CFP BOARD

ETHICS CE: CFP BOARD'S REVISED *CODE AND STANDARDS*

BLUE OCEAN GLOBAL WEALTH
FRIDAY, JULY 24, 2020

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About Your Instructor

CFP BOARD

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- CEO, Blue Ocean Global Wealth

- Marguerita is a past spokesperson for the AARP Financial Freedom Campaign and a regular columnist for Investopedia & Kiplinger.
- As a Certified Financial Planner Board of Standards (CFP Board) Ambassador, Marguerita helps educate the public, policy makers, and media about the benefits of competent, ethical financial planning.
- In 2017, she was named the #3 Most Influential Financial Advisor in Investopedia Top 100, a Woman to Watch by InvestmentNews, and a Top 100 Minority Business Enterprise (MBE®) by the Capital Region Minority Supplier Development Council (CRMSDC).

Disclaimer

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The content of this program is based on CFP Board's *Code of Ethics and Standards of Conduct* (*Code and Standards*), which is effective on October 1, 2019.

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Polling Question

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What Financial Planning Software do you use?

- MoneyGuidePro
- eMoney
- Right Capital
- NaviPlan
- Money Tree

Polling Question

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What is your favorite breakfast food?

- Bacon & Eggs
- Avocado Toast
- Yoghurt Parfait
- Bagel & Cream Cheese
- Waffles

Learning Objectives

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1. Identify the structure and content of the revised *Code and Standards*, including significant changes and how the changes affect CFP® professionals.
2. Act in accordance with CFP Board's fiduciary duty.
3. Apply the Practice Standards when providing Financial Planning.
4. Recognize situations when specific information must be provided to a Client.
5. Recognize and avoid, or fully disclose and manage, Material Conflicts of Interest.

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STRUCTURE, CONTENT AND SIGNIFICANT CHANGES

LEARNING OBJECTIVE 1

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The Revised *Code and Standards*

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- Significant Changes to Content
- The New Structure and Organization
- Duties to:
  - Clients
  - Firms and Subordinates
  - CFP Board

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Most Significant Changes to Content

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- Expanded Application of Fiduciary Duty
- Updated Duties to Clients
- Revised Definition of Financial Planning
- Modernized Practice Standards
- New Process for Bankruptcy
- Enhanced Requirements for Reporting

The Structure Has Changed

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Current Standards (Effective Until September 30, 2019)	Revised Standards (Effective October 1, 2019)
Introduction	Preamble
Code of Ethics and Professional Responsibility	Code of Ethics
Rules of Conduct	Standards of Conduct
Financial Planning Practice Standards	Practice Standards for the Financial Planning Process
Terminology	Glossary

Code of Ethics

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A CFP® professional must:

1. Act with honesty, integrity, competence, and diligence.
2. Act in the client's best interests.
3. Exercise due care.
4. Avoid or disclose and manage conflicts of interest.
5. Maintain the confidentiality and protect the privacy of client information.
6. Act in a manner that reflects positively on the financial planning profession and CFP® certification.

Standards of Conduct – Six Sections

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- Duties Owed to Clients
- Financial Planning and Application of Practice Standards
- Practice Standards
- Circumvention
- Duties Owed to Firms and Subordinates
- Duties Owed to CFP Board

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Integrity, Competence, Diligence

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Integrity

- Honesty and candor that is not subordinated to personal gain or advantage
- Standard anti-fraud language

Competence

- Relevant knowledge and skill
- Gain competence, obtain assistance, limit or terminate engagement, and/or refer the Client

Diligence

- Timely and thorough

Objectivity, Professionalism, Communications

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Sound and Objective Professional Judgment

- Exercise professional judgment that is not subordinated.
- Avoid considerations that could compromise objectivity.

Professionalism

- Treat Clients and others with dignity, courtesy, and respect.

Client Communications

- Provide accurate information in an understandable manner and format.

Comply With the Law

Confidentiality/Privacy and Technology

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Confidentiality/Privacy

- Applies to non-public personal information (NPPI)
- Exceptions for ordinary business (four) and legal/enforcement (seven)
- Can’t benefit from NPPI
- Must protect security and adopt, implement, and share written policies
- Safe Harbor for Reg S-P (or equivalent)

Reg S-P

- Regulation S-P is the primary SEC rule regarding privacy notices & safeguards
- It requires registered broker-dealers, investment companies and investment advisors to “adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records & information.
- Refer to SEC Office of Compliance Inspections & Examinations (OCIE) for updates

Technology

- Use reasonable care in selecting, using and recommending
- Have a reasonable understanding of assumptions and outcomes
- Have a reasonable basis for believing outcomes will be reliable, objective, and appropriate

Confidentiality/Privacy and Technology

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Technology

- CFP® professionals must understand how client data is stored and the security protocols to protect it.
- CFP Board is in the process of reviewing the current materials regarding the use of technology to determine if additional resources are needed
- CFP Board does anticipate issuing additional guidance in early 2021

Refrain from Borrowing, Lending, and Commingling Financial Assets

Polling Question

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Prospects & Clients Understand the difference between fee only and fee based?

- Yes
- No
- Not sure

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Representation of Compensation Method

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Key Terms and Concepts:

- Fee-Only and Fee-Based
- Sales-Related Compensation
- Related Party Compensation
- Representations by a CFP® Professional's Firm

Fee-Only Application

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Earning Sales-Related Compensation?

How about your Firm?

Any “Related Party” earning Sales-Related Compensation?

If so, is the Related Party compensation “in connection with”?

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Working With Additional Persons

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Duties When Engaging or Recommending

- Develop reasonable basis
- Disclose compensation arrangements

Duties When Engaging

- Exercise reasonable care

Duties When Working With Additional Persons

- Communicate about services and responsibilities
- Inform client if the other provider did not perform or uphold responsibilities

Duties Owed to Firms and Subordinates

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- Use Reasonable Care When Supervising
- Comply with Lawful Objectives of Firm
- Provide Notice of Public Discipline

Duties Owed to CFP Board

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- Avoid Adverse Conduct
- Report Incidents of Apparent Adverse Conduct Within Thirty Days
- Provide a Narrative Statement
- Cooperate with CFP Board
- Comply with the *Terms and Conditions of Certification and License*

Quick Review

CFP BOARD

- ✓ New **Structure** and **Organization**
- ✓ Duties to:
  - **Clients**
  - **Firms and Subordinates**
  - **CFP Board**

Apply the New *Code & Standards example*

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Diane is a fee-only CFP® professional working for an RIA that uses an Assets Under Management (AUM) model to assess fees. Recently her firm, which is also a licensed insurance agency, decided to participate in an insurance sales incentive program through an insurance vendor who will compensation the firm with a portion of the commission the vendor earns on sales made by representatives at her firm. The incentive program was disclosed in the firm's ADV Part 2A. Diane will not participate in the programs, but others at the firm will do so.

Apply the New *Code & Standards example cont.*

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Which of the following statements accurately describes Diane's obligations in this scenario?

Response Options:

A. Diane may use fee-only because she collects no Sales-Related Compensation from any source.

B. Diane may use fee-only because the Sales-Related Compensation earned by Related parties is not "in connection with" her Professional Services.

C. Diane may not use fee-only because the Sales-Related Compensation earned by her firm is "in connection with" her Professional Services.

D. Diane may not use fee-only because although she collects no Sales-Related Compensation from any source, her firm collects Sales-Related Compensation.

Apply the New *Code & Standards* example cont.

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Correct Response: D is correct.

Duties When Representing Fee-Only Compensation Model

(LO 1; Standard A.12.a.i)

Instructions for Program Delivery

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CFP BOARD'S FIDUCIARY DUTY

LEARNING OBJECTIVE 2

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The Fiduciary Duty

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- Includes a Duty of Loyalty, a Duty of Care, and a Duty to Follow Client Instructions
- Applies to all Financial Advice to a Client
- Defines Financial Advice Broadly

Fiduciary: Act in the Client's Best Interests

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Duty of Loyalty

- Place Client's interests ahead of your own
- Conflicts: avoid or fully disclose, obtain consent, & properly manage
- Act without regard to interests of others

Duty of Care

- Act with care, skill, prudence, and diligence
- Consider Client's goals, risk tolerance, objectives, and circumstances

Duty to Follow Client's Instructions

- Comply with Terms of Engagement
- Follow Client's reasonable and lawful directions

Applies to All Financial Advice

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Application

- "At all times when providing Financial Advice to a Client"
- More expansive than when providing Financial Planning

Who is a "Client"?

- Any person, including a natural person, business organization or legal entity
- To whom the CFP® professional provides or agrees to provide "Professional Services"
- Pursuant to an "Engagement"

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Financial Advice Broadly Defined

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Financial Advice:

A. A communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation that the Client take a particular course of action with respect to:

   1. The development or implementation of a financial plan
   2. The value of or the advisability of investing in, purchasing, holding, or selling Financial Assets
   3. Investment policies or strategies, portfolio composition, or asset management
   4. The selection and retention of other persons to provide financial or Professional Services to the Client, or

B. The exercise of discretionary authority over Financial Assets.

Polling Question

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Do you manage your clients assets on a discretionary basis?

- Yes
- No

Quick Review

CFP BOARD

- ✓ Duty of **Loyalty**
- ✓ Duty of **Care**
- ✓ Duty to **Follow Client Instructions**
- ✓ Fiduciary Duty Applies to **All** Financial Advice
- ✓ Financial Advice **Broadly** Defined

Apply the New *Code & Standards example*

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Ray, a CFP® professional, asks his new Client Susan to complete his firm's required account opening forms. Later, he notices that she completed the forms inconsistently with respect to her risk tolerance. Susan indicated on one form that she cannot tolerate losing 5% of her investment but stated on another form that she has an aggressive risk tolerance.

Apply the New *Code & Standards example*

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Ray's supervisor learns that Susan selected an aggressive risk tolerance and urges Ray to consider a private placement investment for Susan with potentially large returns but substantial risk. After analysis, Ray determines that the investment would match Susan's stated risk tolerance. Ray explains the investment and Susan chooses to purchase the investment.

Apply the New *Code & Standards example cont.*

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Which of the following statements about the scenario is true?

Response Options:

A. Ray met his duty of care because he solicited information about Susan's risk tolerance and recommended an investment to Susan that matched her risk tolerance.

B. Ray violated his duty of care because a prudent CFP® professional acting with diligence would have discussed the inconsistency in risk tolerance information prior the recommending the investment.

C. Ray violated his duty of care to Susan because the investment is not appropriate for her.

D. Ray violated his duty of care because a prudent CFP® professional would have assumed that with Susan's fear of losing 5% of her investment she would want a conservative investment.

Apply the New *Code & Standards example cont.*

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Correct Response: B is correct.

Duty of Care (LO 2; Standard A.1.b)

A prudent CFP® professional would have been more diligent in exploring the inconsistent information regarding risk tolerance before recommending an investment that matched an aggressive risk tolerance.

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APPLYING THE PRACTICE STANDARDS

LEARNING OBJECTIVE 3

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Updated Practice Standards

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- Updated Financial Planning Definition
- A Revised Standard for Determining Whether the Practice Standards Apply
- Options When Required to Comply with the Practice Standards but the Client Does Not Want Financial Planning
- Documentation
- Updates to Steps in the Financial Planning Process

An Updated Financial Planning Definition

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Current Standards (Effective Until September 30, 2019)	Revised Standards (Effective October 1, 2019)
“Personal financial planning” or “financial planning” denotes the process of determining whether and how an individual can meet life goals through the proper management of financial resources. Financial planning integrates the financial planning process with the financial planning subject areas.	Financial Planning is a collaborative process that helps maximize a Client’s potential for meeting life goals through Financial Advice that integrates relevant elements of the Client’s personal and financial circumstances.

Application of the Practice Standards

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The Practice Standards Apply When:

- The CFP® professional agrees to provide or provides Financial Planning
- The CFP® professional agrees to provide or provides Financial Advice that requires integration of relevant elements to act in Client's best interests
- The Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning

When Integration Is Required

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The Integration Factors:

- Number of relevant elements
- Portion and amount of the Client's assets affected
- Length of time the Client's circumstances may be affected
- Effect on exposure to risk
- Barriers to modification of Financial Advice

CFP Board Evaluation

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- If CFP Board alleges a Practice Standards violation
- And the CFP® professional denies the allegations
- Then the CFP® professional has the burden of demonstrating that Financial Planning was not required

Clients Who Do Not Want Financial Planning

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If a CFP® professional otherwise must comply with the Practice Standards, but the Client does not agree to engage for Financial Planning, a CFP® professional must either:

- Not enter into the Engagement
- Limit the scope to services that do not require Financial Planning
- Provide the requested service but explain the benefits of Financial Planning and limitations on services
- Terminate the Engagement

Documentation Requirement

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If required to comply with the Practice Standards, a CFP® professional must act prudently in documenting information, taking into account:

- The significance of the information
- The need to preserve the information in writing
- The obligation to act in the Client's best interests and
- The CFP® Professional's Firm's policies and procedures

Current Practice Standards (Effective Until September 30, 2019)	New Practice Standards (Effective October 1, 2019)
1. Establishing and Defining the Relationship with the Client	Moved to Section A.10: Provide Information to a Client
2. Gathering Client Data	1. Understanding the Client’s Personal and Financial Circumstances
	2. Identifying and Selecting Goals
3. Analyzing and Evaluating the Client’s Financial Status	3. Analyzing the Client’s Current Course of Action and Potential Alternative Course(s) of Action
4. Developing and Presenting the Financial Planning Recommendations (Identifying and Evaluating Alternatives)	
4. Developing and Presenting Financial Planning Recommendations (Developing Recommendations)	4. Developing the Financial Planning Recommendation(s)
4. Developing and Presenting Financial Planning Recommendations (Presenting Recommendations)	5. Presenting the Financial Planning Recommendation(s)
5. Implementing the Financial Planning Recommendations	6. Implementing the Financial Planning Recommendation(s)
6. Monitoring	7. Monitoring Progress and Updating

Steps 1-3: Circumstances, Goals, Options

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Step 1: Understanding Personal and Financial Circumstances

- Obtaining Qualitative and Quantitative Information
- Analyzing Information
- Addressing Incomplete Information

Step 2: Identifying and Selecting Goals

- Identifying Potential Goals
- Selecting and Prioritizing Goals

Step 3: Analyzing the Client's Current and Potential Alternative Course(s) of Action

- Analyzing Current Course of Action
- Analyzing Potential Alternative Course(s) of Action

Steps 4-5: Developing and Presenting

CFP BOARD

Step 4: Developing the Financial Planning Recommendation(s)

- Select recommendation(s) to maximize Client potential for meeting goals
- For each recommendation, consider:
  - Assumptions and Estimates
  - Basis for Recommendation
  - Timing/Priority
  - Interdependency of Recommendation

Step 5: Presenting the Financial Planning Recommendation(s)

- Present recommendations
- Present information considered in developing the recommendation(s)

Steps 6-7: Implementing and Monitoring

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Step 6: Implementing the Financial Planning Recommendation(s)

- Address implementation responsibilities
- Identify, analyze and select actions, products and services
- Recommend actions, products, and services for implementation
- Select and implement

Step 7: Monitoring Progress and Updating

- Monitoring and updating responsibilities
- Monitor the Client's progress
- Obtain current qualitative and quantitative information
- Update goals, recommendations or implementation decisions

Quick Review

CFP BOARD

- ✓ **Updated Definition** - Financial Planning
- ✓ **Revised Standard** - Determining Whether the Practice Standards Apply
- ✓ **Updated Steps** - Financial Planning Process

Apply the New *Code & Standards example*

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Melissa leaves her investment manager because of fees and performance. She meets with Bryan, a CFP® professional, who reviews her information. Melissa requests the following services: investment management, insurance planning, and retirement planning. Bryan tells Melissa that these areas affect almost all of her assets, and that he would need to provide Financial Planning to provide these services. Melissa refuses to pay the extra costs or enter into a Financial Planning Engagement. Bryan concludes that he can avoid providing Financial Planning by limiting the Scope of Engagement to cover only investment management.

Apply the New *Code & Standards* example cont.

CFP BOARD

Which is the best course of action?

Response Options:

A. Bryan should do what Melissa wants and provide investment management, insurance planning, and retirement planning.

B. Bryan should have Melissa sign a waiver granting him permission to provide investment management, insurance planning, and retirement planning, but not Financial Planning, and then provide the three services.

C. Bryan should provide investment management, insurance planning, and retirement planning after informing Melissa how Financial Planning would benefit Melissa and how the decision not to engage Bryan to provide Financial Planning may limit Bryan's Financial Advice.

D. Bryan should provide the investment management, insurance planning and retirement planning after informing Melissa in writing how Financial Planning would benefit Melissa and that Bryan will not be providing Melissa with Financial Planning.

Apply the New *Code & Standards* example cont.

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No Client Agreement to Engage in Financial Planning (LO 3; Standard B.6.)

Correct Response: C is correct. Melissa has the right to choose which services to receive from a CFP® professional. Standard B.6. of the revised Code and Standards provides a CFP® professional with options when a Client declines services a CFP® professional is required to provide.

Apply the New *Code & Standards example*

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Laura, a CFP® professional, has an initial meeting with a new prospect, Sara. After agreeing to prepare a financial plan, Lara gathers information about her personal & financial goals, needs & priorities. Sara provides some documentation but says that she'll need more time to collect additional documents from home. Laura immediately begins reviewing the initial documents and developing recommendations and decides that Sara's goals are outdated. Several weeks later, Laura presents Sara with a financial plan that makes several recommendations that she believes are in Sara's best interests

Apply the New *Code & Standards* example cont.

CFP BOARD

Which of the following statements about this scenario is true?

Response Options:

A. Laura complied with the first three steps of the Practice Standards by gathering Client Data and developing recommendations.

B. Laura has not complied with the Practice Standards because she failed to: obtain information from Sara; analyze the information to assess Sara’s personal & financial circumstances; and work with Sara to identify and select goals. Laura also failed to analyze Sara’s current course of action prior to recommending an alternative course of action.

C. Laura has complied with the Practice Standards because she developed recommendations that she believes are in Sara’s best interests.

Apply the New *Code & Standards* example cont.

CFP BOARD

Practice Standards for the Financial Planning Process

(LO 3; Standard C)

Correct Response: B is correct.

The purpose of the revised financial planning process is to understand the Client’s personal & financial circumstances before working collaboratively with the client to identify and select goals

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INFORMATION THAT MUST BE PROVIDED TO THE CLIENT

LEARNING OBJECTIVE 4

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Providing Information to a Client

- Timing, delivery, and updating requirements
- Eight categories of information must be provided
- Additional requirements when providing Financial Planning

Timing, Delivery, and Updating

CFP BOARD

Timing:

- Prior to or at the time of the Engagement

Delivery:

- Financial Advice: No written requirement, but must document
- Financial Planning: Provide in one or more written documents
- Conflicts of Interest: Not required to be provided in writing, but evidence of oral disclosure will be given such weight

Updating:

- Ongoing duty to provide Client with a Material change or update
- Updates to disciplinary history or bankruptcies within 90 days

The Information That Must Be Provided

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A description of the services and products to be provided
How the Client pays for the products and services, and a description of the additional types of costs the Client may incur
How the CFP® professional, the CFP® Professional's Firm, and any Related Party are compensated for providing the products and services
Relevant websites that have information about disciplinary actions and bankruptcies
Other information that is Material to a Client's decision to engage or continue to engage
Full disclosure of all Material Conflicts of Interest
Policies regarding the protection, handling, and sharing of non-public personal information
Information required under the Engagement and in response to reasonable Client requests

Terms of Engagement

CFP BOARD

When Providing Financial Planning: The Terms of the Engagement include:

(a) the Scope of the Engagement and any limitations,

(b) when the services will be provided, and

(c) the Client’s Responsibilities

Quick Review

CFP BOARD

- ✓ Information provided to Clients
- ✓ **Timing**, **Delivery**, and **Updating**

Apply the New *Code & Standards example*

CFP BOARD

Charlie is a CFP® professional with no bankruptcy or disciplinary history. Gina, a prospect, meets with Charlie and hires him for Financial Advice not requiring Financial Planning. Charlie orally discloses all Material Conflicts of Interest. Both sign a written Engagement describing the services and products to be provided, how Gina pays for them, the additional types of costs Gina may incur, and how Charlie, his firm, and Related Parties are compensated for providing the products and services. The agreement makes Gina responsible for implementation, monitoring, and updating. Charlie provides another document describing his firm's policies regarding the protection, handling, and sharing of Gina's non-public personal information.

Apply the New *Code & Standards* example cont.

CFP BOARD

Has Charlie provided the required information to Gina?

Response Options:

A. Charlie has provided the required information set forth in the revised Code and Standards.

B. Charlie has not provided the required information to Gina because he cannot say that a Client is responsible for implementation, monitoring, and updating.

C. Charlie has not provided the required information to Gina because the agreement does not include a written disclosure of all Material Conflicts of Interest.

D. Charlie has not provided all required information to Gina because he failed to provide her with the location of the webpages where any governmental authority, self-regulatory organization, or professional organization that may set forth any public disciplinary history or personal bankruptcy or business bankruptcy where the CFP® professional was a Control Person.

Apply the New *Code & Standards* example cont.

CFP BOARD

Provide Information to a Client (LO 4; Standard A.10.)

Correct Response: A is correct.

The agreement includes the information that Standard A.10 of the revised Code and Standards requires. Because Charlie does not have any bankruptcy or disciplinary history, Charlie is not required to disclose the location of the webpages of all relevant public websites of any governmental authority, self-regulatory organization, or professional organization that sets forth his public disciplinary history or any personal or business bankruptcy with respect to which the CFP® professional was a Control Person. B is not correct because the Code and Standards states that a CFP® professional is responsible for implementing, monitoring or updating the Financial Planning recommendations unless those services are specifically excluded from the Scope of Engagement. C is not correct because the Code and Standards does not require Conflict of Interest disclosures to be provided in writing. D is not correct because Charlie only would have to provide that information if there is a disclosure set forth on the relevant webpage. Since Charlie does not have a bankruptcy or disciplinary history, he does not need to provide the location of the webpage(s).

Instructions for Program Delivery

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RECOGNIZE AND AVOID OR DISCLOSE AND MANAGE CONFLICTS

LEARNING OBJECTIVE 5

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Conflict of Interest Obligations

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- Avoid Material Conflicts of Interest
- For Material Conflicts that are not avoided:
  - Provide Full Disclosure
  - Obtain Informed Consent
  - Manage the Conflict in the Client's Best Interests

Duty to Fully Disclose Material Conflicts

CFP BOARD

Disclosure Obligation:

- Fully disclose all Material Conflicts of Interest that could affect the professional relationship

Conflict of Interest Defined:

- When interests of CFP® professional (and firm) are adverse to the CFP® professional's duties to the Client, or
- When CFP® professional has duties to one Client that are adverse to another Client

Material:

- When a reasonable Client or prospective Client would consider the Conflict of Interest important in making a decision

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Informed Consent Explanation

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- The client must not only receive the information related to the conflict of interest, but a determination must be made that the client actually understands the facts and circumstances and accepts the consequences of their decision to proceed.
- The CFP® professional must not only provide disclosures, but also document that the disclosures were received, reviewed & discussed with the client.

Full Disclosure and Informed Consent

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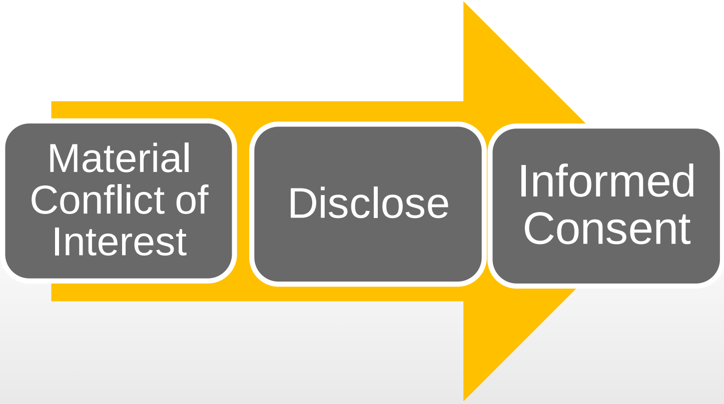
Disclose "Sufficiently Specific Facts"

- Would a reasonable Client understand the conflict and how it could affect the advice?
- Ambiguity interpreted in favor of the Client

Delivery:

- Written disclosure is not required
- Oral disclosure weighed as CFP Board deems appropriate



Obtain Informed Consent

- Written consent is not required
- When will consent be inferred?

Must Also Manage Conflicts

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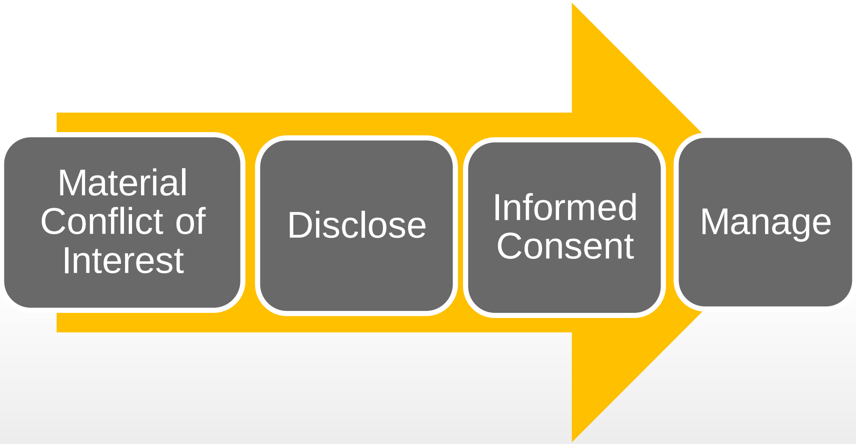
Management of Conflicts

- Must adopt and follow business practices reasonably designed to prevent Material Conflicts from compromising the CFP® professional's ability to act in the Client's best interests



Quick Review

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- ✓ **Disclose** Material Conflicts of Interest
- ✓ **Obtain** Informed Consent
- ✓ **Manage** the Conflicts

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Apply the New *Code & Standards example*

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Abby is a CFP® professional who wants to represent Ultra High Net Worth Clients and determines that one hallmark of these Clients is their propensity toward philanthropy. Abby is a board member of a local community foundation, a large nonprofit hospital, and her church. Through her various philanthropic roles, Abby meets several Clients who want her to provide them with financial planning, including assisting them with making choices regarding their philanthropic giving. Depending on the circumstances, Abby may consider recommending that Clients give to an organization for which she serves as a board member.

Apply the New *Code & Standards example cont.*

CFP BOARD

Is there a Material Conflict of Interest? If yes, how could Abby manage these conflicts?

Response Options:

- A. Yes, there is a Material Conflict of Interest. Abby should disclose her board membership and notify her Clients of the Conflict of Interest that the membership presents to her when assisting Clients with their philanthropic giving. Abby also should put into place business practices that will prevent her work with these organizations from compromising her ability to act in her Client's best interests.
- B. Yes, there is a Material Conflict of Interest. Abby should decline to enter into an agreement with prospective Clients and terminate any agreements with existing Clients who intend to make philanthropic gifts.
- C. No, there is not a Material Conflict of Interest because her board membership will add to the value of the advice Abby provides to her Clients.

Apply the New *Code & Standards example*

CFP BOARD

CFP® Professional Volunteer (LO 5; Standard A.5.)

- Correct Response: A is correct. Under Standard A.5.a., when providing Financial Advice, a CFP® professional must make full disclosure of all Material Conflicts of Interest. Advice regarding charitable giving is Financial Advice here because it is provided as part of the development or implementation of a financial plan. Aisha has a conflict because a reasonable client would view her board membership as affecting the objectivity of her recommendations and thus is important to the Client's decision whether to accept the recommendation. Under Standard A.5.b., the CFP® professional must adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising her ability to act in her Clients' best interests.

Apply the New *Code & Standards example*

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Cameron is a CFP® professional who has become friends with a recent widower, Jeff. Jeff mentions that he has decided to sell his house because it is too big for him to handle alone. Cameron says that she and her husband would be interested in purchasing his home but she would have a Material Conflict of Interest if she were to act as Jeff's financial planner and buy the home. Cameron follows up by providing Jeff with a comprehensive written disclosure regarding the conflict. Jeff acknowledged that Cameron has a Material Conflict of Interest, but he wants to proceed with the sale anyway.

Apply the New *Code & Standards* example cont.

CFP BOARD

What is Cameron's best option for managing the Material Conflict of Interest?

Response Options:

A. Cameron should ask Jeff what price he wants for the home and meet that price.

B. Cameron should decide what she thinks is a fair price and offer Jeff no less than that specific price.

C. Cameron should inform Jeff that she cannot purchase the home from him unless he obtains independent advice with respect to the sale of the home.

D. Cameron should terminate her relationship with Jeff as his financial planner and then purchase the home.

Apply the New *Code & Standards example*

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Real Estate Sale (LO 5; Standard A.5.)

- Correct Response: C is correct. The relevant standard is A.5.b. To manage this Material Conflict of Interest appropriately, Cameron should seek to make this an arms-length transaction. This term refers to a business deal in which buyers and seller act independently without one party influencing the other

Lightning Round

Lightning Flat Icon

Polling Question

CFP BOARD

In order for there to be Financial Advice, there must be compensation

- True
- False
- It depends

Polling Question

CFP BOARD

A CFP® professional who provides marketing materials and general financial education materials is “Providing Financial Advice”

- True
- False
- I’m guessing

Polling Question

CFP BOARD

How Many Steps Are in The Financial Planning Process?

- 6
- 7
- 5
- 8

Polling Question

CFP BOARD

A sincere belief by a CFP® professional with a Material Conflict of Interest that he/she is acting in the best interests of the Client is sufficient to excuse the CFP® professional's failure to make full disclosure of the Material Conflict of Interest.

- True
- False
- Not sure

Polling Question

CFP BOARD

The effect of the Financial Advice on the Client's exposure to risk is what determines whether a CFP® professional is required to provide Financial Planning.

- True
- False
- It depends

Polling Question

CFP BOARD

The Duty to Follow Client Instructions is absolute. There are no exceptions

- True
- False
- Not sure

Polling Question

CFP BOARD

The Professional Services to be provided pursuant to an engagement is defined as the Scope of

- Planning
- Responsibility
- Engagement
- Fiduciary

Polling Question

CFP BOARD

A CFP® professional must act as a ___ at all when times

- Investor
- Client
- Planner
- Fiduciary

Polling Question

CFP BOARD

There is a(n) ___ when a CFP® professional has duties to one client that are adverse to another

- Conflict
- Advantage
- Collusion
- Opportunity

Polling Question

CFP BOARD

A CFP® professional who exercises care, skill, diligence & prudence to act in the best interest of the Client is fulfilling the ____

- Duty of Loyalty
- Duty of Care
- Duty to Follow the Client's Instructions
- Duty to CFP Board

Wrap Up

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- Ask the program evaluation (paper version or online) be completed and emphasize the importance of participant feedback
- Let participants know when attendance will be reported to CFP Board
- Conduct a quick poll about their experience
- Consider the “Ah Ha” Moment activity

Polling Question

CFP BOARD

The best part of this CFP Ethics presentation

A. The Content

B. The Polling Questions

C. The Instructor was Marguerita ☺

D. It's over

E. All of the above

Recommended Resources

CFP BOARD

Go to www.cfp.net/code

- Full version new Code and Standards
- Commentary on the new Code and Standards

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THANK YOU

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GLOBAL WEALTH

Questions & Follow-up

CFP BOARD

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Ethics Icebreaker

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Ethics Icebreaker

Trending Topic: Mental Capacity

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Compliance Trends: Mental Capacity

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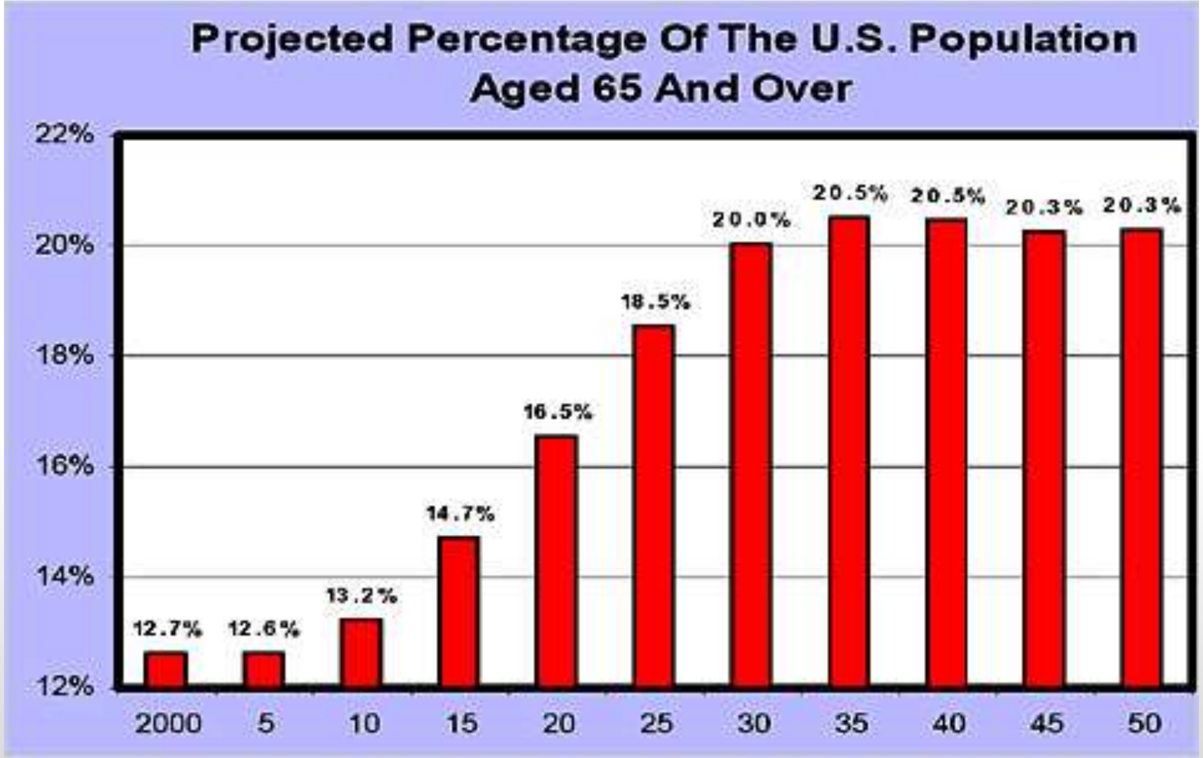

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Compliance Trends: Mental Capacity

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- The numbers tell the story: in 1900, Americans between the ages of 65 and 90 comprised a mere 6% of the U.S. population, but by 2050 this group is projected to comprise nearly 24% of the population.

- The number of Americans age 65 and older is expected to more than double, from roughly 40 million people today to 89 million people by 2050.

- With 10,000 U.S. residents retiring daily over the next 17 years require expanding social and economic consequences.

Compliance Trends: Mental Capacity

CFP BOARD

JANUARY 21, 2016

Clients' Dementia Presents Ethical Challenges for Advisors

Financial professionals face 'ethical and regulatory challenges' when their clients show signs of dementia

Compliance Trends: Mental Capacity

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723 views | Jun 20, 2018, 01:56pm

Understanding The Financial Risks Of Diminished Capacity

Catherine Schnaubelt Contributor

I write about retirement and wealth transfer planning.

Forbes

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Money

RETIREMENT • DEMENTIA

When Dementia Threatens Your Money

By MELISSA MONTGOMERY-FITZSIMMONS August 24, 2016

The older woman, in her mid-80s, was one of my sharpest clients, always on top of her finances. Then, not long ago, some of her children told me they found several past-due mortgage statements in a pile of old mail. Worse, after we arranged to pay the past-due bills, the client thought she was through with the issue. She did not understand that she needed to continue making payments every month.

Compliance Trends: Mental Capacity

CFP BOARD

Legislative action to protect senior investors around issues of dementia and diminished mental capacity:

- FINRA Chairman & CEO (retired) Rick Ketchum comments: It's not so much that we need senior investor legislation, but with respect to how many more seniors there will be we need to think about compliance and regulation and how we treat this population.
- How you communicate with a senior could be literally different than you would with a 30-year-old. Talking about it, thinking about best techniques, reinforcing information and making sure they understand the information – that would be one issue where the industry and regulators could work together on.
- No one – whether you are an industry person, a regulator, a legislator, press – no one will be able to ignore the fact that we have an aging population.

FINRA®

Compliance Trends: Mental Capacity

CFP BOARD

- The population of senior investors is large and growing; between 2012 and 2020, the number of Americans aged 65 or greater is projected to increase from 43 million to 56 million, and to 73 million by 2030.
- The consequences of unsuitable investment advice can be particularly severe since they rarely able add to their investment portfolios and lack time to make up losses.

Compliance Trends: Mental Capacity

CFP BOARD

- Many firms are increasingly proactive in dealing with senior investors by developing specific internal guidelines to strengthen suitability decisions and providing training on the needs of these investors, including, in some cases handling individuals experiencing **diminished capacity** or **elder financial abuse**.

Compliance Trends: Mental Capacity

CFP BOARD

- Firms that conduct seminars directed to senior investors must ensure that the presentations are fair, balanced and not misleading. Protecting senior investors also means compliance with requirements apart from the federal and state securities laws that require reporting or the intervention of court-appointed guardians when elder abuse is detected.

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Recommended Resources

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- Regulators will continue to review communications with seniors; the suitability of investment recommendations made to seniors, the training of financial advisors to handle senior-specific issues; and the supervision firms have in place to protect seniors.

Considerations

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- Is the client currently employed? If so, how much longer does he/she plan to work?
- What are the client's primary expenses? For example, does the client still have a mortgage?
- What are the client's sources of income? Is the client living on a fixed income or anticipate doing so in the future?
- How much income does the client need to meet fixed or anticipated expenses?

Considerations cont.

CFP BOARD

- How much has the client saved for retirement? How are those assets invested?
- How important is the liquidity of income-generating assets to the client?
- What are the client's financial and investment goals? For example, how important is generating income, preserving capital or accumulating assets for beneficiaries?
- What health care insurance does the client have? Will the client be relying on investment assets for anticipated and unanticipated health costs?

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Elder Care Best Practices

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- Designate a specific individual or department, such as the compliance or legal department, to serve as a central advisory contact for questions about senior issues.
- Provide written guidance to employees on senior-related issues, such as how to identify and/or what to do if they suspect their client is experiencing diminished capacity or is being abused, financially or otherwise, by a family member, caregiver or other third party.

Elder Care Best Practices cont.

CFP BOARD

- Ask at either the initial engagement or a meeting in the future, whether the client has executed a durable power of attorney or other estate planning documents. It may be easier to engage in these conversations with your clients about these sensitive issues as a matter of routine.
- Ask either at either the initial engagement or a meeting in the future, whether the client would like to designate a secondary or emergency contact for the account whom the firm could contact if it could not contact the client or had concerns about the client's whereabouts or health.

Elder Care Best Practices cont.

CFP BOARD

- Ask the client if he or she would like to invite a friend or family member to accompany him/her to meetings.
- Remind financial advisors that it is important to base recommendations on current information.

Elder Care Best Practices cont.

CFP BOARD

- Offer education to help financial advisors understand and meet the needs of older investors, including proper asset allocation, liquidity demand and longevity needs
- Invite representatives from senior-related advocacy groups, the Alzheimer's Association, and state and local agencies that serve seniors to speak to their employees.
- Organizations that can help firms locate local experts on senior issues include the National Association of State Units on Aging (www.nasua.org), the National Association of Area Agencies on Aging (www.n4a.org) and AARP (www.aarp.org).

Elder Abuse Resources

https://www.justice.gov/elderjustice

http://www.preventelderabuse.org/issues/capacity.html

http://www.americanbar.org/news/abanews/aba-news-archives/2013/10/recognizing_and_deal.html

http://www.aarp.org/aarp-foundation

http://www.gao.gov/products/GAO-13-140T

Elder Abuse Resources cont.

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Protecting residents from financial exploitation

A manual for assisted living and nursing facilities

http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf

cfpb Consumer Financial Protection Bureau

Senior Investors

FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers

Executive Summary

The purpose of this *Notice* is to urge firms to review and, where warranted, enhance their policies and procedures for complying with FINRA sales practice rules, as well as other applicable laws, regulations and ethical principles, in light of the special issues that are common to many senior investors. The *Notice* also highlights, for the consideration of FINRA's member firms, a number of practices that some firms have adopted to better serve these customers.

SEC Comments: Diminished Capacity

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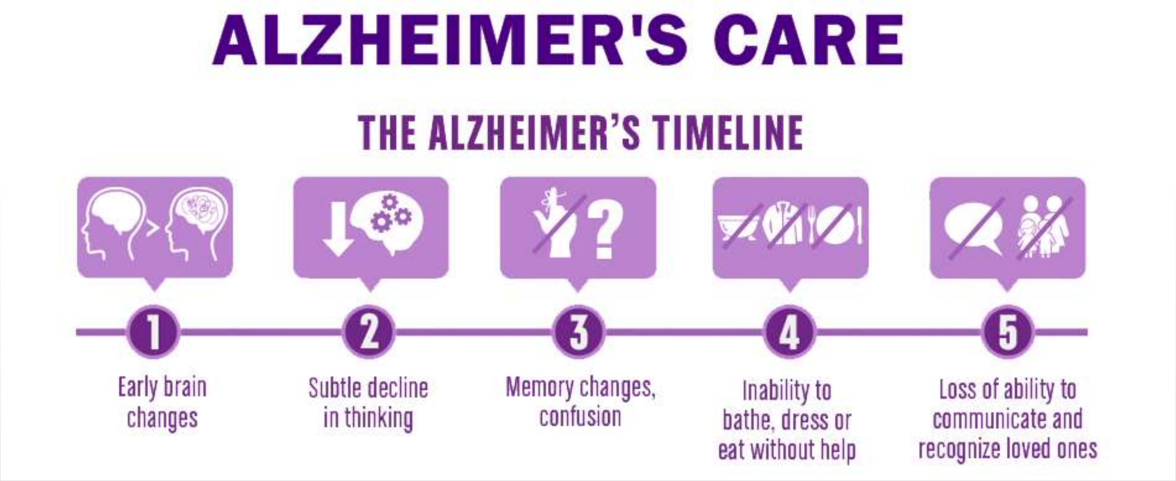
- Diminished mental capacity, such as Alzheimer's Disease and other forms of dementia, may impair a client's ability to make appropriate decisions regarding his or her portfolio.



What is Elder Abuse?

Recommended Resources

CFP BOARD

- While not qualified to diagnose clients, Firms and their Registered Representatives should be alert to the signs of Diminished Capacity, including:
- Memory loss (is the client repeating orders or questions?)
- Disorientation (is the client confused about time, place or simple concepts?)
- Difficulty performing simple tasks
- Poor judgment
- Drastic mood swings
- Difficulty with abstract thinking

SEC Comments: Diminished Capacity Red Flags cont.

CFP BOARD

- Sudden reluctance to discuss financial matters.
- Sudden, atypical or unexplained withdrawals, wire transfers or other changes in financial situation.
- Drastic shifts in investment style.
- Abrupt changes in wills, trusts, POAs, or. beneficiaries
- Concern or confusion about missing funds.
- Appearance of insufficient care despite significant wealth.

SEC Comments: Diminished Capacity Red Flags cont.

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- A firm must decide whether to accept, or refuse, an order from a client suffering from diminished capacity. There are risks with either course of action.
- Sometimes a firm must protect the client from him or herself.
- What we do may result in complaints from either the client or the client’s family members, guardian, or heirs.

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Elder Financial Abuse

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- Often occurs in tandem with a client's diminishing mental or physical capacity
- Occurs when someone exploits a position of influence or trust over an elderly person to gain assets to that person's assets, funds or property.

- Examples of abuse include:
- Cashing checks without authorization
- Forging signatures
- Improper use of conservatorship, guardianship or POA

Elder Abuse Example 1

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InvestmentNews

Advisers on front lines in battle against financial abuse of the elderly

As the population ages, more seniors are at risk of becoming victims of financial exploitation

By **Christine Idzelis** — April 3, 2017

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Elder Abuse Example 2

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InvestmentNews

Advisers taking steps to protect elderly

Firms and regulators are putting policies in place to help advisers help seniors

Apr 3, 2017 @ 12:01 am

By Mark Schoeff Jr.

48 Shares

Elder Abuse Example 3

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Forbes / Personal Finance / #BeltwayBrief

MAY 8, 2018 @ 12:12 PM 825

The Little Black Book of Billionaire Secrets

How The Senior Safe Act Could Curb Elder Financial Abuse

Why is Elder Financial Abuse Awareness important to your practice?

- Financial health affects our clients' overall health.
- The quality of proper nutrition and healthcare are both affected by finances.
- Many aspects of normal aging and disease can contribute to client vulnerability, fraud and exploitation.
- Changes in a client's ability to make important decisions can leave him/her vulnerable to someone who may handle their affairs differently than they would.
- The population of older adults vulnerable to investment and financial fraud is increasing.

Diminished Capacity & Elder Abuse Escalation

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- Financial advisor should determine whether there is an executed trading authorization or durable power of attorney on file.
- If appropriate, suggest that the client bring a trusted family member/friend to the next meeting.
- When these options are not available, Firms are in a difficult position as privacy laws may prohibit contacting a third party without the client’s authorization.
- Firms should consider a centralized escalation process to Legal or Compliance to promote consistency of approach.

Prevent Elder Abuse

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- A contact authorization form that gives advisers a trusted person to reach out in case of suspected fraud.
- Perhaps a request for a family member to receive duplicate copies of statements,

  -Not necessarily power of attorney

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Trending Topic: Filial Laws

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Filial Laws

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Filial responsibility definition: A duty owed by an adult child for his parents' necessities of life.

Filial Laws cont.

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Parental Support Laws

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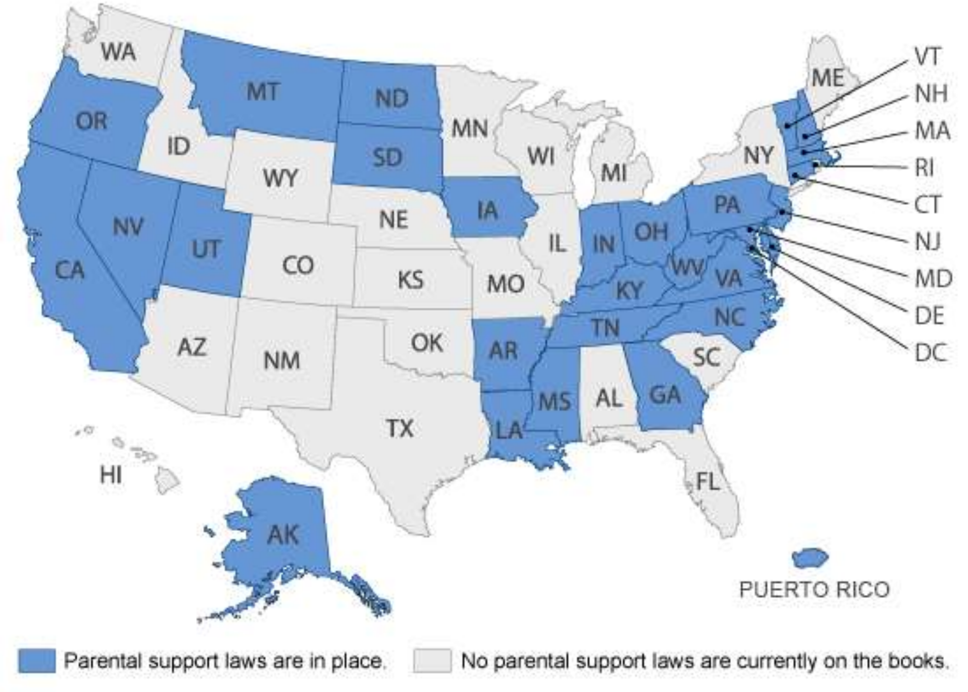

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Filial Responsibility Laws

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Alaska, Arkansas, California, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, and West Virginia.

No Filial Responsibility Laws: Colorado, New Mexico & Arizona

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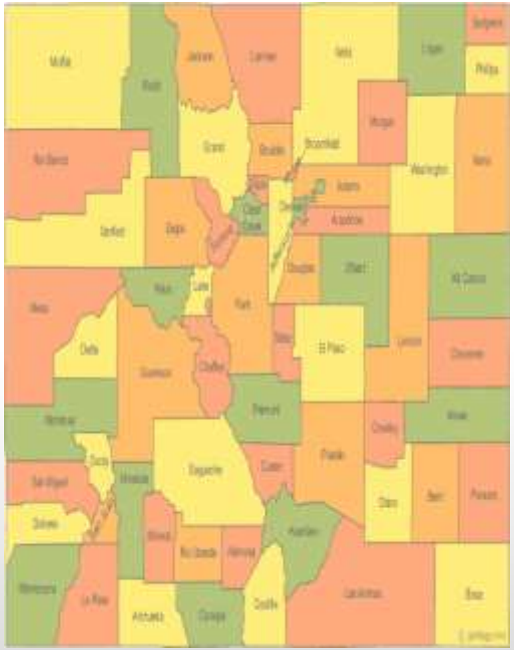

Filial Responsibility Laws (Utah)

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Utah's filial responsibility statute states, "Children shall first be called upon to support their parents, if they are of sufficient ability; if there are none of sufficient ability, the parents of such poor person shall be next called upon; if there are neither parents nor children, the brothers and sisters shall next be called upon; and if there are neither brothers nor sisters, the grandchildren of such poor person shall next be called upon, and then the grandparents."

In short, children have a filial responsibility to take care of their parents.

No Filial Responsibility Laws: Michigan, Wisconsin, Minnesota & Illinois

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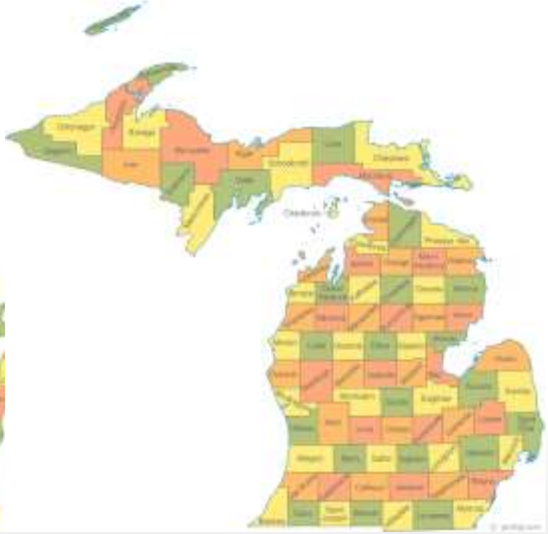

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Filial Responsibility Laws (Virginia)

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- Under Virginia Code section 20-88, joint and several liability maybe applied to any person of “sufficient earning capacity or income, after reasonably providing for his or her own immediate family, to assist in providing for the support and maintenance of his or her (parent, if such parent is) in necessitous circumstances.

Filial Responsibility Laws (Maryland)

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- The repeal was a bipartisan effort. The arguments for repealing the law were that filial responsibility laws were a holdover from Elizabethan times, and that a parent’s failure to exercise sound financial discretion should not burden the parent’s adult children.

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Filial Responsibility Laws (California)

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- California has one of the more comprehensive filial responsibility laws, though it has rarely been enforced.
- Currently, a California action for filial support must be brought by the parent or the county, not by creditors.
- And, there is no responsibility to pay for the parents debts after they die.

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Filial Responsibility Laws (Florida)

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Filial responsibility refers to the obligation imposed by statute, in many states, holding family members liable for the costs of care and upkeep for an elderly or disabled loved one. And some states, like Florida, do not have filial responsibility laws.

Filial Responsibility Laws (New York)

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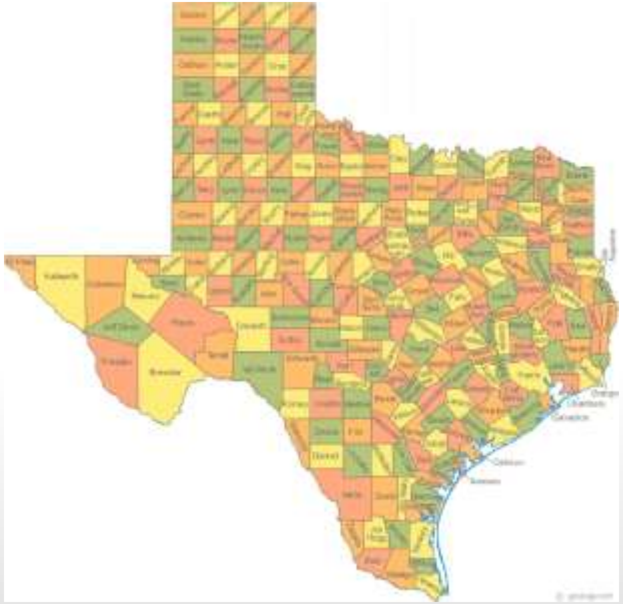
“Here in New York, children have no legal obligation at all with respect to the care of their parents, or any obligation with respect to their expenses,” said James A. Robbins, a specialist in elder law at Manhattan-based Robbins & Associates.

Filial Responsibility Laws (Texas)

Though it was repealed in 1993, the Texas Probate Code once included a filial responsibility statute. In 1955, the Regular Session of the 54th Texas Legislature enacted Chapter IX of the Texas Civil Statutes, an act entitled Specific Provisions Relating to Persons of Unsound Mind and Habitual Drunkards.



Filial Responsibility Laws (North Carolina)

You could face criminal charges in North Carolina for failure to support your parents. If one or both parents are sick or unable to support themselves financially, it is a duty of a child who is financially able to do so to support the parent(s). If the child fails to provide this support, he or she could face a Class 2 misdemeanor for the first conviction and a Class 1 misdemeanor for any subsequent conviction. This law can mandate stiff penalties; depending on a person's prior criminal record, he or she could receive active jail time up to 60 days for a first offense and 120 days for any following convictions.

Filial Responsibility Laws (Pennsylvania)

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Pennsylvania Act 43 of 2005 resurrected the old filial support laws that made adult children financially responsible for payment of their parents' long term medical costs. Act 43 became a part of Pennsylvania's Domestic Relations Law in 23 Pa. Cons. Stat. Chapter 46, entitled "Support of the Indigent." Unfortunately, Act 43 does not specifically define "indigent" and, as such, there is no true definition of the term. Prior case law may assist in identifying facts and circumstances under which one may be considered "indigent." Arguably, however, any situation where all or a portion of an individual's care costs are not being paid (for any number of reasons) could make a family member open to a claim for filial support.

Filial Law Example 1

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Adult Children Could Be on Hook for Parents' Nursing Home Bills

The adult children of elderly parents in many states could be held liable for their parents' nursing home bills as a result of the new Medicaid long-term care provisions contained in a law enacted in February 2006. The children could even be subject to criminal penalties.

The Deficit Reduction Act of 2005 includes punitive new restrictions on the ability of the elderly to transfer assets before qualifying for Medicaid coverage of nursing home care. Essentially, the law attempts to save the Medicaid program money by shifting more of the cost of long-term care to families and nursing homes.

ElderLawAnswers

The Web's Most Trusted Long-Term Care and Planning Resource

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Wills and Estate Planning

What is Filial Responsibility and Why Should You Be Concerned About It?

Do You Have Filial Responsibility for Your Parents' Medical Bills?

By Julie Garber
Updated September 08, 2016

Filial responsibility definition: A duty owed by an adult child for his parents' necessities of life.

the balance

Filial Law Example 3

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BARRON'S

Family-Responsibility Laws Could Cost Your Clients

Be aware of laws aiming to hold family members financially responsible for other family members.

By Jamie Hopkins • Updated April 24, 2017 9:44 a.m. ET

Contributor

Jamie Hopkins

I cover retirement income planning, retirement, and other legal issues

Follow

Filial Law Example 4

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InvestmentNews

Why filial laws are a 'sleeping giant' that could prompt long-term-care planning

The laws create the possibility that clients' their long-term-care expenses may be shouldered by their children

May 24, 2016 @ 1:03 pm
By Greg Iacurci

537
Shares

The National Academy of Elder Law Attorneys (NAELA)

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- Established in 1987, NAELA's mission is to educate, inspire, serve, and provide community to attorneys with practices in elder and special needs law.
- Members of the National Academy of Elder Law Attorneys (NAELA) are attorneys who are experienced and trained in working with the legal problems of aging Americans and individuals of all ages with disabilities.
- Elder law and special needs planning includes helping such persons and their families with planning for incapacity and long-term care, Medicaid and Medicare coverage (including coverage of nursing home and home care), health and long-term care insurance, and health care decision-making.
- It also includes drafting of special needs and other trusts, the selection of long-term care providers, home care and nursing home problem solving, retiree health and income benefits, retirement housing, and fiduciary services or representation.

NAELA
National Academy of Elder Law Attorneys

Questions & Follow-up

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