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Do You Know What a Professional Fiduciary Is? You Should - Here's Why

Last year, 250 private professional fiduciaries in California (members of the Professional Fiduciary Association of California or PFAC) managed investments and expenditures totaling \$4.5 billion for their clients – a 40 percent increase over amounts in 2003 (\$3.2 billion) and an 80 percent increase over 2002 (\$2.5 billion).

In Orange County today, accountants, lawyers, real estate agents, investment advisors, bankers, appraisers, and many others get tens of millions of dollars of business every year from private professional fiduciaries. Fiduciaries pay the bills and handle the investments of trusts, decedent's estates and conservatorships. When asked, many professional fiduciaries can't immediately estimate the total amount of assets and money they are personally responsible for handling. But even a sole practitioner like Sally Graham of Huntington Beach estimates her total client portfolio is about \$5 million.

"As the conservator or trustee of about 20 estates, I manage millions of dollars on deposit in several banks and investment management firms, and sell at least five real estate properties every year," says Graham who has been a private professional fiduciary for the last eight years.

Some private professional fiduciaries employ several full and part-time staff. Their firms manage \$10 million, \$15 million sometimes \$20 million or more. Their phones are ringing off the hook and many are not taking on any new clients at this time, even though most people could not define term "professional fiduciary"

"Many people aren't aware of who fiduciaries are and what fiduciaries we do," says Linda Rogers of Laguna Hills who has worked as a private professional fiduciary since 1971. "In my business I work closely with elder law and estate planning attorneys whose clients need to name a trustee of their estate – a trustee with the skills and experience to manage it well. They may not have children who can do this. If they do, those children may live far away and the job of trustee is too burdensome. Some parents don't want their children to be the trustee."

Trustees manage money, and oftentimes, difficult people and situations. When money is involved, beneficiaries and trustees sometimes have disagreements, and family arguments can be among the most rancorous. There are plenty of traditional families, blended

families, dysfunctional families that are faced with an abundance of problems and issues when a parent dies or becomes incapacitated and there is money in an estate to be protected and invested. Sometimes trustees mismanage or neglect their trustee duties, and sometimes he or she may ignore the directions of the trust. Beneficiaries get angry, get an attorney and go to the probate court for resolution. That resolution often names a private professional fiduciary like Linda Rogers or Sally Graham as the new trustee. Many attorneys, accountants and estate planners, who know good private professional fiduciaries, sometimes suggest a professional be named as trustee when a new trust is written. Business is booming for experienced professional fiduciaries.

Every demographic study and statistic about our aging population clearly documents the anticipated abundance of seniors in the population over the next several decades. This graying of America is also why the amount of money being managed by private professional fiduciaries will continue to grow tremendously over the next several decades.

Here are just a few statistics:

- According to the most recent census, roughly 3.6 million of the 34 million people living in California on April 1, 2000, were 65 or older.**
- Important shifts in age distribution of the California population are forecast over the next 50 years as mortality rates decline and life expectancy increases. Currently, life expectancy in California is 78.8. By 2050, we estimate a 50% probability that life expectancy in California will reach 84.2. As a result of this as well as other factors, the state's population age 65 or older is expected to double in 25 years (over 7 million) and triple in 50 years.**
- It is estimated that the number of Americans between the ages of 70 and 85 without a living spouse, without any biological or stepchildren and without living siblings or half-siblings will total more than 2 million people by the year 2020. (*Kenneth W. Wachter, Ph.D., chair of the dept. of demography, U.C. Berkeley in an interview with Geriatric Times magazine, 2004*)
- At least a quarter of the people (in the age group 80 years or above) have significant clinical cognitive impairment. Many are living alone after the death of a spouse – the spouse suddenly disappears – and they can't fend for themselves. That cognitive impairment is a big part of the problem. (*Joel Streim, M.D. president of the American Association for Geriatric Psychiatry in an interview with Geriatric Times magazine, 2004*)

***Center for Economics and Demography of Aging, UC Berkeley. CEDA Papers Special Report: The Growth and Aging of California's Population: Demographic and Fiscal Projections, Characteristics and Service Needs, 2030. Ronald Lee, Timothy Miller, Ryan Edwards*

What exactly is a professional fiduciary? He or she is a person who assumes a position of trust and responsibility serving an individual by probate court appointment. Last year, fiduciaries in California **managed over \$4.5 billion** in cash and assets, as trustees, conservators and personal representatives of estates (up from \$3.2 billion in 2003 and \$2.5 billion in 2002). A fiduciary as trustee has the responsibility of carrying out the terms of a testamentary or living trust. The trustee is usually a person named by the

creator of the trust, but in some cases, the trustees cannot carry out his or her duties because of incapacity or death. If there is no successor trustee who can serve, the court has the responsibility of appointing a trustee, usually someone nominated by the trust beneficiary who then safeguards the assets and invests them according to the Uniform Prudent Investor's Act (as set forth in the Probate Code). Professional trustees working under the UPIA are held to a higher standard than others.

The fiduciary as conservator is the person who is legally appointed to manage the conservatee's estate and/or person. A conservatorship is a legal tool designed to provide management for the financial and/or personal affairs of individuals deemed by the court to be physically or mentally incapacitated, often because of dementia. Alzheimer's disease (the most common form of the dementias) is the eighth leading cause of death among people 65 or older in California and its prevalence doubles every five years beyond the age of 65 (National Institute of Aging, 1997). California (along with Florida and Texas) will continue to have the greatest total number of cases in the country and will experience significant growth rates (a 50% increase in California) by 2025 (Alzheimer's Association Study, 2004).

How do you find professional fiduciaries that are trustworthy? It is safe to say that many are; however, the members of the Professional Fiduciary Association of California (PFAC) deliberately hold themselves and their peers to a higher standard. They are committed to safeguarding the reputation of their profession and the trust of their clients as evidenced by their mission statement. It is a growing field due to the growing number of seniors in need, and the anticipation of even greater growth led a group of professional fiduciaries to form an association in 1995 that would ensure that current and future practitioners be qualified, certified and dedicated to high standards practice, continuing education and a strict code of ethics. They meet statewide twice a year to provide training workshops for practitioners, exchange professional information and expertise on case management and assess the achievements and challenges experienced in the field of professional fiduciary management. On May 5, PFAC will celebrate the ten-year anniversary at the annual educational conference in Burlingame, California.

"Most of us entered this profession because we want to help people," says Shirley Trissler, current president of PFAC. "The safety and welfare of vulnerable people is the reason we work in a service field where success is dependent upon our own integrity, good judgment and expert skills. As professional practitioners in this field we must be bonded and are held legally and personally accountable by the court. We shoulder not just the personal burdens of our clients, but the scrutiny of the law and a great deal of liability if we make a mistake."

In order to be a member of PFAC, professionals must adhere to the code of ethics, and demonstrate a commitment to their own professional skills by completing continuing education units annually. At California State University, Fullerton (CSUF), courses in professional fiduciary management leading to certificates for conservators and trustees were initiated at the urging of PFAC and are now established. CSUF instructors are members of PFAC. Many PFAC members are also members of the National

Guardianship Association (NGA) which has recently begun administering a new national certification exam that was developed by PFAC and CSUF. PFAC also initiated and advocated the passage of AB1155 regulating and specifying the qualifications of private professional conservators and guardians including certain educational requirements. On or before January 1, 2006, the Judicial Council will adopt a rule of court outlining these requirements. Noncompliance would prohibit practitioners from registering with the Statewide Registry in the Office of the Attorney General (all conservators and guardians with two or more cases must register with the state and submit to fingerprinting and background checks – they must also register with their local Probate Court).

As larger segments of our population swell the growing ranks of seniors and the “oldest old,” working members of society are increasingly faced with the complications of caring for elderly parents while still raising their own families and managing careers. Many elderly people do not live near their adult children, and sometimes relationships between siblings and other relatives create conflict and strife, causing problems rather than solving them for elders. Many of the elderly are easy prey for a gold-digging family member or friendly stranger ready to lighten a senior’s pockets while they are still living. In these situations and certainly for elder orphans in need, professional fiduciaries are a godsend.

The Professional Fiduciary Association of California (PFAC) is a statewide professional organization currently with 250 members dedicated to serving and protecting the best interests of those who have placed their trust in them by ensuring the highest standards of ethics and practice, establishing comprehensive statewide certification, maintaining high qualifications for membership, requiring the continuing education of members, and the mentoring of new members. For more information, please visit the PFAC website at: www.pfac-pro.org