



Stop the Bleeding

Temporarily Freezing Assets in Financial Abuse Cases

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SAN MATEO COUNTY

Disclaimer

- ▶ While we represent the San Mateo County Counsel's Office and the San Mateo County District Attorney's Office, the opinions and information here do not constitute the legal interpretation, guidance or advice of either of those agencies.
- ▶ Any opinions or views stated are our own.

What is Probate Code § 2952?

If an elder meets certain criteria, it allows law enforcement, working with APS and the Public Guardian, to **freeze assets**.

Can be used in situations where the Public Guardian **IS NOT** opening a conservatorship investigation.

Helps us stop the hemorrhaging of assets while an investigation proceeds, protecting the elder from further loss.



How
does the
process
work?

1. What is the financial decision you are making/have made? _____
- Giving a gift / loan** (e.g., paying bills or tuition for grandchild, purchase of home for son to live in)
 - Major purchase or sale for self** (home, car, renovations, services, invest in LTC or NH)
 - Investment Planning** (retirement, insurance, portfolio balancing)
 - Estate planning** (Will, beneficiary, DPOA, add/remove someone from bank account)
 - Turn over bill paying to someone else**
 - Scam, Fraud, Theft** (suspected)
 - Other: _____
 - Don't know or inaccurate

Notes:

2. Was this your idea or did someone suggest it or accompany you?
- My idea
 - Someone else suggested/drove me here
 - Don't know/inaccurate

Notes:

3. What is the purpose of your decision?
- Benefit self (meet a need, peace of mind)
 - Benefit family (**whom?**)
 - Benefit friends (**whom?**)
 - Benefit organization/charity (**which?**)
 - Please or satisfy someone else (**whom?**)
 - Don't know/inaccurate

Notes:

4. What is the primary financial goal? (PROBE)
- Earn money** (or retain value of investment)
 - Reduce tax burden**
 - Reduce debt**
 - Affordability** of item(s) or service(s)
 - Share my wealth after my death**
 - Allow someone else to access my money or finances / accounts** (now)
 - Gift someone or a charity** (which?)
 - Lifestyle** (no \$\$ goal; meet a need/desire)
 - Other (describe) _____
 - Don't know/inaccurate

Notes:

5. How will this decision impact you now & over time?
- Improve financial position
 - No impact
 - Negative impact/debt
 - Don't know/inaccurate

Notes:

6. How much risk to your financial well-being is involved?
- Low risk or none
 - Moderate risk
 - High risk
 - Don't know/inaccurate

Notes:



Lichtenberg Screening Tool

Declaration of Incapacity

(all five conditions must be met)

Probable cause to believe elder is substantially unable to manage financial resources or to resist fraud/UI.

Significant danger elder will lose property as a result of fraud, misrepresentations, or incapacity.

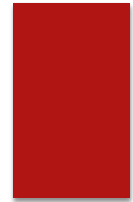
Probable cause to believe elder is victim of crime.

Crime is connected to the inability to manage finances or to resist fraud or UI, and that inability is the result of cognitive deficits.

Peace officer has consulted with an individual qualified to perform a mental status exam.

The Declaration

- ▶ Make sure the officers/detectives completing it have the appropriate knowledge and experience.
- ▶ Must include an interview with the older adult, can't be completed based on the PG or social worker's interview.



DECLARATION OF SUSPECTED ELDER FINANCIAL ABUSE

1. My name is:

My badge number is:

My office address and telephone number(s) are:

2. I am a duly sworn peace officer presently employed by _____, in the County of _____, in the State of _____.

3. On _____ (date) I personally interviewed _____ (victim) at _____ a.m./p.m. at _____ (address). The victim resides at _____ (address, telephone number, and name of facility, if applicable).

4. There is a probable cause to believe that:

(a) _____ (Victim) is substantially unable to manage his or her financial resources or to resist fraud or undue influence, and

(b) There exists a significant danger the victim will lose all or a portion of his or her property as a result of fraud or misrepresentations or the mental incapacity of the victim, and

(c) There is a probable cause to believe that a crime is being committed against the victim, and

(d) The crime is connected to the victim's inability to manage his or her financial resources or to resist fraud or undue influence, and

(e) The victim suffers from that inability as a result of deficits in one or more of the following mental functions:

Necessary Qualifications of the Investigator Who Signs the Declaration:

- ▶ Completed financial abuse POST training within the last 36 months. Training must include:
 - ▶ Elder abuse laws
 - ▶ Recognition of financial abuse and fraud
 - ▶ Assessment of cognitive capacity
 - ▶ Procedures for the investigation of financial abuse and related crimes, including neglect
 - ▶ Civil/criminal procedures for the protection of victims.
 - ▶ Reporting requirements
 - ▶ Class need not be exclusively about elder abuse.
- ▶ The signature of another peace officer who has this training and with whom the officer engaged in the investigation has consulted.

CERTIFICATE OF AUTHORITY

THIS IS AN OFFICIAL CERTIFICATE ENTITLING THE PUBLIC GUARDIAN TO TAKE POSSESSION OF ANY AND ALL PROPERTY BELONGING TO THE FOLLOWING INDIVIDUAL:

This Certificate of Authority has been issued by the Public Guardian pursuant to and in compliance with the Financial Abuse of Mentally Impaired Elders statute, Chapter 4 (commencing with Section 2950) of Part 5 of Division 4 of the California Probate Court. Under California law, this Certificate of Authority authorizes the Public Guardian to take possession or control of property belonging to the above-named individual.

SPECIAL NOTE TO FINANCIAL INSTITUTIONS:

State law requires that upon receiving a copy of this Certificate of Authority, financial institutions shall provide the Public Guardian with information concerning property held by the above-named individual and surrender the property to the Public Guardian if requested.

This Certificate of Authority shall only be valid when signed and dated by the Public Guardian or a deputy Public Guardian of the County of San Mateo and affixed with the official seal of the Public Guardian below.

Date: _____
Authorized Signatory of the Public Guardian

Official Seal
|



Certificate
of Authority



Upon completion of the Certificate of Authority, the PG is authorized to take immediate possession/control of any real or personal property belonging to the elder.



This includes property held jointly between the elder and a third party.



Upon receipt of the Certificate of Authority, financial institutions must provide information about the elder's account or must provide the property.

Real Property

- Using the Certificate of Authority, the PG may deny access or residency in the elder's home to anyone without a written rental agreement.
- PG may terminate the occupancy of anyone living in the home and remove the person.
- Use the certificate to support filing a *lis pendens* on the property, which should freeze it until title can be returned to the victim or legitimate POA.



A few additional notes on 2952



The issuance of the Certificate of Authority does not require the PG to take possession or control of property



The Certificate also does not require the PG to have found that the requirements for appointment of a conservator are satisfied.



2900/2901 Certificates of Authority require that the PG determine that the requirements for appointment of a conservator of estate are satisfied and the PG must intend to petition.

Liability



Any financial institution or other person who provides information or surrenders property pursuant to this section shall be discharged from any liability for any act or omission of the PG with respect to the property.



PG acting in good faith pursuant to a 2952 certificate of authority is not liable when taking possession/control of property.

Freeze, even
if you don't
plan to
seize.

For older adults,
staunching the
flow of their
resources is
crucial.

Conservatorship
or other actions
may take months.

Declaration
allows for the
freezing of assets,
even if the PG
does not intend
to take possession
of those assets.

Bank accounts,
investment
accounts, any
other accounts or
assets.

Timeframe of certification

- ▶ 15 days
- ▶ Ex parte for additional 15-day periods (requires the court to find that the additional time is necessary to protect the elder from financial abuse)

Additional powers of the court

Order

Order disbursements from elder's assets, as reasonably needed for the elder


Appoint

Appoint a temporary conservator

Quash

Quash the certification if it is challenged by the elder

Next steps



If PG takes possession of an elder's property pursuant to this section, the PG shall attempt to find DPOAs or successor trustees to manage the estate.

When PG has taken possession or control of the property of an elder pursuant to this chapter, the PG shall exercise reasonable care to ensure that the reasonable living expenses and legitimate debts of the elder person are addressed as well as is practical under the circumstances.

Compare with §§2900/2901

PG intends to petition
for conservatorship

Similar ability to
remove people from
elder's real property

No ability under
§§2900/2901 to spend
the elder's money to
manage living
expenses or debts

EDAPT Facilitates Collaborative Efforts like the 2952 Process



San Mateo County's Elder and Dependent Adult Protection Team (EDAPT) is a multidisciplinary collaboration dedicated to:

- ▶ Streamlining and facilitating the investigation and prosecution of elder and dependent adult abuse
- ▶ Coordinating supportive services to victims
- ▶ Raising awareness through targeted outreach to the community and training first responders

Our EDAPT Team

- ▶ A dedicated vertical prosecution unit within the District Attorney's Office including prosecutors, investigators, and a victim advocate.
- ▶ A dedicated staff within Aging and Adult Services including social workers and deputy public guardians.
- ▶ County Counsel's office.
- ▶ Other relevant stakeholders as needed.



How to
reach us
with any
additional
questions:

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