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## Making a Financial Power of Attorney in Alaska

### Know what an Alaska financial power of attorney can do for you.

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#### Why do I need an Alaska financial power of attorney?

If you become ill or injured and you can't take care of your own finances, someone else must step in to help. With a financial power of attorney, you name a trusted person to pay bills, make bank deposits, watch over investments, collect insurance or government benefits, and handle other money matters on your behalf. Without this important document, your loved ones will have to go to court to get authority over your financial affairs.

#### Who makes financial decisions for me under an Alaska financial power of attorney?

In Alaska, the person you name to make decisions for you is called your attorney-in-fact. Any competent adult can serve as your attorney-in-fact; the person most definitely doesn't have to be a lawyer. Honesty, common sense, and dependability should be the most important factors in your decision. It's also wise to choose someone who lives nearby—this will make it easier to take care of practical tasks.

#### When does my financial power of attorney take effect?

In Alaska, you can draft your financial power of attorney so that it takes effect as soon as you sign it. You must specify that you want it to be "durable." If you don't, it will automatically end if you become incapacitated.

If you don't want to make an immediately effective document, you can state that your power of attorney will not go into effect unless a doctor certifies that you have become incapacitated. This is called a "springing" durable power of attorney.

#### When does my financial power of attorney end?

A durable power of attorney automatically ends at your death. It also ends if:

- **You revoke it.** As long as you are mentally competent, you can revoke your document at any time.
- **You get a divorce.** In Alaska, your durable power of attorney is not automatically terminated if your spouse is your attorney-in-fact and you get a divorce. As a practical matter, it is always wise to make a new power of attorney as soon as you file for divorce.
- **A court invalidates your document.** It's rare, but a court may declare your document invalid if it concludes that you were not mentally competent when you signed it, or that you were the victim of fraud or undue influence.
- **No attorney-in-fact is available.** To avoid this problem you can name an alternate attorney-in-fact in your document.

#### Do I need a lawyer to make a financial power of attorney in Alaska?

You usually don't need a lawyer to prepare a durable power of attorney for finances. In fact, state governments have designed these forms for people to complete on their own by filling in the blanks. You can find a form for Alaska in Nolo's **Quicken WillMaker Plus** (fproducts/quicken-willmaker-plus-2009-WQP.html) software, including detailed instructions for completing your document and making it legal in Alaska.

Last updated on 11/19/07.

by [Shae Irving](#) (flaw-authors/shae-irving.html), J.D.

### Create Your Estate Plan



(http://www.nolo.com/products/quicken-willmaker-plus-wqp.html?utm\_campaign=estateplanningpages&utm\_medium=html-content&utm\_source=nolo-content&utm\_content=big-image)

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Elder Financial Abuse: Power of Attorney Scams
How to protect seniors from abuse of a power of attorney by family or friends, and how to spot this type of financial abuse.

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Financial scams targeting seniors are common. Disturbingly, a growing number of these scams involve family members, relatives or friends who steal money from an elder when the elder grants them a financial power of attorney. In these power of attorney scams, the family member or friend often claims the money was taken for safekeeping because the elder was senile or needed to be protected from making bad financial decisions. The elder may lose their home, nest egg, or other money and property through power of attorney scams.

Older Americans are vulnerable to fraud and financial abuse because they commonly experience some degree of cognitive decline -- through natural causes or from medications -- and can have difficulty understanding their changing world. The Internet, personal computers, appliances with complex controls, and other indicia of contemporary life can accelerate disorientation of an aging mind, and seniors who spend most of their time at home can feel isolated and alone. (To learn more about financial scams targeting seniors in general, see Nolo's article Elder Abuse: Financial Scams Against Seniors (legal-encyclopedia/elder-abuse-financial-scams-against-29822.html) )

As the number of seniors in the general population rapidly increases, there will likely be a corresponding increase in financial scams involving an unauthorized use of a power of attorney. People with elderly loved ones, caregivers of seniors, and elders themselves can prevent or remedy these scams by learning how they work, what steps to take to prevent becoming a victim of a power of attorney scam, and what legal claims are available in the event of a scam.

A Typical Power of Attorney Abuse Case

A case I handled years ago demonstrates how a typical power of attorney scam works. My client, an elderly retired gentleman, lived alone with no immediate family. One day he suffered an injury that required his hospitalization. He knew he would be away from home for weeks and was worried about paying his bills. His nephew arrived at the hospital with flowers and an offer to help.

The next day the nephew showed up with a power of attorney, which his uncle signed. By the time the elderly man had returned home, his nephew had robbed him blind, using the power of attorney to close bank and investment accounts. Assuring his uncle he was merely keeping the money safe, the nephew had instead transferred the money to an accomplice, who in turn invested it in a mobile home development in South Carolina.

When the uncle sued, the nephew maintained that his uncle had gifted him the money out of love and affection, and the power of attorney was evidence of the trust his uncle placed in him.

What is a Power of Attorney?

A power of attorney is a written authorization giving one person the legal authority to act for another person, typically regarding financial affairs like bank accounts and investments. (To learn more about powers of attorney, including the different types and how to make one, see Nolo's Financial Powers of Attorney (legal-encyclopedia/powers-of-attorney) topic.)

In the hands of someone trustworthy, a power of attorney can be an important tool to manage the finances of an elder who has become permanently or temporarily unable to handle financial affairs. But, in the hands of a financial predator or a greedy family member, a power of attorney can be used to secretly steal money and assets, readily bypassing the normal safeguards that are employed by financial institutions.

Power of Attorney Abuse Cases: Legal Claims

If you or a loved one is the victim of fraud or financial abuse involving an unauthorized use of a power of attorney, it's important to act quickly. Usually, the best course of action is to contact an attorney. The attorney can assist you in revoking the power of attorney, demanding the return of the stolen money and property, and, if necessary, filing a lawsuit. (You can use Nolo's Lawyer Directory (http://browsebyresults.do?pedialtyid=99&specialtyName=ElderLaw) to find an attorney in your area.)

The most common legal claims in a case involving the abuse of a power of attorney are "breach of fiduciary duty" and "conversion." Both of these claims are based upon a legal concept known as "fiduciary duty." When an elder signs a power of attorney, it creates a fiduciary relationship between the elder (called the "principal") and the person who is

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Product recommendations for Social Security Disability, Retirement Plans, and Elder Abuse: Financial Scams Against Seniors.



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Elder Abuse: Financial Scams Against Seniors
Learn about the most common financial frauds and scams targeting seniors.

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Financial fraud is the fastest growing form of elder abuse. Broadly defined, financial elder abuse is when someone illegally or improperly uses a vulnerable senior's money or other property. Most states now have laws that make elder financial abuse a crime and provide ways to help the senior and punish the scammer.

Elder financial abuse is tough to combat, in part because it often goes unreported. Many elderly victims are often too confused, fearful, or embarrassed by the crime to report it. One recent study reported by Consumers Digest estimated that there are at least 5 million cases of this financial abuse in the United States each year, but law enforcement or government officials learn about only 1 in 25 cases.

You can protect yourself or your loved ones from financial elder abuse by becoming familiar with the most common scams and learning what to do if you suspect foul play.

Profiles of Elder Abuse Victims and Scammers

A recent study by the American Association of Retired Persons (AARP) highlighted characteristics of people older than 50 that make them easy targets for financial abuse. In general, they expect honesty in the marketplace, are less likely to take action when defrauded, and are less knowledgeable about their rights in an increasingly complex marketplace. And as people over 50 are more likely to be home than their younger neighbors, they are often within easy reach of devious telemarketers and home solicitors.

Scammers target elders that they perceive to be vulnerable - those that are isolated, lonely, physically or mentally disabled, unfamiliar with handling their own finances, or have recently lost a spouse.

The scam artists often pose as trustworthy helpers. They can be strangers, such as telemarketers and tradespeople, or have a relationship with the targeted victim, such as friends, family members, doctors, lawyers, accountants and paid or volunteer caregivers. Abusers who are family members often have money troubles that may be made worse by unemployment, gambling, or substance abuse problems.

Elder financial abuse scammers can be tough to catch. Many scammers have paperwork that appears to give them legal authority to act - including powers of attorney, authorizing signature cards, and vehicle pink slips. Some work at a bank or other financial institution and have intricate ways of hiding their tracks by manipulating electronic records and such.

Common Financial Scams

Financial scams perpetrated against older people include a broad range of conduct - from outright taking of money or property to forging a signature on a legal document, such as a will or deed, to getting paid for care, products, or services and then not providing them.

Keep an eye out for these common scams.

Telemarketing or mail fraud. The U.S. Department of Justice estimates that dishonest telemarketers take in an estimated \$40 billion each year, bilking one in six American consumers - and the AARP claims that about 80% of them are 50 or older. Scammers use the phone to conduct investment and credit card fraud, lottery scams and identity theft. Scammers also use the phone to sell seniors goods that either never arrive or are worthless junk.

Getting unauthorized access to funds. In "Sweetheart Scams," alleged suitors woo older people, convincing them that love and care are their motivations for being included on bank accounts or property deeds; the suitors usually disappear along with the property.

Charging excessive amounts of money. Smooth-talking scammers first convince seniors that they need some goods or services, then seriously overcharge them - often hiding the high cost in extravagant schemes involving interest and installment payments. This tactic is often used for products that many older people might find essential to their quality of life, such as hearing aids and safety alert devices.

Selling bogus items. Among the most egregious of false sales ploys is dubbed "Rock in a Box." In them, a senior is sweet-talked into buying an item, such as a new color television, at a bargain price that comes in a box that's suspiciously sealed. What the box actually contains is a well-padded rock.

Getting money or property through undue influence or fraud. Many seniors have been duped into parting with their homes or other property because a scammer convinces them it is for their own good. In one infamous case, three officials from the Detroit-based Guardian Inc. were found guilty of embezzlement and fraud after selling a client's house for \$500 - to the mother of a company officer. The company also collected excessive fees from its wards, sometimes as high as 70 percent of their Social Security (http://dictionary.social-security-term.html) checks.

Using fraudulent legal documents. Many scammers cloak their actions in legal authority, procuring a power of attorney or will or other legal document giving them access to a senior's property. They get seniors to sign these documents by lying to, intimidating or threatening the seniors.

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**Making pigeon drops.** In a typical pigeon drop, two suspects approach an older person – often in a retail shopping area or near an ATM machine – and claim they have just found a package or wallet containing a large amount of money. One of the suspects volunteers to check with a “boss” offsite to get advice on what to do with the found money, then reports that it came from an illegal source such as gambling or narcotics.

The scammers offer to split the money – but only after the older person shows “good faith” by producing money of his or her own. When the scammers send the senior to the “boss” to get the promised share of the money, the senior discovers that there is no boss and the suspects have disappeared.

**Faking an Injury scenario.** In this situation, a scammer claims to have a connection to law enforcement and tells an elder that a child or other close family member has been seriously injured or is in jail. The scammer then convinces the senior to give him or her money for medical treatment or bail.

**Offering false prizes.** A good example of this is the “You have won the lottery” scam operating out of Canada. In this scam, thousands of older people were bilked into believing they became wealthy overnight, but had to wire money in “fees and taxes” before they could collect the grand prize. In a joint crackdown, the U.S. [Attorney General](#) ([dictionary/attorney-general-term.html](#)) and the Solicitor General of Canada estimated the take from this mass-marketing fraud to be about \$1 billion a year.

In another version of this scam, con artists tell an elder that he or she has just won a huge cash prize, but needs to send in some money – usually in money orders – to free it up from customs officials.

**Doing unsolicited home repair work.** Typically working in teams of two or more, scammers scour neighborhoods with a high concentration of older residents, or even track recent widows and widowers through obituaries and death notices, then appear on their doorsteps claiming to spot something in need of fixing – a hole in the roof or clogged drainpipe, for example.

The scammers demand payment up front, and then often claim that their initial investigation reveals a more serious problem, with a more expensive solution. The “work” they do is unlicensed and often shoddy, such as applying paint to a roof to make it appear as if it has been tangibly fixed.

In a twist on this scam, one alleged worker might distract the elder while another enters the house to steal money and other valuables.

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Warning Signs of Elder Abuse
(Page 2 of 2 of Elder Abuse: Financial Scams Against Seniors)

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Look out for certain factors that may indicate that a loved one is a likely target of financial abuse. Of course, no single sign is conclusive proof, but staying aware will help you avoid or limit the fallout if there are any problems

- Unusual or large withdrawals or transfers from bank accounts, or large credit card charges that the older person can't explain.
Checks that are missing or include suspicious signatures.
An individual who suddenly forms a close relationship with the older person, getting easy access to his or her home, money, and other property.
Newly executed documents, such as a will or power of attorney, that the older person doesn't seem to understand.
Changes in account beneficiaries or authorized signers.
A large number of unpaid bills.
Missing property.
Entry forms and prizes from contests, and payments made for "free" vacations or other merchandise.
Untreated physical or mental problems including a dramatic change in mood or disposition, or other evidence of substandard care.
Sudden social isolation.

Where to Report Suspected Abuse

There are now a number of individuals and groups dedicated to investigating suspected financial abuse, and finding and stopping perpetrators. Here are some options for taking action.

Notify bank personnel. Depending on the type and extent of financial abuse involved, giving a heads up to the bank tellers and officers who commonly handle the elder's accounts may be enough to stop the wrongdoing. Bank employees are often in a good position to note suspicious activity, such as a sudden withdrawal of large sums of money or use of an ATM card by an elder who is housebound.

The laws in most states encourage or require bank officials to report suspected elder financial abuse. And a federal law requires financial institutions to file a Suspicious Activity Report with the federal government when they suspect elder financial abuse.

Get help from a senior services group. While the services offered -- from counseling to legal assistance -- vary widely depending on the locale, the Eldercare Locator, at 800-677-1116 directs callers to local programs and services that help prevent financial elder abuse. And INFO LINK at 800-394-2255 helps arrange and coordinate assistance with crimes.

Contact Adult Protective Services. Adult Protective Services (APS) is the government-affiliated agency charged with investigating reports of elder financial abuse and offering assistance to victims. To find your state APS office, visit the National Center on Elder Abuse's website at www.ncea.aopa.gov (http://www.ncea.aopa.gov) (click on "Find State Resources").

Alert law enforcement. The police or local prosecutor's office will often intervene when there is good evidence that a crime is being committed.

To learn more about elder abuse, get Long-Term Care: How to Plan & Pay For It (product.cfm/objectID/BFA8AE70-24A9-47B5-B6B3E339CA87B74A/118/207/#summary), by Joseph L. Matthews (Nolo).

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# **Durable Power of Attorney Abuse: It's a Crime Too**

## **A National Center on Elder Abuse<sup>1</sup> Fact Sheet for Criminal Justice Professionals**

By Lori A. Stiegel, J.D., of the American Bar Association<sup>2</sup> Commission on Law and Aging  
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### **PURPOSE OF FACT SHEET:**

Victims of durable power of attorney (DPA) abuse or their family members often report that their attempts to report this abuse to law enforcement are rebuffed with the following statement: "It's a civil problem. Go talk to a civil lawyer." While DPA abuse is a civil problem, it is also a crime and should be treated as one. An increasing number of newspaper stories describe successful investigations and prosecutions of DPA abuse. But too many criminal justice professionals still lack awareness of DPA abuse and the role they can play in holding offenders accountable and obtaining justice for victims. This fact sheet will enhance their awareness.

### **CASE EXAMPLE:**

Helen was 85 and ailing when she made a DPA naming her daughter Susan as her agent. Two weeks later Susan used this DPA to sell Helen's home. Susan placed the sale proceeds into bank accounts that were in Helen's name. Within a year Susan had used her authority under Helen's DPA to withdraw all the money from Helen's accounts. Susan used the money to support her lavish lifestyle and her failing business. When Helen discovered her money was gone, she contacted the local law enforcement agency and was told by a detective that her only option was the civil justice system. Helen could not afford a civil lawyer and the local free legal services program for older people was not able to help her. The adult protective services agency told Helen that they couldn't help her recover her money. Helen lost all hope and died six weeks later.

### **TERMINOLOGY:**

- The "*Principal*" is the person who authorizes another person to act on his or her behalf through a power of attorney or durable power of attorney.
- The "*Agent*" or "*Attorney-in-Fact*" is the person who acts on the principal's behalf through a power of attorney or durable power of attorney.
- A "*Power of Attorney*" (POA) is a legal document through which a principal authorizes an agent to act on the principal's behalf. An agent's authority ends if the principal revokes that authority or if the principal dies. By law, the agent's authority also ends if the principal loses decision-making capacity and can not revoke the agent's authority. The law does this to protect incapacitated principals who are no longer able to monitor their agents and take action if the agents abuse their authority.

- A “*Durable Power of Attorney*” is a POA that remains valid even if the principal loses the legal capacity to revoke the agent’s authority. This characteristic makes the DPA a useful tool for people who want to plan for the possibility of incapacity. Planning may avoid the appointment of a guardian or conservator, which occurs when a court declares that a person lacks decision-making capacity and then appoints someone to make personal or property decisions on behalf of the incapacitated person. As DPAs are used to enable an agent to act on behalf of an incapacitated principal, they usually are written very broadly and give the agent a lot of authority to handle financial matters.
- A “*Springing Durable Power of Attorney*” is a DPA that does not become effective when the principal signs it (unlike the POA or DPA, which become effective upon signing). Instead, it springs into effect at a later time or when a certain event that is specified in the DPA occurs.

**THE PROBLEM:**

DPA abuse (sometimes referred to as POA abuse) is the misuse by the agent of the authority granted by the principal. It means making a decision or taking an action that is not in the principal’s best interest. For example, as in the case described above, DPA abuse occurs when the agent spends the principal’s money to benefit the agent, rather than the principal. It may also include forging the principal’s signature on the DPA or coercing an older person to make a DPA against his or her wishes.

Powers of attorney, whether general, durable, or springing, usually are not subject to oversight by a court or third party. If the principal becomes incapacitated and can no longer monitor the agent’s actions, this lack of oversight for a broadly written legal document makes it very easy for an agent to abuse the authority granted by the principal. For this reason, a DPA is often called a “license to steal.”

**THE AGENT’S DUTY TO THE PRINCIPAL:**

Just like an agent for a sports player or actor, an agent under a DPA has a legal duty to act as a *fiduciary*. Generally this means that the agent is required to act in a trustworthy manner and to make decisions that are in the principal’s best interest or that are consistent with decisions that the principal made for himself or herself before losing decision-making capacity.

**THE CRIMINAL LAWS RELATED TO DPA ABUSE:**

An agent who violates the duty owed to the principal may have committed one or more crimes. The agent may have violated state and federal laws, including laws on:

- Exploitation
- Embezzlement
- Forgery
- Fraud (e.g., credit card fraud, tax fraud, welfare fraud)
- Larceny
- Money laundering
- Theft<sup>3</sup>

Some states have laws criminalizing financial exploitation of older persons. Criminal laws of general application also may be used against agents who commit DPA abuse. Criminal justice professionals who are investigating or prosecuting DPA abuse should take action to prevent the agent from dissipating the principal's remaining assets. Assets should be frozen if allowed by law. Additionally, professionals should seek restitution on the principal's behalf.

#### **OPPORTUNITIES FOR CRIMINAL JUSTICE PROFESSIONALS:**

Many communities have or are establishing multidisciplinary teams (MDT) that bring together an array of professionals to review and redress elder abuse cases, improve the response to elder abuse victims, and prevent victimization of other older people. There are several types of MDT including case review teams, crisis response teams, fatality review teams, and financial/fiduciary abuse specialist teams.<sup>4</sup> The expertise of criminal justice professionals is critical to the success of an MDT. Additionally, the professional contacts and knowledge gained by participating on an MDT enhances the ability of criminal justice professionals to investigate and prosecute elder abuse cases.

#### **SELECTED RESOURCES:**

- The National Center on Elder Abuse (NCEA) website ([www.ncea.aoa.gov](http://www.ncea.aoa.gov)) provides a wealth of information about elder abuse. It can help you determine whether your community has an MDT and link you to numerous other resources.
- The NCEA listserv connects you to other professionals throughout the U.S. and in many other countries and enables you to discuss cases and gather information. For information about or to join the listserv, visit the NCEA website.
- The Clearinghouse on Abuse and Neglect of the Elderly, an NCEA project, is a fully computerized archive of published research, training resources, government documents, and other sources on elder abuse. To access the CANE database and annotated bibliographies (which include the subject of financial exploitation), visit the NCEA website.

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<sup>1</sup> This document was completed for the National Center on Elder Abuse and is supported in part by a grant, No. 90AM2792, from the Administration on Aging, U.S. Department of Health and Human Services. Grantees undertaking projects under government sponsorship are encouraged to express freely their findings and conclusions. Therefore, points of view or opinions do not necessarily represent official Administration on Aging policy.

<sup>2</sup> The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

<sup>3</sup> This list was developed based on news stories from November and December 2007 in which agents were indicted or successfully prosecuted for DPA abuse.

<sup>4</sup> Brandl, B., Dyer, C.B., Heisler, C.J., Otto, J.M., Stiegel, L.A., & Thomas, R.W. (2007). *Elder Abuse Detection and Intervention: A Collaborative Approach*. New York, NY: Springer Publishing.

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Elizabeth O'Brien's Retire Well  
 March 19, 2013, 7:02 a.m. EDT

## Power of attorney: It's easily abused

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By Elizabeth O'Brien  
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It's a standard part of estate planning. It's also, according to experts on elder fraud, a license to steal. It's the power of attorney, a legal instrument designed to give a trusted individual the authority to handle financial or health matters for the person creating it.

As their own parents grow older—and, in many cases, lose the capacity to make their own financial and medical decisions—growing numbers of baby boomers are beginning to wrestle with the intricacies and pitfalls of the power of attorney. And of course, the day may not be too far off when they themselves may have to trust someone else with those powers. "They have great value and opportunity to misuse," said Randy Thomas, a former police officer in Columbia, South Carolina who lectures nationally on elder financial abuse.

The MetLife Mature Market Institute estimates that older Americans lose at least \$2.9 billion annually from financial abuse of all kinds. And experts expect that amount to grow as the baby boomers age. The Administration on Aging has designated 2013 as the "Year of Elder Abuse Prevention" to raise awareness of all types of abuse at the national, state and local levels.

Statistics on power of attorney abuse are hard to come by, but experts recognize it as a prevalent problem. Some kinds of power of attorney grant their holders far-reaching authority over the affairs of people who are physically or mentally unable to conduct their own business. The Government Accountability Office released a report last November on elder financial exploitation which listed power of attorney agents as one category of potential abuser whose actions can be particularly challenging to prevent.

Indeed, family members, friends, and neighbors are the culprits in 34% of elder financial abuse cases, according to a study by MetLife. Yet much of the education on senior financial exploitation centers on scams

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perpetrated by strangers. "We've got them so scared of answering the phone or going online, when the majority of the assets are going out the back door by a trusted niece," Thomas said. And the vehicle that often enables this, Thomas said, is the power of attorney.

Here's what that can look like: A friendly neighbor offers to go pick up an elderly couple's license plates. He has them sign a specific power of attorney for that sole purpose, printed from an automobile-club website. He takes that to the bank and uses it to withdraw money from the couple's account. (That's an actual scenario that came before Thomas A. Swift, probate judge in Trumbull County,

Ohio; the bank returned the money, because the teller should have but failed to notice the limited nature of the power of attorney.)

Pame'a Glasner, a filmmaker who lives in central Connecticut, experienced a more devastating scenario when a man from her parents' Florida synagogue gained the couple's confidence a few years ago. Glasner's father, who had Alzheimer's disease, had moved into a nursing home, and her mother lived alone and visited him daily. The man, who represented himself to nursing-home staff as the couple's son, had Glasner's father sign a power of attorney form that he then used to access their money and transfer their house into his name. The fraudster also had Glasner's mother rewrite her will, naming him a beneficiary. "By the time we found out about it," Glasner said, "all of our accounts were zeroed out." Glasner turned her experience and that of others into a 2012 documentary, "Last Will and Embezzlement."

Finding a trusted 'agent'

When used properly, the power of attorney can assure that a trusted person is handling your financial affairs, or making health-care decisions for you, when you're not mentally or physically capable of doing this yourself. Many lawyers include powers of attorney as part of a standard estate plan (some recommend separate documents for financial affairs and health-care, while others create one document to address both).

Estate plans usually involve what's known as a "durable" power of attorney. These allow the trusted individual—legally, the "agent"—to retain power of attorney even when the person who created the document—the "principal"—has become incapacitated. A general power of attorney expires when the principal has lost capacity; these are usually limited to a certain transaction, such as a real estate closing or the license-plate example above. All powers of attorney expire when the principal dies.

It's important that people create a power of attorney when they're still in full command of their faculties. If you fail to designate someone to handle your affairs, and you become unable to take care of them yourself, then your family will likely have to go to court and establish what most states call a conservatorship or guardianship. (This holds true even for spouses; unless an account is held in both names, one spouse won't have access to another's funds without a power of attorney.) Guardianship can be a costly and complicated process, and there's no guarantee the judge will choose as your guardian the person who you would've picked.

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### Retire Here, Not There

Powers of attorney should be customized to each individual's wishes and situation. When crafting the document, some people might decide not to allow their agent to make gifts on their behalf. Others might decide they want to add a second agent or at least allow someone else to review the actions of the first agent. Then again, "If you get to the point where you need that level of review, you're probably naming the wrong person," said Michael A. Dribin, a partner in Miami with law firm Harper Meyer LLP. People should consult a lawyer to ensure their power of attorney will be accepted everywhere they need it to be, experts say, especially if they have property in more than one state, as the laws governing power of attorney vary by state.

Powers of attorney are vulnerable to abuse in part because they're not routinely tracked by the court system. Anyone can print a template from the Internet and put that in front of an older person to sign. Once a new power of attorney is signed, that document supersedes the old power of attorney if it addresses the same issues. Yet since these forms aren't tracked in a central repository, the old agent isn't notified of the change. Most states require witnesses, including a notary public, to the signing, but this intended safeguard can be sidestepped if witnesses are inattentive or, worse, collude with the abuser.

A mentally competent person can revoke power of attorney at any time if she notices the document being abused. Yet, if the principal's mental state is in question, the courts are often called on to determine whether she understood what was happening when she signed the power of attorney. This happens during a "proceeding to determine capacity." This kind of retrospective analysis of an older person with some cognitive decline can be very complex, even for experts, said Dr. Gary Small, director of the division of geriatric psychiatry at the Semel Institute for Neuroscience and Human Behavior at UCLA, and the author of The Alzheimer's Prevention Program.

#### Taking steps against abuse

While there's no fail-safe way to prevent power of attorney abuse, people can take steps to protect themselves and their loved ones. The most important preventative measure is for people to name an agent they trust completely, experts say. Once the decision is made, revisit it every few years, Dribin said: The family member who seemed like the perfect candidate might seem less so if he is in the midst of a divorce, for example, with fresh financial woes.

Once you've established your power of attorney, or helped an older relative do so, notify the relevant financial institutions in writing and ask them to alert you to any changes in the account, Swift said. This serves two purposes, experts say: it can alert you to potential abuse, and it can also ensure that your financial institution will honor the document. Some financial institutions will only honor their own power of attorney documents, generated by their lawyers, and state law on the issue varies.

People serving as agents for their parents or older relatives should watch for potential abuse once their loved one has become incapacitated. Monitor bank accounts for any suspicious activity. You might also consider freezing your relative's credit report to make it more difficult for fraudsters to take out loans in his or her name, said John Ulzheimer, president of consumer education at SmartCredit.com, a credit monitoring and education firm, who recently froze the reports of his 85-year-old mother-in-law for her protection. To do this, you register with each of the three credit bureaus—Equifax, TransUnion and Experian—and pay a

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nominal fee. You can always go back in and "thaw" the account if your relative needs to apply for credit. If you realize someone has used a power of attorney to take advantage of your loved one, consider requesting a proceeding to determine capacity in the local court where he or she lives, Dribin said. In some states, this request legally suspends the ability of an agent to use the power of attorney, since the principal's mental capacity is under question. As an extra measure, send a written notice to all financial institutions where your loved one has accounts—banks, brokerage houses and insurance firms—letting them know that the power of attorney has been suspended. No one likes to think about becoming reliant on others. But establishing a power of attorney, and taking steps to protect it, can lessen the burden of caregiving for your loved ones down the road. No matter how many crossword puzzles we may do, everyone experiences some degree of cognitive decline as part of the natural aging process, said Michael Finke, a professor of personal financial planning at Texas Tech University: "It may be healthier to plan for it than to try to prevent it."

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# StarTribune

## Whistleblower: Power-of-attorney law addresses 'rampant' abuse

Article by: JANE FRIEDMANN

Star Tribune

July 15, 2013 - 12:00 PM

The legal authority to sign someone else's name can lead people to do terrible things.

A man with power of attorney removes his elderly aunt from an assisted-living facility, leaves her at home unattended and spends her money.

A nursing home resident with dementia gives power of attorney to a stranger, who pays herself generously from the resident's funds.

A terminally ill man gives his mother power of attorney and in her son's final days, she changes the beneficiaries on his pension plan.

Power of attorney can be an easy-to-use tool to allow friends, family and clergy to take care of financial matters for the elderly, deployed military personnel and others.

But it can just as easily be used to exploit those people, when trust is placed in the wrong hands. Unlike conservatorships, which are court-appointed and supervised, powers of attorney come with little oversight and may be granted in minutes using a form downloaded from the Internet.

Abuse "is rampant and we really are seeing a huge increase" in incidents, according to Tara Patet, a prosecutor in the office of the St. Paul City Attorney.

Thanks to efforts by a vulnerable-adult advocacy group, a law passed in April requires those given power of attorney to keep careful records of where money goes, provide an accounting if requested and face liability if they abuse that power.

The form that grants power of attorney will soon reflect those changes. Part of the law goes into effect next month with the rest implemented in January.

### 'Speed bumps' installed

The standard power of attorney form will now have cautionary language that the granter will have to sign off on. "There are touchy issues where people ought to kind of reach a speed bump and make an affirmative decision," said Iris Freeman, an advocate for seniors and member of the Vulnerable Adult Justice Project (VAJP).

One of those "touchy issues" is referred to as self-gifting, whereby attorneys-in-fact, the people granted power of attorney, take money from the other person's funds for themselves or their children.

The old form simply allowed the granter to designate whether attorneys-in-fact could self-gift, with virtually no restrictions. Now the granter must check a box and write the names of the people allowed to self-gift.

"We intend that to be helpful in averting those kinds of self-gifting excesses that have been a problem," Freeman said.

The new form also lists a maximum amount of gift equal to the federal annual gift tax exclusion.

"The more information the attorney-in-fact knows, the less chance the power of attorney will be used incorrectly," said Laura Garbe, a Minneapolis lawyer with Erickson & Wessman, P.A. and co-chair of the VAJP committee that proposed the changes.

The form's new language also makes "much clearer statements of the duties that are being granted to the attorney-in-fact," Freeman said. For instance, the law says they must "act with the interests of the [granter] utmost in mind ... [and] exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs."

A third change requires attorneys-in-fact to keep detailed records and, if the granter asks, provide the records to the granter or another person on a periodic basis.

The provision of the bill that will go into effect Aug. 1 allows the granter or an authorized person to recover reasonable attorney fees and costs in the event an attorney-in-fact fails to provide an accounting.

### A push nationwide

With the change in law, Minnesota joins a number of other states that have strengthened power of attorney legislation.

In 2006, prompted by widespread abuse, a group of lawyers appointed by state governments to find ways of making laws more consistent across states adopted a model power of attorney reform bill.

Since then, Minnesota is among the states that have adopted at least some of the group's recommendations.

The amended law "is a big step in the right direction but there's a lot more work that needs to be done," Patet said.

Advocates recognized the need to strike a balance. "The power of attorney is a very flexible tool, and we did not want to take away flexibility but we also wanted to add some protections in there," Garbe said.

Not just a civil matter

For every one case of elder abuse reported, 24 go unreported, according to a 2011 study conducted by Cornell University and others. Victims rarely speak up.

Many power of attorney abuses involve an elderly victim. In those and other vulnerable-adult cases, an attorney-in-fact could be charged criminally for financial exploitation.

The loss is often large enough that the person is charged with a felony. "We don't get these cases until there's tens of thousands or hundreds of thousands of dollars of loss. Because of the nature of these victims and the fact that they're isolated," Patet said.

"I do think that the additional safeguards with the new legislation are going to help us in prosecuting these kinds of crimes," Patet said.

"You have a document now that outlines for this person, here's what your obligations were under this power of attorney. You were on notice of it because it was right here in this document that you signed," she said.

Jane Friedmann • 612-673-7852

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## ConsumerReports.org

### Protecting Mom & Dad's money

#### What to do when you suspect financial abuse

Consumer Reports magazine, January 2013

#### The ultimate betrayal

The New York Post called it the "swindle trial." Jurors likened it to a "Shakespearean tragedy." When New York socialite Anthony D. Marshall was convicted of defrauding and stealing from his elderly mother, philanthropist Brooke Astor, reports detailed how he conspired with lawyer Francis Morrissey to amend her will in his favor, took millions without her consent, and lifted paintings from her walls while she languished in her Park Avenue home. The trial painted a portrait of greed and filial neglect. Both men were sentenced to one to three years in prison and are currently out pending appeal.

Elsie Brooks's lifestyle was a world apart from Astor's, but their stories are tragically similar. When she was 72 she sold her mobile home and moved in with her daughter and granddaughter in Monterey, Calif. She decided she didn't want to deal with her finances any longer and let the two take control. But her daughter, Lisa Karen MacAdams, and granddaughter, Christi Schoenbachler, drained Brooks of jewelry, furniture, and an annuity worth almost \$90,000, and abandoned her at a nursing facility, according to court documents. They were convicted of grand theft and financial elder abuse, both felonies, and two counts of misdemeanor elder abuse. Last summer, a California appeals court stayed one of Schoenbachler's misdemeanor charges.

Elder financial abuse is "the ultimate betrayal," says Colleen Toy White, a superior court judge in Ventura County, Calif., who sees roughly 40 cases of such abuse each month. "It's shocking to see how vulnerable the elder person is."

We've told you about scams by strangers, among them fraudulent sweepstakes phone calls and investments, and grandparent scams ("Scamnation!," October 2012 issue). Far more insidious are deceptions by neighbors, friends, employees, and relatives—the very people entrusted to care for and protect seniors.

Such abuse can be financially and emotionally devastating. And experts say it's likely to increase because of a stalled economy and an aging population. Awareness is rising thanks to cases such as Astor's. Yet because seniors might not recognize when it happens to them or are too ashamed to speak, the crime lurks largely out of sight.

In a randomized New York telephone survey released in 2011, for instance, seniors mentioned being victims of financial exploitation more frequently than any other type of abuse. Yet the study estimated that only 1 in 44 incidents of financial elder abuse is officially documented.

"Nearly every time I lecture on financial abuse, people will approach me with their personal stories," says Elizabeth Loewy, a Manhattan assistant district attorney and lead prosecutor on the Marshall case. "They will talk to me about their grandmother, aunt, or neighbor, usually a senior with cognitive issues, who had 'this problem.' And it's like a light will go on, and they'll ask, 'So this could be a crime?'"

#### Unreported crimes

Financial exploitation of elders is broadly defined as the illegal or improper use of the funds, property, or assets of people 60 and older. In the New York survey, 4.2 percent of older people surveyed said that they'd been exploited by family members or others. In a national study from 2009, 5.2 percent of older Americans said they'd been victimized by family members, and 6.5 percent said they'd been exploited by others. A seminal national study by the MetLife Mature Market Institute found that the cost of such abuses is at least \$2.9 billion a year. Yet John Migliaccio, the institute's director of research and gerontology, acknowledges that the study's methodology—pulling from compiled news reports of abuse—underestimates the crime's true price. "What we're seeing is a tip of the iceberg," he says.

Nevertheless, the study reports some startling facts: In 107 cases, seniors lost an average of more than \$145,000 from fraud committed by family, friends, caregivers, and neighbors. In 159 cases involving fraud by strangers, the average loss was more than \$95,000.

Studies of investment abuses tell similar stories. In a survey last year of about 2,600 financial planners by the Certified Financial Planner Board of Standards, 56 percent said they knew older clients who had been subject to unfair, deceptive, or abusive practices. Among reported cases, the average loss estimate was \$140,500; the median was \$50,000. Only a quarter of surveyed CFPs said the crimes' perpetrators rarely or never knew the victim.

Law-enforcement and social-services professionals see exploitation rising sharply. Rhode Island Attorney General Peter Kilmartin's office opened 128 financial-elder-abuse cases in 2011, a 40 percent rise from 2010. Paul Greenwood, a deputy district attorney in San Diego and head of the county's elder-abuse protection unit, says the office will prosecute about 200 cases this year. "I've never been busier," he says.

Better reporting contributes to that growth, Greenwood says. So does the flat economy. "As people become more desperate from the economy, they need that extra money," says Sally Smith, adult protective services case manager supervisor at the Franklin County (Ohio) Office on Aging.

#### Caregivers and freeloaders

Experts say it's not only the volume of cases that have swelled but also the variety. Greenwood says fraud committed by strangers such as unlicensed home contractors and phone sweepstakes scammers is bigger than ever. So are crimes involving people in close contact with seniors. Ninety percent of abusers are family members or trusted others. Of all reported elder-abuse cases, financial exploitation is reported most frequently.

"The referrals we get run the gamut, from someone having their Social Security check being taken to an account drained of over \$200,000," Smith says.

Professional caregivers pose particular risks because of their closeness to the victims and, perhaps, their generally low wages. We unearthed numerous cases in which health aides, either in the home



Tabloid coverage of the Brooke Astor case helped raise awareness of elder financial abuse.

In a classic elder-abuse scenario, the predator isolates the older person, creating an environment of manipulation, intimidation, and fear

or in an institution, had taken items, cash, or Social Security checks from their elderly charges, or worse. The New York study found that 12 percent of elder abuse was perpetrated by home health aides.

"I see a lot of middle-aged women, unskilled caretakers," Toy White says. "For the first time in their lives that we know of, they start to steal. The temptation of the money is so great."

New "friends" also can be perpetrators. Cynthia Gartman, president of Ikor, a for-profit advocacy and guardianship service based in Kennett Square, Pa., recalls an elderly woman with diminished mental capacity supporting a number of predators, including a minister. One was taking the woman shopping once a week so that she'd buy the freeloader groceries and supplies.

In a classic elder-abuse scenario, the predator isolates the older person, creating an environment of manipulation, intimidation, and fear. In 2012, Rodney Chapman of Damariscotta, Maine, was sentenced to five years in prison after pilfering the life savings—more than \$300,000—of his widowed neighbor, Gwendolyn Swank, now 86. According to a court document and police reports, Chapman played on Swank's fears of reported drug trafficking in the area and encouraged her to pay phony law-enforcement agents for her protection. On several occasions, he ordered the frightened woman to hide in her house. He took away her phone, restricted visitors, coerced her into drinking whiskey, and limited when she could drive. Investigators later determined that Chapman had spent some of Swank's money to renovate his home and "blew" the rest.

"By the time we intervened, she was down to living on peanut butter and rice cakes," Lincoln County, Maine, Detective Robert McFetridge told the Bangor Daily News in June 2012. "She was really a prisoner in her own home."

### The scheming grandson

By far the most disturbing abuse is by family members themselves. Kin who seem reliable can turn bad from greed or desperation. They can coerce an older relative into giving up money or control of assets, threaten or intimidate, or like Astor's son, steal outright. They can ask a cognitively impaired person for repeated loans and never try to repay. Or they can abuse power of attorney or a joint account to siphon funds. "You especially want to trust family members," says Utah Attorney General Mark Shurtleff. "But even your loved ones could try to hurt you."

Those cases can also involve neglect or physical abuse. "Financial abuse is often the motivator for beating up Grandpa or neglecting Mom," says Kathleen Quinn, executive director of the National Adult Protective Services Association, which represents state and local programs that investigate abuse of vulnerable adults and takes steps to protect the victims. "You're not getting her the care she needs because you want the money for yourself."

An archetypal exploiter is a ne'er-do-well son, nephew, or grandson, living on Grandma's couch and borrowing or stealing money. He might have emotional scars or a drug habit, or he might view his elderly relative as an easy source of cash.

Another threat is a relative acting as a caregiver who starts with good intentions but then siphons money from her charge's accounts. "Many will write themselves a check to gift money to themselves," says Steve Starnes, a certified financial planner in McLean, Va., who counsels advisers on dealing with the elderly. "They feel like, 'I'm looking after my loved one and I deserve something in return.'"

At the heart of these cases is a grievous breach of trust. Arthur Green, 74, of Brooks, Maine, signed over the deed to his lakefront home and adjoining cottage to his granddaughter, Nevin Bennoch, assuming that he could live there rent-free through retirement, according to Green's attorney, Denis Culley, of the nonprofit Legal Services for the Elderly in Augusta, Maine. Instead, Bennoch and other family members moved into Green's house, put the cottage up for sale, and began a campaign of harassment, Culley said. When Green, a former construction worker, was served with an eviction notice, he contacted Culley, who fought successfully to return his properties. Without the agency's help, Green says, "I'd probably be under a bridge in a cardboard box."

Sometimes prosecutors and judges characterize such financial shenanigans as civil cases, rather than criminal ones, which could prevent or delay their resolution. Prosecutors also may be unwilling to use seniors as witnesses if their mental capacity is in question. And often the victim may not want to talk, out of shame or fear of losing their independence. Smith of the Franklin County Office on Aging recalls a client who was sitting in the dark because her son was taking her Social Security checks and not paying her utility bills. She refused to press charges.

Predators who succeed once often try again. "You don't want to admit that you were taken the first time," says Jaye Martin, executive director of Maine's Legal Services for the Elderly. "So you don't say no when they keep coming back."

As in domestic-abuse cases, victims may fear their abuser's wrath if they report them—or they might be afraid of losing them. "Most of the time the person who's exploiting her is her caregiver," Smith says. "So if they go to jail, who's going to take care of her?"

In fact, the similarity to domestic violence helps explain why elder financial abuse goes underreported. "It took people a while to wrap their heads around the idea that domestic violence was a crime," says Loewy, the Manhattan assistant district attorney. "We're where domestic violence was about 20 years ago."

### Addressing the problem

Those problems haven't stopped law-enforcement and other professionals from pushing to improve awareness and prevention of financial exploitation of older people. With little federal coordination and funding, most activity happens at the state level. Experts we interviewed in several states mentioned improvements in recent years in the communication among adult-protective-service workers, emergency medical personnel, police officers, prosecutors, and other workers to identify and deal with suspected crimes.

Strained state budgets challenge more progress. Some jurisdictions in California, for instance, have established dedicated courts like that of Toy White to handle the growing number of elder-abuse cases. A spokeswoman for the California Administrative Office of the Courts expressed concern about the elder courts' survival in the face of state budget cuts. In spite of a burgeoning elderly population, Maine's Legal Services for the Elderly has seen its funding remain flat over the past decade, Martin says.

In 25 states, financial institutions are required to report suspicious withdrawals from seniors' accounts and other uncharacteristic activity, according to the American Bankers Association. The ABA says it supports its member banks



Arthur Green fought back when he says his relatives tried to evict him from his home.



Judge Colleen Toy White handles about 40 financial-elder-abuse cases a month.

with education, including training that focuses on teaching employees to identify behavioral and transactional indicators that could signify financial abuse.

But a recent Government Accountability Office report found examples where bank employees missed opportunities to identify elder exploitation. Banks' misconceptions about federal privacy laws also may make them unwilling to release bank records to investigators, the report found.

On the federal level, the Consumer Financial Protection Bureau, established by the 2010 financial-reform law, houses the Office of Financial Protection for Older Americans, which works to prevent abusive and fraudulent financial practices related to seniors. Several agencies publish material on preventing and avoiding identity theft, phone scams, consumer frauds, investment cons, and other swindles for seniors and others.

But a potentially powerful federal weapon against financial elder abuse remains stuck in neutral. The Elder Justice Act, part of the 2010 health-care reform law, authorized more than \$700 million over four years for preventing and dealing with elder abuse, neglect, and exploitation, mostly by funding state adult protective-services agencies. Congress, however, has failed to fund the "discretionary" expenditure despite a sharp rise in need. According to a 2012 report by the National Association of States United for Aging and Disabilities, almost 70 percent of state adult protective-services agencies reported a rise in caseloads of up to 20 percent in the past five years; 16 percent saw rises of 20 to 30 percent.

That lack of funding could backfire. Without timely intervention, victims stand a greater chance of becoming indigent and dependent on government support. A 2012 study by the Utah Division of Aging and Adult Services, for instance, found that older financial-abuse victims in 2010 who resorted to the state's Medicaid program for their care had lost an average of \$480,000. Such victims could cost the program almost \$9 million, the study projected. "It costs victims, families, financial institutions, and the taxpayer," says Quinn at the National Adult Protective Services Association.

## Protect yourself

Preventing financial exploitation by the people you know might require taking legal precautions; at the very least you'll need to have some uncomfortable conversations with friends and family. You might need to revisit plans you've made before—and create new ones.

**Hire the right professionals.** Engage a CPA or certified financial planner to handle such concerns as how much money you can withdraw safely from retirement funds. Hire an estate-planning attorney with elder-law expertise to write your will and power-of-attorney documents; they can also craft trusts, which can limit relatives' access to your money. A professional daily money manager can help you deal with bill-paying, insurance claims, phone calls to financial institutions, and troubleshooting. (Learn where to find professionals.)

**Set up your documents.** Consider carefully to whom you give power of attorney. Though legally that person is your fiduciary—charged with acting in your best interest—in practice he or she could do anything with your money, even without your knowledge. Don't assume the person closest to you will do the best job; you might be better off giving it to someone more detached and financially secure.

Experts told us that for no extra cost, the power-of-attorney document can be drawn up with limits, such as assigning a relative or friend to monitor the person with power of attorney, mandating a periodic written report of financial transactions, or assigning joint powers of attorney, which requires two signatures on every check. You can also split the chores, giving one person authority over financial matters and another control of health decisions. Have your lawyer hold the physical papers granting power of attorney, to ensure that your appointee can't prematurely present it to your investment company or bank to gain unnecessary access.

**Arrange your everyday accounts.** Set up direct deposit of payments such as tax refunds, pension benefits, and Social Security. As of March 1, 2013, all Social Security benefits must be paid electronically or on a debit card. (Go to [ssa.gov/deposit](http://ssa.gov/deposit) for details.) Set up automated bill pay with your bank for your mortgage, utility bills, and other regular expenses. Have financial institutions send statements and alerts to a trusted person who has no access to any of your accounts to check for fraud.

Avoid sharing a large bank account or a credit card with another person. If you need or want someone else to pay bills for you, create a shared account and arrange to transfer only enough money each month to cover the bills. Get to know officers and tellers at your local bank or credit union. Ensure that they have an up-to-date signature card and contact information on file.

**Secure your home.** Make sure any caregiver you're considering undergoes a background check. Don't assume that a placement agency will do a thorough one. Insist on a national, rather than a state, criminal check. To monitor in-home help, consider installing a surveillance camera if state law permits it.

**Don't leave mail in an unsecured mailbox.** Shred documents with identifying information. List and photograph all jewelry and valuables, so they can be traced to pawn shops if necessary. Keep small valuables in a locked drawer and photographs of them in a separate place.

## Safeguarding relatives

The most important action you can take on an older relative's behalf is to make sure he or she gets out and about. Elder abuse is correlated highly with social and physical isolation. In addition to making regular and unplanned visits yourself, arrange for outings and visits with friends, neighbors, clergy, and volunteers.

**Lay down the ground rules.** Hold a family meeting to discuss who will look after the older relative physically and financially. If one relative will handle the bulk of the care, have an attorney draft a "personal-care agreement" that outlines how much he or she should receive for services. "It's reasonable for a family member to be paid," says Starnes, the CFP. "That'll keep a lot of caregivers out of trouble, knowing what the limits are."

**Set up a limited account.** If you're concerned about your relative's abilities to make financial decisions, set up a small account at a local bank for her. The account could, for instance, include a debit card and checks and have a spending limit of, say, \$300. Arrange with the bank to investigate checks written for more.

**Be available.** Accompany your relative to meetings with financial advisers and doctors; they can help you make plans for her protection. "Often people are nervous about having that conversation, but it doesn't have to be approached in an adversarial mind-set," Starnes says. "It can be, 'Mom, you've done such a great job, and I just want to help.'"



Protective-services professionals like Sally Smith, left, report a rise in abuse

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The most important action you can take on an older relative's behalf is to make sure he or she gets out and about.

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**Watch for these warning signs**

Be suspicious if the elderly person has a new "best friend," becomes socially isolated, never seems to be available or able to come to the phone, or is hesitant to have contact with others unless his or her caregiver is present. Also be on alert for:

- Unpaid bills when someone else has been designated to make payments.
- Missing property, large or unexplained withdrawals from bank accounts, or transfers between accounts.
- Excessively large reimbursements or "gifts" to caregivers or friends.
- New authorized signers on a person's bank account.
- Changes in banks or attorneys.
- Bank statements and canceled checks no longer coming to the person's home.
- Unfamiliar signatures on checks and other documents.
- Changes in spending patterns, such as purchases of items the senior doesn't need.
- Lack of personal amenities such as clean clothes and grooming items.
- Changes in documents such as a will or power of attorney, or a change in beneficiaries that the senior can't completely explain or comprehend.
- Excessive interest in the senior's finances by a caregiver, friend, or relative.

**What would you do?**

<b>Scenario</b>	<b>Solution(s)</b>
<p>You visit your father every few weeks. Recently you looked at his bank statement and saw several checks that he can't explain.</p>	<p>Did your father write the checks? If he didn't and does not know who did, he should file a police report. A common tactic of abusers is to write checks to themselves from their victim's checkbook, expecting the senior to later forget or be confused about writing the check. If your father did write the checks and doesn't recall doing so, he may have a capacity problem. If that's the case, you should have him assessed by his physician, says Roger Demers, special assistant attorney general, Rhode Island Department of Attorney General.</p>
<p>You've given your favorite nephew several loans. His requests are getting larger and more frequent. He can get very angry when challenged, so you're reluctant to say no.</p>	<p>If you have a hard time refusing his requests, get someone to assist you with your finances. Then you can tell the nephew that you are no longer handling your money and he will have to go through the other person with his requests. That takes you out of the position of having to say no and lets him know that someone else is looking over things, so he might be more likely to stop asking, suggests Sally Smith, adult protective services case manager supervisor, Franklin County (Ohio) Office on Aging.</p>
<p>Several times when you've called your aunt's home in another state, her caregiver tells you she's sleeping, or too tired, or just can't come to the phone.</p>	<p>Contact law enforcement to conduct a "well check." They will make contact with your aunt and report back to you what they find. Whenever you suspect abuse, neglect, or exploitation, immediately contact your state's abuse hotline, says Allison Bryant, statewide elder-abuse prevention coordinator for the Florida Department of Elder Affairs.</p>
<p>The woman who drives you is like a daughter. Once, when you weren't well, you gave her your ATM card to do errands for you. Now, when you ask her</p>	<p>Close that account, check to make sure that no unauthorized withdrawals have been made, and sever the relationship. If there are such withdrawals, make an</p>

where the card is, she changes the subject.

immediate police report, says Paul Greenwood, deputy district attorney in San Diego and head of the county's elder-abuse protection unit.

The woman who drives you is like a daughter. Once, when you weren't well, you gave her your ATM card to do errands for you. Now, when you ask her where the card is, she changes the subject.

Close that account, check to make sure that no unauthorized withdrawals have been made, and sever the relationship. If there are such withdrawals, make an immediate police report, says Paul Greenwood, deputy district attorney in San Diego and head of the county's elder-abuse protection unit.

Your brother lives with your mother. He doesn't have a job, and he doesn't pay rent. When he drinks, he is mean to your mother. You think that she's been giving him money and that she is afraid of him.

Ask her whether you can take control over her funds so that you are the go-to person if he has questions about her money, says Debra G. Speyer, elder-law attorney in Philadelphia.

Talk to her when he isn't around. Unfortunately, if she's been enabling him his whole life, chances are you're not going to get her to stop, says Sally Smith, adult protective services case manager supervisor, Franklin County (Ohio) Office on Aging.

If there are signs of physical abuse, involve the police, says Martha Crippen, elder-abuse investigator, Rhode Island Department of Attorney General.

Your brother, who has power of attorney for your father with Alzheimer's disease, won't let you look at your father's accounts. But recently your brother bought a fancy car, and you're suspicious.

The fancy car might be a red herring, but it might indicate that your brother is taking your dad's funds. Does your father have any capacity to discuss this with him? Perhaps a meeting with the three of you discussing this might help. If all else fails, you could go to court and request an independent conservator or guardian over your dad because of his dementia and request that the power of attorney be voided because of your brother's improprieties, says Debra G. Speyer, elder-law attorney in Philadelphia.

## Where to turn for information and help

**Consumer Financial Protection Bureau's Office of Financial Protection for Older Americans** receives and investigates consumer fraud complaints specifically related to mortgages, credit cards, banks, loans, and more.

**Eldercare Locator (800-677-1116)** refers and connects callers to local services in their communities, including meal and transport services, home care, support services, services for caregivers, and others.

**National Academy of Elder Law Attorneys (703-942-5711)** offers a search for lawyers specializing in durable powers of attorney, conservatorship, estate planning, elder abuse, and other concerns.

**National Adult Protective Services Association** provides a national map with links to abuse-reporting hotlines by state.

**National Center on Elder Abuse** has links to additional state directories of help lines, hotlines and elder-abuse prevention resources in all 50 states and the District of Columbia.

**AARP Money Management Program** pairs seniors of limited resources or people with disabilities with trained money-management volunteers. One service helps seniors who remain in control of their finances to balance their checkbooks and pay bills; the other focuses on those deemed incapable of handling their own funds. The program is offered in 21 states and the District of Columbia, though availability varies.

**American Association of Daily Money Managers** has members nationwide who can assist seniors with bill-paying, banking, insurance paperwork, and organizing records in preparation for income-tax filing, among other tasks.

**National Association of Professional Geriatric Care Managers** includes professionals who can facilitate aspects of seniors' lives, including monitoring home-care workers, managing medical appointments, and identifying potential exploitation risks, among other services. Some geriatric-care managers can also pay bills and handle paperwork.

**AARP's Scams and Fraud page** offers information on the latest frauds against older people.

**Better Business Bureau Scam Stopper** has information on common scams and instructions on reporting a scam. You can sign up for scam alerts on the site.



## Financial Abuse

Elder financial abuse spans a broad spectrum of conduct, including:

- Taking money or property
- Forging an older person's signature
- Getting an older person to sign a deed, will, or power of attorney through deception, coercion, or undue influence
- Using the older person's property or possessions without permission
- Promising lifelong care in exchange for money or property and not following through on the promise
- Confidence crimes ("cons") are the use of deception to gain victims' confidence
- Scams are fraudulent or deceptive acts
- Fraud is the use of deception, trickery, false pretence, or dishonest acts or statements for financial gain
- Telemarketing scams. Perpetrators call victims and use deception, scare tactics, or exaggerated claims to get them to send money. They may also make charges against victims' credit cards without authorization

## Who are the perpetrators?

Family members, including sons, daughters, grandchildren, or spouses. They may:

- Have substance abuse, gambling, or financial problems
- Stand to inherit and feel justified in taking what they believe is "almost" or "rightfully" theirs
- Fear that their older family member will get sick and use up their savings, depriving the abuser of an inheritance
- Have had a negative relationship with the older person and feel a sense of "entitlement"
- Have negative feelings toward siblings or other family members whom they want to prevent from acquiring or inheriting the older person's assets

Predatory individuals who seek out vulnerable seniors with the intent of exploiting them. They may:

- Profess to love the older person ("sweetheart scams")
- Seek employment as personal care attendants, counselors, etc. to gain access

- Identify vulnerable persons by driving through neighborhoods (to find persons who are alone and isolated) or contact recently widowed persons they find through newspaper death announcements
- Move from community to community to avoid being apprehended (transient criminals)

Unscrupulous professionals or businesspersons, or persons posing as such. They may:

- Overcharge for services or products
- Use deceptive or unfair business practices
- Use their positions of trust or respect to gain compliance

## Who is at risk?

The following conditions or factors increase an older person's risk of being victimized:

- Isolation
- Loneliness
- Recent losses
- Physical or mental disabilities
- Lack of familiarity with financial matters
- Have family members who are unemployed and/or have substance abusers problems

## Why are the elderly attractive targets?

- Persons over the age of 50 control over 70% of the nation's wealth
- Many seniors do not realize the value of their assets (particularly homes that have appreciated markedly)
- The elderly are likely to have disabilities that make them dependent on others for help. These "helpers" may have access to homes and assets, and may exercise significant influence over the older person
- They may have predictable patterns (e.g. because older people are likely to receive monthly checks, abusers can predict when an older people will have money on hand or need to go to the bank)
- Severely impaired individuals are also less likely to take action against their abusers as a result of illness or embarrassment
- Abusers may assume that frail victims will not survive long enough to follow through on legal interventions, or that they will not make convincing witnesses
- Some older people are unsophisticated about financial matters
- Advances in technology have made managing finances more complicated

## What are the indicators?

Indicators are signs or clues that abuse has occurred. Some of the indicators listed below can be explained by other causes or factors and no single indicator can be taken as conclusive proof. Rather, one should look for patterns or clusters of indicators that suggest a problem.

- Unpaid bills, eviction notices, or notices to discontinue utilities

- Withdrawals from bank accounts or transfers between accounts that the older person cannot explain
- Bank statements and canceled checks no longer come to the elder's home
- New "best friends"
- Legal documents, such as powers of attorney, which the older person didn't understand at the time he or she signed them
- Unusual activity in the older person's bank accounts including large, unexplained withdrawals, frequent transfers between accounts, or ATM withdrawals
- The care of the elder is not commensurate with the size of his/her estate
- A caregiver expresses excessive interest in the amount of money being spent on the older person
- Belongings or property are missing
- Suspicious signatures on checks or other documents
- Absence of documentation about financial arrangements
- Implausible explanations given about the elderly person's finances by the elder or the caregiver
- The elder is unaware of or does not understand financial arrangements that have been made for him or her

## How can I learn more?

Nerenberg, L. (1999). Forgotten victims of elder financial crime and abuse: A report and recommendations. Produced by the Goldman Institute on Aging for the National Center on Aging (NCEA), this report summarized four roundtable discussions sponsored by NCEA, which focused on four components of the legal system: the state and criminal justice system, federal investigative and regulatory agencies, the civil legal system, and the victim witness assistance network. Professionals from each system described challenges they face in handling financial abuse cases and made recommendations for improving each system's response. To view, [click here](#) to download it from the NCEA web site.

Volume 12 Number 2 (2000) of the Journal of Elder Abuse & Neglect is devoted to elder financial abuse. For more information about JEAN and a listing of articles in the issue, [click here](#).

A/PACT: Aging Parents and Children Together. Produced by the American Association of Retired Persons (AARP) and the Federal Trade Commission (FTC), this consumer education series includes 10 1-3 page articles focusing on consumer fraud, daily money management, alternatives to guardianship, etc. Contact the [AARP](#) for more information.



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# Financial Exploitation Of Elderly Difficult To Detect

By [Matt Bush](http://wamu.org/authors/matt_bush)  
May 8 2013

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Flickr / David Goehring <http://www.flickr.com/photos/carbonnyr/2201277276/>

Banks in the state of Maryland are now required to report suspected financial abuse of senior citizens.

Rosetta Skipper met a woman at St. Luke's Catholic Church along East Capitol Street in southeast D.C. in 2007. Skipper's husband had died five years earlier; they had no children, and she lived alone in her northeast D.C. home. Her closest family was in New York City.

Skipper had Alzheimer's disease, and was briefly hospitalized in 2007, as her health worsened. That's when the woman at the church took control of her life and moved Skipper into her own home.

"She had somehow gotten power of attorney done," says Stephan Skipper Jr., Rosetta's great nephew. "We don't know how she did. As soon as my aunt got home from the hospital, it only seemed like two weeks later. This lady who no one had ever met, was now her caretaker and power of attorney over everything"

Financial exploitation of seniors is a problem that's estimated to cost nearly \$3 billion per year. Now, some states — including Maryland — are trying to put a stop to that abuse. But this type of exploitation is difficult to spot.

Skipper Jr. is able to speak about what happened to Rosetta, unlike his father and the woman from the church, both of who signed a confidentiality agreement after the case almost went to a probate court. Skipper's father was the beneficiary in his aunt's will, and the one

## WHERE TO GET HELP

- Contact information for Adult Protective Services ([http://wamu.org/news/13/05/03/elder\\_reveals\\_who\\_to\\_contact](http://wamu.org/news/13/05/03/elder_reveals_who_to_contact))
- Contact information for the Ombudsman's office (<http://www.theombudsman.org/ombudsman/washingtondc/>)
- Warning Signs Of Elder Abuse (<https://p0.amznaws.com/3/documents/10497/documents/295844/2013-119-wpa-inf-of-elder-abuse-warning-signs-nm-1.pdf>)

## AGING AND ABUSE SERIES

- Part 1: [Elderly Couple's Tale Of Abuse Not So Uncommon](http://wamu.org/news/13/05/03/elderly_grandparents_found_living_in_their_own_word)
- Part 2: [Adult Protective Services Fight Against Elder Abuse](http://wamu.org/news/13/05/06/npb_tuphil_battle_to_end_elder_abuse)
- Part 3: [Tackling Nursing Home Complaints With Ombudsman Programs](http://wamu.org/news/13/05/07/managing_nursing_home_complaints)
- Part 4: [Financial Exploitation Of Elderly Difficult To Detect](http://wamu.org/13/05/08/financial_exploitation_of_elderly_difficult_to_detect)
- Part 5: [House Calls A Better Option For Some Elderly](http://wamu.org/news/13/05/03/house_calls_a_better_option_for_some_elderly)
- Read the entire series: [Aging and Abuse](http://wamu.org/aging_and_abuse/)

who kept tabs on her. But in 2007, he starting having health issues of his own and was unable to check in with his aunt with any frequency.

Rosetta Skipper died in 2011. Because she was a former Pentagon employee, an obituary was written about her in the *Washington Post* weeks later. That's how her family found out she died.

**Dealing with an empty bank account**

"We lost Aunt Rosetta and didn't even know it," says Skipper Jr. "And this woman didn't have the respect to call and tell us. She tried to tell my father once 'Oh I tried to reach you but couldn't find your number.' My father has had the same job for 30 years. His number hasn't changed in the last 40 years."

When her family want to claim her estate, they found Rosetta Skipper's bank accounts were mostly empty. There was her house, but the woman had changed the will to ensure it ended up in her hands upon Skipper's death. Having power of attorney allowed her to do that. She had also paid herself a weekly fee, claiming it was for the costs of being Skipper's caregiver. It started at \$750 a week, and by the time of Skipper's death, it was over \$2,500 a week. Skipper Jr. says that ended up being her undoing when the lawyers got involved.

Extended interview: Maryland Del. Ben Kramer (D-Montgomery County) explains his bill, that was deferred for study this summer, on registered sex offenders in nursing homes.



If this case had occurred in Maryland, it almost certainly would have been referred for criminal investigation... D.C. is just not as aggressive on this issue.

"The minute we asked for her tax returns, they wanted to settle," he says.

Skipper Jr. believes the woman hadn't been reporting those payments to the IRS. The family got the house back, but could only sell it at half its value. The hundreds of thousands the woman spent on things such as improvements to her house, cars, high-end clothes, and Redskins and Nationals tickets -- all that money was gone.

"If this case had occurred in Maryland, it almost certainly would have been referred for criminal investigation," says Ron Landsman, one of the attorneys for the Skipper family. "That might have led to criminal sanctions. D.C. is just not as aggressive on this issue."

**Implementing tougher laws to prevent abuse**

According to Maryland Del. Ben Kramer, 70 percent of the wealth in this country is in the hands of the over-55 population.

"That is a statistic that is not lost on the con artists and the scammers."

Kramer, a Democrat from Montgomery County, has sponsored several bills on elder abuse that have passed the General Assembly. One, which he says is the only such law in the country, allows prosecutors to charge someone for using "undue influence" to get anyone over age 68 to sign over their assets.

"For instance, a caregiver who is taking care of an elderly person, would start to tell them 'Look, if you want me to keep going to the grocery store, or if you want me to get your dry cleaning, you're going to have to sign over the title to your car to me,'" says Kramer.

Another bill deals with banks, and just went into effect last October.

"Banks in the state of Maryland are now required to report suspected financial abuse of senior citizens," says Kramer. "And they are now mandated to train all of their employees to look for this kind of financial abuse."

Sandy Spring Bank had been doing this on a voluntary basis since 2002. Frank Moran is the director of corporate security for the bank.

"Anything that is out of the ordinary are red flags that they should be looking for," says Moran. "Are they adding people to their account that aren't relatives? Are they seeing checks coming across that are signed by the client, but the actual body of the check -- make payable to and the amount -- are in a different handwriting?"

The bank's branch staff was trained before the new law went into effect last October. With all Sandy Spring employees now taught to look for those red flags, suspected financial exploitation cases have skyrocketed. In the past six months, Sandy Spring banks have reported more cases than they had the prior 10 years.

John Sadowski, Sandy Spring's chief information officer, says a lot of those come through the bank's call center.

"If you Google your own name, you'd be surprised what's known about you online already," says Sadowski. "Bad guys can take pieces of information that's publicly available, and then call our call center and try to get additional pieces of information. I've sat in on the call center, and they'll be people struggling, saying 'My mom was married three times before and her maiden name was... umm,' trying to get the rep to fill in the blank for them."

But even with this new focus, financial exploitation is still difficult to spot, especially if it's a family member doing it. Sadowski admits there is little their bank or any bank can do to stop that.

**The importance of the power of attorney**

Stephen Skipper Jr. knows this all too well, and not just because of what happened to his great aunt. He's a branch manager of a credit union in New York City. In his family's case, he knows there was next to nothing banks could

**70 percent**  
of the wealth in this country is in the hands of the over-55 population

have done once the woman from the church got his great aunt to give her power of attorney. He does wish the banks had alerted them about the changes in spending once the woman started using the accounts

"Checks written to replace windows in her house, payments on cars, payments on electricity bills, frivolous shopping at Nordstrom's and Saks Fifth Avenue," Skipper Jr. says. "Something that an 87-year-old woman wouldn't do."

And while he's able to speak openly about what happened, Skipper still gets emotional when he thinks of his great aunt and uncle, whom he visited often in D.C. when he worked for the United Nations

"When my uncle first died, my father asked my Aunt Rosetta, 'do you want to come live with us?' And she said 'no. I'm okay. I want to stay in D.C.' When you're married over 50 years, and you have no children, it's just you and that person. And it seems like when this lady came in, she just took everything they worked on for 50 years."



NPR

### Hashtag Slows Stereotypes Of Black Sexuality

(/programs/tell\_me\_more/13/12/16/fasttailedgirls/slow/16/hashtag-slows-stereotypes-of-black-sexuality)

#FastTailedGirls on Twitter is raising questions about stereotypes when it comes to black sexuality, and how those misconceptions can affect young girls. Host Michel Martin talks with Mikki Kendall, who started the hashtag, along with The Root's Kelli Goff, and Salon's Prachi Gupta



WAMU 88.5

### McDonnell To Present Final Two-Year Budget

(/news/13/12/16/mcconnell-to-present-final-two-year-budget)

Virginia Gov. Bob McDonnell is preparing to present his last two-year state budget proposal to Virginia lawmakers



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### When Craft Beer Goes Global: A Kansas City Brewery's Tale

(/programs/morning\_edition/13/12/15/when-craft-beer-goes-global-kansas-brewerys-tale)

Boulevard Brewing has become a Kansas City staple since its founding in the 1980s. It has many loyal local fans — and soon, a new international owner. Duvel. The deal says a lot about how the world now values a product made with a firm sense of place



NPR

### Exploring Economic Inequality From Heart Of The Tech Boom

(/news/13/12/16/exploring-economic-inequality-from-heart-of-the-tech-boom)

Something strange is going on in the San Francisco Bay Area: The tech boom is global, but it's leading to economic recovery. The ultra-rich are getting richer as many other Silicon Valley residents are slipping into poverty



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Linda Kincaid · 7 months ago  
These stories are so common. In California, Carol Hahn saved her entire life. By age 74, she had a comfortable \$1M to see her through retirement.

That money is now in the hands of a former step-granddaughter. After Hahn developed dementia, the step-granddaughter coerced Hahn to sign over everything. The step-granddaughter hid Hahn from her family, and kept her isolated for fifteen months. The San Bernardino County DA responded, "There is nothing out of the ordinary." He refused to investigate.

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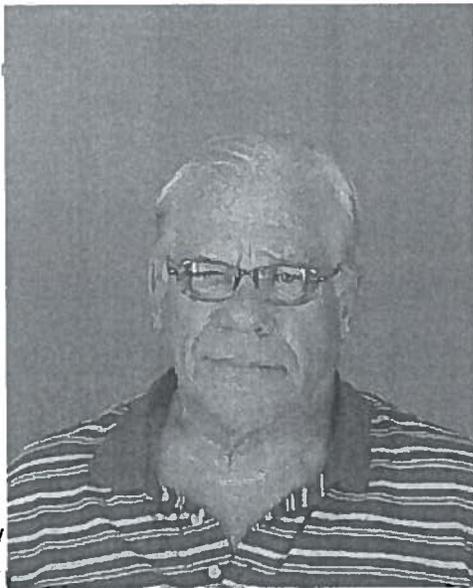
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News | Police & Fire

# Man Charged With Exploiting 93-Year-Old Mother

According to the Pasco County Sheriff's Office, he used her Social Security checks for his own "frivolous expenditures."

Posted by Keli Sipperley , March 17, 2012 at 03:07 AM



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home care.

Instead, the Pasco County Sheriff's Office says, William Hamilton of Holiday used the funds for "frivolous expenditures," according to a complaint affidavit.

According to an incident report, Hamilton was given power of attorney when the health of his mother, Catherine Christensen, began to decline.

When she was admitted to Southern Pines nursing home, 6140 Congress St. in New Port Richey, Christensen, then 91, had suffered from a stroke, heart attack, depression and hallucination disorders, the affidavit stated.

According to the affidavit, Hamilton did not pay Southern Pines for the time period between April and November of 2010, "shorting the nursing home \$7,343."

During a non-custodial interview in November 2010, Hamilton said he used his mother's Social Security money to pay for the proerty taxes on her home, the affidavit stated.

A records search revealed that the taxes on Christensen's home had not been paid "for years," the report stated.

The case was assigned to the sheriff's economic crimes unit, and "an investigation into (Hamilton's) bank account shows cash deposits and frivolous expenditures during the time period in question, expenditures beyond his obvious personal monthly income," according to the affidavit.

Hamilton used some of the money to patronize local gay bars, take a trip to Wisconsin, purchase food at restaurants and pay for satellite radio, among other things, Pasco County Sheriff spokesman Kevin Doll said in an email.

Hamilton, 65, of 3306 Briar Cliff Drive, was arrested Thursday, March 15, and charged with exploitation of an elderly person. He is being held at the Land O' Lakes jail on \$5,000 bond.

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## MarketWatch

THE WALL STREET JOURNAL

Elizabeth O'Brien's Retire Well

March 19, 2013, 7:02 a.m. EDT



### Power of attorney: It's easily abused How to protect ailing relatives from fraud and abuse



By Elizabeth O'Brien

It's a standard part of estate planning. It's also, according to experts on elder fraud, a license to steal. It's the power of attorney, a legal instrument designed to give a trusted individual the authority to handle financial or health matters for the person creating it.

As their own parents grow older—and, in many cases, lose the capacity to make their own financial and medical decisions—growing numbers of baby boomers are beginning to wrestle with the intricacies and pitfalls of the power of attorney. And of course, the day may not be too far off when they themselves may have to trust someone else with those powers. "They have great value and opportunity to misuse," said Randy Thomas, a former police officer in Columbia, South Carolina who lectures nationally on elder financial abuse.

The MetLife Mature Market Institute estimates that older Americans lose at least \$2.9 billion annually from financial abuse of all kinds. And experts expect that amount to grow as the baby boomers age. The Administration on Aging has designated 2013 as the "Year of Elder Abuse Prevention" to raise awareness of all types of abuse at the national, state and local levels.

Statistics on power of attorney abuse are hard to come by, but experts recognize it as a prevalent problem. Some kinds of power of attorney grant their holders far-reaching authority over the affairs of people who are physically or mentally unable to conduct their own business. The [Government Accountability Office released a report last November on elder financial exploitation](#) which listed power of attorney agents as one category of potential abuser whose actions can be particularly challenging to prevent.

Related: [Elder Financial Abuse](#)

#### TAXES



#### How to slash your tax bill in retirement

Big tax bills can devastate your retirement savings. MarketWatch's Robert Powell and Andrea Coombes talk about strategies to employ before and during retirement to lower your taxes.

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Related: [Elder Financial Abuse](#)

this yourself. Many lawyers include powers of attorney as part of a standard estate plan (some recommend separate documents for financial affairs and health-care, while others create one document to address both).

Estate plans usually involve what's known as a "durable" power of attorney. These allow the trusted individual—legally, the "agent"—to retain power of attorney even when the person who created the document—the "principal"—has become incapacitated. A general power of attorney expires when the principal has lost capacity; these are usually limited to a certain transaction, such as a real estate closing or the license-plate example above. All powers of attorney expire when the principal dies.

Indeed, family members, friends, and neighbors are the culprits in 34% of elder financial abuse cases, according to a study by MetLife. Yet much of the education on senior financial exploitation centers on scams perpetrated by strangers. "We've got them so scared of answering the phone or going online, when the majority of the assets are going out the back door by a trusted niece," Thomas said. And the vehicle that often enables this, Thomas said, is the power of attorney.

Here's what that can look like. A friendly neighbor offers to go pick up an elderly couple's license plates. He has them sign a specific power of attorney for that sole purpose, printed from an automobile-club website. He takes that to the bank and uses it to withdraw money from the couple's account. (That's an actual scenario that came before Thomas A. Swift, probate judge in Trumbull County, Ohio; the bank returned the money, because the teller should have but failed to notice the limited nature of the power of attorney.)

Pamela Glasner, a filmmaker who lives in central Connecticut, experienced a more devastating scenario when a man from her parents' Florida synagogue gained the couple's confidence a few years ago. Glasner's father, who had Alzheimer's disease, had moved into a nursing home, and her mother lived alone and visited him daily. The man, who represented himself to nursing-home staff as the couple's son, had Glasner's father sign a power of attorney form that he then used to access their money and transfer their house into his name. The fraudster also had Glasner's mother rewrite her will, naming him a beneficiary. "By the time we found out about it," Glasner said, "all of our accounts were zeroed out." Glasner turned her experience and that of others into a 2012 documentary, "Last Will and Embezzlement."

#### Finding a trusted 'agent'

When used properly, the power of attorney can assure that a trusted person is handling your financial affairs, or making health-care decisions for you, when you're not mentally or physically capable of doing

It's important that people create a power of attorney when they're still in full command of their faculties. If you fail to designate someone to handle your affairs, and you become unable to take care of them yourself, then your family will likely have to go to court and establish what most states call a conservatorship or guardianship. (This holds true even for spouses; unless an account is held in both names, one spouse won't have access to another's funds without a power of attorney.) Guardianship can be a costly and complicated process, and there's no guarantee the judge will choose as your guardian the person who you would've picked.

Powers of attorney should be customized to each individual's wishes and situation. When crafting the document, some people might decide not to allow their agent to make gifts on their behalf. Others might decide they want to add a second agent or at least allow someone else to review the actions of the first agent. Then again, "If you get to the point where you need that level of review, you're probably naming the wrong person," said Michael A. Dribin, a partner in Miami with law firm Harper Meyer LLP. People should consult a lawyer to ensure their power of attorney will be accepted everywhere they need it to be, experts say, especially if they have property in more than one state, as the laws governing power of attorney vary by state.

Powers of attorney are vulnerable to abuse in part because they're not routinely tracked by the court system. Anyone can print a template from the Internet and put that in front of an older person to sign. Once a new power of attorney is signed, that document supersedes the old power of attorney if it addresses the same issues. Yet since these forms aren't tracked in a central repository, the old agent isn't notified of the change. Most states require witnesses, including a notary public, to the signing, but this intended safeguard can be sidestepped if witnesses are inattentive or, worse, collude with the abuser.

A mentally competent person can revoke power of attorney at any time if she notices the document being abused. Yet if the principal's mental state is in question, the courts are often called on to determine whether she understood what was happening when she signed the power of attorney. This happens during a "proceeding to determine capacity." This kind of retrospective analysis of an older person with some cognitive decline can be very complex, even for experts, said Dr. Gary Small, director of the division of geriatric psychiatry at the Semel Institute for Neuroscience and Human Behavior at UCLA, and the author of *The Alzheimer's Prevention Program*.

#### Taking steps against abuse

While there's no fail-safe way to prevent power of attorney abuse, people can take steps to protect themselves and their loved ones. The most important preventative measure is for people to name an agent they trust completely, experts say. Once the decision is made, revisit it every few years, Dribin said: The family member who seemed like the perfect candidate might seem less so if he is in the midst of a divorce, for example, with fresh financial woes.

Once you've established your power of attorney, or helped an older relative do so, notify the relevant financial institutions in writing and ask them to alert you to any changes in the account, Swift said. This serves two purposes, experts say: it can alert you to potential abuse, and it can also ensure that your financial institution will honor the document. Some financial institutions will only honor their own power of attorney documents, generated by their lawyers, and state law on the issue varies.

People serving as agents for their parents or older relatives should watch for potential abuse once their loved one has become incapacitated. Monitor bank accounts for any suspicious activity. You might also consider freezing your relative's credit report to make it more difficult for fraudsters to take out loans in his or her name, said John Ulzheimer, president of consumer education at SmartCredit.com, a credit monitoring and education firm, who recently froze the reports of his 85-year-old mother-in-law for her protection. To do this, you register with each of the three credit bureaus—Equifax, TransUnion and Experian—and pay a nominal fee. You can always go back in and "thaw" the account if your relative needs to apply for credit.

If you realize someone has used a power of attorney to take advantage of your loved one, consider requesting a proceeding to determine capacity in the local court where he or she lives, Dribin said. In some states, this request legally suspends the ability of an agent to use the power of attorney, since the principal's mental capacity is under question. As an extra measure, send a written notice to all financial institutions where your loved one has accounts—banks, brokerage houses and insurance firms—letting them know that the power of attorney has been suspended.

No one likes to think about becoming reliant on others. But establishing a power of attorney, and taking steps to protect it, can lessen the burden of caregiving for your loved ones down the road. No matter how many crossword puzzles we may do, everyone experiences some degree of cognitive decline as part of the natural aging process, said Michael Finke, a professor of personal financial planning at Texas Tech University. "It may be healthier to plan for it than to try to prevent it."

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