



**SANDRA SHEWRY**  
Director

State of California—Health and Human Services Agency  
**Department of Health Services**



**ARNOLD SCHWARZENEGGER**  
Governor

August 2, 2006

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 06-24  
ALL COUNTY ADMINISTRATIVE OFFICERS  
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS  
ALL COUNTY HEALTH EXECUTIVES  
ALL COUNTY MENTAL HEALTH DIRECTORS

SUBJECT: TRUSTS: SIMILAR LEGAL DEVICES

Similar legal devices (SLDs) are to be treated as trusts for purposes of establishing initial and on-going eligibility for Medi-Cal. The purpose of this letter is to provide counties with two examples of SLDs to use for staff training in identifying SLDs.

“Similar legal device” is defined in Title 22, California Code of Regulations (CCR), Section 50489 (a) (9) to mean the following:

“Any legal instrument, device or arrangement that involves the transfer of assets from an individual or entity (transferor) to another individual or entity (transferee) with the intent that the assets be held, managed, or administered by an individual or entity for the benefit of the transferor or certain other individuals. SLDs also include annuities purchased on or after August 11, 1993.”

The Property Supplement (MC 210 PS) has been revised to address SLDs. In accordance with Title 22, CCR, Section 50489(e), eligibility workers will need to request and review any documentation of the SLD, including verification of investments and distributions, and verification of property addressed by the SLD to determine its status and/or value.

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If you have any questions on this issue, please call Sharyl Shanen-Raya at (916) 552-9449; Robert Laederich at (916) 552-9486; Sherilyn Walden at (916) 552-9502 or Pritesh Mogera at (916) 650-0140.

Original Signed By

Maria Enriquez, Chief  
Medi-Cal Eligibility Branch

Enclosure

## **FAMILY AGREEMENT**

This AGREEMENT is made by

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(hereinafter collectively called OWNER),

Whereas, OWNER(S) have received assets which have been transferred as completed gifts to OWNER(S) over which OWNER(S) have full and exclusive control and ownership, and;

WHEREAS, said assets were legally and within Federal and State guidelines transferred in order to avoid "spend down" on Long-Term Care assistance or be the subject of an estate claim, and;

WHEREAS, gifting such assets is prudent according to established Elder Law principals; specifically referred to in the Matter of Kashmira Shah 1999 N.Y. Slip Op. 06500 (1999), and under Substituted Judgment doctrines of the California Probate Code Sections 2480, et. Seq. and 3100, et Seq., and;

WHEREAS, OWNER(S) have no contractual or constructive obligation to use said assets for the benefit of any person, and;

WHEREAS, OWNER (S) shall not use said assets for any business purpose or joint profit motive.

WHEREAS, OWNER(S) specifically intend said assets not to be held, and do not consider said assets as being held, in any manner which is considered a device similar to trusts, under the OBRA 1993, or Trust provisions implemented in California Title 22, California Code of Regulations, Section 50489, et Seq. This document shall not create, and is not intended to create a Trust, or similar device, under any collection of laws, including, but not limited to the California Probate Code, the California Health and Welfare Code, California Code of Regulations, nor the Internal Revenue Code.

NOW THEREFORE, OWNER(S), agree among and for themselves exclusively, and not for the benefit of any other person, to hold said assets among themselves for a reasonable time period as described below.

1. OWNER(S) agree to maintain said assets to provide assistance, if any is significantly needed, that a family member may need in the sole and absolute discretion of the OWNER(S).
2. OWNER(S) agree that when such support to any family member is no longer significantly necessary in the discretion of the OWNER(S), for a time period not to exceed 10 years, the funds may be disbursed according to the terms agreed to by the OWNER(S).
3. If a court or government agency determines this agreement renders a family member ineligible for government benefits, for which the family member would be eligible if this agreement did not exist, the OWNER(S) shall terminate the agreement, and on the advice of legal counsel, take whatever lawful and prudent steps are necessary to effectuate the OWNER(S) purpose of the agreement.
4. OWNER(S) acknowledge and assert that \_\_\_\_\_ has fully explained to the OWNER(S), and that each OWNER completely understands, that the use or spending of the above described assets, prior to the termination of this agreement, violate certain criminal and civil statutes.

Date: \_\_\_\_\_

## **PERSONAL PLEDGE**

THIS PLEDGE is made by:

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(hereinafter collectively called (DONEE), and made for the benefit of

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(hereinafter called "INDIVIDUAL").

WHEREAS, INDIVIDUAL owns assets which would be required to be "spent down" on Long-Term Care assistance or be the subject of an estate claim and;

WHEREAS, gifting such assets is prudent according to established Elder Law principals, specifically the Matter of Kashmiri Shaw 1999 N.Y. Slip Op. 06500 (1999), and under Substituted Judgment doctrines of the California Probate Code Sections et. Seq.

WHEREAS INDIVIDUAL being a dependent adult, needs special care and considerations to be furnished to him/her throughout the duration of his/her lifetime; and

WHEREAS, DONEE pledges to preserve assets in order to furnish supplemental support, care, and protection for the duration of INDIVIDUAL'S lifetime:

NOW, THEREFORE, DONEE promises to maintain sufficient assets from any gifts received from INDIVIDUAL, during INDIVIDUAL'S lifetime, to provide supplemental support to any government benefits that INDIVIDUAL may be entitled to under State or Federal law.

1. DONEE shall furnish and provide to INDIVIDUAL on an "as needed" basis the following financial support and services over the entire duration of the lifetime of INDIVIDUAL:
  - a) DONEE shall not, during the lifetime of INDIVIDUAL, transfer, spend, encumber, loan, gift, nor waste, any assets received from INDIVIDUAL on DONEE'S personal needs.
  - b) DONEE, with funds received as gifts or transfers from INDIVIDUAL may shop for INDIVIDUAL to obtain personal hygiene supplies, beauty supplies, clothing, shoes, hobby, entertainment and other goods, wares and services for INDIVIDUAL'S use and enjoyment. During INDIVIDUAL'S lifetime, DONEE shall maintain complete discretion to use assets received for the benefit of INDIVIDUAL.
  - c) DONEE shall not make any purchases nor gifts to INDIVIDUAL that would result in the loss or reduction of public benefits, including but not limited to Medi-Cal, Medicare, Social Security Disability Insurance, nor Social Security Insurance.
  - d) DONEE shall not pay expenses incurred by or on behalf of the INDIVIDUAL, or make any distributions to or for the benefit of the INDIVIDUAL, either during or after the lifetime of the INDIVIDUAL, if a government benefit, private insurance, or other program was obligated or available to meet those expenses while the INDIVIDUAL was alive. Specifically, the DONEE does not have discretion to distribute assets where the exercise of such discretion would have the effect of making the assets available for Medi-Cal eligibility purposes for the INDIVIDUAL. This document contemplates and assumes the eligibility of INDIVIDUAL for Medi-Cal benefits. It is one of the express purposes of this document to only supplement the needs of the INDIVIDUAL who is otherwise qualified for Medi-cal benefits and not to render the INDIVIDUAL for those benefits as a result of creating this pledge. This pledge does not contain the assets of the INDIVIDUAL and it is the specific intent of the DONEE to avoid counting the assets herein as belonging to the INDIVIDUAL.

- e) DONEE will seek to obtain services and treatment of appropriate health care providers, including, but not limited to physicians, nurses, nursing home services, mental and physical health specialists, which DONEE deems necessary and reasonable to assess INDIVIDUAL'S physical and mental health status and render treatment, cure and services to meet such physical and mental health circumstances of INDIVIDUAL.
  - f) The DONEE shall have discretion to make adjustments to, or distribution of the assets received by INDIVIDUAL to compensate for or pay any income tax or capital gains tax incurred as a result of receiving or holding the aforementioned gifts, including any actions to minimize any tax consequences of any action of DONEE.
2. There shall be no compensation paid to DONEE in exchange for the above stated promises.
  3. INDIVIDUAL shall not take any actions in reliance as a result of said promises without prior written consent from both DONEE and at least one licensed attorney acting as a representative of DONEE. Any detrimental reliance on the aforementioned promises shall have no effect on the enforceability of such promises without the described express written consent.
  4. INDIVIDUAL may not assign, transfer or convey any rights or benefits of this statement of intent to perform. It is understood and agreed that DONEE's services are personal to INDIVIDUAL and no one else. No interest in these promises may be anticipated, assigned, encumbered, or subject to any creditor's claim or to legal process before actual receipt by the INDIVIDUAL. No part of the assets described herein may be subject to the claims of voluntary or involuntary creditors for any costs incurred or sums expended by any public agency, office, or department of California, any other state, or the United States, for the provision of care and services (including residential care) to or for the INDIVIDUAL (whether prospectively or in reimbursement). If in the DONEE's opinion, a court or government agency determines that this pledge renders the INDIVIDUAL ineligible for government benefits for which the INDIVIDUAL would be eligible if this pledge did not exist, the DONEE shall evaluate the financial loss caused to the INDIVIDUAL by the INDIVIDUAL'S ineligibility for government benefits as compared to the financial gain to the INDIVIDUAL resulting from the pledge's continued operation, to determine whether to maintain the promise or terminate the aid and support promised. If the DONEE determines that the benefits conferred by the promise do not outweigh the detriment caused by the loss of government benefits, the DONEE may, in the DONEE's sole discretion, terminate the pledges made herein.
  5. This document shall not create, and is not intended to create a trust under any collection of laws, including but not limited to the California Probate Code, the California Health and Welfare Code, California Code of Regulations, nor the Internal Revenue Code.
  6. **DONEE(s) acknowledge and assert that the Law Office of \_\_\_\_\_ has fully explained to the DONEE(s), and that each DONEE completely understands, that the use or spending of the above described gifts, prior to the death of the INDIVIDUAL, would constitute elder abuse under California criminal and civil statutes.**

Dated: \_\_\_\_\_

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X \_\_\_\_\_

X \_\_\_\_\_

X \_\_\_\_\_