Aging Life Care Association Conference – Western Region – September 2018

**Care Managers, Red Flags and Risks**

Presented by: Marguerite C. Lorenz, CTFA, CLPF #319

Since 2003, Marguerite has been a partner in Lorenz Fiduciary Services, Inc. (LFS), and has served as a Professional Trustee and Executor on over one hundred cases. *Ethics for Trustees*, written by Marguerite and Jane Lorenz, gives further understanding to the work of a Fiduciary. Marguerite has hosted the [www.EstatePlanning101.org](http://www.EstatePlanning101.org) program in San Diego since 2009.

Governor Brown appointed Marguerite to serve a four year term as a Member of the Professional Fiduciaries Advisory Committee, in 2012. Marguerite served as the Chairman for four years. Under her leadership, the Bureau developed various educational publications, and extended the national awareness of the fiduciary profession.

Marguerite is a Master Certified Independent Trustee through the Independent Trustee Alliance, a member of the North County Estate Planning Council, and faculty for AttorneyCredits.com

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1. **What is a Fiduciary?**

   *Anyone who is expected to be loyal to the person (the Client) to whom he/she owes the duty (Trustor/Beneficiary), putting the Client’s best interest first, before the Fiduciary’s personal interests. “California Licensed Professional Fiduciary” CLPF*

   a. Licensing – Business and Professions Code 6500 – See Page 6
   b. Amateurs vs. Professional Fiduciaries (See Page 4)
   c. Ethics

   Professional Fiduciaries do not sell financial products and are not beneficiaries in the cases where they serve. Mission Statement: **To protect consumers through licensing, education, and enforcement by ensuring the competency and ethical standards of Professional Fiduciaries.**

   Code of Ethics

   PROFESSIONAL FIDUCIARIES CODE OF ETHICS Title 16, Division 41, Article 4, California Code of Regulations - [http://www.fiduciary.ca.gov/licensees/code_ethics.pdf](http://www.fiduciary.ca.gov/licensees/code_ethics.pdf)

   d. Decision Maker, not an Advisor –
2. What is an Aging Life Care Manager?
   a. Also known as Geriatric Care Managers, they have varied educational and professional backgrounds with a specialized focus on issues associated with aging and disabilities. Through consultation, assessment, care coordination, and advocacy, an Aging Life Care Professional works with clients and families to address these challenges. (from Standards of Practice and Code of Ethics)

   b. Are Professional Care Managers Mandated Reporters? They are not but should/could be. (See below).

   A mandated reporter is “any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation . . . .” (Cal. Welf. & Inst. Code § 15630 subd. (a) (West).) This includes “administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency.” (Id.)

   Mandated reporters are statutorily required to report suspected instances of abuse, including financial abuse, of the elderly: “Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be . . . financial abuse . . . or reasonably suspects that abuse, shall report the known or suspected instance of abuse . . . as soon as practicably possible.” (Id. subd. (b)(1); Santos v. Kisco Senior Living, LLC, 1 Cal. App. 5th 862, 870–71 (Ct. App. 2016)).

   The National Care Planning Council (NCPC) defines a Care Manager as an individual who “help[s] . . . family caregivers provide care for loved ones.” About What a Care Manager Does, NCPC, (https://www.longtermcarelink.net/about_care_manager.htm). Per the NCPC, Care Managers are responsible for “assessing the level and type of care needed and developing a care plan; Taking steps to start the care plan and keep it functioning; Making sure care is received in a safe and disability friendly environment; Becoming an advocate for the care recipient and the family caregiver; Managing care for a loved one for out-of-town families; Conducting ongoing assessments to monitor and implement changes in care; Overseeing and directing care provided at home; Coordinating the efforts of key support systems; Providing personal counseling; Helping with Medicaid qualification and application; Arranging for services of legal and financial advisors; Managing a conservatorship for a care recipient; Providing assistance with placement in assisted living facilities or nursing homes; Monitoring the care of a family member in a nursing home or in assisted living; Assisting with the monitoring of medications; Finding appropriate solutions to avoid a crisis; Coordinating medical appointments and medical information; and Providing transportation to medical appointments.” (Id.)

   Considering the nature of the responsibilities held by a Professional Care Manager, a Professional Care Manager could be found to fit within the definition of a Mandated Reporter, as they assume full or intermittent responsibility for the care or custody of an elder or dependent adult.
3. Does the Care Manager have a fiduciary duty?
   a. Client Expectations
   b. Record Keeping
   c. Petty Cash
   d. Review of the Standards of Practice and Code of Ethics – see handout

4. Who is the Client?
   a. The Trustor(s)
      i. Meeting - in advance of the need
      ii. The Time Has Come – Incapacity, Resignation or Death
         1. Living and in need of care?
            a. Where will Mom live?
            b. Cash Flow Projection and Budgeting
         2. Passed On?
            a. Will the money last for her beneficiary’s lifetime?

5. What are the Trustor’s expectations? How does the new Decision Maker know?
   a. The Trust – Successor Trustee
   b. The Will – Executor
   c. The Power of Attorney for Finance – Agent or Attorney-in-Fact
   d. The Advance Health Care Directive – Agent
<table>
<thead>
<tr>
<th>Amateur Fiduciary</th>
<th>Professional Fiduciary</th>
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<tbody>
<tr>
<td>Often a beneficiary</td>
<td>Never a beneficiary</td>
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<tr>
<td>Often surprised at the amount of work involved (May have full time job and other commitments)</td>
<td>Has created systems to handle the work (This is the Fiduciary’s full time job)</td>
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<tr>
<td>Unprepared for conflict with other beneficiaries</td>
<td>Duty to treat the beneficiaries equally</td>
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<td>Expected to serve as Co-Trustee, which implies 100% agreement with other family members</td>
<td>Does not serve as Co-Trustee. Often insured to serve specifically in these fiduciary roles.</td>
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<td>Unprepared for the feelings of grief, surrounded by family pressure</td>
<td>Neutral and Objective</td>
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<td>May or may not be willing to serve, but might anyway</td>
<td>Assesses if case is appropriate</td>
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<td>Needs lots of support from professionals, doesn’t know what to ask</td>
<td>Hires other professionals, then delegates and supervises</td>
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<td>Bondable? Insured? Mistakes can be costly.</td>
<td>Bondable, Insured, Licensed</td>
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<tr>
<td>Has little or no trust accounting experience, may or may not have budgeting practice</td>
<td>Trust accounting completed in house. Full reconciliation between Trust accounting, individual tax return and Trust tax return</td>
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<td>Often, this the one and only case</td>
<td>Many cases, lots of experience</td>
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<td>May or may not sell financial products</td>
<td>Does not sell financial products</td>
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<td>May or may not have experience in documentation requirements</td>
<td>Standardized Documentation Practices</td>
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<td>Fees could be calculated against the dependence on paid professionals for guidance and trust administration completion</td>
<td>Paid based on a published fee schedule, minimal reliance on the advice or services of other professionals</td>
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<td>No on-point education</td>
<td>Required pre-licensing education and ongoing continuing education</td>
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<td>Often unfamiliar with legal, tax, financial and medical consequences</td>
<td>Must be familiar with ethics, legal, tax, financial, insurance and medical issues</td>
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<td>May or may not know who to hire</td>
<td>Professionally developed resources</td>
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<td>Managing the work alone</td>
<td>Has trained staff</td>
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<td>Perceived to cost less (more time learning &amp; hiring others)</td>
<td>Actually costs less based on efficiency</td>
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<tr>
<td>Has no code of ethics</td>
<td>Has code of ethics to follow from our Association and Licensing Bureau</td>
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As the Trustee, a major goal in trust administration is to make informed decisions and to document those decisions so as to report to the appropriate parties.

Since Amateurs may have a lack of training, a lack of sufficient time to get the work done and deep emotions in the situation, it appears that the Trustor’s Attorney/CPA/Financial Advisor or other professional can be helpful to the whole family by exploring the Trustor’s expectations and the ability of the Trustor’s selected successors to meet those expectations.

Trustors often have trouble assessing the abilities of their loved ones.

Questions to discuss with Trustors, as the Trustor must make a reasonable selection as to who will serve:

1. **Does my successor trustee have experience and expertise in handling finances? Good accounting and bookkeeping skills? Trust and Estate tax experience?**

2. **Will my successor trustee remain objective, responsive and compatible with all beneficiaries of the trust and other members of the family?**

3. **Will my successor trustee be able to devote sufficient time to the management of the trust, unburdened by other obligations such as a job or a family for three years or more?**

4. **Is my successor trustee also a beneficiary, causing a “natural conflict of interest”?**

Many Trustors don’t ask their child if the child wants the responsibility. Once a Trustor has selected the right Successor Trustee, he/she should be willing to allow that Successor to learn the Trustor’s financial details, health concerns and Quality of Life values.

Trustors should interview prospective Fiduciaries (including their own children/loved ones). Here are some possible questions:

- What are your internal controls like?
- How are you insured and by which company?
- What happens to me if something happens to you (or what is your succession plan)?

**Working with Care Managers**

I have been privileged to work with some of the very best Aging Life Care Managers in San Diego, Orange and Riverside Counties. The best form of team work happens when I am managing the cash flow, sharing the right financial information with the team, communicating with both the client and manager, and handling any issues with family, visitation, tax, legal, and quality of life. I often serve as Trustee, Executor, Agent under the Power of Attorney, and Agent for Health Care.

 Petty Cash is a critical component, whether the client is making the purchases, or the care manager is bringing in supplies, groceries, and comfort items. Managing the caregivers, providing some fun, doctor visits, home safety, transportation, and psycho-social needs are the main things I see our care managers deliver. Thank you all for all you do to make our clients lives so much better!!
CHAPTER 6 OF DIVISION 3 OF THE BUSINESS AND PROFESSIONS CODE

Professional Fiduciaries Act

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California Code of Regulations, Sections 4400-4622

Probate Code Provisions

Probate Code Section 60.1
Probate Code Sections 2340

The above is directly related to licensing of Professional Fiduciaries and can be found at www.Fiduciary.CA.gov

PROBATE CODE SECTION 20-88  (please refer to this section directly for more detail, excerpts below)

39. "Fiduciary" means personal representative, trustee, guardian, conservator, attorney-in-fact under a power of attorney, custodian under the California Uniform Transfer To Minors Act (Part 9 (commencing with Section 3900) of Division 4), or other legal representative subject to this code.

Notice that Section 39 does not specify the individual’s relationship, as in, also a beneficiary, a family member, a friend, a professional? Anyone who serves in these roles is considered a “Fiduciary”.

60.1. (a) "Professional fiduciary" means a person who is a professional fiduciary as defined under subdivision (f) of Section 6501 of the Business and Professions Code.

   (b) On and after January 1, 2009, no person shall act or hold himself or herself out to the public as a professional fiduciary unless he or she is licensed as a professional fiduciary under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

PROBATE CODE SECTION 2340-2341

2340. A superior court may not appoint a person to carry out the duties of a professional fiduciary, or permit a person to continue those duties, unless he or she holds a valid, unexpired, unsuspended license as a professional fiduciary under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, is exempt from the definition of "professional fiduciary" under Section 6501 of the Business and Professions Code, or is exempt from the licensing requirements of Section 6530 of the Business and Professions Code.

2341. This article shall become operative on July 1, 2008.