

## WHAT IS FINANCIAL ELDER ABUSE?

Marlene, 81 years old, is a retired lawyer. Her husband, Bob, a successful businessman, died six years ago. Their combined wealth was over \$5 mil., including real property, stocks and bonds. They had four adult children. One of the four, John, took over Bob's (the family's) business, when Bob died. Over the last four years, the business went into the tank, and John needed money to keep it afloat. He asked Marlene for a loan, which became a series of loans: \$350,000, \$100,000, \$50,000 and on, totaling nearly \$2 mil.

John also convinced Marlene to mortgage an apartment complex they owned. The money was to be used for improvements to the building. John prepared the loan paperwork for Marlene to sign, took her to a bank to open up an account for the loan proceeds to be deposited, and he was signed on as Power of Attorney for the account. A month after the loan proceeds were wired to the account, Marlene stopped receiving bank statements. It was later discovered that John had changed the address of the account to his home address. John also enticed Marlene to execute a master lease where she would be the landlord, he the tenant, and that he would sublet the apartments. The apartment building gener-

*((Sad Stories—Continued on page 2))*

## WHAT YOU SHOULD KNOW ABOUT PROPERTY TAXES

Here are some facts about Proposition 13 and several other initiatives spawned by the Property Tax Revolution of the 1970's.

**Proposition 13** was passed by California voters in the mid 1970's containing three major elements: (1) property tax assessment set at 1% of fair market value as of 1975; (2) assessed value of property can increase only 2% per year unless there is a change in ownership; and (3) a 2/3 'super' majority is required for the legislature to pass tax increases. Under **Proposition 13**, the property tax assessment is 'reset' to 1% of current fair market value when there is a "change in ownership" such as a sale of the property.

**Proposition 58** excludes from reassessment real property passing *between parents and children* so long as the property is either the family home (any value) or other real property with an *assessed* value of up to \$1 million for each parent (total \$2 million for husband and wife).

**Proposition 60** allows individu-

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## Upcoming Events

### Maintenance Program

#### Members

*What to do When a  
Loved One Dies*  
Wednesday, March 30  
4:30PM to 6:30PM

### Collaborative & Financial Advisors

*Needs Benefit Approach  
to Estate Planning*  
Thursday, March 3  
Friday, March 4  
9:00AM to 5:00PM

#### Everyone

*Hot Lunch Tuesdays  
and  
March Madness*  
Thursday, March 17

See pages 2 & 3 for additional information

*Planning for a Loved One  
with Special Needs*

Thursday, April 28  
9:00AM to 11:00AM  
3:00PM to 5:00PM

## MAINTENANCE PROGRAM UPDATE

We are pleased to announce that we have officially launched our Maintenance Program. The Maintenance Program, which was announced in our last newsletter, is a program designed to keep your

estate plan up to date and to keep you informed of matters impacting your estate plan.

Our first Maintenance Program event was a workshop on the Estate and Income Tax rules in effect for the next two

years. Our thanks to Joe Kashani and Harry Aubright of Bickford Accountancy Corporation in South San Francisco (650) 583-6000 for doing a great job covering the income tax rules for 2011 and 2012 and thanks to our

*(Maintenance—Continued on page 4)*

## SAD STORIES OF FINANCIAL ELDER ABUSE

*(Sad Stories—Continued from page 1)*

ated \$30,000 a month in rents. John agreed to pay his mother \$7,500 a month on his master lease.

Marlene went to a lawyer to prepare an estate plan. At the first meeting, the lawyer inquired what her assets were and how she was covering her monthly living needs. At that point it was realized that John had “borrowed” all but \$500,000 of the estate.

In another case, Mildred and Ron, a couple in their early seventies, had three children. Ron was a union worker his entire adult life, Mildred a stay-at-home mother. Their daughter,

Amy, was their pride and joy. Amy was the first, and only, of the family to graduate from high school. Her parents would ask her to explain complex documents and fill out forms. Her parents paid for her to go to a business college. When Amy married, she wanted her family to live with her parents, so she suggested that Mildred and Ron take out a loan on the family home. With no outstanding mortgage, they took out a \$250,000 loan intending to build a second unit. Amy was placed on the deed so that she could be a borrower. The second unit was built and Amy lived there with her family. Mildred helped raise Amy’s family. Over time, the loan was refinanced. Eventually,

through the guise of another need to refinance, Amy brought a new deed for her parents to sign. Mildred and Ron, trusting their daughter, signed the deed. The transaction occurred in the house; Amy did not recommend her parents seek legal counsel. As it turned out, this deed removed Mildred and Ron from ownership of the property, making Amy the sole owner. At this point, Amy obtained a \$450,000 loan. A few years later, Ron wanted a loan to buy a car. He learned that he did not own the house anymore.

“The Legislature recognizes that elders and dependent adults may be

*(Sad Stories - Continued on page 3)*

## PROPERTY TAXES

*(Property Taxes—Continued from page 1)*

als 55 years of age or older to apply the property tax assessment on their current home to a *replacement dwelling* in the same county so long as the replacement dwelling has a lower value. This allows ‘older’ folks to downsize without suffering a reassessment to higher property taxes.

**Proposition 90** allows individuals 55 years of age or older to apply the property tax assessment on their current home to a replacement dwelling in certain other counties in California

so long as the replacement dwelling has a lower value. Participating counties as of 2009 include: Alameda, Los Angeles, Orange, San Diego, San Mateo, Santa Clara and Ventura.

**Proposition 8** allows for lowered property taxes when there is a *Decline in Market Value*. If you purchased your home in the last few years, its value may have declined to a value less than its current assessed value. If so, you can apply for a reduction of your property tax bill. See the Assessor’s website for your county for the appropriate form and the deadlines.

**Please Note:** The details of and the claim forms for each one of these property tax savings propositions can be found on the website of the Assessor for your county. To implement one of these propositions requires your action; they are not automatic. These propositions offer planning opportunities to you and your families. Proposition 58 (the parent to child reassessment exclusion) is a powerful planning tool which allows children to hold local property because it is not reassessed. The reassessment exclusions can be technical

*(Property Taxes—Continued on page 3)*

## UPCOMING WORKSHOPS

### **HOT LUNCH TUESDAYS—KEY INFORMATION FOR OWNING AND OPERATING A BUSINESS**

This lunchtime series will focus on what it means to operate a business. Topics will include making a business plan, selecting the proper entity, planning to sell the business, wage and hour issues, finance and accounting,

what social media means both as an owner and an employer, employee handbooks, and techniques for improving efficiency.

Every third Tuesday, starting in April we will host a lunch and moderate a round table discussion.

### Registration Information

If you or a family member is interested in attending, please call our Client Services Coordinators, Sylvia or Irene at 650-572-7933. You can also send an email to:

clientservices@mcdlawyers.net

## AVOIDING FINANCIAL ELDER ABUSE

(Sad Stories—Continued from page 2)

subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons and recognizes that a significant number of these persons are elderly. The Legislature desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.”

"Elder" means any person residing in this state, 65 years of age or older.

California Welfare and Institutions Code Sec 15610.30 defines "Financial Elder Abuse." "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following: (1) 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. (2) Assists in taking,... for a wrongful

use or with intent to defraud, or both. (3) Takes, by undue influence." Cal Wel & Inst Code § 15600., 15610.27

Undue influence exists: (1) In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; (2) In taking an unfair advantage of another's weakness of mind; or, (3) In taking a grossly oppressive and unfair advantage of another's necessities or distress. Cal Civ Code § 1575.

There is a low threshold for demonstrating elder abuse is low: Elder abuse is presumed to have occurred when the person or entity *knew or should have known* that this conduct was likely to be harmful to the elder

or dependent adult.

In each of our examples above, the children were persons in whom parents reposed confidence. What parent doesn't?

The range of possible schemes that might be addressed by remedies for financial abuse is too broad for comprehensive treatment in this article. Each scheme, however, will be presumptively fraudulent or the product of actual fraud, undue influence and/or mistake. Common examples are: Family overreaching, caregiver theft or overreaching, lawyer or accountant misconduct, bankers and tellers, insurance and annuity salespersons or mortgage brokers.

Be cautious when approached. When in doubt, say "I can't do this right now, I need time to think about it." Then, call your lawyer.

## WELCOME TO NEW TEAM MEMBERS

McDowall Cotter is proud to announce that it has added an associate attorney and a paralegal to our Estate / Trust Planning, Trust Administration and Probate team. Jaclyn Smith is a member of the Board of Directors for the San Mateo County Bar Association - Barrister's Section and an active participant in the San Mateo County Bar

Association - Estate Planning and Probate Section. Jaclyn's primary focus involves trust and estate administration and counseling individuals, families, trustees, corporations and limited liability corporations in legal matters pertaining to Wealth Preservation, Asset Protection and Estate Planning.

Carolyn Navarro comes to us with 16 years experience in the areas of Estate Planning, Trust Administration and Probate. Carolyn will assist Bob, Brett and Jaclyn.

We are excited to have you both join us, WELCOME JACLYN AND CAROLYN!

## PROPERTY TAXES

(Property Taxes—Continued from page 2)

and an exclusion from reassessment can be lost if you do not act in a timely manner. You are of course free to contact this office if you have questions about the application of any one of these propositions to your particular situation. There are additional property tax savings propositions that we will cover in later issues.

## MARCH MADNESS



**Thursday, March 17**

Everyone is welcome! Come join us for some hoops! The grill and games start at 10:00AM. Donuts, bagels, hot dogs, burgers and snacks will be provided as well as beverages (adult and kids). Our clients and collaborative advisors, their friends and families are welcome. We just request that all attending are open to having a good time.

## Maintenance

*A Common Sense Approach to the Practice of Law*

*(Maintenance—Continued from page 1)*

maintenance program members who attended this event.

We will be contacting each of our maintenance members over the next 60 days to arrange for office conferences to review and update your existing estate plans.

If you are interested in becoming a member of our maintenance program, please contact one of our Client Services Coordinators, Sylvia Hart or Irene Dominguez for an application.

McDowall Cotter has served clients in the greater San Francisco Bay Area for more than half a century. In that time, we have established a reputation, in the courts and in the community, for ingenuity, integrity, and a common-sense approach to the practice of law.

It has been said that in some ways we are an old-fashioned law firm. We believe in civility, value long-term relationships, cultivate a healthy work environment, and provide the highest quality legal representation in matters large and small. And we agree — we are old-fashioned, but then again we've been old-fashioned for more than fifty years and still somehow we remain ahead of our time.

- Defending Businesses and Individuals in Civil Lawsuits
- Estate and Trust Planning
- Trust Administration
- Probate
- Will Contests
- Trust Contests
- Trustee Challenges
- Employer/Employee Relations
- Personal Injury Lawsuits
- Partition Actions
- Construction — Mechanic's Liens
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