

CALIFORNIA CODES
PROBATE CODE
SECTION 2952-2955

2952. (a) A peace officer may issue a declaration, as provided in Section 2954, concerning an **elder** person if all of the following conditions are satisfied:

(1) There is probable cause to believe that the **elder** person is substantially unable to manage his or her financial resources or to resist fraud or undue influence.

(2) There exists a significant danger that the **elder** person will lose all or a portion of his or her property as a result of fraud or misrepresentations or the mental incapacity of the **elder** person.

(3) There is probable cause to believe that a crime is being committed against the **elder** person.

(4) The crime is connected to the inability of the **elder** person to manage his or her financial resources or to resist fraud or undue influence, and that inability is the result of deficits in the **elder** person's mental functions.

(5) The peace officer has consulted with an individual qualified to perform a mental status examination.

(b) If the requirements of subdivision (a) are satisfied, the peace officer may provide a signed declaration to the public guardian of the county. The declaration provided by the peace officer under this subdivision shall be signed by both the peace officer and a supervisor from the county's adult protective services agency. The declaration shall be transmitted to the public guardian within 24 hours of its being signed, and may be transmitted by facsimile.

(c) (1) Upon receiving a signed declaration from a peace officer, the public guardian is authorized to rely on the information contained in the declaration to take immediate possession or control of any real or personal property belonging to the **elder** person referred to in the declaration, including any property that is held jointly between the **elder** person and a third party that is subject to loss, injury, waste, or misappropriation, and may issue a written recordable certification of that fact pursuant to this section. The written recordable certification shall substantially comply with the following form:

"CERTIFICATE OF AUTHORITY

THIS IS AN OFFICIAL CERTIFICATE ENTITLING THE PUBLIC GUARDIAN TO TAKE POSSESSION OF ANY AND ALL PROPERTY BELONGING TO THE FOLLOWING INDIVIDUAL:

(Name of Victim) _____

This Certificate of Authority has been issued by the Public Guardian pursuant to and in compliance with the Financial **Abuse** of Mentally Impaired Elders statute, Chapter 4 (commencing with Section 2950) of Part 5 of Division 4 of the California Probate Code. Under California law, this Certificate of Authority authorizes the Public Guardian to take possession or control of property belonging to the above-named individual.

SPECIAL NOTE TO FINANCIAL INSTITUTIONS: State law requires that upon receiving a copy of this Certificate of Authority, financial institutions shall provide the public guardian with information concerning property held by the above-named individual and surrender the property to the Public Guardian if requested. This Certificate of Authority shall only be valid when signed and dated by the Public Guardian or a deputy Public Guardian of the County of _____ and affixed with the official seal of the Public Guardian below.
Signature of Public Guardian: Date: Official Seal"

(2) The mere issuance of the declaration provided by this section shall not require the public guardian to take possession or control of property and shall not require the public guardian to make a determination that the requirements for the appointment of a conservator are satisfied.

(3) The authority provided to the public guardian in paragraph (1) includes the authority to deny use of, access to, or prohibit residency in the home of the **elder**, by anyone who does not have a written rental agreement or other legal right to the use of, or access to, the residence, and, subject to the requirements of subdivision (b) of Section 2900, the authority to terminate the occupancy of anyone living in the home of the **elder** person, and the authority to remove that occupant residing therein.

(4) The public guardian shall serve, or cause to be served, a copy of the certification issued pursuant to this section on the **elder** person by mail within 24 hours of the execution of the certification, or as soon thereafter as is practical, in the manner provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure.

(5) Receipt of a certification issued under this section constitutes sufficient acquittance to financial institutions and others in possession of an **elder** person's property to provide information and surrender property of the **elder** person to the public guardian. Any financial institution or other person who provides information or surrenders property pursuant to this section shall be discharged from any liability for any act or omission of the public guardian with respect to the property.

(6) A public guardian acting in good faith is not liable when taking possession or control of property pursuant to this section.

(7) A certification issued pursuant to this section is valid for 15 days after the date of issuance. Upon ex parte petition to the superior court, the public guardian may seek additional 15-day certifications. The court shall grant that petition only if it determines that the additional certification is necessary to protect the **elder** from financial **abuse** and the **elder**'s property from loss, injury, waste, or misappropriation.

(d) (1) If the public guardian takes possession of an **elder** person's property pursuant to this section, the public guardian shall attempt to find agents pursuant to the use of durable powers of attorney or successor trustees nominated in trust instruments, or other persons having legal authority under existing legal instruments, to manage the **elder** person's estate.

(2) If the public guardian is unable to find any appropriate person to manage the **elder** person's estate pursuant to paragraph (1), the public guardian shall attempt to find appropriate family members willing to manage the **elder** person's estate. If no documents exist

appointing appropriate fiduciaries, the public guardian shall follow the priorities set forth in Article 2 (commencing with Section 1810) of Chapter 1 of Part 3.

(3) The public guardian shall take the steps described in paragraphs (1) and (2) within 15 days of taking possession of an **elder** person's property pursuant to this section.

(e) Nothing in this section prevents the county's adult protective services agency from conducting an investigation regarding the **elder** person named in the declaration and providing appropriate services, in coordination with any actions taken with the public guardian under this section or an investigation conducted by law enforcement regarding the **elder** person.

2953. (a) (1) A public guardian who has taken possession or control of the property of an **elder** person pursuant to this chapter is entitled to petition a court of competent jurisdiction for the reasonable costs incurred by the public guardian for the protection of the person or the property, together with reasonable fees for services, including, but not limited to, reasonable attorneys' fees. These fees shall be payable from the estate of the **elder** person if the person is not deemed competent by the court and if any of the following apply:

(A) The public guardian or someone else is appointed as the temporary or general conservator of the estate.

(B) An attorney-in-fact, under a durable power of attorney, or a trustee, takes steps, or is notified of the need to take steps, to protect the estate of the **elder** person.

(C) An action is brought against the alleged financial abuser by the **elder** person, his or her conservator, a trustee, a fiduciary, or a successor in interest of the **elder** person, arising from a harm that the public guardian taking charge was intended to prevent or minimize.

(2) Any costs incurred by the public guardian pursuant to paragraph (1) shall be compensable as provided in Section 2902. Fees collected by the public guardian pursuant to this chapter shall be used for the activities described in this chapter.

(b) When a public guardian has taken possession or control of the property of an **elder** person pursuant to this chapter, the public guardian shall exercise reasonable care to ensure that the reasonable living expenses and legitimate debts of the **elder** person are addressed as well as is practical under the circumstances.

(c) Any person identified as a victim in a declaration described in Section 2954 may bring an ex parte petition in the superior court for an order quashing the certification issued by the public guardian as provided in subdivision (c) of Section 2952.

(1) Upon request by the petitioner, the court may defer filing fees related to the petition, and order the public guardian to authorize the release of funds from a financial institution to reimburse the petitioner the filing fees from assets belonging to the petitioner, but shall waive filing fees if the petitioner meets the standards of eligibility established by subparagraph (A) or (B) of paragraph (6) of subdivision (a) of Section 68511.3 of the Government Code for the waiver of a filing fee.

(2) The court shall quash the certification if the court determines that there is insufficient evidence to justify the

imposition on the alleged victim's civil liberties caused by the certification.

(3) If the court determines that there is sufficient evidence to justify the imposition on the alleged victim's civil liberties caused by the certification, the court may, in its discretion, do one or more of the following:

(A) Order disbursements from the alleged victim's assets, as are reasonably needed to address the alleged victim's needs.

(B) Appoint a temporary conservator of the alleged victim's estate, where the facts before the court would be sufficient for the appointment of a temporary conservator under Section 2250.

(C) Deny the petition.

(D) Award reasonable attorney's fees to the respondent's attorney from the victim's estate.

2954. A declaration issued by a peace officer under this chapter shall not be valid unless it substantially complies with the following form:

DECLARATION

PRINT OR TYPE

1. My name is:

_____.

My badge number is:

_____.

My office address and telephone number are:

_____.

2. I am a duly sworn peace officer presently employed by

_____, in the County of _____,
in

the State of California.

3. On _____ (date) I personally interviewed _____
(victim)

at _____ a.m./p.m. at _____ (address). The victim
resides at _____ (address, telephone number, and

name

of facility, if applicable).

4. There is probable cause to believe that:

(a) _____ (Victim)
is substantially unable to manage his or her financial
resources or to resist fraud or undue influence, and

(b) There exists a significant danger the victim will lose all

or

a portion of his or her property as a result of fraud or misrepresentations or the mental incapacity of the victim, and

(c) There is probable cause to believe that a crime is being committed against the victim, and

(d) The crime is connected to the victim's inability to manage his or her financial resources or to resist fraud or undue influence, and

(e) The victim suffers from that inability as a result of deficits

in one or more of the following mental functions:

INSTRUCTIONS TO PEACE OFFICER: CHECK ALL BOXES THAT APPLY:

A(ALERTNESS AND ATTENTION

(1. Levels of arousal. (Lethargic, responds only to vigorous and persistent stimulation, stupor.)

(2. Orientation. Person ____ Time ____ (day, date, month, season, year), Place ____ (address, town, state), Situation ____ (why am I here?).

(3. Ability to attend and concentrate. (Give detailed answers from memory, mental ability required to thread a needle.)

B(INFORMATION PROCESSING

Ability to:

(1. Remember, i.e., short- and long-term memory, immediate recall. (Deficits reflected by: forgets question before answering, cannot recall names, relatives, past presidents, events of past 24 hours.)

(2. Understand and communicate either verbally or otherwise. (Deficits reflected by: inability to comprehend questions, follow instructions, use words correctly or name objects; nonsense words.)

(3. Recognize familiar objects and persons. (Deficits reflected by: inability to recognize familiar faces, objects, etc.)

(4. Understand and appreciate quantities. (Perform simple calculations.)

(5. Reason using abstract concepts. (Grasp abstract aspects of his or her situation; interpret idiomatic expressions or proverbs.)

(6. Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest. (Break complex tasks down into simple steps and carry them out.)

(7. Reason logically.

C(THOUGHT DISORDERS

(1. Severely disorganized thinking. (Rambling, nonsensical, incoherent, or nonlinear thinking.)

(2. Hallucinations. (Auditory, visual, olfactory.)

(3. Delusions. (Demonstrably false belief maintained without or against reason or evidence.)

(4. Uncontrollable or intrusive thoughts. (Unwanted compulsive thoughts, compulsive behavior.)

D(ABILITY TO MODULATE MOOD AND AFFECT

Pervasive and persistent or recurrent emotional state which appears severely inappropriate in degree to the patient's circumstances.

Encircle the inappropriate mood(s):

Anger	Euphoria	Helplessness
Anxiety	Depression	Apathy
Fear	Hopelessness	Indifference
Panic	Despair	

5. The property at risk is identified as, but not limited to, the following:

Bank account located at: _____
(name, telephone number, and address of the bank branch)

Account number(s): _____

Securities/other funds located at: _____
(name, telephone number, and address of financial institution)

Account number(s): _____

Real property located at: _____
(address)

Automobile described as: _____
(make, model/color)

(license plate number and state)

Other property described as: _____

Other property located at: _____

6. A criminal investigation will (will not (be commenced against _____

(name, address, and telephone number)
for alleged financial **abuse**.

BLOCKS 1, 2, AND 3 MUST BE CHECKED IN ORDER
FOR THIS DECLARATION TO BE VALID:

- (1. I am a peace officer in the county identified above.
- (2. I have consulted concerning this case with a supervisor in the county's adult protective services agency who has signed below, indicating that he or she concurs that, based on the information I provided to him or her, or based on information he or she obtained independently, this declaration is warranted under the circumstances.
- (3. I have consulted concerning this case with an individual qualified to perform a mental status examination.

Signature of Declarant Peace Officer

Date

Signature of Concurring Adult Protective
Services Supervisor

2955. Nothing in this chapter shall prohibit or restrict a public guardian from undertaking any other proceeding authorized by law.