

The Guardian



Message from the Advisory Committee Chair



Marguerite Lorenz,
CTFA, CLPF

Dear Colleagues, Friends and Consumers:

It has been a privilege to serve on the Professional Fiduciaries Bureau Advisory Committee these past six months with my fellow committee members

Barbara de Vries, Aileen Federico, and Donna Estacio. Please join me in thanking our Acting Bureau Chief Gil DeLuna and his hardworking team at the Sacramento Bureau offices for their dedication and flexibility. My term as a member of the Advisory Committee continues through 2015 and I'm enjoying this challenging learning experience!

Our licensees are approximately 600 strong and serve in a variety of fiduciary roles: trustee, executor, conservator, guardian, agent for finance, agent for health, receivership, representative payee, etc. Our consumers need us to manage a variety of issues, for varying lengths of time; including their medical care, investments, public benefits, personal property, real property, socialization, and their quality of life.

The need for trained, focused, ethical fiduciaries has never been greater. The modern family can no longer be automatically expected to serve an elder when the inevitable crisis occurs. Family members live far away and/or have their own busy lives (staying objective with other family members is very difficult). Second marriages create more challenging family arrangements. Medical complications, aging in place, and

market uncertainty, add to the intense life management issues none of us should have to bear alone. Too often, avoidable (and costly) errors are made by well-meaning friends or loved ones who just have no experience in this area of service.

If you have chosen to dedicate yourself to the challenging profession of fiduciary, you have my respect and gratitude. Since state licensing for fiduciaries was made mandatory in 2009, our profession has experienced increased growth and increased public awareness. Our fellow legal, tax, medical, and financial professionals are referring more and more licensed professional fiduciaries to their clients as the senior population grows in California. The number of seniors (age 65 and above) is projected to grow to over 6.12 million by 2020. Others who often need fiduciaries are people with special needs, minor children, veterans, the disabled, those in bankruptcy, etc. All of the Advisory Committee meetings are public, so you can join us in person or on webcast. See www.Fiduciary.ca.gov for details.

Everyone needs a plan for incapacity, resignation, and death and someone to implement that plan with respect, objectivity, and efficiency. Good communication is challenging for everyone, so we welcome your questions and comments.

Please continue to share your input with our Bureau, as we continue to strive for better protection for our vulnerable consumers and for raising the standards of service among our California Licensed Professional Fiduciaries.

Thanks for the opportunity to be of service.

DEPARTMENT OF CONSUMER AFFAIRS

PFB

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Message from the Acting Bureau Chief

On behalf of the Professional Fiduciaries Bureau (PFB), welcome to the premier edition of our first biannual newsletter.

The PFB is responsible for many functions, from community outreach, approving applications and renewals, to the intake and investigation of consumer complaints. Our mission is to protect consumers through licensing and monitoring, and to ensure competent and ethical standards of practice for professional fiduciaries.

My report will focus on any new issues or changes in our program. For example: Effective July 1, 2012, the PFB is required to deny an application for licensure and to suspend the license of any applicant or licensee who has outstanding tax obligations due to the Franchise Tax Board (FTB) or the State Board of Equalization (BOE) and who appears on either the FTB's or BOE's certified lists of top 500 tax delinquencies over \$100,000. (Assembly Bill 1424, Perea, Chapter 455, Statutes of 2011). So far, I am happy to see that none of our licensees made that list.

I want to thank staff and the Advisory Committee for their contribution to the newsletter. I would also like to hear feedback from you on how we are doing or if you would like to see any new issues addressed in our next edition. If you do have comments or suggestions, please send them to fiduciary@dca.ca.gov

Due to the cost of printing, this newsletter will only be published on our Web site. We hope you enjoy the newsletter and find it both informative and useful.

Gil DeLuna

Acting Bureau Chief

Proactive enforcement helps consumers and licensees

The mission of the Professional Fiduciaries Bureau is to protect consumers through licensing and monitoring, and to ensure competent and ethical standards of practice for professional fiduciaries. An important dimension to protecting the public is an enforcement process that not only protects the public, but also is transparent to licensees.

The Bureau would much rather educate and inform in advance than discipline the licensee later. This is the philosophy behind proactive enforcement.

The mandatory continuing education courses help keep everyone up to date, but licensees are not always aware that misconduct outside the office may result in disciplinary action taken against your license. For example, if you have a DUI conviction or a conviction for theft, it may result in license discipline from probation to suspension.

Staff is available to answer any questions you may have regarding enforcement. You can also visit PFB's Web site at fiduciary.dca.ca.gov, and click on the Frequently Asked Questions (FAQs). It's always good practice to learn the rules in advance rather than making a mistake down the road.

PFB's Disciplinary Guidelines will be going through the regulation approval process soon. There will be plenty of time for public input during the scheduled public hearing. When it gets to that point, PFB will publish the information on the Web site.

The goal of enforcement is to protect the public, not to be punitive to the licensee. The goal of proactive enforcement is to give the licensee the tools to live and practice within the law.

How the Bureau handles complaints



The Bureau receives complaints many different ways: through regular mail, the Bureau's Web site online complaint process, e-mails, referral from another agency, in-person, by fax, and sometimes over the phone.

When the PFB receives a complaint, the complaint is processed and then assigned to a representative for investigation. Information regarding a complaint generally is gathered by the representative assigned to the

complaint. The representative will always contact the complainant first to introduce themselves and to gather more information if needed. Subsequent contacts will be made to the licensee in an attempt to resolve the complaint.

Following this investigation, a recommendation is made to either (1) close the case with no violation of the Professional Fiduciaries Act or Regulations; (2) issue a citation and fine when supporting evidence is provided; (3) offer probation

to licensee when appropriate; or (4) refer the case to the Attorney General's Office for review and possible preparation of an accusation against the licensee or a statement of issues relating to the applicant.

If charges are filed against a licensee, a hearing may be held before an independent administrative law judge who submits a proposed decision for consideration by the PFB, or the matter may be settled. The PFB may either accept the proposed decision or decide the matter itself. After the effective date of the PFB's decision, the licensee may obtain judicial review of its decision. On occasion, a court will order a stay of the PFB's decision or return the decision to the PFB for reconsideration. Copies of the accusations, decisions, and settlements regarding any of these disciplinary and/or enforcement actions are available on PFB's Web site or by sending a written request to the Bureau.

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 (anonymously if you prefer) to fiduciary@dca.ca.gov, or call (916) 574-7340.

Senior Gateway, a new online consumer protection tool

The Elder Financial Abuse Interagency Roundtable (E-FAIR) unveiled a new consumer protection tool for California seniors, who have traditionally been prime targets for con artists. The California Department of Insurance (CDI) is hosting a new Web site www.seniors.ca.gov to educate seniors and their advocates and provide helpful information about how to avoid becoming victims of personal or financial abuse.

The Web site, called “Senior Gateway,” is important because seniors, including older veterans, are disproportionately at risk of being preyed upon financially and subjected to neglect and abuse. The Senior Gateway is sponsored by the Elder Financial Abuse Interagency Roundtable (E-FAIR), convened by CDI and includes representatives from many California agencies that share a common purpose of safeguarding the welfare of California’s seniors.

The goal of the Web site is to assemble, in one convenient location, valuable information not only for seniors, but also their families and caregivers. This site will help California seniors find resources and solve problems, and will enable participating agencies to better serve this important segment of our population.

The site offers seniors valuable tips and resources in these areas and more:

- Avoiding and reporting abuse and neglect by in-home caregivers or in facilities; identifying different types of abuse and the warning signs.
- Preventing and reporting financial fraud, abuse and scams targeting seniors.
- Understanding health care, insurance, Medicare and long-term care.

- Locating services and programs to assist older adults.
- Knowing your rights before buying insurance; what seniors need to know about annuities.
- Investing wisely and understanding the ins and outs of reverse mortgages.

Partners in creating the Senior Gateway include the Department of Insurance, Attorney General’s Office Bureau of Medi-Cal Fraud and Elder Abuse, California Commission on Aging, Department of Aging, Department of Consumer Affairs, Department of Corporations, Department of Financial Institutions, Department of Health Care Services, Department of Managed Health Care and the Alameda County District Attorney’s Office, with support from district attorneys in Fresno, Los Angeles, Monterey, Sacramento, and San Mateo counties.

The Senior Gateway Web site includes information about governmental and nonprofit agency resources. Please visit the site at www.seniors.ca.gov.



CALIFORNIA SENIOR GATEWAY

Empowering seniors with information and resources

The Senior Gateway is a one-stop website intended to provide seniors, their families, and caregivers with the information they need to connect to helpful services and resources, to find answers, and to solve problems.

Find information on such topics as:

- Avoiding and reporting abuse and neglect.
- Preventing fraud, financial abuse, and common scams.
- Health care information.
- Your rights.
- Other resources.

Senior Gateway is sponsored by the Elder Financial Abuse Interagency Roundtable (E-FAIR), a working group with representatives from many California State agencies, and is hosted by the California Department of Insurance.

www.seniors.ca.gov

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 common and difficult questions that we can publicize for all to see.

We may not be able to answer all your questions because we cannot give legal advice, but please submit questions concerning applications, licensing, licensing renewals, complaints, enforcement, or any other questions related to the Professional Fiduciaries Bureau to fiduciary@dca.ca.gov with the phrase ASK ANGIE in the subject line.

Your questions will be answered directly to you, and if the question becomes one of the Bureau's frequently asked questions (FAQs), the question and answer will be published in our next newsletter. Below are samples of questions asked:

From Applicants:

Q: How do I find out if the college I attended and obtained my degree from is nationally accredited?

A: You can check to see if your school is nationally accredited at the following link: <http://ope.ed.gov/accreditation/Search.aspx>

Q: If I have another professional license, can I use the continuing education obtained for that license to count for the Bureau's precicensing requirements?

A: Yes, as long as the hours were obtained on or after January 1, 2007, and fall under the criteria of the California Code of Regulations, Section 4444.

Q: How do I find an approved provider to obtain precicensing education?

A: Please see the following link to the Bureau's approved provider list: http://www.fiduciary.ca.gov/forms_pubs/prelicreq.shtml. Any course given by or approved by a provider listed and falling under the criteria of the California Code of Regulations, Section 4444 will be accepted by the Bureau.

From Licensees, concerning 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 per Business & Professions Code sections 6561 and 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 Web site 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 unless the individual holds a valid, unexpired, unsuspended fiduciary license.

Q: If I obtain continuing education out of state, can the courses be used toward my continuing education to renew my Professional Fiduciary license?

A: Yes, if the courses are offered by or given by one of the Bureau's approved providers and the course meets the criteria in California Code of Regulations, Section 4444.

From Licensees, concerning 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, provides for an exception to the California Public Records Act, which states that records of complaints to and investigations conducted by, among others, state agencies are exempt from disclosure.



Legislative Updates

2012 legislation impacting all Department of Consumer Affairs licensing programs

SB 1099 (Wright, Chapter 295) – Changes to Regulatory Timelines

This legislation modified the effective date of regulations. Currently, regulations become effective, as a general rule, 30 days after the Office of Administrative Law (OAL) files the Order of Adoption with the Secretary of State (SOS). Beginning January 1, 2013, a regulation, or an order of repeal, becomes effective on one of four dates: January 1, April 1, July 1, or October 1 of each year. As to which of the four effective dates a regulation will become effective depends on when OAL files the regulation with SOS.

Section 100 regulatory files are not subject to the new quarterly effective dates. However, entities are required, effective January 1, 2013, to post the Section 100 regulations on their Web sites and send the link to OAL, as is the case with all other OAL-approved regulations.

OAL currently is in the process of drafting regulations to implement SB 1099 to clarify the bill's requirements.

AB 1588 (Atkins, Chapter 742) – Waiver of Renewal Requirements for Licensees on Active Duty

Beginning January 1, 2013, every program must waive the renewal requirements for a licensee if the licensee is serving on active duty in the Armed Forces or California National Guard. This new law gives each program broad regulatory authority to implement its provisions.

Renewal requirements waived under this bill include:

- Renewal fees;
- Continuing education; AND,
- Any other requirements as determined by the program.

AB 1904 (Block, Chapter 399) – Expediting the Licensure Process for Spouses of Active Duty Members

Beginning January 1, 2013, each program is required to expedite the licensure process for spouses and domestic partners of those on active duty. This does not mean that a license must be issued, but simply requires the process to be accelerated for these individuals. The applicant must provide evidence that he or she is also currently licensed in another state in the same profession.

AB 439: Exceptions for Negligent Release of Confidential Medical Information

An act to amend Section 56.36 of the Civil Code.

Under present law, a negligent release of confidential medical information or records may be subject to an action for actual damages plus \$1,000 for each violation. However, this industry-sponsored bill permits an affirmative defense if the defendant has complied with all notification requirements, it is a covered entity or business associate, and where both the releasing and receiving entities take reasonable and appropriate steps to stop any further release or disclosure of the information.

AB 1124: Energy Rate Discounts for Seniors and Low-Income Consumers

An act to amend Section 1941.1 of the Civil Code.

The California Alternate Rate for Energy (CARE) program provides a minimum 20 percent energy rate discount to eligible low-income households earning at or below 200 percent of the federal poverty level. Those households are also eligible for the Energy Savings Assistance Program (ESAP), formerly known as Low Income Energy Efficiency program, which provides no-cost weatherization and other services such as attic insulation, energy efficient refrigerators, energy efficient furnaces, weather stripping, caulking, low-flow showerheads, water heater blankets, and door and building envelope repairs that reduce air infiltration. The ESAP is administered by the utilities. More than one-

third of low-income households that are eligible for ESAP live in multifamily buildings but get only minimal energy savings from weather stripping and limited measures suited to individual rental units. The PUC has ruled that most of these are habitability issues and are the responsibility of the landlords and that ratepayers should not subsidize them. This bill provides that the law establishing multifamily habitability requirements shall not be interpreted to prohibit a tenant or owner of rental properties from qualifying for heating and hot water system repair or replacement under a utility energy-savings assistance program.

AB 2149: Prohibits Settlements from Not Reporting Elder Abuse

An act to add Section 15657.8 to the Welfare and Institutions Code.

This bill prohibits a settlement agreement in a civil action alleging elder or dependent adult abuse from containing any provision that prevents any party from reporting to, cooperating with, or otherwise contacting or cooperating with the county adult protective services agency, the local law enforcement agency, any other governmental entity, or the defendant's current employer, provided that the party contacting or cooperating with one of these entities had a good faith belief that the information he or she provided is relevant to the concerns, duties, or obligations of that entity, person, or government agency efficiency program.

Introduced bills to watch in 2013

- AB 381** Estates and trusts: undue influence and elder abuse. (Chau-D)
- AB 1029** Trusts and estates: allocations of receipts. (Maienschein-R)
- AB 1339** Professional fiduciaries: licensing. SPOT BILL (Maienschein-R)
- SB 156** Conservatorships: attorney's fees. SPOT BILL (Beall-D)

DISCIPLINARY ACTIONS AND CITATIONS ISSUED BY THE PROFESSIONAL FIDUCIARIES BUREAU

Licensee/Applicant	License Number	Action Taken	Effective Date
Marion Montgomery Austin	531	2-year Probation	4/7/11
Melodie Scott	545	3-year Probation	5/18/11
Teresa Lagner	182	Revoked	7/6/11
Loretta Hefner	329	Citation and fine	8/8/12
Janet Welborn	640	2-year Probation	8/29/12
Daniel Lanahan	641	2-year Probation	9/18/12
Mary Pynenburg	380	Citation and fine	10/17/12
Akira Bob Nakamura	83	Citation and fine	11/15/12
William Hlavaty	121	Citation and fine	12/7/12
Treneatra Farmer	656	2-year Probation	12/13/12
Robert Schnieders	641	3-year Probation	12/19/12
Donna Bogdanovich	572	Citation and fine	1/9/13
Marsha Keeffer	443	Citation and fine	2/8/13
Richard Albert Cox	137	Accusation	11/19/12
Richard Dier	Unlicensed	Citation and fine	4/9/13
Kenneth Blickenstaff	Applicant	Statement of Issues	3/22/13

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.



Why citations are issued

As of May 17, 2012, The Bureau was granted authority by the Office of Administrative Law to issue Administrative Citations for cause under Section 4600 of the California Code of Regulations.

There are a number of reasons the Bureau may issue a citation to a licensee. Typically, citations are issued for violations of the Professional Fiduciary Act, or its rules or regulations that are administrative in nature and do not require disciplinary action against a license. Examples of such violations include omitting information on a renewal application and/or annual statement, failing to provide records to the Bureau upon request, and unprofessional conduct.

What do you do if you receive a citation?

The first thing to do is read the citation carefully. The Citation Order specifically details the order of abatement for compliance, the administrative fine to be paid, and the due date to comply with both the order of correction and payment of the fine.

To dispute a citation, you must act within 30 days of the date the citation was issued by filing the Notice of Appeal form included with the citation. Contact information to reach an enforcement representative is included with the citation if you have questions about the citation or the appeal process.

What are the consequences if you don't comply with a citation or you don't file a timely appeal?

A citation is certainly not something to ignore. Failure to comply with or appeal the citation within the allotted time may result in the outstanding administrative fine being added to your license renewal fees. You must pay both the outstanding administrative fine and renewal fees (and any applicable delinquent fees) before your license can be renewed.

An important note regarding citations: The Bureau will post citations on its Web site. This action is mandated by Business and Professions Code section 6580(c), which requires the Bureau to provide information regarding the status of every license on the Bureau's Web site. Also, the consumer shall not bear any costs related to a citation served to the licensee (CCR 4604)(c).

If you have any questions about citations, please contact the Bureau by e-mail, fiduciary@dca.ca.gov or call (916) 574-8645.

Expert consultants needed

The Professional Fiduciaries Bureau established its expert consultant program as an impartial and professional way to support the investigation and enforcement functions of the Bureau.

Expert consultants assist the Bureau by providing expert reviews and opinions on Bureau cases.

To be an expert consultant for the Bureau, you must:

1. Possess a current California Professional Fiduciary license in good standing with no prior discipline and no accusation pending.
2. Have no history of confirmed complaints within the last three years.

3. Have an active fiduciary practice.

The Advisory Committee for the Professional Fiduciaries Bureau has set the reimbursement rate for fiduciaries conducting case reviews and report writing for providing expert testimony at an Administrative Hearing.

Due to the relatively small number of licensees, it is the policy of the Bureau to

use each expert no more than three times a year with prior approval of the Bureau Chief.

If you have any questions and are interested in applying, please contact Dave Thornton at (916) 574-7816 or e-mail dave.thornton@dca.ca.gov.



Advisory Committee Meeting

April 3, 2013 – Van Nuys, CA

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 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.

On the Annual Statement, don't:

- Forget to report your home address in Part 1.
- Forget to report the value of client assets under management in Part 3.
- Forget to report ONLY cases closed or opened (include dates) since the statement in Part 3.
- Forget to attach any explanation and/or court document for Part 5.
- Forget to sign and date Part 6.
- 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* Newsletter useful. We welcome your comments and suggestions for future issues. You can contact us by phone (916) 574-7340 or by e-mail at fiduciary@dca.ca.gov. We will keep copies of the newsletter on the Bureau's Web site at www.fiduciary.ca.gov.

Please share this newsletter with your staff and let them know they can sign up to receive a copy by calling us or sending us an e-mail.

To join the Bureau's interested party list, go online to <https://www.dca.ca.gov/webapps/fiduciary/subscribe.php>