

Safe Seniors

Newsletter for the Prevention of Elder Abuse in San Diego County

Stop Getting Phone Calls You Don't Want

Sign up for the national "do not call" registry. It's easy and it's free! Call (888) 382-1222 from the phone number you want to register. You can register online at www.donotcall.gov. You'll need Internet access and a working email address. The "do not call" system will send a response to that address with a link that must be clicked on within 72 hours to complete the registration.

Registration doesn't last forever. It expires in five years. No notice will be sent to you, so keep your own records. You can confirm that a number is on the registry and the registration date through the toll-free number or Web site. If your number changes or is disconnected, you'll need to re-register. You can also take the



phone number off the "do not call" registry anytime via the toll-free number or Web site.

Some callers aren't covered. Nonprofit groups, charities, political organizations, and survey companies don't have to use the national "do not call" list. But when charities use professional fundraisers to call, they must honor your request not to call again.

Some companies can still call you. Even if your number is on the

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Bill Would Require Abuse in Facilities to Be Reported to DA

State legislation by Assemblywoman Lois Wolk (D-Davis) to help local district attorneys investigate and prosecute elder abuse cases that occur in long-term care facilities was unanimously approved by the Assembly Public Safety Committee.

"Every year hundreds of cases of physical abuse in California nursing homes and assisted living centers, including potential felonies such as assault, rape, and sexual molestation, are reported to state licensing agencies, but not to local law enforcement," said Wolk. "This bill builds on the ombudsman reporting system now in place and makes sure with a simple cross-report that the most serious cases are brought to the immediate attention of local law enforcement, before evidence is lost or destroyed, or

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Who Should Make Decisions for You When You Can't?

*By Lois Kelly, Esq., Managing Attorney
Elder Law & Advocacy*

A person who is close to the point in their lives where they may need a caregiver should plan ahead for someone they trust to make decisions about healthcare and/or finances when they can no longer do so for themselves. The elder needs to execute specific legal documents while he or she has still the mental capacity to do so.

The elder can execute a springing power of attorney, which ensures that the elder will remain in charge of his/her own finances until two doctors declare the elder cannot do so. Once incapacity sets in, the agent chosen by the elder

can take over money management. If the elder recovers capacity, two doctors can attest to that change in mental capacity and the power of attorney will no longer be valid.

A power of attorney which 'springs' into effect only when an elder loses capacity is preferred over an immediate power of attorney. The springing power of attorney acts as a safeguard against unscrupulous caregivers who may use the immediate power of attorney to drain an elder's financial resources by liquidating assets or selling the elder's home to themselves at a bargain price.

Everyone over 18 may execute an Advanced Health Care Directive. This document allows a person to list his or her directions for the agent to follow regarding health care decisions. The agent has a duty to follow the elder's wishes as outlined in the Advanced Health Care Directive. If the

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The Elder Abuse Reporting Line:
1-800-510-2020

Elder Abuse Prosecutions

District Attorney's Office

Curtis Lawson: Pled guilty to willful cruelty to elder/dependent adult. During an altercation with his mother's caregiver, the defendant picked up the family dog (which weighed 50 pounds) and dropped it on his 86-year-old mother. The dog fell into the victim's lap and scratched her. He was sentenced to 365 days local custody and three years formal probation.

Ronald St. Clair: Pled guilty to theft from an elder. Victim was the defendant's 76-year-old mother. After returning from cashing her \$403 check, the victim laid down her purse and went into another room. The defendant stuffed his mother's wallet down his pants and pushed her down causing her to fall backward against a wall. The defendant then ran out of the house and was later found in possession of the victim's money. He was

sentenced to 365 days local custody and three years probation.

Eliseo Rojas: Pled guilty to theft from an elder. Defendant used to clean 71-year-old victim's home. The victim noticed that between \$20,000 and \$30,000 worth of jewelry was missing and it was discovered that the defendant had pawned the jewelry. Some of victim's jewelry was returned to her. Defendant was sentenced to 180 days local custody and four years probation.

Kaleena Naranjo: Pled guilty to caretaker theft from an elder and grand theft of personal property. The defendant was the caretaker for the 87-year-old victim. The defendant stole a blank check, filled it out, signed the victim's name and made it payable for \$3,000. The defendant was sentenced to 180 days local custody, three years formal probation and ordered not to work with elders.

Beware of the Scam Involving Jury Duty

The caller claims to be a jury coordinator, saying that you failed to report for jury duty, and that a warrant has been issued for your arrest. If you protest that you never received a summons, the scammer asks for your Social Security number and birth date for "verification purposes."

Victims are caught off guard and are understandably concerned about the prospect of a warrant being issued for their arrest for failing to report to jury duty. So victims are less likely to be skeptical about this call and be less careful about protecting their confidential information. This is a recipe for identity theft!

How to avoid being a victim:

- Court workers would only contact you by phone after you have mailed back your summons informa-

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agent does not know what the elder would want because the situation is not covered by the Advanced Health Care Directive, the agent must make a decision based on the elder's best interest. It is important that the elder discuss his or her wishes with the appointed agent to be sure they are both in agreement regarding treatment.

Once an elder loses mental capacity, he/she cannot execute the above documents. A caregiver's ability to take care of the elder's health care or financial needs can be difficult. If the caregiver is a spouse, the spouse can go to Probate Court and file a "3100 Petition" to obtain the court's authorization to put all of the community property of the marriage into the healthy spouse's name so that the caregiver spouse can manage, control or dispose of property in order to take care of the ailing spouse.

Adult children caregivers do not have this option. The children of the elder will have to seek a conservatorship in court in order to manage the personal and real property of the elder. It is important to speak with an attorney to be sure the conservatorship is necessary. If the elder has only Social Security and Supplemental Security Income (SSI), the adult child can become the representative payee and pay the elder's bills. If the elder has other sources of income and owns real property, and has not executed a power of attorney for finances, there is no other choice but a conservatorship.

A conservatorship is where the court appoints a person as a conservator to make the medical and/or financial decisions for an incapacitated person. This is a lengthy process and once granted will continue until the elder dies, unless the conservator seeks a termination of the conservatorship. A conservatorship requires a capacity declaration to be signed by a doctor stating the elder no longer has the capacity to make his or her own medical decisions. The costs associated with obtaining a conservatorship are significant, but if the elder has little income, the court fees may be able to be waived.

Once the conservatorship is granted, there are still documents to file each year. Ninety days after the conservatorship is granted, an Inventory and Appraisal has to be filed. An accounting of finances received and expended must be done yearly and a court investigator will re-examine the conservatorship each year until the conservatee dies. These reports and investigations have been put in place by the judicial system to safeguard the conservatee and protect the elder from financial elder abuse.

Any San Diego resident over the age of 60 may obtain a springing power of attorney and an Advanced Health Care Directive by calling Elder Law & Advocacy at (858) 565-1392.

Elder Law & Advocacy, a nonprofit corporation, provides no-cost routine legal services to seniors and relative caregivers of seniors. Call (858) 565-1392 for an appointment with an attorney.

California Legislation Action on Elder Abuse

Here are some of the bills being considered by the California Legislature this session that are related to elder abuse and elder protection. See www.sandiego.networkofcare.org/aging for more details and click the "Legislate" button.

Three bills relate to creating a registry and/or Web site to identify persons who are convicted of elder abuse, similar to the Meagan's Law Web site for sex offenders. **AB 2051 (Anderson)** would require the state to compile details on convictions for crimes against an elder or dependent adult in an elder abuse offender registry accessible to the public. **AB 2172 (Cook)** would require the Department of Justice to develop an Internet Web site that would make available to the public certain information concerning people who have been convicted of at least one crime against an elder or dependent adult. The bill initially failed passage in the Assembly Public Safety committee, but reconsideration has been granted. **SB 1416 (Hollingsworth)** also seeks to create a publicly available registry of known elder abusers.

AB 1765 (Blakeslee): Would require a mandated reporter of elder abuse to report any suspicion of abuse in a long-term care facility to both the Ombudsman office and to a local law



enforcement agency. Currently, the mandated reporter can contact either office. Also, if the abuse occurred outside of a facility, the mandated reporter must contact both Adult Protective Services and a local law enforcement agency.

AB 1900 (Nava): Authorizes county boards of supervisors to increase fees for copies of a death record for the purpose of supporting the public guardian's office and/or a special county healthy seniors fund. Would impose an additional financial penalty for the conviction of various crimes committed against an elder or dependent adult, with those funds going into the seniors fund.

AB 2038 (Lieber): Would include

any crime against a victim with a disability within the provisions for sentencing a hate crime. Authorizes a peace officer to make a warrantless arrest in an assault or battery involving a victim with a substantial disability. Requires police training in investigation and prosecution of crimes against elders and persons with disabilities.

AB 2100 (Wolk): Requires the local Long-Term Care Ombudsman to immediately report cases of known or suspected physical, sexual or financial abuse in a long-term care facility to the local district attorney's office.

AB 2105 (DeSaulnier): Expands the category of mandated reporters of suspected financial abuse to include title officers.

SB 1140 (Steinberg): Adds the words "lacks capacity or by undue influence" to the definition of financial abuse.

SB 1259 (Margett): Relates to penalties for crimes against elders and dependent adults. Includes theft, embezzlement, forgery, fraud or identity theft. Applies a penalty for knowingly engaging in the exploitation of or exerting criminal undue influence upon an elder or dependent adult in order to acquire possession or control of an interest in funds or property of the elder or dependent adult.

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registry, companies can call if: you purchased something from them or made a payment within the previous 18 months; you asked about a product or service or submitted an application in the past three months; or you have a "personal relationship" as a friend, relative or acquaintance. But you always have the right to tell them not to call again.

Be careful what you sign. Companies can also call with your written permission, so look at contracts, order forms, contest entry forms, and other things you sign carefully to make sure you're not agreeing to be called without realizing it. You can withdraw consent anytime by saying, "don't call me again."

It may take a while to notice fewer calls.

Telemarketers check the national "do not call" registry every 31 days, so it may take that long before your number

is removed from their calling lists.

If you don't sign up for the national "do not call" registry, you still have rights. You can tell companies not to call you again on a case-by-case basis. Keep a record of their names and the dates of your requests.

Enforce your rights. If telemarketers ignore the fact that your number is on the registry or your request not to call again, report them through the "do not call" toll-free number or Web site. You can also sue telemarketers that violate your federal "do not call" rights in small claims court for \$500 (the court can triple that amount if the company knowingly broke the law). Note their names and the dates of the calls.

If you need advice about an Internet or telemarketing solicitation, or you want to report a possible scam, call the Federal Trade Commission at (877) 382-4357 or see www.ftc.gov.



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witnesses forget key details, making it impossible to prosecute the criminals committing these horrible crimes.”

Under existing law, local ombudsmen are assigned to monitor facilities that provide care for elderly and dependent adults. Ombudsmen are required to report known or suspected cases of abuse to one of several state agencies in charge of licensing the facility. However, they are not required to report elder abuse to the local district attorney or law enforcement agency, those best situated to investigate and, when warranted, prosecute the case. Every year, thousands of abuse cases are reported to state agencies, but only a handful ever reach the attention of local prosecutors.

“AB 2100 will ensure that our office is made immediately aware if known or suspected abuse is occurring at a long-term care facility in our jurisdiction,” said Jeff Reising, the Yolo County District Attorney, who wrote in

support of the bill. “Once alerted, we can then take the appropriate action to see that the abuse is properly investigated, evidence secured, witness statements are obtained and, if a case for prosecution is merited, charges brought. But we can't act on cases we don't know about. AB 2100 will inform us of a potentially serious case of abuse, when the facts are fresh.”

“The California Senior Legislature (CSL) strongly supports Assemblywoman Wolk's bill,” said Shirley Krohn, a senior assemblymember with CSL, the bill's sponsor. “It sends a message that the frail elderly who must live in a long-term care facility can do so knowing they are safe from the many forms of abuse that plague them today, and that they are respected and treated with dignity.”

AB 2100 is also supported by the California District Attorney's Association, California Advocates for Nursing Home Reform, and the American Federation of State, County and Municipal Employees.

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tion, and it is rare a court worker would call at all. Hang up on anyone who claims to work for the court, unless you have received a recent mailing from the court. Take the caller's name and contact the court to verify the person works there.

- Court workers would never ask for your Social Security number or other personal ID information.

- Never give out your Social Security number, bank or credit card numbers over the phone if you did not initiate the call, whether it is to someone trying to sell you something or to someone who claims to be from a bank or government office.

- If callers insist on verifying information with you, have them read the data to you, rather than giving them information.

- Examine your credit card and bank account statements each month, looking for any unauthorized charges. Challenge items you did not approve.