



Aldrich & Bonnefin, PLC
Counsel to Bankers' Compliance Group® presents



Deposit Accounts for the Elderly, Deceased, and Incapacitated: How Best to Manage the Risks



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Introduction

- The “Great Wealth Transfer”
 - Reports suggest that approximately \$106 trillion in assets may be passed down to younger generations through 2048
- Banks need to be prepared to deal with the risks that come with serving an increasingly older customer base



Three Core Risk Factors

- Entitlement and Access
 - Who has the legal authority to control or access deposit accounts
 - Powers of attorney, conservators, estate administrators, trustees, etc.
- Capacity
 - Recognizing signs of diminished mental capacity
 - Legal vs. practical capacity assessments
- Elder Abuse Reporting and Prevention



DECEASED CUSTOMER ACCOUNTS



Steps to Take Upon Notification of Death

- Verify the customer died
 - Certified copy of death certificate
- Freeze all accounts
- Notify other branches and offices
- Determine the appropriate method to release decedent's property



Entitlement to Decedent's Property

- Probate
 - Letters Testamentary
 - Letters of Administration
- Small Estate Affidavit
- Entitlement can also depend on account type
 - Joint accounts and rights of survivorship
 - Fiduciary accounts
 - Business accounts



Individual Personal Account

- Probate or Small Estate Affidavit
- Identify the claimant and determine legal entitlement
 - Letters Testamentary or Letters of Administration
 - Small Estate Affidavit
- Release the funds to the executor or administrator, or to the person presenting a compliant Small Estate Affidavit



Small Estate Affidavit

- California Probate Code Section 13000 allows property to be distributed to a successor of the decedent without administration of the estate through probate (referred to as the “Small Estate Affidavit”)
- Successor of the decedent
 - If there is a will, beneficiary who succeeds to decedent’s property under decedent’s will
 - If there is no will, person(s) who succeed to decedent’s property under the Probate Code
- To use the Small Estate Affidavit, 40 days must have elapsed since the death of the decedent



Small Estate Affidavit

- Gross value of decedent's estate must not exceed specified amounts
 - Died prior to April 1, 2022- **\$166,250**
 - Died between April 1, 2022 and April 1, 2025- **\$184,500**
 - Died after April 1, 2025- **\$208,250**



Reliance on Small Estate Affidavit

- There is no duty to inquire into the truth of any statement in the Small Estate Affidavit
- Instead, a financial institution is permitted to rely in good faith on the statements in the affidavit



Small Estate Affidavit and Trusts

- It is very common for a successor trustee to inform the bank that the funds in an account of a decedent were intended by the decedent to be property of the deceased trustor's trust
- The trustee will need to petition the probate court for an order transferring the funds to the trust
 - *Heggstad* Petition
- The bank should not turn over the funds in the decedent's account unless it is served with a court order directing it to do so



Out-of-state Executors or Administrators

- They may petition a CA probate court for ancillary proceedings in CA
 - Can be filed by any interested party
 - The institution will then be provided with either CA Probate Letters or a court order from a CA court
- They may also be able to use a CA Small Estates Affidavit



Joint Account

- Joint accounts (with right of survivorship)
 - Surviving joint owner has full access to funds in the account upon death of the other account owner
 - No probate or Small Estate Affidavit required



Tenancy in Common Accounts

- Joint account without right of survivorship
 - Ownership is 50/50 between account owners
- Upon death of one account holder, release half of the funds to the surviving joint account holder
- The other half should be released to the decedent's estate



Formal Trust Accounts

- Death of trustee
 - The trust survives the death of the trustee
 - Obtain a new certification of trust
- The trust instrument should designate one or more successor trustees
 - Court order appointing a successor trustee may be required if no successor trustee is named
- Death of trustor is generally a non-event
 - May trigger internal changes, such as conversion to an irrevocable trust
 - May need a new TIN



Additional Entitlement Requirements to Consider

- Certifications from Public Administrators
 - A public administrator who is authorized to take possession or control of the property of a decedent may issue a written certification of that fact
- Business Accounts
 - Impact of death depends on the type of entity and the underlying organizational documents



CAPACITY ISSUES



Mental Capacity

- Legal capacity
 - There is a rebuttable presumption under California law that all persons have the capacity to make decisions and to be responsible for their acts or decisions
 - A person who has a mental or physical disorder may still be capable of contracting
- Concerns over a customer's mental capacity
 - From a risk perspective, consider requesting a note from the customer's doctor certifying that the principal is able to manage his or her own affairs
 - For recently signed powers of attorney, this could help provide some level of assurance as to whether the principal had the requisite mental capacity to sign the power of attorney
- Only a judicial determination of a lack of mental capacity could provide an institution with a guarantee of protection



Powers of Attorney (POA) and Capacity Issues

- All persons with the capacity to contract may grant power to an attorney-in-fact (AIF) under a POA
 - Did principal have capacity when the POA was created?
- Durable vs. non-durable POA
 - Reject a non-durable POA when principal is incapacitated
 - Springing durable POAs become effective upon incapacity of the principal
- No duty to accept a POA if the principal is not an existing customer
- Monitor for potential signs of elder abuse
 - California laws give institutions the right to refuse to honor a POA if it suspects the AIF is committing financial elder abuse



Conservatorship Accounts

- Estate vs. person
 - Must be appointed conservator of the estate to have control of the funds in a deposit account
 - Conservatorship over just the person is not sufficient
- Temporary letters of conservatorship
 - Conservatorship terminates 30 days after appointment or upon notification that a final conservatorship has been appointed
- Financial institutions must file a notice with the court regarding conservatorship account
 - Take possession or control of an asset of the conservatee
 - Open or change the name of an account or a safe deposit box



IDENTIFYING AND REPORTING ELDER FINANCIAL ABUSE OR EXPLOITATION



Elder Financial Abuse or Elder Financial Exploitation (EFE)

- Occurrences of EFE continue to grow and have a significant impact
 - AARP estimates victims of EFE over age 60 annually lose approximately \$28.3 billion
 - FBI estimates average losses per older adult in 2025 to be approximately \$38,500
 - Total number of victims and total losses have steadily increased from 2022 to 2025
- Federal and state lawmakers view financial institutions as playing a vital role in combatting EFE



Reporting Requirements

- No specific federal law imposes mandatory reporting obligations with respect to EFE
- California's Financial Elder Abuse Reporting Act of 2005 ("FEAR Act" or "Act")
 - Mandates that certain officers and employees of financial institutions (i.e., "mandated reporters") have a duty to report suspected instances of financial abuse to appropriate agencies specified in the FEAR Act
 - Applies to banks and their officers and employees



Detecting and Identifying EFE

- No bright-line rules
- Train staff who deal directly with elder customers on how to spot signs of potential EFE
- Keep informed of current trends and scams
 - Consider red flags identified in FinCEN's Advisory on Elder Financial Exploitation ("2022 Advisory")
- Monitor government sites for updates, advisories, and notices regarding EFE
- Do not be afraid to ask or warn the customer directly
- Training



California Assembly Bill 871

- On September 20, 2026, Governor Newsom signed Assembly Bill 871 (AB 871), which amends the FEAR Act
- Requires mandated reporters to submit reports of suspected financial elder abuse to the FBI's Internet Crime Complaint Center within two working days
- Imposes an annual training requirement for mandated reporters
- Requires mandated reporter to notify the elder directly within 48 hours any time they file a report
- AB 871 becomes operative on January 1, 2028



We're adjourned!

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