# PFAC NEWS

SUMMER 2019

## PFAC STATEMENT OF PURPOSE

**The purpose of the Professional Fiduciary Association of California is to:**

1. Promote high standards of ethics and practice
2. Maintain high qualifications for membership
3. Require and provide continuing education
4. Enhance awareness of and respect for the Professional Fiduciary Association of California and its members
5. Contribute to the development and support of effective regulation, legislation and licensing
6. Promote communication among members to share resources

## PRESIDENT'S MESSAGE

***by Julie Sugita, President***

Thank you for the opportunity to serve as the 2019 | 2020 PFAC President. It's an honor to join the ranks of professional fiduciaries that I have come to know and respect so much in this role. My sincere thanks to Donna Verna for paving the way to an exciting term in which to serve. PFAC has grown by leaps and bounds over the past few years and I'm looking forward to advancing that forward trajectory.

We just finished the annual PFAC Leadership Retreat at the Mission Inn Resort & Spa in Riverside. All PFAC regions and all but two PFAC chapters were represented. The team went through some enlightening and engaging exercises to show how we all look at the world differently. Quite interesting, to say the least! Collectively, we progressed through PFAC policy and procedures as well as plans for the upcoming year. We'll be sharing those plans with you soon along with photos from the event. I thank each leader who took the time from their busy lives to come and make PFAC an even stronger organization.

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# PRESIDENT'S MESSAGE

(Continued from page 1)

Our Leadership conference was directed by the excellent team of Leandra McCormick and Amy Olsen, and many kudos are due them!

As I look forward to the path ahead, I want to thank those who have paved the way over the past year by being active, participatory and engaged members of the PFAC Board of Directors. Thank you to Donna Verna, Mark Olson, LeAndra McCormick, Susan Ghormley, Meredith Taylor, Michael Storz, Tom Behr, Susanna Starcevic, Donna Bogdanovich, Marlene Dennis, Patty Fister, Stella Shvil, and Leslie Byrne. It was such a pleasure serving, strategizing, and laughing with you. Now, let's roll up our sleeves and get things done!

Sincerely, Julie Sugita

# FROM THE **EXECUTIVE DIRECTOR**

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At the writing of my last report to you, we were gearing up for the 24th Annual PFAC Conference at the Disneyland Resort Hotel. We are now on the other side of what was the best attended conference in PFAC's history. Over 800 people attended the 2019 conference and from all reports, considered it to be one of the best programs of education paired with some of the best networking opportunities they've experienced. Based on feedback from attendees, the Board of Directors decided to make a return visit to Disneyland for the 2022 PFAC conference. It's such a pleasure to work with PFAC volunteers to produce conferences that people enjoy and realize a good return on their investment. Check out the PFAC Event Calendar for upcoming conference dates and locations.

You'll be receiving the 2019—2020 PFAC Member Directory in the mail next week and it will be arriving in a regular, letter sized envelope. How are we fitting a full directory in such a small envelope? Because the whole thing (over 130 pages) is on a credit card sized flash drive! Simply pop out the flash drive from the card and plug it into the USB port on your computer. Open the file and navigate through the directory. The Table of Contents is fully interactive, and we've included navigation buttons at the bottom of even pages that will take you back to the Table of Contents. Move the directory to your desktop (a desktop icon is included for your reference) or keep it on the flash drive. The directory comes with a brief letter of instruction or feel free to give the office a call if you need any help. Your business website and email are hyperlinked as are advertiser's ad placements. This new directory technology provides a convenient, economical, and comprehensive way to access member information. I hope you enjoy this new resource. If you prefer a printed copy of the directory, we are happy to provide that to you as well. Printed copies are $20. If you would like additional copies of the digital directory, they are available for $10 each.

PFAC's Fiduciary Academy has now been in place just over two years and it's proven to be a success. We've added 15 additional courses since the 2019 Conference for a total of 34 courses including 5 Ethics courses. The cost is only $45 per unit for members and is a great way to virtually attend conference courses that you may have missed. Visit PFAC's Center For Fiduciary Development | Fiduciary Academy to view the current course portfolio. While you are in the Center for Fiduciary Development, check out the Nuggets of Knowledge as well. You'll find short videos that you may find helpful and insightful.

I hope you enjoy the summer months and take some time to relax and rejuvenate your body, mind and spirit. I look forward to hearing from you or seeing you at an upcoming PFAC event.

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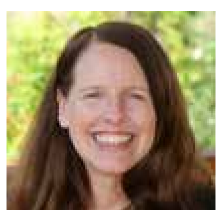

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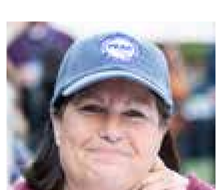

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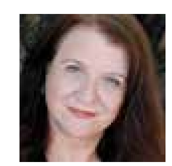

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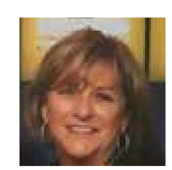

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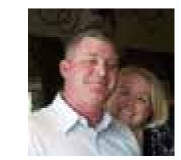

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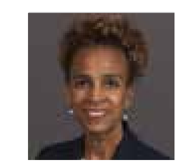

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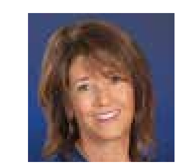

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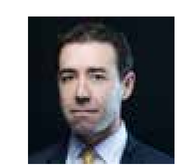

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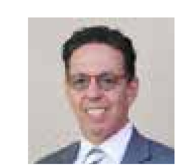

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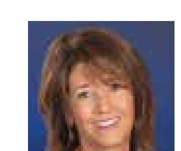

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# NEW MEMBER REPORT

PLEASE JOIN US IN WELCOMING OUR NEWEST PFAC MEMBERS!

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## MEMBERS OF THE PROFESSIONAL FIDUCIARY ASSOCIATION OF CALIFORNIA SHOULD:

- Abide by the Professional Fiduciaries Act (California Business and Professions Code Sections 6500-6592) and the Act's implementing regulations (California Code of Regulations Sections 4400-4622), including the Professional Fiduciaries Bureau Code of Ethics.
- Recognize that the client is the prime responsibility and strive to provide services which reflect respect for each client.
- Not engage in any form of discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin or any other condition or status.
- Manifest personal integrity, assume responsibility and accountability for individual judgments and maintain an attitude of fairness, honesty, respect, courtesy and good faith in all professional relationships.
- Cooperate with colleagues to promote common professional interests and concerns and facilitate ethical and competent professional performance.
- Seek and maintain competence in professional skills and seek to contribute to the ongoing development of the profession's body of knowledge.

## MISSION STATEMENT

**The mission of the Professional Fiduciary Association of California is to advance excellence in fiduciary standards and practices.**

**Statement of Purposes - The purposes of the Professional Fiduciary Association of California are to:**

- Promote high standards of ethics and practice
- Maintain high qualifications for membership
- Require and provide continuing education
- Enhance awareness of and respect for the Professional Fiduciary Association of California and its members
- Contribute to the development and support of effective regulation, legislation and licensing
- Promote communication among members to share resources
- Mentor new members





## NORTHERN REGION

### August 2, 2019
**Sonoma County Chapter Meeting**
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### August 15, 2019
**East Bay Chapter Meeting**

### August 16, 2019
**San Mateo Mentoring Meeting**
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### August 28, 2019
**Silicon Valley Chapter Meeting**
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### September 10 - 11, 2019
**Northern Region Education Day**
Click Here to Learn More

## SAN DIEGO REGION

### August 14, 2019
**San Diego Chapter Meeting & Webinar**
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### July 30, 2019
**San Gabriel Valley Chapter Meeting & Webinar**
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**Los Angeles Chapter Meeting**
Save the Date

### September 10, 2019
**Orange County Chapter Meeting**
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### September 21, 2019
**Southern Region Education Day**
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## WE MADE MAGIC HAPPEN!

This year's conference was a resounding success with over 800 attendees – the most in PFAC's conference history. Seventy-two topical experts, including three judges and a Deputy Director from the Department of Justice, delivered a program filled with leading-edge content for all levels of practice. Some highlights from the conference included:

### Local Celebrities

Conference attendees were visited by Disney stars including Mickey and Minnie Mouse. Everyone had an opportunity for an exclusive photo op with both with copies sent to them after the conference.

### Canine Companions For Independence

Service dogs were present to help fiduciaries learn how to work with clients with service animals. These beautiful dogs were a wonderful addition to the Exhibit Hall and provided lots opportunities for petting.

### Exhibit Hall Activities

This year's conference featured so many fun things to do – there wasn't a down moment. The Hall included Wheels of Fortune, Photo Booths, Power Stations, Raffles, Wine Tasting, Scavenger Hunts, Games, and more. It was the "place to be" when sessions weren't scheduled.

### We're All Ears

PFAC started "crowd sourcing" ideas and speakers for future years with the "We're All Ears" board at this year's conference. By the end of the event, we had collected over 100 ideas for speakers, presentations, venues, and more to integrate into future conferences.

### Celebration Dinner

The Friday Celebration Dinner was attended by over 400 guests – more than any PFAC dinner past. The Holly Street Stompers entertained while attendees enjoyed an delicious buffet dinner on the Magic Kingdom Lawn.

### Party In The Park

After dinner, guests were escorted into California Adventure Park to enjoy a hosted dessert party and the World of Color show.

It was a fabulous time all around and we hope you will join us in thanking the PFAC sponsors and exhibitors who helped make it happen. Remember them when you consider service providers and their support of professional fiduciaries in California.

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## PFAC NORTHERN REGIONAL REPORT

Greetings from the Northern Region,

We are starting well with the new year in the North State. Sacramento restarted and had their first restart meeting in June with a huge turnout! I counted over 25 fiduciaries and supporters. Kudos Kathryn Cain and team! San Francisco is nearing their re-start as well. Lise McCarthy and Bill Shaw have been very involved. We can hardly wait to hear the news of the first meeting!

The NorCal Education Day, September 11, 2019, is well on its way. All speakers' slots are filled for a total of 6.5 units, a special first time Tuesday night hosted gathering will take place this year and we have all four major sponsor spots filled, one major table top and three regular table top sponsors. Pricing is $200 for the event and we reserved a block of rooms at a special $189 for the hosted Tuesday night gathering. Good work Laurie Jamison, our Northern California Regional Director!

All NorCal chapters are registered to attend the Leadership training in July so I am looking forward to new ideas for strategic growth and organizational strengthening!

## PFAC SOUTHERN REGIONAL REPORT

**Vanita Jones**
Southern Region President

Welcome Southern Region PFAC Members to yet another glorious season filled with experiential learning, educational seminars and webinars, networking events and volunteer opportunities. The Southern Region and the Southern Region Chapters welcome you with open arms to any and all upcoming activities, and we hope you will benefit from the support of others, or offer support, form new friendships and gain valuable knowledge.

Our goal this year is to enhance the value of a PFAC membership. We aim to expand the depth and breadth of our learning experiences, to create additional opportunities for members to network with other professionals (e.g. attorneys, judges), to support community events where PFAC's positive messaging will most benefit those we serve, and to encourage and embrace the participation of aspiring fiduciaries.

The Southern Region is working together with Amy Olsen to plan an exciting, unforgettable Southern Region ED Day in September (tentatively, planned for the 21st) Stay tuned for more information about ED Day and other Regional events.

The Southern Region has six chapters: Inland Empire, Kern County, Long Beach, Los Angeles, Orange County, and San Gabriel Valley. Some interest and exploration has begun to consider the start of a new San Fernando Valley Chapter. Some chapters have already begun their meetings and additional meetings are pending. Check the calendar for the most current information.

Both the Region and the Chapters are run by dedicated volunteers and I want to extend a warm thank you for your commitment, hard work, and endless efforts to the betterment of PFAC. Furthermore, I want to express my deepest gratitude to all who preceded us in making PFAC what it is today. We appreciate you all!

**Regina F. Lark, Ph.D.**
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# SHOULD IT STAY, OR SHOULD IT GO? PART 1

### "Should it Stay or Should it Go" is a 4-part series to help us makes sense of the value of our clients' "stuff."

Professional Fiduciaries are first responders. They are often first to advocate for the welfare and well-being of a new client, and, more often than not, first to step foot in the door of a home overrun with benign neglect, or, basically intact but filled with a huge number of things.

Responsible for the health, welfare, and fiscal oversight of their clients, Fiduciaries are called upon to make some hard decisions. Sometimes this means finding room for caregivers or divesting a home filled with a trove of old and new treasures.

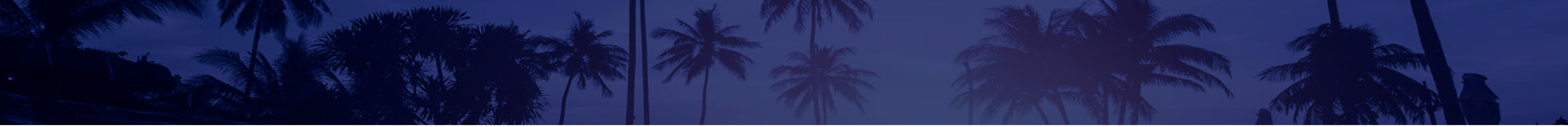
Home is where the heart is. It is also the place of deferred dreams and incomplete projects. It is the place where folks stash their bowling trophies, grandma's plated silver, and signed first editions. Over years the home becomes the repository for everything life has to offer – clothes, kitchenware, and place-settings. The "average" household often contains the possessions of adult children who had long ago moved from the family home but never quite got around to removing yearbooks and toys, high school ephemera, and everything else assigned to the category of "memories." Don't forget the so-called "collectibles" – from Hummels and Barbie dolls to entire runs of Playboy and National Geographic magazines.

Why do we own so much stuff? It's a difficult question to answer. Older adults who lived through America's "Great Depression" tell us that growing up with nothing means holding on to everything. While that may or may not be true, I wonder how we understand younger generations' seemingly insatiable consumption, or how we account for the growth of self storage.

We tend to cling to our things for two very broad reasons. First, we don't want to let go of stuff we may need "someday" (note cards, car wax, vases), or that we may wear again "someday" (golf shirts, skinny jeans). Of course any and all items may have future use but if we're not already in the habit of writing notes or losing weight, then these "someday" items do not have current value; they just clutter our lives today. At the same time, we hold on to things that have been in our lives forever such as Grandma's good china, music boxes, report cards – contain therein our "memories," along with the stories we attach to each and very item.

With a tight hold on that which we may need someday (the future), and an emotional hold on that which has already happened (the past), our "stuff" tends to hang around. The longer it hangs around, the value of the "stuff" it either increases or decreases.

It's tricky business determining the value of art and clothing, furniture, first editions, and the array of what is unearthed in clearing the path for what's next in the life of the client or the life of a trust. Part Two of this series is an interview with Joe Baratta, the vice president of Business Development & Valuations with Abell Auction Co. Joe is a USPAP-qualified generalist appraiser with over 15 years' experience helping fiduciaries separate "the wheat from the chaff."



**Jeremy Lau, CFA, CFP**
President/
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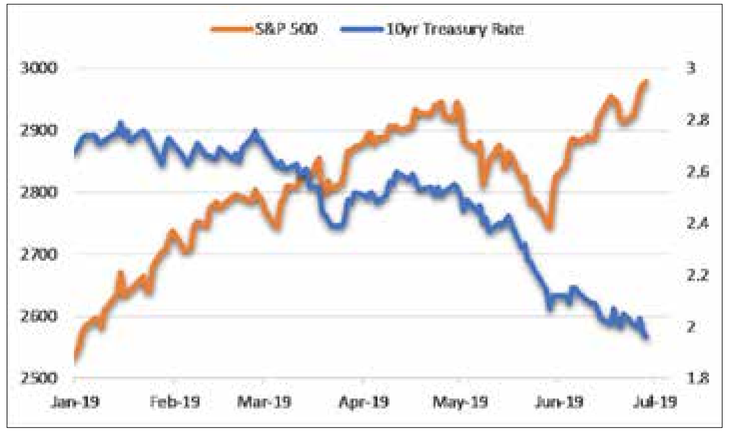
# NOT-SO-GREAT EXPECTATIONS

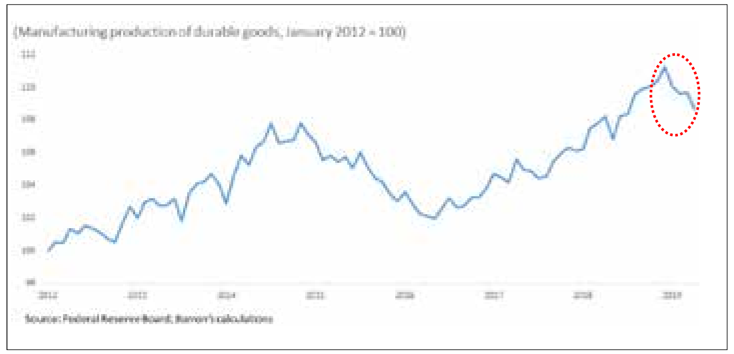
## Overview

This year, S&P 500 companies suffered an earnings decline for the first time since 2016 and major economies around the world are showing signs of slowing. These are hardly factors one might expect after US stocks just posted their best first half since 1997. But the 0.4% earnings decline in Q1 was considerably better than the 3.9% decline that was expected, and Q1 GDP growth of 3.2% blew away the 1% that was modestly forecasted. While low expectations have helped bring the market to all-time highs in recent days, our actual reality will need to show fundamental improvement to sustain this latest rally. With growing concerns over slowing expansion, trade tariffs, and geopolitical rivalries, bond yields have compressed down to their lowest levels since late-2016. The flight to safety and rally in bonds is clearly evident through changes in global asset allocations. For instance, in June, gold-backed ETFs saw their biggest inflows in seven years. Additionally, taxable corporate and government bonds had an 11.5% increase in flows in the first half of the year and municipal bonds saw a 9% increase over the same period. By contrast, US funds suffered huge equity outflows during the 2Q, particularly in late May. These changes as well as a change in tone from the Federal Reserve have brought interest rates significantly lower, which has been supportive of stock valuations. Expectations are already low, now we need to improve our reality.

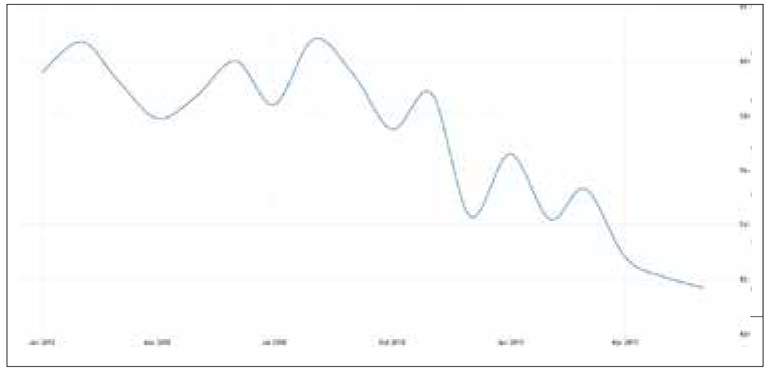



## Low Expectations

There is significant evidence of economic slowing both within the US and abroad. Even looking at the 3.2% GDP growth seen in Q1, the headline figure was largely attributed to exceptional inventory accumulation in anticipation of trade tariffs as well as reduced spending on imports. Stripping out the effect of inventories and trade brings the annual growth rate down to 1.5%, which is in line with the Atlanta Federal Reserve after they cut their 2Q forecast last week on an unexpected 0.8% drop in May construction spending. Overall industrial output has also dropped since December. Production of nondurable goods is down 2.3% and durable goods such as vehicles, machinery, and equipment is down 5%.




Furthermore, the ISM Purchasing Managers Index (PMI), a measure of business conditions for company decision makers and a leading indicator of economic activity in the US has steadily declined since the middle of last year. While a reading above 50 represents an expansion from the previous month, the downward trend over the last 12 months is clearly evident.



## Pessimistic 2Q Earnings Outlook

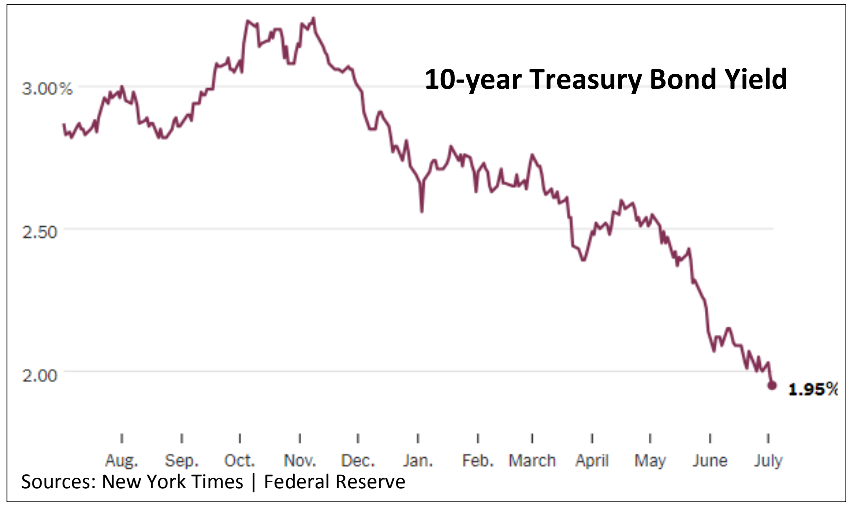
No surprise the broad slowdown is expected to seep into corporate earnings in the 2nd quarter. S&P 500 companies are expected to report a 2.6% earnings decline for the last three months. If earnings do indeed fall back it would mark the first consecutive-quarter profit reduction since Q1 and Q2 2016. Guidance has been generally negative thus far with 88 S&P 500 companies already issuing negative EPS guidance versus only 26 positive.

## To Deal, or Not to Deal? That is the Tariff

With stocks up 18% by the end of April, investors viewed a trade deal with China as largely a foregone conclusion. That perception was quickly dashed in early May, however, when trade negotiations broke down and the US increased tariffs on $200 billion of Chinese goods from 10% to 25%. China responded in-kind by raising tariffs on $60 billion of US goods in early June. While the tone of the discussions has since de-escalated over the G20, the certainty and timing around a possible trade deal remains unclear; a very different proposition than what was being discussed three months ago.

## A Deafening Omission from the Federal Reserve

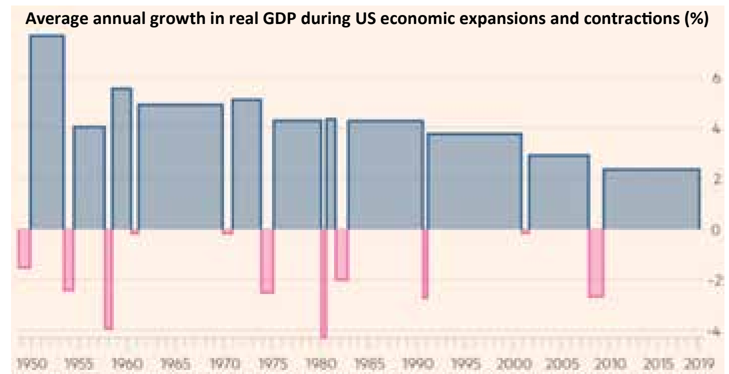
"Patient." This was the word conspicuously omitted from the Fed statement in June. After four rate hikes in 2018 as the economy started to slow the central bank emphasized the need to be "patient" towards future interest rate increases. The glaring omission of the word "patient" in the latest round was a strong admission from the Fed that not only are hikes no longer on the table but a future cut is more likely. In fact, most market participants expect a July cut with at least one more later this year. Even before the Fed's June policy statement, the bond market was already well-ahead of the change in rhetoric and had priced in lower rates for several months.



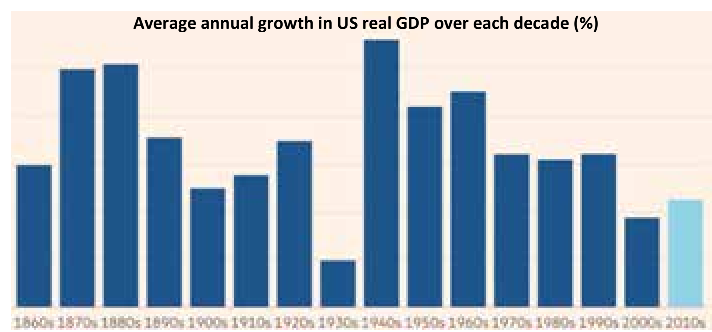

(Continued on next page)

## The Longest Recovery ≠ The Strongest Recovery

This past week the current economic recovery reached a historical milestone; notching 121 consecutive months of expansion and making it the longest stretch of growth in American history. While the streak is indeed impressive, this recovery also has the less flattering distinction of being the weakest recovery since World War II. Over the past decade the US economy has experienced cumulative growth of just 25% (2.3% annually), which is well below the 38% growth seen in the Reagan-era of the 1980s and the 43% growth seen in the Clinton-era of the 1990s. Thus it may come as a surprise that although this decade has enjoyed an uninterrupted period of expansion, the 2010s has had the lowest growth apart from the recession-hit 1930s and 2000s, which may suggest the economy is not as overheated as some might expect. While the economy has slowed down recently, the shift in global asset allocations and large reduction in interest rates reflects low expectations baked into certain areas of the market. What investors may not be positioned for, is if we see improvements in economic data arising from more accommodative monetary policy or an eventual trade deal with China. For now this is not yet a reality, but it is a possibility.



Sources: NBER, Federal Reserve, FT research



Source: MeasuringWorth.com, NBER, Federal Reserve, FT research

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## NEW SEC REGULATION BEST INTEREST: WHAT YOU DON'T KNOW CAN HURT YOU

**Paul Hynes, CFP®**
President and CEO,
HearthStone Private
Wealth Management

In June 2019, Regulation Best Interest (Reg BI) was approved by The Security and Exchange Commission (SEC), the regulatory authority overseeing investments, investment advice, and the markets. We talked about these proposed rules in a previous newsletter. Now, we're providing an update.

At the basic level, Reg BI contains new rules that require additional disclosures from stock brokers. It may seem like a win for the consumer. However, it's really not anything new – sort of like a new wrapper on the same old bubble gum.

So, what's the big deal? Well, on the surface, it sounds like things have changed in the way stock brokers deliver recommendations and advice. And, as you'll see shortly, there can be confusion and misunderstanding that could lead to trouble later on.

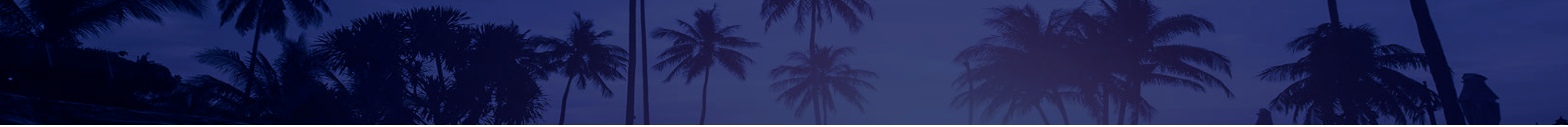
First, a quick review. A stock broker is required to recommend investments that are "suitable" for their customers. This means a stock broker can legally put his or her own interests above yours when making recommendations. Conversely, an investment advisor is legally required to behave as a fiduciary at all times, just like you. They must be loyal to you and use skill, prudence, diligence, and care. That couldn't be clearer.

Now, the SEC's new rule says that stock brokers must act in their customer's "best interest." However, nothing has really changed. There can still be conflicts of interest between the stock broker and her customer, just as before. The only difference is that the rule requires that the conflicts be disclosed on a new form, Form CRS. This form is basically a "safe harbor provision" for stock brokers who will continue to have conflicts with their customers in the same way as before Reg BI was issued.

The potential trouble for you is that you must exercise diligence and care in the selection of your professional providers. If you think someone is held to the best interest standard, and really they are not, then that could be a problem if scrutinized later on.

Reg BI might increase disclosures but it doesn't ensure that your financial services provider will always be acting in your best interests. One way for you to do that is to require that each provider sign the Fiduciary Oath. In the end, it's up to you, and not any government rule, to make sure you're in good hands when it comes to professional financial advice.

*Sources: www.sec.gov/rules/final/2019/34-86032.pdf SECURITIES AND EXCHANGE COMMISSION 17 CFR Parts 200, 240, 249, 275, and 279*



**Susan Valoff**
LCSW, C-ASWCM

# CARE MANAGEMENT FOR YOUNGER ADULT CLIENTS

Professional fiduciaries frequently work with Aging Life Care Professionals®, also known as geriatric care managers or Aging Life Care Managers®, to ensure the well-being of their older adult clients.

What you may not know is that an Aging Life Care Manager can also be a valuable partner in caring for your adult clients who are not elderly. Many ALCMs work with adult clients ranging from age 18 upwards with various diagnoses including developmental disabilities; Multiple Sclerosis; serious mental illness; substance misuse; and/or brain injuries.

Aging Life Care Managers are health and/or human services professionals with expertise in helping people to age well, and in supporting family caregivers. Aging Life Care Professionals frequently have backgrounds in nursing, social work, gerontology, or a related field. The Aging Life Care Association is the national, professional organization for Aging Life Care Managers, offering certification, continuing education, and networking opportunities for members.

Though Aging Life Care Professionals are known for their proficiency in working with elderly clients, there are "transferable skills" that they use when working with younger clients. These skills include:

- Advocating for clients in healthcare and mental healthcare settings
- Assisting clients and families with advance directives and future care planning
- Navigating veterans' benefits, Social Security, and other governmental programs
- Providing education and support to family caregivers
- Helping clients to live as independently as possible and with purpose

Younger adults have some unique needs, however, and it is important for an Aging Life Care Manager to be prepared to address these. Clients under 65 are more likely to have work-related concerns, such as finding employment or vocational training. They may also have issues related to childcare or custody, or related to the educational system.

In many locales, governmental or non-profit case management services for younger adults are unavailable, limited, or have long waiting lists. This is where an Aging Life Care Professional can fill an unmet need.

Aging Life Care Professionals are adept at collaborating with various service providers to ensure they are working toward common goals and not overlapping or leaving gaps. For example, clients with developmental disabilities in California are typically connected with a Regional Center. Regional centers are nonprofit private corporations that contract with the California Department of Developmental Services to provide or coordinate services and supports for people with developmental disabilities. They have offices throughout California, providing local help in accessing available services. Aging Life Care Professionals can work closely with Regional Center staff to ensure the client is receiving appropriate resources, including respite care for family caregivers.

When considering whether to bring a care manager on board with your client, be sure to ask them about their expertise in working with younger adult clients, and if they have a defined client age range. Some care managers may work with adults as young as 18 years, while others may have different criteria.

Issues of personal safety can come into play with these younger adult clients, particularly when the client has a mental illness and is able-bodied. It is advisable to work closely with the Aging Life Care Professional to ensure the safety of any staff helping the client, particularly if the client's health or mental health conditions are not yet well managed.

A national non-profit organization that has recognized the value of Aging Life Care Management for their younger adult clients is the National Multiple Sclerosis Society (NMSS) The NMSS contracts with ALCPs nationally through their Edward M. Dowd Personal Advocate Program. Individuals with MS can contact the NMSS toll-free national number where an MS Navigator assesses their eligibility for care management services. If the MS Navigator feels that local support is needed, the refer to an Aging Life Care Manager trained and in network with the National MS Society.

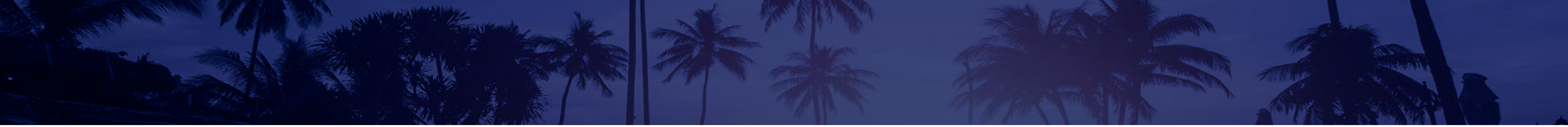
These care managers assist clients with MS with things like hospital discharge planning; identifying affordable housing and care options; interfacing with health insurance case managers; and supporting family caregivers in their role. The short-term involvement of the care manager is meant to help the individual with MS gain access to local support and resources so they can manage more independently in the future.

"With the help of Aging Life Care Managers, people living with MS have been able to increase their independence and quality of life through accessing programs and benefits. Many people don't know where to start, and with the help of a care manager, people with MS are able to navigate these often complex systems to find sustainable solutions to make life with a chronic illness a little bit easier," says LeeAnn Bellum, LCSW, C-ASWCM, Director of Case Management of the National Multiple Sclerosis Society.

Aging Life Care Professionals can be a support to the whole family or support system for a younger client. If the parents are still the primary caregivers, they worry about who will care for their child when they themselves die. A care manager can offer information regarding special needs trusts, long-term care options, and grief support for the adult child as well as anticipating grief support for the parents. The care manager's involvement can be essential in relieving some of these worries as the older parents prepare for their own aging process.

Like the relationship between a younger client and a Licensed Professional Fiduciary, the bond formed between a younger client and care manager can be longer-term, and thus especially supportive and meaningful to that client. This is particularly true when natural supports erode, such as with he death of aged parents who were the primary caregivers. The team of a Licensed Professional Fiduciary and an Aging Life Care Professional can help younger clients to feel supported and safe, and can ensure that the client's needs in all realms are met.

*Susan Valoff, LCSW,C-ASWCM, is Vice President of Windward Life Care, a care management and home care provider in San Diego County. Susan is also on the national Education Committee of the Aging Life Care Association.*



**Kathryn Stebner**
Stebner and Associates

**Deena Zacharin**
Stebner and Associates

# WHAT YOU CAN DO ABOUT NEGLECT IN CALIFORNIA'S ASSISTED LIVING FACILITIES

Many families and personal representatives are choosing assisted living facilities over skilled nursing for various reasons, including the lower cost, the homelike environment, or simply the lack of medical need for skilled nursing at admission. While stories of elder abuse and neglect in nursing homes are often in the news, this type of wrongful conduct often flies below the radar in assisted living facilities.

It is estimated that nearly 10% of Americans over age 60 have experienced elder abuse, whether physical abuse, emotional abuse, financial exploitation or neglect.[1] Yet while physical abuse and financial abuse might make the evening news, the injuries caused by the neglect of elders often go undetected. Injuries such as bedsores, falls leading to fractures or head injuries, or even malnutrition or dehydration are often seen as unavoidable and a "natural" part of aging. However, the elderly are paying dearly for the extra care and supervision designed to prevent precisely these types of injuries.

We exclusively represent elders and their personal representatives, so we see the worst of the neglect and injuries every day. Over the last 30 years we have filed suit against all types of assisted living facilities in California based on allegations of wrongdoing, such as bedsores, falls, sexual assault and other injuries, as well as class action cases against major chains for unfair business practices. The root cause of all of these injury scenarios is a lack of adequate staffing. The sad truth is that the bottom line is often considered by assisted living owners and operators above the interests of the residents.

Large chain facilities may appear to be luxurious, but they are operated with an eye towards a budgeted Net Operating Income that can be set as high as 40 percent and the profit margin drives decisions that affect resident care. Staffing is dictated by an annual budget, and staffing level decisions may be made by financial employees and not clinicians familiar with elder care issues. This rigid system leaves the facility without the flexibility to add staffing when the needs of the residents increases in the middle of the fiscal year, even though the resident's "points" may have increased and additional fees have been added to the resident's monthly bill. Often a facility will bring in a new resident with a reasonable monthly fee, then continually add services at extra fees, without actually adding the staff to provide those extra services, misrepresenting that staffing decisions were based on personal care assessments when, in reality, the facilities were staffed based months prior on an annual labor budget.

Conversely, there are more than 6,400 six-bed facilities in California,[2] which operate in a home that may be owned by an operator with little to no experience in elder care. These facilities often provide minimal care and assistance and often do not follow State regulations in terms of record keeping or documentation of the care given to the residents so there is less accountability. In fact, absent complaint investigations, six bed facilities are only inspected by the State of California every five years. The caregivers may be untrained and unlicensed, and may be living in the garage and working around the clock, and earning minimum wage or less. Conditions such as these for the caregivers create less than an ideal environment for the residents.



The agency which regulates assisted living facilities in California, the Department of Social Services Community Care Licensing Division ("CCL"), is incredibly underfunded. This means that the State cannot always adequately monitor the facilities to act as a safety net before neglect occurs. This leaves a great deal of the onus of monitoring and advocacy on the families and personal representatives of the elderly residents in assisted living facilities.

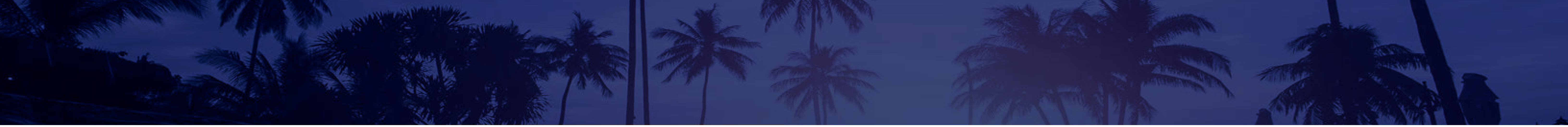
It goes without saying that just because the facility costs more and is pretty doesn't mean it has better care. Some of the things that fiduciaries should consider when evaluating a facility for your client include:

1. Review the DSS/CCL website and the facility's licensing file for regulatory violations and other indications of understaffing;
2. Scour online resources including Yelp, Senior Advisor and other websites for information about quality of care;
3. Talk to other residents/family members and ask to speak to resident and/or family council members;
4. Look at court records for lawsuits against the facility and/or its owners;
5. Ask about the staffing ratio and how staffing level decisions are made (i.e. based on census or resident needs);
6. Ask questions about basis for fees and their increases;
7. Talk to medical providers to find out what care is really needed and not needed;
8. Ask about the training of the caregivers especially if it involves dementia. The state requirement is minimal and not sufficient;
9. Tour the facility and trust your nose! If the rooms or facility smell like urine there isn't enough staff. Similarly, if you see people sitting in a corner in wheelchairs and no one interacting with them, this is a bad sign;
10. Ask to see a schedule of activities the facility offers for residents and sit in on activities;
11. Find out about the facility's policy with regard to documentation of changes;
12. How does the facility deal with fall prevention? Or with residents who might not get along?
13. If you decide to move a client into a facility, DON'T SIGN AN ARBITRATION AGREEMENT and waive your client's right to a jury trial;
14. Once a client is in a facility, drop in at different times of the day and evening unannounced, which shows that you care about the welfare of your client and are involved. Walk in when they are not expecting you and look around.
15. If the concerns arise after the elder has been admitted, keep a paper trail and take photos of anything you have a concern about; call the Ombudsman with concerns.

Never brush away or ignore complaints about the way your client is being treated. There have been many cases of sexual abuse, especially of dementia residents, many of whom told their family members but weren't believed. So, please, investigate everything.

Sadly, this is the current reality. As a fiduciary, it is your job to investigate facilities, listen to your clients' concerns and take action when something doesn't seem right. You are the eyes, ears and voice of your client. As litigators, it is our job to bring abuse to the forefront and keep people thinking about how we are going to change this broken system. We know that lawsuits act as a deterrent and class actions are a vehicle for systemic change, and we must work together to face the tidal wave of elder abuse and neglect head on.

*1 https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/*
*2 https://6beds.org/fast-facts/*

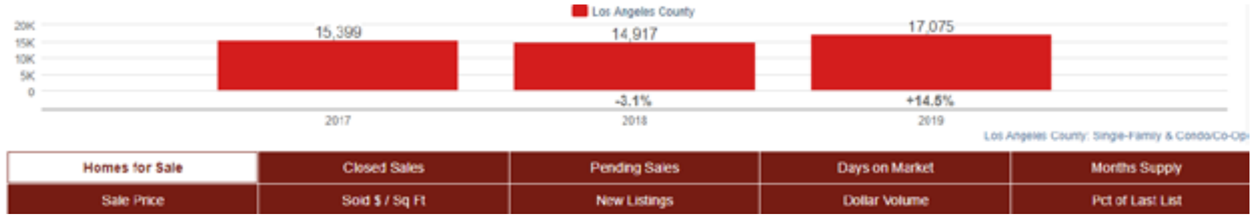


**Orit Gadish**
Real Estate Broker

# MARKET UPDATE–JUNE 2019

Wondering how the real estate market is looking? I've been told by various financial institutions that we will be seeing an increase in defaults, "REOs" in 2020. But what's happening in the market today, if you were to place a residential property on the market for sale, you wonder. Let's take a look at data from the MLS for Los Angeles County. Comparing the current year to date statistics to the prior two years will depict where we are today.

**1.** There are more homes for sale on the market this year compared to last year. There are 14.5% more homes for sale year-to-date this year (2019) than in the previous year (2018). The inventory is increasing.

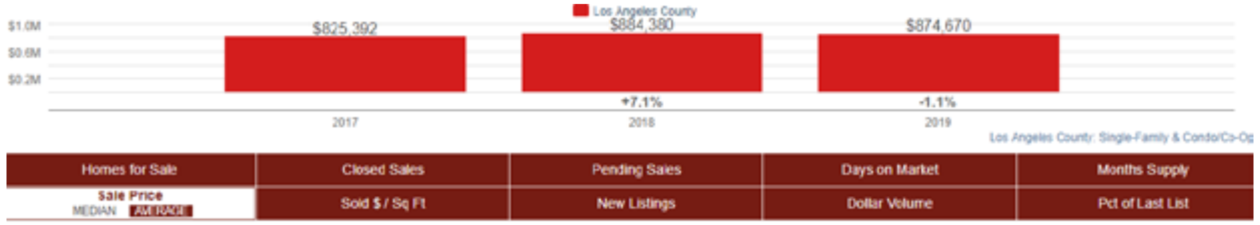



**2.** There are less homes that sold this year compared to the past two years. There's 7.6% less homes that sold year-to-date this year (2019) than in the previous year (2018), and last year (2018) 5.3% less homes sold year-to-date than the year prior (2017).


**3.** This year properties are sitting longer on the market than they did last year. It takes 21.6% longer to sell a property this year (2019) than in the previous year (2018).


**4.** This year the months supply of homes is greater than last year. Months supply refers to the number of months it would take to sell the current inventory, assuming no new inventory enters the market. There's a 29.6% increase in the months supply of homes for sale this year-to-date over the previous year. This follows a smaller year-to-date increase of 3.8% in 2018 over 2017.

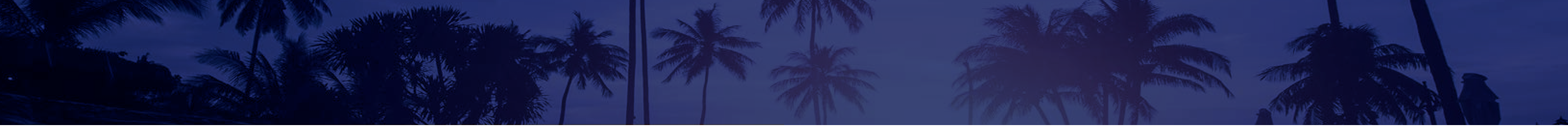

**5.** The average sales price is begging to decline: after a large increase of 7.1% of the average home price in Los Angeles in 2018 over 2017, we are now seeing a small decline of 1.1% year to date 2019 over the previous year 2018.




These various housing indicators illustrate that the market is slowly changing from a sellers' market to a buyers' market and sellers may consider pricing their properties more competitively than in recent years to avoid sitting on the market longer.

*Analysis based on data from the Multiple Listing Service (MLS): www.themls.com.*

*Orit Gadish is a hands-on Real Estate Broker/Owner, licensed in CA and CO and has been working as a Real Estate Broker since 2005, handling both residential and commercial assets. Specializing in probate, trust and conservatorship real estate as well as bank-owned properties (REO), she has prepared, marketed, and sold over 1,300 properties since she began her career. Aside from being the Broker/Owner of a brokerage with 20 agents, Orit is also a mother of 4 little girls, ages 8, 6, and 4 year old twins.*



# IN-HOME CARE: THE CLIENT CASE FOR DIRECT HIRES—AND WHAT IT MEANS FOR FIDUCIARIES

**Tom Breedlove**
Senior Director, Care.com HomePay

According to research by the AARP, more than 8 out of 10 seniors say they want to age in their own home – even if they require help with activities of daily living. There are two main options for in-home care and recent regulations have created a vast disparity in cost between the two. Since care costs are often the single-largest expense for seniors, it's very important for Fiduciaries to have a thorough understanding of the options and how to help clients weigh the pros and cons.

## Use a Middleman or Go Direct?

Since 1974, in-home care has been delivered predominantly by a middleman model – home care agencies that employ caregivers and dispatch them into homes to care for seniors.

The Domestic Worker Bill of Rights legislation in California (1) and the repeal of the Companion Care Exemption and Live-In Exemption have changed the game (2).

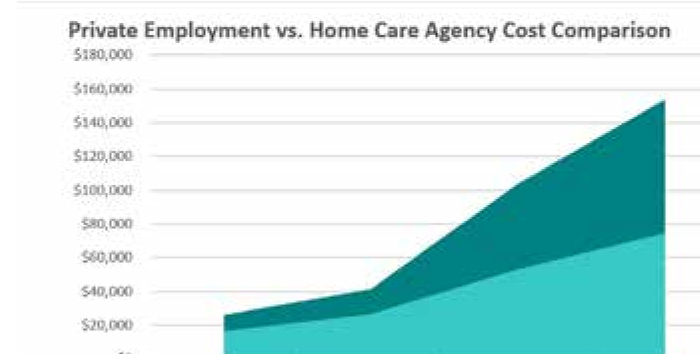
Home care agencies now have to pay time-and-a-half for every hour over 40 in a work week – or try to manage around overtime using lots of caregivers and shifts. In some cases, these regulatory changes don't have much impact. However, for the 5.8 million cognitive decline cases (i.e. Alzheimer's disease and other forms of dementia) that need caregiver continuity/stability, it is having a huge impact (3). Lots of new faces is very unsettling for the patient so there is a strong desire to manage these cases with only one or two caregivers. But because these are typically high-hour cases, overtime can drive up costs dramatically. As a result, more and more families are considering a direct hire.

First-party employers (families) are still entitled to the overtime exemptions in most states. However, in California, state law overrides these federal exemptions, and therefore, overtime must still be paid. Nevertheless, going direct means avoiding middleman overhead and profit margins – potentially saving families tens of thousands of dollars each and every year.

Further, if the caregiver is a live-in working directly for a family, the worker does not have to be paid when they are not physically performing duties, which can greatly reduce the number of compensable hours each week. (A "live-in" worker is defined as one whose worksite is their primary residence or who works five 24-hour shifts in a week. Note: this designation can change from week to week if the schedule falls below the 120+ hour/week threshold).

Combined, these advantages for 1st-party employers can have a dramatic impact on the care budget. Below is an illustration of those savings on a national average (4). As you can see, as the hours of care rise, the savings increase dramatically.

*(P1) * COSTS ARE DETERMINED BY NATIONAL AVERAGES AND RESEARCH VIA GENWORTH AND THE US CENSUS BUREAU. PRIVATE EMPLOYMENT FIGURES INCLUDE CAREGIVER WAGES ($11.35/HR), PAYROLL TAXES, HIRING A PAYROLL & TAX SERVICE, AND WORKERS COMPENSATION INSURANCE. AGENCY COSTS INCLUDE AGENCY RATE ($20/HR), OVERTIME, INSURANCES AND BUSINESS OVERHEAD.*




| | Part-Time Care (25hrs/wk) | Full-Time Care (40hrs/wk) | High-Hour Care (120hrs/wk) | Continuous Care (168hrs/wk) |
|---|---|---|---|---|
| Agency Caregivers | $26,000 | $41,600 | $104,000 | $153,920 |
| Private Employment | $16,640 | $26,624 | $53,248 | $74,547 |

## Making Household Employment Administratively Simple and Legally Sound

If a family decides to go direct, it's important to make sure the employment obligations are handled correctly in order to mitigate risk for all parties. Unfortunately, the tax code and labor law statutes are full of exemptions and exceptions for household employers (5), so it can be somewhat overwhelming for families and even tax professionals and commercial payroll providers.

The good news is there are providers that specialize in household employment and can manage all the employer compliance obligations on behalf of your client. When looking at providers, we strongly advise families and Fiduciaries to make sure 1) they are experts in the nuances of domestic employment and 2) they handle everything – tax IDs, payroll processing, federal and state tax filings, labor law, workers' compensation insurance, etc. – with full accountability and guaranteed accuracy.

Also, there are a number of special requirements in California, such as Wage Notices, Paid Sick Leave accruals/tracking (which can vary by municipality), and monthly tax remittances that can come into play, so it's important that providers are set up to provide expert support for families and/or Fiduciaries (6).

Although not mandatory, we have found that certain "extras" make household employment – especially senior care cases – run much more smoothly, namely an Electronic Visit Verification (EVV) app, ADL tracking/reporting for LTC insurance claims, caregiver bonding and liability insurance, a platform for access/visibility across the entire care team, and, when the need arises, hiring/vetting support.

These types of capabilities and resources provide additional structure and control around the entire employment experience – ensuring that direct hires are administratively simple and legally sound.

## In Conclusion

Long-term care is a critically-important life choice for seniors – in terms of both care quality and budget management. Recent regulatory changes have made direct hires a more attractive option, frequently enabling families to dramatically reduce the cost of care without sacrificing quality.

If they decide to go direct, it is imperative for all parties that it be managed in a structured, "air-tight" system that includes expertise and support around all the nuances of domestic employment payroll, tax, labor law/HR and insurance.

*(1) AB-241 Domestic work employees: labor standards (2013-2014). https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB241*
*(2) U.S. Department of Labor, Wage and Hour Division (September 2013). https://www.dol.gov/whd/regs/compliance/whdfs25.pdf*
*(3) Alzheimer's Association (2019). https://www.alz.org/media/dsw/facts2019_report.pdf*
*(4) Genworth Cost of Care Study (2017). https://www.genworth.com/dam/Americas/US/PDFs/Consumer/corporate/cost-of-care/131168_081417.pdf*
*(5) IRS Publication 926 (2019). https://www.irs.gov/pub/irs-pdf/p926.pdf*
*(6) CA Wage Order 15, (2019). https://www.dir.ca.gov/IWC/WageOrderIndustries.htm*

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ATTORNEYS AT LAW

# SAFEGUARDING AGAINST LIABILITY FOR ENVIRONMENTAL CONTAMINATION OF REAL PROPERTY

Fiduciaries of clients with interests in commercial, industrial or agricultural property that are considering selling, leasing, or potentially buying these kinds of properties are wise to assess the environmental risks associated with the property well in advance of making a deal.

Brownfields, or contaminated real estate, whether merely suspected or known to be impacted by pollutants, carry with them potentially significant and expensive liability. Liability for environmental contamination is a risk for current owners or operators of impacted property, including a fiduciary in his or her role as trustee, and a risk for former owners or operators that owned or operated the property during the time that a discharge of pollutants occurred.

If a fiduciary is selling a commercial, industrial or agricultural property, it is vital for the fiduciary to understand the environmental condition of the property before entering into contract or signing a letter of intent with a buyer that seeks to perform its own environmental due diligence.

The fiduciary (as property owner or managing party) should conduct its own strategic investigation of the property and would be wise to do so under attorney-client privilege. This allows the fiduciary to retain as much control as possible over the environmental investigation of the property. This strategy is meant to avoid a worst-case scenario where a prospective buyer walks away from the deal after conducting an environmental investigation -- the results of which trigger legal reporting obligations, government agency involvement and potentially an agency enforcement action against the property owner.

A fiduciary that leases commercial, industrial or agricultural property or who plans to lease such property should also understand the environmental condition of the property in order to have a documented "baseline" with which to compare the future condition of the property. Baseline information is important in a scenario where a tenant's operations cause or could cause environmental impacts to the land and will help the fiduciary require the tenant to perform clean-up or assume liability for such impacts.

Armed with knowledge of the environmental condition of a property, fiduciaries responsible for clients' properties will be better equipped to negotiate contractual provisions that appropriately allocate risks in purchase and sale or lease agreements. Furthermore, strategic environmental assessment of commercial, industrial or agricultural properties performed under attorney-client privilege will allow fiduciaries to more successfully defend against and mitigate potential liability related to real estate that is contaminated or suspected of being contaminated.

*Hartman King PC is a boutique law firm specializing in environmental litigation, enforcement defense, contaminated property transactions and regulatory compliance. The information in this article is for informational purposes only and does not constitute legal advice.*

# GOVERNMENT NEWS

## UPDATES ON PFAC ADVOCACY EFFORTS IN SACRAMENTO

**Jerry Desmond**
PFAC Legislative Advocate,
Desmond & Desmond, LLC

The PFAC Legislative Committee and Board of Directors are active on a number of key issues. This is an update on two: the Governor's Master Plan on Aging and SB 303 that address conservator and guardian compensation.

### Governor's Master Plan on Aging

PFAC has reached out to Governor Newsom's Health and Human Services Agency and has discussed the association's support for the objectives of the effort to develop a Master Plan for Aging and the commitment to build an age-friendly state so that all Californians can age with dignity and independence.

The development of a Master Plan for Aging is directed by Governor Newsom in his Executive Order N-14-19.

PFAC members work directly with older adults and those with disabilities, helping them to overcome challenges and to live independently in their communities, providing access to a range of public and private resources and programs, and addressing their needs including health, homecare, food and nutrition, human services, housing and transportation.

With the best interests of older adults and those with disabilities as our focus, PFAC and its members have experience and perspectives that the association believes will be helpful to the effort, and we look forward to being engaged.

As an initial step as we understand, PFAC has recommended the selection of Meredith Taylor to serve on the stakeholder advisory committee that is being created to assist in the development of the plan.

### SB 303 [Wieckowski] Conservator and Guardian Compensation

PFAC has worked with Senator Wieckowski and other stakeholders to obtain further amendments that Senator has now made to his measure that addresses the compensation that can be paid to a guardian, conservator or attorney from the ward's or conservatee's government benefits. With the revisions Senator Wieckowski has made to SB 303, PFAC has removed its opposition to the bill and now has a neutral position on the measure.

**Original Proposal re Conservator and Guardian Fees**

PFAC opposed the provisions of SB 303 that would have prohibited a conservator or guardian from being compensated with funds paid to the ward or conservatee from a government program:

- Probate Code Section 2640 - (e) Notwithstanding subdivision (c), the guardian or conservator shall not be compensated with funds paid to the ward or conservatee from a government program, including, but not limited to, federal Social Security payments, Medicare, or Medi-Cal.
- Probate Code Section 2641 - (d) Notwithstanding subdivision (b), the guardian or conservator of the person shall not be compensated with funds paid to and for the benefit of the ward or conservatee from any government program, including, but not limited to, state disability insurance, federal Social Security payments, Medicare, or Medi-Cal.

**PFAC Opposition to Original Proposal**

PFAC adopted an oppose position on SB 303 as introduced and as amended on April 22. The reasoning, expressed in formal correspondence and testimony before the Senate Judiciary Committee:

- PFAC recognizes and respects the objectives of SB 303 which we understand to be ensuring that government benefits are applied toward the recipient's needs rather than being depleted in payment of fees. In the context of guardianship and conservatorship proceedings, these protections are already in place.
- The administration of both guardianship and conservatorship matters are established and overseen by the Probate Division of the Superior Court. These proceedings are rarely established to manage a single income source such as government benefits and more commonly are for the management of assets along with several income sources.
- Guardians and Conservators are required to file regular accountings for the court's review (Probate Code Section 2620) which accountings include reporting of all income sources (including government benefits) as well as expenses paid on behalf of the ward or conservatee.
- In the course of reviewing a guardian's or conservator's accounting, the court, along with family members, are able to review income sources and expenditures for the purpose of ensuring that all income is being applied toward the ward/conservatee's needs and in their best interest.
- Fees in guardianship and conservatorship matters are only allowable and paid upon order of the court at which time the court, taking numerous factors into consideration, must make a determination that the fee awarded is just and reasonable (Probate Code Section 2640 and California Rules of Court 7.752 and 7.702).
- PFAC is of the opinion that the objectives of SB 303 are met in the provisions of the Probate Code and are addressed on a daily basis in our courts. Additionally, PFAC believes that implementation of SB 303 would frustrate the court's ability to exercise its discretion.
- Another concern is that, with the Probate Code protections in effect, it would be an overreach to place into law an additional prohibition against compensating a conservator from the funds derived from any government program.
- The prohibition would apply regardless of the fund situation, and regardless of any risk of depletion. The proposal could also lead to situations where a conservator is not compensated for services that are essential to the conservator, which in turn, may have the unintended consequence of discouraging professionals and others from serving as much-needed conservators. This must certainly not be the intent of the legislation.

**July 11 Amendments**

As a result of advocacy efforts by PFAC and other stakeholders, Senator Wieckowski has replaced the provisions SB 303 that were opposed by PFAC with these new additions to the Probate Code:

- Probate Code Section 2640 - (e) Notwithstanding subdivision (c), the guardian, conservator, or attorney shall not be compensated with any government benefits program moneys unless deemed by the court as necessary to sustain the support and maintenance of the ward or conservatee, but in no event may this exceed the amount permitted by federal laws and regulations.

*(Continued on next page)*

- Probate Code Section 2641 - (d) Notwithstanding subdivision (b), the guardian or conservator of the person shall not be compensated with any government benefits program moneys unless deemed by the court as necessary to sustain the support and maintenance of the ward or conservatee, but in no event may this exceed the amount permitted by federal laws and regulations.

**Conservatee Residence**

SB 303 also contains provisions intended to address where a conservatee lives and what happens to their residence if they are no longer able to live at home.

The measure would provide that, in any hearing to determine if removal of a conservatee from their personal residence is appropriate, the presumption that the residence is the least restrictive appropriate residence may only be overcome by clear and convincing evidence.

In addition, the bill would authorize the sale of a conservatee's present or former personal residence only if the court finds that the conservator demonstrated a compelling need to sell the residence for the benefit of the conservatee.

Third, the bill would prevent a conservator from committing any significant resources to the proposed sale of a conservatee's present or former residence before the conservator notifies the court that the residence of the conservatee is proposed to be sold, unless the conservator can establish that either:

1. The conservatee has the capacity to consent and unequivocally consents to the sale; or
2. There are exigent circumstances that require the conservator to commit resources to the sale prior to court approval.

Fourth, the bill would no longer exempt a court, when granting a conservator the power to sell a conservatee's personal residence at a public or private sale, from requiring the following:

1. The conservator must inform the court that the sale has been proposed and that the proposed sale has been discussed with the conservatee; whether the conservatee supports or opposes the sale; why the sale is necessary; whether the conservatee has the ability to live in the home; and why other alternatives, including in-home care services, are not available; and
2. The court finds, by clear and convincing evidence, that the conservator demonstrated a compelling need to sell the residence for the benefit of the conservatee.

Fifth, the bill would add to the requirement that a conservator, when seeking an order to sell a conservatee's personal residence, demonstrate to the court that the terms of the sale are in the best interest of the conservatee, the requirement to consider the estimated capital gains income and tax consequences, and the impact on access to government benefits.

**Status**

SB 303 will be taken up on the Assembly Floor [Assembly Third Reading] after the Legislature returns from its summer recess on August 12. The deadline for the measure to pass the Legislature and proceed to the Governor for his consideration is September 13.

# 25TH ANNUAL
# PFAC CONFERENCE

## PFAC's SILVER JUBILEE

The 2020 Conference marks 25 consecutive years of PFAC providing education for professional fiduciaries. Such an auspicious anniversary deserves a celebration and that's what you can expect at next year's conference. You're invited to take part in this special event and here's a preview of what you can expect.

### Location

The conference takes place in the heart of San Francisco at the Hyatt Regency Embarcadero. This is an amazing location just across the street from the iconic Ferry Building and San Francisco Bay. The hotel is in the financial district of San Francisco and you can feel safe walking through the city and exploring. Access is easy with a Bart station located just outside the hotel as well as a cable car stop. And, it's the first exit across the Bay Bridge from Oakland. Parking in San Francisco is on the expensive side so save on parking fees by using one of the many convenient transportation options to the hotel.

### Education

Plans are in place to provide one of the best educational programs to date with attorneys, judges, and topical experts. The program will include 15 units of continuing education credit along with add on pre-conference intensive options including a special 5-unit presentation on Special Needs Trusts.

### Networking

We've added a new opportunity for fiduciaries looking to find resources to meet their clients needs. Speed Lead Sessions will take place on Wednesday from 2pm to 3pm for fiduciaries who have qualified needs in particular areas such as investment advising, real estate, organizing, care services. Qualified individuals will receive a 50% DISCOUNT on their conference registration for taking part in the Speed Lead session! This is a great way to find a service provider specific to what you need. A limited number of spots are available. Applications will be posted on the conference website and sent with conference registration materials.

On Thursday evening, we're offering a wonderful opportunity to enjoy a San Francisco Bay Cruise with all of your PFAC friends on the Enhydra – the newest and only hybrid vessel of the Red & White Fleet. Cruise the Bay, enjoy an open bar with appetizers, and take in the sites of Alcatraz, the Golden Gate Bridge and the lights of the City. PFAC has chartered the vessel so you'll have lots of room to enjoy and relax.

### Celebration

On Friday evening, the Silver Jubilee Anniversary Celebration begins with a reception in the hotel atrium where PFAC will premier a documentary film including interviews with some of the founding members of PFAC, legal experts and more. After the reception, dinner guests will enjoy a Gatsby inspired experience complete with entertainment and some surprise guests!

**Sponsor and exhibitor space will be available starting August 1 and registration opens September 1.**
**Visit PFACMeeting.org for more information.**




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