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Financial elder abuse

HOW TO ASSIST SENIORS AND OTHER VULNERABLE VICTIMS OF FINANCIAL EXPLOITATION

The impacts of fraud and financial exploitation on seniors reach far beyond finances. While the economic losses can be financially catastrophic, they are generally relatively easy to calculate. But the emotional harm is much more difficult to quantify and can be even more devastating and far reaching. However, attorneys and supporting professionals have the power to help.

What is financial exploitation, and how does it happen?

Financial exploitation is a form of financial elder abuse that involves the illegal, unauthorized, or improper use of a vulnerable adult's resources for the perpetrator's personal gain. While anyone can fall victim to financial exploitation, seniors are often common victims, and we

witness its effects all too often in my practice as a securities attorney representing investors and my colleague's work as a geropsychology expert. In this article, we share what we've learned from our research and experience.

Unfortunately, there is an almost endless number of ways by which someone can financially exploit an older adult. Common types of financial

exploitation include theft, fraud, Ponzi schemes, forgery, the improper use of guardianship or power of attorney, and the use of coercion, deception, or false pretenses to surrender finances and property or sale of unsuitable investment products. Harassment, duress, or threats may also be used to coerce the victim.

Electronic scams such as “phishing” emails and lottery or sweepstake scams are some of the most well-known forms of financial exploitation designed to target seniors. However, more covert forms of exploitation involving breaches of fiduciary duty by trusted financial advisors, insurance agents, and even romantic or familial relationships are just as pervasive.

Perpetrators often attempt to build a relationship with the victim to establish trust, or they may take advantage of a relationship that already exists. Since seniors are especially vulnerable to loneliness, isolation, and elevated trust levels, they can be an ideal target for this type of deception. When other risk factors like cognitive impairment, poor physical health, and a subsequent need for daily assistance come into play, an older adult’s vulnerability to these acts, as well as their risk of experiencing serious non-economic impacts as a result of it, only amplifies.

What are the non-economic impacts of financial exploitation?

Financial exploitation is one of the most common types of elder abuse, with numbers rising at staggering rates. Despite this, the devastating effects of this form of exploitation, outside of the expected financial impacts, remain little understood in the general public. Although, a great deal has been learned from studies following the Bernie Madoff Ponzi Scheme meltdown.

Recent research on the emotional impact of financial fraud has consistently found that victim’s perception of the emotional impact of fraud victimization is more severe than the victim’s perception of the financial losses across fraud types.

PTSD-type symptoms

Audrey Freshman described the psychological aftermath of victims following the Bernie Madoff Ponzi scheme in her 2012 study *Financial disaster as a risk factor for posttraumatic stress disorder: Internet survey of trauma in Victims in the Madoff Ponzi Scheme*. (Health & Social Work. Doi10.1093/hsw/hls002.) In the Madoff study, 55.7 % of respondents met criteria for presumptive Post Traumatic Stress Disorder (“PTSD”) reporting symptoms of anxiety, depression, sleep disorders, health-related problems, and increased use of prescription medications. Other statistically significant items included “life choices altered,” immediate family negatively affected, and felt betrayed by FEC. This research has demonstrated that a catastrophic financial event can result in a clinical picture very similar to PTSD. Assessment of these symptoms can include tools that have been validated for use with PTSD.

Decreased physical health

Financial fraud victimization has been linked to physical symptoms such as poor health, poor sleep and poor quality of life secondary to the high level of stress experienced by victims. (Zunzunegui, M.V. (2017). *Financial Fraud and Health: The Case of Spain*. GAc Sanit. 2017; (31(4) 313-319.) Assessment of physical health following the catastrophic loss is another component to consider.

Anxiety and depression

Common symptoms after a financial setback are stress, depression, anxiety, worry, rumination, and lack of sleep. (Button, Lewis & Tapley (2014). *Not A Victimless Crime: The Impact of fraud on individual victims and their families*. Security Journal, 27(1), 36-54.) Tools that have scales assessing anxiety and depression symptoms that have been validated for use in older adults could also be considered.

Social isolation and social relationships

Button and colleagues reported high incidences of financial setbacks on the victims as well as their families. Families

may blame the victim for squandering money that was hoped to be used for college educations, etc. Adult children may have financial burdens that were unexpected. The change in social support can result in decreased quality of life.

Lack of trust

Victims may also report feelings of anger, distrust and betrayal. This is particularly true when scammers use a trusted individual or institutions. Lack of trust can impact future social relationships and ability to move forward. A senior’s feelings of betrayal, bitterness, and shame can also translate into changes in attitudes, which in turn impacts their relationships. They may be less trusting of people in general, but more specifically friends, family members, and institutions. This distrust leads to isolation and a loss of relationships, which in turn leads to a lower quality of life.

In summary, being financially exploited can be a truly traumatic experience for an older adult, and seniors who fall victim to financial exploitation or financial elder abuse often experience a range of significant mental health symptoms because of it. These include the following:

- Depression
- Anxiety
- Intrusive thoughts
- Rumination
- Nightmares
- An increased risk of suicide
- Disrupted sleep

Our clients who have been victims of unscrupulous financial advisors feel intense shame. The shame arises from the recognition that they were duped, and it is intensified by the uncomfortable attention that the fraud attracts from clients’ children, social service agencies, law enforcement, and the court. Often, these clients feel and are treated like vulnerable children. The embarrassment of this indignity causes some clients to close themselves off from their support network and makes them even more vulnerable to self-neglect and exploitation.

Additional feelings of self-doubt and an inability to plan for the future can leave a senior feeling lost, stagnant, and powerless. In the most severe cases of financial exploitation, a senior can experience significant debt, tax burdens, and even homelessness, further compounding these psychological impacts.

While most younger people could expect to eventually recover from these impacts, older adults have limited time horizons, so any effects will have a greater sense of permanency for them. Not all time is equal. When time is limited, it is more precious. A limited time frame of misery for a middle-aged person is different than an elder's misery for all the rest of their life. Many victims of financial elder abuse will never return to life as they knew it. Further, when you reach your retirement years, there is a premium placed on the value of those few remaining "Golden Years."

Families of victims

Financial abuse and fraud can also impact the finances and emotional well-being of future generations, whether it's due to family members taking care of the exploited senior's damaged finances, a depletion of assets to be eventually passed down to loved ones, or the emotional burden that loved ones carry.

The non-economic impact of financial elder abuse isn't limited to an elder's loss of self-confidence, the feeling of safety, and or increased mortality rate. It also can devastate a victim's family and loved ones. The secondary victims of financial elder abuse are those who struggle to prevent the elder from further harm while managing their frustrations trying to reason with someone who, because of their failing abilities, is incapable of accepting their counsel.

Fortunately, not all hope is lost if a senior is exposed to financial exploitation, but it takes a quick and coordinated effort between loved ones and supporting professionals to mitigate its effects before it takes a destructive and irreversible toll on a senior's well-being.

What are the warning signs of financial exploitation?

When financial exploitation occurs, early intervention is key to stop the abuse and limit the spread and severity of its impacts. Since it is so pervasive among seniors, anyone who regularly spends time with an older adult should be aware of – and on the lookout for – the warning signs of financial exploitation.

First, any changes in a senior's mental health or behavior should be treated as a warning sign of abuse. Some individuals may openly express feelings of shame, hopelessness, or distrust, while others may show more subtle signs of depression or other psychological impacts, including isolation, irritability, or a diminished interest in previously enjoyed activities.

While these may be difficult to measure, one clear sign is if the elderly person stops answering the phone or communicating with loved ones. One of the biggest non-economic impacts of fraud on seniors is that a vulnerable and isolated senior who is targeted by fraudsters often stops answering their phone regularly after receiving so many unwanted calls. This common response to being inundated with constant phone calls can leave a senior even more isolated if they are not answering phone calls from family, friends, or neighbors who truly care about them.

It's also important to look out for any resulting physical changes, such as sudden, significant weight loss or gain and signs of poor sleep like baggy eyes, lethargy, and unexplained impairments in memory.

Other, more obvious, signs of financial exploitation can include events such as sudden changes in one's financial situation, including unpaid bills, termination of vital utilities, and notices for eviction, foreclosure, or repossession despite adequate income. In addition to a reluctance toward discussions of financial matters, checks written to "cash," unexplained changes to estate documents, or extravagant spending can also be warning signs.

How can attorneys and other supporting professionals help?

Attorneys and other supporting professionals who work directly with seniors are in a unique position to help their clients who are facing financial exploitation. This begins with establishing trust. However, this may be more difficult than it sounds because this type of emotional trauma often results in the seniors feeling a sense of betrayal. They have been betrayed by someone they wholeheartedly believed they could trust. Now, they don't know who to believe anymore and this makes it difficult for them to trust even the attorneys who are trying to help them obtain justice. It also makes it difficult for the victims to trust their family members and previously trusted inner circle.

That doesn't mean that all hope is lost, though. In my practice, the most important step is for the victim to have a sense of purpose in pursuing justice and working to break the vicious cycle of isolation. And for the attorney to know the best paths to recovery. Fortunately, the California financial elder abuse statutes provide some very powerful remedies to aid in that mission.

Treble damages via Civil Code section 3345

California's Legislature enacted the California's Elder Abuse Act "to protect elders by providing enhanced remedies which encourage private, civil enforcement of laws against elder abuse and neglect." (*Negyete v. Fid. & Guar. Life Ins. Co.* (C.D. Cal. 2006) 444 F.Supp.2d 998, 1001.) The "enhanced remedies" entitles claimants to treble recovery. "Section 3345 establishes that when a defendant knew or should have known his conduct was directed to a senior citizen, and that conduct caused the senior to suffer loss of income or property, that the court may impose a remedy up to three times greater than the amount the trier of fact would impose absent such a finding." (*King v. Portfolio Preservation, LLC* (E.D. Cal., Feb. 22, 2021, No. 2:19-CV-01916-

JAM-CKD) 2021 U.S. Dist. LEXIS 32770, at *17-18, fn. 3.)

Civil Code section 3345 provides that “Whenever the trier of fact makes an affirmative finding in regard to one or more of the following factors, it may impose a fine, civil penalty or other penalty, or other remedy in an amount up to three times greater than authorized by the statute...”

Section 3345’s “trebled recovery provision comes into play when the governing statutory remedy has ‘the purpose or effect’ of punishing or deterring. (Civ. Code, § 3345, subd. (b)).” (*Clark v. Superior Ct.* (2010) 50 Cal.4th 605, 614 [holding that trebled recovery may be awarded under Civ. Code, § 3345, subd. (b) only if the statute under which recovery is sought permits a remedy that is in the nature of a penalty].) Trebling may be applied to statutory claims that are alleged in conjunction with an underlying cause of action involving unfair practices or deceptive acts against vulnerable or dependent adults. (*Hood v. Hartford Life & Accident Ins. Co.* (E.D. Cal. 2008) 567 F.Supp.2d 1221, 1229; see Statutory damages, Cal. Civ. Prac. Procedure (April 2021 Update), § 8:10 [defining statutory remedies as penal damages permitted under certain statutes (including Civil Code § 3345) that impose a penalty in a specified sum, sometimes regardless of actual damages suffered,

and in addition to the award of compensatory damages].) This includes punitive damages under section 3294, which qualifies as statutorily imposed punitive remedy subject to trebling under section 3345. (See *Hood, supra*, 567 F.Supp.2d at 1229.)

All damages authorized under the Elder Abuse Act are “punitive” in nature and thus should be subject to section 3345’s trebling provisions. “The purpose of the [Elder Abuse Act] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment [...], which the Legislature enacted after recognizing in 1982 that ‘this state has a responsibility to protect such persons.’ (Former § 15600, added by Stats. 1982, ch. 1184, § 3, p. 4223.)” (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33.) “The purpose of the Elder Abuse Act is to protect and deter, but not to compensate. [*Delaney v. Baker*, 20 Cal.4th 23, 33 (1999)] General damages under the Act may be measured in relation to the harm done, but the purpose of such damages is nonetheless to protect (and deter).” (California Practice Guide: Elder Abuse Litigation ¶ 9.89 (The Rutter Group, September 2020 Update); Welf. & Inst. Code, § 15600, subd. (h), (j).)

Summary

While the non-economic impacts of financial exploitation are well-established,

recognizing and effectively addressing them isn’t always as simple. However, with a coordinated and compassionate effort from loved ones, knowledgeable attorneys armed with the most powerful elder protection statutes, and supporting professionals, a senior who has experienced these impacts will have significantly greater odds of recovery.

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