

HOME IS WHERE THE HEART IS: PROTECTING OLDER ADULTS FROM FINANCIAL ABUSE IN THE PLACE THEY LOVE

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Abstract

The United States is getting older. As the ageing population grows, so does the prevalence of elder financial abuse. One of the most devastating forms of financial abuse occurs when an older adult unknowingly signs over a deed to their home, a cornerstone of their financial stability and key asset necessary for aging in place. While legal remedies exist in both civil and criminal courts, these protections are largely inaccessible to a self-litigant for a variety of reasons. Under California law, elder abuse restraining orders (“EAROs”) offer some protections, but recent case law in *Newman v. Casey* prevents the return of real property, even if that property has been procured through fraud or undue influence. This Article advocates for reform, including expansion of the current EARO statute to include the return of real property. There should be trials or “prove-up” hearings and a court investigator process, like those used in many probate proceedings. This Article also suggests several other potential reforms, such as strengthening the regulation of notaries and implementing short-term deed rescission rights for adults over 65. These measures could help fill critical gaps in protection and ensure older adults can prevent the loss of home ownership due to financial abuse.

I. Introduction

In the United States, the ageing population is growing at an unprecedented rate. Experts estimate that the number of individuals over 65 will increase dramatically in the next 40 years,¹ causing a significant shift in our age demographics and amplifying the need to safeguard the financial security and well-being of older adults. One of the most pernicious threats facing older adults is the likelihood of elder financial abuse. Broadly, elder financial abuse occurs when someone illegally or improperly takes the money or property of an older adult for their own personal use.² While elder financial abuse can take many forms, the loss of home ownership can have particularly devastating effects. As older adults desire to age safely in place in their homes,³ protecting this asset from financial abuse is critical to ensure their ongoing economic security, their safety, and their autonomy.

Elder financial abuse is a phenomenon that affects millions of older adults every year, causing billions in lost income, property, and assets.⁴ The majority of abuse is at the hands of family members.⁵ While the financial

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¹ JONATHAN VESPA ET AL., U.S. CENSUS BUREAU, DEMOGRAPHIC TURNING POINTS FOR THE UNITED STATES: POPULATION PROJECTIONS FOR 2020 TO 2060, at 2 (2020); *The U.S. Population is Aging*, URBAN INST., <https://www.urban.org/policy-centers/cross-center-initiatives/program-retirement-policy/projects/data-warehouse/what-future-holds/us-population-aging> (last visited Apr. 18, 2026).

² 42 U.S.C. § 1397(j)(8); see also Andrew Jay McClurg, *Preying on the Graying: A Statutory Presumption to Prosecute Elder Financial Exploitation*, 65 HASTINGS L.J. 1099, 1106 (2014) (citing NAT'L CTR. ON ELDER ABUSE, AM. PUB. HUM. SERVS. ASS'N, THE NATIONAL ELDER ABUSE INCIDENCE STUDY 3-3 (1998)).

³ Michelle R. Davis, *Despite Pandemic, Percentage of Older Adults Who Want to Age in Place Stays Steady*, AARP, <https://www.aarp.org/home-living/home-and-community-preferences-survey-2021> (last updated Nov. 22, 2022).

⁴ Steven Bradley, *Behind the Screen: Elder Financial and Technology Abuse in the Age of AI*, 46 BIFOCAL 76, 76 (2025) (citing FED. BUREAU INVEST., 2023 ELDER FRAUD REPORT 6 (2024)).

⁵ Emily J. Miller, *The Power of Personal Protection Orders for Older and Vulnerable Adults*, 46 BIFOCAL 82, 82 (2025) (citing Gali H. Weissberger et al., *Elder Abuse Characteristics Based on Calls to the National Center on Elder Abuse Resource Line*, 39 J. APPLIED GERONTOL. 1078, 1085 (2020)).

toll of these losses is staggering, the emotional shame and embarrassment of being victimized by someone you love and trust can never be fully remedied.⁶ For many Americans, their dream of home ownership has provided a deep sense of security, economic stability, and upward mobility. The family home is often the only asset that can be passed on to build generational wealth. As adults continue to live longer than ever before, the home is also one of the most important assets to assist them in their aging goals. The home is not just a place of comfort and familiarity. It is a nest egg that can provide options for financing to pay for in-home care,⁷ may be large enough to accommodate a caregiver or family member moving in, or may be used to rent out or sell to help pay for residential living if the need arises. However, this also means that the home itself is a valuable asset, ripe for the taking.

Every state provides older adults with at least some criminal or civil legal remedies to pursue when financial losses occur. Although these laws exist, practically speaking, our legal system continues to lag in its ability to resolve this type of dispute in an expeditious and financially realistic manner. Engaging in protracted litigation takes significant time, skill, and financial resources, when time and money are not often on the older adult's side. A home that an older adult has lived in their entire life, and the jewel of their many years of hard work, could be gone in the time it takes to complete a signature.

California is one state that has implemented several laws designed to protect older adults from abuse. Along with criminal statutes and civil remedies, older Californians under Section 15657.03 of the Welfare and Institutions Code can file for elder abuse restraining orders ("EAROs").⁸ While these petitions address emotional, verbal, physical, and financial harms,⁹ the recent decision in *Newman v. Casey*¹⁰ raises concerns that the remedies stop short of returning real property that was procured through fraud or undue influence. Before *Newman*, there was no definitive precedent that prevented the return of real property in an EARO matter. The *Newman* case highlighted that, for Californians who are victims of elder financial abuse, some of the most appropriate remedies can only be achieved by filing a civil lawsuit.¹¹

What is most troubling about the *Newman* ruling is that the processes and procedures for signing over a deed are relatively simple: draft the deed, sign the deed in front of a notary, and record the deed. A defendant can obtain ownership relatively quickly and inexpensively, but to undo the abusive and fraudulent transaction the older adult faces an expensive and lengthy process. Why should it be so much harder for victims to right the wrongs committed against them?

As this Article will discuss, the barriers older adults face in seeking private counsel to assist in the return of real property are significant. For many, the civil litigation process is simply not an option. On the other hand, many individuals represent themselves in EARO matters. This Article contends that the EARO process should be expanded to provide for the return of real property. Moreover, outside of the EARO process, we need to explore other ways the law can quickly support a return of real property and protect the precious jewel of home ownership.

This Article will also explore other potential avenues for reform, including an overhaul of California's notary laws, which currently do not require a notary to check for the signer's capacity or willingness to effectuate documents, or require a notary to confirm that the signer understands the documents being signed. As will be discussed, these and other potential safeguards could be implemented to require people over 65 confirm they understand they are signing a deed that transfers their ownership to someone else.

Aside from changes to notary laws, other laws could be strengthened to protect an older adult from unwittingly signing over their property. Laws regarding rescission of deeds could be implemented to allow a short time for older adults to rescind a deed. These laws would mirror those in effect for home solicitation contracts where older adults have additional time to cancel certain contracts.

⁶ *Id.*

⁷ Kathie Brown Roberts & Bailey Liipfert, *Housing Options for Seniors: Legal and Financial Considerations*, 46 BIFOCAL 61, 63 (2025); see also *Reverse Mortgage Suitability: Points to Consider*, CANHR, <https://canhr.org/reverse-mortgage-suitability-points-to-consider/> (last updated Sept. 4, 2024) (explaining one method for turning home equity into care funding).

⁸ CAL. WELF. & INST. CODE § 15657.03(a)(1) (West 2026).

⁹ *Id.* § 15657.03(b)(5)(A).

¹⁰ *Newman v. Casey*, 99 Cal. Rptr. 3d 706 (Cal. 1st Ct. App. 2024).

¹¹ *Id.* at 389–90.

This Article has seven Parts. Part II will discuss a case example from the Elder and Health Law Clinic at the University of the Pacific, McGeorge School of Law in Sacramento, California, where the return of real property was granted in an EARO filing in 2020. This client story narrates a common theme of cases litigated in the Clinic, where an older adult has unknowingly signed over real property to a family member. Part II will further discuss the scale of elder financial abuse. Part III will address the available remedies in California civil and criminal law and will review the *Newman* decision. Part IV will address why the EARO process, in California and beyond, should be expanded to permit the return of real property belonging to an older adult. Part V will argue that EARO laws should be expanded to provide more complete relief. Lastly, Part VI will examine other proactive alternatives to help prevent elder financial abuse, including reform to notary laws and rescission time periods for deeds signed by individuals over 65.

II. Return of Real Property—An EARO Example

Part II covers the return of real property, beginning with real experience approaching the process discussed in Section A.

A. Case Example

The Elder and Health Law (“EHL”) Clinic at the University of Pacific’s McGeorge School of Law has been in existence since 2010.¹² The EHL Clinic provides legal services to residents of Sacramento County age 60 and older who demonstrate the highest need and vulnerabilities. To meet emerging demands in the Sacramento community, the Clinic has developed expertise in elder financial abuse. It regularly represents clients in elder abuse restraining orders, civil litigation matters, and probate litigation matters. It is the only legal service provider in Sacramento County that provides this legal type of representation, making its varied subject matters a rich, fulfilling experience for its students. In addition to elder abuse, the Clinic handles consumer issues, access to and maintaining eligibility for public benefits (Social Security, Medicare, Supplemental Security Income, MediCal, and In-Home Supportive Services), powers of attorney, advance health care directives, estate planning, and probate litigation. The Clinic receives referrals from many community partners and works frequently with Adult Protective Services.

As a staff attorney in the Clinic since 2018, this Author has seen many cases with a standard fact pattern: an older adult loses title to their home at the hands of a family member. One case highlighted the need for a quick return of real property to the client so that she could avoid homelessness and maintain her only source of income.

In early 2020, the EHL Clinic, on behalf of Isabelle Orona,¹³ aged 73, filed an EARO matter against her daughter, Claudia, alleging financial abuse, elder abuse, and neglect. Mrs. Orona alleged that her daughter had secretly acquired title to her two residential properties. Mrs. Orona resided in one property with her husband, Armando, aged 84, and Claudia, her adult daughter, aged 41. The other property was used as a rental and the couple relied on the rental income to support themselves.

Claudia was a caregiver for her parents. She drove them to appointments, went to the grocery store, cooked meals, and provided them with their medications, among other tasks. In 2018, Mrs. Orona alleged that her husband’s health began declining rapidly. The couple, fearing that he did not have long to live, became concerned about passing their properties to Claudia when they died. Claudia suggested they transfer the properties to her immediately, offering that she would continue to provide care to them in their home and ensure the rental was well looked after. The couple trusted their daughter and, relying on her promises to care for them, agreed to sign

¹² *Elder & Health Law Clinic*, UNIV. OF THE PACIFIC, <https://www.pacific.edu/law/legal-clinics/elder-and-health-law-clinic> (last visited Apr. 18, 2026).

¹³ The identity of the individuals in the case summarized in this Article have been changed to protect their privacy and the confidentiality of the attorney-client relationship.

the homes over to her. Claudia promised that if they needed the homes back in their names for any reason, she would execute a transfer back whenever they asked.

In March 2020, only a few days into a statewide shutdown due to the Covid-19 pandemic, Claudia abruptly abandoned her parents in their home, alerting them that they were on their own. Without Claudia to care for them, the couple had no ability to leave the home for food. They subsisted on random pantry food for several weeks. Unbeknownst to her parents, Claudia was trying to quickly sell her parents' homes. She had arranged for cash buyers for both properties, but a report to Adult Protective Services was made anonymously. Once Mrs. Orona was referred to the Clinic, a request for an EARO was filed against Claudia. Mrs. Orona sought a restraining order against her daughter seeking protection from further abuse and the return of her properties. Unable to file a contemporaneous civil action due to covid court closures, Mrs. Orona argued that the taking of her homes constituted ongoing financial abuse. Without the return of the properties, Mr. and Mrs. Orona faced homelessness and a lack of income.

At the time, there were no other cases that addressed whether the return of real property was permitted in an EARO matter. The EHL Clinic argued that the superior court had wide latitude in granting equitable relief.¹⁴ The EARO judge agreed that the taking of the properties constituted ongoing elder abuse and, to prevent future harm, ordered the return of the properties to Mr. and Mrs. Orona. Mrs. Orona was able to prevent the sale of her properties and obtain the return of the titles to her name. She was then able to engage in proper estate planning to pass her properties to her designated beneficiaries. Had the abuse occurred today, however, the only remedy for Mr. and Mrs. Orona would be to file a civil lawsuit.

Through the EARO process, Mr. and Mrs. Orona were able to avoid lengthy and costly litigation. They were able to quickly have their properties returned to them, ensuring they had a monthly income to live off, and a home in which to continue to age in place. If not for the EARO process, Mr. and Mrs. Orona would have been forced into a lengthy and costly civil litigation matter to have their properties returned to their names. With no savings and no access to take out money from their homes, the couple would not have been able to afford a private attorney to file a civil lawsuit against Claudia.

This case highlights the problem with *Newman*, and many of the current laws discussed below, which all embody a flawed assumption: older adults will have the means to hire attorneys to assist them in navigating these complex matters.

B. The Demonstrated Need

What happened to Mr. and Mrs. Orona is not unusual. Over the years there have been many cases regarding elder financial abuse in the headlines.¹⁵ But elder financial abuse does not just occur to the rich and famous who have millions of dollars to lose. In the United States it is estimated that over 10% of people over 65 and older experience some form of elder abuse.¹⁶ During the Covid-19 pandemic, those numbers rose drastically and it is estimated that one in five older adults experienced some form of abuse.¹⁷ Other studies worldwide indicate that 6.8% of the population of older adults has experienced financial abuse.¹⁸ Even more staggering is the fact that

¹⁴ Supporting this argument is the discussion in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, where the Supreme Court stated that “[o]nce a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” 402 U.S. 1, 15 (1971).

¹⁵ E.g., Deborah Roberts & Joan Martelli, *Brooke Astor Trial Verdict Latest in Long Family Drama*, ABC NEWS (Oct. 9, 2009, 10:48 AM), <https://abcnews.go.com/2020/Astor/brooke-astor-son-anthony-marshall-guilty-fraud-larceny/story?id=8629431>; David Hochman, *The Last Days of Stan Lee*, AARP, <https://www.aarp.org/entertainment/celebrities/stan-lee-elder-abuse/> (last visited Apr. 18, 2026); Nancy Dillon, *Priscilla Presley Sues for ‘Abhorrent’ Financial Elder Abuse, Claims Losses Over \$1 Million*, ROLLINGSTONE (July 18, 2024), <https://www.rollingstone.com/music/music-news/priscilla-presley-lawsuit-financial-elder-abuse-1235063496/>.

¹⁶ Elder Just. Initiative, *About Elder Abuse*, U.S. DEP’T JUST., <https://www.justice.gov/elderjustice/about-elder-abuse> (last visited Apr. 18, 2026).

¹⁷ E-Shein Chang & Becca R. Levy, *High Prevalence of Elder Abuse During the COVID-19 Pandemic: Risk and Resilience Factors*, 29 AM. J. GERIATR. PSYCH., no. 11, Nov. 2021, at 1152, 1153; *Get the Facts on Elder Abuse*, NAT’L COUNCIL ON AGING (July 8, 2024), <https://www.ncoa.org/article/get-the-facts-on-elder-abuse/>.

¹⁸ ABA Comm’n L. & Aging, *What Percent of Elders Are Abused?*, 46 BIFOCAL 81, 81 (2025).

financial exploitation of individuals over 60 years of age causes over \$28 billion in loss annually.¹⁹ While many assume that scammers, unknown individuals, or unrelated caregivers perpetrate elder abuse, the ugly truth is that most abuse occurs at the hands of someone the older adult knows.²⁰ Available data suggests that almost 50% of perpetrators of abuse are family members.²¹ In examining the toll of this familial financial abuse, it is estimated that \$20 billion of the annual loss reported above is attributed to people the older adult knows.²²

Elder abuse is also more than just the loss of billions of dollars. Older adults have higher rates of depression, shame, hospitalizations, and institutionalization due to abuse.²³ The financial strain is also not just the older adults' problem to bear—abuse has caused severe financial strain on our healthcare system in the amount of \$5.3 billion.²⁴ Even one event of elder financial abuse can trigger an upheaval in the older adult's life, causing “loss of independence, serious complicating illness, and even death.”²⁵ These health outcomes will worsen as more people than ever are getting older.

In California, the fastest growing population category is 80 and older.²⁶ The population of the 60-plus age group will continue their 142% increase over the next 15 years.²⁷ Additionally, the next 15 years will also see the remainder of the 238% increase in people age 80-plus.²⁸ Even before this shift in the aging population, elder financial abuse was the number one crime against older adults.²⁹

Although the numbers support that abuse occurs regularly, we also know that financial crimes against older adults often go unreported.³⁰ Victims of elder financial abuse may not want to report abuse for fear of what may happen to that family member or their relationship with that family member.³¹ Crimes against elders in a family setting are often ignored by law enforcement, who may classify the issue as a family dispute rather than the crime it is.³² This also means that there is a lack of data on the nature and scope of elder financial abuse.³³

C. The Intersection of Housing and Financial Abuse

Financial abuse can also lead to economic instability and homelessness. Homelessness has significant effects on health outcomes for people in any age category, but especially for older adults.³⁴ With limited resources for affordable senior housing,³⁵ losing any housing could have damaging effects for people in these age categories who are already on fixed incomes. In California especially, where housing costs are exceptionally high, older

¹⁹ JILENNE GUNTHER, AARP PUB. POL'Y INST., *THE SCOPE OF ELDER FINANCIAL EXPLOITATION: WHAT IT COSTS VICTIMS* 1 (2023).

²⁰ Charles P. Golbert, *Combating Financial Elder Abuse*, 40 BIFOCAL 59, 61 (2019); *Get the Facts on Elder Abuse*, *supra* note 17.

²¹ Weissberger et al., *supra* note 5, at 1078.

²² GUNTHER, *supra* note 19, at 5.

²³ Miller, *supra* note 5.

²⁴ Jerome M. Adams & Lance Robertson, *Elder Abuse: A Public Health Issue That Affects All of Us*, ADMIN. CMTY. LIVING, acl.gov/news-and-events/acl-blog/elder-abuse-public-health-issue-affects-all-us-0# (last modified May 7, 2020).

²⁵ SANDRA D. GLAZIER ET AL., *UNDUE INFLUENCE AND VULNERABLE ADULTS* 3 (ABA 2020).

²⁶ HANS JOHNSON ET AL., PUB. POL'Y INST. CAL., *CALIFORNIA'S AGING POPULATION* 6 (2025).

²⁷ *Fact Sheet: Older Adult Demographics*, CAL. DEP'T AGING, <https://www.aging.ca.gov/download.ashx?IE0rcNUV0zb4L9ijwWImXw%3d%3d> (last updated Sept. 26, 2024).

²⁸ *Id.*

²⁹ See BUREAU JUST. STATS., *CRIMES AGAINST PERSONS AGE 65 OR OLDER, 1992–97*, at 5 (2000).

³⁰ GUNTHER, *supra* note 19 (citation omitted).

³¹ CONSUMER FIN. PROT. BUREAU, *RECOVERING FROM ELDER FINANCIAL EXPLOITATION* 22–24 (2022).

³² *Id.* at 33.

³³ LISA NERENBERG, CAL. ELDER JUST. COAL., *REINFORCING CALIFORNIA'S ELDER JUSTICE INFRASTRUCTURE: COMMITTING TO EQUITY AND INCLUSION* 78, 89 (2023).

³⁴ MARGOT KUSHEL ET AL., UCSF BENIOFF HOMELESSNESS & HOUS. INITIATIVE, *TOWARD A NEW UNDERSTANDING: THE CALIFORNIA STATEWIDE STUDY OF PEOPLE EXPERIENCING HOMELESSNESS* 54 (2023).

³⁵ See *id.* ch. 2.

adults have maintained ownership of real property because most have owned their homes for decades.³⁶ Losing their home would make it exceptionally difficult to ever own another home again on their fixed incomes.³⁷

While older adults tend to own their homes more so than other age populations, the fastest growing population of people experiencing homelessness in the United States are individuals over 55.³⁸ In 2021, it was reported that almost two-thirds of people over 65 who were entering homeless shelters were doing so for the first time.³⁹ Additional data in 2024 suggested that the trend in older adults experiencing homelessness was occurring in part due to the problems related to affordability, accessibility, and availability of appropriate housing for older adults.⁴⁰ Further, lack of infrastructure is preventing older adults from aging in place. This infrastructure includes economic stability, neighborhood environments, and reduced isolation.⁴¹ Lastly, the challenges older adults face on a fixed income means that older adults must make difficult decisions about how and where they spend their money on even basic necessities.⁴² With homelessness on the rise, the need to protect housing at any cost is significant, as those who have worked hard to purchase their homes want to stay there. Eighty-eight percent of older adults have reported that it was important to them to continue living safely in their homes for as long as possible.⁴³

The reasons for increased homelessness among older adults show a trend regarding the affordability of housing in California. Research indicates that public benefits do not provide enough money to support housing and that older adults are languishing for years on affordable housing lists.⁴⁴ Recent research also indicates that elder abuse may be a risk factor in driving increased homelessness in older adults.⁴⁵ Since there is already a shortage of affordable housing, older adults cannot afford to continue to lose housing options to financial exploitation.

Housing has long been considered a social determinant of health.⁴⁶ Moving forward, new policy changes considering the “One Big, Beautiful Bill”⁴⁷ are going to have significant effects on health and housing options for older adults. California is already dealing with significant funding deficits that will negatively affect older adults.⁴⁸ The federal budget cuts that are projected under the One Big, Beautiful Bill will have a devastating effect on long-term care planning for older adults.⁴⁹ Drastic funding cuts to Home and Community Based Services are expected, forcing more older adults into institutionalized settings as they will no longer have access to the support systems that would allow them to age in place.⁵⁰ The potential Medicaid cuts will also cause nursing homes to

³⁶ See Hans Johnson, *California’s High Housing Costs Have Created a Million “House Rich” Millionaires* (July 21, 2022), <https://www.ppic.org/blog/californias-high-housing-costs-have-created-a-million-house-rich-millionaires/>; see also ADMIN. CMTY. LIVING, 2023 PROFILE OF OLDER AMERICANS 14 (2024) (finding that in 2022, of the 14.8 million households in the United States headed by people seventy-five and older, seventy-eight percent owned their own homes).

³⁷ ADMIN. CMTY. LIVING, *supra* note 36.

³⁸ Erica Costello, *Fostering Stability in Aging: Assisting Older Adults At-Risk of Poverty and Homelessness*, 46 BIFOCAL 47, 47 (2025) (citation omitted); see Daniel Soucy et al., *State of Homelessness: 2025 Edition*, NAT’L ALL. END HOMELESSNESS (Sept. 4, 2025), <https://endhomelessness.org/state-of-homelessness/>.

³⁹ Malya Kurzweil Levin, *Housing Instability and Elder Mistreatment: How a Growing Movement Addresses Two Intersecting Issues*, 46 BIFOCAL 50, 50 (2025) (citing MEGAN HENRY ET AL., U.S. DEP’T HOUS. & URB. DEV., PT. 2: ESTIMATES OF HOMELESSNESS IN THE UNITED STATES, 2021 ANNUAL HOMELESSNESS REPORT (AHAR) TO CONGRESS 1–8 (2023)).

⁴⁰ Yolanda Stevens, *The Biggest Challenges Facing Older Americans: Insights from The Aging Advisory Group*, NAT’L ALL. END HOMELESSNESS (Feb. 24, 2025), <https://endhomelessness.org/blog/the-biggest-challenges-facing-older-americans-insights-from-the-aging-advisory-group/>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ ADMIN. CMTY. LIVING, *supra* note 36, at 20 (citing Inst. Healthcare Pol’y & Innovation, *National Poll on Healthy Aging: Older Adults Preparedness to Age in Place*, UNIV. MICH. (Apr. 2022), <https://ihpi.umich.edu/national-poll-healthy-aging/national-findings/older-adults-preparedness-age-place>).

⁴⁴ See Stevens, *supra* note 40.

⁴⁵ Levin, *supra* note 39 (citation omitted).

⁴⁶ *Social Determinants of Health*, CTR. DISEASE CONTROL (May 16, 2024), <https://www.cdc.gov/public-health-gateway/php/about/social-determinants-of-health.html>.

⁴⁷ One Big Beautiful Bill Act, Pub. L. No. 119–21, 139 Stat. 72 (2025).

⁴⁸ CANHR, *The Devastating Effects of the New Budget Bills on California’s Long Term Care System*, 37 THE CANHR ADVOC., no. 2, 2025, at 1, 1.

⁴⁹ *Id.* at 1.

⁵⁰ *Id.* at 4.

close in California.⁵¹ This means that although demand for nursing homes may increase, there will be fewer beds overall.⁵² Without community-based services to help people age in place, and without open nursing home beds to move to if they cannot, there will be nowhere else for older adults to go.

When looking at these numbers, it is crucial to see elder abuse as the public health crisis that it is.⁵³ In summary, when elder financial abuse is so prevalent, losses are in the billions, and housing is already in short supply, more must be done now to protect these resources.

III. Elder Financial Abuse – An Overview

Part III provides an overview of elder financial abuse and its significance when discussing an older adult's loss of real property.

A. Capacity

One of the perceived barriers to prosecuting or litigating elder financial abuse is that the client or victim may not be a reliable witness due to a lack of capacity to testify or recall the underlying events or facts. While these are valid concerns, there is an element of bias. The bias about capacity in older adults likely stems from a belief that all older adults have diminished capacity.⁵⁴ This bias may be rooted in the prevalence of Alzheimer's disease or other dementia-related illnesses that affect older adults. In the United States, about one in nine individuals age 65 and older has Alzheimer's dementia, and the percentage of people living with Alzheimer's dementia increases with age.⁵⁵ Older adults may have memory issues, cognitive decline, or experience other health issues that contribute to their capacity.⁵⁶ This should not, however, be viewed as a barrier to legal remedies.

i. Presumption of Capacity

Whether someone demonstrates capacity can be complex because capacity can be variable by task and context.⁵⁷ California law creates a rebuttable presumption that every person has the capacity to "make decisions and to be responsible for their acts or decisions."⁵⁸ This presumption can be rebutted with evidence of a deficit in alertness and attention, information processing, thought processes, and ability to modulate mood and affect,⁵⁹ but a diagnosis of a mental or physical disorder alone is not enough to prove incapacity.⁶⁰ The deficit must significantly impair the person's ability to understand and appreciate the consequences of the act or decision in question.⁶¹ When determining a party's capacity, the court will consider the frequency, severity, and duration of periods of impairment.⁶²

⁵¹ *Id.*

⁵² *Id.*

⁵³ Adams & Robertson, *supra* note 24.

⁵⁴ Arabelle Malinis, *Protecting an Older Adult's Estate Plan from Capacity Challenges*, 36 CANHR L. NETWORK NEWS, no. 2, 2025, at 1, 1.

⁵⁵ ALZHEIMER'S ASS'N, 2025 ALZHEIMER'S DISEASE FACTS AND FIGURES 29 (2025) (citations omitted) (stating 33.4% of individuals over eighty-five years old have Alzheimer's dementia).

⁵⁶ *See id.* at 5.

⁵⁷ Lori Mars et al., *Balancing Protection and Autonomy: A Person-Centered Approach to Older Adult Guardianship Adjudication*, 16 J. AGING L. & POL'Y 74, 76 (2025).

⁵⁸ CAL. PROB. CODE § 810(a) (West 2026).

⁵⁹ *Id.* § 811(b).

⁶⁰ *Id.* § 811(d); *see* AM. BAR ASS'N COMM'N L. & AGING ET AL., JUDICIAL DETERMINATION OF CAPACITY OF OLDER ADULTS IN GUARDIANSHIP PROCEEDINGS: A HANDBOOK FOR JUDGES 11–13 (2006).

⁶¹ CAL. PROB. CODE § 811(b) (West 2026).

⁶² *Id.* § 811(c).

ii. Representing Older Adults

The starting point in representing older adults is determining if a client has decisional capacity to work with an attorney to prosecute their claim. An attorney is not required to conduct standardized psychological and neurological testing to determine capacity.⁶³ When working with older adults, a determination should be made as to the best time of day to speak with them to ensure or enhance capacity. This assessment may depend on their medication, sleep schedule, or periods of alertness.

The American Bar Association has established that if an attorney is representing a client with diminished capacity, the attorney should make every effort to maintain a normal attorney-client relationship.⁶⁴ The Rules of Professional Conduct in California have not adopted the model rule.

iii. Capacity to Execute a Deed

Relevant to this Article is the capacity needed to effectuate a change in title to real property. In California, the capacity to execute a deed is similar to testamentary capacity.⁶⁵ Essentially, the grantor would need to demonstrate that they understood the nature of the act, be aware of their situation and property, and appreciate the relationships affected by the transaction.⁶⁶

There may be many instances where an older adult lacked capacity at the time of signing a significant document, like a deed. To unwind the transaction, the plaintiff would need to establish evidence of their incapacity at the time of signing.⁶⁷ But the reality is that the loss of significant money or real property does not happen merely to those older adults who present with diminished or no capacity. Many older adults come to rely on the statements and promises of those they trust in agreeing to sign over property. This theory of abuse is defined as undue influence, which will be discussed in more detail below.

B. Civil Statutes for Elder Abuse and Theories of Recovery

Section 15600 of the California Welfare & Institutions Code, or the Elder Abuse and Dependent Adult Civil Protection Act (“EADACPA”), was enacted in 1982.⁶⁸ The legislature’s intent in creating the statute was clear; it recognized the need for a new statutory cause of action for elder abuse.⁶⁹ In its creation, the California legislature recognized the needs of elder and dependent adults who are susceptible to abuse at the hands of caregivers and family members.⁷⁰ The EADACPA also recognized that few elder abuse cases were being adjudicated due to court delays, problems with proof, and little incentive to prosecute.⁷¹ As a result of this finding, the legislature created incentives for the private bar to litigate elder abuse cases by enacting an attorney fee statute and options for treble damages.⁷²

The EADACPA also established requirements and procedures for mandatory and nonmandatory reporting of elder abuse crimes.⁷³ While the EADACPA provides a remedial framework for physical and psychological abuse, neglect, and self-neglect, this Article focuses on the financial elder abuse definitions.

⁶³ GLAZIER ET AL., *supra* note 25, at 12.

⁶⁴ MODEL RULES OF PRO. CONDUCT r. 1.14 (AM. BAR ASS’N 2002); *see* David R. Katner, “Normal,” 33 S. CAL. REV. L. & SOC. JUST. 427, 427–28 (2024).

⁶⁵ *Hughes v. Grandy*, 177 P.2d 939, 944 (Cal. 1st Ct. App. 1947); *Hemenway v. Abbott*, 97 P. 190, 195 (Cal. 3d Ct. App. 1908).

⁶⁶ CAL. PROB. CODE § 6100.5(a)(1) (West 2026); *see also Hughes*, 177 P.2d at 945.

⁶⁷ *Hughes*, 177 P.2d at 944.

⁶⁸ CAL. WELF. & INST. CODE §§ 15600–15675 (West 2026).

⁶⁹ *Id.* § 15600(g).

⁷⁰ *Id.* § 15600(d).

⁷¹ *Id.* § 15600(h).

⁷² *See id.* §§ 15600(j), 15657.

⁷³ *See id.* § 15630.

C. Financial Elder Abuse

Under EADACPA, financial abuse occurs when someone takes or misuses another person's money or property for the benefit of someone other than that person.⁷⁴ Neighbors, caregivers, professionals, and even family or friends may take money without permission, fail to repay money they owe, charge too much for services, or not do something they were paid to do.⁷⁵ Financial abuse is broadly defined and occurs when a person or an entity takes, secretes, appropriates, obtains, or retains real or personal property of an elder or a dependent adult, for a wrongful use, with intent to defraud, or both.⁷⁶ A taking occurs when an elder or dependent adult is deprived of a property right, even if the property is held by the elder or dependent adult's representative.⁷⁷

Older adults are more susceptible to financial abuse for a variety of reasons. Many older adults experience isolation and loneliness,⁷⁸ which causes them to be vulnerable to abuse. Other older adults have concerns about physical mobility and may rely on others to assist them, even if those relationships are potentially harmful. Deficits in cognitive ability and mental acuity may play a role in an older adult agreeing to something they may not truly understand.⁷⁹ Some older adults agree to things that might not be in their best interest because they are worried about paying bills, and the fear of becoming a financial burden to their family members leads them to make financial decisions they otherwise might not make.⁸⁰

Elder financial abuse can take many forms. There might be inappropriate bank activity where an abuser uses the client's funds to pay for their own groceries or restaurant dinners.⁸¹ Financial abuse can also take the form of a family member paying off their own debts using the client's money.⁸² Elder financial abuse also occurs where documents are signed without the requisite capacity, including wills, trusts, or powers of attorney.⁸³ Of importance to this Article is the elder financial abuse that occurs when an older adult is convinced to give away their interest in real property. For example, an older adult might take their name off property and give it to a family member without payment or other consideration.⁸⁴

In alleging elder financial abuse as a cause of action, complaints can be filed in civil or probate court depending on the facts of a case.⁸⁵ If it is proven by a preponderance of the evidence that a defendant is liable for financial elder abuse, the court is directed to award reasonable attorney's fees and costs, including the reasonable cost of a conservator.⁸⁶ Increased punitive damages are also available if it has been demonstrated by clear and convincing evidence that a defendant has committed elder abuse with recklessness, oppression, fraud, or malice in the commission of the abuse.⁸⁷ In the event of the elder's death, a claim can survive for the decedent's personal

⁷⁴ *Id.* § 15610.30(a).

⁷⁵ *See id.* § 15610.30(a)–(c).

⁷⁶ *Id.* § 15610.30(a)(1).

⁷⁷ *See id.* § 15610.30(c).

⁷⁸ *See* Golbert, *supra* note 20, at 59–60 (discussing exploiters' attempts to prey on the "most vulnerable and isolated").

⁷⁹ *See id.*

⁸⁰ *See, e.g.,* CONSUMER FIN. PROT. BUREAU, *supra* note 31, at 23.

⁸¹ The EHL Clinic litigated a case where the client's family member had used her card to support their own lifestyle, often covering shopping at expensive stores and dinners out using the client's card.

⁸² The EHL Clinic also litigated a case where the client's family member claimed that client gave them permission to pay over \$50,000 in personal credit card debt using client's funds. Client had no idea that the funds were being directed from their account to pay off debt.

⁸³ *See Elder Financial Abuse*, CANHR, <https://canhr.org/elder-financial-abuse/> (last updated Dec. 18, 2024); *see also supra* Part III(A) (discussing capacity).

⁸⁴ *Elder Financial Abuse*, *supra* note 83. Additionally, several other EHL Clinic clients in recent years also experienced loss of housing due to their trust of a family member's promises. One client signed over their one-third interest in the property to the other property holders when convinced their name had to be removed to qualify for a refinance; another client believed the family home was being rented out, only to realize it was sold and the proceeds were directed to the purchase of a family member's home. Another client was convinced by a family member that if she did not sign over the residence, it would be lost to medical bill collectors.

⁸⁵ CAL. WELF. & INST. CODE § 15610.30 (West 2026); CAL. PROB. CODE § 859 (West 2026).

⁸⁶ CAL. WELF. & INST. CODE § 15657.5(a) (West 2026).

⁸⁷ *Id.* § 15657.5(b).

representative or successor in interest, who may recover exemplary damages the decedent would have been entitled to recover had he or she lived.⁸⁸

D. Other Related Causes of Action

Financial elder abuse is one cause of action that can be brought in a civil complaint, but several other causes of action may also be pled depending on the facts. Since elder financial abuse can touch many different areas of law, breach of contract, tort, or other property claims may also be applicable.

The Article focuses on the other property-related claims that would likely need to be addressed in a complaint alleging elder financial abuse where the older adult has lost their home. Fraud and misrepresentation are often present in these financial abuse claims as well.⁸⁹ Fraud in the execution or material alteration of a deed, such as misrepresenting the terms or purpose of the deed, can give rise to a cause of action.⁹⁰

i. Rescission of a Deed

Deed rescission restores the parties to a deed as if the deed had never been signed and recorded. In order to rescind a deed, a party must provide: 1) notice to the opposing party of the intent to rescind, and 2) restoration of anything value received.⁹¹ If the other party fails to accept the rescission, then a complaint must be filed, and the court will determine if the rescission is justified.⁹² A party may seek to rescind a deed executed under fraudulent circumstances or because of undue influence.⁹³ Rescission of a deed is retroactive and acts as if the event did not occur. Cancellation of a deed, however, cancels future performance.

ii. Cancellation of Deed

Actions to cancel a deed may arise out of fraud, undue influence, or lack of capacity.⁹⁴ A deed procured through undue influence or fraud may be voided so that it never existed, effectively undoing the transfer.⁹⁵ Plaintiffs often argue that a deed procured through fraud or undue influence should be voided and ask the court to order its cancellation. A California court with personal jurisdiction over the defendant has jurisdiction to find a deed to real property “void ab initio,” or void at the begging, and order the defendant to execute a re-conveyance.⁹⁶ If a party fails to execute a re-conveyance, the court has jurisdiction to order the court clerk to execute it.⁹⁷ This is a significant help to older adults who were unduly influenced into signing over a deed, but it is a remedy that must be sought through the civil process.

⁸⁸ *Id.* §§ 15657(b), 15657.3(c)–(d) (cause of action passes to the personal representative or successor in interest); CAL. CIV. PRO. CODE § 377.34(a) (West 2026); *County of Los Angeles v. Superior Court*, 981 P.2d 68, 75–76 (Cal. 1999).

⁸⁹ See David Burnes et al., *Prevalence of Financial Fraud and Scams Among Older Adults in the United States: A Systematic Review and Meta-Analysis*, 107 AM. J. PUB. HEALTH e13, e19–e21 (2017) (“[B]etween 5.4% (complete overlap of [elder fraud] and financial abuse victims) and 9.9% (no overlap of [elder fraud] and financial abuse victims) of community-dwelling, cognitively intact older adults experience some form of financial exploitation each year.”).

⁹⁰ CAL. BUS. & PROF. CODE § 7161(c) (West 2026).

⁹¹ CAL. CIV. CODE § 1691 (West 2026).

⁹² *Wong v. Stoler*, 188 Cal. Rptr. 3d 674, 681 (Cal. 1st Ct. App. 2015).

⁹³ See *More v. More*, 65 P. 1044, 1046 (Cal. 1901); *Walsh v. Majors*, 49 P.2d 598, 604–05 (Cal. 1935).

⁹⁴ CAL. CIV. CODE § 3412 (West 2026).

⁹⁵ *Erickson v. Bohne*, 279 P.2d 619, 620–21 (Cal. 3d Ct. App. 1955); *Webb v. Saunders*, 191 P.2d 43, 46–47 (Cal. 4th Ct. App. 1947).

⁹⁶ See *Chamberlain v. Wakefield*, 213 P.2d 62, 69 (Cal. 2d Ct. App. 1949).

⁹⁷ *Id.*

iii. Constructive Trust

Under California law, a constructive trust is an equitable remedy to prevent unjust enrichment and to compel the transfer of property from a person who is wrongfully holding it back to the rightful owner.⁹⁸ To be successful in a request for a constructive trust, the plaintiff must show that: 1) there was a valid property or property interest, 2) the plaintiff has a right to that interests, and 3) the defendant wrongfully acquired the property interest.⁹⁹

iv. Quiet Title Actions

A party may bring a quiet title action to resolve disputes over ownership or title to real property. This can include claims to cancel a deed based on fraud, undue influence, or lack of consideration.¹⁰⁰ Quiet title actions in California allow a property owner to bring a claim to determine any adverse claim to ownership.¹⁰¹ In these actions, the court is required to have evidence of the plaintiff's claim to title before default judgment can be entered.¹⁰²

E. Undue Influence

Undue influence is a common form of elder financial abuse.¹⁰³ Undue influence is insidious in nature as it often occurs behind closed doors.¹⁰⁴ It was not until 2014 the definition of undue influence was adopted in probate matters and California's elder abuse statutes.¹⁰⁵ As a cause of action, undue influence is complex and challenging to prove because it often involves the piecing together of suspicious actions, requiring an in-depth knowledge of the law and facts in order to be successful.¹⁰⁶

Undue influence, as defined in the EADACPA, means "excessive persuasion that causes [an elder] to act or refrain from acting by overcoming that person's free will and results in inequity."¹⁰⁷ In elder financial abuse cases that involve undue influence, courts will look to the factors enumerated in the statute: (1) the vulnerability of the victim; (2) the influencer's apparent authority; (3) the actions or tactics used by the influencer; and (4) the equity of the result.¹⁰⁸ The fact that an older adult may be influenced by a loved one is not enough to indicate *undue* influence. Instead, as the California Supreme Court has stated, "[u]ndue influence is pressure brought to bear directly on the testamentary act, sufficient to overcome the testator's free will, amounting in effect to coercion destroying the testator's free agency."¹⁰⁹

⁹⁸ Taylor v. Fields, 224 Cal. Rptr. 186, 195 (Cal. 2d Ct. App. 1986); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 58 Cal. Rptr. 3d 516, 527 (Cal. 2d Ct. App. 2007); Am. Master Lease LLC v. Idanta Partners, Ltd., 171 Cal. Rptr. 3d 548, 574–75 (Cal. 2d Ct. App. 2014).

⁹⁹ Taylor v. Polackwich, 194 Cal. Rptr. 8, 13 (Cal. 2d Ct. App. 1983); Communist Party of the U.S. v. 522 Valencia, Inc., 41 Cal. Rptr. 2d 618, 623–24 (Cal. 1st Ct. App. 1995); Kraus v. Willow Park Pub. Golf Course, 144 Cal. Rptr. 744, 756 (Cal. 1st Ct. App. 1977).

¹⁰⁰ Hunter v. Hunter, 130 P.2d 704, 704 (Cal. 1942); Lewis v. Marshall, 265 P. 862, 862 (Cal. 1st Ct. App. 1928); see Samuels v. Superior Ct. of L.A. Cnty., 81 Cal. Rptr. 216, 218 (Cal. 2d Ct. App. 1969).

¹⁰¹ CAL. CIV. PROC. CODE §§ 760.010–764.080 (West 2026).

¹⁰² *Id.* § 764.010.

¹⁰³ Mars et al., *supra* note 57; see also David Horton & Reid Kress Weisboard, *The New Undue Influence*, 2024 UTAH L. REV. 231, 234.

¹⁰⁴ Mary Joy Quinn, *Defining Undue Influence: A Look at the Issue and at California's Approach*, 35 BIFOCAL 72, 72 (2014).

¹⁰⁵ *Id.* at 73–74; see CAL. PROB. CODE § 86 (West 2026) (giving undue influence the "same meaning" found in CAL. WELF. & INST. CODE § 15610.70 (West 2026)).

¹⁰⁶ GLAZIER ET AL., *supra* note 25, at 121.

¹⁰⁷ CAL. WELF. & INST. CODE § 15610.70(a) (West 2026).

¹⁰⁸ *Id.*

¹⁰⁹ Rice v. Clark, 47 P.3d 300, 304 (Cal. 2002). Although *Rice* references undue influence in the creation of a will, its ruling still affects any document obtained through undue influence.

Evidence of vulnerability may include incapacity, illness, status as a fiduciary, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency and whether the influencer knew or should have known of the alleged victim's vulnerability.¹¹⁰ For older adults, mere age may not indicate vulnerability. All factors regarding vulnerability may be explored under the statute, so the inclusion of "education" as a factor could lead exploration into the older adult's literacy skills, language abilities, or communication style.¹¹¹ Since the risk factors are not exhaustive, further examination could be made into a victim's health, what diagnoses they may have, how medication may affect them, and when their medication may cause side effects that limit their ability to make decisions.¹¹²

In determining factor number two, the influencer's apparent authority may include status as a fiduciary, family member, care provider, or other listed qualifications.¹¹³ Simply being a family member of an older adult involved in a financial transaction alone does not mean that undue influence occurs; rather it is the dynamic between the victim and the perpetrator that may determine if the victim could have acted under their own free will.¹¹⁴ In interviewing clients with regard to undue influence, the EHL Clinic examines the relationship between the parties, whether the alleged perpetrator was a caregiver, and inquiries about the level of trust and confidence shared between the parties.

In examining the actions of the influencer in prong three, the EHL Clinic looks for certain actions or tactics including control over the victim's necessities of life, medication, interactions with others, access to information, or amount of sleep.¹¹⁵ They also examine the use of affection, intimidation, or coercion. In this element, the EHL Clinic continues to dig deep in exploring the dynamic between the perpetrator and the victim. It is important to also scrutinize who initiated changes in personal or property rights, secrecy or expediency in effectuating those changes, and if these changes occurred at inappropriate times or places.¹¹⁶ Often times in interviews, the EHL Clinic spends a lot of time establishing the facts that led to a property transfer, and every detail matters. They routinely inquire as to: Whose idea was it to make the transfer? Who drafted the deed? Who else was present? Who selected and paid for the notary? Did the older adult read the document? Were they asked to sign as opposed to "told to sign"? What specifically was said during the signing? Did they get a copy after? What did they say would happen next? Every aspect of the transaction may be critical in helping to prove undue influence.

Lastly, as to prong number four, the EHL Clinic looks to the equity of the result. This may include the economic consequences to the victim, any divergence from the victim's prior intent or conduct, and the relationship of the value conveyed to the value of any services or payments received.¹¹⁷ Undue influence is a potential avenue to prove that elder financial abuse has occurred.¹¹⁸ It can be used to bolster the financial elder abuse claim, or it can be a cause of action on its own.

Under California Law, when a gift is procured through a testamentary document and certain elements are met, a presumption that the gift was procured by undue influence arises. A presumption of undue influence is triggered when three elements are met: (1) a confidential relationship exists where the person exerting influence had a special relationship of trust with the testator; (2) there was active participation in procurement where the alleged perpetrator was involved in preparing or executing a testamentary document, like a will or trust; and (3) the alleged perpetrator received a benefit under the instrument that appears to be excessive or unusual given the circumstances.¹¹⁹ When these three elements are met, there becomes a presumption of undue influence where the burden shifts to the person benefiting from the instrument to rebut the presumption that it was procured with

¹¹⁰ CAL. WELF. & INST. CODE § 15610.70 (West 2026) ("Evidence of an inequitable result, without more, is not sufficient to prove undue influence.").

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* § 15610.70(a).

¹¹⁴ JUDICIAL COUNCIL CAL., CIV. JURY INSTRS. no. 3117 (2026).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *See* CAL. WELF. & INST. CODE § 15610.30 (West 2026); JUDICIAL COUNCIL CAL., CIV. JURY INSTRS. no. 3100 (2026).

¹¹⁹ *Rice v. Clark*, 47 P.3d 300, 304 (Cal. 2002).

undue influence.¹²⁰ While this burden shifting is typically seen more in litigation surrounding testamentary documents,¹²¹ case law supports that it can also be applied to inter-vivos gifts like deeds.¹²²

Once a civil litigation matter is filed, it can take years to resolve.¹²³ Although California law sets preferred timelines for the disposition of civil cases, these serve more as administrative goals.¹²⁴ While trial courts aim to have unlimited civil cases adjudicated within 24 months,¹²⁵ this timeline is often extended due to the complexity of cases and the potential for delays when those cases involve discovery.

F. Default Proceedings

If a defendant fails to respond to a complaint, the process of getting a judgment isn't necessarily easier to navigate. Collection on a default judgment can take significant time and resources. Pursuing judgment after default is also complicated if the underlying petition is requesting the return of real property.

California recognizes three different types of default proceedings.¹²⁶ In an elder abuse action, where the plaintiff is seeking the return of real property, the regular clerk-approved judgment would not be appropriate. Instead, the plaintiff would need to seek a court-approved default judgment, where the court would then need to hear evidence of the plaintiff's case to render judgment against a non-answering defendant.¹²⁷

If a defendant has failed to respond to an action and a plaintiff is pursuing the return of real property, then default must be entered against the defendant before the plaintiff can take further action. To have real property returned during the default judgment process, the plaintiff must schedule a "prove-up" hearing where the facts of their case are confirmed by a judge.¹²⁸ The plaintiff must be able to demonstrate that the deed was procured fraudulently and seek cancellation. If judgment is awarded, then the plaintiff must file the judgment with the county recorder's office to clear the title to the property.¹²⁹

This process becomes even more challenging if the defendant refuses to vacate the property. The plaintiff may then be required to file an eviction petition to regain possession.¹³⁰ Even with a default judgment, the time, energy, money, and expertise to file the correct documents for the return of real property are significant.

G. Elder Abuse Restraining Orders

Approximately 16 states have an elder abuse restraining order statutes, which are typically found in the laws governing Adult Protective Services.¹³¹ California's EARO statute was developed in 1982 as a component of the EADACPA.¹³²

The EADACPA provisions apply both to elders and dependent adults of any age. The EADACPA defines an "elder" as any person residing in California who is 65 years of age or older.¹³³ A "dependent adult" is a

¹²⁰ *Id.* at 305.

¹²¹ See CAL. PROB. CODE § 21380 (West 2026).

¹²² Sparks v. Mendoza, 189 P.2d 43, 45–46 (Cal. 2d Ct. App. 1948).

¹²³ Taylor Dalton, *The Trajectory of Civil Cases in Federal Court*, ABOVE THE LAW (May 28, 2021, 3:15 PM), <https://abovethelaw.com/2021/05/the-trajectory-of-civil-cases-in-federal-court/> (discussing federal case data indicating tort and property cases often take longer than 365 days).

¹²⁴ CAL. GOV'T. CODE § 68603 (West 2026).

¹²⁵ CAL. R. CT. 2.2(f)(1); see also JUDICIARY COUNCIL CAL., STATEWIDE CASELOAD TRENDS: 2015–16 THROUGH 2024–2025, at 83 (2026).

¹²⁶ CAL. CIV. PROC. CODE § 585(a)–(c) (West 2026).

¹²⁷ See CAL. CIV. PROC. CODE §§ 585, 764.010 (West 2026).

¹²⁸ CAL. R. CT. 3.1800(a).

¹²⁹ See CAL. CIV. PROC. CODE § 764.030 (West 2026).

¹³⁰ See generally *After the Eviction Trial Decision*, JUD. BRANCH CAL., <https://selfhelp.courts.ca.gov/eviction-landlord/after-trial> (last visited Apr. 29, 2026) (outlining the lengthy process necessary to evict someone despite a court's decision).

¹³¹ Elder Justice Initiative, *Implementing the APS-Initiated Elder Abuse Restraining Order (AIRO)*, U.S. DEP'T JUSTICE (Oct. 21, 2021), <https://www.justice.gov/elderjustice/video/implementing-aps-initiated-elder-abuse-restraining-order-airo>.

¹³² CAL. WELF. & INST. CODE § 15657.03 (West 2026).

¹³³ *Id.* § 15610.27.

California resident between the ages of 18 and 64 whose physical or mental limitations restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons with physical or developmental disabilities or whose physical or mental abilities have diminished because of age.¹³⁴ EAROs require proof by preponderance of the evidence of a past act or acts of elder abuse.¹³⁵

This type of restraining order recognizes that elder and dependent adults have a heightened vulnerability to abuse. In California, EAROs can be brought in cases where financial abuse is the only type of abuse present in the facts.¹³⁶ The hearings are held on an expedited basis and, upon the acceptance of a filing, must be heard within 21–25 days of the request.¹³⁷ Many of the individuals who seek protective orders are self-litigants.¹³⁸ The elder abuse restraining order matters may be heard in conjunction with another domestic violence or civil harassment protective order calendar, depending on the court.¹³⁹

H. Criminal Elder Abuse Statutes

There are several criminal statutes in California that address elder abuse. Elder financial abuse by a non-caretaker and caretaker are addressed in different prongs.¹⁴⁰ Violations of these code sections can be brought as misdemeanor or felony charges.¹⁴¹ A felony charge occurs where the defendant has taken more than \$100,000 from the victim.¹⁴²

If a defendant is found guilty and the victim has suffered economic loss, the court is required to order the defendant to pay restitution.¹⁴³ The amount of restitution ordered can be a full or partial repayment of the value of property that was taken, medical bills, mental health counseling bills, lost wages or profits, attorneys fees, interest, and more.¹⁴⁴ When a restitution order is granted, the defendant is required to file a disclosure form that provides information on their assets.¹⁴⁵ While some counties aid in collecting restitution, a victim may also pursue all civil remedies in enforcing the restitution on their own.¹⁴⁶ While restitution laws provide a framework for recovery, the law assumes there is actually money or assets to recover from the defendant. In many cases, by the time a restitution order is granted, the money is gone.

The EADACPA itself recognizes that criminal prosecution regarding elder abuse is rare.¹⁴⁷ Unfortunately, law enforcement does not have the ability to follow up on the reported financial abuse that occurs, meaning that

¹³⁴ *Id.* § 15610.23.

¹³⁵ *Bookout v. Nielsen*, 67 Cal. Rptr. 3d 2, 6 (Cal. 4th Ct. App. 2007). Note, CAL. WELF. & INST. CODE § 15657.03(c) (West 2026) does not specify an evidentiary standard, and preponderance is sufficient pursuant to Section 115 of the California Evidence Code. *Id.*

¹³⁶ JUDICIAL COUNCIL CAL., EA-100, REQUEST FOR ELDER OR DEPENDENT ADULT ABUSE RESTRAINING ORDERS 3 (2026); CAL. WELF. & INST. CODE § 15857.03 (West 2026).

¹³⁷ CAL. WELF. & INST. CODE § 15657.03(f) (West 2026) (good cause must exist for the hearing to be scheduled up to twenty-five days after filing).

¹³⁸ TASK FORCE ON SELF-REPRESENTED LITIGANTS, JUDICIAL COUNCIL CAL., STATEWIDE ACTION PLAN FOR SERVING SELF-REPRESENTED LITIGANTS 11 (2004) (“[In] family law, petitioners were pro per at the time of filing an average of 67 percent.”).

¹³⁹ *See, e.g., Civil Harassment Restraining Orders*, SAN DIEGO CNTY. SUPERIOR CT., <https://www.sdcourt.ca.gov/sdcourt/civil2/civilrestrainingorder> (last visited Apr. 18, 2026) (grouping EARO with civil harassment, gun violence, and workplace violence filings); *Elder Abuse/Dependent Adult Restraining Orders Forms*, SANTA CLARA CNTY. SUPERIOR CT., <https://santaclara.courts.ca.gov/self-help/complete-forms-home/self-help-forms-and-instructions/restraining-order-forms/elder-abusedependent-adult-restraining-order-forms> (last visited Apr. 18, 2026) (filed at the Civil Division Calendar Office); *Elder and Dependent Adult Abuse*, ORANGE CNTY. SUPERIOR CT., <https://www.occourts.org/divisions/probate/elder-and-dependent-adult-abuse> (last visited Apr. 18, 2026) (separate elder-abuse ex parte time on the same general protective-order framework). The unified calendaring practice reflects the shared procedural architecture across California law. *See* CAL. CIV. PROC. CODE § 527.6 (West 2026) (civil harassment); CAL. FAM. CODE § 6300 et seq. (West 2026) (domestic violence); CAL. WELF. & INST. CODE § 15657.03 (West 2026) (elder abuse); *see also* CAL. R. CT. 10.464.

¹⁴⁰ CAL. PENAL CODE § 368(d)(1)–(e)(1) (West 2026).

¹⁴¹ *See id.* §§ 368(c), 186.12(a)(1).

¹⁴² *Id.* § 186.12(a)(1).

¹⁴³ *Id.* § 1202.4(a)(2); *see also* CAL. CONST. art. I, § 28(b)(13).

¹⁴⁴ CAL. PENAL CODE § 1202.4(f)(3)(A)–(L) (West 2026).

¹⁴⁵ *Id.* § 1202.4(f)(5).

¹⁴⁶ *Id.* § 1214(b).

¹⁴⁷ CAL. WELF. & INST. CODE § 15600(h) (West 2026).

any criminal culpability for potential defendants is extremely behind where it should be.¹⁴⁸ Victims of financial elder abuse have a difficult time seeking any protections under the criminal justice system. In many instances, when an older adult seeks assistance from law enforcement, victims are told “it’s a civil matter.”¹⁴⁹

Data also suggests that prosecuting elder financial abuse cases can be arduous in a variety of ways.¹⁵⁰ Evidence and witness testimony may be challenging where a victim lacks capacity to testify.¹⁵¹ There may also be issues with time and resources, where forensic accountants or experts may be needed to demonstrate the complicated web of financial abuse.¹⁵² Lastly, the length of time and taxing nature of the court process may be too burdensome on the victim or others.¹⁵³ While there is evidence to suggest that prosecutions of elder financial abuses cases have increased in the last 20-plus years, the progress is “measured in inches, rather than yards.”¹⁵⁴

In reviewing data from Sacramento County alone, a 2024 Grand Jury report found that the county was lacking in any coordinated effort to address financial exploitation of older adults.¹⁵⁵ According to data collected by Adult Protective Services from 2019–2024, the agency investigated 11,391 cases of financial abuse.¹⁵⁶ This number represented 40% of their elder abuse investigations during this time.¹⁵⁷ Of the 11,391 cases that were investigated, 3,987 cases of elder financial abuse were confirmed.¹⁵⁸ From those cases, 1,678 were referred to law enforcement in Sacramento County.¹⁵⁹ Law enforcement only reported 123 cases to the district attorney’s office for potential prosecution, and 99 of those reported cases were prosecuted.¹⁶⁰ In the third largest county in California, only 3% of elder financial abuse cases were prosecuted.

Although the standards of proof are different for criminal versus civil matters, the fact remains that without the threat of criminal prosecution, elder financial abuse will continue to proliferate and cause significant issues for older Americans. If criminal prosecutions continue to lag, a larger burden of recovery is placed on self-litigants or those represented by civil attorneys to recover under civil complaints.

In *Newman v. Casey*, Gracia Bovis, aged 86 at the time, had signed over her home to her daughter, Marina Casey.¹⁶¹ In a February 2022 EARO request filed against her daughter, Ms. Bovis alleged that she was misled by her daughter and unknowingly signed her home over to her.¹⁶² Ms. Casey allegedly told her mother that if Ms. Bovis did not sign the home over to Ms. Casey, her property taxes would skyrocket due to Proposition 19.¹⁶³ Ms. Bovis was confused but relied on her daughter’s representations.¹⁶⁴

Ms. Casey brought her mother to an attorney’s office to sign the deed.¹⁶⁵ Ms. Bovis, testifying in court, shared that she continued to be confused by what was going on and did not realize the deed she signed was meant

¹⁴⁸ U.S. DEP’T JUST., *Elder Financial Exploitation and the Criminal Justice System* (March 5, 2024), <https://www.justice.gov/elderjustice/video/elder-financial-exploitation-and-criminal-justice-system>.

¹⁴⁹ Emily J. Miller, *The Power of Personal Protective Orders for Older and Vulnerable Adults*, 46 BIFOCAL 82, 84 (2025); BRENDA K. UEKERT ET AL., NAT’L CTR. STATE CTS., PROSECUTING ELDER ABUSE CASES: BASIC TOOLS & STRATEGIES 2 (2012); see also Andie MacNeil & David Burnes, *Bridging the Gap Between Homelessness in Older Adulthood and Elder Abuse: Considerations for an Age-Friendly Shelter System*, 34 J. AGING & SOC. POL’Y 391, 391–92 (2022).

¹⁵⁰ Rebecca C. Morgan et. al, *A View from the Bridge: A Brief Look at the Progression of Cases of Elder Financial Exploitation Prosecutions*, 25 ELDER L.J. 271, 312–14 (2018).

¹⁵¹ UEKERT ET AL., *supra* note 149.

¹⁵² Morgan et al., *supra* note 150, at 323 n.408.

¹⁵³ *Id.* at 313.

¹⁵⁴ *Id.* at 323.

¹⁵⁵ SACRAMENTO CNTY. GRAND JURY, GRAND JURY INVESTIGATIVE REPORT: NO EQUAL JUSTICE FOR VICTIMS OF ELDER FINANCIAL ABUSE 16 (2025).

¹⁵⁶ *Id.* at 8.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 9.

¹⁶¹ 317 Cal. Rptr. 3d 706, 709 (Cal. 1st Ct. App. 2024).

¹⁶² *Id.* at 710–11.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 712.

to convey her property to Ms. Casey during her lifetime.¹⁶⁶ After hearing her testimony, the court determined that Ms. Bovis had met her burden and awarded her a restraining order against her daughter.¹⁶⁷ The court further declared the deed “void ab initio” and ordered Ms. Casey both to return the property and stay away from the property.¹⁶⁸

On appeal, the appellate court held that the trial court exceeded its authority in declaring the deed void ab initio and ordering Ms. Casey to stay away from the property, because such an order was not among the enumerated restraining orders in Section 15657.03(b)(5) of the Welfare and Institutions Code, and because Section 15657.03(b)(5)(B) did not allow the trial court to issue a restraining order excluding the record owner from the property.¹⁶⁹ The appellate court concluded that in some situations a restraining order alone may provide an elder a sufficient remedy, but in other cases the restraining order matter would need to be supplemented with a civil or probate action for elder abuse.¹⁷⁰

Although the appellate court reaffirmed that the evidence was sufficient to order a restraining order, they determined that the lower court did not have the authority under the statute to exclude Ms. Casey from the residence as she was the record title owner.¹⁷¹ Further, after a discussion regarding the history and statutory construction of the statute, the court held that ordering the deed void ab initio was not within the enumerated orders in Section 15657.03.¹⁷²

In Ms. Casey’s opening appellant brief, she indicated her mother had passed away.¹⁷³ While the appellate court discussed her death in terms of mootness,¹⁷⁴ the petitioner’s death shortly after filing for a restraining order highlights the need for older adults to receive swift remedies to their legal issues. Her death came less than a year after the filing of her restraining order matter. Had the lower court in Ms. Bovis’s restraining order matter not taken action to return the home to her name, Ms. Bovis likely would not have seen the return of her property to her name prior to death. If she had been forced to file a contemporaneous civil action, it is unlikely her case would have even moved out of the onerous discovery phase and would not have been set for trial for several years.

On a human level, the stress and toll this litigation must have caused Ms. Bovis during the last year of her life is deeply troubling given this Article’s previous discussion of the effect abuse has on long-term health.¹⁷⁵ Embroiled in a fight with one’s child over their own property and spending tens of thousands of dollars on attorney’s fees is not the ideal end-of-life scenario for anyone.

The *Newman* case effectively determined that the only way to void the deed transfer of real property that was procured through undue influence would be through the filing of a separate civil lawsuit.¹⁷⁶ Unfortunately, since there is little published case law on restraining orders, the *Newman* case has become one of the most cited cases regarding elder law in California.

IV. Barriers to Representation and Recovery

The previous Parts discussed the scope of financial abuse and the various laws currently in place to mitigate its effects. In reviewing the above, one might conclude that there already exists ample support under the law to course-correct financial abuse when it occurs. While this may appear to be true, the real question is how accessible these laws are to an older adult who has signed over their home. This Part explores why expansion of current elder abuse laws should be considered.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 713.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 717.

¹⁷⁰ *Id.* at 727.

¹⁷¹ *Id.* at 717.

¹⁷² *Id.* at 717–18 (discussing enumerated restraining orders under CAL. WELF. & INST. CODE § 15657.03(b)(5)(A)–(C) (West 2026)).

¹⁷³ *Id.* at 715.

¹⁷⁴ *Id.*

¹⁷⁵ See discussion *supra* Part I(B)–(C).

¹⁷⁶ *Newman v. Casey*, 99 Cal. Rptr. 3d 706, 726 (Cal. 1st Ct. App. 2024).

Of practical importance is the delay that occurs in a civil litigation matter. Ms. Bovis was assisted by attorneys in bringing her claims. Even so, her death came very soon after her daughter appealed the EARO orders. Ms. Bovis did not live long enough to have her home restored under a civil lawsuit. Regardless of cost or skill to adjudicate the matter on their own, any delay in a civil case may be detrimental for an older adult. The reason a home was likely taken in the first place is often due to the vulnerabilities of the older adult victim. Any delay in a civil case can set a case back months or years. When a civil lawsuit is filed, it can take considerable effort, time, and money to get to a judgment, but just because an older adult wins the case does not mean they are immediately paid that judgment. Often, victims need to take additional steps to enforce the judgment, leading to even more delays in recovery.¹⁷⁷

A. Costly Litigation

The court in *Newman* highlighted that the EADACPA provides incentives for the private bar to take on civil filings.¹⁷⁸ A civil action for elder financial abuse certainly could have restored title to Ms. Bovis, but the cost of financing that litigation would be tremendous and, for most Americans, simply not feasible even when considering the attorney's fee statutes provided.

i. Contingency Fees

Attorneys may represent elder abuse victims on a contingency fee basis.¹⁷⁹ But for an attorney to agree to representation, there needs to be a significant likelihood for recovery. These fee statutes are much more appealing to the private bar when the defendant is a skilled nursing facility, bank, or a larger entity with an insurance policy to defend it.¹⁸⁰ If the only asset of an older adult is the home they wish to recover, then how can attorneys in a contingency matter be paid? Without a fund of money to go after, it is unlikely attorneys will be willing to take the risk on a contingency fee basis.

ii. Cost of Litigation

The average cost of litigation for a civil lawsuit varies widely based on jurisdiction, but using Ms. Bovis's locale of San Mateo County—the most expensive county to live in California¹⁸¹—the anticipated cost of hiring a private attorney would have been significant. It is likely that the hourly rate for representation would be at least several hundred dollars.¹⁸²

Ms. Bovis was not a person of limited means. In review of the probate court filings conducted after her death, a final accounting revealed that her estate was valued over \$3 million.¹⁸³ Much of her estate consisted of the residence at the heart of her EARO dispute. Following her death, her home was sold for \$2.6 million.¹⁸⁴ Due to the underlying appeals case, a probate matter was filed. In review of the filings concluding the accounting of

¹⁷⁷ CONSUMER FIN. PROT. BUREAU, *supra* note 31, at 36.

¹⁷⁸ See *Newman*, 317 Cal. Rptr. 3d at 726–27.

¹⁷⁹ See CAL. R. PRO. CONDUCT r. 1.5(c) (stating rule for prohibited contingent fees); CAL. WELF. & INST. CODE § 15657.5(a) (West 2026) (stating rule for attorney's fees awarded based on claims for financial abuse of an elder or dependent adult).

¹⁸⁰ Or rather, an insurance policy with the limits to be able to pay any settlement or judgment.

¹⁸¹ Marc Sternfield, *You Now Need \$2 Million to Buy a Home in These California Counties*, KTLA 5, <https://ktla.com/news/california/you-need-2-million-to-buy-a-home-in-these-california-counties/> (last updated May 23, 2024, 8:21 PM PDT).

¹⁸² Joan Feldman, *Small Firm Hourly Rates by State and Practice Area*, ATT'YS AT WORK (Oct. 23, 2024), <https://www.attorneyatwork.com/solo-and-small-firm-lawyer-hourly-rates/> (discussing hourly rates pulled from CLIO.com, a cloud-based case management system used by attorneys which releases a yearly trends report providing insight on average hourly fees and other data items).

¹⁸³ Ex Parte Petition for (1) Approval and Settlement of First Account and (2) Ratification of Acts of Trustee with Consents and Waivers of Notice at 6, *In re Bovis*, No. 23-PRO-00362 (Cal. Sup. Ct. Jan. 6, 2025).

¹⁸⁴ *Id.* at 8.

her estate, Ms. Bovis paid significant amounts to various attorney offices. Records show that attorney's fees of \$68,876.35 were paid to her previous attorneys and the EARO appellant attorneys.¹⁸⁵ Even for someone with means to pay, the cost of hiring a private attorney was significant.¹⁸⁶

The reality is that most Americans would not have been in Ms. Bovis' position to afford these attorney's fees. In 2022, the year that Ms. Bovis filed her restraining order action, the average social security retirement benefit was \$1,638 for women.¹⁸⁷ Nearly 55% of social security earners that year were women.¹⁸⁸ As of 2022, the average median income of older people was \$29,740 (\$37,430 for men and \$24,630 for women).¹⁸⁹ It was predicted that over half of Baby Boomers turning 65 between 2024 and 2025 have \$250,000 or less in assets.¹⁹⁰ With this level of income or assets, there is simply not enough money to pay an attorney for representation.

B. Access to Legal Aid

If an older adult cannot afford an attorney, would a legal aid agency be able to take on these types of matters? This is highly unlikely as well. The Legal Services Corporation ("LSC"), founded in 1974, remains the largest national funder of civil legal aid for low-income Americans.¹⁹¹ In order to qualify for services from an LSC office, a potential client's income must be below 125% of the federal poverty line.¹⁹² In 2026, that annual income is below \$19,950 for an individual, \$27,050 for a family of two, and \$41,250 for a family of four.¹⁹³ LSC funds 800 offices across the country.¹⁹⁴ In 2023, LSC served 163,858 clients over the age of 60.¹⁹⁵ This number is relatively small compared to the report's findings that 51 million Americans are eligible for services through LSC.¹⁹⁶

According to a 2024 Justice Gap Survey conducted in California, 72–75% of households in every income group experienced at least one civil legal issue in the past year.¹⁹⁷ Data indicates that civil legal needs impact mental and emotional health, financial situation, physical health, and safety of lower-income households more so than other income households.¹⁹⁸ The Justice Gap Survey reports that organizations that focus on civil legal needs are only able to provide legal representation to 20% of eligible persons.¹⁹⁹ For one in five Californians, even if they have a legal issue that could be resolved by an attorney, they are told the case is not financially worthwhile for the attorney to pursue.²⁰⁰ For older adults who are looking to have a home returned to their possession, an attorney is not likely to see the financial upsides to representation.

The LSC held a panel presentation in 2023 on the importance of civil legal aid. Chief Judge of the New York Court of Appeals, Rowan Wilson, described at the forum how—despite public perception—“[t]here are some civil matters that have a more catastrophic real-world consequence than some criminal matters.”²⁰¹ Judge

¹⁸⁵ *Id.* at 9.

¹⁸⁶ Feldman, *supra* note 182 (calculating 2024 hourly rates for a California attorney at a small or solo law firm, which average from \$340 to \$391 per hour).

¹⁸⁷ SOC. SEC. ADMIN., NO. 13-11785, FAST FACTS & FIGURES ABOUT SOCIAL SECURITY, 2023, at 15 (2023).

¹⁸⁸ *Id.* at 14.

¹⁸⁹ ADMIN. CMTY. LIVING, *supra* note 36, at 11.

¹⁹⁰ Roberts & Liipfert, *supra* note 7, at 61.

¹⁹¹ *Who We Are*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are> (last visited Apr. 18, 2026).

¹⁹² *LSC 101: Understanding Civil Legal*, LEGAL SERVS. CORP., <https://lsc-live.app.box.com/s/7f4y34xk63ka1y9b0wly45uoq6q27xxx> (last updated Apr. 1, 2026).

¹⁹³ Annual Update of the HHS Poverty Guidelines, 91 Fed. Reg. 1797, 1798 (Jan. 15, 2026). The Department of Health and Human Services also publishes tables displaying different multiples of the guidelines which organizations like LSC use to make determinations, available at <https://aspe.hhs.gov/sites/default/files/documents/b1bfa16b20ae9b89d525bc35de7c1643/detailed-guidelines-2026.pdf>.

¹⁹⁴ *Who We Are*, *supra* note 191.

¹⁹⁵ LEGAL SERVS. CORP., 2023 ANNUAL REPORT 10 (2023).

¹⁹⁶ *Id.*

¹⁹⁷ STATE BAR CAL., 2024 CALIFORNIA JUSTICE GAP STUDY 10 (2025).

¹⁹⁸ *Id.*

¹⁹⁹ John M. Greacen, *Self-Represented Litigants, the Courts, and the Legal Profession: Myths and Realities*, 52 FAM. CT. REV. 662, 663 (2014).

²⁰⁰ STATE BAR CAL., *supra* note 197, at 35.

²⁰¹ LEGAL SERVS. CORP., *supra* note 195, at 14.

Wilson noted that he “would rather spend 30 days in jail than *lose his home* or custody of his children.”²⁰² And yet, only Americans facing criminal charges have the right to an attorney. As Judge Wilson argued, “[w]e are not doing nearly enough’ . . . to help people facing potentially life-changing civil issues.”²⁰³

While legal aid offices are critical and provide intangible benefits protecting the rights of hundreds of thousands of people, the demand for pro-bono representation far exceeds the supply. Judge Wilson’s musings remind us that the return of property, the actual roof over someone’s head, is one of the most critical civil issues a person can face.

In summary, the likelihood of recovery from elder financial abuse is increased when victims have the financial security to hire attorneys.²⁰⁴ Ultimately, the inability to afford an attorney can often prevent litigants from accessing the justice system.²⁰⁵ California law has provided a myriad of options to explore in civil litigation, but they are hardly of any value if an older adult does not have a lawyer who can succinctly navigate those laws.

If older adults do not qualify for legal aid and they cannot afford litigation, what is an older adult to do? Their only option is to represent themselves.

C. It Is Unlikely That Self-Litigants Can Resolve a Civil Case on Their Own

Filing a lawsuit is challenging for a lay person. If you throw in medical and other health related issues, transportation, and the growing challenges of technology use in and out of the court system, it is highly unlikely that many older adults can represent themselves in a civil suit for the return of real property. The procedural rules for a civil matter are challenging even for seasoned attorneys, let alone self-litigants.

In July 2010, the American Bar Association conducted a nationwide survey of trial judges regarding pro se litigation.²⁰⁶ That survey found that over half of the 1,200 judges who were surveyed reported an increase in pro se litigation in their courtrooms.²⁰⁷ Sixty-two percent of judges reported that outcomes were typically worse for people who represented themselves in court, even in simple matters.²⁰⁸ Data available from only a handful of states in 2024 indicates that over two-million individuals represented themselves in court matters.²⁰⁹ This number did not consider any self-represented individuals from California, whose superior courts in fiscal year 2024–25 processed over 5 million cases.²¹⁰

Without representation, self-litigants had issues in presenting the necessary evidence, correcting procedural errors, conducting witness examination, and often had ineffective arguments or failed to properly object to evidence.²¹¹ Victims of elder financial abuse may be unable to follow through on attempts to retrieve money or property through the court system if complex forms and processes are a barrier to recovery.²¹²

²⁰² *Id.* (emphasis added).

²⁰³ *Id.* at 17.

²⁰⁴ CONSUMER FIN. PROT. BUREAU, *supra* note 31, at 40.

²⁰⁵ DAVID B. ROTTMAN, NAT’L CTR. STATE CTS., TRUST AND CONFIDENCE IN THE CALIFORNIA COURTS: A SURVEY OF THE PUBLIC AND ATTORNEYS 19 (2005).

²⁰⁶ Richard W. Painter, *Pro Se Litigation in Times of Financial Hardship—A Legal Crisis and its Solutions*, 45 FAM. L.Q. 45, 45 (2011).

²⁰⁷ *Id.* at 46.

²⁰⁸ *Id.* Note that the survey indicated that most people were representing themselves in a domestic violence or foreclosure cases. *Id.* at 52. A domestic violence matter is typically adjudicated in one or two short hearings, but even in these types of cases judges reported less favorable outcomes. *Id.* at 46. It is easy to conceptualize how difficult representation becomes when addressing more complex issues.

²⁰⁹ S. Gibson et al., 2024 CSP STAT, NAT’L CTR. FOR STATE CTS., <https://www.ncsc.org/resources-courts/data> (click “See our trial court overview,” select the “Caseload Detail” heading, and choose “Self-Represented Litigants” from the caseload measure dropdown) (last updated Oct. 2024). California was not one of the seven states which provided information on self-litigants, but it is likely the total number of self-litigants exceeds the reported two million. *Id.*

²¹⁰ JUDICIARY COUNCIL CAL., *supra* note 125, at 51.

²¹¹ Painter, *supra* note 206, at 46.

²¹² CONSUMER FIN. PROT. BUREAU, *supra* note 31, at 39.

While many courts have adopted ways to assist self-litigants, these methods stop short of providing ongoing representation and advice.²¹³ Still, the trend appears to be that simplified processes need to be implemented because the cost of litigation is too high.²¹⁴ Some authors have opined that the fact that the legal process has been simplified for self-litigants, and potential costs have been lowered, does not mean the legal system is experiencing better outcomes.²¹⁵

Unfortunately, self-litigants don't just need help with the filing of the forms or the procedure, though that presents plenty of issues as well. They need assistance with the decision-making and judgment in relation to their legal issue.²¹⁶ Many of the concerns, as it relates to the self-litigant's ability to make appropriate judgment calls, analyze the law and facts, and provide a coherent argument related to those facts, would be challenging for any self-litigant. However, when that self-litigant may demonstrate diminished capacity, be easily confused, have significant mobility or other cognitive issues, and have hearing or vision loss, their ability to represent themselves would surely be difficult, if not impossible, in a formal civil action.

If an older adult is forced to represent themselves, what other challenges could they face? In California, plaintiffs can file a motion for trial preference which, if granted, would result in mandatory trial setting within 120 days.²¹⁷ While this type of motion would be critical to adjudicate an older adult's claim within a short timeline, the requirements to properly plead and file a motion of this kind would be incredibly difficult for many older adults whose digital literacy is far behind younger individuals. A single motion document would require the ability to read and understand the California Rules of Court regarding the requirements for the filing of motion documents,²¹⁸ an understanding of the county's local rules on filings and where to find them,²¹⁹ and the ability to obtain and draft the documents required for the motion.

Courts may increasingly require e-filing²²⁰ or the establishment of other court portals to receive notifications about the case. Adapting to these online forums may be difficult for older adults to manage on their own. Even to access assistance with EARO forms, self-litigants in Sacramento County are directed to correspond with the self-help center via email correspondence.²²¹ While the apparent trend in access to justice is to increase technology options,²²² adequately accessing technology options may continue to be a barrier for older adults lacking in digital literacy skills.

Even more so than just the filing process, the creation of legal documents on a computer may, at times, be a stretch for the current generation of older adults. Many older adults had already retired prior to the popularity of the internet or use of computers.²²³ Although the stark digital divide of a decade ago is moving in a positive

²¹³ See ABA STANDING COMM. ON DELIVERY LEGAL SERVS., AN ANALYSIS OF RULES THAT ENABLE LAWYERS TO SERVE SELF-REPRESENTED LITIGANTS 1–2 (2014) (discussing the shift among courthouse to provide assistance to self-litigants in a variety of ways, including; guides, publications and forms, courthouse facilitators, desks with volunteer attorneys, and other self-help centers).

²¹⁴ See ROTTMAN, *supra* note 205.

²¹⁵ *E.g.*, Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 WIS. L. REV. 287, 290–91 (“The administration of justice is different from a commodity or service to be delivered to market as smoothly as possible at a cost as close as possible to zero.”).

²¹⁶ RICHARD ZORZA, THE SELF-HELP FRIENDLY COURT: DESIGNED FROM THE GROUND UP TO WORK FOR PEOPLE WITHOUT LAWYERS 17–18 (2002). Richard Zorza labels this the Analysis Barrier. *Id.* at 17 (“Most self-help assistance programs report as the key problem that telling people the law was not enough. Litigants often need far more help than the program could give them in analyzing the implications of the law, in applying that law to the facts, and then in forging out of the law and the facts a coherent and persuasive legal argument.”).

²¹⁷ CAL. CIV. PROC. CODE § 36(f) (West 2026).

²¹⁸ See CAL. R. CT. 3.1110–3.1115.

²¹⁹ See, *e.g.*, SACRAMENTO CNTY. LOCAL R. 1.06(A) (2026); see also *id.* r. 2.40 (outlining procedure for requesting oral argument should the petitioner not prevail on the motion and need to make their plea to the judge).

²²⁰ It is unlikely that all courts require e-filing for self-litigants as this may demonstrate access to justice issues.

²²¹ *Elder or Dependent Adult Abuse Restraining Order*, SACRAMENTO CNTY. SUPERIOR CT., <https://www.saccourt.ca.gov/restraining-orders/elder-dependent-abuse.aspx> (last visited Apr. 18, 2026).

²²² See STATE BAR CAL., *supra* note 197, at 107.

²²³ The Pew Research Center reports that when it began tracking internet adoption in early 2000, only fourteen percent of adults sixty-five and older used the internet, and that figure did not exceed fifty percent until April 2012. See MONICA ANDERSON & ANDREW PERRIN, PEW RSCH. CTR., TECH ADOPTION CLIMBS AMONG OLDER ADULTS 3 (2017); PEW RSCH. CTR., OLDER ADULTS AND TECHNOLOGY USE 1 (2014). Among adults seventy-six and older, internet adoption was just thirty-four percent as of 2012. Kathryn Zickuhr & Mary Madded, *Older Adults and Internet Use*, PEW RSCH. CTR. (June 6, 2012), <https://www.pewresearch.org/internet/2012/06/06/older-adults-and-internet-use/>. The average U.S. retirement age during this same period ranged between fifty-seven (in 1991) and sixty-two (by 2014). Jeffrey M. Jones, *More in U.S. Retiring, or Planning to Retire, Later*, GALLUP

direction,²²⁴ older adults still lag behind younger generations in their technology capabilities.²²⁵ It is reported that only 66% of those 50-plus report comfort with their digital literacy skills and, as people age, their comfort with these skills diminishes.²²⁶ Older adults also do not feel that technology was built with them in mind and express concerns over the complexity of technology, lack of training, and need for additional instruction that they often cannot find.²²⁷

Even while older adults are increasingly online, folks over 65 are still the most likely of any age group to visit websites promulgating fake news articles.²²⁸ The technological skills of older adults vary widely based on their income, age within the group, and education, with some researchers referring to these differences as a “second-level digital divide.”²²⁹ Just because older adults are using internet and smart phones more does not mean their skills are adequate to effectively file a successful claim.

V. Expansion of Elder Abuse Laws

The court in *Newman* made it clear that certain remedies were not within the court’s jurisdiction because those remedies were not one of the enumerated restraints.²³⁰ This Article still disagrees with the remedies enumerated within the statute, since the taking of a home constitutes the highest form of ongoing elder financial abuse. The entire point of an emergency protective order is to provide a quick and accessible option to prevent current and future abuse.²³¹ *Newman* allows EARO judges to ignore one of the more critical financial losses by punting the issue to civil courts. If *Newman* continues to control California law on this issue, an older adult’s protection against ongoing financial abuse is a facade and allows for a major loophole abusers can exploit. If the taking of the real property is not addressed as part of the EARO action, then the older adult is still experiencing direct, ongoing financial harm. California’s maxims of jurisprudence provide that “[w]here the reason is the same, the rule should be the same.”²³² The EARO statute refers to California’s elder abuse definitions regarding financial abuse.²³³ If EAROs and civil cases for elder financial abuse are predicated on the same laws, then the remedies under these laws should be available in both courts. If a party is truly to be stopped from committing further financial abuse, then retaining property of an older adult will continue to violate that restraint. While true that the return of property cannot be categorized as a restraint, the statute can and should be expanded to provide necessary relief. As discussed above,²³⁴ the mechanism for restoring title already exists under the civil code and could be adopted under the EARO statute.

Expanding relief under the EARO statute would allow for matters to come before a judge in less than a month. The facts and evidence are generally limited and straightforward. Additional requirements could still be implemented into the statute that would allow for the resolution of the matter through the EARO’s shorter

(July 22, 2022), <https://news.gallup.com/poll/394943/retiring-planning-retire-later.aspx>. Today’s adults aged seventy-five and older therefore largely retired before the internet, broadband, smartphones, and routine computer use became fixtures of working and daily life.

²²⁴ Michelle Faverio, *Share of Those 65 and Older Who Are Tech Users has Grown in the Past Decade*, PEW RSCH. CTR. (Jan. 13, 2022), <https://www.pewresearch.org/short-reads/2022/01/13/share-of-those-65-and-older-who-are-tech-users-has-grown-in-the-past-decade/>.

²²⁵ BRITTNE KAKULLA, AM. ASS’N RETIRED PERS., 2024 TECH TRENDS AND ADULTS 50+, at 45 (2024).

²²⁶ *Id.* at 5. Note that in practice there is a huge gap between the digital literacy skills and comfort of someone who is fifty-one and eighty-one years old. The fact that a person over sixty-five owns a smartphone does not mean that they can download forms or print, complete, and file them in a correct manner.

²²⁷ *Id.* at 45.

²²⁸ Susan Nash, *Older Adults and Technology: Moving Beyond the Stereotypes*, STANFORD CTR. LONGEVITY (Mar. 30, 2019), <https://longevity.stanford.edu/older-adults-and-technology-moving-beyond-the-stereotypes/>.

²²⁹ Eszter Hargittai et al., *From Internet Access to Internet Skills: Digital Inequality Among Older Adults*, 18 UNIVERSAL ACCESS INFO. SOC’y 881, 882 (2018).

²³⁰ *Newman v. Casey*, 99 Cal. Rptr. 3d 706, 717–18 (Cal. 1st Ct. App. 2024).

²³¹ *E.g.*, CAL. FAM. CODE § 6251 (West 2026) (expressly conditioning issuance of an emergency protective order on a judicial finding that the order “is necessary to prevent the occurrence or recurrence” of domestic violence, child abuse, child abduction, or abuse of an elder or dependent adult).

²³² CAL. CIV. PROC. CODE § 3511 (West 2026).

²³³ CAL. WELF. & INST. CODE § 15657.03(a)(1) (West 2026).

²³⁴ See discussion *supra* Part III(F).

calendar. This Article proposes two potential amendments to the EARO statute: (1) prescribe a requirement for probable cause or prove-up hearing if a petition seeks the return of real property, or (2) where petitions seek the return of real property, create a court investigator program similar to the programs seen on the probate calendar regarding guardianships or conservatorships.

A. Requirement for Probable Cause of “Prove-Up” Hearing

One possible way to allow expansion consistent with due process concerns would be to require a short court trial if the request of real property is made in an EARO petition. This requirement would be like the condition under California law that requires a plaintiff to “prove up” a case in a default judgment where the return of real property is requested.²³⁵ Pending trial, potential defendants could be immediately ordered to refrain from mortgaging, selling, renting, or making other real property related transactions regarding the subject property. The older adult could also be given temporary possession of the property pending trial.

A model amendment would look like this: “The court may issue an order requiring the return or restoration of real property wrongfully obtained through financial abuse as defined in Section 15610.30, where the petitioner shows by a preponderance of the evidence that the transfer was procured through undue influence, fraud, or coercion.”

By expanding Section 15657.03 of the Welfare & Institutions Code to include this relief, older adults who petition the court will have a faster route to relief in a courtroom, one that typically relaxes some of the rules of civil procedure and allows them to bring their case without representation, or without extensive representation costs, due to the nature of EARO cases.

B. Implementation of a Court Investigator Program for EARO Cases Involving Real Property

A court appointed investigator is a neutral third-party hired by the court to gather facts and report findings back to the court in certain legal matters.²³⁶ In conservatorship cases in California, a court-appointed investigator will conduct interviews with the proposed conservatee, proposed conservator, and other interested parties.²³⁷ The investigator’s report typically aides the court in determining whether a conservatorship is warranted based on the situation.²³⁸ Similarly, in California guardianship²³⁹ and adoption²⁴⁰ cases, a court investigator will conduct an in-home interview and meet with interested parties to determine whether or not the placement is in a minor child’s best interest.

EAROs hearings are typically already held in probate or family law courts, where these investigations are already occurring on a regular basis. Investigators in probate settings may also be very familiar with issues of abuse and capacity, making it a natural transition to also require a court investigation report for an elder abuse matter involving real property. This would allow the court to have another set of eyes on a situation to help piece together the circumstances for the alleged financial abuse.

These are just a few examples of how current EARO statutes can be expanded and amended to provide for additional protections and further investigations into the ongoing financial abuse that occurs when an older adult is fraudulently disposed of their real property.

²³⁵ CAL. CIV. PROC. CODE § 585.5(d) (West 2026).

²³⁶ See generally CAL. PROB. CODE §§ 1454, 1456, 1513, 1826(West 2026).

²³⁷ CAL. PROB. CODE § 1851(a)(1)(D) (West 2026).

²³⁸ *Id.* § 1826(a).

²³⁹ *Id.* § 1513(a).

²⁴⁰ CAL. FAM. CODE § 8715(a) (West 2026).

VI. Other Remedies

There are other areas in which the law could provide additional safeguards regarding real property transactions for older Californians.

A. Proposed Changes in Notary Laws

One area of law that could be strengthened to help prevent the transfer of property is California's notary law.²⁴¹ There have been previous attempts at modifying notary laws to support the prevention of elder abuse by requiring notaries to be mandatory reporters; however, this legislation was unsuccessful.²⁴² There are several ways that notary laws could be improved to provide additional oversight into the deed process for older adults. The EHL Clinic often hears from potential clients that they did not know what document they signed, had not read the document placed in front of them, and had relied on the promises or statements of others in agreeing to sign a document.

Notaries are required to meet certain qualifications to be licensed, which includes enrolling in an approved study program and passing an exam.²⁴³ The signing of a deed in California requires that signatures are properly notarized by a licensed notary, who then provides a notary acknowledgment form indicating they have confirmed the identity of the person signing.²⁴⁴ Notaries are also able to administer oaths. Unlike an acknowledgment form, a jurat is a different type of notary verification where the signer declares under oath that a statement is true.²⁴⁵

While notaries have several duties that are prescribed under the Code,²⁴⁶ there is no requirement that notaries ensure a signer reviews a document before signing, understands the document, acknowledges what the document is and purports to do, speaks confidentially with the signer about the document, or evaluates if the signer has the capacity to sign.

When an older adult is signing over property, the deed to that property must be notarized. While there are still issues of fraud and forgery, for a deed to be valid a notary must be present to verify the identification of the signer and provide an acknowledgment form at the time of signing.²⁴⁷ Notaries may provide the key to ensuring a safety net during transactions involving older adults. This following Sections contain several potential solutions to reform the current codes governing notaries.

i. Requiring an Oath Confirmed by a Jurat Form

One potential solution is that, instead of requiring a regular acknowledgment form for deeds, an oath or confirmation could be used to verify that an older adult is aware of any deeds they are signing at the time. For example, when an attorney is admitted into practice, they must take an oath that they swear to uphold the constitution and the laws of the State of California, among other promises.²⁴⁸ If this oath is taken in front of a notary, a notary will fill out a jurat form. A jurat form for deeds could be created and required specifically for older adults over 65 who are signing real property deeds of any kind.

²⁴¹ CAL. GOV'T CODE §§ 8200–8230 (West 2026).

²⁴² Michael Lewis, *California Governor Vetoes Bill Requiring Notaries to Report Suspected Financial Abuse of Seniors*, NAT'L NOTARY ASS'N (Oct. 2013), <https://www.nationalnotary.org/notary-bulletin/blog/2013/10/gov-vetoes-notaries-report-senior-abuse>.

²⁴³ See CAL. GOV'T CODE § 8201.1(a) (West 2026); see also *Become a Notary Public*, CAL. SEC'Y STATE, <https://www.sos.ca.gov/notary/qualifications> (last visited Apr. 18, 2026).

²⁴⁴ *Id.* § 8205(a)(2).

²⁴⁵ See *id.* § 8202. For an example of a jurat form, see *Jurats*, CAL. SEC'Y STATE, <https://www.sos.ca.gov/notary/jurats> (last visited Apr. 18, 2026).

²⁴⁶ See CAL. GOV'T. CODE § 8205 (West 2026).

²⁴⁷ *Id.* § 8205(a)(2).

²⁴⁸ See *Attorney's Oath*, STATE BAR CAL., <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Attorneys-Oath> (last visited Apr. 18, 2026).

An example of an oath could be: I, “name of grantor” confirm I am over 65 years old. I understand I am signing a deed to real property conveying my interest in “address or identity of real property” to “name of grantee”. I understand that by signing this deed, I will no longer be the owner of record for this property.

Admittedly, some unintended consequences may flow from improving this requirement. One question would be, couldn't a grantor who is being unduly influenced still state this oath and sign over property? The answer is yes, but the signing itself would not preclude an argument of undue influence based on the facts. The additional safeguard of ensuring that an older adult understands they are signing a deed may aid in airing out the nature of the transaction.

ii. Require Notary Capacity and Elder Abuse Training

Notary governance varies greatly state to state, but many require some form of training prior to licensure. As discussed above, California requires a day-long training and passage of a notary examination to be licensed.²⁴⁹ This training does not currently cover any rules regarding establishing or confirming the capacity of a potential signer.²⁵⁰

Nevada was the first state to pass legislation authorizing the Secretary of State to establish a code of professional responsibility for notaries.²⁵¹ A new Nevada law also authorizes a notary to refuse to perform a notarial act if it is not satisfied that the person executing the document is competent or has the capacity to execute the record.²⁵² While it is not clear what rules will be finalized in Nevada's code of professional responsibility, there are model professional rules that cover capacity that could be pulled from national notary organizations. For example, The National Notary Association provides sample conduct rules for consideration. Under their proposed rules, mental competence and coherent communication are essential to the notarial act.²⁵³ For mental competence, a notary “shall not perform a notarial act if the Notary has reasonable belief which can be articulated that the principal or witness identifying the principal, if any, does not have the mental capacity to execute the notarial act.”²⁵⁴ Other states have also prescribed that a notary should determine if a signor has the competence to sign.²⁵⁵ Unfortunately, California's notary laws are silent as to confirming capacity, competence, or willingness to sign on documents, leaving signers, especially those over 65, vulnerable to an unwanted transaction.

California should adopt the rules identified in other states that require a notary to determine capacity of a signer and should prescribe penalties for the failure to do so. A mandatory component of notary training should include education on capacity and elder financial abuse, including the prevalence and warning signs. Notaries should also receive training on undue influence to understand the potential dynamics at play between parties to a transaction. Further training on capacity and competence will be required to ensure that notaries understand any new regulations regarding capacity.

iii. Require Additional Note Keeping on Transactions

Notaries are required to notate every signature they notarize in a specialized signing book.²⁵⁶ The rules prescribe required notes that must be in every book for each transaction.²⁵⁷ These rules could be expanded to

²⁴⁹ *Become a Notary Public*, *supra* note 243.

²⁵⁰ See CAL. GOV'T. CODE § 8205 (West 2026). As of writing of this Article, this Author is also a licensed notary in California.

²⁵¹ NEV. REV. STAT. § 240.017(1) (2026).

²⁵² *Id.* § 240.075(2).

²⁵³ See NOTARY PUB. CODE OF PRO. RESP. § III-C-2 (NAT'L NOTARY ASS'N 2020).

²⁵⁴ *Id.*

²⁵⁵ See Brooke Merritt, *Alaska – U.S. Notary Reference*, NAT'L NOTARY ASS'N,

<https://nmainternal.atlassian.net/wiki/spaces/ETS/pages/3258318849/Alaska+-+U.S.+Notary+Reference> (last updated Aug. 14, 2025) (recommending that “while you scan the document for any printed title or other document identification, [you] ask the signer to describe the document to you as well”).

²⁵⁶ CAL. GOV'T. CODE § 8206(a)(1) (West 2026).

²⁵⁷ *Id.* § 8206(a)(2).

require the recording of additional information. Requiring the notary to make a note regarding capacity, list names of other people who were present, write in who specifically arranged for the notary's services, or who paid could all be important facts to confirm.

iv. Increase Bond Requirement

To ensure that notaries hold to their training regarding capacity, the current bond requirement could be increased. Currently, notaries are required to be bonded in the amount of \$15,000 for any errors and omissions that may have occurred during the pendency of their commission.²⁵⁸ An increase to the bond value may help provide additional avenues for redress if a notary who was aware of the rules regarding capacity decided to allow the signature to proceed anyway.

B. Deed Rescission Reform

There is not currently a California law that would allow for a time period for rescission of a real property deed. However, certain contracts allow rescission. For seminar sales solicitation and home solicitation contracts, older adults have the right to cancel the contract until midnight on the fifth day of business after signing the agreement.²⁵⁹ Those under age 65 are permitted only three days to cancel.²⁶⁰

AB 2471 sought to alleviate the financial risk elders take when they enter contracts they do not fully understand.²⁶¹ Supporters contended that the modest extension of three days to five days would “alleviate some of the pressure felt during sales presentations and allow for a more measured and informed choice.”²⁶² They recognized that these types of contracts often involved “high-pressure or intimidating sales tactics—often taking place in the senior citizen’s home” and involving “a large financial commitment which senior citizens are ill equipped to recover from should the financial obligation prove to be too much.”²⁶³ The bill contended that “[t]hese contracts can have dire consequences, not only financially, but also psychologically for seniors who unknowingly place their home—their largest financial asset—at risk to foreclosure due to assessments or liens.”²⁶⁴ The California District Attorneys Association, who also supported the bill, expressed concern that homes could be foreclosed if senior citizens were unable to afford the payments on these contracts.²⁶⁵

Current law requires that the rescission be mailed to the address provided in the contract.²⁶⁶ Legislation was recently passed that now permits the delivery of rescission by email correspondence, with the requirement for an email address to be added to contracts.²⁶⁷

The California legislature has recognized that, when older adults are put in high pressure situations where they do not realize they are signing, they should have an out, because the financial implications of that signing could be disastrous for an older adult.²⁶⁸ When it comes to signing over the home itself though, there are no such safeguards. If sales contracts are permitted five days—where the value of the contract is likely much less than the value of a home—a 30-day period for rescission should be available under the law. Any adverse effect on

²⁵⁸ *Id.* § 8212.

²⁵⁹ CAL CIV. CODE § 1689.20(a)(1) (West 2026).

²⁶⁰ *Id.*

²⁶¹ *Senior Citizens: Rescission of Contracts: Hearing on A.B. 2471 Before the Senate Judiciary Committee*, 2019–2020 Leg., Reg. Sess. 5 (Cal. 2020) (statement of Hannah-Beth Jackson).

²⁶² *Id.* at 5.

²⁶³ *Id.* at 6.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ CAL. BUS. & PROF. CODE § 7159(c)(3)(B)(ii) (West 2026).

²⁶⁷ A.B. 1327, 2025–2026 Leg., Reg. Sess. 13 (Cal. 2025).

²⁶⁸ CAL. BUS. & PROF. CODE § 7159 (West 2026).

legitimate sales between informed parties could be avoided with an option to waive the time-period where there has been either assistance of counsel or a title company who is involved in the transaction.

VII. Conclusion

As our population ages, laws must adapt to the crises occurring within our communities. Although much more attention has been devoted to elder abuse in recent years, current avenues for relief lack a pragmatic approach to dealing with elder financial abuse issues. If action is not taken now to help protect the homes of older adults, the financial abuse numbers will only continue to rise. With this rise will inevitably come more burdens put on legal systems to try to support the loss of critical housing, health, and economic stability for older adults.

The crisis of elder financial abuse is preventable and can be addressed with comprehensive reform. As evidenced by the *Newman* matter, California's systems are failing older petitioners and plaintiffs. Expanding the elder abuse restraining order statute to include the return of real property would allow self-litigants to have their day in court earlier, in a setting that typically has more relaxed rules of evidence. Additional safeguards to stop the abuse from happening include: (1) notary law reform that provides further protections at the time of signing; (2) establishing trainings for notaries on spotting elder financial abuse and capacity; and (3) a requirement of an oath by a grantor over 65 confirming that the older adult verifies they are signing a deed and acknowledges they are transferring an interest in real property. The last safeguard is particularly important for helping vulnerable older adults who are being abused recognize what they are being asked to sign. Further, reform regarding rescissions of deeds for up to a 30-day period may allow an older adult to contact someone they trust and share that they signed a deed.

Without serious thought given to the threats that exist in every neighborhood around the country, we are ignoring future abuse that is not a matter of if, but when. If home is where the heart is, then we need to put more heart, and resources, into protecting the nest egg of our older neighbors.