



PARK WATCH

™ LEGAL DEVELOPMENTS NEWSLETTER

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“Tea and Sympathy:” Unsuspecting Seniors Need to Beware of Con Artist Caregivers

California Law Prevents the Unscrupulous from Weaseling in to Take Over an Elder’s Estate and Affairs

By DLO Attorneys

■ THE TRAGEDY WE CAN HELP AVOID

From a Daytona Beach Newspaper: caregiver of two seniors found dead in a South Daytona trailer park is charged with 34 counts of fraud and criminal use of credit cards that belonged to the deceased . . . Kimberly Dawn Smith, 45, being held in the Orange County jail. . . Smith was the self-appointed caregiver of both seniors, police said, but she has not been charged in their deaths,



Elder predators exist. To coerce a bequest from an elderly person, some may ingratiate themselves with undue influence, gain trust and take over later. Management may be in a position to observe and “blow a whistle” on such abuse. Too, California law provides basic safeguards to help squelch efforts to exploit your seniors.

. . .two seniors found dead in a South Daytona trailer park . . . caregiver. . . charged with 34 counts of fraud and criminal use of credit cards. . .

With the population aging, seniors and other dependent persons who live in mobilehome parks are increasingly looking for live-in caregivers or helpers. Unfortunately, that means there’s also an increased danger of scam artists taking over the lives – and mobilehomes – of the unsuspecting elderly, disabled and dependent residents. Fortunately, the

law provides extra protection for those in this vulnerable situation: California prohibits bequests to caregivers. Elderly, disabled and dependent residents who are aware of the law will be better armed to avoid predatory caregivers.

In short, California prohibits bequests to caregivers. Elderly and dependent residents who are aware of the law will be better armed to avoid predatory caregivers who scheme to endear themselves in hopes of being left money in the will.

■ THE SITUATION

America is aging. It has been estimated that there are approximately 78 million baby boomers. Boomers are turning 65 at the rate of about 10,000 a day, and they are retiring at a rate of 8,000 a day. By the middle of this century, the number of senior citizens will have more than doubled. The over-65 group is expected to increase from about 40 million a few years ago to roughly 84 million by 2050. And the oldest of that group,

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In this Issue:

- 55+ Parks: Stop Abusive, Avaricious Caregivers

Coming Events:

★ **Save the Dates:**
 2015 WMA Convention & Expo
 Peppermill Resort Spa Casino in Reno,
 October 12-15

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CAREGIVER

those over 85, will more than triple in number, from about 6 million to 19 million by mid-century.¹

Of course it's not just the elderly who need in-home care. Many disabled or unwell individuals also need help with everyday tasks. They may need assistance with meal preparation, laundry, dressing, bathing, running errands or buying groceries. Sometimes, there is medical care involved, such as catheter or ostomy care. Or maybe the medical care is limited to reminding them to take their pills. Typically, light household chores may be involved. Sometimes, the helper provides companionship and not much else. This represents a variety of skills not easy to identify in each applicant.

But a live-in assistant may be the sole difference between institutionalization and independence. We cherish freedom of movement and choice within our familiar surroundings and will, understandably, do almost anything to avoid a confined residence. *Without* live-in help, our seniors are relegated to few choices, from a live-in or assisted living situation to a group home – an option that many lower-income seniors and disabled cannot afford, or which they find distasteful. Making a good choice? Not easy.

■ RECENT DEVELOPMENTS:

Because of the direction of the demographics and the often prohibitively high cost of assisted living facilities, mobilehome parks are likely to see an increase in the number of residents who require or desire in-home helpers. Unfortunately, many of these residents who will be needing care in the near future may have done little to plan for their care. It has been estimated that, over the next 30 years, some tens of millions of Americans will need to find caregivers.²

Inside Baseball: At the same time, the increase in need has led, in recent years, to lobbying and legislation benefitting caregivers. Skilled and semi-skilled home healthcare workers in particular have been waging a campaign for better pay and benefits. In 2013, the President issued an order extending overtime pay to domestic workers. However, that order was overturned by a federal judge. That judicial action, in turn, opened the door for the Governor to cancel an understanding he reached and instituted, giving overtime and other compensation to certain in-home caregivers. And that in turn led the home healthcare workers to relaunch a campaign for better pay and benefits. They recently attacked again with a mock trial on the capital steps in Sacramento. Like fast-food workers, the representatives of the workers are demanding wage increases to levels of \$15/hour or more. The demanded legislation does not contain any reciprocal or additional relief of the suffering of the victims, nor for the remuneration of the increased wages by those likely to be charged: the fixed-income sick, elderly and frail.



CAREGIVER PARTNER

■ HOW DOES IT GO WRONG?

Many caregivers are neither trained, skilled nor unionized. Often, it's a very casual relationship, seldom with the benefit of a written contract. And sometimes the malevolent who works their way into the senior or disabled resident's household is not at all who they pretend to be. Particularly for seniors, the process of finding a part-time or full-time live-in caregiver is fraught with peril. For the person needing care, it can be uncomfortable and distressing. A stranger in the home? It's hard to know whom to trust, and even harder to know who would make an agreeable helper or companion.

Home care agencies? There are home care agencies and referral services; these need to be checked for licensing, complaints, pending legal actions, the better business bureau. Are the workers accountable, bonded?

For those who choose to find an unskilled or unlicensed caregiver on their own, without the help and guidance of an agency or referral service, it's a difficult and risky task. Ideally, background checks should be performed, and references obtained. Realistically, these precautions are seldom taken. While caregivers can be hired through in-home care agencies that do background checks, many mobilehome park residents need a cheaper alternative and find their caregivers on their own. That's where they can get into trouble. Craigslist may be only the beginning of the problem.

Consider the following scenario, which you may have already seen play out, in some version or another, in your own park. In your park, the nice, elderly widow in the well-kept double-wide. Over the past year, you notice she's been slowing down, the landscaping is more ragged, and she needs assistance with basics like grocery shopping. You, her friends or neighbors may help out now and then, and occasionally you see a family member drop by. But then, a new occupant arrives: a shady looking guy who pulls down his cap and looks away each time he sees you. He claims to be caring for the resident. You see less and less of the resident. You naturally suspect her welfare is in jeopardy. You suspect coercion and undue influence, possibly a raiding of her assets and bank accounts. A new pick-up truck appears in the driveway.

¹ Kaye, H.S., Harrington, C., LaPlante, M.P. (2010). Long-term care: Who gets it, who provides it, who pays, and how much? Health Affairs, 29 (1), 11-21.

² *Ibid.*

■ CALIFORNIA LAW?

Revised in 2011, the so-called “care custodian statutes” are specifically intended to protect the elderly, dependent, and disabled from avaricious caregivers.³

Who qualifies as a “care custodian”? A caregiver, or “care custodian,” means any “protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults.”⁴ It applies to a gamut of undesirable characters with ulterior motives, from Predatory Pete to the seemingly innocent and kindly young waif who “volunteers” to help out a senior citizen with their weekly groceries and other errands, in exchange for staying in the spare room.

When a suitably duped resident does in fact make a bequest to their caregiver during the time in which the caregiver was providing assistance – or even within 90 days of that time – the law will presume that there has been fraud or undue influence.⁵

At that point, it is up to the would-be beneficiary to prove that undue influence did not in fact occur. Otherwise, that part of the will or other testamentary document that leaves the money to the caregiver will be deemed invalid.

■ CALLING FOR INTERVENTION

Management has no duty to protect a resident from an unscrupulous caregiver. However, family members may help avert real harm and loss. Adult protective services, welfare checks, and utilizing all local government resources is also a means by which to avoid abuse to elder, frail residents. Checking in with the family to verify the presence of the caregiver may be an election to exercise in the right case.

When making the call, be ready to give the elder's name, address, contact information, and details about why you are concerned. You may be asked a series of questions. For example:

- Are there any known medical problems (including confusion or memory loss)?
- What kinds of family or social supports are there?
- Have you seen or heard incidents of yelling, hitting, or other abusive behavior?

We do not recommend becoming personally involved. It is possible that in such situations intervention may prove to be dangerous. Be the second person in, right after the personnel responding to a 911 call.

List of Local County Adult Protective Agencies

Los Angeles County: Community & Senior Services 3333 Wilshire Blvd. Suite 400 Los Angeles, CA 90010 24 Hour Abuse Hotline: (877) 477-3646	Orange County: Social Services Agency P.O. Box 22006 Santa Ana, CA 92702-2006 24 Elder Abuse: (800) 451-5155	Riverside County: Department of Public Social Services 4060 County Circle Drive Riverside, CA 92501 (800) 491-7123	San Diego County: Aging & Independence Services P.O. Box 23217 San Diego, CA 92193-3217 24 Hour Abuse Hotline: (800) 339-4661	San Berdo County: Administration Office 686 E. Mill Street, 2nd Floor, San Bernardino, CA 92414-0640 24 Hour Abuse Hotline: (877) 565-2020
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■ CONCLUSION

The California legislative specifically intended to protect the elderly and other vulnerable persons. Homeowners who are aware of these laws will be better armed to avoid being manipulated, and that will help keep devious characters out of your park.

Disclaimer Regarding Materials: PARKWATCH™ is prepared to provide information of general interest. This information is not legal advice or a substitute for specific advice from your counsel. Some information may be dated or obsolete. Legal advice appropriate to you is dependent on considering particular facts and circumstances in consultation with your attorney. Our firm does not consult by newsletter. Written retainer agreement and consultation is required to establish representation. The information is not to be construed as legal advice. You may not rely on it.



Please Feel Free to Contact Us with Any Questions!

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³ Prob. Code §21360-21392.

⁴ Welf. & Inst. Code §15610.17(y) (2008)

⁵ Prob. Code §21380(a)(3).