ICLS Branch Offices

Inland Counties Legal Services has offices throughout Riverside and San Bernardino Counties to assist you with your civil legal problems if you qualify for services. For further information call (888) 245-4257 from 8:45 a.m. to 4:45 p.m., Monday through Friday.

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Inland Counties Legal Services

Legal Guide for Seniors

Frequently Asked Questions

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Mobile Home Law
Elder Abuse
Grandparent Visitation
Small Claims Court
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Serving Riverside and San Bernardino Counties

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LEGAL SERVICES CORPORATION

Inland Counties Legal Services (ICLS) is a public interest law firm committed to pursuing justice and equality for low-income persons who otherwise would not have access to the civil judicial system. ICLS delivers high quality legal assistance and community education, treating all with dignity and respect.

ICLS legal assistance is free to eligible clients in legal priority areas adopted by the ICLS Board of Directors. Legal services are available in family law, elder law, housing, income maintenance, consumer finance, bankruptcy and public benefits. Call 1(888)245-4257 to see if you can get help.

ICLS, is a non-profit 501(c)(3) corporation serving Riverside and San Bernardino Counties, is funded by the Legal Services Corporation (LSC); the State Bar of California Legal Services Trust Fund Program IOLTA (Interest on Lawyers' Trust Account), State of California Equal Access Funds and voluntary "Justice Gap" bar dues; Riverside County Office on Aging (OoA); San Bernardino County Department of Aging and Adult Services (DAAS); San Bernardino County Community Development and Housing Agency Housing and Disability Advocacy Program (HDAP) and Emergency Solutions Grant (ESG) funds; the Legal Aid Society of San Diego (with state and federal funds for healthcare reform education and advocacy); the Department of Justice Bank Settlement Funds; Internal Revenue Service Low Income Taxpayer Clinic; and the U.S. Veterans Initiative.

The Riverside County Office on Aging (OoA) and the San Bernardino County Department of Aging and Adult Services (DAAS) each provide funding which supports Seniors' Legal Services targeted for persons age 60 and older who are in the "greatest social and economic need."

Consumer Information and Fraud

1. How can I stop Telemarketing Calls?

Under the Telephone Consumer Protection Act (TCPA), the Federal Communications Commission (FCC) plays a crucial role in helping consumers stop unwanted calls, text messages and faxes. FCC rules address unsolicited telephone marketing calls, including those using automated and prerecorded messages.

The FCC's rules under the TCPA require anyone making a telephone telemarketing call to your home to provide his or her name, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which that person or entity can be contacted.

The rules also:

- Prohibit telephone solicitation calls to your home before 8 am or after 9 pm.

- Require telemarketers to comply immediately with any do not call request you make during a call.

The National Do Not Call List protects home and personal cell phone numbers. You can register your phone numbers on the national Do Not Call List by phone or on the Internet at no cost.

- To register via the Internet, go to www.donotcall.gov.

- To register by phone, call (888) 382-1222 (voice) or (866) 290-4236 (TTY). You must call from the phone number you wish to register.

Telemarketers are prohibited from making telephone solicitations to any phone numbers on the Do Not Call List. Your phone numbers will remain on the list until you remove them or discontinue service. There is no need to re-register your phone numbers.

Telemarketers must remove your phone numbers from their call lists and stop calling you within 31 days from the date you register.

2. How can I avoid being ripped off for phony home repairs?

Seniors, especially those who live alone, are targets for phony scams which include unnecessary repairs to their homes. A common method involves someone who “just happens to be in the neighborhood” and “couldn’t help but notice” the bad spot on the roof, the problem with the chimney, the bad mobile home bracing, etc. Another common ploy is the “gas leak inspector.”

Always ask to see identification and then call the company to verify their identity. Reputable companies are licensed and bonded. Get a written estimate then get a second opinion to compare offers. If you are dealing with a contractor, call the Contractors State License Board, (800) 321-2752, to verify their license and bond. Also, ask if any complaints have been filed. If someone comes to do an inspection, monitor each inspected room to prevent theft and have another person present with you for your safety.

If you do enter into a contract for repairs or construction, make sure it is in writing and specifies the services and repairs to be completed. **Never** pay all of the money in advance, and always get a receipt for any payments made. Only pay 10% down or $1,000, whichever is less. Set up a payment schedule based on stages of completion and obtain lien release forms from each subcontractor and material supplier at each stage. Withhold final payment until all work has been completed to your satisfaction, all needed inspections have been passed, and all releases have been obtained.

Remember, payment in full to a contractor may not protect you if the contractor has not paid his or her subcontractors or material suppliers. If you fail to pay for the services provided by a material supplier, contractor or a subcontractor they can file a mechanic's lien against your property. This lien can force the sale of your home to satisfy the unpaid bill.

3. Do I have any options if I purchase or lease a new motor vehicle that has to be taken back to the dealer numerous times for repairs shortly after purchase?

Yes. A purchaser or lessee of a new motor vehicle has rights if the vehicle does not perform as provided under an express warranty. Known as the "Lemon Law", this law requires the manufacturer or its authorized dealer to promptly replace the vehicle or return the purchase price to the buyer or lessee, if they are unable to service or repair a new motor vehicle to meet the terms of the expressed written warranty after a "reasonable number" of repair attempts. Specific procedures must be taken if you think you have a "lemon". Contact the California Department of Consumer Affairs at (800) 952-5210 or (800) 326-2297 (TDD) or our office at (800) 977-4257 for more information.

4. What about phony auto repairs?

Coupons for a discount transmission inspection or oil change may be an effort to sell you unnecessary car repairs. Get a second opinion from your regular shop, if you can. Remember, all repairs must be authorized. If additional repairs are needed, you must be notified in advance and must authorize those additional repairs. You do not have to pay for repairs you did not authorize before the work was done. Always ask that the repair shop return all defective parts or replaced parts to you. If you still have a problem or are not satisfied with the repairs, you can contact the Bureau of Automotive Repair at (800) 952-5210.

5. Can I cancel a written contract after I have already signed it?

Yes, if you entered into a door-to-door sales contract or if your contract includes a 3-day rescission clause, you can cancel within 3 days. However, in most contracts you can't change your mind, such as motor vehicle contracts.

Before you sign a contract:

- Read the entire contract. Ask questions if you do not understand.
- Never sign a contract that contains blank spaces.

6. What if someone is trying to sell me a supplemental health insurance policy?

Beware. Health insurance policies often overlap and agents may be more interested in getting their commission than taking care of your needs. It is against the law for an insurance company to knowingly sell you more than one supplemental health insurance policy. If you feel that you have been the victim of consumer fraud, call the District Attorney's Office or the California Department of Consumer Affairs at (800) 952-5210.

7. **What can I do if I have too much debt and cannot pay my bills?**

There are reputable organizations you can contact for credit counseling or debt management assistance but beware of “Get Out of Debt” firms who just put customers deeper in debt. Credit counseling or debt management organizations must register with the California Attorney General’s Office and post a $100,000 bond with the Secretary of State. Prior to signing with an organization you should research their standing with the California Department of Consumer Affairs at (800) 952-5210 and the Attorney General’s Public Inquiry unit at (800) 952-5225 to ensure the company is properly registered and has no complaints.

8. **Can debt collectors call and harass me when I am behind on my payments?**

No, the California Fair Debt Collection Practice Act (FDCPA) prevents abusive, deceptive and unfair debt collection practices by debt collectors.

Debt Collectors:

- Cannot contact you before 8:00 a.m. or after 9:00 p.m.
- May not call you repeatedly over short periods of time.
- Cannot contact third parties to tell them about your debt, but they can ask a third party how to find you.

- Must not threaten to do anything they cannot legally do, such as physically hurt you, damage your property or threaten to have you arrested.

You have the right to tell your creditors to stop calling. Write a letter to the debt collector demanding they “cease and desist” all communications with you. The creditor must comply with your request to stop, but they can still file a lawsuit against you.

9. Is it true that I can get a “free” credit report from the top three credit reporting agencies (Experian, Equifax & TransUnion)?

Yes, the Fair Credit Reporting Act (FCRA) requires each of the credit reporting agencies to provide consumers with a free copy of their credit report, at the consumer’s request, once every 12 months.

You can order your free credit report on the internet at www.annualcreditreport.com or download the free credit report request form and mail it to Annual Credit Report Request Service, PO Box 105281, Atlanta, GA 30348-5281 or call (877) 322-8228 and request a copy over the phone. Do not contact the three reporting companies individually for the free report - all three companies provide the free credit report either by internet, mail, or phone request.

Wills, Death & Probate

10. What is a Will?

A Last Will and Testament ("Will") is a legal document that addresses a person's wishes and instructions as to how a person's estate (everything the person owns at the time of his or her death) is to be distributed after his or her death. Your Will can only dispose of assets held in your name. Only an individual who is 18 years or older and who is of sound mind may make a Will.

11. Do I need a Will?

No, a Will is not required. However, it may be in your best interest to have a Will. A Will dictates how your estate is to be distributed after your death. It allows you to choose an Executor to follow your instructions. If you have minor children, you can nominate a guardian. If you do not have any living relatives at the time of your death and you do not identify in your Will who is to receive your estate, your estate will go to the State of California.

12. Can I prepare a Will without an attorney?

Yes, you can use the California Statutory Will form or prepare a handwritten Will known as a Holographic Will.

The California Statutory Will form requires that you read and follow all the instructions printed on the form and answer the questions by filling in the blanks next to the questions. You will need to have two (2) witnesses who are over the age of 18 and are not mentioned in the Will. Notarization of the Will does not fulfill the requirement to have two witnesses. These forms can be obtained at a stationery store or downloaded from the internet.

A Holographic Will is a Will that the person writes in their own handwriting. You can prepare your own Will so long as you handwrite it yourself, indicate how you wish your property to be distributed, and you sign the Will. Although a date or a witness is not required, it is a good idea to date any handwritten document intended as a Will.

13. Can I make changes to my Will?

Yes, by using a codicil. A codicil is a separate paper attached to the Will, which states the changes you want to make to your Will. You must follow the same rules in writing the codicil that you followed in drafting the Will.

14. May I add or cross out any words on my Will?

No. Any changes to a Will must be done by a codicil or a new Will in order for the changes to be valid.

15. Where should I keep my Will?

Keep your original Will in your safe deposit box or other safe place. You should tell your Executor where the original Will is kept.

16. What is Probate?

Probate is a court procedure that provides for supervision of the distribution of your estate in accordance with the terms of your Will (or state law if you do not have a Will). Fees to probate a Will include court fees, attorney's fees and executor fees. Attorney's fees and executor's fees are set by the California Probate Code and are based on the estate value. The fees are paid during the final steps of the procedure.

Fees can be more if there is "extraordinary" work such as tax preparation, sale of real estate or a dispute (contest) of some kind. An attorney must have court approval to collect a fee for this extraordinary work.

Probate can also be a lengthy process that can last from 4 months up to a year or longer.

17. Does a Will avoid Probate?

Not necessarily. If your estate is valued at $150,000 or more, you must go through Probate. You may be able to avoid Probate regardless of the size of the estate. You should consult an attorney for more information.

18. Do all assets go through Probate?

No. There are ways to title your assets to avoid Probate. A common example is having property in joint tenancy. Joint tenancy means two people own a property equally and if one person dies, the other owns the property as the sole owner.

You should consult with an estate planning attorney to determine how to title your assets based on your personal needs.

19. What are other ways to avoid Probate?

Here are some possibilities:

- **A Living Trust** is a written document where all (or part) of your property is put into the trust and is modifiable by the person(s) who created the trust at any time. A trust avoids Probate because all property and assets are owned by the trust and therefore pass to the heirs through the trust. If you are interested in a trust you should speak with an estate planning attorney.

- **Gifts:** You may gift up to $15,000 per person, per year. You or the recipient may owe taxes on any gift over $15,000 in one year. You should seek the advice of a tax attorney before making a gift.

- **Pay on Death (POD):** Stocks, securities, bank deposits, Totten Trusts, life insurance and annuities can be made payable on death to someone thereby avoiding Probate.

20. What is Unclaimed Property?

California's Unclaimed Property Law requires banks, insurance companies, corporations, and certain other entities to report and submit their customers' property to the State Controller's Office when there has been no activity for a period of time (generally three years). Common types of unclaimed property are bank accounts, stocks, bonds, uncashed checks, insurance benefits, wages, and safe deposit box contents. Property does not include Real Estate. There is no deadline for claiming the property once it is transferred to the State Controller's Office. There is never a fee to recover unclaimed property from the State Controller.

You can find out if the Controller is protecting property in your name by searching https://ucpi.sco.ca.gov/UCP/Default.aspx.

Financial Powers of Attorney and Advanced Health Care Directives

21. What is a Financial Power of Attorney?

A Power of Attorney gives a person of your choosing, known as your agent the legal authority to act for you in any lawful way in the financial matters you choose. You may choose to have the Power of Attorney effective immediately on the day you sign the document or upon your incapacity.

Your agent must act in your best interest. Contact ICLS, and if you are qualified, ICLS can assist you in preparing your Power of Attorney.

22. Will my Power of Attorney be accepted everywhere?

Maybe. Many institutions, such as banks, require that you use their Power of Attorney form. You should check with your bank, insurance company, and any other financial institutions to ensure your Power of Attorney will be honored by them.

23. Who can create a financial Power of Attorney?

Any California resident who is age eighteen (18) or older, of sound mind, and acting under his or her own free will can do so.

Should you move to another state, you should consult with an attorney in that state regarding their rules for a Power of Attorney.

24. What happens if I become incapacitated but did not sign a Power of Attorney to manage my affairs?

When a person over age eighteen (18) becomes incapacitated without a valid Power of Attorney, someone will need to file for Conservatorship to be able to make financial or healthcare decisions on behalf of the incapacitated adult. If the adult does not have a family member or friend willing to be appointed to care for them, the Public Guardian of the County can be appointed to care for the incapacitated adult.

25. How does a Power of Attorney become valid?

The Power of Attorney becomes valid once you have completed the form, identified who will be acting as your agent, and you sign the document in front of a Notary Public.

Remember, even though the Power of Attorney is valid, the agent does not obtain the right to make decisions on your behalf unless you chose to make the Power of Attorney effective upon signing. If you chose to make the document effective upon incapacity, the agent will not obtain any rights until a doctor determines you are unable to make your own decisions.

26. Can I revoke my Financial Power of Attorney?

Yes. To revoke your Financial Power of Attorney, you must notify your agent or anyone else who may have relied on the document, in writing, mailing it certified return receipt requested. If the current Power of Attorney was recorded with the County Recorders' office, you should record the revocation as well.

If you become mentally incapacitated, you will no longer be able to revoke or reassign the powers already given.

Advanced Health Care Directives

27. What is an Advanced Health Care Directive?

A Power of Attorney for health care is called an Advanced Health Care Directive. The Advanced Health Care Directive allows you to determine who will make decisions regarding your health care and requires your wishes to be followed by your agent and the doctor.

In the Advanced Health Care Directive, your agent must follow your instructions regarding health care, end of life decisions, your instructions on burial or cremation, and whether you wish to donate organs.

The Advanced Health Care Directive forms can be obtained from your doctor.

28. What happens if I fail to leave any directions about disposition of my remains? Who has the right to control disposition of my remains after I die?

If you have a valid Advanced Health Care Directive, the named agent will make all decisions based on the instructions you provided. If there is no agent, by law the agent would be the surviving spouse if he or she is competent, then the surviving adult children if they are competent (if there is more than one adult child, decisions require an agreement by the majority), then the surviving parent or parents if they are competent. If there are no competent surviving family members, then the County Public Guardian can be appointed to handle the disposition.

29. How does an Advanced Health Care Directive become valid?

Most Advanced Health Care Directives become valid when witnessed and signed by two people eighteen (18) or older. An Advanced Health Care Directive may be notarized but it is not required.

If an Advanced Health Care Directive is needed when the person is in a skilled nursing home, the document must be witnessed and signed by an ombudsman with the nursing home, as well as a second witness who is eighteen (18) or older.

30. Can I revoke or make changes to my Advanced Health Care Directive?

Yes. If you are competent, you may revoke or make changes to the Directive. You should notify your agent(s), doctor and anyone else that may rely on the document. Provide them a copy of your revoked or revised Advanced Health Care Directive.

31. What authority does my agent have?

Your agent will meet with your doctors and family, then make decisions for your care based on the instructions you provided in your Advanced Health Care Directive. Current law requires your doctor to disclose medical information regarding your health only to your agent.

Social Security

32. Can creditors take my Social Security?

Maybe. Social Security income is usually protected from creditors under the Social Security Act. However Social Security income can be garnished to pay court-ordered child or spousal support, unpaid Federal taxes, or other Federal non-tax debt (i.e. student loans).

33. Can I continue to work after I start to collect my Social Security retirement check?

Yes, however, depending on your age and income, Social Security may deduct a portion of your benefit payments.

The earliest age you can begin receiving Social Security is 62. The full retirement age is 66 for people born between 1943 and 1954, and gradually increases to 67 for those born in 1960 or later. You should check with Social Security to confirm your full retirement age: https://www.ssa.gov/.

If you are under full retirement age for the entire year, Social Security will deduct $1 from your benefit payments for every $2 you earn above the annual limit. You should check with Social Security to confirm the current annual limit.

Once you reach your full retirement age, Social Security will stop withholding money from your income depending on the month you reached your full retirement age.

Homestead

34. Is my home or mobile home protected from most creditors even without recording a Homestead?

Yes. If you own a house, condominium, mobile home (and the land it sits on) or houseboat, and reside in it, a specified amount of equity interest in your home is automatically protected. The amount of equity in the home that is protected depends on the homeowner's circumstances. Under California laws, you are allowed an exemption of $175,000 if you are 65 years or older or disabled and unable to work. You also qualify for the exemption if you are 55 years or older with a gross annual income of $25,000 or less if you are an unmarried person, or $35,000 for married couples and the sale is an involuntary sale.

35. Will a Homestead protect my home from foreclosure?

No. A Homestead does not prevent a lender from foreclosing where a debt is secured by the home. If you pledge your home as collateral for a loan, the lender can sell the property to collect on the debt regardless of the existence of the Homestead.

36. How does a Homestead protect my property?

A home with a recorded homestead cannot be sold by a creditor if proceeds from a forced sale of the home will not be sufficient to pay all of the following: 1) the owner's Homestead exemption; 2) all mortgages on the home and other loans secured by the home; and 3) all existing liens or encumbrances on the home. For example, a $155,000 residence, owned by a 65-year-old person and encumbered by a $20,000 mortgage, is fully protected from judgment creditors.

If a homeowner voluntarily sells his or her home, to the extent the proceeds of the sale do not exceed the homeowner's Homestead exemption, a Declaration of Homestead protects the proceeds for six months after the sale. If, within those six months, the proceeds from the sale of the home are invested in a new dwelling and the owner files a Homestead Declaration for the new dwelling, the money remains protected.

However, if someone has a home that was valued at $350,000 and the property is encumbered by a $20,000 mortgage, the property is not fully protected from creditors. There would be $155,000 unprotected that the creditors can go after, often through the forced sale of the home.

37. How do I file a Declaration of Homestead?

The Declaration of Homestead is a form which the owner must fill out, sign in front of a notary and file in the County Recorder's office where the home or mobile home on a permanent foundation is located. A small filing fee is charged for recording the document.

Reverse Mortgages

38. What is a reverse mortgage?

Reverse mortgages are a special type of home-secured loan that allow seniors to convert home equity into cash without having to move out and without having to make periodic mortgage payments. Reverse mortgage lenders advance funds to the borrower as a lump sum, as monthly payments, through a line of credit, or a combination of these options. No periodic payments are due from reverse mortgage borrowers. Instead, over time, reverse mortgage balances rise as a result of additional advances, accruing interest, and fees. Generally, reverse mortgages become due and payable when the borrower dies, sells the home, or permanently relocates from the home.

There are two principal types of reverse mortgages: Home Equity Conversion Mortgages (HECMs) and proprietary reverse mortgages.

HECM loans are federally insured and make up the vast majority of the reverse mortgage market. The Department of Housing and Urban Development (HUD) administers the program and promulgates regulations with respect to HECM loans. Under the HECM program, private lenders make reverse mortgage loans subject to HUD's regulations and, in return, HUD insures the lender against certain losses in the event of default. Proprietary reverse mortgages are equity conversion products that are developed and backed solely by private financial institutions. These are not governed by the extensive rules covering HECM loans. Generally, these reverse mortgages will be subject to the Truth in Lending Act, as well as state law, unless preempted.

While no periodic payments are due on reverse mortgages, there are certain circumstances in which foreclosure can be triggered. The most common reasons for reverse mortgage foreclosure are failure to pay property charges and failure to pay the amount due upon maturity of the loan.

39. What are the differences between a reverse mortgage and a home equity loan?

With a second mortgage, or a home equity line of credit, borrowers must make monthly payments on the principal and interest. A reverse mortgage is different, because it pays you. There are no monthly principal and interest payments. With a reverse mortgage, you are required to pay real estate taxes, utilities, and hazard and flood insurance premiums.

40. Will I be required to make loan payments on a reverse mortgage?

No, there are no monthly loan payments required for reverse mortgages. This does not mean that reverse mortgages are "payment-free." Rather, the loan documents require reverse mortgage borrowers, like traditional mortgage borrowers, to pay for "property charges." These charges include real estate taxes and hazard insurance premiums and, if applicable, condominium association fees, ground rents, or other special assessments.

41. What is the cost for a reverse mortgage?

HECM loans have a number of costs and fees that are payable by the borrower, including origination fees, servicing fees, and mortgage insurance premiums. These costs are commonly financed with the loan proceeds. Origination fees are limited to the greater of (1) $2,500 or (2) two percent of the maximum claim amount up to $200,000, plus one percent of any portion of the maximum claim amount that is greater than $200,000, with a cap of $6,000.

In addition, HECM borrowers must pay mortgage insurance premiums (MIP) and a monthly servicing fee. The upfront MIP for a HECM loan, which is due at origination, equals either 0.5% or 2.5% of the maximum claim amount, depending on the initial disbursement amount. After the closing, a monthly MIP accrues daily on the mortgage balance at a rate of 1.25% a year and is paid by the lender to HUD. Borrowers are also typically charged a fixed monthly servicing fee, ranging from $25 to $35 dollars. MIP amounts and servicing fees are added monthly to the borrower's mortgage balance. You must meet with a HECM counselor. You can find a counselor online at https://entp.hud.gov/idapp/html/hecm_cnslr_look.cfm or by calling (800) 569-4287 toll-free.

42. What do you get from the loan?

Reverse mortgage lenders advance funds to borrowers as a lump sum, in monthly payments, through a line of credit, or a combination of these options. For example, borrowers may receive a single lump-sum disbursement at origination. This option is the most expensive, as interest on the lump sum is charged from the first day and compounded every month.

Alternatively, under tenure plans, borrowers can receive equal monthly payments from the lender for as long as they live and continue to occupy the property as a principal residence.

Term plans also provide for equal monthly payments, but payments are disbursed for a fixed period of months. Term plans generally offer larger monthly advances than a tenure plan, where the lender promises to pay a monthly payment for as long as the homeowner is in the house.

A line-of-credit plan permits the borrower to draw amounts as needed until the line-of-credit is exhausted. The modified tenure and modified term plans allow borrowers to combine these various features.

HECM loans do not require the borrower to make periodic loan payments. Instead, over time, the reverse mortgage balance rises as a result of additional advances, accruing interest, and fees. Payment is due only at maturity, which occurs when the last borrower dies, sells, or permanently relocates from the home. HECM loans may be prepaid in whole or in part without penalty. Homeowners do have ongoing obligations to pay their property taxes, insurance, and other property related expenses.

43. Who may be eligible for an FHA-insured reverse mortgage?

Homeowners who are, or whose spouses are, at least 62 years old and who either own their home free and clear of debt or have only minimal mortgage debts may be eligible for a reverse mortgage. The property serving as collateral for the loan must be titled in the borrowers' names and must be the borrowers' principal residence. HECM borrowers must obtain counseling by an independent third party, usually one from a list of HUD-approved counseling agencies, that is neither directly or indirectly associated with the mortgage transaction. The counseling fee can be paid to the counselor directly by the borrower or subtracted from HECM proceeds at the closing.

Until recently there were no income or credit qualifications for a reverse mortgage other than, a requirement that each mortgagor have a “general credit standing” satisfactory to HUD.

In late 2014, HUD issued new financial assessment guidelines effective for reverse mortgages made on or after April 27, 2015. These requirements supersede similar guidelines issued in 2013. The new financial assessment guidelines assess borrowers’ ability to meet ongoing obligations for taxes, insurance and other property charges—whether through income, assets, reverse mortgage proceeds, or a set aside of reverse mortgage funds. The financial assessment includes residual income and credit history analyses.

Unlike before, HUD now requires originators of reverse mortgages to ensure that either (1) the mortgagor has sufficient other income and credit history to indicate that the mortgagor will pay the property charges on the home, or (2) that an amount necessary to meet these expenses is set aside from the proceeds of the reverse mortgage.

44. Would I end up owing more than the home is worth?

HECMs are designed to be "non-recourse" loans, which means that the borrower (or their estate) will not owe more than the loan balance or the value of the property, whichever is less. Whether or not the loan is due and payable, the borrower may sell the property "for at least the lesser of the mortgage balance or the appraised value." If proceeds from a sale exceed the mortgage balance, any excess funds would belong to the borrower or the borrower's estate. When repayment is due, the home can be tendered to the lender and nothing further is owed. Alternatively, if the mortgage is due and payable at the time a contract for sale is executed, the borrower may sell the property for ninety-five percent of the appraised value.

45. Will I have an estate that I can leave to heirs on a reverse mortgage?

Yes, if there is equity in the home. When the home is sold or no longer used as a primary residence, the cash, interest, and other HECM finance charges must be repaid. All proceeds beyond the amount owed belong to your spouse or estate. This means any remaining equity can be transferred to heirs. No debt is passed along to the estate or heirs.

46. Should I use an estate planning service to find a reverse mortgage lender?

Yes. FHA does not recommend using any service that charges a fee for referring a borrower to an FHA-approved lender. You can locate a FHA-approved lender by searching online at www.hud.gov or by contacting a HECM counselor for a listing. Services rendered by HECM counselors are free or at a low cost. To locate a HECM counselor search online or call (800) 569-4287 toll-free, for the name and location of a HUD-approved housing counseling agency near you.

Paying for Nursing Home Care

47. Will my Medicare or HMO pay for a nursing home?

Yes. Medicare may pay for some of your nursing home expenses. If you go directly to a nursing home after a three day stay in a hospital for illness or injury, your Medicare will pay for days 1 through 20 of your nursing home stay. Medicare will also pay for 80% of the costs for days 21 through 100. If you have a supplemental (Medi-Gap) policy, this supplemental policy should pick up the other 20%. After one hundred days in a nursing home, you are on your own. HMO’s usually have similar nursing home policies, but you need to check with your health insurance carrier to verify their nursing home policy.

48. Who pays for my nursing home care if I can't afford it?

In California, Medi-Cal will pay for an individual to be in a nursing home provided that person is of modest means and has few assets. An unmarried person, who retains less than $2,000 in a bank account, has a prepaid funeral/burial fund, $1,500 in a separate account designated for burial, a burial plot, and a policy of life insurance with a face value or cash value of less than $1,500, can qualify for Medi-Cal assistance in a nursing home. The person's home remains exempt as long as there is "intent" to return to that home, whether or not the person is physically capable of returning to the home. Medi-Cal rules do not allow you to give away your money (for instance, to your children or grandchildren) in order to qualify for Medi-Cal. In fact, Medi-Cal "looks-back" 30 months prior to your application, reviewing all your financial transactions to determine eligibility. If you transferred or gifted money to anyone during those 30 months, you will be delayed in receiving Medi-Cal.

In February 2006, the Federal Deficit Reduction Act of 2005 was signed into law. These rules will most likely be implemented in California, although they have not been implemented yet. When implemented, one of the many rules that will change is the "look-back" period will increase from 30 months to 60 months (5 years).

49. If my spouse is placed in a nursing home, can they receive Medi-Cal assistance?

Yes. They can receive assistance under the Medicare Catastrophic Coverage Act (MCCA) if they entered a nursing home after September 1989 and applied for Medi-Cal after January 1990, and they meet certain income/asset guidelines. The following is a list of property exempt in determining eligibility:

- The home is totally exempt regardless of value, if it is the principal residence;
- One automobile regardless of value;
- In 2019, the at-home spouse can retain up to $126,420 in liquid assets resources (such as stocks, bonds, bank accounts, etc.). This is known as "Community Spouse Resource Allowance" (CSRA)[1];
- In 2019, the at-home spouse can retain up to $3,161 of the family income or a greater amount if the at-home spouse receives more than $3,161 in their name alone. This is known as "Minimum

[1] The CSRA and MMMNA may increase yearly

Monthly Maintenance Needs Allowance" (MMMNA);

- Prepaid irrevocable burial plans of any amount and $1,500 in designated burial funds. These designated funds must be kept separate from all other accounts;

- Cash surrender value or balance of pension funds, IRA's and certain types of Annuities;

- The nursing home spouse can only keep $2,000 in his or her name.

There are other exemptions you may qualify to use. Remember the nursing home must meet the Medi-Cal definition of a "skilled care/skilled nursing facility" or Medi-Cal will not pay expenses for a board and care facility or pay for custodial care.

50. What if I need more of the family income or assets than I am allowed under the MCCA rules?

An at-home spouse can keep more than the allocated $3,161 per month (MMMNA) or the $126,420 (CSRA) in assets if he or she can demonstrate extraordinary circumstances which would justify the need for more. An Administrative Law Judge is the only person who can change the CSRA and MMMNA amounts.

The MMMNA and CSRA amounts may increase each year.

If you or your spouse's Medi-Cal benefits are jeopardized because the income or asset levels are exceeded, you must request a State Hearing to determine if your need exempts you from the limits.

51. Will the State put a lien on my home when my spouse dies if Medi-Cal has paid for the nursing home care?

Yes, in rare cases California will file a lien where the Medi-Cal beneficiary's home is not exempt and is up for sale. Estate recovery claims can be made after a Medi-Cal beneficiary's death. Effective January 1, 2017, the state can no longer recover for basic health services such as doctor's visits, prescription drug costs, or managed care reimbursement, unless the services are related to nursing care or home and community based services for those aged 55 and older or the beneficiary is permanently institutionalized.

The new recovery provisions limit recovery to only those services required under federal law, including services related to nursing home care; intermediate care for developmentally disabled; home and community based services; services related to hospital and prescription drug services that are provided to an individual while receiving nursing home services and home and community based services.

You may avoid an estate claim by reviewing the property of the Medi-Cal beneficiary and making arrangements to transfer the property prior to death. If the property is transferred out of the beneficiary's name prior to death, the state cannot place a claim. However, any transfer of real property can have tax consequences that may outweigh a Medi-Cal claim. Currently, there are a number of legal options (for example, irrevocable life estates, occupancy agreements, certain types of trust) to avoid probate, avoid tax consequences and avoid estate claims. Anyone considering a transfer of real property should consult an attorney experienced in the Medi-Cal rules and regulations.

If you receive a letter from the Medi-Cal Estate Recovery Unit, it is best to consult with an attorney or advocate who is experienced in the Medi-Cal rules and regulations.

52. I heard that if you purchase annuities, the State cannot make a recovery claim against your estate. Is this true?

Yes, for annuities purchased on or after January 1, 2017, the State can no longer recover when annuities pass to a named beneficiary by survivorship and are not subject to probate. If the annuity does not have a named beneficiary, or has another legal issue requiring a probate case, Medi-Cal may collect against the annuity.

53. If I know I need nursing home care, can I put my estate in a trust, or give it away, to be eligible for Medi-Cal?

No. This question is directed toward circumventing the "eligibility" requirements to qualify for Medi-Cal assistance. Medi-Cal can "look-back" 30 months[EAS1] from the date of your application for Medi-Cal to determine your eligibility for assistance. But keep in mind, when the Federal Deficit Reduction Act of 2005 is implemented in California, the "look-back" period will change from 30 months to 60 months (5 years).

54. Can I get help paying for my care at home so that I don't have to go into a nursing home?

Yes. Both San Bernardino and Riverside Counties In-Home Support Services (IHSS) programs help low income disabled persons to stay safely in their homes by providing persons to assist with cleaning, cooking, shopping, care giving, etc. If you are eligible, the county will pay all or part of your care provider's wages. After an assessment by the county of your needs, they will authorize a specific number of hours for your care. You have the right to a Fair Hearing if you are denied IHSS, if your hours are incorrectly determined or reduced, and you disagree with the decision.

In Riverside County you can call (888) 960-4477 to request services from IHSS. In San Bernardino County you can call (877) 800-4544 to request services from IHSS.

Mobile Home Law

55. I live in a mobile home. I own the home, but I pay space rent in a park. Are there separate laws to protect me?

Yes. Laws concerning mobile homes can be found in The "Mobile Home Residency Law", the California Civil Code, the Government Code, the California Code of Regulations, and the California Health and Safety Code.

Elder Abuse

56. What is elder abuse?

California law defines elder abuse as the physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment resulting in harm, pain, or mental suffering to an elder or dependent adult. Elder abuse also includes deprivation of goods or services necessary to avoid physical harm or mental suffering by a person directly responsible for the elder's care.

Elder Abuse laws protect anyone who is 65 years of age or older, and adults between the ages of 18 and 64 who are not capable of caring for themselves.

If you are being abused by a family member, spouse/partner, former spouse/partner, or any person directly responsible for your care, you may file for a restraining order to protect yourself or to recover money or property.

57. If I suspect an elderly person is being abused, can I report it to someone?

Yes. If you or another elder or dependent adult you know is being abused, please call the police or the Department of Aging and Adult Services. The 24-hour hotline in San Bernardino County is (877) 565-2020 and in Riverside County is (800) 491-7123. All reports are handled in strict confidence.

An elder abuse "mandated reporter" is required by law to report actual or suspected physical or financial abuse, abandonment, or neglect. A mandatory reporter for elder abuse is any person who has assumed full or part-time responsibility for the care or custody of an older adult, whether they received compensation or not.

If you are worried about an elder or dependent adult's immediate safety, call 911.

Grandparent Visitation

58. As a grandparent, can I ask the court for visitation with my grandchildren when the parents are getting a divorce?

Yes. The court has the power to grant visitation rights to grandparents when there is any custody proceeding before the court. In order to obtain visitation rights, you must prove that your relationship with your grandchild is so strong that it is in the child's best interest to provide visitation. The court will balance the child's best interest and the parents' right to exercise their parental authority. There is a rebuttable presumption that visitation is not in the best interest of the child if both parents agree that the grandparent should not be granted visitation. You should seek advice from a family law attorney prior to filing for grandparent's visitation rights.

Small Claims Court

59. How can small claims court be of benefit to me?

Small Claims Court was created to resolve disputes quickly and inexpensively through a less formal court process.

You are allowed to consult with an attorney prior to filing a Small Claims case, and while the case is pending, however attorneys are not allowed to appear in Small Claims Court on your behalf.

The maximum you can file for in a Small Claims case is $10,000 if you are filing as an individual or sole proprietor. Corporations and other entities cannot ask for more than $5,000 per case. Only two cases per calendar year can be filed for more than $2,500. There is no limit if your cases are below $2,500.

Collections agencies cannot sue in small claims court to collect on debts that are assigned to them.

60. What type of case can I file in Small Claims Court?

Small Claims Courts may hear civil law cases where you are asking for less than $10,000 (or $5,000 if you are a corporation or other entity), such as property damage, personal injury, contract disputes, or homeowner association disputes.

You can get help at the self-help centers located in the San Bernardino and Riverside Courts.

Small Claims forms are available free at http://www.sb-court.org/self-help/small-claims

61. How much are the court fees for small claims?

The filing fee is based on the amount of your claim and the number of claims you have filed in the past 12 months. If you have filed 12 or more claims in past 12 months, the filing fee may increase.

You may check the San Bernardino County Small Claims fees at:

http://www.sb-court.org/sites/default/files/Divisions/Exhibit/feeSched.pdf.

You may check the Riverside County Small Claims fees at:

https://www.riverside.courts.ca.gov/feeschedule.pdf

Affordable Care Act

62. What is the Affordable Care Act?

The Affordable Care Act (ACA) of 2010 established a variety of consumer protections including the right to obtain coverage regardless of pre-existing conditions, free preventative screenings, coverage to adult children up to age 26 on their parents' plan, language access, and reforming the health insurance grievance and appeals process. Most notably, the ACA expanded Medicaid (what we call Medi-Cal in California) to provide full-scope health insurance coverage to low-income able bodied adults between the ages of 19-64.

In addition to increased consumer protections and Medicaid expansion, the ACA requires persons to have minimum essential health insurance coverage. If you are required to have health insurance the entire year, and elect to not obtain coverage, you may face a tax penalty.

63. What are Essential Health Benefits?

Essential Health Benefits are benefits that your health insurance company must provide. This includes: outpatient care, emergency services, hospital care, pregnancy and newborn care, mental health, drug and alcohol, and behavioral services, prescription drug coverage, services and devices to help you recover and function, lab services, and preventive and wellness services.

64. What is Minimum Essential Coverage?

Certain types of health insurance coverage are already certified as minimum essential coverage including: Medicare Part A and Medicare Advantage Plans, Full-Scope Medi-Cal without a Share of Cost, most TRICARE, certain VA health benefits, employer-sponsored plans, and plans purchased through

Covered California, our state’s health insurance market place. If you presently have coverage under any of these plans, you are considered to have Minimum Essential Coverage and have met your health insurance responsibility under the law.

65. Who is required to have Minimum Essential Coverage?

United States Citizens or Lawfully Present Residents are required to have coverage. If you fall into any of these categories, you are not required to have coverage: (1) members of recognized religious sects; (2) members of health care sharing ministries; (3) exempt noncitizens; (4) individuals who are incarcerated; (5) individuals with no affordable coverage; (6) household income below filing threshold; (7) members of federally recognized Indian tribes; (8) individuals who qualify for a hardship exemption certification; and (9) individuals with a short coverage gap of a continuous period of less than three months in which the individual is not covered under minimum essential coverage.

66. What if I choose to not obtain health insurance coverage?

If you choose to not obtain health insurance coverage, and are not exempt, you may have to pay a penalty when you file your taxes.

Note: If you have not filed your Federal taxes between 2014 and 2018, and you did not have health insurance coverage during that time, you may be assessed a penalty.

The Tax Cuts and Jobs Act of 2017 (TCJA) eliminates the Affordable Care Act penalty beginning in tax year 2019. Because the TCJA makes other changes that interact with how the ACA penalty is calculated, taxpayers who expect to pay a penalty in 2017 and 2018 should be aware of the other changes as they estimate their tax liability.

67. How does the Affordable Care Act help me?

The ACA provides preventative services with no out-of-pocket costs (flu shots, tobacco cessation programs, and no cost screening for cancer, diabetes and other chronic diseases); free annual wellness visits with your provider; lower prescription drug costs by gradually closing the “donut hole” which will disappear entirely in 2020; new provisions to combat fraud, waste, and abuse; and new initiatives to support care coordination.

Please visit the Health Consumer Alliance website at http://healthconsumer.org for more information.

RESOURCES

The ICLS PAI Program is an integral component in meeting the needs of our clients and completing our mission to pursue "…justice and equality for low income people through counsel, advice, advocacy, and community education, treating all with dignity and respect."

ICLS, with partners Inland Empire Latino Lawyers Association ("IELLA") and Legal Aid Society of San Bernardino ("LASSB"), works to increase and improve services to our communities, focusing on providing legal services to seniors.

Inland Empire Latino Lawyers Association (IELLA)
(951) 369-3009

IELLA holds clinics at various locations throughout Riverside and San Bernardino Counties. Call for clinic schedules and locations.

Legal Aid Society of San Bernardino, Inc. (LASSB)
(909) 889-7328

LASSB holds clinics at various locations throughout San Bernardino County. Call for clinic schedules and locations.

LEGAL AID PROGRAMS

Inland Counties Legal Services, Inc. providing services in Riverside and San Bernardino Counties
1040 Iowa Ave., #109. Riverside, CA 92507
82632-C Highway 111, Indio, CA 92201
455 North D St., San Bernardino, CA 92401
13911 Park Ave., #210, Victorville, CA 92392
10565 Civic Center Dr., #200, Rancho Cucamonga, CA 91730
(888) 245-4257 for services
(800) 977-4257 Seniors aged 60 or over
www.inlandlegal.org

Inland Empire Latino Lawyers Association (IELLA)
2060 University Ave. #113, Riverside, CA 92507
(951) 369-3009
www.iella.org

Legal Aid Society of San Bernardino, Inc. (LASSB)
588 W. Sixth St., San Bernardino, CA 92410
(909) 889-7328
www.legalaidofsb.org

Public Service Law Corporation of the Riverside County Bar Association dba Riverside Legal Aid (RLA)
Riverside Area: (951) 682-7968
Coachella Valley: (760) 347-9456
www.riversidelegalaid.org

COUNTY OFFICES FOR SENIORS

Riverside County Office on Aging
7894 Mission Grove Parkway, Riverside CA 92508 &
3610 Central Ave., Riverside CA 92506
(951) 867-3800 or (800) 510-2020
Website: www.rcaging.org

San Bernardino County Department of Aging & Adult Services
784 E. Hospitality Lane, San Bernardino CA 92415
(877) 565-2020 (909) 891-3900
Website: www.hss.sbcounty.gov

Riverside & San Bernardino County Senior Information & Assistance
(800) 510-2020

Community Action Partnership of San Bernardino County
696 S. Tippecanoe Ave., San Bernardino CA 92408-2607
(909) 723-1500
Website: www.capsbc.org

DISTRICT ATTORNEY

San Bernardino County Criminal Division
303 W. 3rd St., 4th Fl. San Bernardino CA 92415-0004
(909) 382-3800
Website: www.sbcountyda.org

Riverside County Criminal Division
3960 Orange St., Riverside CA 92501
(951) 955-5400
Website: www.rivcoda.org

CONSUMER PROTECTION

Better Business Bureau of Inland Cities, Inc.
2600 W. Shaw Lane, Fresno CA 92371
File complaints online at www.bbb.org
(Lists previous complaints about specific business organizations)

Contractors State License Board
9821 Business Park Dr., Sacramento, CA 95827
(800) 321-2752
Website: www.cslb.ca.gov
(*24 hr. Licensing & Consumer information*)

Office of the Attorney General, California Department of Justice, Attn: Public Inquiry Unit
P.O. Box 944255, Sacramento CA 94244-2550
(916) 445-9555 or (800) 952-5225
Website: www.oag.ca.gov
(Complaints about deceptive or fraudulent business practices.)

Federal Trade Commission
(877) 382-4357
Website: www.ftc.gov
(Investigates consumer complaints of unfair, deceptive, or fraudulent practices in the marketplace)

California Bureau of Automotive Repair
1450 Iowa Ave,, #150, Riverside CA 92507
(951) 782-4250
Website: www.bar.ca.gov
(Complaint information and license verification
(800) 952-5210)

California Department of Consumer Affairs
1625 N. Market Blvd., #N 112, Sacramento CA 95834
(800) 952-5210
Website: www.dca.ca.gov

Office of the Controller
Division of Unclaimed Property
(800) 992-4647
Website: www.ucpi.sco.ca.gov

MOBILE HOMES

Housing & Community Development Mobile Home Titling & Registration
3737 Main St., #400, Riverside, CA 92501
(951) 782-4431 or (800) 952-8356
Website: www.hcd.ca.gov

California Department of Housing and Community Development - Mobile Home Assistance Center
(Office of the Mobile Home Ombudsman)
P.O. Box 31, Sacramento, CA 95812-0031
(800) 952-5275
MHassistance@hcd.ca.gov

Website: http://hcd.ca.gov/manufactured-mobile-home/mobile-home-ombudsman/index.shtml

Golden State Manufactured-Home Owners League
14802 Beach Blvd. La Mirada, CA 90638
(657) 325-0144 or (800)888-1727
Website: www.gsmol.org

Yucaipa Mobile Home Residents' Association
P.O. Box 1052, Yucaipa CA 92399
(909) 797-9732

ELDER ABUSE: PHYSICAL OR FINANCIAL

San Bernardino County Adult Protective Services (Department of Aging & Adult Services)
(909) 891-9019
Hot Line 24 Hrs. (877) 565-2020

Riverside County Adult Protective Services (Public Social Services Department)
Hot Line 24 Hrs. (800) 491-7123

SKILLED NURSING HOME CARE

San Bernardino County Department of Aging & Adult Services
Long-Term Care Ombudsman Services
(909) 891-3928 or (866) 229-0284
Website: www.hss.sbcounty.gov

Riverside County Office on Aging
Long-Term Care Ombudsman Program
(833) 772-6624

(Both counties handle complaints about nursing homes and residential care facilities. Counseling for facility residents and advocacy for seniors and the disabled is available.)

CANHR (California Advocates for Nursing Home Reform)
650 Harrison St., 2nd Fl., San Francisco, CA 94107
(415) 974-5171 or (800) 474-1116 (consumers only)
Website: www.canhr.org

SOCIAL SECURITY & MEDICARE & HEALTH INSURANCE

Social Security Administration *(covers Medicare also)*
(800) 772-1213
Website: www.ssa.gov

Health Insurance Counseling & Advocacy Program (HICAP)
9121 Haven Ave., #120, Rancho Cucamonga CA 91739
(800) 434-0222 or (909) 256-8369
Website: www.coasc.org
(Free counseling on health care options and rights.)

INFORMATION & REFERRAL

California Department of Aging
1300 National Dr., #200, Sacramento CA 95834
(916) 419-7500 or (800) 510-2020
(Information & fact sheets re: nursing home complaints: (800) 231-4024)
Website: www.aging.ca.gov

Rolling Start
1955 Hunts Lane, #101, San Bernardino CA 92408
(909) 890-9516
Website: www.rollingstart.com
(Information and referral for housing and adult care.)

Inland Fair Housing and Mediation Board
1500 S. Haven Ave., Suite 100, Ontario, CA 91761
(909) 984-2254 or (800) 321-0911
Website: www.ifhmb.com

Fair Housing Council of Riverside County
4164 Brockton Ave., Riverside, CA 92501
(951) 682-6581 or (800) 655-1812
Website: www.fairhousing.net

California Medical Association
1201 "J" St., Suite 200, Sacramento, CA 95814
(800) 786-4262, (916) 444-5532
(purchase advanced health care directives)
Website: www.cmadocs.org

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