



EDUCATING SENIORS PROJECT

THE TRUSTS & ESTATES SECTION OF THE CALIFORNIA LAWYERS ASSOCIATION

WORKING DRAFT

EDUCATING SENIORS PROJECT

[INSERT COUNTY NAME] COUNTY BAR ASSOCIATION

PROTECTING YOURSELF AGAINST FINANCIAL ELDER ABUSE

Introduction

Welcome. My name is [INSERT NAME OF PRESENTING ATTORNEY]. I am an attorney in the law firm of [INSERT NAME OF PRESENTING ATTORNEY'S LAW FIRM]. But, I am not here today on behalf of my law firm. I am here on behalf of the [INSERT COUNTY] Bar Association and want to help you learn how to spot financial elder abuse and how to stop it.

What is Financial Elder Abuse?

Financial elder abuse occurs whenever someone takes unfair financial advantage of a senior or dependent adult. When I say "senior" I mean someone who is age 65 or older. When I say "dependent adult" I mean someone under age 65 who has impairments that restrict his or her ability to protect his or her own rights.

Are There Special Laws to Protect Seniors and Dependent Adults?

The legislature has enacted a number of special laws that are designed to protect seniors and dependent adults against financial elder abuse. The "special laws" are both criminal laws and civil laws that can stop ongoing abuse, impose significant fines on the abuser, and help seniors to get their money back. In the criminal context, these laws may force the convicted abuser to pay restitution or go to jail. In the civil context, these laws may prevent the abuser from having further contact with the elder, freeze the abusers' bank accounts, force the abuser to return the money, force the abuser to pay a huge penalty to you and force the abuser to pay your legal fees. The police and the district attorney are the ones in charge of prosecuting the crime of financial elder abuse. Private attorneys like my firm help elders bring civil lawsuits against the abuser to recover the money taken and stop any further abuse. Depending on the circumstances, an abuser may have violated both criminal laws and civil laws.

Why Do Seniors Get Special Protections

Seniors get special protection because as we age, we become more vulnerable to being taken advantage of. The scientific studies show that during our 60s our ability to process new information starts to slow down and the skeptical part of our brain tends to become less active. We become more trusting.

This aging or slowing down process does not mean that we are not smart. Most of us can still handle our day to day business well into our 80s. But, we are a little less able to protect ourselves and detect when someone is scamming us as we get older. We become more susceptible to being tricked.

Financial Elder Abuse Laws Protect Us Even if We Have No Disability or Impaired Thinking

The financial elder abuse laws protect us even if we have no impaired thinking and no disability. As long as we are age 65 or older, the laws protect us. A rocket scientist who is age 65 and is still working at the Jet Propulsion Laboratory at Cal Tech is protected by the financial elder abuse laws just like a 90-year-old with beginning signs of dementia.

What is An Example of Financial Elder Abuse?

Financial elder abuse takes on many forms.

Let me give you one example of financial elder abuse. Let's say you are age 75 and you own a two-story house but it is difficult for you to get up and down the stairs. You are considering selling your house at some point and moving into a retirement community. One day while gardening in your front yard you strike up a conversation with your neighbor. You tell your neighbor your plans about moving into a retirement community someday. You trust your neighbor. They have even helped you from time to time pull out your trash cans on garbage day. The neighbor has always been pleasant and greeted you.

Your neighbor comes by a couple of days later and hands you a written offer to purchase your home. He offers you \$500,000, which seems like a lot of money since you only purchased it for \$20,000 in the 1960s. Your property tax bill lists the value of the property at \$100,000 so \$500,000 seems like a great deal. The neighbor tells you that his offer is "above-market" because he wants to give you a good deal. He tells you that you can save money by not using a realtor, skipping any commission. He says he can help you fill out the paperwork and he also tells you that the offer is only open for a couple of days and if you don't accept, he will use his money to buy another property. You go ahead and sign the paper work. The neighbor puts \$20,000 into escrow to "seal the deal." Because it was such a rush, you didn't have a chance to tell your kids. A week into the transaction you call your oldest daughter and tell her that you are selling your property for \$500,000 and it is in escrow. Your daughter then gives you the bad news that the property is really worth \$1,000,000 and the assessed value on the property tax bill has nothing to do with its actual value.

Have you been the victim of financial elder abuse? If the neighbor knew or should have known that the property was worth a lot more than \$500,000, then the answer is "yes." You have been the subject of financial elder abuse.

What Remedies are Available

Can you cancel the contract and keep your home? Yes, where there has been financial elder abuse, one of the remedies that the court can grant you is called *rescission*. Rescission allows you to cancel the contract.

So what should you do? Call your trusted advisor and meet with a qualified attorney who can explain your options. Do not complete the transaction. The lawyer can tell escrow that you are cancelling the contract.

But what if the buyer threatens to sue you for backing out of the deal? What if you don't have a lot of money to pay for a lawyer to defend you or bring a legal action to rescind the contract?

Mandatory Attorneys Fees

One of the most important protections of the elder abuse laws is that the abuser – in this case the neighbor – is responsible for paying your legal fees if you win the lawsuit. Some lawyers are willing to take cases knowing that they will get paid either out of the property they recover for you or from the abuser. The shifting of the cost of your lawyer to the abuser is a big weapon. Sometimes, just knowing that the abuser may have to pay all of your legal fees is enough to get the abuser to agree to cancel the contract. If the neighbor actually sues you for breaching the sales contract, your attorney can counter sue for financial elder abuse, requesting rescission of the contract and attorney's fees.

What if You Already Moved Out and Transferred the Property through Escrow?

What happens if you don't tell your kids about the neighbor buying your property until after escrow closes and you no longer own the property? Can you get the property back?

The answer is “yes.” With the right lawyer, you can sue for return of the property, for payment of your attorney’s fees and even possibly for double damages (twice the value of the property taken).

What Other Types of Financial Elder Abuse Are There

The California Lawyers Association has a website called *Educating Seniors Project*. They provide an updated list of all of the latest scams that people are using to try to take advantage of elders. In the written material that each of you received, I have listed all of the scams and a link to the website where you can learn more about the scams. The website is _____.

How to Protect Yourself against Phone and Internet Scams

If someone who you do not personally know calls you on the phone, sends you an email or contacts you through Facebook stating that you have won money, you have an inheritance or you have an opportunity to share in a large pool of money, don’t believe that person. Especially if the person tells you that you need to provide personal financial information over the phone or if you need to send money as a fee in order to receive the larger payment. The caller may ask you to send the money by Western Union, or Money Gram, or by buying debit cards or gift cards for the caller. Don’t believe them. It is a scam.

Ten years ago, these phone calls were probably coming from Nigeria. How many of you received calls from someone claiming to be holding money for you overseas? Now the calls or emails may be coming from anywhere in the world, including the U.S. They are almost always scams. Hang up the phone, don’t respond to the email and call your trusted advisor – your trustworthy adult children, your CPA, your attorney or your financial advisor –to get a second opinion before doing anything that you will regret later.

Do not give anyone who contacts you through phone, email or Facebook who you do not personally know your information. Do not give them social security number, pin number, driver’s license, date of birth, bank account information, credit card number or names of your children or grandchildren. If you think it is not a scam, check with your adult children, your financial advisor, your CPA or your lawyer first. If you know how to use the internet, go to the *Educating Seniors Project* website and see if it sounds like one of the scams listed on the website.

Never let anyone pressure you into a financial transaction – selling assets, buying life insurance, buying annuities. Good advisors will almost never pressure you. If it is a new advisor – someone you met through a free seminar about estate planning, or annuities or government benefits – don’t let that person pressure you. If they give you information, ask your own trusted advisors to review it to determine if it is legitimate.

If the deal sounds too good to be true, it probably is. Be skeptical.

Avoid free seminars unless they are put on by a government agency or recognized non-profit. Very few things are free. The seminar may be a way for the presenters to obtain your financial information or pressure you into buying investments that are not suitable for you.

Other Ways to Protect Yourself When You Start to Suffer Cognitive Impairment

There may be a point in time when you can no longer protect yourself from financial elder abuse because of cognitive impairment. That is why it is critical to have a mechanism in place before you become impaired. The mechanism is your “estate plan.” You can start the estate planning process by meeting with a qualified estate planning attorney who can explain to you the options for designating co-trustees, successor trustees, and agents under powers of attorney and other fiduciaries to protect you when you no longer can protect yourself. The right estate plan can make certain that your finances are never controlled by someone that you should not trust. A qualified estate planning attorney can draft documents for you – trusts, powers of attorney and advance health care directives – that will make it very difficult for an outsider to take advantage of you when you are no longer able to protect yourself.

If you have a trusted estate planning attorney, please be certain to meet with him or her periodically to make certain your estate plan is up-to-date. This could mean meeting every five (5) years or so. The individuals who you selected five years ago to make financial decisions for you during your incapacity may no longer be the best choice. Estate plans need to be updated to stay current.

How Do You Find a Qualified Estate Planning Attorney and Not a Scam Artist?

How do you find a qualified estate planning attorney and not a scam artist? Start by asking your trusted advisor. If you have a longtime financial advisor or CPA who you have worked with for years, he or she may have a recommendation for a qualified estate planning attorney.

You can check the credentials of an attorney or find an attorney who specializes in estate planning through the California State Bar website. The type of certified specialist you will normally be looking for is one who is certified in (1) estate planning, trust or probate law or (2) elder law or (3) tax law. Some lawyers are excellent who have not gone to the trouble of becoming certified. So, don't rule out a lawyer who is not a certified specialist if the lawyer comes highly recommended by another professional who you trust.

Most lawyers but not all lawyers have websites that list the lawyer's credentials. While you cannot believe everything on the website, you can still get valuable information. See if the lawyer's profile shows that he or she truly focuses his or her practice on estate planning and elder law or if it something completely unrelated.

The California State Bar and many of the local county bar associations have lawyer referral services that will match you with the type of lawyer that you need. [Option: Our County has a lawyer referral service. Their phone number is _____.]

There are online publications like: (1) Best Lawyers in America; (2) Super Lawyers and (3) Martindale Hubbell that rate lawyers who have substantial experience in a particular area of the law. Many lawyers who are excellent at estate planning or elder law are still not listed in those publications. So, don't rule out an attorney that is strongly recommended by a trusted advisor just because the attorney is not rated by one of those publications.

At the State Bar website, you can check the credentials of a lawyer to see if he or she has been subject to discipline by the California State Bar. Generally, you want to avoid attorneys who have been disciplined.

Don't Be Afraid To Tell Someone You Have Been the Victim of Financial Elder Abuse

It is easy to be embarrassed when you have been taken advantage of by someone. You may not want anyone to know for a lot of different reasons: Most financial elder abuse is never reported.

Don't be embarrassed. Just about everyone gets taken advantage of at some point in their life. **[GIVE PERSONAL EXAMPLE OF HOW ATTORNEY PRESENTER HAS BEEN TAKEN ADVANTAGE OF IN THE PAST]** It can happen to anyone one. The most important thing you can do if you suspect elder abuse is act fast by telling your trusted advisor. The faster you act, the more likely your attorney will be able to get the money back for you or stop further abuse of you. It is not foolish to be taken advantage of. But, it is foolish to not get help when you have been abused financially. The longer you wait, the more difficult it will be to cancel the contract, get the money back, stop payment on the checks, or recover the property.

What if You Don't Have a Trusted Advisor and Don't Know Where to Start

Start by contacting your local Adult Protective Services or similar senior organization. In the paper work handed out today, I have provided you with a list of organizations that you can contact to get immediate help. You can also find that list on the *Educating Seniors Project* website.

Questions and Answers

Does anyone have any questions?

