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Rev. 5/08

Elder Financial Abuse

WHAT IS ELDER FINANCIAL ABUSE?

Elder abuse makes up a broad range of conduct. Some examples include the attendant who shortchanges his or her elderly client; the neighbor who secures a power of attorney to help out with chores and uses it to take possession of an older person's home; and the son or daughter who persuades an impaired elderly family member to change a will in his or her favor.

Seniors are more susceptible to many different types of abuse. Clearly, one factor is that persons over the age of 50 control 70% of the nation's wealth. Other explanations are seniors are more trusting than their younger counterparts: that they may not realize the value of their assets; and that they are easily identifiable as victims. Additionally, they are more likely to have conditions or disabilities that make them easy targets. Abusers of elders may also recognize that older people who are in extremely poor health may not survive long enough to follow through on lengthy legal interventions.

INDICATORS OF FINANCIAL ABUSE

The following list of indicators of financial abuse was derived from a variety of sources. While there is no litmus test for identifying abuse, the presence of any of these conditions may warrant concern and further investigation.

- Bank activity that is erratic, unusual, or uncharacteristic of the older person.
- Changes in property titles, wills, or other documents; especially if the person is confused and/or the documents favor new acquaintances.
- The senior executes a power of attorney and gives it to someone other than a family member.
- Lack of amenities when the person can afford them.
- Missing property.
- Suspicious activity on credit card accounts.
- Forged or suspicious signatures on documents.
- Failure to receive services that have already been paid for.
- The person is being evicted or having his or her utilities disconnected.
- The person is uncared for or the residence is unkempt when arrangements have been made for providing care.
- Untreated medical or mental health problems.
- The person's documents (e.g. pensions, stocks, or government payments) are missing.
- The person is unaware of, or does not understand, recently completed financial transactions.

DOCUMENT FINANCIAL ARRANGEMENTS

Put all financial instructions in writing. Keep up-to-date records of all financial transactions in a safe place.

Practice Preventive Banking

If possible, use direct deposit. Keep checks in a safe place and don't sign a blank check allowing someone else to fill in the amount. Never give anyone your ATM or credit cards or your PIN numbers. Check your bank statements carefully for unauthorized withdrawals.

Be Cautious of Signing Powers of Attorney

Before signing a power of attorney for a bank account, general purposes or for financial management, know and trust the person that you are naming as the agent; a power of attorney can sometimes be used by unscrupulous persons to "legally steal" someone's money and assets.

Establish Relationships with Financial Professionals

Get to know your banker, attorney and/or financial advisor. They can help detect changes or unusual activity that might signal problems.

Be Aware of Scams

Just say no to bogus prize offers, travel packages, get-rich-quick schemes and even pleas from unknown charitable or religious organizations. In telephone solicitations, never give your social security or credit card number over the phone.

Check Health-Care Billing

Question bills or notices for services that you do not understand. Report providers that have suspicious billing practices and never give your Medicare or Medi-Cal number to unauthorized providers or for "FREE" health-care services.

Avoid Trust Mills and Annuity Salespeople

Do not attend living trust seminars. Seek assistance from a lawyer specializing in elder estate planning.

REMEDIES FOR FINANCIAL ABUSE

If careful investigation and assessment indicates that abuse has occurred, a variety of interventions can be initiated to recover assets and protect clients from further abuse. Here are some actions that service providers can take to help their clients:

Misused Bank Accounts

- Contact the bank immediately and request that it "flag" the account, and observe it with caution.
- Access information regarding the account by visiting the bank with the client. If the client is home bound and hasn't granted anyone power of attorney, have the client sign a release of information form for the bank or arrange a home visit by bank personnel.
- Close the misused account and have the client open a new account. This can be done in person or via a letter signed by the client.
- Request copies of past concealed checks, bank statements and withdrawals to look for forgery or unusual activity. If forgery or misuse of funds is apparent, the client can sign an affidavit with the bank and it will be investigated.

Misuse of Power of Attorney

- If you believe there is a misuse, have the client verbally inform the attorney that the power of attorney is being revoked. If the client no longer has capacity and the power of attorney is not a durable one, it is not a valid document. The client should sign a letter of revocation.
- Send copies of the letter to the attorney.
- Declare that the attorney has misacted and have the power revoked if it is in the best interest of the principal.
- The investigating worker should file the revocation letter with the County Recorder's office.
- Legal counsel should be sought.

Stolen SSA, Pension or Annuity Checks

- Notify the Social Security Administration (SSA), the Veterans Administration or the pension board of the problem. SSA can hold on to the checks until the problem is resolved or can require assignments of a new representative payee if checks are being misused.
- Arrange for direct deposit of checks or change the address on the check to a reliable address.

Suspicious Deed Change on Property

(often in exchange for a promise of life care)

- Look up the deed at the County Recorder's office to check the title on the property. See if the deed has been transferred and recorded (anyone can look up these public records).
- If a new deed has not been recorded, ask the client and involved parties for any papers indicating a transfer of property.
- If the deed has been transferred, get legal assistance in transferring the property back to the client, either voluntarily or via a lawsuit.
- Before any transfer back to the client, make sure that a title search is done to ensure that the title is clear (there are no liens on the property or the property hasn't been subsequently transferred to a third party). If there are liens, contact a lawyer.
- A "guardian ad litem" can be appointed by the court specifically and solely for the purposes of litigation if a client has the capacity to manage his or her own affairs but can not participate effectively in litigation.

Misuse of Client's Cash

This type of abuse includes abusers withholding some of the change from a purchase or using the client's cash for their own benefit. The act can be perpetrated by caregivers, neighbors and others who are asked by the elder to do errands on his or her behalf.

- Get as many "purchased services" as possible in order to minimize the need for cash. Examples include home delivered meals, grocery delivery (with receipts going to a third party) and mail order catalogue purchases.
- Require receipts from the suspected abuser for all transactions performed in the interest of the elder.
- If large amounts of money have been misused, there may be legal actions available, so consult a lawyer.

Evaluating whether financial abuse has occurred often involves complex and subjective determinations. It may involve differentiating between misconduct and mismanagement, or distinguishing between acceptable exchange and exploitative conduct.