



FINANCIAL ELDER ABUSE: Forms, Causes and Remedies

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Types of Financial Elder Abuse

FINANCIAL ELDER ABUSE: The wrongful taking of property of an older adult. In general, a taking of property is wrongful if it is clearly harmful to the older adult or was obtained through fraud or [undue influence](#).

DOMESTIC FINANCIAL ELDER ABUSE: The economic exploitation of an older adult by family members, caregivers, acquaintances, and neighbors that often involves the transfer of an older adult's property or an inappropriate bequest obtained through undue influence.

COMMERCIAL FINANCIAL ELDER ABUSE: The economic exploitation of older adults by sellers of products and services, which often involves issues of capacity to contract, undue influence, and misrepresentation. Tools used to commit commercial financial elder abuse may include advertising, promotions, free-lunch seminars, sales presentations, emails, or phone calls.

Source: https://www.ioaging.org/wp-content/uploads/2016/07/CivilCriminalResourceGuide_0512.pdf

Additional source: <https://www.napsa-now.org/get-informed/what-is-financial-exploitation/>

FORMS

Prevalence of Financial Elder Abuse

HARD TO KNOW

One Study: 1 out of 10 older adults is abused every year (all types of abuse).

Another Study: When swindles are included, 1 out of 5 older adults is swindled every year. Swindles can include “inappropriate investments, unreasonably high fees for financial services, or outright fraud.”

We also have an under-reporting problem, as it is estimated that as few as 1 out of every 44 cases of elder abuse is reported to authorities.



FORMS

Annual Estimates of Dollars Lost

Met Life Study: [\\$2.6 Billion](#)

TrueLink Study: [\\$36 Billion](#)



Both studies have methodological flaws.

There are no definitive studies showing annual dollars lost to elder financial abuse.

For more on this, see [Financial Elder Abuse Costs \\$3 Billion a Year. Or Is It \\$36 Billion?](#)

FORMS

Examples of Financial Elder Abuse

TROJAN HORSE SCAMMERS: Financial abusers create nonprofits that “educate” older adults on topics of interest: [Medi-Cal planning](#), [veterans benefits](#), [living trusts](#), etc. A [free lunch](#) is often provided. Nonprofit gains the trust of older adults in order to sell financial products.

SITTING DUCK SENIOR CENTERS: Senior centers are [prime targets](#) for trojan horse scammers. Senior Centers are looking for programing and trust nonprofits to provide impartial education and advice to participants.

TAX PROSPECTORS: Financial abusers [go into business as tax preparers](#) to gain access to older adults' financial information. They then pitch the older adults long-term care insurance, [investments](#), deferred annuities, and reverse mortgages.

RADIO SHOW HOST SWINDLERS: Financial abusers buy airtime in order to [pitch investment advice and products](#) directly to older adults.

CAUSES

Why Are Elders TARGETS?

PHYSICAL VULNERABILITY, NEW NEEDS: An older adult's [increased reliance on others](#) due to physical limitations can increase risk for abuse.

ISOLATION OR SOCIAL BUTTERFLY: Both are [risk factors](#) for abuse.

NEUROLOGICAL VULNERABILITY: Normal aging can [affect executive functioning](#) in the brain. These cognitive deficits are often not perceptible and will not rise to the level of dementia or even pre-dementia.

FINANCIAL VULNERABILITY: [Older adults with substantial assets are more at risk](#) for financial abuse. Abusers will skillfully target both liquid assets and money tied up in homes, pensions, investments, etc.

CAUSES

Tactics of Abusers

ENGENDER TRUST: Present self as an [authority or expert](#) on certain kinds of services or financial products. Offer initial services for free or at a discounted rate. Tell older adult that he or she considers that elder “family.”

ISOLATE: Find an already [isolated older adult](#) with few social supports. Or, draw an older adult away from family, friends, or professionals who have provided impartial advice to that older adult in the past. Discourage the older adult from seeking out the financial or legal advice of others.

MANIPULATE: [Guilt and/or bully](#) the older adult into believing that the abuser is the only one who can meet the older adult’s needs. In the case of certain financial schemes, convince the older adult that he or she is indebted to the abuser and/or colluded with the abuser to do something illegal.

BAIT AND SWITCH: [Promise one service or product, then deliver another.](#) This can apply to care contracts, financial products, legal documents, etc.

CAUSES

Risk Factors and Signs

DEATH OF SPOUSE: Long-term [spouse who handled finances dies.](#)

CHANGES IN FINANCIAL HABITS: [Unusual or frequent cash withdrawals](#) from ATM, bounced checks, missed credit card payments, purchase of unsuitable products or services, leveraging or taking out loans on property.

NEW “FRIEND” OR LONG LOST RESURFACED RELATIVE: Someone [facilitating financial habits](#), being named as fiduciary, appearing on title or account records.

ELDER REMOVED FROM RADAR OF FRIENDS AND LOVED ONES: Older adult may [suddenly become distrustful](#) of those who were formerly central to his or her life.

CHANGE IN APPEARANCE/EATING HABITS/BEHAVIOR: Older suddenly [doesn't have enough money](#) to provide for his or her basic needs.

ESTATE (RE)PLANNING: Older adult [changes will or trust](#); puts new “friend” on title.

REMEDIES

COMMON LAW REMEDIES: Remedies under several common law theories may be available depending upon the particular circumstances, including one or more of the following:

- ◆ NEGLIGENCE
- ◆ FRAUD
- ◆ BREACH OF FIDUCIARY DUTY
- ◆ CONVERSION

GENERAL STATUTORY REMEDIES: Many states have statutes of general application which provide a private right of action and may encompass financial abuse. The following are examples:

- ◆ GENERAL STATUTORY REMEDIES
- ◆ CONSUMER PROTECTION STATUTES (e.g., California's CLRA)
- ◆ UNFAIR COMPETITION STATUTES
- ◆ REGULATORY STATUTES (e.g., Senior Insurance Provisions)

REMEDIES

Specific Statutory Remedies

EXAMPLE: THE ELDER ABUSE AND DEPENDENT ADULT CIVIL PROTECTION ACT

- ◆ The EADACPA prohibits physical abuse, neglect or financial abuse and provides enhanced remedies to elders subjected to such abuse.
- ◆ As a remedial statute, the EADACPA is to be liberally construed on behalf of the class of persons it is designed to protect.

REMEDIES

The EADACPA Broad Definition of “Financial Abuse”

Under Welf. & Inst. Code §15610.30, financial abuse occurs whenever a person or entity does, *or assists*, any of the following:

- ◆ takes, secretes, appropriates, obtains or retains elder’s interest in real or personal property, for a wrongful use, or with intent to defraud or both;

OR

- ◆ does any of the above described acts through "undue influence" as defined in Welf. & Inst. Code §15610.70.

REMEDIES

The Conclusive Presumption of Financial Abuse

- ◆ Welf. & Inst. Code. §15610.30(b) creates a conclusive presumption of "financial abuse" whenever the person or entity knew, or should have known, their conduct was likely to be harmful to the elder.
- ◆ The conclusive presumption of "financial abuse" arguably weakens (if not extinguishes) the doctrine of *caveat emptor*, or "buyer beware," in transactions with California's elders.

REMEDIES

What Actions Constitute “Taking” Property?

- ◆ A person or entity "takes, secretes, appropriates, obtains, or retains" an elder's property whenever the elder is deprived of any property right.
- ◆ The definition of taking, etc. also reaches actions accomplished by means of an agreement, a donative transfer or a testamentary bequest. It does so without regard to whether the property is held directly by elder or by the elder's representative.

REMEDIES

Heightened Remedies for Financial Abuse

- ◆ The EADACPA provides for recovery of compensatory damages and all other remedies provided by law.
- ◆ Upon a proof of financial abuse by a preponderance of the evidence, the elder has a unilateral mandatory right to recover reasonable attorneys' fees and costs.
- ◆ The EADACPA also provides a special right to obtain a writ of attachment without showing the claim is for money based upon a contract, for a fixed or readily ascertainable amount not less than \$500, unsecured or secured by personal property and a commercial claim.

REMEDIES

When Can Failure to Return an Incompetent Elder's Property Constitute Financial Abuse?

- ◆ The EADACPA also provides remedies to an elder who lacked capacity or was of unsound mind when his or her property was taken.
- ◆ To trigger those remedies the elder's representative must demand return of the property and the person or entity must fail to return it.
- ◆ When the taking is from a person of unsound mind and the person or entity fails to comply with the demand, all of the remedies for financial abuse are available.

REMEDIES

Settlement Limitations

Prohibited Settlement Agreement Provisions

Settlements of financial abuse claims are subject to two special limitations:

- ◆ Confidential settlement agreements are disfavored and unenforceable in any civil action asserting a financial abuse claim. C.C.P. §2017.310.
- ◆ Welf. & Inst. Code § 15657.8 prohibits provisions which attempt to "gag" or prevent a settling plaintiff from making complaints to appropriate regulatory agencies, or provisions which require the plaintiff to withdraw those complaints.

REMEDIES

Alternative Remedies



- ◆ **Adult Protective Service Investigation**
- ◆ **Criminal Prosecution – Restitution**
- ◆ **Collaborative Mediation**

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