



Financial Abuse of Seniors: Truth or Myth?

- 1.) According to the Bureau of Justice Statistics, people over the age of 65 are most likely, of any demographic group, to be the victims of a “property crime” i.e. involving money. T or M ?

- 2.) In NYS, you *must* have a Power of Attorney form filed with your county clerk’s office for it to be valid. T or M ?

- 3.) The 2010 NYS Elder Abuse Prevalence Study found that only 1 out of every 44 cases of financial exploitation/abuse are ever reported to authorities. T or M ?

- 4.) NYS has a mandatory reporting law which requires professionals to report cases of elder abuse or financial exploitation to Adult Protective Services or law enforcement. T or M ?

- 5.) Dishonest home health aides were the # 1 perpetrators of financial abuse of older adults in 2011. T or M ?

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NON SEQUITUR

by Wiley



WHEN LITTLE RED RIDING HOOD GOT TO HER GRANDMOTHER'S HOUSE, SHE SAW THAT THE AILING OLD WOMAN HAD BEFRIENDED THE WOLF.

THIS SWEET DOGGY IS HELPING ME WITH MY ESTATE PLANNING!

WOLF:

RED:

MY, WHAT BIG EARS YOU HAVE, MISTER WOLF

THE BETTER TO HEAR OPPORTUNITY KNOCKING WITH, LITTLE GIRL

AND WHAT BIG EYES YOU HAVE

THE BETTER TO SEE LEGAL LOOPHOLES WITH

AND WHAT BIG TEETH YOU HAVE

THE BETTER TO SEIZE POWER OF ATTORNEY WITH!

WITH THAT, RED RIDING HOOD LEFT TO FIND HELP FOR HER FEEBLE GRANDMOTHER!

BUT RED WAS TOO LATE AND BEFORE HER GRANDMOTHER PASSED AWAY SHE HAD SIGNED PAPERS THAT LEFT ALL HER ASSETS TO THE WOLF...

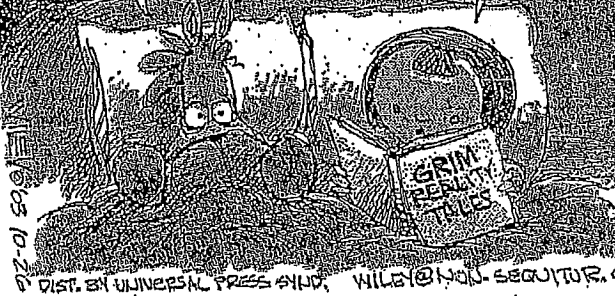
SORRY, KID... IT'S ALL LEGAL

NOW GET OFF MY PROPERTY

...LEAVING HIM FREE TO ROAM AND PREY UPON OTHER GOOD-NATURED OLD FOLKS

WOLF: SHEESH AND I THOUGHT THE ORIGINAL VERSION WAS GRUESOME...

RED: FICTION IS NEVER AS SCARY AS REAL LIFE, LUCY



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IV. FINANCIAL EXPLOITATION

FINANCIAL EXPLOITATION – FASTEST GROWING FORM OF ABUSE

Financial exploitation is the fastest growing form of elder abuse, and often the most devastating for a victim who is an older adult. Staff members of financial institutions have a special role to play in the prevention of elder abuse, neglect and exploitation. Not only do they have frequent contact with older adults, they are well equipped to identify suspicious activity. They are a first line of defense against the exploitation of older adults and can begin the intervention process by reporting possible cases of financial exploitation, fraud and scams.

All professionals can help prevent financial exploitation by observing whether older adults are confused or experiencing mental or physical impairments that make it difficult for them to handle their accounts or other financial matters. Suspicions of financial exploitation should be reported to proper authorities, local elder abuse prevention programs or county Protective Services for Adults. Helping older adults access other agencies that provide needed services will also help prevent further abuse.

Fiduciary Relationships

You may come across various documents that give another person the legal right to act as an older adult's proxy. It is important to understand this person's responsibilities and the legal issues that may arise because of them.

Guardianship

Guardianship is a court-ordered appointment (pursuant to Article 81 of the N.Y. Mental Hygiene Law) wherein an individual, the "incapacitated person," has his or her personal needs (i.e., living arrangements, medical decisions, personal care, etc.) and/or property rights (i.e., authority to enter into contracts, pay bills, invest money, make gifts, etc.) managed by another person, corporation or public agency. The guardian's duties are explicitly stated in the order of appointment and the guardian is required to provide initial, annual and final reports to the court. A court action is the only legal way to declare a person incapacitated; a person is assumed to have capacity until that time. Guardianship is designed to provide assistance to individuals in the least restrictive manner. It is not "one size fits all." Because a person may retain capacity in some areas, and lack capacity in others, his or her capacity is carefully evaluated by the court in terms of functionality and cognitive impairment. Collateral information from doctors, family, friends and other pertinent individuals may be utilized in making a capacity determination.

Financial institutions are obligated to accept valid guardianships according to the terms of the court order appointing the guardian.

Power of Attorney

A power of attorney (POA) is an inexpensive and effective tool for financial management and estate planning. It is a notarized legal document that gives an individual or agency (the agent) authority to act on behalf of another person (the principal). Powers given to an agent can be very specific or very general. A power of attorney is not an indication of incapacity and does not in itself relinquish the principal's control or authority over his or her affairs. As of September 1, 2009, significant changes were made in New York's law governing powers of attorney (General Obligations Law, Article 5, Title 15); the law was further amended in 2010. See Appendix A for key highlights about these changes and general information about POAs. See Appendices B and C, respectively, for a sample copy of the Power of Attorney Statutory Short Form and Statutory Gifts Rider.

Representative Payee (Rep Payee)

A representative payee is an individual or organization appointed by the Social Security Administration (SSA) to manage monies received from the SSA (i.e., Social Security retirement or disability income, Supplemental Security Income) by a person who has been declared incapacitated or otherwise unable to manage his or her own finances. The rep payee is responsible for utilizing an SSA recipient's funds for the current or future needs of the individual. The payee is required to keep records of any transactions made with SSA funds and provide reports to the SSA upon request.

A representative payee does NOT have authority to manage non-SSA monies. A power of attorney or guardianship would be needed for this purpose. Likewise, a power of attorney does not give the agent the authority to act on a principal's behalf with the SSA. These two tools are not interchangeable.

FRAUDS, SCAMS AND IDENTITY THEFT

Older adults are a favorite target for con artists. Typically, these criminals use personal information, persistence and intimidation to swindle money from their victims. Unfortunately, scam victims may be too embarrassed or fearful to tell family or friends. Con artists usually appear to be trustworthy and sincere.

The Fake Accident/Arrest Ploy: The con artist gets the older adult to withdraw money on the pretext that the older adult's child, grandchild or another relative is in the hospital or jail and needs money immediately.

The Bogus Winner: The older adult receives a call saying they have won a free or cheap vacation, other prize, lottery or sweepstakes. They can redeem the winnings by merely paying some "taxes" and other "costs." The older adult must provide bank account information, send a check or wire the money to receive the winnings or prize.

Telemarketing Fraud: Operators employing high-pressure and well-rehearsed sales tactics attempt to defraud the older adult by seeking money in exchange for services or products, which are never sent or are priced far above their actual value. This fraud is often accompanied by the requirement that the older adult make a "900" call (or perhaps to other long-distance areas such as the West Indies or Virgin Islands) without

knowing the calls are charged at a high rate to the caller. Some perpetrators then follow up with a new offer to assist the older adult in recouping fraudulent losses. Of course, there is a fee for this new service.

Mail Fraud: The con artist attempts to sell fraudulent or misrepresented investments, solicit funds for phony charities, promote participation in fraudulent “work at home” schemes or sell chances in phony sweepstakes or contests.

Internet Fraud: Victim receives an e-mail from either a familiar organization (IRS, their bank, etc.) or a notification that they are the beneficiaries of a bequest. The e-mail requires immediate response and the sharing of some personal information.

“Low ball” quotes: A debt consolidation scam - letters, TV and radio ads pitching a 50% reduction in debt. These organizations sometimes charge large fees up front, may be undercapitalized and use your money for payroll, or may be several months behind in processing, adding further to your debt. Similarly, gutter cleaning and other home repair services are offered at an extremely low price, but are then accompanied by hidden fees and other costs. It is always advisable to get several quotes.

Additional Fraud and Scam Information:

- In the past decade a number of new banking scams have emerged. Much fraudulent activity and many scams involve theft of identity or financial information.
- Many trusting, older adults often do not realize how important it is to protect their account numbers and confidential PIN numbers. They often welcome assistance with shopping and allow relatives, neighbors and “friends” to use their debit and credit cards for cash and purchases. Often, a portion of the funds is indeed used for legitimate purchases; however, the remainder is not used for the benefit of the older adult or is used without his or her knowledge.
- Credit card numbers are stolen and sold over the internet. Perpetrators have blank cards and equipment to duplicate the original card. There are many methods that can be used to obtain a person’s credit card number.
- Beware of the contractor or door-to-door salesperson who offers to drive the older adult to the bank to get cash before starting a job.
- Any outgoing cash wires should be discussed with the older adult, especially monies being wired out of the U.S. How well do you know the person that will be receiving the money? Is this to purchase a product, or a loan? Worse yet, is it “confidential” because you have won money?
- Using a credit card is safer than using a debit card. It limits a person’s losses.
- Bank Managers are often the first line of defense. If an older adult comes into a financial institution with an unknown person, it is advised that bank personnel greet the older adult and accompanying person, and then commence a discussion to determine whether the older adult is possibly being victimized. How is the person related? What is his or her reason for accompanying the older adult today? The two people may need to be separated to best ascertain this information. Consult with bank security if there is suspicion that the older adult is in danger or a possible victim of financial exploitation.

SIGNS AND SUSPICIOUS BEHAVIORS SIGNALING POSSIBLE FINANCIAL EXPLOITATION OR VULNERABILITY TO EXPLOITATION

Any one of these indicators alone does not necessarily mean there is exploitation. However, if a pattern occurs over time including one or more of these indicators, investigation is definitely warranted.

Older adults may be victims of financial exploitation, fraud or scams if they are:

- Accompanied by a stranger or family member who encourages or pressures them to withdraw a large amount of cash.
- Not allowed to speak for themselves or make decisions.
- Accompanied by someone who appears too interested in their financial information.
- Nervous or afraid of the person accompanying them.
- Providing implausible explanations about what they are doing with their money.
- Concerned or confused about “missing funds” in their accounts.
- Unable to remember financial transactions or signing paperwork.
- Fearful that they will be evicted or placed in a nursing home if money is not given to a caregiver.
- Appear to be neglected or receiving insufficient care for their needs in spite of sufficient financial means.
- Isolated from other family members by a relative or acquaintance.

Specific Suspicious Activities

Unusual volume of banking activity

- Frequent account changes.
- Change in pattern of withdrawals, or unusually large amounts.
- Large withdrawals or transfers from recently opened joint accounts.

Banking activity inconsistent with customer’s usual habits

- Large withdrawals from previously inactive accounts.
- Frequent withdrawals made through ATMs, especially if the older adult is physically frail and has not used ATMs previously.
- Sudden changes in an established pattern of deposits and withdrawals.
- Revocation of stable, single beneficiary trusts.

Suspicious signatures on checks or other documents, such as credit card application or power of attorney

- Older adult's signature appears forged.
- The signature appears correct but the amounts are written in a different handwriting and/or with different pens.
- Older adult uses a "signature stamp" to sign documents.

Sudden increases in incurred debt when older adult appears unaware of transactions

- Bank loans, second mortgage, quitclaim deed.
- Large credit card debts.

Additional suspicious activity

- A fiduciary or other person begins handling the older adult's financial affairs, withdrawing funds with no apparent benefit to the older adult.
- Bank statements are no longer sent to the older adult's home.
- Implausible reasons for banking activity are given either by the older adult or by a family member or acquaintance.

SUGGESTED GUIDELINES FOR INVESTIGATING SUSPECTED FINANCIAL EXPLOITATION

- Interview victims and alleged abusers separately.
- Determine the relationship between the victim and the suspected abuser. Is the suspect a member of the victim's family? Is he or she in a position of trust? Does he or she live with the victim?
- Determine the extent of the victim's financial assets, including real properties, certificates of deposit, stocks, bonds, bank accounts, home furnishings, personal belongings, vehicles.
- Find out who owns the victim's home, whose name is on the deed, whose name is on the rental agreement, who pays the property taxes, who pays the rent and whose name is on the utilities.
- Check with the County Clerk's Office to determine if there have been any suspicious deed transfers.
- Make sure the victim does not sign any documents in the future to transfer property or give power of attorney to the suspected abuser.
- Determine if the victim is literate.
- Find out whose names are on bank accounts, certificates of deposit, investment accounts and stocks.
- Consult a forensic accountant in complex cases of financial exploitation.
- Find out if there is a representative payee, power of attorney or legal guardian.

- Find out who pays the bills.
- Find out how the victim's pension, social security or other income checks are received and deposited into bank accounts.
- Receive samples of the victim's and the suspected abuser's signatures.
- Determine what documents signed by the victim have placed the assets in the suspect's control. These documents may include powers of attorney, bank signature cards or title transfer documents. Get copies of the signed documents.
- Check for previous criminal charges against the suspected abuser.
- Take into consideration the victim's mental status. Does the victim appear to be capable of understanding documents, testifying or assisting in the investigation?
- If the person is incapacitated, or if his or her capacity is questionable, contact family members, friends or service providers to obtain mental health evaluations and history. This should include information about the relationship between suspected abuser and the victim, and the length of time that the victim has had diminished capacity in order to determine if he or she was able to give consent at the time it was given.
- If questionable purchases have been made, find out the value of the purchases, by whom and for whom they were made, the value of the purchases in relation to the suspected abuser's income and whether there has been a history of gift giving between the parties.
- Determine whether the older person's assets are still at risk of theft or misappropriation. If so, secure the assets as soon as possible.
- Follow the "money trail!" Determine who has (or had) possession of all misappropriated funds or property.
- Determine if the victim is willing to press charges.

Action Steps for Stolen Social Security, Pension or Annuity Checks

- Notify the Social Security Administration, the Veterans Administration or the appropriate pension system. The Social Security Administration, for example, can hold checks until the problem is resolved or can require assignment of a new representative payee if checks are being misused.
- Arrange for direct deposit of checks or for change of address for mailing of checks to a safe, reliable address. Changing an address can be accomplished more quickly than arranging for direct deposit. Changing the address, therefore, is recommended as an interim measure until the direct deposit request takes effect.

Remember

- Immediate response may minimize the exploitation of the older adult.
- Ask clear, non-threatening, factual questions; empathize with the victim and validate his or her feelings.
- Explain that there is help available that may be able to assist in resolving the problem.
- Careful documentation and preservation of all evidence are essential.