



## *April Newsletter!*

*by Endy Ukoha-Ajike*



Welcome to Spring. A very beautiful time of the year when it's neither too cold nor too warm. Just right. I hope you enjoyed spring break... or at least you took a break!

This newsletter addresses briefly a very critical area of Estate Planning that is continuing to evolve. It is closely tied to financial elder abuse and they almost always go hand in hand.

Please join us for our April Seminar on Your Health Care Options in Retirement with guest speakers Ervin Thompson, ChFC-Chartered Financial Consultant and Lewis Phillips-Senior Financial Advisor at Merrill Lynch Wealth Management. [RSVP](#) to join!

*~Endy*

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**Care Givers: Beware of those Gifts From  
Your Clients  
Family Members: The Law is Your Ally**

## Upcoming Events

**- April Seminar -  
Your Health Care  
Options in  
Retirement**

Join us at our office for our April Seminar with guest speakers:

- **Ervin Thompson, ChFC-Chartered Financial Consultant**
- **Lewis Phillips- Senior Financial Advisor at Merrill Lynch Wealth Management**

Wine and Appetizers Included!  
Free to Attend. Space is Limited.  
Please Register to Reserve your Spot.

**Date:** April 27th, 2017

**Time:** 6:15pm - 8pm  
Doors Open @ 6:15pm  
Presentation @ 6:30pm

**Location:**  
Ukoha-Ajike Law Group Office

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## **Gifts to Care Givers Can Be Set Aside: Presumption of Undue Influence**

Often times care givers receive gifts and/or “loans” from their clients who are mostly elderly people under their care.

California Probate Code provides that gifts made to an unrelated care giver by a person under their care can be set aside. The law presumes that the care giver if not related to the giver, obtained such gift by undue influence. We call them “donative transfers”. The recipient of the gift has the burden to show that he/she did not unduly influence the giver to make the gift. The gift will be set aside if the care giver cannot show absence of undue influence.

We hear the stories like this all the time. I have encountered this many times in my practice where I am representing an elderly person who wants to make a gift to their care giver who is not a family member. They may have had a long term relationship but not married to one another.

### **Certificate of Independent Review:**

Before you can make any such gift, you are required to consult an attorney who is independent from the one that is creating your Estate Plan: Will or Trust where the gift will be made. That independent attorney will meet with you, discuss the gift and its consequences with you to be sure you are certain of your intention. He/She then prepares and signs a Certificate of Independent Review stating that he/she has discussed the gift and that it is made of your free will.

That Certificate of Independent Review protects the recipient of the gift from a challenge by the family members of the giver. It also assures family members of the giver that the gift was not made by

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[Register](#)

[Submit Your Questions](#)

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## **Mark Your Calendars!**

Our seminars will now be held on a bi-monthly basis at our cozy office in Jack London Square.

### **2017 Seminar Dates**

- Thursday, April 27th
- Thursday, June 22nd
- Thursday, August 24th
- Thursday, October 26th

## **Contribute to the Conversation!**

Our goal is to make our seminars as informative and interactive as possible. Please let us know if there is any topic you would like to hear about at an upcoming seminar.

[Submit Your Topic  
Request](#)

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## **Endy's Advice Corner**

A generous person who wishes to make a gift of appreciation for his/her care giver's efforts in

undue influence to the care giver.

### Exception for Family Members Who Are Related:

Family members who are related by blood or affinity within the fourth degree, or who lives with the giver. Relationship of affinity within the fourth degree is determined by the courts.

### What To Look Out For:

Care giver's gift is safe if the giver got a Certificate of Independent Review. Family members can also look through their elderly relatives' Estate Planning documents to see if there is such a certificate. If there is none and the care giver is unrelated, the gift can be set aside.

### Serious Consequences:

Not only can the gift be set aside, the court shall impose enormous attorney's fees and damages against the care giver for elder abuse under California law.

caring for them should contact an Estate Planning Attorney before making any gift. Likewise a care giver who knows of an impending gift CANNOT arrange for a Certificate of Independent Review to protect the gift, but should hope that one was prepared for the gift.

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### Share the news!



Share



Forward



Share



### About Endy:

Endy is an Oakland (Jack London Square) based Tax & Estate Planning Attorney with over 16 years of experience. He has helped countless families throughout California develop individualized estate plans and has administered many estates over that period.



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