

# The Guardian



## Message from the Advisory Committee Chair

### Dear Colleagues, Friends, and Consumers:

At the February 4, 2015, Advisory Committee Meeting, I had the honor of being elected Chair. Congratulations to my colleague, Aileen Federizo, for being elected Vice Chair. This is the beginning of my second term as a member of the Professional Fiduciaries Bureau (Bureau) Advisory Committee.

We welcome Jennifer Chacon, a Senior Health Program Planner for the Department of Public Health of the city and county of San Francisco. Ms. Chacon is also a member of Hispanas Organized for Political Equality and the Central American Resource Center. Thank you for your energy and participation.

I am grateful to be a committee member because I am very interested in the education of Professional Fiduciaries. It is my hope that the standards of the profession continue to rise so consumers will have the highest confidence in the Professional Fiduciaries that are licensed by the Bureau.

I believe that the preliminary education, now required, to qualify for Professional Fiduciary licensing is only the beginning. During my term, I will continue to suggest that every Licensed Professional Fiduciary strive for more learning to bring his/her best to every case on which they serve. Please look for suggested guidelines in future editions of The Guardian.

Many Professional Fiduciaries decide to specialize in a particular area, such as trusts, conservatorships, or estate management. It is my belief that a licensed Professional Fiduciary should be familiar with all four areas of practice, no matter what area of practice they ultimately decide to specialize. The areas are as follows: introduction to the field and best practices, services dealing with the person, services dealing with finances, and public benefits. Our committee has been actively addressing these proposals, and I will continue working on educational concerns in my current term.

In keeping with my belief in ongoing continuing education for the profession, I have been running a mentoring group for the past several years. I have a core group of eight to ten participants who meet once a month at my home. It has been very helpful for new practitioners to gain information from a seasoned professional and share ideas and resources with each other. This may even be of value to other experienced licensees to discuss difficult cases and share suggestions on how to deal with the often challenging issues raised.

If you can't find a mentoring group to join, I suggest starting one on your own with a few colleagues. Remember, no man is an island.

I am looking forward to a productive term and to having more qualified licensees join the profession.

**Barbara de Vries**  
CLPE, LCSW

DEPARTMENT OF CONSUMER AFFAIRS



PROFESSIONAL FIDUCIARIES BUREAU

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# Message from the Bureau Chief

Let's get down to business. Do you own a car or a house? Do you have pets or bank accounts? These are things we all manage on a daily basis. What happens if you get sick? What if you are in the hospital? Do you have a plan for the things in your life that you are responsible for if you are unable to manage them? Who will watch over your home, your pets, drive your car and pay your bills if you are unable to? Do you have a family member or friend designated who can handle these items in your absence? Do you have someone who knows where all your important files and documents are located?

The ultimate question is: Do you have someone in your life you trust with all of your personal and financial information? Do you have someone you trust to make your healthcare decisions if you are unable to? Some individuals reading this article have a family member or a friend who is capable to assist if they are unable to care for themselves. If you are fortunate to have such a loved one, talk to him or her, so what you

want is known before a crisis occurs. Be flexible; he or she may not want the responsibility.

There are many individuals who do not have family or friends to turn to and they have not drafted a plan. The Professional Fiduciaries Bureau (Bureau) is here to inform consumers that if you do not have someone who is capable and trustworthy to help you when you are in need, a Professional Fiduciary is someone you can turn to for assistance.

Maybe you are not familiar with any Professional Fiduciaries in your city or county? We encourage you to visit our website and search for a Professional Fiduciary in your area. The Bureau's website allows you to search by county or city at: [http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lcev2.startup?p\\_qte\\_code=PF&p\\_qte\\_pgm\\_code=3108](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lcev2.startup?p_qte_code=PF&p_qte_pgm_code=3108).

If you are not comfortable on the Internet, please call us at (916) 574-7340. We can help you find a Professional Fiduciary in your area. Our mission is to protect consumers of California. Take action; get your estate plan up-to-date, and choose who you want to serve you when the need arises. If you don't make a plan, you could end up without the help you need, or worse, in a court proceeding to assign the help you need (conservatorship) without your choosing.

## The Need for Professional Fiduciaries is Growing

As our senior population in California continues to rise, the need for services of licensed Professional Fiduciaries will increase as well. The Bureau is making strides in educating the citizens of California. You have the right to choose and create a plan that will serve you. Don't put off making these important decisions and getting them in writing.

The Bureau has been licensing Professional Fiduciaries since July 1, 2008. We have made many strides as a government agency in a few short years. Allow us to share with you some of our more important accomplishments since our inception:

- Inception of Professional Fiduciaries Bureau (2007)
- Creation of in-house enforcement/investigative program (2010)
- Creation of a biannual newsletter (2012)
- Cite and fine authority (2012)
- Explanatory brochures for both consumers and licensees (2007 to present)
- Utilization of subject matter experts in high-profile investigations (2012 to present)
- Creation of a Strategic Plan (2013)
- Participation in Senior Scam Stopper events (2013 to present)

- Active sub-committees (2013 to present)
- Permanent part-time Bureau Chief (2013)
- Full complement of advisory members (2014)
- Permanent full-time Enforcement Analyst (2014)
- Attendance at the Professional Fiduciaries Association conference (2014 & 2015)
- Full-time Bureau Chief (July 2015)

The Bureau continues to grow and develop and we are proud of our accomplishments. The foundation we have built continues to strengthen the industry overall.

We have more work to do and we are energized by the overwhelmingly positive effect we believe Professional Fiduciaries will have for future generations of California consumers.

Finally, please join us in thanking outgoing Chair Marguerite Lorenz and Vice Chair Barbara de Vries. The Bureau is grateful to both of you for your service to the committee and dedication to this profession. Congratulations to our new 2015 Chair Barbara de Vries and our new 2015 Vice Chair Aileen Federizo! We look forward to another productive year with the two of you in office. In addition, please help us in

welcoming our newest member to the committee, Jennifer Chacon. Ms. Chacon was appointed by the Senate Rules Committee. She is a Senior Health Programmer for the Department of Public Health for the city and county of San Francisco. The Bureau looks forward to working with you.

*“Challenges are what make life interesting and overcoming them is what makes life meaningful!”*  
– Joshua Marine

**Warm regards,**  
**Julia Ansel, Bureau Chief**

## VISION AND MISSION STATEMENTS

OUR VISION

To protect, maintain, and enhance the quality of life for consumers by promoting the highest Professional Fiduciary standards.

OUR MISSION

To protect consumers through licensing, education, and enforcement by ensuring the competency and ethical standards of Professional Fiduciaries.



## Are You a Fiduciary With a Future?

**By Marguerite Lorenz**

Certified Trust and Financial Advisor

This year, at least two longtime Professional Fiduciaries have passed away, and each time questions arise; what will happen to their clients? Their staff? Their families? I have heard of a few different approaches to this, and rather than present answers, I want to share some ideas and just get the conversation started. If you have more ideas on this, or any other topic for this newsletter, please e-mail our Bureau Chief at [Julia.Ansel@dca.ca.gov](mailto:Julia.Ansel@dca.ca.gov). I believe all of us in this profession want to feel that we are doing things right, and for the right reasons. Your wisdom matters!

### WHAT WILL HAPPEN TO THEIR CLIENTS?

A longtime professional conservator once told me that the court will pick her replacement after she is dead. This left me wondering, what about vacations or illness? Although it would be unusual for a successor conservator to be named, the suggestion has been made that the attorney representing the conservator (person or estate, or both) should be made aware of where records are kept, who can get to those records in an emergency, and if there are

any special issues or arrangements for this conservatee. I have heard that some professional conservators “pair up” and share information about each of their cases to facilitate vacations, so that someone can answer the phone, decide if it really is an emergency, and reach out to the conservator for an answer, if it really can’t wait. So it isn’t really replacing yourself, but could be seen as having skilled temporary staff so you can rest. Trading off is a beautiful thing!

If you have been named as a successor trustee (and successor in the other vital estate planning documents), and there is either someone named after you or there is a provision that gives instruction as to how your replacement will be selected, this is good for you and for the client. This succession planning is normal in context of an estate plan, and if you have a younger partner, you may be making the effort to ask that your “in-house” successor be named after you. This offers the client continuity, your partner the opportunity to be of service, and you peace of mind if you work until the inevitable happens. Think, “What if this fiduciary needs a fiduciary?”

### WHAT WILL HAPPEN TO YOU?

In terms of trusts, wills, durable powers of attorney, and advance health care directives, are yours up to date? So many times I have asked this question of my professional audience members (fiduciaries, attorneys, CPAs, financial advisors, etc.) and typically, less than a third raise their hands in affirmation they are ready for whatever life brings. It is unreasonable to ask that all of this work be done by our clients if we ourselves have not faced up to the realities of our lives and practices. Once you have invested the time with your estate planning attorney, consider speaking with a business law attorney about what will happen to your practice if you are unable to continue. How would it be structured if someone bought your practice from you? Because there has been so much discussion about the potential for an alternative corporate structure for fiduciary practices, it may be a good time to learn more about the business of being a fiduciary from a lawyer who practices in the business and professions area of law.

I've heard from quite a number of experienced fiduciaries that they are hesitant about having someone to train. They don't want employees, complications, or a lack of control. I feel that if you are able to team up, adding a partner rather than an employee, not only is your quality of life improved, you can take on more clients and still be effective for additional cases. There are fewer than 700 active Professional Fiduciary licensees in California and more than 5 million potential clients! Having talked to many newly Licensed Professional Fiduciaries, it appears that there are many interested, educated people who want to learn from you and are willing to do what it takes to be successful.

### **SUCCESSION PLANNING MEANS PLANNING FOR SUCCESS!**

If you have a thriving practice that relies only on you, consider that it will take time, energy, and effort to develop a solid succession plan, but it is worth it because you and your experience are desperately needed. Your successor needs to learn from you (rather than alone, the hard way), and the whole industry is improved with the belief that many of us will be here tomorrow—growing, learning, and serving.

## **NEW!**

The Professional Fiduciaries Bureau is now accepting Individual Taxpayer Identification Numbers (ITIN) for an individual applicant who does **NOT** have a Social Security number (SSN).

Senate Bill 1159 (Lara, Chapter 752, Statutes of 2014) was signed by the Governor and became effective on January 1, 2015. The new law requires licensing programs under the Department of Consumer Affairs to begin accepting ITINs no later than January 1, 2016.

## **Band Together to 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 the industry's credibility.

The Professional Fiduciary Bureau's staff is not able to take action against those providing services without being licensed unless it is brought to the Bureau's attention. The Bureau is requesting your help in combatting unlicensed activity.

To report unlicensed activity, send an e-mail to [fiduciary@dca.ca.gov](mailto:fiduciary@dca.ca.gov) or call (916) 574-7340.



## ASK ANGIE

Angie is the Professional Fiduciaries Bureau (Bureau) expert when it comes to answering questions related to Bureau functions. We always like to hear from you, both common and unusual questions we can publicize. This forum will be used specifically for that purpose. We may not be able to answer all of your questions because we are excluded from giving legal advice, but please submit questions regarding applications, licensing, licensing renewals, complaints, enforcement, or any other questions related to the Bureau to [fiduciary@dca.ca.gov](mailto:fiduciary@dca.ca.gov) with “Ask Angie” in the subject line. Your questions will be answered directly, and if a question becomes one of the Bureau’s frequently asked questions, it and the answer will be published in our next newsletter. Below are some of the questions I am asked regularly:

### From Applicants:

**Q:** Do I have to be a United States citizen?

**A:** Yes, or legally admitted to the United States as stated in **Business and Professions Code section 6533(b)**.

**Q:** Do I have to complete the prelicensing education requirement prior to submitting my application?

**A:** No. However, according to **California Code of Regulations section 4426(a)**, if the application is not complete within 12 months from the date of notification of deficiency, the application shall be deemed abandoned and the application fee forfeited.

**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 are: “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.” All five years of experience must have occurred prior to July 1, 2012.

**Q:** Can I e-mail 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. The \$400 application fee is the actual cost for the Bureau to process the application.

### From Licensees Regarding Renewals:

**Q:** What do I do if I do not receive a license renewal application?

**A:** Your license renewal application will be mailed approximately 60 days prior to the expiration of your license. If you do not receive the license renewal application, please contact Bureau staff.

Please remember this is the form you return your payment with; the Annual Statement that is due 60 days prior to your expiration is a separate form and will not be mailed to you. It is each licensee's responsibility to mail this to the Bureau on time.

- Q:** How long does it take the Bureau to process my renewal once it is received?
- A:** It may take four to six weeks to process a renewal from the date of receipt, so be sure to send it as soon as possible.
- Q:** What happens if I am short continuing education hours for my annual renewal?
- A:** Your license **will not** be renewed until all requirements stated in **Business and Professions Code section 6541** are completed.
- Q:** How long do I need to keep proof/documentation of my completed continuing education?
- A:** According to **California Code of Regulations section 4452(b)**, "A licensee shall maintain documentation of completion of continuing education courses for a period of at least three years from the date of renewal."
- Q:** What happens if the Bureau selects me for a continuing education audit?
- A:** According to **California Code of Regulations section 4452(c)**, "Each licensee shall provide any information requested by the Bureau within ten (10) business days of the request, to determine compliance with the continuing education requirements for license renewal."
- 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/DD/YEAR.

## From Licensee 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. **California Government Code section 6254(f)**, an exception to the California Public Records Act, exempts records of complaints to and investigations conducted by, among others, State agencies 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, he or she 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/incomplete record keeping.
  - Charging the client when speaking to the Bureau in response to a complaint.



## Annual Statement vs. Annual Renewal Form

The Professional Fiduciaries Bureau (Bureau) has received several questions regarding the Annual Statement and the Annual Renewal Form. The following explains the difference and purpose for both documents.

### ANNUAL STATEMENT

The Annual Statement is a five-page reporting form that is required to be completed and submitted **at least 60 days prior** to the expiration date of the license as part of the renewal process pursuant to California Code of Regulations, sections **4540** and **4542**. It is a form that is only available to be downloaded from the Bureau's website (**Annual Statement Form**). **It is not mailed to the licensee.** The licensee is required to complete the form in its entirety each year; however, the following are areas that have been highlighted to help provide more clarification:

1. Part 1 of the Annual Statement  
Address of Public Record: you may use a P. O. Box or other address.
2. Part 3 of the Annual Statement  
Value of Client Assets Under Management: you should report the grand total of all assets under your supervision as a licensed Professional Fiduciary; a breakdown is not required.

### 3. Part 3 of the Annual Statement Current Client Information:

- Report all court-appointed and non-court cases.
- **Only report any new or closed client cases since the date of your last report. The date of your last report will be the date you signed your last Annual Statement.**
- Do not report duplicate client case information as it may delay the renewal process.
- **Include the case or client type, case or client name, Case number, date appointed, date closed, and court location (if applicable).**
- All dates should be reported in MO/DY/YR format.

### 4. Part 4, section 2 of the Annual Statement Bankruptcy: submit a copy of your bankruptcy documents along with a copy of the court discharge (pursuant to **Business and Professions Codes sections 6534(a)(7) and 6534(c)**).

### 5. Part 5 of the Annual Statement Convictions: submit a detailed letter of explanation and "certified" court documents of disposition (pursuant to **Business and**



**Professions Code section 6561).**

6. Part 5, sections 1-4 of the Annual Statement Breach of Fiduciary Duty, Removal, Resignation, and Settlement: submit a detailed letter of explanation and any related court documents or contract (pursuant to **Business and Professions Code section 6561**).
7. Part 6 of the Annual Statement Affidavit: be sure to sign and date.

**LICENSE RENEWAL APPLICATION (CONTINUING EDUCATION-ANNUAL STATEMENT) AFFIDAVIT**

The License Renewal Application form is a part of the renewal notice. **It is received by mail only.** It is mailed to the licensee's address of record approximately 60 days prior to the license expiration. It is a slip that is detached from the renewal notice. The following are areas that have been highlighted to help provide more clarification:

1. The licensee shall complete 15 hours of continuing education (CE) prior to their license expiration date.
2. A portion of the 15 hours shall include two hours of fiduciary ethics (pursuant to **California Code of Regulations sections 4442(a)(1) and (b)(2)**).
3. The check for the renewal fee shall be included with the renewal slip.
4. Be sure to sign and date the License Renewal Application, affidavit section, located on the right side of the slip.
5. If you do not receive a renewal notice that contains the License Renewal Application (detachable slip) in the mail, contact the Bureau for assistance.
6. License renewal processing time is 4 to 6 weeks from the date the Bureau receives all of your completed documents.



**HOW TO ACCESS PROFESSIONAL FIDUCIARIES BUREAU WEBCAST**

The Professional Fiduciaries Bureau (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 the public to attend the meetings if they would like to speak on agenda topics, or request that a topic be put on a future meeting agenda.

A list of past and future Bureau meetings can be found at the following link: [http://www.fiduciary.ca.gov/about\\_us/meetings.shtml](http://www.fiduciary.ca.gov/about_us/meetings.shtml)

To access the webcast while the meeting is in progress, use the following link: <https://thedcapage.wordpress.com/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 "Bureau Meetings" page and may be viewed at the following link: [http://www.fiduciary.ca.gov/about\\_us/meetings.shtml](http://www.fiduciary.ca.gov/about_us/meetings.shtml). It may take up to two weeks for the video to be posted.

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



## A Senior's Home

**By Ronald L. Greenwald, Broker Associate**

Bureau of Real Estate No. 01264025  
Pacific Sotheby's International Realty

As Professional Fiduciaries know, planning ahead is an important tool to protecting our elders and their quality of life. The following article is for both licensees and consumers to take a closer look at what might be the most valuable asset any of us will own in our lifetime.

What is or should be the goal of your estate plan?  
What should be the goal of our work and efforts when dealing with a family?

My answer is, "Working to ensure the highest quality of life for our elder; a life free of fear and intimidation; a life at peace filled with joyful memories of one's past, filled with hope for the family's future."

As a Realtor, what do I see over and over again that is a detriment to the goals I noted above?

**1.** The home of deferred maintenance. I can walk into a senior's home and tell you immediately: What is the state of the senior's mental and physical capacity?

It is no mystery that as a loved one (or your client) ages, their capacity to cope with both the bones of an aging home, and the upkeep that is required, diminishes significantly over time. Whether you are the fiduciary and/or the daughter or son of a beloved senior, it is imperative that periodic checks are made on the home's condition. The family should make it a point to have a professional home inspector come to the home, perhaps on an annual basis. The preventative medicine of a thorough inspection (including the detection of moisture in the walls) may cost around \$500.

Like any situation, by catching issues early on, you will save thousands of dollars in home repairs. More importantly, you keep your loved one living in a safe, and sane, environment. For sure, an annual termite inspection must be part of the care package for the home. We continually shock family members when we tell them the home is termite infested and that the cost to the estate to fix the issue is going to run up to \$30,000 or more. Is the homeowner a collector of treasures or a hoarder? Sons and daughters are often surprised to hear their beloved Mom or Dad is living in what, at best, can be called a "state of squalor." Using the services of a qualified home inspector may make it easier to talk with the elder about his or her living environment.

2. The adult child living with his or her parent. A sibling has been living with Mom/Dad, and now the parent needs to move into a senior living community or has passed away. When there are multiple heirs or siblings set to inherit the proceeds from the sale of real estate, and one of the heirs has lived in the property for any period of time, the scenario can easily deteriorate, and may destroy any hope of favorable future family gatherings.

Do it right—if a son or daughter is going to live with his or her parent(s), set up a rental agreement at the very beginning of the process. Set up the “what if” scenarios through the estate plan. If the son or daughter is truly acting in the capacity of a caregiver, set up a compensation plan. Make it a business transaction, which includes good documentation (a great topic to discuss with your estate-planning attorney). This will facilitate clarity when it comes time to sell the real estate. Hopefully, the result will be family harmony and respect for each sibling’s role in the care and love for a parent.

3. Using the home as a source of cash. As it is no surprise that the home is usually the senior’s largest source of capital, the homeowner too often views the home as an unending source of cash without proper consultation with the right professionals to design the appropriate financial strategy. The homeowner may be bombarded with reverse-mortgage commercials, bank ads, and other marketing techniques such as home equity loans. Certainly, these financial instruments have a place and time, but they are often purchased in isolation by an elder without appropriate professional advice. I suggest that anyone considering a reverse mortgage get help determining their budget and cash needs first, in detail, with their CPA, financial advisor, or attorney. This way, you will have all the facts, and you can consider a charitable gift annuity, or other financial remedies, and thoroughly compare all the possibilities to learn what is best for you in the long run.

Bottom line—we must all work together to circle our loved ones with the best and brightest team of legal, financial, and care professionals.

## CONTINUING EDUCATION AUDIT

The Professional Fiduciaries Bureau (Bureau) will conduct an annual continuing education audit in Summer of 2015. Bureau staff would like to share some of what we learned from the last audit.

First, we would like to thank you as we found the majority of our licensees complete many more than the 15 hours required. Following are a few of the findings that are easily corrected before returning your documents to the Bureau:

1) It is important when submitting verification of your hours that you make sure all forms are signed and dated, if applicable, by the appropriate person. This may be the licensee or the education provider.

2) Make sure to submit at least two hours of completion of “fiduciary ethics.” During the audit, staff found that most licensees had completed this requirement but had not submitted proof in the documentation provided to the Bureau. California Code of Regulations section 4442(b)(2) states, “At least 2 hours of the continuing education credits each year shall be in ethics for fiduciaries.”

3) Finally, the letter will state a timeframe in which the course hours must have been taken. Be sure to check your records and only submit courses that were taken during the specified timeframe.

If you receive one of the Bureau’s audit letters and have any questions, please contact Bureau staff at the number listed on your letter.



## DISCIPLINARY ACTIONS AND CITATIONS ISSUED BY THE PROFESSIONAL FIDUCIARIES BUREAU

Licensee/Applicant	License Number	Action Taken	Effective Date
Alison Wood Stonecipher	176	Citation Status: Order Satisfied	07/10/2014
Steven Baer	792	2-year Probation	09/10/2014
Loretta Stewart Cabrera	222	Accusation	12/05/2014
Christine Backhouse	263	Revoked	12/31/2014
Gary Lee Arps	315	Accusation	03/23/2015
Karin Anne Smith	821	Citation	03/25/2015
Loretta Stewart Cabrera	222	Revoked	03/30/2015

### 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.

# CONTINUING EDUCATION REQUIREMENTS

All California Licensed Professional Fiduciaries are required to complete 15 hours of approved continuing education (CE) courses each year (**Business and Professions Code section 6538(b)**). The requirements for approved education courses can be found in **California Code of Regulations section 4444**, and below is a list of providers. Please remember two of your 15 CE hours must be in "Ethics for Fiduciaries."

Each licensee is required to report annually on their license renewal application and sign under penalty of perjury that the hours have been completed, and maintain documentation of completion for at least three years from the date of renewal (**California Code of Regulations section 4452**).

## APPROVED EDUCATION PROVIDERS

A local court of the State of California

California State Bar or American Bar Association

California State Board of Accountancy

California State Board of Behavioral Sciences

Certified Financial Planner Board of Standards, Inc.

California Department of Insurance

California Board of Registered Nursing

California State Board of Psychology

California Department of Mental Health

California Department of Social Services

California Department of Developmental Disabilities

Professional Fiduciary Association of California

California State Association of Public Administrators, Public Guardians, and Public Conservators

National Guardianship Association and its state affiliates

National Association of Professional Geriatric Care Managers

American Society of Aging

Gerontological Society of America

National Association of Social Workers

National College of Probate Judges

National Elder Law Foundation

American Bankers Association

Cannon Financial Institution

To earn pre-licensing education credit immediately, the Bureau has identified the following possible opportunities:

1. The CSU Fullerton Fiduciary Management Program online courses website: [www.csufextension.org](http://www.csufextension.org).
2. The National Guardianship Association online CE courses website: [www.guardianship.org/](http://www.guardianship.org/).
3. The Professional Fiduciary Association of California's Annual Education Conference, May 2008 website: [www.pfac-pro.org/pages/meetings.htm](http://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](http://www.extension.ucr.edu/welcome/profid/profid_cpfb.html),  
[http://www.alz.org/norcal/in\\_my\\_community\\_professionals.asp](http://www.alz.org/norcal/in_my_community_professionals.asp), or  
<http://www.guardianshipcert.org/>.

For more information, please visit the Bureau's website at [www.fiduciary.ca.gov](http://www.fiduciary.ca.gov) or contact the Bureau by e-mail at [fiduciary@dca.ca.gov](mailto:fiduciary@dca.ca.gov).



## Legislative Updates

### \*Legislation impacting all Department of Consumer Affairs licensing programs

#### AB 139, as amended, Gatto. Nonprobate transfers: revocable transfer upon death deeds.

- (1) Existing law provides that a person may pass real property to a beneficiary at death by various methods including by will, intestate succession, trust, and titling the property in joint tenancy, among others.

This bill would, until January 1, 2021, create the revocable transfer on death deed (revocable TOD deed), as defined, which would transfer real property on the death of its owner without a probate proceeding. The bill would require that a person have testamentary capacity to make or revoke the deed and would require that the deed be in a statutory form provided for this purpose. The revocable TOD deed must be signed, dated, acknowledged, and recorded, as specified, to be effective. The bill would provide, among other things, that the deed, during the owner's life, does not affect his or her ownership rights and, specifically, is part of the owner's estate for the purpose of Medi-Cal eligibility and reimbursement. The

bill would void a revocable TOD deed if, at the time of the owner's death, the property is titled in joint tenancy or as community property with right of survivorship. The bill would establish priorities for creditor claims against the owner and the beneficiary of the deed in connection with the property transferred and limits on the liability of the beneficiary. The bill would establish a process for contesting the transfer of real property by a revocable TOD deed. The bill would also make conforming and technical changes. The bill would require the California Law Revision Commission to study and make recommendations regarding the revocable TOD deed to the Legislature by January 1, 2020.

- (2) Existing law provides that a person who feloniously and intentionally kills a decedent is not entitled to specified property, interests, or benefits, including any gifts of personal property made in view of impending death.

This bill would specify that a person who feloniously and intentionally kills a decedent is not entitled generally to property and interests that are transferred outside of probate, including real property transferred by a revocable TOD deed.

- (3) Existing law establishes simplified procedures for dealing with a decedent's estate valued under \$150,000, including authorizing the successor of the decedent to collect and

distribute property due the decedent without letters of administration or awaiting probate of a will. Existing law provides that a beneficiary who receives real or personal property under these circumstances, as specified, may be liable to the estate if probate proceedings are subsequently commenced. Existing law provides, in this context, that a spouse has liability for the debts of a deceased spouse if the decedent's property is in the control of the surviving spouse. Existing law permits a court judgment to enforce liability in these instances only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

This bill would delete the reference to court judgment and provide instead that the personal representative of the estate is permitted to enforce liability only to the extent necessary to protect the heirs, devisees, and creditors of the decedent.

#### **AB 193, as amended, Maienschein. Mental health: conservatorship hearings.**

Existing law provides a procedure for the appointment of a conservator for a person who is determined to be gravely disabled as a result of a mental disorder or an impairment by chronic alcoholism and requires an officer, including a county public guardian or a county mental health program, to conduct a conservatorship investigation and render a written report to the court of his or her investigation. Under existing law, a professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment for a gravely disabled person may recommend a conservatorship for that person, and the agency is required to disclose any records or information that may facilitate an investigation. Existing law requires the officer providing conservatorship investigation, when he or she concurs with the recommendation of the professional person or facility, to petition the superior court in the patient's county of residence for a conservatorship.

This bill would authorize the court, after a hearing attended by the proposed conservatee or the proposed conservatee's counsel, or both, to recommend a conservatorship to the officer providing conservatorship investigation if the *court, in consultation with a physician providing comprehensive evaluation or intensive treatment*, in a conservatorship proceeding determines, based on the evidence presented to the court, including medical evidence, that a person for whom a conservatorship has been established may be gravely disabled as a result of a mental disorder or impairment by chronic alcoholism and is unwilling to accept, or is incapable of accepting, treatment voluntarily. The bill would also require the court to appoint counsel to a proposed conservatee if he or she cannot afford counsel. The bill would require the officer providing conservatorship investigation to petition the superior court in the patient's county of residence to establish conservatorship if he or she concurs with the recommendation of the court, and to file a copy of his or her report with the court within 30 days of the court's recommendation. The bill would require an existing probate conservator, if conservatorship is recommended by the court, to disclose any records or information that may facilitate the investigation. The bill would also make conforming changes.

By expanding the duties of the county officer providing conservatorship investigation, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

**AB 314, as amended, Waldron. Limited conservatorship: developmentally disabled persons.**

*Existing law establishes a procedure for creating a limited conservatorship for a person with developmental disabilities. Under existing law, that procedure requires, among other things, that a court investigator conduct interviews of a proposed conservatee and others, review allegations in the petition to create the conservatorship, determine whether the proposed conservatee is incapable of completing an affidavit of voter registration, and report the results of the investigation to the court.*

*This bill would provide that these requirements do not apply to a procedure to establish a limited conservatorship for a person with developmental disabilities when the proposed conservator is a parent of the proposed conservatee.*

*Existing law requires that within 30 days after the filing of a petition for limited conservatorship of a person with developmental disabilities, the proposed limited conservatee, with his or her consent, be assessed at a regional center. Existing law requires the regional center to submit a written report of its findings and recommendations resulting from that assessment to the court.*

*This bill would instead authorize, rather than require, the proposed limited conservatee, with his or her consent, to be assessed at a regional center for those purposes. The bill would require the regional center, with the consent of the proposed limited conservatee, to submit a written report containing findings and recommendations to the court without an assessment of the proposed conservatee if the proposed conservatee has been a client of the regional center for a period of time sufficient for the center to provide those findings and recommendations without the need for an additional assessment, and if the proposed conservator is a parent of the proposed conservatee.*

**AB 436, as amended, Jones. Guardian or conservator: powers and duties.**

Existing law provides that, upon a court's findings that a conservatee has dementia, as defined, and a functional impairment, a conservator may place the conservatee in a prescribed secured residential or nursing facility and authorize the administration of prescribed medications appropriate for the care and treatment of dementia. A petition for authority to act under these provisions requires, among other things, that the conservatee be represented by an attorney, as provided.

This bill would require the court, upon granting or denying that authority to a conservator, to either discharge the attorney or order continuation of the representation, as specified.

**AB 468, as introduced, Jones. Wards and conservatees: mental health.**

Existing law generally prescribes the extent of the powers and duties of guardians and conservators and limits those powers by prohibiting the involuntary commitment of a ward or conservatee to a mental health treatment facility, except as specified. Existing law requires the Director of State Hospitals to adopt and issue regulations defining "mental health treatment facility" for those purposes.

This bill would delete the requirement that the director adopt and issue regulations defining "mental health treatment facility" for those purposes.

**AB 1085, as amended, Gatto. Personal representatives: conservators and attorneys-in-fact.**

(1) Existing law requires a conservator of a person to be responsible for the care, custody, control, and education of a conservatee, except where the court, in its discretion, limits the powers and duties of the conservator. Existing



law also provides that the conservator's control of the conservatee shall not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by a court order.

This bill would provide that a court order may be issued that specifically grants the conservator the power to limit or enforce the conservatee's right to receive visitors, telephone calls, and personal mail. *The bill would state findings and declarations of the Legislature in this regard.*

(2) Existing law additionally authorizes an adult with capacity to execute a power of attorney for health care.

*This bill would require a conservator to provide notice of a conservatee's death by mailing a copy of the notice to specified persons, as provided. The bill would require an attorney-in-fact, if directed by the principal in a power of attorney for health care, upon the death of the principal, to inform those individuals whose names are provided by the principal for that purpose.*

### **SB 196, as amended, Hancock. Elder abuse: protective orders.**

Existing law authorizes a court to issue a protective order to restrain any person for the purpose of preventing the abuse of an elder or dependent adult. Under existing law, certain persons are authorized to file a petition for these protective orders on behalf of the elder or dependent adult, including a conservator or trustee, an attorney-in-fact, a person appointed as a guardian ad litem, or other person legally authorized to seek the order.

This bill would, commencing July 1, 2016, additionally authorize a county adult protective services agency to file a petition for a protective order on behalf of an elder or dependent *who, among other things, has suffered abuse and has an impaired ability to appreciate and understand the circumstances that place him or her at risk of harm, or if the elder or dependent adult has provided written authorization for the agency to act on his or her behalf.*

The bill would require the adult protective services to provide a copy of the petition, a notice of the hearing, and any supportive declarations to the elder or dependent adult at least 5 days before the hearing, and to make reasonable efforts to assist the elder or dependent adult to attend the hearing and provide testimony to the court. *The bill would also recast and clarify the definition of "abuse of an elder or a dependent adult."*

### **SB 269, as amended, Vidak. Conservator appointments: compensation.**

Existing law permits a conservator of the estate to petition the probate court for an order fixing and allowing compensation to the conservator for services rendered and to the attorney for services rendered. Existing law also permits a person who unsuccessfully petitioned for the appointment of a conservator to petition the probate court for an order fixing and allowing compensation to the person and the person's attorney for services rendered in connection with the appointment of a conservator.

This bill would permit a person who successfully petitioned for the appointment of a conservator, *as specified*, to petition the probate court for an order fixing and allowing compensation to the person and the person's attorney for services rendered in connection with the appointment of a conservator.

### **SB 589, as amended, Block. Voting: voter registration: individuals with disabilities and conservatees.**

(1) *Existing law requires that a person be registered as a voter by affidavit of registration and provides that a properly executed registration is deemed effective if it is received on or before the 15th day before an election to be held in the registrant's precinct. Existing law requires the affidavit of registration to show certain information of the affiant and requires the affiant to certify the content of the affidavit as to its truth and correctness, under penalty of perjury, with the signature of the affiant's name and the date of signing, except that if the affiant is unable to write, a mark or cross must be used to sign the affidavit.*

*This bill would authorize an individual with a disability who is otherwise qualified to vote to complete an affidavit of registration with reasonable accommodations as needed. The bill would also authorize an individual with a disability who is under a conservatorship to be registered to vote if he or she has not been disqualified from voting. The bill would authorize an affiant who is an individual with a disability to complete the affidavit of registration with reasonable accommodations as needed. The bill would find and declare that by explicitly adding the concept of reasonable accommodation to state laws on voter qualification, the bill brings the state into compliance with federal standards.*

*(2) Existing law deems a person mentally incompetent, and therefore disqualified from voting if, during certain proceedings including conservatorship proceedings, the court finds that the person is incapable of completing an affidavit of voter registration. Existing law, in certain conservatorship proceedings heard by a jury, requires the jury to unanimously find that the person is incapable of completing an affidavit of registration before the person is disqualified from voting. If an order establishing a conservatorship is made and in connection with the order it is found that the person is incapable of completing an affidavit of voter registration, existing law requires the court to forward the order and determination to the county elections official of the person's county of residence. Existing law, during the yearly or biennial review of certain conservatorships, requires the court investigator to review the person's capability of completing an affidavit of voter registration and, if the conservatee's capability of completing the affidavit of voter registration changes, requires the court investigator to inform the court and the court to hold a hearing regarding that capability.*

*This bill would instead require that a person be presumed competent to vote, regardless of his or her conservatorship status, and would require that a person be deemed mentally incompetent, and therefore disqualified from voting if, during certain proceedings including conservatorship proceedings,*

*the court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process. In certain conservatorship proceedings heard by a jury, the bill would require the jury to instead unanimously find by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process before the person is disqualified from voting. The bill would also require an order establishing a conservatorship to instead find by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process before the court is required to forward the order and determination to the county elections official of the person's county of residence. The bill, during the yearly or biennial review of certain conservatorships, would instead require the court investigator to review the person's capability of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and if the conservatee's capability of communicating that desire has changed, would require the court investigator to inform the court and the court to hold a hearing regarding that capability.*

*(3) Existing law regulates the terms and conditions of conservatorships and requires a court clerk, if a conservatorship petition is filed by a person other than the proposed conservatee, to issue a citation to the proposed conservatee that includes, among other things, a statement that the proposed conservatee may be disqualified from voting if he or she is incapable of completing an affidavit of voter registration, and a statement that the proposed conservatee will not be disqualified from voting if he or she would need to complete the affidavit by signing it with a mark, cross, or signature stamp, or with the assistance of another person. Existing law requires a court hearing on a petition for the appointment of a conservator and requires a court investigator, before the court hearing and as part of periodic review after the appointment of the conservator to, among other things, determine if the proposed conservatee is incapable of completing an affidavit of voter registration, as specified, and may be disqualified from voting. Existing law provides that a conservatee is not disqualified from voting on the basis that he or she would need to complete the affidavit by signing it with a mark, cross, or signature stamp, or with the assistance of another person.*

*This bill would require the court clerk's citation to the proposed conservatee, as described above, to instead include a statement that the proposed conservatee may be disqualified from voting if he or she is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and a statement that the proposed conservatee will not be disqualified from voting if he or she would also need to complete the affidavit with reasonable accommodations. The bill would require the court investigator, before the court hearing and as part of periodic reviews after the appointment of a conservator to, among other things, instead determine whether the proposed conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and may be disqualified from voting. The bill would also provide that a conservatee is not disqualified from voting on the basis that he or she would need to complete the affidavit with reasonable accommodations. By requiring local officials to perform additional duties, the bill would impose a state-mandated local program.*

*(4) This bill would also make technical, nonsubstantive changes to these provisions.*

*(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

## **SB 785, as amended, Morrell. Estates and trusts: creditor's claim.**

Existing law permits property to be titled in a trust, and provides that, upon the death of a settlor of a trust, the property of the deceased settlor that was subject to the power of revocation at the time of the settlor's death is subject to the claims of creditors of the deceased settlor's estate. Existing law defines specified terms for the purposes of these provisions.

This bill would define *the* terms "probate estate" and "trust estate" for the purposes of these provisions and clarify that certain uses of the term "estate" in existing law refer to a probate estate.



## Important Bureau Updates and How to Receive Them

The Professional Fiduciaries Bureau (Bureau) is now on Facebook and Twitter!

Please follow the Bureau by clicking on the following icons or going to the specified link:



or <https://www.facebook.com/pages/California-Professional-Fiduciaries-Bureau/281715915342772>



or <https://twitter.com/FiduciaryBureau>

Additionally, if you would like to receive notifications from the Bureau about upcoming events, new regulations, and meetings, please sign-up to receive e-mail notifications from the Bureau at the following link: <https://www.dca.ca.gov/webapps/fiduciary/subscribe.php>.

## Send us your feedback

We hope you find *The Guardian E-Newsletter* useful. The Bureau welcomes your comments and suggestions for future issues. You can contact us by phone at (916) 574-7340 or by e-mail at [fiduciary@dca.ca.gov](mailto:fiduciary@dca.ca.gov). We will keep copies of the E-Newsletter on the website at [http://www.fiduciary.ca.gov/forms\\_pubs/newsletter.shtml](http://www.fiduciary.ca.gov/forms_pubs/newsletter.shtml).

Please share this 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>.

## 2015 Advisory Committee Meetings

May 20 DCA Headquarters  
1625 N. Market Blvd  
1st Floor Hearing Room  
Sacramento, CA 95834

August 19 TBD

November 18 DCA Headquarters  
1625 N. Market Blvd  
1st Floor Hearing Room  
Sacramento, CA 95834

## Advisory Committee Members

Barbara de Vries, Chair, Licensee  
Aileen Federizo, Vice Chair, Licensee  
Hang Le To, Public Member  
Jenny Chacon, Public Member  
Kathleen Thomson, Probate Court Investigator  
Marguerite Lorenz, Licensee

## Bureau Staff

Julia Ansel, Bureau Chief  
Angela Bigelow, Program Analyst  
Dave Thornton, Part-time Investigator  
Jenny Turner, Licensing Analyst  
Sara Lopez, Enforcement Analyst

## Our office will be closed on the following holidays for the remainder of 2015:

Monday, September 7 – Labor Day  
Wednesday, November 11 – Veteran's Day  
Thursday, November 26 – Thanksgiving Day  
Friday, November 27 – Holiday  
Friday, December 25 – Christmas