

Financial Exploitation and Family Dynamics

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About ABA COLA

The ABA Commission on Law and Aging is a collaborative and interdisciplinary leader of the American Bar Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons.

The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

Key Lessons

1. Options that can be used to address financial exploitation by family members, including mediation, restorative justice, and other solutions to remedy the situation and preserve the relationship with the family.
2. Information on the importance of advanced planning and how to work with banks and financial institutions to prevent financial exploitation by family members and preserve autonomy.

Financial Exploitation & Family Dynamics

What is Financial Exploitation?

- Improperly using someone else money for your gain.
- In the elder exploitation context, it could include:
 - Using an ATM Card to withdraw money without authorization
 - Pressuring the older adult to sign over title to vehicles or real property
 - Taking over the older adult's finances without input of the older adult
 - Self-dealing under a power of attorney

Power and Control

- The power and control wheel was originally developed for the domestic violence context. It has been repurposed to address elder abuse and other forms of power and control.



Domestic Abuse Intervention Project, Duluth, Minnesota. Adapted for Sojourn, 1992.

Who Are the People Responsible?

The “Bad Guys”

- The stranger behind a keyboard on the other side of the world
- The “new friend” from the community

The Loved Ones

- The adult child who moved in to “help”
- The niece who offered to “handle the finances”
- The loved one who is “owed something”
- They’re a “good kid”

Family Dynamics: Setting the Stage

- It can begin without an intention to exploit
 - Mutually beneficial arrangement
 - Older adult can use some assistance
 - Younger loved one can receive a stable living arrangement
- Often happens on the heels of a major life event
 - Older adult loses a spouse
 - Younger loved one is going through a breakup, their own financial turmoil, or recovery from substance use

Family Dynamics: The Exploitation Begins

- It can start with a trickle (like other forms of embezzlement)
 - Small amounts of money
 - The person may feel they are “owed” for their assistance
- Can be exacerbated by substance use and mental illness
 - Younger adult needs money for substances
- Older adult may not fully understand their financial situation
 - Recently deceased spouse may have overseen finances
 - Older adult may have age-related cognitive decline

Family Dynamics: Challenges to Remedies

- The exploiter may have isolated the older adult, so seeking help is hard
- Ending the exploitation versus avoiding getting the exploiter “in trouble”
- Fear of losing contact with the exploiter
 - Or the grandkids
 - Or other family members because they’re the “bad guy”
- The exploiter may need substance use or mental health services
- Older adult may need home and community based services to replace any help from the exploiter
 - And they’re afraid they will end up in an institutional setting without this help

Remedies

Remedying the Situation: Guiding Principles



- Must be client-centered and client-directed
- Focus on the actual problem
 - Hint: the problem isn't, *"they don't have a conservator"* the problem is, *"they're being financially exploited"*
- Client may want to avoid involving the criminal justice system
- Client may want to get the exploiter the help they need

Non-Litigation Remedies

- Cut off access
- Request a hold with credit reporting agencies
- Revoke any DPOAs giving the exploiter authority
- Consider enlisting help from other loved ones*
- Develop a safety plan
- Mediation, using the same safeguards as in domestic violence situations

Civil Litigation Remedies

- Personal protection orders
 - No one is “in trouble”
 - May not be publicly searchable
 - Gets the perpetrator away
- Eviction
 - Physically separates the older adult and perpetrator
- Civil action to recover money

Civil Litigation Remedies (Cont.)

- Possible civil claims in financial exploitation cases
 - Breach of Fiduciary Duty
 - Conversion
 - Rescission of Contract
 - Replevin
 - Fraud
 - Duress
 - Undue Influence
 - Constructive Trust
 - Civil Theft

Seal, C. (2014). Elder Financial Exploitation-A View from the Front Lines, Part III: Remedies [Review of *Elder Financial Exploitation-A View from the Front Lines, Part III: Remedies*]. *ABA Voice of Experience* , 26(2), 1–4.

Criminal Justice Remedies

- Unlike non-litigation and civil remedies, the client is no longer in control: law enforcement is in control
- File a police report
- Protective Orders/”No Contact” Orders

Other Possible Remedies

- Mediation
 - Provides families with access to resources not available in court
 - Helps to preserve family relationships and build connections to community resources
 - i.e., Eldercaring Coordination

Other Possible Remedies Cont.

- Restorative Justice Programs
 - Older adult meets with the person who committed harm in a safe space
 - Provides opportunity for the older adult to describe how they've been affected, ask questions, and state what they want to happen
 - Provides opportunity for the person who committed the harm to tell their story and “make things right”
 - Interventions can be led by volunteers or professionals in the community or judicial setting
 - i.e., Pilot Project in Ontario (launched in 2000).

Nerenberg, L. (Aug. 9, 2021). *Restorative Justice: Can it Heal the Harm of Elder Financial Harm*. Retrieved April 11, 2024, from: <https://www.nextavenue.org/elder-financial-abuse/>

Case Example

- Sam, age 72, appointed his daughter Jill, age 45, as his Financial POA. Unknown to Sam, Jill has been using the POA to make monthly withdrawals from his bank account to pay off her credit card debt. Sam comes to you distraught when he finds out that she has taken over \$20,000 from his bank account.
 - What options does Sam have?

What Can We Do As Practitioners?

- Make this a team sport
 - Work with local vulnerable adult networks/collaboratives and multi-disciplinary teams
 - Get Legal Services involved
- Eliminate the shame and stigma
- Learn from the domestic violence advocacy space

Advance Planning

The Importance of Advance Planning



- POAs are important documents for planning but can be used to exploit.
 - Agent's authority can be limited.
 - Agent's authority can also be revoked.

Adding Safeguards to a Financial POA

- Have a trusted 3rd party receive an accounting and provide oversight.
- Require a second signature by a trusted 3rd party.
- Grant a trusted 3rd party the power to revoke.
- Clearly define the power of the agent to make gifts
 - Prohibit gifts, limit gifting to certain permitted recipients, or limit the amount or frequency of gifting.
- Limit any changes to beneficiary rights under accounts or contract.
- Learn More: [NCLER Drafting Advance Planning Documents to Reduce the Risk of Abuse or Exploitation](#)

Working with Financial Institutions

Working with Banks and Financial Institutions

- Willie Sutton – That’s where the money is
 - Those over 70 own 30% of country’s wealth says Federal Reserve Board
 - For many financial institutions, older persons own the bulk of the assets
- Financial Institutions Have Three Duties Relevant Here
 - Faithfully and Promptly Execute a Request
 - Maintain the Older Person’s Privacy
 - Keep Account Secure from Third Party Intrusion
- Unclear Adequate Awareness of Cultural and Demographic Differences in Family Dynamics

Working with Banks and Financial Institutions (Cont.)

- Family and those known to customer commit the most financial abuse
 - Sometimes family feel entitled (I was going to get it anyway)
 - Feel their needs are more important
 - Substance abuse and addictions
- Estimates are up to \$36 billion lost annually
- Financial Institutions may be overly reliant on the older person speaking up, BUT
 - Actions (mandatory reporting, account holds) can have unintended impacts
 - Unclear when financial protection conflicts with other customer needs

Financial Institution Role

- Important to Encourage Family Financial Meetings
 - Discuss in advance goals and expectations for financial accounts
 - Determine who will be involved in addition to Customer
 - What to do and who to alert when things go wrong
- Key Decisions to Make
 - Account titling—Joint, TOD, Beneficiary
 - Account Monitoring Services—View Only, Duplicate Statements
 - ICE—In case of emergency Trusted Contact. Other arrangement?
 - Spending guard rails
 - POA, Successor Trustee, Supported Decision Maker

Resources

- [Drafting Advance Planning Documents to Reduce the Risk of Abuse or Exploitation](#), National Center for Law and Elder Rights
- [Managing Someone Else's Money Guides](#), Consumer Financial Protection Bureau
- [Five Safeguards for Power of Attorney](#), ABA Commission on Law and Aging
- [National Center for Law and Elder Rights](#)
- [National Center on Elder Abuse](#)
- [ABA Commission on Law and Aging](#)
- [Administration for Community Living](#)
- [Department of Justice, Elder Justice Initiative](#)
- [National Adult Protective Services Association](#)

Questions



World Elder Abuse Awareness Day: June 15th



- Visit [WEAAD Page](#) for Social Media Tools, Events, Walk for WEAAD, and more.

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Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.