

A Guide to **SENIOR** Legal Terms

This is a quick reference guide to legal terms that may affect seniors and those that care for them. The guide is presented in sections that address key areas of the law and provide resources for assistance when dealing with legal concerns. This guide is not to be used as a substitute for legal advice or as a self-help guide. Its purpose is to define legal language in simple terms so that legal advice or procedures can more easily be understood. Before acting on any of this information it is important to speak with a qualified legal professional.

If you want additional information or referral to services, call the Senior Connection Program at (800) 510 2020.

This guide was developed by the Central Coast Commission for Senior Citizens-Area Agency on Aging. Central Coast Commission for Senior Citizens is a non-profit organization responsible for allocating federal and state dollars to local agencies to move forward in the development of 'senior friendly' communities. Senior Connection is a program of the Central Coast Commission for Senior Citizens.

Quick Reference

<i>Credit / Debt Issues</i>	<i>2</i>
<i>Consumer Complaints.....</i>	<i>2</i>
<i>Elder Abuse</i>	<i>3</i>
<i>Estate Planning</i>	<i>4</i>
<i>Landlord / Tenant Issues.....</i>	<i>7</i>
<i>Legal Professionals / Legal Terms for People.....</i>	<i>8</i>

Credit/Debt Issues

Bankruptcy	A federal system of statutes and courts which permits persons and businesses which are unable to pay creditors (insolvent) to place an individual's financial affairs under the control of the bankruptcy court.
Foreclosure	The legal proceedings initiated by a bank (or creditor) to repossess the home in which the mortgage is in default due to failure to make payments. The home is then sold in order to recover money due, unpaid interest and the costs of foreclosure.
Lien	The right to retain legal possession of the property of an owner until the owner fulfills the legal duty to the person holding the property, such as the payment of charges for work done on the property, taxes owed or a car loan.
Harassment	Collection agencies are prohibited by law from harassing debtors. The following are examples of prohibited behaviors: Calling your office, calling your home before 8 a.m. or after 9 p.m., addressing you in an abusive manner; calling family or friends in an attempt to collect your debt; making false or misleading statements; or adding unauthorized charges.

Credit/Debt Resources

Catholic Charities	Provides non-denominational family and individual financial counseling and assists with debt obligations. Loans and grants may be available to qualified individuals. Also provides money management workshops. Santa Barbara - (805) 965-7045 Lompoc- (805) 736-6226	Santa Maria - (805) 922-2059 San Luis Obispo- (805) 541-9110
Money Management International	A non-profit organization offering financial counseling, education, debt management programs and housing counseling. They can help people struggling with collections, debt, facing bankruptcy or foreclosure. https://www.moneymanagement.org/ (800) 540-2227	
Hope Now	HOPE NOW is an alliance between HUD approved counseling agents, mortgage companies, investors and other mortgage market participants that provides free foreclosure prevention assistance. http://www.hopenow.com/ 888-995-4673 (HOPE)	

Consumer Complaints

Arbitration	A process, outside of the courts, in which a disagreement between two or more parties is resolved by impartial individuals, called arbitrators, in order to avoid costly and lengthy litigation. Both parties must agree
Civil lawsuit	In a civil lawsuit, a person (plaintiff) who believes that they have suffered injury, whether monetary, physical or emotional, bring a case for money damages against the offender (defendant) for causing monetary, physical, or emotional injuries. In a civil suit, the attorney directly represents the plaintiff's interests and the plaintiff has greater control in case decision-making than in criminal prosecution. In a civil suit the plaintiff is responsible for the cost of litigation. Some attorneys may choose to handle a plaintiff's case on a contingency basis.

- Contingent fees** A fee paid a lawyer if he/she is successful in resolving a lawsuit in the client's favor. The case does not need to go to court in order for the lawyer to receive his/her fee, it can also be collected in cases settled out of
- Consumer complaint letter** A letter written by a consumer to a manufacturer or retailer regarding a problem with a product or service. This type of letter is written usually with the expectation that corrective action will be taken.
- Damages** Money ordered to be paid as compensation for injury or loss.
- Department of Consumer Affairs** Is a part of the state government that exists to protect and serve California consumers while ensuring a competent and fair marketplace. DCA helps consumers learn how to protect themselves from unscrupulous and unqualified individuals. DCA also has 40 regulatory boards that investigate complaints from consumers.
- Fraud** The intentional misrepresenting of "existing facts" for the purpose of getting the person to act on that information which result in injury or damage. To be fraud, the person misrepresentative or omitting information must have knowledge
- Mediation** A technique for resolving disputes in which the parties attempt to come to an agreement without giving up authority to a third party (a judge or arbitrator). If the parties are unable to agree, arbitration or a civil lawsuit can be used to resolve the dispute.

Consumer Resources

- Better Business Bureau – BBB's** mission is to be the leader in advancing marketplace trust. They can help you find business that will operate in a trustworthy manner and reports business who are acting improperly.
www.santabarbara.ccc.org (805) 963-8657
- Consumer Mediation Program (Santa Barbara County)** – The goal of the program is to be assisting in resolving disputes without going to court. Volunteers help resolve consumer complaints without the cost of hiring and attorney. Download the consumer complaint form at:
https://www.countyofsb.org/da/civ_consumer_mediation.html or call
Santa Barbara (805) 568-2390 Santa Maria (805) 346-7516
- Consumer Protection Advisory (San Luis Obispo County)** – Accepts complaints and assists consumers who allege violations of unfair or illegal business practice statutes in California. If you have a consumer complaint, or believe you may have been the victim of an unlawful scam, you can Download the consumer complaint form at: [SLOCO Consumer Complaint Form](#) or contact the District Attorney's Office at (805) 781-5800.
- California Department of Consumer Affairs** – Is a part of the state government that exists to protect and serve California consumers while ensuring a competent and fair marketplace. DCA helps consumer learn how to protect themselves from unscrupulous and unqualified individuals. DCA also has 40 regulatory boards that investigate complaints from consumers.
www.dca.ca.gov (800) 952-5210

Elder Abuse

Elder Abuse is the “physical abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment resulting in physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.” (Welfare & Institutions Code, Section 15610.07 and in Penal Code 368) “Elders” are defined as persons 65 years of age or older.

- Abandonment** The desertion of an elderly person by an individual who has assumed responsibility for providing care by a person with a physical custody of an elder.
- Financial abuse** Is the illegal or improper use of an elder’s funds, property, or assets. Examples include but are not limited to: cashing checks without authorization or permission; forging an older person’s signature; misusing or stealing an older person’s money or possessions; coercing or deceiving an older person into signing a document (e.g., contracts or a will); and the improper use of conservatorship, guardianship, or power of attorney.
- Undue influence** When someone’s influence diminishes the ability of a senior to exercise free will. This can be grounds for nullifying a Will or invalidating a Gift. Undue influence is exercised by excessive insistence, superiority of will or mind, using relationships or putting emotional/financial pressure on a senior by any other means to do something to the point that he/she is unable to refuse.
- Neglect** The failure to provide a degree of care that a reasonable person in a care providing capacity would exercise. Some examples are: failure to assist with personal hygiene, provision of food, clothing or shelter, provision of medical care, or to protect from health and safety hazards or to prevent malnutrition or dehydration.
- Self-neglect** Is characterized as the behaviors of an elderly person that threaten his/her own health or safety
- Physical abuse** The use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include but is not limited to such acts of violence as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, and burning. The unwarranted administration of drugs and physical restraints, force feeding, and physical punishment of any kind are also examples of physical abuse.

Elder Abuse Resources

Adult Protective Services- Investigates reports of Elder Abuse and helps to intervene in instances of self-neglect.

All Santa Barbara County 1-844-751-6729 San Luis Obispo County (805) 781-1790

Long Term Care Ombudsman- Investigates reports of abuse and mistreatment in Care Facilities (Assisted Living, Board and Care, and Nursing Homes).

Santa Barbara County (805) 922-1236 San Luis Obispo County (805) 785-0132

24-Hour State Ombudsman Crisis Line 1-800-231-4024

Estate Planning

Estate planning is the process of deciding how to dispose of all of a person's property (estate) after their death. Estate planning typically attempts to eliminate uncertainties over what will be done with the person's remaining property (including their body), and maximize the value of the estate by reducing taxes and other expenses. Estate planning involves the will, trusts, beneficiary designations, powers of appointment, property ownership, gift, and powers of attorney, specifically the durable financial power of attorney and the durable medical power of attorney. The following are legal terms used in discussing estate planning matters.

- Administrator** A person appointed by a court to handle the administration of an estate for someone who has died without a will.
- Advanced Health Care Directive** Under state law, you have a legal right to express your health care wishes and to have them considered in situations when you are unable to make these decisions yourself. In these circumstances, you can also designate someone to make these decisions. California consolidated various earlier forms used to indicate health care preferences into one Advance Care Directive (which includes both "Living Will" and Health Care Power of Attorney components).
- Beneficiary** A broad definition for any person or entity (like a charity) who is to receive assets or profits from an estate, a trust, an insurance policy or any instrument in there is distribution.
- Conservatorship** A guardian and protector appointed by a judge to protect and manage the financial affairs and/or the person's daily life due to physical or mental limitations. The conservatory may be in charge of financial affair (estate), or in charge of overseeing the daily activities, such as health care or living arrangement of the conserved person.
- Disposing mind and memory** Disposing mind and memory refer to the mental ability to understand in general what one owns, one's family relationships, and the meaning and effect of the will at the time of making a will. This is also known as sound mind and memory.
- Escheat** The forfeit of all property (including bank accounts) to the state treasurer if it appears certain there are no heirs, descendants or named beneficiaries to take the property upon the death of the last known owner.
- Executor** The person appointed to administer the estate of decedent's will. Unless there is a valid objection, the judge will appoint the person named in the will to be executor. The executor must insure the person's desires expressed in the will are carried out.
- Health Care Power of Attorney** (See Advance Health Care Directive)
- Holographic will** A will entirely handwritten. In order to be valid in California the will must be completely in your own handwriting. You must date and sign the will. Your handwriting has to be legible, and the will must clearly state what you are leaving and to whom. It does not have to be notarized or witnessed. However, any typed material may invalidate the will. It is a good idea to consult with a qualified lawyer to make sure your will conforms with California law and does not have any unintended consequences.
- Incompetent** Term referring to a person who is not able to manage his/her affairs due to mental deficiency (low I.Q., deterioration, illness or psychosis) or physical disability, in some cases. Being incompetent can be the basis for appointment of a guardian or conservator to handle his/her person and/or affairs.

Intestate	Referring to a situation where a person dies without leaving a valid will. This usually is voiced as “he died intestate,” “intestate estate,” or “intestate succession.”
Life estate	The right to use or occupy property for one’s life. Often this is given to a person (such as a family member) by deed or as a gift under a will with the idea that a younger person would then take the property upon the death of the one who receives the life estate. Title may also return to the person giving or deeding the property or to his/her surviving children or descendants upon the death of the life tenant-this is called “reversion.” Example of creation of a life estate: “I grant to my mother, Molly McCree, the right to live in and/or receive rents from said real property, until her death,” or “I give my daughter, Sadie Hawkins, said real property, subject to a life estate to my mother, Molly McCree.” This means a woman’s mother, Molly, gets to live in the house until she dies, then the woman’s daughter, Sadie, will own the property.
Living Trust	A trust is an arrangement under which one person, called a trustee, holds legal title to property for another person, called a beneficiary. You can be the trustee of your own living trust, keeping full control over all property held in trust. A “living trust” (also called an “inter vivos” trust) is simply a trust you create while you’re alive, rather than one that is created at your death. Different kinds of living trusts can help you avoid probate, reduce estate taxes, or set up long-term property management.
Living Will	<p>In California, a living will usually takes the form of an advance health care directive. According to the California Medical Association, a traditional living will focused only on refusal of life-sustaining treatment in the event of incapacity. The living will is often combined with a power of attorney that authorized a specific individual to make health care decisions. However, the advance health care directive addresses life-sustaining treatment in any situation. It includes the appointment of an agent, also known as a power of attorney for health care, to make decisions. Individuals can include a range of issues in the directive, such as preferences for palliative and hospice care.</p> <p>If you made a valid form of a living will prior to July 1, 2000, such as a Natural Death Act Declaration, a Durable Power of Attorney for Health Care or Directive to Physicians, these remain in effect until revoked.</p>
Medi-Cal Estate Recovery	An unsecured claim may be Medi-Cal upon the death of a Medi-Cal recipient (and spouse, if any) against the recipients’ estate for recovery of lifetime medical benefits paid to the recipient.
Power of Attorney	<p>A written document signed by a person giving another person (also know as the attorney in fact) the power to act in conducting the signer’s business, including signing papers, checks, title documents, contracts, handling bank accounts and other activities in the name of the person granting the power. Not all power of attorney documents are the same. Some are general power of attorney, which covers all activities, and special power of attorney, which grants powers limited to specific matters, such as selling a particular piece of real estate. A power of attorney may expire on a date stated in the document or upon written cancellation.</p> <p>Unless otherwise specified, a power of attorney becomes invalid when the person giving authority is deemed incompetent.</p> <p><i>Durable Power of Attorney</i> A power of attorney document that contains a durability clause. That clause states that the attorney in fact’s authority continues even when the individual is unconscious or legally incompetent.</p>

“Spring forward” power of attorney This document only gives the attorney in fact authority under certain circumstances, like when the individual is deemed incompetent or otherwise unavailable.

Probate

The process of proving a will is valid and thereafter administering the estate of a deceased person according to the terms of the will. The first step is to file the purported will with the clerk of the appropriate court in the county where the deceased person lived, along with a petition to have the court approve the will and appoint the executor named in the will (or if none is available, an administrator). If the court determines the will is valid, the court then “admits” the will to probate.

Testate

Dying with a will (a testament). It is compared to “intestacy,” which is dying without a will.

Will

A written document which leaves the estate of the person who signed the will to named persons or entity (beneficiary, legatee, devisee) including portions or percentages of the estate, specific gifts, creation of trusts for management and future distribution of all or a portion of the estate (a testamentary trust). To be valid the will must be signed by the person who made it (testator), be dated (an incorrect date will not invalidate the will) and witnessed by two people (except in Vermont which requires three). In some states the witnesses must be disinterested, or in some states, a gift to a witness is void, but the will is valid. If the will (also called a Last Will and Testament) is still in force at the time of the death of the testator (will writer), and there is a substantial estate and/or real estate, then the will must be probated (approved by the court, managed and distributed by the executor under court supervision). If there is no executor named or the executor is dead or unable or unwilling to serve, an administrator (“with will annexed”) will be appointed by the court.

Estate Planning Resources

State Bar of California Board of Legal Specialization-Certifies Lawyers as specialists in the area of Estate Planning. <http://www.calbar.ca.gov> 415-538-2120

National Academy of Elder Law Attorneys-Certifies lawyers as Elder Law Attorneys. www.naela.org 703-942-5711

Contact Senior Connection for list of Elder Law Attorneys at (805) 928-2552

Landlord/Tenant Issues

Eviction

Generic word for the act of expelling (kicking out) someone from real property by legal action (filing a suit for unlawful detainer). Most frequently eviction consists of ousting a tenant who has breached the terms of a lease or rental agreement by not paying rent or a tenant who has stayed (held over) after the term of the lease has expired or only had a month-to-month tenancy.

“Three Day Notice” When a tenant is not fulfilling the obligations of the rental agreement or lease, a landlord may give a notice to resolve the issue. The tenant is advised to pay delinquent rent or vacate the property. This is the first step in an eviction.

Unlawful detainer A legal action taken to restore possession of an owner's property from a tenant or other occupier who holds it without legal right due to unpaid rent or other damages. Notice that legal action is being taken is called a writ of unlawful detainer. The tenant has the right to respond by a specific date (in person or in writing) and contest the action to nullify the eviction.

Implied warranty of habitability Is a warranty implied by law in all residential leases that the premises are fit and habitable for human habitation and that the premises will remain fit and habitable throughout the duration of the lease.

“Repair and Deduct” remedy Allows a tenant to deduct money from the rent, up to the amount of one month's rent, to pay for repair of defects in the rental unit. This remedy covers substandard conditions that affect the tenant's health and safety, and that substantially breach the implied warranty of habitability. Examples might include a leak in the roof during the rainy season, no hot running water, or a gas leak. As a practical matter, the repair and deduct remedy allows a tenant to make needed repairs of serious conditions without filing a lawsuit against the landlord. Because this remedy involves legal technicalities, it's a good idea for the tenant to talk to a lawyer, legal aid organization, or tenants' association before proceeding.

Retaliatory eviction Requirement that a tenant vacate a unit in response to a complaint from the tenant concerning the condition of the building. This is illegal in California under certain conditions.

Landlord/Tenant Resources

Rental Housing Mediation Task Force (City of Santa Barbara) Provides information on the California Rules and Regulations pertaining to Landlord/Tenant rights and responsibilities along with mediation services regarding disputes pertaining to residential rental housing.

<http://www.santabarbaraca.gov/resident/home/rhmtf/> (805) 564-5420

Department of Consumer Affairs Publishes a handbook for Landlords and Tenants on laws relating to rental properties and Landlord/ Tenant relationships.

<http://www.dca.ca.gov/publications/landlordbook/index.shtml> (866) 320-8652

Legal Aid Foundation Ensures equal and meaningful access to the civil justice system to Santa Barbara county seniors living at or below the poverty level. <http://www.lafsb.org>

Santa Barbara (805) 963-6754 Santa Maria (805) 922-9909 Lompoc (805) 736-6582

Senior Legal Services Project Provides free legal services for seniors in San Luis Obispo County (805) 543-5140

info@slolaf.org

Legal Professionals/Terms

Attorney-in-fact Someone specifically named by another through a written “power of attorney” to act for that person in the conduct of the appointer’s business. Not necessarily a lawyer or a legal professional

Elder Law Attorney A specialty in legal practice, covering estate planning, wills, trusts, arrangements for care, social security and retirement benefits, protection against elder abuse (physical, emotional and financial), and other concerns of older people.

District Attorney A lawyer who is elected to represent a state government in criminal cases in a designated county or judicial district. A D.A.’s duties typically include reviewing police arrest reports, deciding whether to bring criminal charges against arrested people and prosecuting criminal cases in court. The D.A. may also supervise other attorneys, called Deputy District Attorneys or Assistant District

Plaintiff Also known as a claimant or complainant, is the party who initiates a lawsuit (also known as an *action*) before a court.

Defendant A person or institution against whom an action is brought in a court of law; the person being sued or accused.

Notary public A person authorized by the state in which the person resides to administer oaths (swearing to truth of a statement), take acknowledgments, certify documents.

Public Guardian A person selected by the court to serve as conservator of both the person and estate when no other suitable person can be found. This person has all the same duties and responsibilities of a conservator. The public conservator must answer to the court and obtain the same court approvals for decisions made on behalf of the conservatee.

Legal document assistants Professionals, qualified through education, training or work experience, authorized to assist consumers representing themselves in legal matters by preparing and processing the necessary legal documents. Legal Document Assistants are not lawyers and do not offer legal advice, discuss legal strategies, answer questions of a legal nature, select forms for the consumer, or appear in court on the consumer’s behalf.

Legal Professionals/ Resources

National Academy of Elder Law Attorneys – Certifies lawyers as Elder Law Attorneys

www.nacla.org (703) 942-5711

Lawyer Referral Services:

Lawyers Referral Service (Santa Barbara County) (805) 569-9400

San Luis Obispo County Bar Association (805) 541-5502

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