- Q:** If I do not have a degree, can I qualify to take the examination with experience only?
- A:** You may qualify with experience only if you meet the criteria stated in Business and Professions Code section 6533(g)(3). The criteria is: "Experience of not less than five years, **prior to July 1, 2012**, working as a professional fiduciary or working with substantive fiduciary responsibilities for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney."
- Q:** Can I email the Bureau with a list of my experience for the Bureau to review before I submit an application and pay the \$400 application fee?
- A:** No, the Bureau reviews the application in its entirety once it is submitted to the Bureau. The \$400 application fee is the actual cost for the Bureau to process the application.

From Licensees Regarding Renewals:

- Q:** If I'm not renewing my license, why do I have to submit an Annual Statement?
- A:** All licensees are required to file an annual statement 60 days prior to the expiration date of their license according to Business and Professions Code section 6562.
- Q:** When is my license considered delinquent? Is there a grace period?
- A:** California Code of Regulations section 4562 states a delinquent fee is due if a license is renewed more than 30 days after its expiration date. During those 30 days the license will appear on the Bureau's Website as "Active" but with an expired date. Probate Code section 2340 states the court may not appoint or permit a person to carry out the duties of a Professional Fiduciary if the person's license is expired.

- Q:** Which clients should I report to the Bureau when renewing my license?
- A:** When submitting your Annual Statement for renewal, report only cases you opened or closed since the date of your last Annual Statement.
- Q:** Does the Bureau need the exact date a case was opened or closed?
- A:** Yes, the Bureau needs all dates in the format of MM/DY/YEAR.

From Licensees Regarding Complaints:

- Q:** Will this complaint affect my license renewal?
- A:** No. Complaints are not public record and do not affect the renewal of your license. Your license is not affected by a complaint unless the Bureau takes disciplinary action or issues a citation against your license.
- Q:** Can I have a copy of the complaint that was filed against me?
- A:** No. Section 6254(f) of the Government Code, an exception to the California Public Records Act, exempts records of complaints to and investigations conducted by State agencies, among others, from disclosure.
- Q:** Am I required to submit documents the Bureau requests from me?
- A:** Yes. Business and Professions Code section 6560 states: "A licensee shall keep complete and accurate records of client accounts, and shall make those records available for audit by the Bureau." Additionally, California Code of Regulations section 4544(b) states the licensee has 15 business days to provide this information to the Bureau. If the licensee does not comply, the licensee may be subject to a citation, that may include a fine, or other disciplinary action for failure to comply as stated in California Code of Regulations section 4544(d).
- Q:** What are the top reasons the Bureau issues citations?
- A:** Most citations are issued for the following reasons:
- Unlicensed activity.
 - Not acting in the best interest of the client.
 - Inaccurate or incomplete recordkeeping.
 - Charging the client when speaking to the Bureau in response to a complaint.

Legislative Updates

2013 Legislation Impacting the Professional Fiduciaries Bureau

The following bills were chaptered and became law:

AB 381 (Chau, Chapter 99, Statutes of 2013) Estates and trusts: undue influence and elder abuse.

This bill extends double-damage provisions to an attorney-in-fact who misappropriates property through undue influence, in bad faith, or through acts of financial elder abuse, and specifically allows a court to award attorney's fees and costs in addition to double damages.

Sponsor: Conference of California Bar Associations

AB 937 (Wieckowski, Chapter 127, Statutes of 2013) Conservators and guardians: personal rights of conservatees.

This bill provides that a conservator's control of a conservatee shall not extend to personal rights retained by the conservatee, such as the right to receive visitors, telephone calls, and personal mail, unless limited by court order.

AB 1029 (Maienschein, Chapter 105, Statutes of 2013) Trusts and estates: allocations of receipts.

This bill clarifies how the partial liquidation exception is to be determined and the information on which the trustee may rely regarding that determination. This bill would also provide immunity from liability for a trustee who makes an improper allocation in reliance on the proposed methods to determine whether or not the money received by an entity is a partial liquidation.

Sponsor: Trusts and Estates Section of the State Bar of California

AB 1339 (Maienschein, Chapter 248, Statutes of 2013) Professional fiduciaries: guardians and conservators.

This bill requires a court-appointed conservator, or proposed conservator, who is also professional fiduciary, to disclose their total fees or compensation at the time a petition to appoint a conservator is filed. This bill would also allow for periodic payments from the estate to the conservator but only after a fee schedule or statement of compensation has been properly filed.

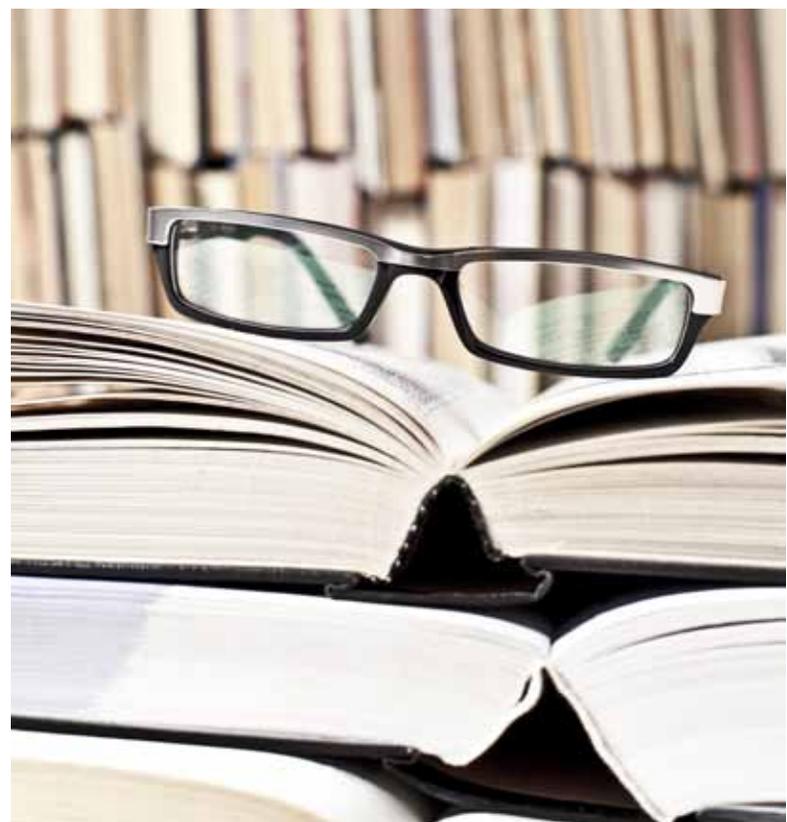
Sponsor: Professional Fiduciaries Association of California

SB 156 (Beall) Conservatorships and guardianships: attorney's fees.

This bill limits a guardian or conservator from collecting fees from a ward's or conservatee's estate for any costs or fees that the guardian or conservator incurred in defending the guardian or conservator's compensation petition unless specified conditions are met.

Sponsor: California Senior Legislature

This bill was vetoed.



APPROVED EDUCATION PROVIDERS

A local court of the State of California	Professional Fiduciary Association of California
California State Bar or American Bar Association	California State Association of Public Administrators, Public Guardians, and Public Conservators
California State Board of Accountancy	National Guardianship Association and its state affiliates
California State Board of Behavioral Sciences	National Association of Professional Geriatric Care Managers
Certified Financial Planner Board of Standards, Inc.	American Society of Aging
California Department of Insurance	Gerontological Society of America
California Board of Registered Nursing	National Association of Social Workers
California State Board of Psychology	National College of Probate Judges
California Department of Mental Health	National Elder Law Foundation
California Department of Social Services	American Bankers Association
California Department of Developmental Disabilities	Cannon Financial Institution

To earn prelicensing education credit immediately, the Bureau has identified the following possible opportunities:

1. The CSU Fullerton's Fiduciary Management Program online courses: www.csufextension.org.
2. The National Guardianship Association online CE courses: www.guardianship.org.
3. The Professional Fiduciary Association of California's Annual Education Conference. www.pfac-pro.org/pages/meetings.htm
4. The UC Riverside Extension Professional Fiduciary Certificate Program: http://www.extension.ucr.edu/welcome/profid/profid_cpfb.html

For more information, please visit the Bureau's website at www.fiduciary.ca.gov or contact the Bureau at (916) 574-7340

DISCIPLINARY ACTIONS AND CITATIONS ISSUED BY THE PROFESSIONAL FIDUCIARIES BUREAU SINCE THE SPRING 2013 E-NEWSLETTER

Licensee/Applicant	License Number	Action Taken	Effective Date
M. Terry Campbell	230	Citations	3/8/2013
Aprille Rafidison	356	Citation	5/9/2013
Mary M. Pynenburg	380	Citations	5/9/2013
Richard Albert Cox	137	Surrendered	5/17/2013
Ronald Olund	243	Accusation	8/6/2013
William Lee Exeter	448	Citation	10/14/2013

Bureau Actions | Explanation of Language

Accusation – A formal, written statement of charges filed against a licensee.

Citation and Fine – Licensee is issued a citation and required to pay a fine commensurate with the violation committed.

Default Decision – Licensee fails to respond to an accusation by filing a Notice of Defense or fails to appear at an administrative hearing.

Effective decision date – The date the disciplinary decision/order goes into operation.

Letter of Public Reprimand – A formal reprimand issued by the Bureau, which could be in lieu of filing a formal accusation.

Revoked – The license is voided and the right to practice has ended.

Revoked, stayed, probation – “Stayed” means the revocation is postponed, put off. Professional practice may continue so long as the licensee complies with specified probationary terms and conditions. Violation of probation may result in the revocation that was postponed by the stay.

Statement of Issues – Charges filed against an applicant to deny licensure due to alleged violations of the Professional Fiduciaries Act.

Stipulated settlement – The case is negotiated and settled prior to hearing.

Surrender of license – While charges are still pending, the licensee agrees to turn in the license – subject to acceptance by the Bureau.

Suspension – The licensee is prohibited from practicing for a specific period.

Writ – An appeal filed by the licensee in Superior Court asking the court to overturn the Bureau’s decision.

Practice tips for Professional Fiduciaries

Plan for a Successor

- Don't wait too long to discuss who will be a successor. Help your clients understand how failing to plan can:
 - > Change who manages their estates and how their estates are managed.
 - > Lead to unnecessary legal costs and fees.
- Make sure there is a successor or a way to select a successor if the one nominated can't or won't accept the appointment.
- Naming co-trustees, especially two or more children, may create family friction.
- Be sure all needs have been planned for including:
 - > Health care management.
 - > Management of assets outside of the trust.
 - > Tangible personal property management (and that instructions in Will and Trust are in agreement).
- Update estate planning documents periodically (at least every five years) or when laws or circumstances change.
- Discuss the role of a successor during periods of incapacity, not just when someone dies.

Plan for Incapacity

- Provide directions or instructions to successor of important health care and living needs. Have the difficult discussion.
- Think about the age of the successor in comparison to your client and whether he or she will be around and able to manage things.
- Think of a licensed Professional Fiduciary for short- and long-term problem solving.

Fund and Administer the Trust

- Ensure the client titles all assets in the trust name.
- Consolidating accounts down to a few will save time and money during the administration.
- Re-assess titling and allocation of assets with your clients when one spouse dies in light of Trust instructions.
- Help surviving trustors understand that they should review possible new sub-trust statutes, and limitations on authority to make distributions to themselves or make changes to beneficiaries after the first spouse dies.
- Have clear instructions as to tangible personal property and whether to distribute, sell, include in total distributive amount, etc.



Where to find Bureau webcasts

The Professional Fiduciaries Bureau provides a webcast of all public meetings if webcast technology is available at the location of the meeting. Webcasting allows the public to view the Bureau’s public meetings; however, it is not interactive and the public is not able to participate via webcast. The Bureau welcomes members of the public to attend the meetings if they would like to speak on topics that are on the agenda or request that a topic be put on a future meeting agenda.

A list of past and future Bureau meetings can be found online at www.fiduciary.ca.gov/about_us/meetings.shtml.

To access the webcast while the meeting is in progress, please go to www.dca.ca.gov/publications/multimedia/webcast.shtml and click on “Current Webcasts”.

The webcast will be available approximately 15 minutes prior to the start of the meeting.

Once the meeting has concluded, the video will be uploaded to the Department of Consumer Affairs webcast archive and may be viewed online at www.dca.ca.gov/publications/multimedia/webcast_archive.shtml. It may take up to two weeks for the video to appear on the archive list.

If you have any questions regarding webcasts, please contact Angela Bigelow at (916) 574-7341.

Professional Fiduciaries Bureau Contact Information

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Email: fiduciary@dca.ca.gov

Hours: Monday-Friday 8 a.m.-5 p.m.

Our office will be closed on the following holidays in 2014:

Wednesday, January 1..... New Year’s Day
Monday, January 20..... Martin Luther King Jr. Day
Monday, February 17 Presidents Day
Monday, March 31 Cesar Chavez Day
Monday, May 26 Memorial Day
Friday, July 4 Independence Day
Monday, September 1 Labor Day
Tuesday, November 11 Veterans Day
Thursday, November 27 Thanksgiving
Friday, November 28 Holiday
Thursday, December 25 Christmas



Be sure your license is renewed on time

If you do not renew your license on time, it affects the status of your license. Although you have a 30-day grace period, after that, your license will be tagged “Delinquent” on your license look-up. Courts, by law, cannot assign a case to a Professional Fiduciary whose license has expired. To prevent any delays when you renew your license, keep this information in mind:

Do

- Submit your Annual Statement at least 60 days before the expiration date of your license.
- Complete all sections of your Annual Statement as required in Section 4542 of the California Code of Regulations.
- Complete 15 hours of continuing education, complete your detachable renewal application (sign and date), and mail it to the Bureau with your \$700 renewal fee by the expiration date of your license.
- Remember: Renewal processing time is four to six weeks.

Don't

- Forget to report your home address in Part 1 of the Annual Statement.
- Forget to report the value of client assets under management in Part 3 of the Annual Statement.
- Forget to report ONLY cases closed or opened (including dates) since the date of your last Annual Statement in Part 3.
- Forget to attach an explanation and/or court document for Part 5 of the Annual Statement.
- Forget to sign and date Part 6 of the Annual Statement.
- Forget all approved education providers can be used for pre-license and continuing education.

If you have any questions about this information, please send an e-mail to fiduciary@dca.ca.gov.

Send us your feedback

We hope you find the *Guardian* e-newsletter useful. We welcome your comments and suggestions for future issues. You can contact us by phone at (916) 574-7340 or by email at fiduciary@dca.ca.gov. We will keep copies of the e-newsletter on the website at www.fiduciary.ca.gov.

Please share this e-newsletter with your staff and let them know they can sign up to receive a copy by joining the Bureau's interested party list by going online to <https://www.dca.ca.gov/webapps/fiduciary/subscribe.php>.

