



Sandoval's Soliloquy

A Periodic Update for Health Care Professionals Working With the Elderly and the Disabled

January 2008

Dennis M. Sandoval,
A PROFESSIONAL LAW
CORPORATION

*Providing Peace of Mind to
Seniors, the Disabled and
their Family Members*

3233 Arlington Avenue
Suite 105
Riverside, California 92506
Phone: (951) 787-7711

*Mr. Sandoval is the only
attorney in California
certified as a Taxation Law
Specialist and an Estate
Planning, Trust & Probate
Law Specialist by the
California Bar Board of
Legal Specialization as well
as a Certified Elder Law
Attorney by the National
Elder Law Foundation*

Visit Our Websites at:

www.protect-your-wealth.com

www.cal-elder-lawyer.com

www.cal-special-needs-attorney.com

www.life-care-planning.com

www.fight-the-taxman.com

Abuse of Financial Powers of Attorneys is Widespread

With the increase of Alzheimer's Disease and similar dementias, the use of financial powers of attorney have become more commonplace. Of course, with this increased use of powers of attorneys comes increased abuse. Think the family of the elder with dementia will protect the elder from this kind of abuse? Think again—sadly, family members are the most frequent abusers.

Newspapers such as the Wall Street Journal, New York Times and New York Daily News have reported on financial abuse cases, one of the more famous of which is the case of noted philanthropist Brooke Astor, recipient of the Presidential Medal of Freedom in 1998. Ms. Astor is famous for her quote, "Money is like manure, it should be spread around."

The New York Daily News ran a front page story in 2006 surrounding the family feud between Anthony Marshall, Ms. Astor's son, and her grandson, Philip Marshall. The story detailed how Philip had filed a lawsuit seeking the removal of his father, Anthony, as the guardian for Ms. Astor, then 104 years old. The lawsuit alleged that Anthony had not provided for his elderly mother and , instead had allowed her to live in squalor , had cut back on her medications and doctor's visits, while enriching himself from the income and assets of Ms. Astor's estate. Ms. Astor died August 13, 2007, at the age of 105. In late 2007, criminal charges were brought against Anthony and his attorney, Francis X. Morrissey, Jr.. The charges relate to questionable amendments to the Will of Ms. Astor as well as alleged mishandling by Anthony of his mother's estate.

These types of cases are not limited to the wealthy. We have handled numerous financial elder abuse cases in our office over the past few years, including two current cases – one where we represent the conservator of an elderly man with dementia who was physically abused by his son and had nearly \$2 million dollars stolen from him – and the other where we represent the conservator of an elderly woman who lived in such squalor that she made the local papers when animal control removed hundreds of rats, dozens of snakes, and other vermin and reptiles that made the residence uninhabitable. In addition to the physical abuse, he son stole ten of thousands of dollars from her through the use of a power of attorney that was obtained under questionable circumstances.

Perhaps those of us working with the frail elderly have become unnecessarily cynical about the behavior of others. Perhaps, on the other hand, there is truly an epidemic of abuse and exploitation at the hands of family members, friends and even professionals holding a power of attorney. I am inclined to think the latter is more accurate, though there are few studies or statistics to support my view.

What is to be done about the problem? It is not sufficient to simply stop using powers of attorney. In fact, most elder law attorneys, while warning their clients about the dangers, regularly recommend powers of attorney to clients who want to avoid the expense, indignity and inconvenience of court supervision if and when incapacity strikes. Changes in state laws are mostly unhelpful. California, for example, limits the authority of agents to make gifts of the principal's assets. However, I doubt few would make the case that the frequency of financial abuse has slowed even a tiny amount as a result of this requirement.

One thing that might help slow the trend would be aggressive investigation and prosecution of agents who misuse their powers of attorney. Too often, however, the authorities dismiss exploitation as a "family matter," or as something that ought to be pursued in civil litigation, or as too expensive to ferret out and too difficult to prove in a criminal prosecution. It is all very well to say (as the law does in most states) that the agent may not use a power of attorney for his or her own benefit. Civil recovery against an exploiter is seldom available, since it is so often committed by individuals without sufficient financial resources to pay their own bills (or support their gambling, drug or alcohol habits). Agents who have abused powers of attorney seldom have the wherewithal to repay misappropriated funds. This will likely be the case with my client's mother who was living in squalor with her abusive son.

So what can an individual do to minimize the risk? A few suggestions might include careful selection of your agent, regular review of that choice, and requiring accountings to be given to another trusted family member, friend or independent professional. While these measures might make the administration of the client's estate more costly, it could lead to tens, if not hundreds, of thousands of savings in the long run.

Is a living trust better protection for you? Perhaps, but perhaps not. Just as with a power of attorney, one of the principal benefits of a living trust is avoidance of court supervision of your fiduciary. That's the good news. Sadly, it's also the bad news. Without oversight, no one in the court system will be charged with keeping your agent -- or your trustee -- honest. The bottom line is this: the financial durable power of attorney is simultaneously one of the most important and the most dangerous estate planning document most of our clients will sign. You should do what you can to make this terrifically valuable instrument work the way it is intended.

Save The Date!!

Friday, April 18, 2008

Third Annual Inland Empire Caregivers Symposium

See the registration form that accompanies the e-Newsletter for more information about this year's speakers, topics they will cover and how to register to attend.

We think this will be our best Symposium yet, and we hope you can attend!

Office Update

Mr. Sandoval is pleased to announce that the California Education of the Bar (CEB) has just published its two-volume treatise, **Special Needs Trusts: Planning, Drafting and Administration**. Dennis is the author of the *Taxation of Special Needs Trusts* chapter of the two-volume treatise. Many of the leading California estate planning practitioners with special knowledge of planning for Special Needs individuals, including Mr. Sandoval, collaborated in this seminal work in this area of very specialized estate planning that involves knowledge of many areas of federal law as well as California law.



Dennis M. Sandoval has recently presented Estate Planning for Special Needs Persons classes to **The Down Syndrome Association of Orange County, The Inland Empire Autism Society Support Group, H.E.A.R.T.S. Autism Support Group** and **The Riverside Adults with Epilepsy Support Group**. If you know of a support group that would like Dennis to give a presentation on estate planning for special needs persons, give Karen Griffith, our Geriatric Care Coordinator, a call at (951)787-7711.

Mr. Sandoval is slated to attend the Academy of Special Needs Planners Second Annual Meeting in New Orleans in March. Dennis M. Sandoval, A Professional Law Corporation, is a **charter member** of the **Academy of Special Needs Planners**. For more information on the Academy of Special Needs Planners, go to: <http://www.specialneedsanswers.com>.

The 2nd Annual Meeting of the Academy of Special Needs Planners



Dennis is very proud to announce that **Pamela Y. Valencia** has passed the exam administered by the **California State Bar Board of Legal Specialization** to be certified as a **Certified Estate Planning, Trust and Probate Law Specialist!** Pamela plays a key role in working with our estate planning, probate, conservatorship and tax controversy clients. Pamela hopes to one day soon join Dennis as the only attorneys in California with triple certifications as a **Certified Estate Planning, Trust and Probate Law Specialist**, a **Certified Taxation Law Specialist** and a **Certified Elder Law Attorney (“CELA”)**.

Karen Griffith, our Geriatric Care Coordinator (Social Worker), just returned from attendance at the **National Association of Life Care Planning Law Firms “UnProgram”** in Dallas, Texas. Ms. Griffith was one of approximately fifty Geriatric Care Coordinators that work for law firms across the United States in attendance. Dennis M. Sandoval, A Professional Law Firm, is a charter member of the National Association of Life Care Planning Law Firms and the only Life Care Planning Law Firm and the only law firm with a Geriatric Care Coordinator on staff in Southern California. For more information about life care planning, plan to attend our Life Care Planning, call Karen or Dennis at (951) 787-7711.

2008 Consumer Seminars

Call 951-787-7711 to make reservations – Seating is limited!!!!

Topic	Date	Location
Planning for Special Needs Persons: What You Need to Know – Sponsored by Adults with Epilepsy Support Group	February 1, 2008 6:30 – 8 p.m.	Parkview Hospital Riverside
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	February 7, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	February 9, 2008 9 – 11 a.m.	Our Classroom*
Special Session – Legacy Wealth Planning for Same Sex and Unmarried Partners: Why Your Existing Estate Plan † Won't Work	February 23, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	March 5, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	March 8, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning for Persons With Large Retirement Assets (More Than \$250,000): Why Your Existing Estate Plan † Won't Work	March 15, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	April 9, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	April 12, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	May 7, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	May 10, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	June 11, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	June 14, 2008 9 – 11 a.m.	Our Classroom*
Special Session – Legacy Wealth Planning for Same Sex and Unmarried Partners: Why Your Existing Estate Plan † Won't Work	June 21, 2008 9 – 11 a.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	July 16, 2008 7 – 9 p.m.	Our Classroom*
Legacy Wealth Planning: Why Your Existing Estate Plan † Won't Work	June 19, 2008 9 – 11 a.m.	Our Classroom*

** Unless attendance requires a larger classroom or is scheduled elsewhere, all classes will be conducted in our law firm classroom, located at 3233 Arlington Avenue Ste. 105 Riverside, California 92506 (corner of Division Street and Arlington (near Target Store and across the street from California School for the Deaf)) -- (Maximum attendance in the law firm classroom is twelve persons)*

† The reference to an existing estate plan is a reference to existing estate plan drafted by a law firm other than Dennis M. Sandoval, A Professional Law Corporation

Interested in having Dennis Sandoval or Pamela Valencia conduct a seminar for your church, employee group or other organization? We would be glad to accommodate most requests. Call 951-787-7711 now to inquire about availability of a speaker.