

# PARK WATCH™ LEGAL DEVELOPMENTS NEWSLETTER

DOWDALL LAW OFFICES, A.P.C., Attorneys at Law

SOUTHERN CALIFORNIA: 284 NORTH GLASSELL STREET, FIRST FLOOR, ORANGE 92866 PH 714 | 532 | 2222, FAX 532 | 3238, 532 | 5381  
NORTHERN CALIFORNIA: 770 "L" STREET, SUITE 950, SACRAMENTO 95814 PH 916 | 449 | 3959, FAX 449 | 3969

## Protecting Seniors from Elder Abuse: Move-Out Orders – How We Can Help

By Terry R. Dowdall, Esq.

### ■ UPSHOT:

For every reported case of elder abuse, there are more than 24 undetected cases never reported (according to an East Coast study). Almost all victims are in a private residence behind closed doors. And the numbers are growing. The number of 65+ people increases by 10,000 daily; 8,000 more retire each day.

Elder abusers. Who are they? Most frequently, family members. The residents' grown kids: chronically unemployed, unemployable, parolees, deeply indebted, thieves, grifters. All need money, a bed, an address. These are prime opportunities for abusing, abandoning, neglecting or stealing from your residents: behind closed doors and undetected.

According to the American Psychological Association, "Don't let your fear of meddling in someone else's business stop you from reporting your suspicions. You could be saving someone's life. The reporting agencies in each state are different, but every state has a service designated to receive and investigate allegations of elder abuse and neglect. Even if these agencies determine that there is only potential for abuse, they will make referrals for counseling."

**You can help. You do not need to evict. You can help your abused resident oust the abusive caregiver immediately.**

**You can report, help with "move-out" orders, "stay-away" orders, and other relief for your abused residents in your parks.**



*Fired caregiver-squatter arrested and removed from 90 year old widow's home, after local and national publicity coordinated by Dowdall Law Offices, A.P.C.*

*Creative Solutions for Results: Practical Legal Representation of Housing Providers: Advice, Answers and Your Solutions (not a host of generalized excuses why you cannot do "that").*



**NEW!**  
Follow us on Facebook:



### Contents

- The MRL's Absence of Protection for Seniors Can be Supplemented with Management Help from the Elder Abuse and Dependent Adult Civil Protection Act, Domestic Violence Prevention Act . . . . . 2
- The Scope of the Mushrooming Epidemic: For Every elder abuse case, there are 24 unreported cases. . . . . 2
- Observations of Concerns Amid a Mushrooming Epidemic: A Desire to Help, The Reluctant Good Samaritan . . . . . 3
- Warning Signs and Indicators of Caregiver Elder Abuse. Financial Elder Abuse . . . . . 3
- Signs of Elder Abuse: Who are The Abusers? . . . . . 4
- Immediate Actions NOW if Suspected Elder Abuse is Active and Ongoing . . . . . 5
- Your Resident May Seek a Move-Out Order to Immediately Oust the Abuser . . . . . 6
- Move-Out Order under EADACPA . . . . . 6
- Your Resident May Seek a DVPA Move-Out Order to Immediately Oust the Caregiver . . . . . 8
- Kick-Out Order under the DVPA . . . . . 8
- Your Resident May Seek a Civil Harassment Restraining Order and Injunction . . . . . 9
- What is Elder Abuse?? . . . . . 12

## The MRL's Absence of Protection for Seniors Can be Supplemented with Management Help (Elder Abuse and Dependent Adult Civil Protection Act (EADACPA), Domestic Violence Prevention Act (DVPA))

The common wisdom is that evicting an abusive co-occupant, even a criminal, was fraught with difficulty and uncertainty. But co-occupants, such as abusive caregivers or other family members, *can be ousted* from the residence by court order and *without notice*. As the Mobilehome Residency Law (Civil Code §§798, et seq.) (“MRL”) is a prime enabler of elder abuse by its “hands off” policy to welcoming every predatory opportunist who cajoles his or her way into a senior’s coach, management is handcuffed from interceding with prevention, remedies, or even effective detection. But if we choose, we can do plenty to help the resident once we know.

Evictions take forever. *Management must wait always 60 days to even file suit to evict a community menace. That 60 day period is used to intimidate, terrify and coerce others not to testify. Horrified, residents take shelter and self-imprison.* The Senate Judiciary Committee feels this is fine, so due process of the abuser is honored. So, the park owner’s hands are tied for 60 days after notice of termination for outrageous abuse, even dangerous felonies. But an at-risk elderly frail resident, from a family member or other caregiver, *can go to court now* and obtain a “move-out” order without notice. *We, as management, can educate and help.*

Move-Out Order Issue NOW- Without Notice. In summary, management can assist the abused or harassed senior and help get to court and get the abusive caregiver out **NOW**. Many residents cannot afford a lawyer, and sometimes, it is *the family* that is responsible for the abuse. Management can, if it decides to, help with the preprinted court forms—you do not need an attorney—and attend court with the resident, be a witness, and also report to Adult Protective Services and others family. There are no filing fees or service costs.

As the numbers of elder victims climbs, education as to management options will become a best management practice, a sign of good quality management, and a reflection of care and concern for frail and vulnerable residents. Actively enhancing the lifestyle and atmosphere has always been a hallmark of the manufactured housing industry.

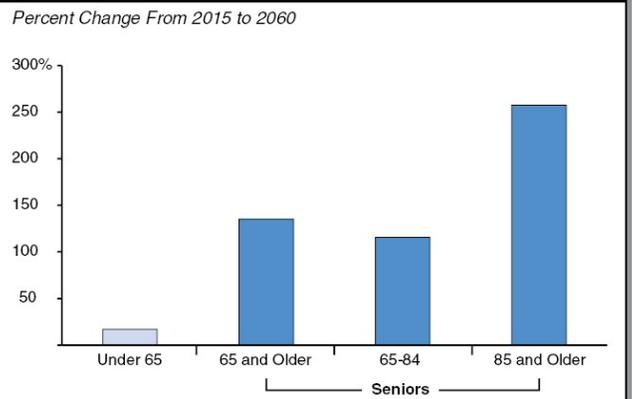
We can help end pain and misery to elder abuse victims of caregivers, family and deceitful predators. There are ways to bring immediate relief to desperate, life-threatening situations which usually are never detected, and which the MRL does not allow a park owner to initially prevent.

## The Scope of the Mushrooming Epidemic: For Every Elder Abuse Case, There are 24 Unreported Cases.

The New York State Elder Abuse Prevalence Study found that for every case known to programs and agencies, 24 were unreported. Another reports that 1 in 10 older adults report emotional, physical, or sexual mistreatment, or neglect. (Acierno, 2010).

Often, physical, emotional or psychological abuse accompanies financial abuse. Neglect and abandonment, for example, when the kids get a power of attorney and ability to withdraw money.

**Growth in Senior Population to Far Outpace Growth of Under 65 Population**



California Legislative Analyst, November 2016

The 65+ population projected to increase over twofold, with largest growth among 85 and older population. In 2015, seniors represented 13% of California’s population, but by 2060, seniors are projected to represent 24% of California’s population. Over this period, 65+ is projected to increase from 5.2 million to 12.2 million, while the under 65 population is projected to grow only 17%. The largest growth of seniors during this time period is projected to occur among the population of seniors aged 85+. The number of seniors aged 85+ is projected to

increase over 3x from about 700,000 in 2015 to over 2.5 million in 2060.<sup>1</sup>

Population of Seniors With Disabilities Projected to Grow Faster Than Overall Senior Population. While California's overall senior population is projected to grow by 135 percent from 2015 to 2060, the population of seniors with disabilities is projected to grow by 160 percent (see Figure 6). This is the net result of the factors discussed below. (We note that our results do not reflect a causal relationship between these characteristics and disability. We observe in current data that these relationships, such as the relationship between education and disability, exist and assume they continue going forward. We are not speculating as to why these relationships exist currently.)

Share of Seniors Aged 85 and Older Is Projected to Increase, and Older Seniors Have Higher Rates of Disability. As the share of California's 85+ population increases, there will be an impact on the number of disabled seniors. Currently, rates of disability among 85+ seniors are higher than seniors from 65 to 84. If this difference continues as the share of seniors aged 85 and older increases, there will be faster growth in the population of seniors with disabilities than the overall senior population.

This means a higher incidence of caregiving for seniors in California's future. The ratio of working-aged adults to seniors is projected to decrease roughly 50% from 2015 to 2060. This may mean there are fewer caregivers available for seniors with disabilities.

For about 40 years now, from 55+ to "all-age" parks, owners and management bring me problems that they observe or their residents bring to them. This is because of genuine concern, not out of sense of legal duty or obligation. Because they care.

## ■ Observations of Concerns Amid a Mushrooming Epidemic: A Desire to Help, The Reluctant Good Samaritan

The victims cannot typically afford to litigate, are often terrified of their family or caregivers or both; as are the neighbors. Many such caregivers are just a ruse with problems of their own. They may bring their problems, criminal records, substance addictions, their kids, boyfriends, girlfriends and compatriots.

- *Terrified Victims:* Residents afraid of their family members, children or spouse, so do nothing;
- *No "Good Samaritan" Legal Standing:* Landlords may wish, but legally cannot, assert rights for their homeowners and residents subject to abusive care-giving. There is no "Good Samaritan" standing to assert rights on behalf of victimized tenants or their household members;
- *Horrified By-Standers:* elderly often caught up in the criminal behavior of children who come home to live with grandpa. For example, the adult children welding bicycle parts in the living room, rebuilding engines in the back, or selling drugs out the side window, while grandpa is locked in the bedroom, unaware.
- *Violence seems to be increasing.* Shootings, Stabbings, Stand-Offs, Severe Neglect.
- *Erosion of Civility:* Less respect, More Aggressive Conduct, Threats, Menacing Conduct.
- *Open Doors to Unqualified Caregiving:* As adult children come home to be caregivers they may do so without any allowable safeguards, checks or screening.

---

<sup>1</sup> All statistics and forecasts credited to: Mac Taylor, Long-Term Outlook: Disability Among California's Seniors, California Legislative Analyst, November 2016,

## Warning Signs and Indicators of Caregiver Elder Abuse.

Watch for the following from your residents. There are signs that elder abuse may be occurring at the hands of the caregivers residing on the space. Bear in mind that the homeowner may not be capable of telling us of the abuse. The elder may also be ashamed, fearful of retaliation or punishment, or somehow assuming some of the blame for his or her own condition.

*The absence of complaint from the homeowner is no indication that very real abuse is not happening.*

## Who are The Abusers? They May be Closer Than They Appear.

- Family
- Caretaker/caregiver/care custodian - any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.
- Banks, mortgage brokers, lenders
- Insurance companies and their agents
- Financial advisors and life agents
- Trust mills
- Real estate agents, title and escrow companies
- Attorneys (and others holding themselves out as having legal expertise—tax preparers, paralegals, assistants, J.D. graduates)
- Scams – lotteries, sweepstakes
- Home repair, unsolicited work
- Sweetheart scams

## Immediate Actions NOW if Suspected Elder Abuse is Active and Ongoing. Contact First Responders.

The elders are not wealthy. Look to charitable and non-profit institutions to deal with abuse and resources. Here are some ideas.

### Adult Protective Services (APS)

- APS can provide investigations, needs assessments, remedial and preventative social work activities, food, transportation, emergency shelter.
- Cross report to police for criminal restraining

## SIGNS OF ELDER ABUSE

### Physical Abuse

- Unexplained signs of injury such as bruises, welts, scars, broken bones or sprains
- Report of drug overdose or apparent failure to take medication regularly
- Broken eyeglasses or frames
- Signs of being restrained, such as rope marks on wrists
- Caregiver's refusal to allow you to see the person alone
- Physical or chemical restraints for caregiver's convenience
- Repeated unexplained injuries

### Emotional Abuse

- Threatening, belittling, or controlling caregiver behavior that you witness
- Behavior from the elder that mimics dementia, such as rocking, sucking, or mumbling
- Uncommunicative and unresponsive
- Unreasonably fearful or suspicious
- Lack of interest in social contacts
- Evasive or isolated
- Unexplained or uncharacteristic changes in behavior

### Sexual Abuse

- Bruises around breasts or genitals
- Unexplained venereal disease or genital infections
- Unexplained vaginal or anal bleeding
- Torn, stained, or bloody underclothing

### Neglect by Caregivers or Self-Neglect

- Unusual weight loss, malnutrition, dehydration
- Untreated physical problems, such as bed sores
- Unsanitary living conditions: dirt, bugs, soiled bedding and clothes

orders.

- State mandates that each County establish a 24/7 emergency response adult protective services program to take and investigate reports of abuse of an elder or a dependent adult. (California Welfare and Institutions Code §15763)
- “Protective services” include investigations, needs assessments, remedial and preventive social work activities; the necessary tangible resources such as food, transportation, emergency shelter, and in-home protective care; the use of multi-disciplinary teams; and a system in which reporting of abuse can occur on a 24- hour basis. (California Welfare and Institutions Code §15760).

■ **Keep Adult Protective Services Honest–Insist They Do Their Jobs: Mandatory Effort to Investigate**

▲ **When an allegation of abuse of an elder or dependent adult is reported;** and,

▲ The agency social worker has reason to believe an elder or dependent adult has suffered or is at substantial risk of abuse pursuant to California Welfare and Institutions Code §15630;

▲ The social worker is required to attempt to obtain consent to:

- enter and meet privately with the elder or dependent adult in the residence or dwelling in which the elder or dependent adult resides,
- without the presence of the person's caretaker, attendant, or family or household member, unless the person requests the presence of the attendant, care giver, or family member, or refuses to meet with the social worker. (California Welfare and Institutions Code §, § 15762)

▲ APS action requires victim consent unless a Penal Code violation has been alleged. (California Welfare and Institutions Code § 15636)

**If the victim is incapacitated** and cannot legally give or deny consent to protective services, APS may initiate a petition for temporary conservatorship.<sup>2</sup>

## **SIGNS OF ELDER ABUSE**

### **Financial Exploitation**

- Significant or unauthorized withdrawals from the elder's accounts
- Sudden changes in the elder's financial condition
- Items or cash missing from the household
- Suspicious changes in mobilehome title, legal owner, wills, power of attorney, titles, and policies
- Addition of names to the elder's signature card
- Unpaid bills or lack of medical care, although the elder has enough money to pay for them
- Financial activity the elder couldn't have done, such as an ATM withdrawal by a bedridden account holder
- Unnecessary services, goods, or subscriptions
- New caregiver cars in the driveway; new high frequency of deliveries

### **Healthcare Fraud and Abuse**

- Duplicate billings for medical service or device
- Over-medication or under-medication
- Evidence of inadequate care when bills are paid in full

<sup>2</sup> By the way, an attorney cannot report such a condition of his own client in California. It is deemed a breach of a client confidence.

## ■ Your Resident May Seek a Move-Out Order to Immediately Oust the Abusive, Dangerous or Harassing Caregiver.

### ★ Move-Out Order under the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA)

Originally, the Elder Abuse Act was designed to encourage the *reporting of abuse and neglect of elders and dependent adults* and continues to be a major component of the Elder Abuse Act as it stands in its current form

today. The statutory scheme was later modified to *provide incentives for private, civil enforcement through lawsuits*. The Elder Abuse Act now permits and even requires certain heightened remedies subject to statutory criteria and limitations, including attorney's fees, punitive damages, pain and suffering damages even after the abused elder's death, and fees for a conservator who successfully brings an elder abuse claim.

We will also discuss a DVRO (domestic violence restraining order), which does not require title ownership, and also the harassment restraining order, which may take longer to obtain and does not allow for a move out.

■ EADACPA allows a court to issue an order protecting an elder or dependent adult from further abuse by an individual including ordering a move-out from the property. Welfare and Institutions Code §15657.03(c) provides that an order may be issued with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if a declaration shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.<sup>3</sup>

■ The CLETS-001 form is also filed so the restraining order is recorded directly with law enforcement computers and on record in the event enforcement for violations is required. There are generally no fees for implementing this order. The forms are generally available at [www.courts.ca.gov](http://www.courts.ca.gov).

■ Does Your Resident Qualify? In order to obtain an Elder Abuse Restraining Order, or EARO, the person requesting the order:

- ▲ Must be an elder or dependent adult;
- ▲ Must have suffered abuse.

## SIGNS OF ELDER ABUSE

### Elders May Contribute to Abuse, Secreting of Abuse, Fail to Recognize or Report

- May lack cognitive ability to recognize abuse and/or their rights to safety and protection
- May be in denial; distorted view of treatment
- May not have functioning neuro-pathways; not feeling normal pain, discomfort
- May be incapacitated--unable to message out
- Are often reluctant to report or prosecute
- "Report me and I will put you in a home"
- Afraid of removal from home
- Fear of retribution
- Dependence on others to assist with activities of daily living and personal care;
- Communication or physical impairments which may limit ability to verbally or physically defend against a perpetrator and disclose abuse
- Lack of experience and socialization which encourages compliance rather than self-advocacy
- Steady income and reliance on others to manage money.

<sup>3</sup> For future reference, note that it was held in *Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, that a protective order under EADACPA may be issued based on evidence of past abuse, without any particularized showing that wrongful acts will continue or be repeated.

- ▲ An “Elder” is one who is 65 years of age or older.
- ▲ For a Move Out Order, Must be a Legal or equitable Owner, and Defendant cannot be sole owner.
- ▲ Also included is the “Dependent Adult”, defined as a person between the ages of 18 and 64 who has physical or mental limitations that restrict the person's ability to carry out normal activities or to protect his or her rights.
- ▲ If the Resident hires counsel, there is an entitlement to attorney’s fees. No reason park owner cannot supply counsel with reimbursement agreement. There is a right to recovery of attorney’s fees.

■ Does Your Resident Qualify for a Move Out Order? The court may issue a restraining order excluding the abusive caregiver (including family members) from the resident’s home on a showing of the following:

▲ Proof that the resident has a right of possession.

▲ Proof that the abusive caregiver assaulted or threatens to assault the resident or other named family or household member including a conservator.

▲ Proof that physical or emotional harm would otherwise result to the person to be protected.

▲ After the restraining order is issued (without notice), the court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

▲ An order excluding the abusive caregiver from the dwelling is permitted, except not if legal or equitable title to, or lease of, the residence is in the sole name of the abuser, or is in the name of the party to be excluded and any other party besides the petitioner.<sup>4</sup>

### ■ EARO Restraining Order Requirements and Burden of Proof

The Code provides for submission of the evidence on forms. This makes it easier for the unrepresented resident to go to court and try to get the protection afforded. The courts are used to these forms and often provide relief with the right language is used. Of course, management can assist in the preparation of the papers, if the resident is unable to do so in a winning fashion.

California Welfare and Institutions Code §15657.03(d) states that upon filing a petition for protective orders under this section, “the petitioner may obtain a temporary restraining order” in accordance with “Section 527 of the Code of Civil Procedure,” except to the extent this section provides a rule that is inconsistent. Section 527 (c) provides the right to an injunction without notice if:

▲ It appears that great or irreparable injury will result before the matter can be heard on notice.

### Documents Required for the EARO (Elder Abuse Restraining Order):

- EA-100- Request for Orders to Stop Elder or Dependant Adult Abuse
- EA-109 Notice of Court Hearing
- EA-110- Response to Request for Orders to Stop Elder or Dependant Adult Abuse (complete #1 and #2 only)
- EA-120- Notice of Hearing and Temporary Restraining Order
- CLETS 001
- Declaration of Notice

<sup>4</sup> Welfare and Institutions Code §15657.03 (b) (3) (B).

- ▲ The resident or his or her attorney certifies one of the following:
  - That within a reasonable time prior to the application the applicant informed the opposing party or the opposing party's attorney at what time and where the application would be made.
  - That the applicant in good faith attempted but was unable to inform the opposing party and the opposing party's attorney, specifying the efforts made to contact them.
  - That for reasons specified the applicant should not be required to so inform the opposing party or the opposing party's attorney.

Note, that the court may grant a an elder abuse restraining order on a preponderance of the evidence.<sup>5</sup>

## ■ Your Resident May Seek a DVPA Move-Out Order to Immediately Oust the Abusive, Dangerous or Harassing Caregiver.

### ★ Kick-Out Order under the Domestic Violence Prevention Act (DVPA)

Your abused resident may also obtain a “kick out” order to force ouster of an abusive caregiver. An order can be issued to restrain contact either directly or indirectly:

- ▲ By mail or otherwise,
- ▲ Coming within a specified distance of, or
- ▲ Disturbing the peace of the other party.<sup>6</sup>

California Family Code §6321 (a) provides that a court may issue an order, without notice, to exclude a party from the family dwelling, the dwelling of the other party, the common dwelling of both parties, or the dwelling of the person who has care, custody, and control of a child to be protected from domestic violence. “*Domestic violence*” is abuse perpetrated against spouses, co-habitants, children and blood relatives within the second degree. (California Family Code §6211). But the order may issues regardless of the owner of the property.

Types of “domestic violence protective orders” includes an order enjoining *specific acts* of abuse (§6320), *excluding a person from a dwelling* (§6321) and *enjoining other specified behavior*. (§6322).

For an order excluding a party from a dwelling, the following proof is required:

- ▲ The resident has a right to possess the mobilehome;
- ▲ The resident’s spouse or significant other has assaulted or threatened to assault the abused resident, child, or any person that is under the resident’s care, custody, and control;
- ▲ If the exclusion order were not granted, physical OR emotional harm would otherwise result.

<sup>5</sup> [*Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131 (rejecting the argument that the heightened "clear and convincing" standard applicable in civil harassment cases should be applied to claims under W&I § [5657.03)].

<sup>6</sup> California Family Code §6320.

While title ownership is not required, still, the relationship to the victim is a requirement must be established.<sup>7</sup> The resident must reasonably show that if the order were not granted, that physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party. (California Family Code §6321)

### ■ What is “Abuse” within the meaning of the DVPA?<sup>8</sup>

- ▲ Intentionally or recklessly causing or attempting to cause bodily injury; or
- ▲ Sexual assault; or
- ▲ “Reasonable apprehension” of imminent serious bodily injury to that person or another; or
- ▲ Engaging in any behavior that has been or could be enjoined pursuant to California Family Code §6320.

Thus, the requisite “abuse” *need not be* actual infliction of physical injury or assault.

## ■ Your Resident May Seek a Civil Harassment Restraining Order and Injunction.

### ★ California Code of Civil Procedure §527.6

Civil injunctive scheme has a separate procedure to prevent civil harassment to prevent unlawful violence, threats of violence and suffering of emotional distress. (California Code of Civil Procedure §527.6).

Court relief can also be sought with the filing of court approved form here: <http://www.courts.ca.gov/documents/ch100.pdf>

Civil injunctions<sup>9</sup> provide the specific procedures that must be followed when seeking civil injunctions, including a temporary restraining order.

Civil injunction requires demonstrating imminent irreparable harm, probability of success on the merits and a balancing of equities. An elder who has suffered financial abuse may seek a protective order, including a TRO:

- (1) Enjoining someone from abusing, intimidating, molesting, attacking, stalking, threatening, sexually assaulting, battering, or harassing the petitioning elder,
- (2) Preventing the destruction of the elder’s personal property, and
- (3) Excluding someone from the elder’s home.

Family members residing in the home with the elder and caregivers can be added as protected parties to receive the full protection of the temporary restraining order.

## ■ Injunctive Relief/Restraining Orders Generally.

Injunctive relief can range from obtaining temporary, emergency protective relief to a permanent injunction to

<sup>7</sup> This is not a requirement to obtain a civil injunction under California Code of Civil Procedure §527.6.

<sup>8</sup> California Family Code §6203 (a), (b), (c), (d).

<sup>9</sup> . . . are governed by Code of Civil Procedure section 527 and California Rules of Court, rules 3.1150 -3.1152.

enjoin the conduct of an individual or entity. Injunctive relief can be obtained under general civil law, elder abuse statutes and domestic violence statutes.

In cases of financial abuse, there is often other types of elder abuse being committed which are also subject to restraint which assist in stopping further financial abuse. Civil injunctions and domestic violence restraining orders are available.

Other ways to oust abusive occupants of the resident's mobilehome include lodger laws which provide for immediate eviction for short term occupants, plus terminations of tenancy and eviction process. The homeowner sharing the household with abusive caregiver has legal process available to get rid of the boarder who is abusive or dangerous.

## ■ Your Resident May Arrest the Short Term Abuser, and Seek Judgment for Possession for Longer Term Abusive Occupants.

Please note that this remedy applies to the single lodger in the mobilehome. Your resident can seek to oust the abusive occupant, boarder, lodger or caregiver. California Civil Code §1946.5 applies only if requirements are satisfied.

- ▲ The mobilehome must *also* be occupied by the resident;
- ▲ The resident retains a right of access to all areas of the mobilehome and have overall control;
- ▲ The abusive person is the sole, other, occupant, and
- ▲ The abusive person must have contracted either for room, or room and board.

If all of the above conditions apply, the law<sup>10</sup> prescribes an expedited procedure to bring about the removal of the lodger. The resident may terminate tenancy by serving written Notice of termination. The length of time must be equal to the tenancy period (*e.g.*, 30 days for a month-to-month).

At the expiration of the required Notice period, the resident must file an action for unlawful detainer. For short term occupants, the occupant can also be arrested if required conditions are met. A private person's arrest is authorized, on condition, for violation of California Penal Code §602.3 (an infraction).

In summary, if the situation involves a single occupant, the resident can make a private person arrest for California Penal Code §602.3 in lieu of proceeding through the eviction process. California Penal Code §602.3 states:

(a) A lodger who is subject to Section 1946.5 of the Civil Code and *who remains on the premises of an owner-occupied dwelling unit after receipt of a Notice terminating the hiring, and expiration of the Notice period, provided in Section 1946.5 of the Civil Code is guilty of an infraction and may, pursuant to Section 837, be arrested for the offense by the owner, or in the*



Protesting abuse caregiver, hoarder and squatter ousted by efforts of Dowdall Law Offices, A.P.C.

<sup>10</sup> California Civil Code §1946.5.

event the owner is represented by a court-appointed conservator, executor, or administrator, by the owner's representative. Notwithstanding Section 853.5, the requirement of that section for release upon written promise to appear shall not preclude an assisting peace officer from removing the Person from the owner-occupied dwelling unit.

(b) The removal of a lodger from a dwelling unit by the owner pursuant to subdivision (a) is not a forcible entry under the provisions of Section 1159 of the Code of Civil Procedure and shall not be a basis for civil liability under that section.

\* \* \*

(f) This section applies only to owner-occupied dwellings where a single lodger resides. Nothing in this section shall be construed to determine or affect in any way the rights of persons residing as lodgers in an owner-occupied dwelling where more than one lodger resides.

## Your Resident Has Standing, so does the Conservator: Not Others. There is no "Good Samaritan" Standing.

EADACPA's purpose supports a broad conveyance of standing.

But in order to assert a claim for elder financial abuse, a plaintiff or petitioner must have standing to do so. (California Welfare and Institutions Code §15657.3(d).)

▲ The elder himself has standing to bring an action during his lifetime.

But does anyone else? Who is a "representative of the elder"?

▲ A conservator

▲ A trustee

▲ Some "other representative of the estate of an elder"

▲ An attorney-in-fact of an elder acting within the authority of the power of attorney.<sup>11</sup>



Abusive caregiver, hoarder and squatter, arrested, in custody, bailed out.

There is no "Good Samaritan" standing to help an abused senior escape elder abuse. A park owner cannot assert claims directly for residents. A park owner and management can report claims and keep up the pressure to insist on positive and prompt action. As revealed by various cases of recent elder abuse, not even the agencies touting their dedication to ending elder abuse take any action in very clear cases.

San Diego County is one such example, where the District attorneys and City Prosecutors took no action until media involvement put them in front of the camera of public opinion locally<sup>12</sup> and nationally.<sup>13</sup> It was *not until the*

<sup>11</sup> California Welfare and Institutions Code §15610.30(d).

<sup>12</sup> <http://www.10news.com/news/team-10/widow-says-caregiver-became-a-squatter-how-can-you-do-that-to-a-90-year-old-woman>, (continued...)

neighborhood was picketing (see inset) before the prosecutors lifted a finger.

■ The law does not allow a park owner or anyone else (to bring an action directly against the abusive caregiver (see inset photo). Just google “Fran Breslauer” for a host of media coverage of the care-giver, who ousted Breslauer within a short time after her husband died.

There are limits as to who may have standing to bring an elder abuse action on behalf of an alleged victim during the elder’s lifetime.

The EADACPA supports third-party standing for certain representatives to bring an elder abuse claim on behalf of an abused elder while he or she is still alive. Such as conservators. But not many others, including concerned family members. There is also no “Good Samaritan” standing, which would allow concerned persons to intercede and seek relief.

## ■ Your Resident Has the Right to Demand Return of Property Wrongfully Taken—Itself an Act of Elder Abuse<sup>14</sup>

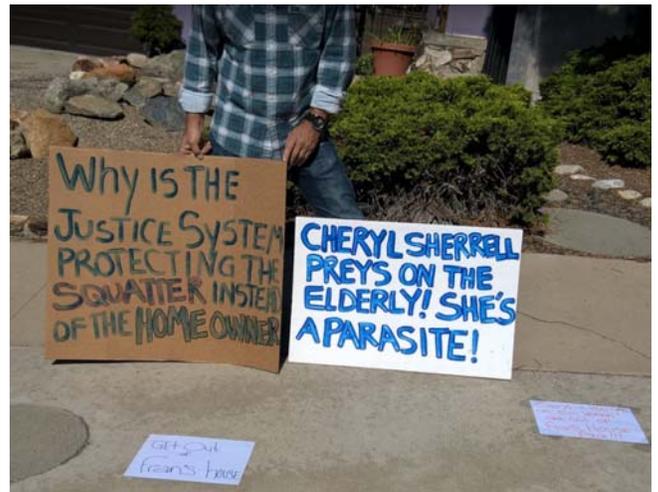
■ The elder or a “representative of the elder” may demand the return of real or personal property from a person or entity who took, secreted, appropriated, obtained, or retained, or assisted in those acts when the elder or dependent adult lacked capacity or was of unsound mind.

■ The failure to return the property on demand gives rise to a separate claim for financial elder abuse, even if the original taking was not financial elder abuse within the meaning of EADACPA.

## ■ Definitions, Laws, Regulations, Further Information

### ■ What is Elder Abuse??

California Welfare and Institutions Code §§ 15600 *et seq.* defines elder abuse as physical abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment resulting in physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. This definition applies to elders and dependent adults. California Welfare and Institutions Code §15610.63: As defined by *Penal Code*, “*physical abuse*” includes:



Pickers signs

<sup>12</sup> (...continued)

<http://abc13.com/news/protestors-want-squatter-to-leave-elderly-womans-home/1558339/>

<sup>13</sup> <http://abcnews.go.com/WNT/video/90-year-woman-locked-home-caretaker-allegedly-changed-42847182;>  
[https://www.washingtonpost.com/news/true-crime/wp/2016/10/19/i-cant-fathom-the-cruelty-elderly-woman-forced-out-of-her-home-while-a-squatter-lived-inside/ ;](https://www.washingtonpost.com/news/true-crime/wp/2016/10/19/i-cant-fathom-the-cruelty-elderly-woman-forced-out-of-her-home-while-a-squatter-lived-inside/)  
<https://www.washingtonpost.com/news/true-crime/wp/2017/01/25/woman-accused-of-squatting-in-elderly-womans-house-agreed-to-never-come-back-to-the-home/>

<sup>14</sup> California Welfare and Institutions Code §15657.6.

- ▲ Assault, battery, sexual assault, battery or rape,
- ▲ Prolonged or continual deprivation of food or water,
- ▲ Use of physical or chemical restraints for punishment, convenience, or without or beyond the scope of the doctor's order.

### ■ What is “Neglect” and “Self-Neglect” ?<sup>15</sup>

“*Neglect*” means either of the following:

- ▲ The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.
- ▲ The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.
- ▲ Neglect includes, but is not limited to, all of the following:
  - ▲ Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.
  - ▲ Failure to provide medical care for physical and mental health needs.
  - ▲ Failure to protect from health and safety hazards.
  - ▲ Failure to prevent malnutrition or dehydration.
  - ▲ Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4) for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

### ■ What is “Mental Suffering” ?<sup>16</sup>

“*Mental suffering*” means fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult.

### ■ What is “Isolation” ?<sup>17</sup>

“*Isolation*” means any of the following:

- ▲ Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
- ▲ Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to

---

<sup>15</sup> California Welfare and Institutions Code §15610.5.

<sup>16</sup> California Welfare and Institutions Code §15610.53.

<sup>17</sup> California Welfare and Institutions Code §15610.43.

the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.

▲ False imprisonment, as defined in Section 236 of the Penal Code.

▲ Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

### ■ What is “Financial Elder Abuse” ?<sup>18</sup>

“Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

▲ Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

▲ Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

▲ Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence.

▲ A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

▲ A person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

### ■ What are the Resident’s Rights to Attorney’s Fees (under EADACPA):

The Code states that the court “shall award” to a prevailing plaintiff/petitioner “reasonable attorney’s fees and costs.” “Costs” include reasonable fees of a conservator relating to the financial abuse litigation. California Welfare and Institutions Code §15657.5.

Attorney fees to a prevailing plaintiff are mandatory. But there is no reciprocal provision for prevailing defendants. The rights established for remedying elder abuse are also unwaivable.

## ■ Agencies and Authorities for Management Reporting of Resident Elder Abuse

*(after families and all local contacts provided on the Emergency Contact Information Update All Park Owners should periodically seek from park residents)*

■ **Law Enforcement:** APS is required to report any known or suspected instance of criminal activity to the

---

<sup>18</sup> California Welfare and Institutions Code §15610.30.

local law enforcement agency.<sup>19</sup> So are doctors.

A law enforcement agency may seek a search warrant to enable law enforcement to inspect the mobilehome if county welfare was denied access by the person or persons in possession and there is reason to believe an elder is subject to abuse. (California Welfare and Institutions Code §5755). The Attorney General's Office also investigates and prosecutes elder abuse. Expect nothing from these folks—your better alternative is to go to required reports such as adult protective services, the city attorney, or County district attorney.

### ■ Federal and State Governmental Agencies

Here is a resource list for agencies who may take reports, investigate and, in some instances, prosecute different types of financial abuse.

- ▲ Federal agencies include the FTC “Federal Trade Commission”, SEC “Securities & Exchange Commission”, FBI “Federal Bureau of Investigations”, U.S. Attorney “United States Attorney General Office”, CFPB “Consumer Financial Protection Bureau” and others.
- ▲ Local and state agencies that take reports and investigate abuse include APS “Adult Protective Service”, DA “District Attorney”, CSLB “California State License Board”, DCA “Department of Consumer Affairs”, DOI “Department of Insurance” and others.
- ▲ Appendix “X” of the U.S. Gov't Accountability Office, GAO-13-110, Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation, November 2012 report lists numerous Private Non Profit, County and State resources available in California to combat abuse.
- ▲ Court services provided in many counties include assistance in completing elder abuse restraining order judicial council forms and other clinics.

### ■ Watch for Powers of Attorney as Another Form of Elder Abuse

Powers of attorney are a frequent tool of abuse. These are low cost, easy to execute, can grant very broad powers and available on the internet without the need for legal counsel.

The “POA” often grants the agent the same broad general powers of a Trustee but, unlike revocable trusts, generally lack provisions defining duties owed by the agent to the principal.

Because general POAs are not tied to particular assets, there may be multiple conflicting instruments empowering multiple agents.<sup>20</sup>

### ■ Conclusion: Make A Difference

Watch for signs of elder abuse. Report it. You could be saving someone's life.

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!



<sup>19</sup> California Welfare and Institutions Code §15640(a)(1).

<sup>20</sup> Durable Power of Attorney Abuse: It's a Crime Too, American Bar Assoc. Comm. on Law and Aging (2008), Lori A. Stiegel, J.D.