

RESOLUTION 05-05-2018- AS AMENDED

DIGEST

Financial Elder Abuse: Add Exception for Reasonable Value of Services

Amends Welfare and Institutions Code section 15657.6 to add an exception to financial elder and dependent adult abuse by allowing reasonable value for support.

STATEMENT OF REASONS

The Problem: Existing language in the Financial Elder Abuse statute would impose liability on a defendant where the elder transferred a reasonable sum of money to the defendant in return for the provision of necessities of life, such as food or water. Incompetents have been held liable for the reasonable value of services for those transactions under Civil Code section 38. This problem was identified by the Rutter Group Elder Abuse Litigation Practice Guide.

The Solution: This would provide an exception to the Elder Abuse statute to the extent a person incompetent of contracting pays or becomes indebted for items deemed necessary for the support of the person or his/her family. This would still require the person to pay for the reasonable value of those items/services, but would not require the person/vendor to return all monies received as a result of that transaction under Welfare & Institutions Code §15657.6.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code section 15657.6 to read as follows:

1 § 15657.6
2 A person or entity that takes, secretes, appropriates, obtains, or retains, or assists in
3 taking, secreting, appropriating, obtaining, or retaining the real or personal property of an elder
4 or dependent adult when the elder or dependent adult lacks capacity pursuant to Section 812 of
5 the Probate Code, or is of unsound mind, but not entirely without understanding, pursuant to
6 Section 39 of the Civil Code, shall, upon demand by the elder or dependent adult or a
7 representative of the elder or dependent adult, as defined in subdivision (d) of Section 15610.30,
8 return the property and if that person or entity fails to return the property, the elder or dependent
9 adult shall be entitled to the remedies provided by Section 15657.5, including attorney's fees and
10 costs. This section shall not apply to payments or things received in exchange for the reasonable
11 value of things furnished to an elder or dependent adult necessary for the support of that elder or
12 dependent adult or to any agreement entered into by an elder or dependent adult when the elder
13 or dependent adult had capacity.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR RELATED LEGISLATION

None known.

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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

TRUSTS AND ESTATES SECTION - OPPOSE

TEXCOM believes the proposed carveout language is too broad. Given that much elder financial abuse (and the ensuing litigation) is perpetrated by the elder's family member(s), including caregivers, the proposed language appears inconsistent with the public policy underlying the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) in that it would let this significant class of potential abusers off the hook based on the language of Civil Code section 38. The proposal to exempt from the scope of Welfare and Institutions Code section 15657.6 the value of "things furnished" by those persons or vendors who provide services or items deemed necessary for the elder's support or family needs to be more narrowly tailored. The proposed language would appear to undermine at least part of EADACPA's intent.