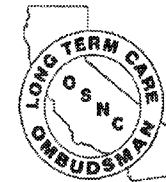


Theft and Loss in Long-Term Care Facilities

**A Manual for Residents of Skilled Nursing
Facilities and Residential Care Facilities for the
Elderly, their Families, Friends, and Advocates**

**Prepared and Created by:
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INTRODUCTION

Part of what makes long-term care facilities undesirable is the loss of personal identity. The chronically-ill and many of the elderly have already suffered immeasurably from the loss of health and independence. When they enter a long-term care facility they leave their homes, many of their possessions, and the family setting, all of which contribute to their individuality.

Under these circumstances, a small object may take on tremendous importance. It may be a radio, an old ring, or a faded photograph, but it forms a bridge to the past, providing a sense of continuity to past life and loved ones left behind. To lose such an object injures a person's self-esteem and robs them of a sense of well-being.

When the missing item has an important function, such as a hearing aid, eyeglasses, or a set of dentures, the effect of its loss is multiplied. Even if the object has not been stolen, the damage is the same: the victims feel they are in a new unprotected environment. They may suspect those on whose trust they depend on such as nurses, care providers, and other residents.

On the other hand, a simple act of individual concern by a facility staff member, such as retrieving a ring from a food tray, may contribute to a person's sense of well-being and create the kind of emotional bond that makes adjustment or continued residence in the facility possible. In light of the importance attached to these objects, California law mandates that long-term care facilities take measures to prevent theft and loss.

With certain minor distinctions, the laws covering theft and loss are the same for skilled nursing facilities (SNFs) and residential care facilities for the elderly (RCFEs). The regulatory agencies are different in the two levels of care: the Department of Health Services (DHS) regulates skilled nursing facilities; the Department of Social Services (DSS) regulates RCFEs (Assisted Living). The long-term care ombudsman monitors care and investigates complaints in all SNFs and RCFEs.

THEFT AND LOSS: STATUTORY REQUIREMENTS IN LONG-TERM CARE FACILITIES¹

A written inventory list of personal property must be prepared upon admission and a copy must be provided to the resident. Upon a written request from the resident (or person acting on the resident's behalf), items later brought into or removed from the facility must be added to or deleted from the inventory list. The facility may not be responsible for items not on the inventory list. The inventory list need not be adjusted each time personal items, such as laundry and other clothing, are taken in and out of the facility. Upon request, a resident must be provided a copy of the current inventory list. All RCFE inventories are required to be written in ink, witnessed by facility staff, the resident or representative, and dated.

The facility will provide a lock and key for the residents' bedside drawer or cabinet, if requested. This item will usually be provided at the residents' expense. On request, each administrator must have access to residents' locked areas.

Upon discharge or death of a resident, all personal belongings must be inventoried by the facility staff and a signed receipt provided in exchange for each item. In the case of death, immediate written notice of all unclaimed property must be provided to the public administrator.

A facility must make reasonable efforts to safeguard resident property, or else it will have to replace stolen or lost property at its market value.

In order to prove it has made "reasonable efforts," the facility must demonstrate that it has tried to meet all requisites of the law.²

The licensing agency will take action against a facility that has no theft and loss program, or whose theft and loss program is insufficient or unenforced. All facilities must establish and post a policy regarding theft and loss.

- All employees must be trained on the facility's policies and procedures regarding theft and loss. The new hires must be trained within 90 days of employment.
- The loss of any article valued over \$25 must be documented. If the loss occurs in an RCFE, it must be documented within 72 hours. All facilities (SNF and RCFE) must report losses of \$100 or more to local law enforcement within 36 hours. Records must include: (1) a description of the article, (2) its estimated value, (3) date and time the article was discovered missing, (4) date and time the theft or loss occurred (if it can be ascertained), and (5) any action taken. The Long-Term Care Ombudsman has a right to see and review the documentation if there is a specific complaint.
- The facility must adopt a method of marking/engraving all personal items at admission and as added to the written inventory list; including dentures and other prosthetic devices.
- Each facility must maintain a protected area somewhere in the facility for safekeeping of residents' personal belongings.
- At least twice a year each facility must record its efforts to control theft and loss of residents' personal property. Records, investigative procedures, and results must be reviewed by the administrator and the residents' council whenever possible.
- A copy of the theft and loss statute must be provided to all residents and, upon request, to all prospective residents.³
- All newly admitted and current residents must be informed about the facility's theft and loss prevention program.

INFORMATION AND SUGGESTIONS FOR RESIDENTS

The Admission Agreement⁴

Each facility is prohibited from including in its admission agreement any language that exempts the facility from the requirements of the law.

The facility, the residents, and their families all share responsibility for protection of personal property in long-term care settings. The following are a few practical suggestions that may aid in the prevention of property loss.

Upon Admission

Each facility must have its policies on theft and loss posted so they may be reviewed prior to admission. Upon admission to a facility, residents may take a number of precautions against the loss of property. While the facility may not insist that residents keep all their valuables in the facility safe, residents may wish to store in the safe those items which need not be constantly in their possession. Residents should request a lock and key for their bedside table. The facility must provide the lock and key, at the resident's expense; however, the facility has the responsibility to install it for the resident.

Before bringing personal items into the facility, residents and their families are advised to mark or tag as many items as possible. This will aid in the identification of the items if lost or stolen. For added protection, it may be possible for the residents to extend their homeowner's insurance to cover personal belongings kept at the facility. Certain valuable items, such as prosthesis, may be insured separately.

The resident should take time to review the inventory list prepared on admission. Each item on the inventory list should include an estimated value. It is advised, however, that items of great value be formally appraised.

Periodically

Residents should review the inventory list on a quarterly basis. It is essential that any item not on the inventory list be added. Residents and/or families may request, in writing, that the facility add or delete items on the inventory list as required. A copy of the updated inventory list will be provided to the requester. Any items brought into the facility subsequent to admission must be marked by the resident or given to the facility staff for marking.

When an Item(s) is Discovered Missing

Any missing item(s) should be reported to the facility staff immediately. It is important to document staff's initial response, including dates, names of individuals questioned, and any offers made to replace the missing item(s) as a matter of record. A letter should be written to the administrator requesting that action be taken to recover or replace the missing item(s). Always date and keep copies of any correspondence to the facility administrator.

Failure to Act

If the facility fails to take timely or sufficient action to recover or replace the missing item(s), the resident has a number of options:

1. Report the issue to the local Long-Term Care Ombudsman, Department of Health Services (for SNFs) or Department of Social Services (for RCFEs), and local law enforcement. Telephone information is located on the back cover of this booklet.
2. Write a letter to the facility administrator requesting that the item(s) be replaced. If the request is denied, sue the facility in Small Claims Court (see Small Claims Court, page 7).
3. In situations where valuable items are missing, or there has been a serious problem of theft and loss in the facility, contact an attorney to file a lawsuit.

DEMAND LETTER

Another option available in the process of recovering lost personal property is the submittal of a demand letter to the facility administrator. This letter will establish at least two essential precepts: (1) the fact that you personally notified the facility administrator of the missing item(s), and (2) it forms the basis for a small claims court action. Please see page 8 for a copy of a sample demand letter.

SMALL CLAIMS COURT

Small claims court is another option for a resident who has suffered a theft and loss of personal belongings. You can sue for up to \$5,000 in this court. Before resorting to small claims court, however, residents must request that the facility replace or reimburse them for the lost or missing property. All such requests should be documented, including any oral communications or any failed attempts to communicate with the facility administrator. These documents should be presented to the court as evidence that you made reasonable attempts to resolve the issue.

The following documents may help demonstrate the value of the missing item(s) and the facility's failure to prevent the theft or loss:

- A copy of the facility's policies and procedures
- The resident's admission agreement
- Applicable receipts, including any documentation on the value of the missing property
- The most recent copy of the facility's inventory list of the resident's belongings
- Any copies of the records the facility kept or made when the loss occurred
- Copies of any offers made to settle the matter/issue

You may want to contact a senior legal service for advice (please see page 12, Resources).

SAMPLE DEMAND LETTER

_____ Date

To: _____
Administrator

Re: _____
Resident

I am writing this letter due to the loss of my personal property while a resident of this facility. During my residency, since _____, 20___, I owned several items of personal property, including the following: _____, which are now missing. When I noticed these items missing, I promptly informed members of your staff. Presently, I am not aware of any effort being made by you or your staff to investigate this incident nor have I been offered a replacement or compensation for my property loss.

Under California law, H & S Code 1289 or 1569, this facility is obligated to protect my personal property. However, the facility has failed in this regard. I frequently use these lost possessions and their loss has upset me greatly. Therefore, I demand adequate and proper steps be taken to investigate the loss of my property immediately.

The replacement value of my property is \$_____. If the facility agrees to pay this amount to me by_____, I am willing to consider this unfortunate incident resolved. Of course, if the facility returns the missing item in the same good condition, I will accept that as a reasonable solution.

Please do not hesitate to contact me regarding this matter. However, I expect a written reply by _____, with an acceptable remedy to rectify the loss of my property. I look forward to your prompt response.

Very truly yours,

Name of resident or responsible party

SUGGESTIONS FOR FACILITIES**Financial abuse of an elder or dependent adult is a crime.**

The facility should conduct frequent training on theft and loss policies and procedures. Involving the staff in devising solutions will foster their sense of personal commitment. All employees of the facility are to be trained on elder abuse and neglect and must understand their individual role as mandated reporters of abuse.

Facilities must report all incidents of theft and loss that amount to \$100 or more to local law enforcement. In all cases of theft facilities must submit a Report of Suspected Elder or Dependent Adult Abuse (SOC 341) to the local Ombudsman Program Monitor or law enforcement.

If the facility maintains a high degree of professionalism and well-trained staff, theft and loss may be significantly reduced. Facilities must check the references of all potential employees to ensure that they have a respectable work history. Any sign of theft in a potential employee's record should be thoroughly investigated.

Inventory List

A written and detailed inventory list must be prepared upon admitting a resident to the facility and maintained throughout the resident's stay. A copy of the inventory list shall be given to the resident or responsible party. Any items brought into the facility after admission shall, at the written request of the resident, the resident's family, a responsible party, or a person acting on behalf of the resident, be added to the inventory list by the facility.

Perhaps the most effective measure a facility can take is the education of its residents, their families, and facility staff. Begin the task of education by supplying the resident and family with information, such as this booklet, separate from the admission agreement. By doing so, it will call special attention to the problem and its importance. The facility newsletter can reinforce this message with monthly reminders.

Thereafter, the inventory list should be updated on a quarterly basis. All personal belongings must be identified on the resident's inventory list. Each facility shall establish and maintain a method of permanently marking, to the extent feasible, personal property items. Such property shall be marked on admission and as items are added to the list. Dentures shall be engraved and prosthetic devices tagged for ease of identification. Large items such as television sets may, in accordance with facility policy, be bolted down to prevent removal.

Storage

The facility must offer all residents the opportunity to secure their money and small valuables in the office or safe. A lockable bedside drawer or cabinet must be made available for each resident. Staff access to the keys should be strictly controlled.

Reporting and Investigation

Investigative and loss reporting techniques are vital to an effective theft and loss program. Each facility must maintain a theft and loss log that describes the missing item(s) and records the date and time of the theft or loss, the work shift, and the names of the employees on duty. It is suggested that a "missing item" report then be provided to the resident and/or sent to resident's family.

Documentation of the facility's efforts to control theft and loss, including the logs and investigative reports, must be reviewed on a semi-annual basis by the facility's administrator and, when feasible, the resident council. Quarterly reviews of these documents may provide additional information such as pinpointing a potential problem to a wing or particular shift of the facility. All documentation should be shared with residents upon request.

The facility shall provide to all residents and their responsible parties a copy of Health and Safety Code, Sections 1289.3, 1289.4, and 1289.5. These code sections shall also be available for all prospective residents and their responsible parties.

CALIFORNIA PENAL CODE, §368

Section 368 states in part: Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), and by a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars (\$400).

WELFARE & INSTITUTION CODE, §15630

Section 15630 states in part: Financial abuse of an elder or dependent adult occurs when a person or entity does any of the following: (1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or intent to defraud or both, and (2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or intent to defraud, or both.

ENDNOTES

1. Health & Safety Code, §1289.3; §1569.152 (RCFE).
2. Health & Safety Code, §1289.4 (SNF); §1569.153 (RCFE).
3. Health & Safety Code, §§1289.3-1289.5 (SNF); §§1569.152-1569.154 (RCFE).
4. Health & Safety Code, §1289.5 (SNF); §1569.154 (RCFE).

RESOURCES

1. Ombudsman Services of Northern California (OSNC)
Advocates for residents in long-term care-complaint resolution
For Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, and
Yuba: (916) 376-8910. For Solano: (707) 644-4194
www.osnc.net
2. Legal Services of Northern California-Senior Legal Hotline
Provides legal service via telephone hotline
Telephone: (916) 551-2140 in Sacramento and 1-800-222-
1753 toll-free in Northern California Fax: (916) 551-2197
www.seniorlegalhotline.org
3. California Advocates for Nursing Home Reform (CANHR)
Provides legal assistance and consumer advocacy
Telephone: 1-800-474-1116 or (415) 474-5171
Fax: (415) 474-2904
www.canhr.org
4. California Department of Health Services
*Regulatory agency for skilled nursing facilities
& intermediate care facilities*
Health Facilities Consumer Assistance Ctr. 1-866-835-556
www.dhs.ca.gov
5. California Department of Social Services
*Regulatory agency for assisted living facilities (residential
care)*
www.cclld.ca.gov "Regional Offices"