

**Special points of interest:**

- Are You a “Deep Pocket” For An Elder Abuse Claim?
- Settling Landlord May Be Entitled To Attorneys’ Fee Award
- When Do Trees Constitute An Illegal “Spite” Fence?
- Homeowner Liability For Injuries to Employees Of Unlicensed Contractor
- When must the presence of mold be disclosed?

# Legal Events in Real Estate

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## Elder Abuse Claims Proliferating Against Real Estate Brokers/Agents, Escrow Companies and Mortgage Brokers

The elderly in our society are, unfortunately, easy prey, and often become victims of family members, care givers and others in a position to take advantage of them. In recognition of that fact, the California Legislature enacted the Elder Abuse and Dependent Adult Civil Protection Act. This protection against the vulnerabilities inherent in old age is very important.

In late 2000, however, the Legislature amended the Act to provide that “financial abuse” occurs when someone “assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.” Nowhere in the Act is the term “assists” defined, and it is not even clear

whether guilty knowledge is required to prove an “assisting” claim. As a result, since the amendment, claims against those other than the perpetrators of the abuse have begun to proliferate.

As in other contexts, attorneys representing elderly persons whose real property has been taken wrongfully typically seek to name as many deep pocket defendants as possible, including, among others, real estate brokers/agents, escrow companies, and mortgage brokers. The abused elder can easily argue people serving in those capacities “assisted” in the abuse be-

cause, without them, the transaction could not have been consummated.

Elder abuse cases are particularly dangerous because the abused elder makes a very sympathetic plaintiff. Especially when the perpetrator is long since gone or has already squandered his or her ill-gotten gains, juries are more likely than not going to be willing to award damages against anyone who can compensate the victim.

Until we have some guidance from the courts as to the meaning of “assists,” it is important that anyone dealing with an elder or potentially dependent adult take great care to ensure any and all transactions do not involve a wrongful use or intent to defraud.



### Settling Landlord May Be Entitled to Attorneys’ Fees

When a contract so provides (as do many lease agreements) the prevailing party in litigation may obtain reimbursement for attorneys’ fees incurred — an amount that may exceed any damage award.

In *Wong v. Thrifty Corp.*, 97 Cal.

App.4th 261 (2002), the court of appeal clarified that such reimbursement is available even when the landlord settles the action by accepting



the tenant’s statutory offer in compromise. In that case, the lease provided that the landlord would be entitled to attorneys’ fees if the action “determined” the tenant was in default. The court held the landlord need not proceed to trial for such a determination, and ordered an award of attorneys’ fees. The settlement in that case was \$43,600 and the attorneys’ fees exceeded \$130,000.

### Trees May Constitute Illegal Spite Fence

California has long had on the books a statute prohibiting fences exceeding 10 feet in height that are erected or maintained for the purpose of annoying a neighbor. In *Wilson v. Handley*, 97 Cal. App.4th 1301 (2002), the court held a row of trees planted along a property line may constitute a “fence” for purposes of the statute. In that case, when a property owner commenced construction of a two-story

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