Compliments of

ASSEMBLYMEMBER

Noreen Evans

District Offices:

50 "D" Street, Suite 301
Santa Rosa, California 95404
(707) 546-4500 • Fax: (707) 546-9031

640 Tuolumne Street, Suite B
Vallejo, California 94590
(707) 649-2307 • Fax: (707) 649-2311

1040 Main Street, Suite 110E
Napa, CA 94559-2605
(707) 258-8007 • Fax: (707) 258-8205

Capitol Office:

State Capitol, P.O. Box 942849
Sacramento, California 94249-0007
(916) 319-2007 • Fax: (916) 319-2107

E-mail:

assemblymember.evans@assembly.ca.gov

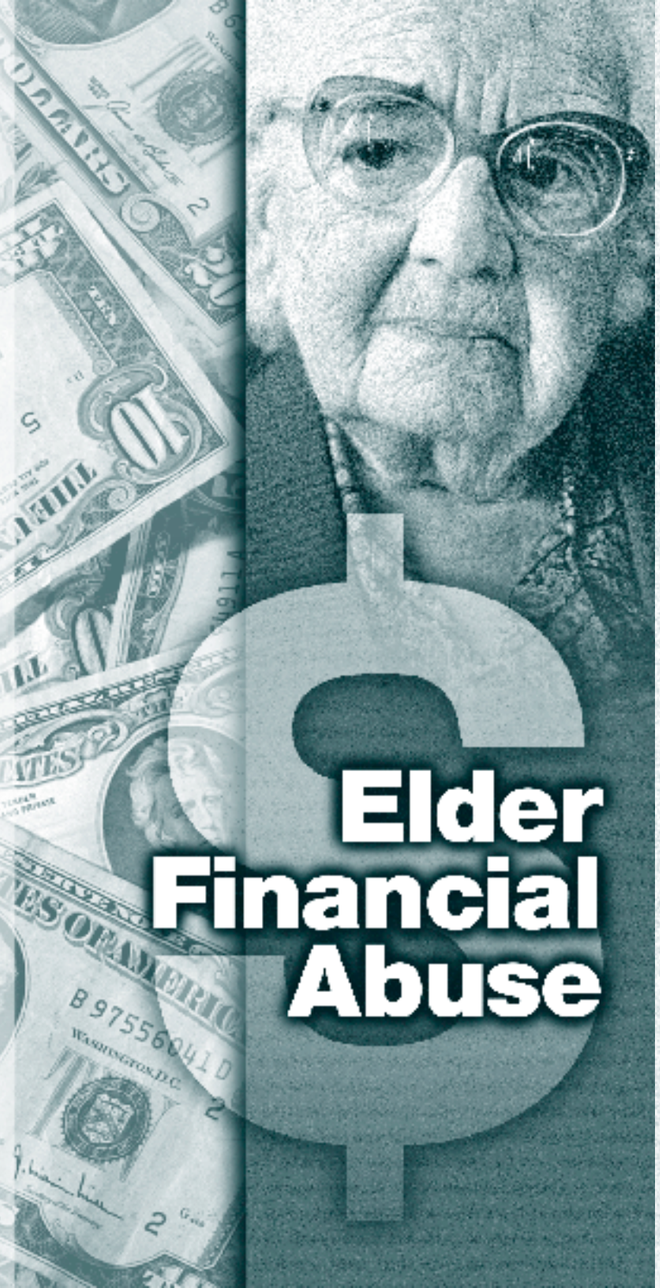
Website:

http://democrats.assembly.ca.gov/members/a07/default.htm

Assembly Website:

www.assembly.ca.gov

REV. 6/00



Elder Financial Abuse

WHAT IS ELDER FINANCIAL ABUSE?

Referred to as a fiduciary abuse, financial abuse, economic abuse, exploitation, and financial mistreatment, this type of abuse encompasses a broad range of conduct. Examples include the attendant who shortchanges his/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.

Many reasons have been cited for why the elderly are targeted for financial abuse. Clearly, one contributing factor is that persons over the age of 50 control 70% of the nation's wealth. Other explanations include the fact that older people 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 including forgetfulness or other cognitive impairments. They are also less likely to take action against their abusers, *particularly if they have been victimized by family members. Abusers 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. Indicators are signs, symptoms, or clues that suggest that abuse has occurred or is likely to occur. 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.*
- *Bank activity that is inconsistent with the older person's abilities (e.g. the person's automatic teller card has been used when the older person can not leave his or her home).*
- *Recent, new acquaintances, particularly those who take up residence with the older person. Changes in the older person's properly titles, will, or other documents, particularly if the person is confused and/or the documents favor new acquaintances.*
- *A power of attorney executed by a confused older person.*
- *Lack of amenities when the older 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 older person is being evicted or having his or her utilities disconnected.*
- *The older person is uncared for or the residence is unkempt when arrangements have been made for providing care.*
- *Untreated medical or mental health problems.*
- *The older person's documents (e.g. pensions, stock, or government payments) are missing.*
- *The older person is unaware of, or does not understand, recently completed financial transactions.*
- *The older person is being isolated by others.*

PREVENTING FINANCIAL ABUSE

Owing to the difficulties involved in investigating and proving financial abuse, as well as the fact that abusers have often spent or dissipated assets by the time the abuse is discovered, the most effective means of protecting seniors is through preventive interventions. A variety of mechanisms and options are available to prevent or circumvent financial abuse. *This section is adapted from an earlier work by Lois Trapp, a former daily money manager in San Francisco.*

Informal Services

A variety of protective interventions are available for older people who are having difficulty managing their finances and who have simple needs. For example, if the only financial transaction which they need to make is paying their bills, a trusted friend, family member, or bill paying service can be employed. Many utilities companies also offer helpful services, including direct payment plans, warning programs to notify customers before turning off services due to non-payment, and payment averaging plans.

Direct Deposit

People who receive regular income payments can have their checks mailed directly to their banks, credit unions, or savings and loan associations to reduce the risk of checks being stolen, misplaced, or destroyed. Individual banks have their own procedures and forms for setting up accounts. The Social Security Administration and/or other payers must also be contacted to arrange for direct deposits.

Restricted Bank Accounts

Some banks will agree to make arrangements that will restrict access to a person's account.

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 client's 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 homebound 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. Make sure any direct deposits are transferred to the new account.
- 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. The police or FBI may get involved at this point.

Misuse of power of attorney

- Have the client verbally inform the attorney-in-fact that the power of attorney is being revoked. This revocation can only be performed if the client is capable. 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-in-fact.
- In some states, courts can call for an accounting.
- Declare that the attorney-in-fact 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.
- In some states, a court investigator can be asked to investigate the use of a power of attorney.
- Legal counsel should be sought.

Stolen SSA, Pension or Annuity checks

- Notify SSA, the VA 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. In this situation, changing the address to which the check is mailed can be accomplished much more quickly than arranging for direct deposit. Changing the address is, therefore, recommended as an interim measure until the direct deposit request takes effect.

Suspicious Deed Change on Property

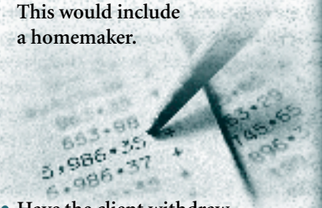
(often in exchange for a promise of life care)

- 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 not been transferred, make sure the client signs no documents in the future which may transfer the home or give power of attorney.
- If the deed has been transferred, get legal assistance in transferring the property back to the client, either voluntarily or via a lawsuit. Legal advice is essential if any property has been transferred.
- 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 Clients Cash

This type of abuse includes abusers withholding some of the change from a purchase or using the client' 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. This would include a homemaker.



- Have the client withdraw cash in small amounts (i.e. $1 and $5 bills). Some clients tend to say "keep the change" even when have given the person a twenty dollar bill for a small purchase.
- If large amounts of money have been misused, there may be legal actions available, so consult a lawyer.

Evaluating whether or not 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.