

## **Identifying Signs of Elder Financial Abuse and How to Make it Stop**

**by Christine M. Allen, Esq.**



You can't believe it. Your once savvy grandmother met a man last week and immediately moved him into her home. He is now living rent-free in her house, driving her car, eating on her dime, and you suspect he is about to make his next move on her finances, if he hasn't done so already. You called her today and heard him in the background telling her to get off of the phone and she meekly complied, abruptly ending your phone call.

You are worried as you have seen something like this play out before. Your next-door neighbor recently shared with you that after his elderly father who had dementia died, it was revealed that he had transferred the title to his home to his seemingly very friendly live-in caregiver, and had made her the trustee and sole beneficiary of his estate.

Financial elder abuse is a rising threat in our community. As our population ages, opportunists, whether inside or outside the family circle, are more and more often taking advantage of those elderly individuals who may no longer be able to resist fraud or undue influence. Too often family members do not learn of this abuse until their loved one has lost everything or passed away.

### **Identifying Elder Financial Abuse**

Under California law, "financial abuse" of an elder (age 65 or older) or dependent adult (with certain mental or physical limitations) occurs when a person or entity takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult with an intent to defraud by undue influence. It is also financial abuse to assist in such misconduct. Financial abuse can happen by a direct taking or transfer of cash or other property, by an agreement, by a "gift," or by a bequest made in a will or a trust.

This kind of abuse occurs in a variety of circumstances, but a concerned family member or friend should watch out for certain patterns that typically develop.

- The victim may or may not have declining mental capacity. Any decline in mental capacity is a factor that will make it easier for an abuser to take advantage.
- The abuser often first isolates the elderly or dependent adult from those people that they previously relied on and trusted the most.
- They will likely seek to become the sole source of emotional and/or physical support in the person's life and to pull them away from their loved ones by limiting their loved one's phone calls and visits with the victim and by making false and negative comments about them to the victim.
- They may move into the person's home and will likely appear highly attentive to and intertwined in the person's life. Often, they will begin to accompany the senior or dependent adult on trips to places like the doctor, to the bank and to meetings with lawyers and financial advisors.

- They may purport to speak for the victim, preventing them from speaking for themselves.
- Atypical spending may begin with an expensive new car in the driveway or lavish trips for two, or changes may be made to title to the victim's real property. Unusual activity on financial accounts such as increased spending or withdrawals, larger retirement account distributions, missing funds or items in the home, redirected income, the opening of new joint accounts with the individual and sudden or increased credit card usage may be indicators of abuse.

**DURABLE FINANCIAL POWER OF ATTORNEY FORM**

**DURABLE FINANCIAL POWER OF ATTORNEY**

On the \_\_\_ day of \_\_\_, 20\_\_\_, I, \_\_\_ the principal, of \_\_\_, State of \_\_\_, hereby designate \_\_\_ of \_\_\_, State of \_\_\_, my attorney-in-fact (hereinafter my "attorney-in-fact"), to act as initiated below, in my name, in my stead and for my benefit, hereby revoking any and all financial powers of attorney I may have executed in the past.

**EFFECTIVE DATE**

(Choose the applicable paragraph by placing your initials in the preceding space)

\_\_\_ - A. I grant my attorney-in-fact the powers set forth herein immediately upon the execution of this document. These powers shall not be affected by any subsequent disability or incapacity I may experience in the future.

or

\_\_\_ - B. I grant my attorney-in-fact the powers set forth herein only when it has been determined in writing, by my attending physician, that I am unable to properly handle my financial affairs.

**POWERS OF ATTORNEY-IN-FACT**

My attorney-in-fact shall exercise powers in my best interests and for my welfare, as a fiduciary. My attorney-in-fact shall have the following powers:

(Choose the applicable power(s) by placing your initials in the preceding space)

**BANKING** - To receive and deposit funds in any financial institution, and to withdraw funds by check or otherwise to pay for goods, services, and any other personal and business expenses for my benefit. If necessary to effect my attorney-in-fact's powers, my attorney-in-fact is authorized to execute any document required to be signed by such banking institution.

## How You Can Take Action

You may be able to provide the necessary assistance or support to the elder or dependent adult to uncover or thwart financial elder abuse or to aid in seeking financial recovery if he or she has appointed you to act as their agent under a durable financial power of attorney. Depending on the specific powers granted, such a power of attorney could allow you to speak with financial institutions and legal counsel on their behalf so as to determine whether or not there is a basis to take legal action to recover lost funds or property.

If the elderly person or dependent adult does not have a durable financial power of attorney in place or, if despite having such a document there is a proof of his or her inability to resist fraud or undue influence, it may be appropriate to file a petition with the court to seek to obtain a conservatorship over the individual being subjected to this abuse.

Where financial elder abuse has occurred, a financial elder abuse lawsuit can be filed with the Court to seek recovery from the abuser. Often, related causes of action are also appropriately filed at the same time, such as for fraud, undue influence, conversion, and breach of fiduciary duty. Restraining orders can be sought in such an action if the abuse is continuing, in order to stop the abuse from occurring. California law also provides for recovery of attorneys' fees and costs in a successful elder abuse action. In some circumstances, triple the amount of damages may also be awarded by the Court.

The right to pursue an elder abuse claim or to petition for recovery of wrongfully taken property does not expire upon the elderly person's death. A claim, if timely, can be pursued by such person's personal representative, trustee, or successors-in-interest in order to obtain a recovery for the deceased individual's heirs or beneficiaries. The neighbor in our example above, should immediately consult with an attorney to discuss his right to pursue such claims.



## Get Involved

If you see multiple signs of a potentially abusive situation developing, you should take practical steps to prevent your loved one from becoming isolated. You can do this by

- Visiting with them regularly in person
- Maintaining positive and routine communication with them

- Encouraging other trusted individuals to reach out to them in person

Speaking with the elder you are concerned about as to your concerns should be done tactfully and with a respect for that person's autonomy. If not done with grace and respect, your loved one may otherwise buy into a potential abuser's narrative that you just don't want them to be happy or that you are trying to prevent them from living their own life.

## Report Abuse

You may also choose to report suspected or known financial elder abuse to Adult Protective Services in the county where the senior or dependent adult is located or to your local police department. Adult Protective Service will assign a social worker to investigate the situation. Orange County's 24-hour elder abuse hotline number is (800) 451-5155.

You can also report elder abuse of any kind to the California Attorney General's Elder and Dependent Adult Abuse Reporting Hotline by calling 1-888-436-3600.

Separately, a police report should be filed if assets have been wrongfully taken or transferred away. Financial elder abuse is a crime that may be criminally prosecuted.

It is never too early to consult with an attorney about suspected financial elder abuse. Our estate litigation attorneys at Law & Stein provide a free consultation and then routinely guide concerned individuals in addressing such issues. Court action can be taken to bring such abuse to a halt and to recover property on behalf of the elder or dependent adult, or for his or her heirs and beneficiaries.



## We look forward to serving you & wish you the best

We are here to provide you with legal guidance you can trust while placing safety and health as a priority. We are happy to meet in person or to accommodate other needs, including Facetime, SKYPE and ZOOM for virtual, face-to-face connections. Contact us directly to speak with someone who can help answer your questions.

T (949) 501-4800

Or send us a private email at the link below and we will respond promptly:

[info@lawandsteinllp.com](mailto:info@lawandsteinllp.com)

Visit our website for more information and to review our partner and attorney bios:

[www.LawandSteinllp.com](http://www.LawandSteinllp.com)

The Law & Stein Newsletter is a monthly publication to share useful information with our clients in matters of estate planning, tax planning, inheritance dispute litigation, elder abuse, probate and business litigation, and premises and product liability defense.

LAW & STEIN LLP  
2601 Main Street, Suite 1200  
Irvine, CA 92614  
[info@lawandsteinllp.com](mailto:info@lawandsteinllp.com)

