

Safe Seniors

Newsletter for the Prevention of Elder Abuse in San Diego County

Banks, Credit Unions in Battle Against Financial Abuse

An 88-year-old woman called her bank's vice president, asking to liquidate a \$40,000 certificate of deposit. It was highly unusual for this long-time customer of the bank to take this action, especially before the CD had matured. The vice president questioned the woman more, and heard a younger, impatient voice in the background urging the woman to hurry up. The bank official became suspicious and told her customer that she needed to check the account further and get back to her. She contacted Adult Protective Services.

This astute action by the bank vice president saved the woman's money. She was being pressured by her granddaughter, who had a drug habit.

Financial institutions can be key gatekeepers in the battle against financial abuse. Many older adults have long relationships with one bank or credit union. They know many employees by name. Those employees often know when there's an unusual change in the banking pattern of a regular customer.

APS agencies statewide tracked the loss of assets from elder and dependent adult financial abuse for just one day. The assets included real estate, vehicles, bank accounts and more. The total: \$20 million. Just one day.

Many financial institutions throughout the county have been partners with APS in the fight against financial abuse of elders and dependent adults. Beginning Jan. 1, all banks and credit unions in the state will be mandated to join this growing battle. In California, more than 600,000 incidents of

financial abuse occur each year. Sadly, for every situation that is reported, an estimated 25 other similar incidents of financial abuse go unreported.

Legislators and the governor felt it was time to bring all banks and financial institutions into this effort. There has been a reluctance in the banking industry to mandate employees to report a suspicion of financial abuse. The concern was over upsetting customers with questions regarding their finances. Understandably, privacy is an important issue for financial institutions.

So APS agencies in the state are working to educate customers about this new law. Financial institutions are not seeking to pry into their business; the goal is to protect customers' assets. Account information will be guarded as before, with sensitive information being released only to investigative agencies, such as APS or law enforcement, or by court order. Hopefully customers will thank their bank or credit union for protecting them.

Warning Signs of Abuse

Here are some signs to employees of financial institutions that a customer may be the victim of abuse:

- Third-parties involving themselves in transactions — especially transactions that are unusual for the customer's account
- Previously uninvolved relative or "friend" claiming the customer's assets
- A customer mentioning "friends," "strangers," or others waiting outside
- Property owners who aren't co-borrowers
- Unusually large and frequent withdrawals, numerous checks made out to "Cash," ATM withdrawals from customers who do not use ATMs
- New names added to accounts
- Many out-of-sequence checks
- Sudden transfers of assets, especially real property
- Property refinancing with cash out
- Transactions that the customer does not know about or can't explain
- Power of Attorney requests that the customer can't explain or doesn't understand
- Checks written or requested to "claim" prizes
- Increases in credit card activity and/or balances outstanding, when cards were previously paid in full
- Payments for clearly unnecessary or inappropriate services
- The customer appears anxious or fearful in the presence of a third party
- The customer is worried or angry about relatives, caregivers, or repairmen stealing
- The customer's appearance or hygiene suddenly declines

The Elder Abuse Reporting Line: 1-800-510-2020

Understanding Victims

Seniors Fall Prey to Cons

The NASD Investor Education Foundation, WISE Senior Services and the AARP Foundation released a study this summer that looks at why certain elderly investors are more susceptible to investment fraud than others, exposes the various tactics used by criminals to exploit seniors and offers strategies to help seniors avoid becoming victims. The report, “Off the Hook Again: Understanding Why the Elderly Are Victimized by Economic Fraud Crimes,” was unveiled at the Securities and Exchange Commission’s Seniors Summit in Washington, D.C.

Researchers for the project analyzed undercover tapes of fraud pitches and surveyed victims and non-victims to determine how they differ. The researchers used their findings to develop practical messages to increase fraud awareness among seniors.

Some of the key research findings include:

- **Investment fraud victims are more financially literate than non-victims;**
- **Investment fraud criminals use a wide array of different influence tactics — from friendship to fear and intimidation tactics — to defraud the victim;**
- **Fraud pitches are tailored to match the psychological needs of the victim;**
- **Investment fraud victims are more likely to listen to sales pitches;**
- **Investment fraud victims are more likely to rely on their own experience and knowledge when making investment decisions;**
- **Fraud victims experience more difficulties from negative life events than non-victims;**



- **Investment fraud victims are more optimistic about the future;**
- **Investment fraud and lottery victims dramatically under-report fraud.**

Arguing that teaching investors only the nuts and bolts of investing is not enough, the report recommends expanding financial literacy and fraud prevention programs to include information about how persuasion tactics work. Other recommendations include encouraging seniors to report such crimes to securities regulators, conducting more research to test the efficacy of education about persuasion and further studying increasing resistance to persuasion in the context of “free seminar” settings where aggressive salespeople so often make their pitches.

The report also provides a profile of lottery victims:

- **Lottery victims are demographically quite different than non-victims.** The present study affirmed that lottery victims are older, are less likely to be married,

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Financial Powers of Attorney: The ‘Danger Zone’

*By Carolyn Reilly, Esq., Director
Elder Law & Advocacy*

Far too often, Elder Law & Advocacy’s staff attorneys meet with senior clients whose assets have been stolen, leaving them destitute. The elder abuser’s weapon of choice: a financial power of attorney. The key to avoiding this type of abuse begins with an understanding of powers of attorney and obtaining legal advice before granting one.

What is a Financial Power of Attorney? It’s a legal instrument which gives another person (the agent or attorney-in-fact) the ability to transact financial business and manage your property for you (the principal).

May I limit these powers? You

may limit the powers you grant to your agent to fit your individual circumstances. For example, your agent’s authority may be limited to a specific period of time, to a certain asset or to specific actions.

How is my capacity to grant a power of attorney determined?

Capacity is measured by your attorney under the Due Process in Competence Determinations Act in the California Probate Code. Some of the factors:

- The ability to communicate the decision to grant a power of attorney;
- The ability to understand and appreciate rights, duties, and responsibilities created or affected by the power of attorney;
- The ability to understand the

important risks, benefits and reasonable alternatives;

- The ability to understand the probable consequences for those who may be affected by it.

Why does my attorney want to see me alone, without my adult children present? Your attorney will want to make sure that the decision to grant a power of attorney is your own decision and in your best interests.

Should I give my agent an “immediate” or “springing” power of attorney? Here is where we enter “the danger zone.” This decision is not an easy one. An immediately effective power of attorney is a powerful legal

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Legislators Pass, Governor Signs Elder Abuse Laws

The State Legislature has passed several bills that benefit older adults and dependent adults, including the Omnibus Conservatorship and Guardianship Reform Act of 2006, a four-bill

package with the goal of reforming California's conservatorship system. Gov. Arnold Schwarzenegger signed the act, making it law. These measures will increase the oversight of the court, and license those who call themselves professional fiduciaries. The following is further detail:

AB 1363 (Jones): Expands the court's oversight of conservatorships through additional reviews of a conservatorship, more detailed accountings, random review and verification of accountings, expanded scope of court investigators' duties and reports. Requires the Public Guardian of a county to apply for appointment as conservator if there is an imminent threat to the proposed conservatee's health or safety or the person's estate, and to begin an investigation within two days of receiving a referral for conservatorship.

SB 1116 (Scott): Creates a presumption that the least restrictive, appropriate setting for a conservatee is his or her home. This presumption may be overcome by a preponderance of evidence otherwise. The bill limits the conservator's power to sell the conservatee's residence. The conservator must demonstrate that the terms of the sale, including the price, are in the conservatee's best interest, and comply with rules relating to appraisal and valuation of the property.

SB 1716 (Bowen): Authorizes, effective July 1, 2007, the court to take appropriate action in response to ex parte communications (generally, communication between the court and only one party or a third party) regarding a fiduciary's performance of duties or regarding a person who is the



subject of a conservatorship or guardianship proceeding. Also permits the court to review a conservatorship at any time. Requires the court investigator to review the conservatee's financial, emotional and physical well-being.

SB 1550 (Figueroa): Establishes the Board of Professional Fiduciaries within the Department of Consumer Affairs (DCA) for the purpose of licensing and regulating professional fiduciaries. Prohibits, on and after Jan. 1, 2008, a person from holding himself or herself out to the public as a professional fiduciary unless he or she is licensed as a professional fiduciary under the Professional Fiduciary Act.

Other successful elder abuse bills:

AB 2494 (Ridley-Thomas): Authorizes an In-Home Supportive Services (IHSS) provider to receive wages for up to six hours of prescribed training per calendar year if specified conditions are met. Prohibits the training authorized under the bill

from counting against assessed hours for a recipient of IHSS.

AB 2609 (Evans): Requires that a licensed residential care facility for the elderly ensure that each employee of the facility who assists residents with the self-administration of medications meet specified employee training requirements and to pass an examination. Requires that each facility to maintain certain records and documentation related to that training.

SB 1609 (Simitian): Prohibits a reverse mortgage lender from accepting a reverse mortgage application or assessing any fees until the lender has received a certification from the potential borrower that the borrower received independent counseling regarding the transaction. The lender would also be required to notify the borrower of the counseling requirement. Prohibits a lender from requiring a borrower to purchase an annuity as a part of the reverse mortgage transaction. Requires a reverse mortgage contract to be translated into Spanish, Chinese, Tagalog, Vietnamese, or Korean if the contract was primarily negotiated in one of those languages.

Elder Abuse Prosecutions

District Attorney's Office

Joshua Smith: Pled guilty to felony robbery and was sentenced to two years in prison after a purse-snatching incident involving a 76-year-old woman. He was previously imprisoned for similar offenses.

Keith Sekerke: Pled guilty to felony burglary and was sentenced to three years in prison. There were several victims. He entered residential homes for the elderly pretending to be a care worker, then stole from purses and wallets. He was found in the possession of several credit cards from victims. He had prison priors.

Julia Montague: Pled guilty to felony theft from her 72-year-old mother, and was sentenced to two

years in prison. She pawned various items of jewelry belonging to her mother.

City Attorney's Office

Pavel Chvets: Pled guilty to trespass in violation of a stay-away order. The victim was his 82-year-old mother. He was sentenced to three years of probation, 180 days in custody (possible residential alcohol rehab program), stay away order, and a prohibition to own or possess any weapons.

Hai Duong: Pled guilty to battery for slapping his 78-year-old mother. He was sentenced to 180 days in custody, to be served with a felony for which he was also serving time.



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more likely to be living alone, and have less education than non-victims.

- **Lottery fraud victims are more likely to have had more negative life events than nonvictims.**

- **Lottery victims are more religious than non-victims.** More likely to describe themselves as “very religious” or “extremely religious” as opposed to nonvictims.

- **Lottery victims are more likely to read materials or listen to sales agents they do not know.**

- **Lottery victims are more likely to have more debt than non-victims.** Lottery victims were more likely to answer “typically pay the minimum each month and rollover the debt.”

- **Lottery victims are more likely to feel like they should live for the moment.** This question has been used to predict impulsivity or the inability to delay gratification and could explain in part why lottery victims impulsively fall for the lottery pitch.

- **Lottery victims are more likely to feel that they have not gotten what they deserved out of life.**

- **Lottery victims were more likely to rely on their own judgment because professionals can't be trusted.** In previous research, lottery victims were found to be the most distrusting of any victim group.

To review an executive summary of the full report, visit www.nasdfoundation.org.

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instrument that can be, and often is, used to financially abuse seniors. It can be used by the agent any time, without the principal's knowledge, often with disastrous results. However, if the principal is critically ill, or is otherwise expected to lose legal capacity within a very short period of time, the “immediate” power of attorney may be necessary. Otherwise, a “springing” power of attorney is a better and safer choice. The springing power of attorney only becomes effective when the principal is incapacitated; at that time, it ‘springs’ into effect. This helps to ensure that the power granted to the agent is not used before it is truly needed.

Who determines whether I am incapacitated?

Usually the principal's physician and possibly others make the decision. These decision makers must be people the principal trusts to act in the principal's best interest.

Can I revoke a power of attorney? Yes, if you have capacity at the time you revoke.

What happens if I no longer have capacity to grant a power of attorney, but need someone to handle my financial affairs? Assuming you have no other options in place, a conservatorship may be necessary.

Where can I go for help with my power of attorney? A senior who is at least 60 years of age, with a simple financial situation, can have a springing or immediate power of attorney prepared at no cost through Elder Law & Advocacy. Call (858) 565-1392 for an appointment.