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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](#).)

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](#) 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.

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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 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 authorized to act on behalf of the elder (called the "agent"). Under this fiduciary duty, the agent owes the elder a duty to act with the utmost good faith and loyalty when acting on behalf of the elder.

Breach of fiduciary duty. When an elder signs a power of attorney, the fiduciary duty created by the document imposes certain duties on the agent. For example:

- The agent must keep the elder informed of things that affect the elder's interests.
- The agent may gain a profit only if he or she informs and gets consent of the elder.
- The agent may not acquire an interest adverse to the elder or reap a secret profit.
- The agent may not transfer the elder's property to him or herself (or to others) unless the power of attorney specifically confers that power.

If the agent fails to act in accordance with these fiduciary duties of fidelity and good faith, the agent may be liable for breaching (that is, breaking) the fiduciary duty.

Conversion. An agent who uses an elder's assets for his or her own benefit may also be liable for conversion of the elder's property. In order to establish conversion of property, the elder (or the elder's lawyer) must show that the defendant managed or used the elder's property in a way that was inconsistent with the elder's rights of ownership. When the agent has used a power of attorney to convert the property, it must also be shown that 1) the elder demanded the return of the property, and 2) the defendant refused to deliver the property to the elder.

Damages. If the elder is successful in a lawsuit for breach of fiduciary duty or conversion, the court will order the defendant to return the stolen property. The court or jury may also require that the defendant pay the plaintiff's attorneys' fees. And, if the defendant's conduct was particularly egregious or involved elements of fraud, the court may award punitive damages to the elder. For example, in the case discussed above (about the uncle and nephew), the jury awarded the uncle the full amount of money that his nephew stole, along with punitive damages, interest, and attorneys' fees. Happily, the uncle was eventually able to collect every penny of the judgment.




Preventing Power of Attorney Scams

Not all elder victims of power of attorney scams are as lucky as the uncle in the example case. Tracing how the stolen money goes from A to Z is not easy, nor is pursuing these kinds of lawsuits. If you or a loved one plans to use a power of attorney, take steps to protect against scams. Or, if you or a loved one is scammed, act quickly to remedy the situation. Here's how:

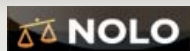
- Do not grant a power of attorney to anyone unless you know the person well and completely trust him or her.
- Do not release the power of attorney until it is needed. In the meantime, keep the signed power of attorney in your attorney's offices.
- If a power of attorney is needed, but you are later able to manage your affairs again, immediately take back the power of attorney.
- If the agent in a power of attorney transfers property into his or her own name, demand in writing that the agent immediately return the assets and render an accounting. It may be wise to contact an attorney at this point.
- If the agent refuses to return the property, immediately contact an attorney.

by: Craig T. Matthews, a business, employment, and litigation lawyer from the Dayton, OH area.

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