

PFAC NEWS

SPRING 2018



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 Susan Ghormley,
President*

As this PFAC year moves toward its end at the conference when we will usher in our new president, I can't help but to reflect back on our many accomplishments this year.

Our State and Regional Boards are enthusiastic and progressive, willing to put forward pioneering initiatives because PFAC fosters an environment where all ideas are welcome and taken seriously. The State Board negotiated and hired Olsen & Associates as the new management company which has proven to be entirely positive for PFAC and our members. Our management staff have created new partnerships with other organizations which provide PFAC with greater visibility while showing other professions who we are and how professional fiduciaries can benefit them and their clients. They have instituted new processes for registration at all PFAC events that will save PFAC significant costs. Conference registration is up (to date 27% over last year at this time) and they have also introduced multiple media savvy programs, giving PFAC vitality to reach younger fiduciaries and the public.

(Continued on page 4)



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PRESIDENT'S MESSAGE

(Continued from page 1)

We have also brought PFAC to the fore as a model for fiduciary associations across the country. We are working to bring diversity and inclusion to the very core of our membership so that new leaders can rise up to show fiduciaries on a national level what we are about. With an eye to diversity and inclusion, we are exploring ways to engage membership by creating 'mini' chapters, closer to home for those far flung across the state that will serve as a conduit for bringing untapped members into leadership positions.

Our Fiduciary Academy has expanded into more areas of service to our members creating a Resource Center offering free benefits to members, partnering with knowledgeable Affiliate members and, in response to membership needs, is moving forward with plans to offer webinar chapter meetings so our outlying members can join in.

The Communications committee has produced the first market specific brochures; is producing short videos of 'Stories from the Field'; informational videos for the website focused on the Conference and benefits of PFAC membership; among others.

The Strategic Plan developed at the beginning of the PFAC year is at the center of much of what we are bringing to membership, with Regional boards disseminating it and the progress being made to membership via chapter leadership.

Our financials are strong because this leadership and our Executive Director have focused on building programs and management tools that save money while expanding PFAC and its reach.

We have built a momentum of progressive change and improvements to PFAC in which we can all be deeply invested. And, we have done and are doing so much more.

As I have had the privilege of acting as President of PFAC this year, I thank you all, members of PFAC for making this journey with me. A learning experience indeed! This position has provided greater access to our membership, allowing me to interact, learn from and assist hard working fiduciaries with the issues that matter to them. Through this exposure, I have been able to bring to the Board's matters of concern which in turn have lead to further investigation of topics ranging from liability issues that concern us all, insurance options for pro-fids, and even how a conference venue is chosen, to name a few.

As we move into next year and beyond, I urge all members to stay active in their PFAC communities. It is rewarding and fun and advances all fiduciaries and the incredible work we do.

Sincerely,

Susan B. Ghormley



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FROM THE EXECUTIVE DIRECTOR



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I think we can all agree – we are living in unprecedented times. Controversy seems to be the call of the day, but one thing seems fairly consistent - people are engaged. Passion for a cause unites people to work together to achieve a common goal. It reminds me of why PFAC exists – professional fiduciaries and service providers working together to advance the profession and provide service excellence to clients. It’s exciting to watch PFAC grow and develop through the committed efforts of members working together. Here are some recent examples of how members have been engaged in common efforts to support the growth of PFAC and professional fiduciaries and how your membership dollars are being used to serve PFAC’s mission.

LEGISLATIVE ADVOCACY

PFAC’s Legislative Committee has been providing input into the Professional Fiduciary Bureau’s Sunset Review process, submitting amendments for adoption consideration including:

- Requirement of Licensure of Decedent Estate Administrators
- Requirement that the Business Entities of Licensed Professional Fiduciaries also be Licensed
- Elimination of Exemption Provided to Enrolled Agents

Hearings are ongoing while committee members meet with legislators and continue to advocate on behalf of proposed changes. You can read more specifics about the efforts of the Legislative Committee in the Legislative Article on page 30-32.

COMMUNICATIONS

The Communications Committee continues to be hard at work conceiving and implementing strategies to create positive awareness of PFAC and professional fiduciaries. PFAC had a booth at the Special Needs Trust Symposium in February and will have a booth at the fall National Guardianship Association Conference and the Aging Life Care Conference – both held in Palm Springs. PFAC plans to also be at the Legal Assistance for Seniors 13th Annual Conference on Elder Abuse in San Francisco in May.

In addition to participation in outreach events, the Communications Committee and staff have been working with a public relations firm – Sagent Communications - to create a PFAC Media Kit, talking points and media training. We’ve also re-established PFAC social media through Facebook and Twitter and have written and placed an article explaining the role of professional fiduciaries in the Home Care Assistance blog emailed to over 60,000 subscribers.

ONLINE EDUCATION

The Fiduciary Academy and Technology Committees have been busy as well, developing a new online education platform – The Center for Fiduciary Development. This new addition to the PFAC website will include the traditional Fiduciary Academy digital classes and will expand to include live webinars, PFAC partner education, short educational video vignettes, and more. You can expect to see this new platform launch in May.

Chapters are preparing to offer remote chapter meeting access as well. This is an exciting development specifically designed for members who find it difficult to reach an in-person meeting. These live events will be offered in a webinar platform and will count toward your meeting attendance requirement for membership renewal.

MEMBERSHIP

The Membership Committee has expanded this year, creating three reviewing groups to handle the increased volume of membership applications. Since the beginning of 2018, the PFAC Office has been processing – and the Membership Committee has been reviewing – up to 15 applications a week! Compare this to the 4-5 applications received and reviewed per week on average last year. We hope this indicates a growth in the profession and services provided.

We are living in exciting times and the activity of PFAC is no exception. It’s time to be engaged and lend your voice and energy to causes you believe in. I encourage you to make PFAC one of those causes. Volunteer on a committee, nominate yourself for a leadership position, join the effort. I think you’ll find it a rewarding experience.

“The most radical, powerful act ever undertaken by any human being remains the act of committing, beyond reservation, to a worthy personal mission”

–Christopher Childs



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NEW MEMBER REPORT

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San Diego
- Caroline Reader**
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- Jennifer Fejzic**
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- Suzanne Grudnitski**
Redondo Beach
- Nancy Howland**
Fountain Valley
- Clarice Henderson**
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Temecula
- Nancy Valentine
Podley Properties**
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UPCOMING EVENTS

APRIL

Friday, April 20

San Mateo Chapter Meeting

Easements in California

Approved - 1.0 CEU (Estate)

11:30 AM - 1:30 PM

Hobee's Restaurant, Belmont

Click [here](#) for details and registration

Tuesday, April 24

Placer County Chapter Meeting

Approved - 1.0 CEU/MCLE (Estate)

11:30 AM - 1:00 PM

Max's Restaurant & Bar, Auburn

Click [here](#) for details and registration

Wednesday, April 25

Southern Region Meeting

The Most Common SSA Pitfalls

Approved - 1.0 CEU (Estate)

11:30 AM - 1:30 PM

Pasadena University Club, Pasadena

Click [here](#) for details and registration

Wednesday, April 25

Orange County Chapter Meeting

The Differences Between How MDs and JDs See the Issue of Capacity: Why a Medical Diagnosis Isn't Enough in a Courtroom

Approved - 1.0 CEU (Person) / 1.0 MCLE

8:00 - 9:30 AM

Advanced Depositions, Irvine

Click [here](#) for details and registration

MAY

Friday, May 4

Sonoma County Chapter Meeting

8:00 - 9:30 AM

Council on Aging, Santa Rosa

Details to follow

Thursday, May 10

East Bay Chapter Meeting

Details to follow

BOARD MEETINGS

Tuesday, May 29

State Board Meeting

The Mission Inn Hotel & Spa, Riverside

Details to follow



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May 30–June 2

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Marriott Riverside

Hyatt Place Riverside

PFAC 2019 Conference Information

May 1–4

Disneyland Resort Hotel

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REGIONAL REPORTS



Meredith Taylor
Northern Region President

PFAC NORTHERN REGIONAL REPORT

Happy Spring from the Northern Region!

I want to give a big thank you to the San Mateo and Silicon Valley Chapters for hosting our February regional meeting. It was a wonderful event and we received great feedback on a job well done! At our February regional board meeting we addressed some of the happenings in our region including our next Nor Cal Education Day, which will be held on September 12, 2018 at the South San Francisco Conference Center. We also reviewed the ways in which chapters are supporting new PFAC members, the region offering scholarships for the June conference, and our upcoming 2018-2019 elections for chapters, regions and the state. I highly

encourage every chapter to send a representative to our regional board meetings so they can take all of the PFAC news and information back to their chapter members.

The 23rd Annual PFAC Conference will be held May 30th – June 2nd, 2018. It will be held at the beautiful, newly renovated Riverside Convention Center. Registration is open and all of the conference committees are busy working on making this the best and most comprehensive conference to date. Our next in-person state board meeting will be held at the conference on May 30th. In attendance at this meetings will be your PFAC state board and the Presidents and Regional Directors from our three regions, plus all new incoming board members.

All chapters, regions and the state board will be holding elections for new officers in the next month. The call for nominations has gone out and we are excited about the members stepping up to run for board office positions. Please take time to get your vote in when the ballots come out.

Follow PFAC on Facebook (PFACalifornia) and Twitter (@PFACalifornia) for up to date news and information!

Please feel free to reach out to me anytime with ideas or concerns about our Northern California Region. I am very proud to be serving as your President.

“As human beings, our greatness lies not merely in being able to remake the world as in being able to remake ourselves ”

–Mahatma Ghandi

PFAC SOUTHERN REGIONAL REPORT

Wow, this year has gone by so fast! I want to congratulate the 2017-2018 Southern Region Board, Mark McKibbin Vice President, Donna Bogdanovich Regional Director, Elaine Watrous Secretary and Nancy Howland Treasurer, for a job well done. The successes of our events, Ed Day, Mix and Mingle Attorney Appreciation Events and quarterly meetings, reflect this team’s positive attitude and willingness to serve the Southern Region. Thank you to each and every one of them for being a part of this year’s Board!

The Southern Region Board along with Manufactures Bank, Shuster Financial and Coldwell Realtors, has held 3 of the 4 Attorney appreciation Mix and Mingle events. This event provided the fiduciaries a great opportunity to thank our attorneys for their support of our profession. Each attorney left with a leather portfolio, a thumb drive that contained the PFAC directory and a bottle of wine. The vendors also provided gifts for a drawing at the end of the evening. We planned the events in Calabasas, Los Angeles, the Inland Empire and Irvine to encourage all Southern Region members to attend. Each event sold out, so we are increasing the number participates in the last mixer.

We have one more mixer scheduled at The Kensington in Serra Madre on April 25th for all Southern Region members in the Inland Empire. The evening will again have wine tasting presented by Michael Pavlidis of Old World Vines. The final event will be sponsored by Manufactures Bank, The Kensington Serra Madre, Old World Vines, and Nancy Valentine of Podley Properties. You can sign-up on line. The cost is \$25.00 for the evening.

Our Region held a Chapter Presidents’ meeting in February to discuss the upcoming elections and be made aware of the bylaws concerning the chapter elections. Each Chapter gave a report; the goal for these meetings is to improve communication between the Regional board and the Chapter leadership. Annabelle Wilson lead the discussion regarding how the San Gabriel Valley Chapter holds elections each year. Our next meeting will be in May.

The Southern Regional meeting was held on January 17th, the meeting was in Irvine at the Council on Aging – Southern California and was attended by more than 40 PFAC members. This was the fist time a Regional meeting was held in the Southern Orange County area in many years.

Our last Regional meeting for the year will be on April 25th, 2018. The meeting will be at the Pasadena University Club and will be sponsored by both the Southern Region and the San Gabriel Valley Chapter. The Speaker will be Daniel Fortuño of Benefits Education Center, Long Beach. He will be presenting on The Most common SSA Pitfalls, giving us an update on the latest changes regarding SSA, SSI, and SSDI. This will be a lunch time meeting and we hope to see you there.

I would like to encourage each PFAC member to think about volunteering at the conference. Conference registrants will receive email notifications with links to volunteer. This is a great way to meet fellow PFAC members and become more involved with PFAC.



LeAndra McCormick
Southern Region President



REGIONAL REPORTS (CONT.)



Thomas Behr
San Diego Region President



Susanna Starcevic
San Diego Region Director

PFAC SAN DIEGO REGIONAL REPORT

How quickly the year has flown since our last Regional election! The slate of officers for open seats in the upcoming May elections includes Tom Behr, president; Susan Crowe, vice president; and Michael Williams, treasurer.

Our activities for the prior three months included:

- Announced the creation of our Mentorship Dialogue program. Dialogue meetings will be held for new fiduciaries and will include one or more of our Board members and a seasoned veteran or two. The meetings will be informal, held directly after our monthly educational meeting and cover any topic of interest to the new fiduciaries. Plus, we anticipate the meetings will result in building personal and business relationships that will continue as the new fiduciaries become more experienced. We are looking forward to our first Dialogue after our April meeting.
- And speaking of the April meeting, we are excited about the launch of our first annual program titled "A View From the Bench". The presenter will be Judge Julia Craig Kelety, Presiding, Probate Department of the San Diego Superior Court. We'll have more to report in the next PFAC Newsletter.
- Held a program at Oakmont Pacific Beach, a care facility, titled "The Bioethics of a Good Death" presented by Susan Valoff, LCSW of Windward Life Care. Susan identified steps to be taken in advance care planning with our clients to establish a framework for decision-making and peace of mind to honor our clients wishes.

- Held a program at La Vida Real, a care facility, titled "Tax Update – The Tax Reform Act of 2017" presented by Kathy Hahn, CPA. and Kris George, CPA, from BDO USA LLC. Albert Einstein said "The hardest thing in the world to understand is the income tax." -- and Kathy and Kris did a great job dispelling AI's concern.
- Held a program at Silverado Encinitas, a care facility, titled "Save Time & Money: Creating Smart Business Systems" presented by Alex Brzozowski. Alex showed us how to improve efficiency, increase security and lower costs in our practice management.

All in all, a good quarter.



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Broker, Associate, MBA, SRES®
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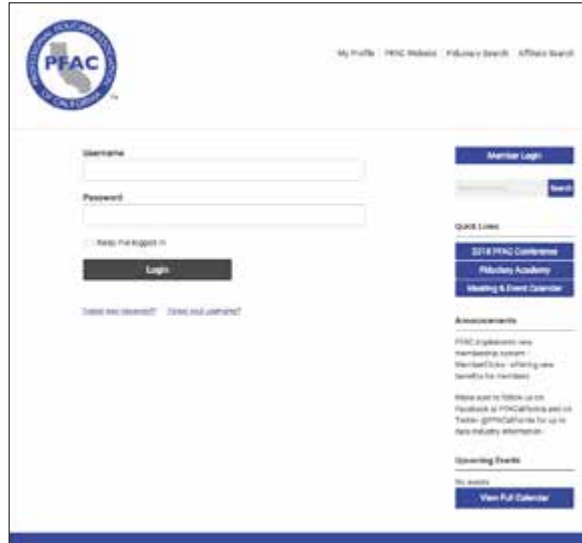
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OUR NEW PFAC MEMBER ONLINE EXPERIENCE: MEMBERCLICKS

We've moved to a new platform to manage your member information, event registrations, and connections between members. With social networking support, simple tools for staying in touch, space for sharing documents and photos and resources to support committees, we can use this system to help increase connections, market the association and highlight all of the great work being done within the industry. In addition, MemberClicks will be the workhorse that will collect member dues and support event registration and payment. Members and non-members will easily and securely be able to pay for chapter and regional events online with credit cards or be invoiced for payment later.



So pardon our dust, we're still under construction. But we invite you to come see what we've started. Go to the PFAC-pro.org website and click on Member Login. You'll need to reset your password, so enter your member ID and click on Forgot Password. You'll receive an email with instructions to reset your password. Or, just give us a call in the PFAC office and we'll reset it for you. Once you login, you'll see all of the new features.

We will be announcing online webinars to be held over the next few weeks to help you navigate your new profile. In the meantime, if you have any questions, please don't hesitate to give us a call at **844.211.3151**.



WELCOME SIENNA THORNBURG

The Olsen & Associates team has added a new member to service PFAC as Event and Communications Coordinator. Sienna Thornburg is a graduate of California Polytechnic University with a degree in Hospitality and Events Management. We knew she was the perfect candidate when, in her interview, she said her motto was "CAN I – Constant And Never-ending Improvement". Sienna stands out for her kind and friendly attitude, her work ethic, and her desire to excel and grow in her event management career.

Sienna will be part of the staff team at the 2018 PFAC Educational Conference and is looking forward to meeting PFAC members. Sienna can be reached at sthornburg@pfac-pro.org or at **(844) 211-3151, x5**.



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WHAT YOU SHOULD KNOW ABOUT THE TAX CUTS AND JOBS ACT

On December 22, 2017, the Tax Cuts and Jobs Act was signed into law. The new law makes sweeping changes to the income tax rules and the transfer tax rules. The transfer tax rules govern the taxation of estates, gifts and generation-skipping transfers and are the subject of this article.

The lifetime exemption for gifts and estates is doubled from \$5,000,000 to \$10,000,000 per person, adjusted for inflation since 2011. For gifts made and deaths occurring in 2018, the inflation-adjusted exemption is expected to be in the range of \$11,200,000 per person. The generation-skipping transfer tax exemption is similarly increased. If a transfer exceeds the applicable exemption, the tax rate remains unchanged at 40%.

It is important to note that these exemption increases are temporary. On January 1, 2026, the exemption amounts revert back to \$5,000,000 per person, adjusted for inflation since 2011 (projected to be in the range of \$6,000,000 to \$6,500,000 per person).

The very beneficial "basis step-up" regime, under which the income tax basis of an inherited asset is adjusted to the asset's fair market value on the date of death, remains in place. This allows heirs to sell appreciated assets without incurring a capital gains tax.

There are no changes in the rules for the gift tax annual exclusion. Each year a person may make annual exclusion gifts without eroding the lifetime exemption as long as the gifts are considered to be of present interests. For 2018, the annual exclusion amount is increased from \$14,000 to \$15,000.

The other gift tax exclusion we deal with in estate planning is the exclusion for a lifetime gift to a spouse who is not a citizen of the United States. For 2018, this exclusion is increased from \$149,000 to \$152,000.

For most families, the primary tax goal in estate planning will be maximizing income tax basis benefits and, while additional estate tax planning may not be necessary, an estate plan update may allow for reduced capital gains tax in the future. For some families, minimizing estate tax will still be the primary goal; these families should consider additional planning to utilize the increased exemptions before they expire.

Either way, if your estate plan has not been reviewed within the last few years, we recommend that you have your estate plan reviewed in 2018.



Will Lindahl, MBA, CLPF

USING TECHNOLOGY TO STREAMLINE, PROTECT, AND ENHANCE YOUR FIDUCIARY PRACTICE

I am the Executive Director for CPT Institute a nationwide 501(c)(3) non-profit Trustee. We were established in 1994 and have established over ten thousand trust accounts over the past twenty-four years. I hope to help you leverage efficiencies and safety in your practice from the lessons we have learned. In this article, we will discuss tools to promote safety in the work place, surveillance strategies, password management, general security, activity monitoring, bank solutions, database systems and CRM solutions. As we have tried literally 100's of products over the years. We have compiled a short list of our favorites to help you succeed. To limit the length of the article we will just discuss our favorites.

Best Low Cost Flexible CRM: [CLOZE](#)

I can't say enough about how powerful this CRM tool is. You will never lose contact with any of your relationships. This CRM automatically reminds you to stay in touch whenever you have not talked with a contact time in a preset amount of time. CLOZE automatically grabs any changes in contact information from your email history and lets you update the information with one click, no manual data entry. Once you add your accounts to CLOZE it will index your full email history and rate the value of all your relationships. The email functions include sent later, snooze and bulk email campaign options. If you add your cell and work phone to CLOZE it will link all your calls and create an agenda view so you can be sure you have logged notes for any past calls. Cloze also tracks all colleague activities, all calls, emails, meeting etc. It automatically creates a daily agenda for you that will show all your meetings, to-dos and email reminders in one place. This only scratches the surface of this CRM. You can create custom sales funnels and contact management all for just \$150 per YEAR.

Best Phone System That Integrates With CLOZE: [Ring Central](#)

Big Take Away: Own your direct numbers, if colleagues leave, their direct work number can be assigned to new staff member. Ring Central synchronizes with CLOZE so all calls will be logged automatically. Web Conferencing, conference calling and group messaging is included with Android and iOS apps for use on personal cell phones. Call recording, texting and faxing from desktop or mobile phone. Never give out your personal cell phone number again.

Best Password Manager: [Dashlane](#)

We have tired them all, but Dashlane is the only one where you control all passwords and your team never needs to see their actual passwords. If you ever have let a colleague go, you can block full access in one click.

Online Database And Collaboration: [Podio](#)

Imagine 600 ready-made databases for you to manage HR, Project Management, File Sharing that works the same on your Mac, PC, iPad, iPhone or Andriod. Supports 23 languages and is supported by Citrix. This product is scalable and has over 1 million options. This product deserves its own article, there is a learning curve but well worth your time.

Best Low Cost Website Live Chat: [Purchat](#)

Today who ever helps the client first, gets the business. If you have a website be sure you add live chat support so anyone looking you up can reach someone on the spot. People love to text now more than talk, with Purechat you will get notified on your mobile anytime a prospective client is exploring your website. You can then help them by texting through your mobile phone.

Best Low Cost Alarm And Video Surveillance: [Ring](#), [Nest](#) and [Scout](#)

When I am discussing workplace safety, I am referencing how you monitor your work environment and colleagues. Video surveillance should be a must, our favorite alarm and video surveillance providers are Ring, Nest & Scout. They offer low cost monitoring solutions with no contracts. You will know when employees arrive and leave with alerts to your cellphone. The cloud storage is inexpensive and cannot be tampered with. Ring links unlimited cameras and an alarm system for a flat \$10 monthly fee. Nest Aware 10-day monitoring is \$100 annually or 30-day monitoring for \$300 per year. Scout Alarm System \$9.99 or \$19.99 per month. At these prices you can't afford not to have monitoring in place.

CHASE Bank Associate Card Program

Imagine having individual debit cards for your colleagues you can monitor. We use this program for high cost item purchases and emergency purchases for our trust beneficiaries. This program allows you to generate secure, itemized lists of colleague purchases on your monthly Chase Business checking statement. These lists display the card, merchant name, location, date and amount of each purchase. Save time by not having to make or approve every purchase yourself item by item. Provide more control to your colleagues by empowering them with greater responsibilities. Set custom daily limits for purchases. Set bank alerts by colleague card to monitor all activity then use Clarity Money or Truebill accounts to see where everything is going.

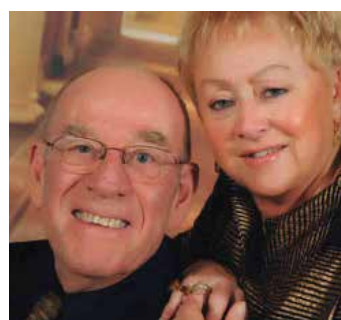
I hope you we be a greater success by leveraging technology to help your practice flourish.

“You are only as strong as your purpose, therefore choose reasons to act that are big, bold, and eternal.”

–Barry Munro



Stewart Frank,
CPA/PFS, AIFA



J. Ben Vernazza, CPA/PFS,
TEP (UK) Emeritus

DIRE FINANCIAL CONSEQUENCES AWAIT TRUSTEES WHO FAIL TO PRUDENTLY MANAGE UNCOMPENSATED RISK

This article was adapted and condensed for publication by PFAC from an original article entitled Uncompensated Risk: The Orphan of Modern Portfolio Theory that appeared in the June 2017 issue of The Tax Advisor, an AICPA Publication. The entire original article can be viewed at www.precisionfiduciary.com/orphan.

The Uniform Prudent Investor Act (UPIA) was promulgated by the Uniform Law Commissioners in 1994 and in 1995 was memorialized in California statute as Probate Code §16045 - §16054. The commentary to Section 3 of the UPIA explains the two types of investment risk and how each should be managed.

The Restatement (Third) of Trusts was promulgated by the American Law Institute in 1992 and remains the authoritative guidance for applying trust law. Chapter 7, Section 227, addresses the general standard of prudent investment and specifically discusses “risk and the requirement of diversification.” Following is the clearly stated pronouncement about what is required of a fiduciary to prudently manage uncompensated risk:

Failure to diversify on a reasonable basis in order to reduce uncompensated risk is ordinarily a violation of both the duty of caution and the duties of care and skill.

[*Id.* at 23] (see more details at www.precisionfiduciary.com/restatement/)

Uncompensated Risk (UCR) Defined

UCR is risk that can be eliminated with diversification and, unlike systematic or compensated risk investors cannot expect added return for assuming more UCR. UCR is removed from a portfolio through the application of prudently exploited diversification.

Diversification’s is measured by the size of the gap between the sum of the portfolio’s weighted average asset variances and the level of the portfolio’s overall variance. A larger gap is the result of having more UCR removed by means of greater diversification.

In 1992 Eugene Fama & David Booth published an article entitled “Diversification Returns and Asset Contributions,” 48-3 Financial Analysts J. 26 (May-June 1992). In that article they identified and quantified the existence of an additive portfolio return factor attributable to diversification that they named “diversification returns”, and approximated its value to be one half of the variance gap.

Uncompensated Risk Measured

UCR is measured by the degree and number of asymmetrical correlations present in a portfolio (not the overall level of portfolio variance). Fewer degrees and/or fewer numbers of asymmetrical correlations result in portfolios having greater amounts of UCR and reduced amounts of “diversification returns”. Thus, if all asset correlations in a portfolio equaled 1.00, then the weighted average asset variance would be the same as the portfolio’s variance, indicating that

zero UCR was removed from the portfolio and no incremental “diversification return” was obtained.

Uncompensated Risk Management

Management of UCR is achieved by quantifying existing UCR followed by use of the right combination of non-correlated assets in the portfolio. The authors use a combination of existing and proprietary algorithms to achieve maximum UCR reduction and maximum added diversification return when assisting with the risk management of portfolios that achieve prudent levels of UCR.

Two recent court decisions emphasize the importance of diversification management for trustees and their advisors.

The Tatum decision emphasizes the need to show a process as a fiduciary. In a U.S. circuit court opinion in Tatum v. RJ Reynolds Pension Investment Committee, No. 13-1360 (4th Cir. 8/4/14) (aka the “good luck case”), the three-judge panel found the defendant breached its fiduciary duty because it failed to practice procedural prudence.

In another major ERISA fiduciary duty case, Tibble v. Edison International, 135 S. Ct. 1823 (2015), the Supreme Court ruled 9–0 in favor of 401(k) participants versus Edison International, overturning the Ninth Circuit. The Court held that because there is continuing duty to monitor the investments it means that the “action which constituted a part of the breach or violation” encompassed not just the initial selection of the investments, but the ongoing failure to discharge fiduciary duties with “care, skill, prudence, and diligence” (29 U.S.C. §1104). In other words, the statute of limitation does not start to run until the imprudent actions stop. The takeaway from this case regarding UCR is the necessity for the fiduciary to have a prudent UCR management strategy in place, one that is prudently established and prudently monitored, otherwise the statute of limitation will never start to run.

Dire financial consequences may await unsuspecting fiduciaries and their advisors.

Uniform acts and restatements describing how UCR is to be prudently managed have been in existence for almost 25 years. Yet, most fiduciaries breach this fiduciary duty simply because they ignore or neglect to follow the long-standing, stated, legal requirements for UCR management.

- Most IPSs omit any mention of UCR management, this conspicuous absence attests to the fact that the trustee has committed nonfeasance and establishes that, if brought, a breach of fiduciary duty claim for UCR management breach would easily be classified as prima facie.
- The breach exposes the trustee to large liability claims equal to the amount of forgone “diversification alpha” for all the years UCR management was neglected.
- This failure also highlights potential mal-practice committed by the trustee’s advisors, possibly exposing them to large liability claims equal to the amount of forgone “diversification alpha” for all the years UCR management was neglected.
- The amount of forgone “diversification alpha” at the portfolio level is easily obtained by formula and can amount to 1% per annum of a trust’s total assets.
- And due to the precedent established by the U.S. Supreme Court in Tibble vs. Edison International, statute-of-limitation protection may not be available to trustees who fail to comply with fiduciary standards for UCR management.



Jerry Desmond
PFAC Legislative Advocate,
Desmond & Desmond, LLC

PFAC ADVOCATING FOR ITS MEMBERS AS THE LEGISLATURE CONSIDERS THE FUTURE OF THE PROFESSIONAL FIDUCIARIES BUREAU

Your association continues to work pro-actively on behalf of its members as the State Legislature considers whether the Professional Fiduciaries Bureau will continue past its statutory sunset on January 1, 2019 [as set forth in Section 6510 of the Business and Professions Code], and whether any revisions will be made to the licensure act.

Most recently, PFAC Legislative Committee co-chair Meredith Taylor attended and presented the association's position in the March 5 joint hearing of the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions.

Her testimony emphasized the association's strong support for the continuation of the Bureau, noting PFAC's co-sponsorship of the legislation that established the Act and the Bureau in state law [SB 1550 - Figueroa, Chapter 491, Statutes of 2006].

Ms. Taylor also confirmed the position adopted by the PFAC board of directors that the Act should be amended to:

- Require licensure and state oversight of personal representatives of decedents' estates, so that the protection of consumers would be enhanced;
- Clarify that the limited exception for enrolled agents applies – as intended - when only when the person is acting within the scope of his or her practice before the Internal Revenue Service; and
- Provide for the opportunity for the licensure of entities, so that the consumer would not have the additional cost and inconvenience of returning to an attorney to amend estate planning documents to name replacement successor trustees or successor agents under durable powers of attorney for finance upon the death or incapacity of the first-named.

Three official documents set the table for the March 5 hearing in the State Capitol:

- The Bureau's Sunset Review Report to the Legislature - for the 320-page report: [click here](#)
- The legislative committees' background paper - for the 18-page paper: [click here](#)
- Legislation introduced to extend the statutory life of the Bureau – for AB 3144: [click here](#)

The key issues that were identified by the Senate and Assembly Committees, the outcomes following the March 5 hearing, and the anticipated next steps where pertinent:

Bureau Fund Condition

The committees agreed with the recommendation in the background paper:

"The Bureau should reconsider taking a look at licensing fees to ensure a proper reserve."

We do not anticipate a push to raise the licensure fees at this time. The questions and answers between committee members and staff focused on the desire to further increase the number of licensees. The number of active licensees has increased fifteen percent since 2014.

Licensure of Personal Representatives of a Decedent's Estate

The committees agreed with the recommendation in the background paper:

"Business and Professions Code Section 6501 should be reviewed by the Bureau to determine if consideration should be given to require licensure of a personal representative of a decedent's estate as defined in Section 58 of the Probate Code, for two or more individuals at the same time who are not related to the professional fiduciary or to each other. This should be accompanied by a reasonable timeframe for these personal representatives to come into compliance."

We anticipate further meetings and discussions with the legislative committees, the Department of Consumer Affairs and the Bureau to further review this issue and to determine if this will be included in the measure that would extend the sunset on the Bureau [AB 3144].

Enrolled Agents

The committees agreed with the recommendation in the background paper:

"In regards to enrolled agents, consideration should be given, by the Bureau, to amend Business and Professions Code Section 6530 to clarify that the exemption from the Act applies to a person enrolled as an agent to practice before the Internal Revenue Service who is only acting within the scope of practice pursuant to Part 10 of Title 31 of the Code of Federal Regulations."

We anticipate another meeting with the committees, the Department of Consumer Affairs and the Bureau to further review this issue and to determine if this will be included in the measure that would extend the sunset on the Bureau [AB 3144].

Status of the BreZE Implementation

Consistent with the recommendation in the hearing's background paper, the Bureau updated the Committees about the current status of its implementation of BreZE. The bureau and department explained that the Bureau would be making a decision on whether the BreZE system or some other IT system would be utilized for an update. The committees appeared to be comfortable with this approach.

Licensure of Entities

The committees agreed with the recommendation in the background paper:

(Continued on next page)

(Continued from previous page)

"As an initial step, the Bureau obtain [sic] information on the forms of the business entities of current licensees, as well as the types of business entity they would desire if it were to be allowed. The Bureau should conduct an informal survey of licenses to obtain information on the forms of the business entities of current licensees, as well as the types of business entity they would desire if it were to be allowed."

The Bureau noted to the committees that it is open to conducting this survey if the committees desires for it to do so and, appreciates the desire to provide for continuity of care, and at the same time, notes:

- a. The importance of the one-on-one relationship between the licensed professional fiduciary and his or her client;
- b. The necessity of mitigating any risks that would be presented by licensure of entities including a requirement that the entities maintain insurance;
- c. The necessity of ensuring that the Bureau would have sufficient enforcement authority; and
- d. The necessity of ensuring that any new costs to the Bureau would be addressed.

We anticipate further discussions and meetings with the committees, Bureau and Department to confirm whether a survey will be conducted, as well as the contents and structure of the survey.

Continuation of the Bureau

The committee agreed with the recommendation in the background paper:

"Recommend that the licensing and regulation of Professional Fiduciaries continue to be regulated by the Bureau in order to protect the interests of the public, and be reviewed again in four years."

Additional Issues

PFAC is also considering the additional issues that the Bureau indicated in the hearing that it is considering as amendments to the Act. They are:

1. To prohibit a licensed professional fiduciary from charging clients for his or her contacts with the Bureau;
2. To mandate that a licensed professional fiduciary inform the Bureau when he or she is removed from a case, or resigns; and
3. To provide a pathway to licensure [and remove a barrier to licensure that could increase the number of licensees] by authorizing relevant experience to be sufficient without an educational degree.

Next Steps

Now that the legislative Sunset Review Hearing has been held, the focus will shift towards AB 3144 as the legislation that would extend the life of the Bureau and perhaps enact one or more revisions to the Act.

AB 3144 should be considered first in the Assembly Committee on Business and Professions by mid-May of this year.

PFAC's leadership and its legislative committee will continue to be engaged as the measure is considered and developed through the legislative process in the State Capitol.



Shawn Nejad

Certified Probate Real Estate Specialist

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Memberships

- Palos Verdes Association of Realtors
- PVP Chamber Of Commerce
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- PFAC Affiliate Member
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23RD ANNUAL PFAC CONFERENCE

IT'S GETTING BETTER ALL THE TIME....

...a little better, all the time. The famous Beatle's refrain loops in my brain as I update you on the 2018 PFAC Educational Conference. Improving the conference each year is a team effort – a collaboration between you as a member and your input regarding your needs and desires; the PFAC Board of Directors; the PFAC Board of Directors; the Conference Committee; and the PFAC administrative staff." Each member of the team contributes to the improvement and this year is no different.

Here are 5 improvements you can expect to see at the 2018 PFAC Conference in Riverside:

1. Advanced sessions for experienced fiduciaries including sessions with current judges of the Los Angeles Superior Court, Probate Division.
2. Mentoring sessions around specialty areas like conservatorships, probate and estate issues, trusts and practice management. Get your specific questions answered around your most troublesome items.

3. A full track on practice management including fees and billing, employing caregivers, establishing and growing your practice, and protecting yourself from liability featuring Judge Maria Stratton from the Los Angeles Superior Court.
4. A fun and casual dinner experience on Friday evening with a full outdoor barbecue buffet, live music and games.
5. Full, hot breakfast and lunch buffet options on both Thursday and Friday.

Remember, PFAC's Annual Member Meeting takes place at the Conference on Friday, June 1. At the meeting you will hear updates on how your membership dollars are being used, meet the incoming Board of Directors, and get advance information on upcoming PFAC programs.

Reserve your spot and register today while you can still take advantage of reduced rates.
Go to: PFACMeeting.org for information.



Celebrate A Legacy Of CALIFORNIA SUCCESS



The 23rd Annual PFAC EDUCATIONAL CONFERENCE

Riverside Convention Center
Riverside, California

May 30 – June 2, 2018

Please join us and celebrate the legacy of professional fiduciary excellence while you learn, socialize, and enjoy the historic California experience.

Visit PFACMEETING.ORG for More Information



**"I am seeking, I am striving,
I am in it with all my heart. "**

–Vincent Van Gogh



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