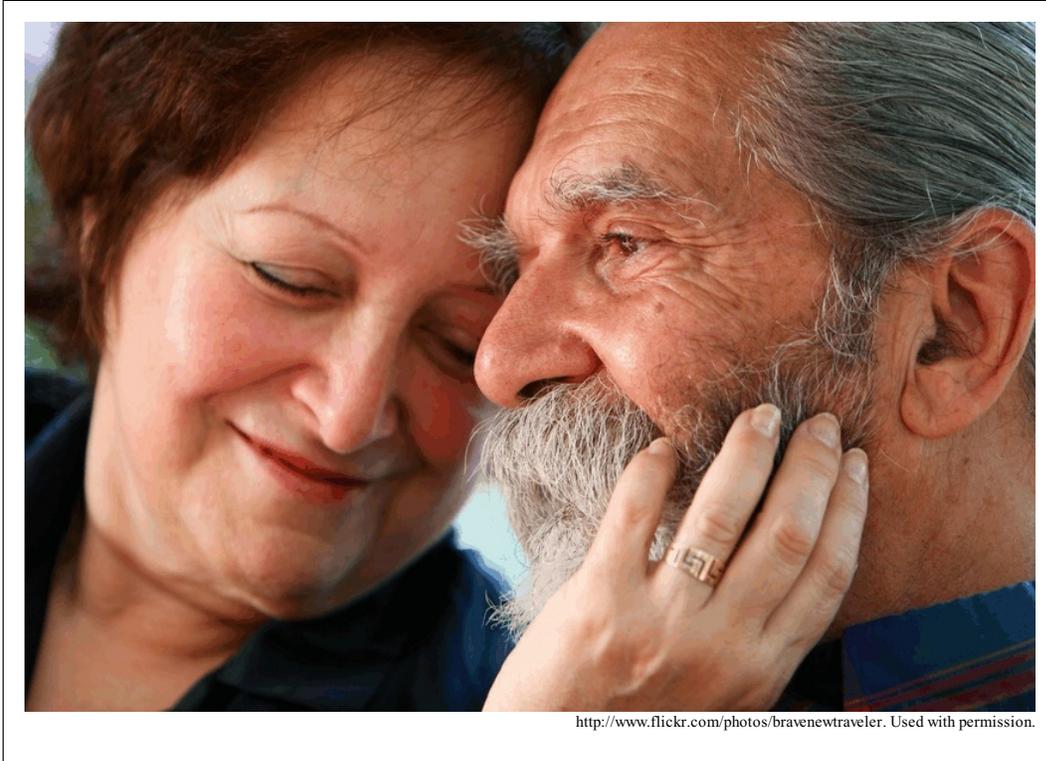


Elder Fraud & Financial Abuse: When Someone You Love Is A Victim



Financial scams targeting seniors are common. Seniors are at risk of being taken advantage of, not just by strangers and con artists, but oftentimes by their own family. Older Americans are likely to be the target of fraud and financial

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abuse for several reasons. Seniors commonly experience cognitive decline, and can have difficulty understanding and comprehending their surroundings. In addition, many seniors rely on medications that may alter their cognitive abilities and reasoning capacity.

Changing forms of technology like the Internet, personal computers and mobile devices can accelerate disorientation of an aging mind. Many seniors spend most of their time at home, and as a result, they can feel isolated and alone. For those seniors, a seemingly kind stranger on the telephone or at the front door can mean exposure to an unwelcome guest with ulterior motives. Seniors may also be geographically separated from trusted friends and family, and the need for home health care and other crucial services can leave them vulnerable to exploitation.

One of the most common ways people take advantage of seniors is to have them sign a power of attorney or execute a will through fraud or undue influence. Fraud is the use of deception, trickery, false pretenses, or dishonest acts or statements for financial gain. Undue influence is coercion that destroys a person's free will and

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substitutes another person's objectives in its place.

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. In the hands of someone you know and trust, a power of attorney is an important tool to manage your finances in the event you become unable to do so. In the hands of an unscrupulous financial predator, a power of attorney can be used to "legally steal" your money and assets.

The unauthorized use of a power of attorney has become a common source of elder financial abuse. Sometimes the perpetrator is a relative, like a son, daughter, or grandchild, who has substance abuse, gambling, or financial problems. It is also not uncommon for close relatives to justify taking an elderly person's money and assets because they feel entitled to what is *almost* "rightfully" theirs. Other times, the person appointed as power of attorney may be a new acquaintance who convinces the victim that giving them power of attorney will be beneficial. Such people are typically career criminals who move from one community to another, preying on vulnerable seniors.

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If you believe that a close friend or relative has been the victim of fraud or financial abuse involving the unauthorized use of power of attorney, you should contact an attorney immediately. An attorney may ask a court to obtain control over the appointee's actions on behalf of the victim. Generally, the attorney will have to show that the victim "lacks capacity" because of an inability to manage his or her financial affairs.

If the court finds that the appointee has exceeded his or her authority, the court may (1) appoint a guardian or conservator, (2) terminate the agency, or (3) impose certain limitations that the judge considers proper. If a guardian or conservator is appointed by the court, he or she will act in place of the victim. The guardian or conservator can then review the appointee's actions and if the actions were inappropriate, the power of attorney can be terminated.

Seniors who fall victim to greedy family members or con artists may be especially susceptible to undue influence while they are creating or changing their will. Generally, undue influence exists if (1) the victim was *susceptible to overreaching* because of a mental, psychological or physical disability or dependency, (2) there was an *opportunity for exercising* undue influence over the

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victim, (3) there was an *inclination to exercise* undue influence over the victim, and (4) there was an *unnatural or suspicious transaction* that reflects undue influence in the victim's will.

In many cases, the opportunity to exercise undue influence arises through a confidential relationship, such as husband and wife, parent and child, fiancé and fiancée, or guardian and ward. The National Committee for the Prevention of Elder Abuse warns of so-called “sweetheart scams” where the predator will seek out a vulnerable senior and profess his or her love for them, with the sole intent of exploiting them financially. Some brazen con artists have even been known to find their victims by scanning the local obituaries to find recent widows and widowers.

Other times, seniors may fall victim to distant relatives who express a sudden, unexpected interest in them or strangers who quickly become their “new best friend.” Whether it's someone in a confidential relationship with the victim, a nefarious relative or a fly-by-night stranger, the person exerting undue influence over the victim will invariably seek to insulate them from outside supervision and discourage them from seeking independent advice.

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In order for a will to be valid and for property to be distributed in accordance with its terms, you must have testamentary capacity when the will is executed. Testamentary capacity exists when you (1) understand the *nature of the disposition* you are making, (2) comprehend generally the *nature and extent* of your property, (3) are aware of the names and identities of those who have a *natural claim* to your property, and (4) appreciate your *relation* to the members of your family.

If you believe that a close friend or relative has been the victim of fraud or financial abuse involving undue influence in the execution of his or her will, you should contact an attorney immediately. The attorney may initiate a “will contest action” on the grounds that the testator (the person making the will) lacked testamentary capacity or was unduly influenced in making the will. If the court finds that the testator lacked testamentary capacity or was unduly influenced in making the will, then it will be declared invalid.

There is, of course, no substitute for maintaining direct communications with an elderly loved one and keeping a close eye out for any suspicious strangers or ill-motivated relatives who may wish to take advantage of them. However, if

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you are concerned that someone you love has been the victim of fraud or financial abuse involving the unauthorized use of power of attorney or undue influence in the execution of a will, there may be legal recourse to recoup their loss, protect their resources, and provide security for their future.

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