

legal guide for seniors

Most Frequently Asked Questions

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ICLS BRANCH OFFICES

Inland Counties Legal Services has offices throughout Riverside and San Bernardino Counties to assist you with your civil legal problems if you qualify for ICLS services. Inquire by phone at the office nearest to you for further information. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

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INLAND COUNTIES LEGAL SERVICES, INC.

Inland Counties Legal Services is a public interest law firm committed to pursuing justice and equality for low-income persons who otherwise would not have access to the civil judicial system. We strive to deliver high quality legal assistance through counsel, advice and community education, treating all with dignity and respect.

Incorporated as a non-profit organization in July, 1958, ICLS provides free legal assistance to eligible clients within case priority areas adopted by the ICLS Board of Directors. Primary law practice areas: family law, elder law, housing, income maintenance, consumer finance and public benefits. Some clients may be eligible to receive legal assistance by telephone. To find out if you qualify for free legal assistance, call the ICLS office nearest you.

ICLS is a non-profit 501(c)(3) corporation serving Riverside and San Bernardino Counties and receives federal, state and local county funding. Funders are the Legal Services Corporation, the State Bar of California Legal Services Trust Fund Program (also known as the "IOLTA" or "Interest on Lawyers' Trust Account" program); State of California Equal Access Funds, San Bernardino County Department of Aging and Adult Services and Riverside County Office on Aging and the Department of Housing and Urban Development.

The San Bernardino County Department of Aging and Adult Services (DAAS) and the Riverside County Office on Aging each provide funding which supports Seniors' Legal Services targeted for persons age 60 and older who are in the "greatest social and economic need."

This publication provides general answers to some questions frequently asked by senior residents of California. The information is current as of May 2011. These questions and answers reflect general situations and problems and are not intended as specific legal advice. Individual cases may vary and laws change from time to time. If you have a specific legal problem, contact Inland Counties Legal Services or one of the Pro Bono Attorney programs listed in this publication.



Consumer Information/Fraud

1. What can I do about stopping Telemarketing Calls?

Consumers can register with the **National Do Not Call List** by calling 1(888)382-1222 or register on the internet at www.donotcall.gov. The registration is through the Federal Trade Commission (FTC) and may take up to 30 days to be effective. Once you are on the list, you should no longer receive calls from telemarketers. Until you register, you can screen your calls with an answering machine or voice mail service, or get an unlisted phone number. Do not put your telephone number on your banking checks and just tell them “no” and hang up.

2. How can I avoid being ripped off for phony home repairs?

Seniors are vulnerable to phony scams where they are convinced they need unnecessary repairs to their homes, especially seniors who live alone. A common method involves someone who “just happens to be in the neighborhood” and “couldn’t help but notice” the bad spot on the roof, the problem with the chimney, the “bad mobile home bracing,” etc. Another common ploy is the “gas leak inspector.”

Always ask to see identification and then call the company to verify their identity. Reputable companies are licensed and bonded. Get a written estimate. If you are dealing with a contractor, call the Contractor’s State License Board, 1(800)321-2752, to verify the license and bond. Ask if any complaints have been filed. **Get a second opinion.** If someone **must** come and make an inspection, monitor each inspected room to prevent theft. Have another person present with you for safety.

If you do enter into a contract for repairs or construction, make sure it is in writing. **Never** pay all of the money in advance. Only pay 10% down or \$1,000, whichever is less. Set up a payment schedule based on stages of completion and obtain lien release forms from each subcontractor and material supplier at each stage. Withhold a final payment until all work has been completed to satisfaction, all needed inspections have been passed, and all releases have been obtained.

Remember, payment in full to a contractor may not protect you if the contractor has not paid his or her subcontractors or material suppliers. With a properly placed mechanic's lien, a material supplier or a subcontractor can force the sale of your home to satisfy an unpaid bill; a Homestead Declaration will **not** protect you against a mechanic's lien foreclosure.

3. Do I have any recourse if I purchase or lease a new motor vehicle that has to be taken back to the dealer numerous times for repairs shortly after purchase?

Yes. A purchaser or lessee of a new motor vehicle has rights both under federal and state law if the vehicle does not perform as provided under an express warranty. Known as the "Lemon Law", this law requires the manufacturer or its authorized dealer, if they are unable to service or repair a *new* motor vehicle to meet the terms of the expressed written warranty after a "*reasonable number*" of repair attempts, the manufacturer is required to promptly replace the vehicle or return the purchase price to the buyer or lessee. Specific procedures must be taken if you think you have a "lemon". Contact our office or Consumer Affairs for more information.

4. What about phony auto repairs?

Coupons for a discount transmission inspection or oil change may be an effort to sell you unnecessary car repairs. Get a second opinion from your regular shop, if you can. Remember,

all repairs must be authorized. If additional repairs are needed, you must be notified in advance and must authorize those additional repairs. **What you do not authorize, you do not have to pay for. Always ask that the repair shop return all defective parts or replaced parts to you.** If you still have a problem or are not satisfied with the repairs, you can contact the Bureau of Automotive Repair at (800)952-5210.

5. Can I cancel a written contract after I have already signed it?

If you entered into to a door-to-door sales contract or if your contract includes a 3-day rescission clause, you can cancel within 3 days. However, in most other contracts you can't change your mind, such as motor vehicle contracts. When mailing, use certified, return receipt requested mail. Remember:

- Read the contract before you sign it.
- Never, **never** sign a contract that contains blank spaces.

6. How do I know if I need more health insurance?

Beware of an agent or company who tries to sell you a policy you don't really need and they insist you need more than one policy. These policies often overlap, and the agent may be out for "up-front" commissions, not out to help you. **It is against the law** for an insurance company to **knowingly** sell you more than one supplemental health insurance policy. If you feel that you have been the victim of consumer fraud, call the District Attorney's Office.

7. What can I do if I have too much debt and cannot pay my bills?

There are reputable organizations you can contact for credit counseling or debt management assistance but there are many disreputable organizations out there as well. The Department of

Consumer Affairs oversees these organizations because many “**Get Out of Debt**” firms just put customers deeper in debt. Credit Services Organizations *must* register with the California Attorney General’s Office and post a \$100,000 bond with the Secretary of State. **BEFORE** entering a contract with a firm, do a research check with the Department of Consumer Affairs to ensure the company is properly registered.

8. Can debt collectors call and harass me when I am behind on my payments?

You have the California Fair Debt Collection practice Act (FDCPA) on your side (Civil Code 1788 et seq). This law prevents abusive, deceptive and unfair debt collection practices by debt collectors. Debt Collectors:

- Cannot contact you before 8:00 a.m. or after 9:00 p.m.
- May not call you repeatedly over short periods of time.
- Cannot contact 3rd parties to tell them about your debt, but they can ask a 3rd party how to find you.
- Must not threaten to do anything they cannot legally do, such as physically hurt you, damage your property or threaten to have you arrested.

You have the right to tell your creditors to stop calling. Write a letter to the debt collector demanding they cease all communications with you. The creditor *must* comply with your request to stop but they can send you court documents.

9. Is it true that I can get a “free” credit report from the top three credit reporting agencies (Experian, Equifax & TransUnion)?

Yes, the Fair Credit Reporting Act (FCRA) requires each of the credit reporting agencies to provide consumers with a free copy

of their credit report, **at the consumer's request**, once every 12 months.

You can order your free credit report on the internet at www.annualcreditreport.com or you can download the free credit report request form and mail it to Annual Credit Report Request Service, PO Box 105281, Atlanta, GA 30348-5281 or you can call 1-877-322-8228 and request a copy over the phone. **DO NOT** contact the three reporting companies individually for the free report -- all three companies provide the free credit report either by internet, mail or phone request.



Wills, Death & Probate

10. Is there a California Will form that I can complete without an attorney?

Yes. There is a California Statutory Will form that you can execute with or without an attorney. Two witnesses are **required** and you must read and follow all instructions printed on the form. These forms can be obtained at a stationery store.

11. Is a handwritten Will legal in California?

A handwritten will is called a Holographic Will. A Holographic Will is valid "whether or not witnessed, if the signature and material provisions are in the handwriting of the testator". Estate of Williams, 155 Cal. App. 4th 197, 206. In other words, you can prepare your own will so long as you handwrite it, you indicate how you wish your property to transfer and you sign the will. Although a date is not required, it is a good idea to date any handwritten document intended as a Will. You do not need your signature to be notarized.

12. If I do not have a Will, does my estate go to the State?

No. State law will determine who are your heirs and who gets your estate and there are different rules for distribution of community property and separate property. The “state” only gets your estate if you have **no living relatives**.

Do not confuse this with unclaimed banks account etc., which are sent to the State. Sometimes bank accounts or stock certificates are not claimed by the heirs because the heirs were never aware of where these items were located. After 5-7 years these unclaimed accounts are sent to the State of California, Office of the Controller and held until an heir comes forward to claim them. Be aware of “heir hunters” who send letters at random to persons with similar names. Often these persons request up front fees or a percentage of the recovery. **Never** pay an up front fee. Check with the Office of the Controller yourself for more information on unclaimed accounts.

However, without a Will, people who are not relatives won't inherit anything if you die. So if you want a best friend or good neighbor to receive anything, you must write a Will. Nonrelatives are usually not eligible to receive unclaimed property.

13. What happens if I fail to leave any directions about disposition of my remains? Who has the right to control disposition after I die?

The Health & Safety Code makes it clear that if the decedent has not given directions for disposition, the first individual with the right to determine disposition is the agent named in an Advanced Health Care Directive. If there is no agent, then the next person would be the competent surviving spouse, then the sole surviving competent adult child (or the majority of the surviving competent adult children), then the surviving competent parent or parents, then the surviving competent next of kin, and finally the public administrator if needed.

14. What is probate?

Probate is a court procedure that provides for supervision of your estate and the transfer of title to heirs in accordance with the terms of your Will (or state law if you do not have a Will). Fees to probate a will include court fees, attorney's fees and executor fees. Attorney's fees and executor's fees are set by the California Probate Code §§10800 and 10810 and are based on a percentage of the estate value. The fees are paid during the final steps of the procedure.

Fees can be more if there is "extraordinary" work such as tax preparation or sale of real estate or a dispute (contest) of some kind. An attorney must have court approval to collect a fee for this extraordinary work.

Probate can also be a lengthy process. The minimum statutory requirement just for creditors to respond is four months after the Letters are issued to The Personal Representative. Seven months is a minimum and a year or more is more probable.

15. Does a Will Avoid Probate?

No, not necessarily. How you hold title to your personal and real property will determine if probate can be avoided. Assets held in joint tenancy are not subject to probate. Nor is probate required for assets held in a living trust, a "Totten" trust, a "pay on death ("POD") account and IRAs or insurance policies where there are named beneficiaries who are still living.

Each of these devices may raise other problems that you must consider, so discuss this matter with your attorney before making any transfer of assets simply to avoid probate.

16. What are the reasons for wanting to avoid probate?

The main reason for wanting to avoid probate is to save time and money, and the key to avoiding probate is planning ahead.

However, probate may be the preferred option in your estate plan if you want absolute supervision of the distribution of your estate by the court for one reason or another.

17. What is joint tenancy?

Joint tenancy means that all joint tenants own the whole property (not just a portion) subject to the ownership rights of the others. Complete ownership starts when the names are placed on the deed. Joint tenancy interests pass by operation of law and not by will. This means that when one joint tenant dies, the surviving joint tenant(s) continue(s) to own the whole property whether or not a Will exists.

Between spouses, when the first spouse dies the surviving spouse continues as the owner of the whole property because the surviving joint tenant did not “inherit” part or all of the property from the deceased joint tenant, there is no probate needed. You should file an Affidavit of Death of Joint Tenant with the County Recorder to avoid issues with the property in the future.

Exercise ***extreme*** caution if you are considering adding anyone to the title of your real property or if you are considering transferring your real property to anyone to avoid Probate. The consequences could be grave, including but not limited to triggering a new property tax assessment.

18. What are other ways to avoid Probate?

Here are some possibilities:

- Living Trust: also known as a revocable living trust, if you have the power to change it after it is created, is a written document where all (or part) of your property is put into the trust. If you become unable to manage your affairs, the trust documents indicate who will manage

the assets on your behalf; when you die, the trust documents indicate who gets the assets of the trust. There is no probate required because you personally did not own the assets upon your death, the trust did. Since probate is not required, there is no court supervision over the handling of the assets to oversee the distribution, etc. Assets are placed in the trust when, the deeds and the ownership certificates, are changed to show the owner as the trust - not the individual. If assets are left out of the trust by accident or intentionally, then those assets may be subject to probate depending on the nature and value of those assets.

- Gifts: During your lifetime, you can make gifts of your property to your children or others. You need to know that you may be liable for federal gift tax for any gift over \$13,000.00 per individual per year.
- Payable on Death: Stocks, securities, bank deposits, Totten Trusts, life insurance and annuities can be made payable on death to someone else. These trusts and contractual holdings can supersede probate requirements.

Remember:

Your Will can only dispose of assets in your name alone. If you have designated a beneficiary or placed a name on a bank account as a joint tenant, these items go **outside** of the Will and are not subject to probate.

- Estates with a value of \$100,000.00 or less do not have to be probated, but may require a special summary proceeding in the probate court if you have real property involved.



Powers of Attorney

19. What is a durable power of attorney for financial/asset management?

A power of attorney for financial affairs should be considered the same as giving another person cash to take care of for you. If the attorney-in-fact (the person named) is not trustworthy, a power of attorney can cause financial ruin. Be sure you know and can trust the person you name as your attorney-in-fact. This document can be very broad giving an agent “absolute authority to act” or can be very “narrow and limited” in its power. You can also execute a “springing” power of attorney. This type of power of attorney is only effective when you become incapacitated. If you have a special need, ask someone about preparing a special durable power of attorney.

Many institutions, such as banks, do not like to accept the usual power of attorney form and want their own form used. It is always a good idea to check with the institution you deal with to find out what, if any, special requirements they may have.

20. Is there is durable power of attorney for healthcare?

As of July 1, 2000, the laws governing the Durable Power of Attorney for Health Care (DPAHC) and the Natural Death Act have been replaced by the Health Care Decisions Law. The new Advanced Health Care Directive is the legally recognized document for appointing a health care agent in California. The Advanced Health Care Directive allows you to do more than the previous DPAHC.

You cannot only appoint an agent, but you can write down your own health care wishes that your doctor must follow. Forms are available through Inland Counties Legal Services,

your physician's office or you can call the California Medical Association.

21. If I have a DPAHC executed prior to July 1, 2000? Is it still valid?

No. DPAHCs had a seven (7) year expiration date and have now expired. Because of the new flexibility in the Advanced Health Care Directive, you may want to consider completing a new one.

22. Who can execute Powers of Attorney and the new Advanced Health Care Directive?

Any California resident, who is age eighteen (18) or older, of sound mind, and acting under his or her own free will, can. You ***must*** be competent when you execute these documents. They can take effect immediately upon signing or they can become effective (springing) upon incapacity.

Once you are no longer competent, you cannot give anyone a power of attorney to act in your behalf.

23. What happens if I become incapacitated but did not sign a power of attorney to manage my affairs?

At that time someone would have to petition the probate department of the Superior Court to be named as your Conservator. If there is no one to act on your behalf then the County Public Guardian's office will likely be called in to act as your Conservator.

A probate conservatorship is a legal procedure whereby a person (or the Public Guardian's office) petitions the court to become a conservator (a guardian for an adult) over a person unable to care for himself or take care of his financial affairs. It requires court supervision and an accounting of monies received and spent on behalf of the conservatee. Note: there is

also a mental health conservatorship that can be instituted by the Public Guardian's office for a person who is a danger to herself or others, making it necessary for her to be placed in a locked facility.

The main difference is that a power of attorney is a form signed and notarized, giving another person the right to act on behalf of another person. A conservatorship is supervised by the Court while the power of attorney is unsupervised, allowing financial abuse to happen, if the agent is untrustworthy.

24. Can I revoke a power of attorney if I change my mind?

Yes. The revocation should be in writing, notarized and sent to everyone that might be relying on the original power of attorney, including your prior agent to make sure they know they are no longer able to exercise the prior power of attorney. Also, if the original power of attorney has been recorded, you should record the revocation.



Social Security

25. If I arrange for direct deposit of my Social Security check, can creditors touch it?

No. Social Security income is protected from creditors under the Social Security Act (42USC407), even if not deposited, but direct deposit makes it easier to protect. However, Social Security income **can be garnished** to make court-ordered child support payments, spousal support, IRS for unpaid Federal taxes or to pay another Federal agency for a non-tax debt (i.e. student loans).

26. Can I continue to work after I start to collect my Social Security retirement check?

Yes, however, Social Security may withhold \$1 for every \$2 you earn over the yearly income amount you are entitled to earn. The maximum yearly income amount is determined by your age at the time you elect to receive Social Security. The earliest age you can start receiving Social Security is 62. The full retirement age is 66, for people born between 1943-1954, and will gradually increase to 67, if you were born in 1960 or later. You need to check with Social Security to find out your full retirement age. Once you reach your full retirement age, Social Security will stop withholding money from your income determined by the month you reach your full retirement age. You can contact the Social Security Administration to find out what your full retirement age is, and what your yearly income amount is.



Homestead

27. As a senior citizen, is my home or mobile home protected from most creditors, even without recording a homestead?

Yes. If you own a house, condominium, mobile home or houseboat, and reside in it, a specified amount of equity interest in your home is automatically protected. The amount of equity in the home that is protected depends on the homeowner's circumstances. An individual 55 years or older who has a gross annual income of \$15,000.00 or less (an unmarried person) or \$20,000.00 (a married person) can exempt \$175,000.00. An individual who is 65 years or older or who is disabled and unable to work can also exempt \$175,000.00, under CCP § 704.730.

28. Will a Homestead protect my home from foreclosure?

No. A homestead does not prevent a lender from foreclosing where a debt is secured by the home. If you pledge your home as collateral for a loan, the lender can sell the property to collect on the debt regardless of the existence of the homestead.

29. How does a Homestead protect my property?

A home with a recorded homestead, cannot be sold by a creditor, if proceeds from a forced sale of the home will not be sufficient to pay all of the following: 1) the owner's homestead exemption; 2) all mortgages on the home and other loans secured by the home; and 3) all existing liens or encumbrances on the home. For example, a \$155,000.00 residence, owned by a 65-year-old individual and encumbered by a \$20,000.00 mortgage, is fully protected from judgment creditors.

If a homeowner voluntarily sells his or her home, to the extent the proceeds of the sale do not exceed the homeowner's homestead exemption, a Declaration of Homestead protects the proceeds for six months after the sale. If, within that six months, the proceeds from the sale of the home are invested in a new dwelling and the owner files a Homestead Declaration for the new dwelling, the money remains protected.

However, if someone has a home that was valued at \$350,000 and the property is encumbered by a \$20,000.00 mortgage, the property is **not** fully protected from creditors. There would be \$155,000.00 unprotected that the creditors can go after, often through the forced sale of the home.

30. How do I file a Declaration of Homestead?

The Declaration of Homestead is a form which the owner must fill out, sign in front of a notary and then file the Declaration in

the County Recorder's office where your home is located. A small filing fee is charged for recording the document.

When you own a mobile home on a permanent foundation, you must file the "Homestead Exemption" with the County Recorder's office in the county where the mobile home is located.

When a judgment is obtained against a mobile home the owner receives a Notice of Levy notifying the owner the mobile home may be sold. The owner must file a "Claim of Exemption" within ten (10) days after the date the Notice of Levy was filed with the court.



Reverse Mortgages

31. What is a reverse mortgage?

Reverse mortgages are, in theory, a means for individuals or their spouses over the age of 62 to use the equity in a home without having to repay a traditional equity loan or line of credit. In reality these can be very expensive loan transactions that can result in very limited benefit to the borrower. While it is not typically necessary for a borrower to repay any portion of the loan during his or her lifetime these loans can consume equity without any action by the borrower. In some cases a borrower may receive little to no money while the mortgage against the home increases monthly.

The most well-known reverse mortgage is the federally-insured Home Equity Conversion Mortgage (HECM). This loan is backed by the U.S. Department of Housing and Urban Development (HUD). It is generally offered by mortgage companies or banks. There are also state and local government programs that offer low-cost reverse mortgages, available to

homeowners with low or moderate income. These loans are generally used for one specific purpose, such as home repair or pay property taxes. There are also “proprietary” reverse mortgages which are owned and backed by private companies. Often these types of loans are expensive. In general, it is probably prudent to consult with a licensed attorney before signing any documents for a reverse mortgage.

32. What do you get from the loan?

You can receive a single lump sum of cash, or a regular monthly loan advance or as a credit-line that lets you decide how much cash to use and when to use it. Or you may choose to use any combination of these payment plans.

The total amount you owe for the reverse mortgage continues to grow over time. You are not obligated to pay back any of the loan advances or interest until some future time, usually at the time of your death, upon the sale of the home, or if you permanently move from the home.

Borrowers under the program cannot be forced to move even if the amount they owe eventually exceeds the worth of their property. FHA insurance protects against the risk that the loan balance may become larger than the value of the home.

33. Who may be eligible for an FHA-insured reverse mortgage?

Homeowners who are, or whose spouses are, at least 62 years old and who either own their homes free and clear of debt or have only minimal mortgage debts may be eligible for a reverse mortgage. The homeowner need not demonstrate an ability to repay the loan from current income to be eligible. Contact Inland Fair Housing and Mediation for more information.



Paying for Nursing Home Care

34. Will my Medicare or HMO pay for a nursing home?

Medicare may pay for some of your nursing home expenses. If you go directly to a **skilled nursing facility** (SNF) after at least a three-day stay in a hospital for illness or injury, Medicare will pay for days one through twenty of your nursing home stay. Medicare will also pay for 80% of the costs for days 21 through 100. If you have a supplemental (Medi-Gap) policy, this supplemental policy should pick up the other 20%. After one hundred days you are on your own. HMO's usually have similar nursing home policies, but you need to check with your health insurance carrier to verify their nursing home policy.

35. Who pays for my nursing home care if I can't afford it?

In California, Medi-Cal will pay for a person to be in a nursing home provided that person is of modest means and has few assets. An unmarried person, who retains less than \$2,000.00 in a bank account, has a prepaid funeral/burial fund, \$1,500.00 in a separate account designated for burial, a burial plot, and a policy of life insurance with a face value or cash value of less than \$1,500.00, can qualify for Medi-Cal assistance in a nursing home. The person's home remains exempt as long as they "intend" to return to that home, whether or not they are physically capable of returning to the home.

To qualify for Medi-Cal, you must meet a 'means test.' Your income and assets must be under a certain level, as determined by your individual state. Most states use a percentage of the Federal Poverty guidelines as the measuring stick to determine eligibility.

Be aware that Medi-Cal rules do not allow you to give away your money (for instance, to your children or grandchildren) in order to qualify for Medi-Cal. In fact, Medi-Cal now implements a 30 month "look-back" period, which means that Medi-Cal will examine all your financial dealings for at least the past 30 months. If you transferred or gifted money to anyone during those 30 months, you will be penalized with a delay in your Medi-Cal eligibility.

In February 2006 the Federal Deficit Reduction Act of 2005 was signed into law. These rules have not been implemented in California. When implemented, one of the many rules that will change is the "look-back" period from 30 months to 60 months (5 years).

36. Can I get Medi-Cal assistance if my spouse goes into a nursing home?*

You can get assistance under the Medicare Catastrophic Coverage Act (MCCA) if your spouse entered a SNF after September 1989 and applied for Medi-Cal after January 1990. (S)he qualifies for assistance provided certain income/asset guidelines are met. The basic ones are:

- The family home is totally exempt regardless of value.
- One automobile regardless of value
- In 2011, the at-home spouse can retain up to \$101,640 in liquid assets (such as stocks, bonds, bank accounts, etc.).
- In 2011, the at-home spouse can retain up to \$2,541.00 of the family income **or** a greater amount if the at-home spouse receives more than \$2,541.00 in their name alone.

- Prepaid funeral plans and burial plots are exempt. So is a separate amount up to \$1,500.00 in a burial fund.
- Cash in IRA's or Annuities are exempt provided the annuity is properly calculated to match the estimated life span of the annuitant and distributions of principal and interest are made properly and at regular, equal intervals.
- The nursing home spouse can only keep \$2,000.00 in his or her name.

There are other exemptions, but the list above contains the major ones. Remember the operative words are **skilled care/skilled nursing facility**. Medi-Cal will **not** pay for expenses for a board and care facility and will not pay for custodial care.

37. What if I need more of the family income or assets than I am allowed under the MCCA rules?*

An at-home spouse can keep more than the allocated \$2,739.00 per month or the \$109,560 in assets if he or she can demonstrate extraordinary circumstances which would justify the need for more. If you or your spouse's Medi-Cal benefits are jeopardized because the income or assets levels are exceeded, you can request a State Hearing to determine if your need exempts you from the limits.

38. Will the State put a lien on my home when my spouse dies if Medi-Cal has paid for the nursing home care?

Consumers often confuse liens and estate claims. Liens are placed on living Medi-Cal beneficiaries' estates to "hold" the property until the person dies. Estate claims are made against the estate of the deceased Medi-Cal beneficiary. California uses liens in rare cases where the Medi-Cal beneficiary's home

is not exempt and is up for sale. Estate recovery claims can be made after a Medi-Cal beneficiary's death. The state can make a claim against the estate of an individual who was 55 years of age or older at the time he or she received Medi-Cal benefits or who (at any age) received benefits in a nursing home, unless there is a surviving spouse or minor, blind or disabled child. California will attempt recovery from any real or personal property in which the individual had any legal title or interest at the time of death (to the extent of such interest). This includes assets conveyed to a survivor, heir or assigns of the deceased through joint tenancy, tenancy in common, revocable life estates, living trust or other arrangement.

The law is being challenged in court and the outcome is still uncertain. At present, all transfers of property from a person who now receives, or who in the near future may receive, Medi-Cal benefits should be reviewed by an attorney regarding the transfer of any property to any other person.

39. I have heard that if you purchase annuities, the state cannot make a recovery claim against your estate. Is this true?

Under the **new** rules, certain types of annuities will now be used to help someone qualify for Medi-Cal. This means the State of California, not your family, will now be named as the beneficiary of your annuity. At present work related pensions, IRAs, and annuities purchased after September 1, 2004 do not apply to the recovery rule.

40. Can I put everything into a trust, or give it away, to avoid paying for a nursing home?

No. This question is directed toward circumventing the "eligibility" requirements to qualify for Medi-Cal assistance. Medi-Cal can do a "look-back" at 30 months from the date from the date of your application for Medi-Cal to determine your eligibility for assistance.

41. Is there any help to pay for my care at home so that I don't have to go into a nursing home?

Yes. In Home Support Services (IHSS), 1(888)980-4477, helps low income disabled persons of all ages to stay safely in their home by assisting with cleaning, cooking, shopping, caregiving, etc. It is run by the county Department of Public Social Services. If you are eligible, the county pays for all or part of the wages to your care provider. You must find and hire your own care provider. After an assessment by the county, a specific number of hours will be authorized for your care. You have the right to a Fair Hearing if you are denied IHSS, if your hours are incorrectly determined or reduced and you disagree with the decision.



Mobile Home Law

42. I live in a mobile home. I own the home, but I pay space rent in a park. Are there separate laws to protect me?

Yes. The “Mobile Home Residency Law” is a set of laws starting with Section 798 of the California Civil Code. There are other regulations found in the Government Code, the California Code of Regulations, and the California Health and Safety Code. See the References at the end of this publication for more information.



ELDER ABUSE

43. What is elder abuse?

Under California law, "Abuse of an elder or a dependent adult" means either of the following:

(a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.

(b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

California Welfare & Institutions Code § 15610.07

An elder person is anyone 65 years old or older. A dependent adult is a person over 18 years of age that is not capable of caring for themselves.

44. I suspect an elderly person is being abused, can I report it to someone?

Yes. The Department of Aging and Adult Services (Adult Protective Services) has a 24 hour hotline to handle incoming calls of suspected elder or dependent adult abuse. **(877) 565-2020**. Effective May 1, 1999, legislation was passed requiring the mandatory reporting of physical abuse, financial abuse, neglect, abandonment or isolation of the elderly or dependent person. If you suspect an elderly person or dependent adult is being abused, call the hotline immediately. All reports are handled in strict confidence.

In addition, the law also provides for criminal prosecution as well as civil penalties for the abuser.



Grandparent Visitation

45. As a grandparent, can I ask the court for visitation with my grandchildren when the parents are getting a divorce?

Yes. The court has the power to grant visitation rights to grandparents when there is any custody proceeding before the court. The court must find there is a preexisting grandparent-grandchild relationship such that visitation is in the child's best interest, and the court must balance the interest of the child in having visitation with the parents' right to exercise their parental authority. There is a rebuttable presumption that visitation is not in the best interest of the child if both parents agree that the grandparent should not be granted visitation (Family Code 3100 et seq.).



Small Claims Court

46. How can small claims court be of benefit to me?

The Small Claims Court rules allow you to resolve your civil issues quickly and inexpensively. If the party filing the small claims action is a corporation, partnership, unincorporated association, governmental body or other legal entity, they may only file for a maximum claim of \$5,000. An individual may file a claim to recover up to \$7,500. Lawyers are not allowed to appear in court with you but you can seek legal advice on how to handle your case in court with a lawyer.

47. How much are the court fees for small claims?

The filing fees in small claims court **depends** on the amount of the claim: \$30 if the claim is for \$1,500 or less, \$50 if the claim is for more than \$1,500 but less than or equal to \$5,000, or \$75 if the claim is for more than \$5,000.



RESOURCES

COUNTY OFFICES FOR SENIORS

San Bernardino County Department of Aging & Adult Services

686 East Mill Street, San Bernardino CA 92415-0640
(909) 891-3900

San Bernardino County Senior Information & Assistance
(800) 510-2020

Community Action Partnership of San Bernardino County
696 S. Tippecanoe Avenue, San Bernardino CA 92408-2607
(909) 723-1500

Riverside County Office on Aging
6296 River Crest Drive, Riverside CA
(800) 510-2020

DISTRICT ATTORNEY

San Bernardino County Criminal Division
316 N. Mountain View Ave., San Bernardino CA 92415-0004
(909) 387-8309

Riverside County Criminal Division
4075 Main Street, Riverside CA 92501
(951) 955-5400

CONSUMER PROTECTION

Better Business Bureau of Inland Cities, Inc.

315 N. La Cadena, Colton CA 92324
(909) 825-7280

(Lists previous complaints about specific business organizations)

Contractors State License Board

1845 Business Center Dr., Suite 206
San Bernardino CA 92408
(800) 321-2752

(Complaints against licensed contractors)

**Attorney General's Office, California Department of Justice,
Attn: Public Inquiry Unit**

P.O. Box 944255, Sacramento CA 94244-2550
(916) 322-3360 or (800) 952-5225

(Complaints about deceptive or fraudulent business practices. Contact when your complaint does not seem to fall within any specific agency's jurisdiction.)

Federal Trade Commission

10877 Wilshire Blvd., Suite 13209, Los Angeles CA 90024
(310) 824-4300

(Investigates consumer complaints regarding equal credit opportunity, credit reporting agencies and department store credit cards.)

California Bureau of Automotive Repair

3737 Main Street, Riverside CA
(951) 782-4250 or (800) 952-5210

California Department of Consumer Affairs

400 "R" Street, Sacramento CA 95814

(800) 952-5210

(Offers free publications for consumers. Handles consumer complaints.)

Office of the Controller

Division of Unclaimed Property

300 Capitol Mall, 8th Floor, Sacramento, CA 95814

MOBILE HOMES

Housing & Community Development Mobile Home Titling & Registration

3737 Main St., Suite 400, Riverside, CA 92501

(951) 782-4431 or (800) 952-8356

Mobile Home Ombudsman-Complaints

P.O. Box 31, Sacramento, CA 95812-0031

(800) 952-5275

Golden State Manufactured-Home Owners League

P.O. Box 876

11020 Magnolia Street, Garden Grove CA 92841

(714) 826-4071 or (800)888-1727

Yucaipa Mobile Home Residents' Association

P.O. Box 1052, Yucaipa CA 92399

(909) 797-9732

ELDER ABUSE: PHYSICAL OR FINANCIAL

San Bernardino County Adult Protective Services (Dept. of Aging & Adult Services)

(909) 891-9019

Hot Line 24 Hrs. (877) 565-2020

Riverside County Adult Protective Services (Public Social Services Department)

1020 Iowa Ave., Riverside CA 92507

(951) 955-3400

Hot Line 24 Hrs. (800) 491-7123

NURSING HOME CARE

San Bernardino County Department of Aging & Adult Services

Long-Term Care Ombudsman Services

(909) 891-3928 or (866) 229-0284

Riverside County Long-Term Care Ombudsman Program

(951) 686-4402

(Both counties handle complaints about nursing homes and residential care facilities. Counseling for facility residents. Advocacy for seniors and the disabled.)

CANHR (California Advocates for Nursing Home Reform)

650 Harrison Street, 2nd Floor, San Francisco, CA 94107

(415) 974-5171 or (800) 474-1116

SOCIAL SECURITY & MEDICARE & HEALTH INSURANCE

Social Security Administration

(800) 772-1213

Health Insurance Counseling & Advocacy Program (HICAP)

6296 River Crest Dr., Suite L, Riverside CA 92507-0738

(800) 434-0222

(Free counseling on health care options and rights.)

INFORMATION & REFERRAL

California Department of Aging

1600 "K" Street, Sacramento CA 95814

(916) 322-3887 or (800) 510-2020

(Information & fact sheets; re: nursing home complaints:

(800) 231-4024.)

Rolling Start

570 West Fourth Street, San Bernardino CA 92401

(909) 884-2129

(Information and referral for housing and adult care.)

Inland Fair Housing and Mediation Board

1005 Begonia Ave., Ontario, CA 91762

(909) 984-2254 or (800) 321-0911

Fair Housing Council of Riverside County

3600 Lime Street, Suite 613, Riverside, CA 92501

(951) 682-6581 or (800) 655-1812

California Medical Association

P.O. Box 7690, San Francisco, CA 94120-7690

(800) 882-1262



ICLS PRIVATE ATTORNEY INVOLVEMENT PROGRAM

Volunteer attorneys recruited by local bar associations provide free legal advice and consultation to eligible clients at evening legal aid clinics. For more information, contact the clinics directly. Inland Counties Legal Services provides funding through its PAI Program to these programs.

Inland Empire Latino Lawyers Assn.

(951) 369-3009

MONDAY CLINIC: 1:00 p.m.

Lawrence Hutton Center, 660 Colton Ave., Colton

WEDNESDAY CLINIC: 1:00 p.m.

Cesar Chavez Community Center

2060 University Ave., Suite 113, Riverside

2ND THURSDAY MONTHLY CLINIC: 1:00 p.m.

De Anza Community Center, 1405 S. Fern Ave., Ontario

3rd THURSDAY MONTHLY CLINIC: 1:00 p.m.

Cesar Chavez Community Center

2060 University Ave., Suite 113, Riverside

LAST SATURDAY MONTHLY CLINIC:

Arlanza Community Center, 7950 Philbin Ave., Riverside

Legal Aid Society of San Bernardino, Inc.

(909) 889-7328 or Toll Free: (1-866)-889-7328

SAN BERNARDINO CLINIC:

588 West Sixth St., San Bernardino

MONDAY - TUESDAY - THURSDAY: 9:00 a.m.

1st & 3rd WEDNESDAY: 10:00 a.m.

1st MONDAY: 3:30 p.m.

1st & 3rd FRIDAY: 10:00 a.m.

CHINO 2nd MONDAY CLINIC: 1:30 p.m.

Neighborhood Activity Center, 5201 "D" St., Chino

RANCHO CUCAMONGA 4th MONDAY CLINIC: 5:00 p.m.

Rancho Cucamonga Family Resource Center, 9791 Arrow Route,
Rancho Cucamonga

VICTORVILLE 1st & 3rd TUESDAY CLINIC: 2:00 p.m.

High Desert Academy, 15411 Village Dr., Victorville (near
Mojave & I-215)

BARSTOW 4th TUESDAY CLINIC: 12:00 p.m.

Cora Harper Fitness Center Mobile Unit in Rear Parking Lot, 851
Barstow Rd., Barstow

JOSHUA TREE 2nd & 4th WEDNESDAY CLINIC: 11:00 a.m.

Joshua Tree Community Center, 6171 Sunburst Ave., Joshua Tree

**29 PALMS at the US MARINE CORPS BASE 2nd WEDNESDAY
CLINIC: 11:00 a.m.**

Appointments Only – only those people permitted on base
29 Palms Marine Corps Base

1707 Bourke (on corner of 8th & Bourke), Room A-Alpha

**Public Service Law Corporation of the
Riverside County Bar Assn.**

Riverside Area: 951-682-7968

Southwest County Area: 951-244-2920

Desert Area: 760-347-9456

Call for Eligibility & Screening & Appointments

MONDAY/WEDNESDAY CIVIL CLINIC

TUESDAY/THURSDAY FAMILY LAW CLINIC:

4129 Main St., Suite 101, Riverside

1-2 TIMES MONTHLY TEMECULA FAMILY LAW CLINIC:

Lake Elsinore, Murrieta, Temecula & Sun City:

Temecula Public Library, 30600 Pauba Rd., Temecula

DESERT CLINIC - INDIO:

Held at: Inland Counties Legal Services, 82632-C Hwy. 111, Indio

GUARDIANSHIP & CONSERVATORSHIP CLINICS:

Guardianships-Thursdays / Conservatorships - Friday

4129 Main St., #101, Riverside

TUESDAY (monthly): Hemet

1075 N. State St., Hemet

2nd & 4th FRIDAY: Coachella Valley Desert

Held at: Inland Counties Legal Services, 82632-C Hwy. 111, Indio

Notice to ICLS Clients

If you are denied legal services or are dissatisfied with the manner or quality of services, you have a right to file a complaint. Ask the receptionist for ICLS's "How to Make a Complaint Notice."

NOTES