

What Can Be Done About Elder Financial Abuse?

By Roy Niedermayer

By now you hopefully realize that elder financial abuse is a serious, growing issue. We have told you what elder financial abuse is, why it's a problem, who is at risk, what the causes and warning signs are, who is committing the abuse and why it often goes unreported. So what do you do about it? How do you prevent it from happening and what do you do after your loved one has already been victimized?

Prevention: Planning and Safeguards

- Designate co-agents - more than one person to fill a fiduciary position (power of attorney, trustee of a revocable trust) so that both can view financial accounts and there is more than one protector. Require that an accountant review financial accounts handled by the fiduciary and that the fiduciary account quarterly to the accountant or the family.
- Use of technologies such as financial monitoring software, fraud detection and alerting software through banks and credit reporting agencies.
- Vigilance in family for unusual behavior, events or transactions.
- Use a team approach through use of other professionals such as doctors, accountants, financial advisors and monitoring agents.
- Restrict certain "hot" powers in a power of attorney including (a) gifting, (b) change of beneficiary designations, (c) allowing tax motivated transfers (education and medical or gifts), (d) exercise disclaimers or powers of appointment, (e) sell assets subject to a specific bequest in the will, (f) create or amend revocable trust, (g) create joint accounts or POD accounts.
- Expressly limit self-dealing (e.g., improvement of agent's residence, investment in agent's business, loans to agent's business); spell out what is fair compensation of agents, may reduce the risk of fraud.
- Guardianships.
- Insurance.

Recovery of Misappropriated Financial Assets

- Reporting and removal of credit card charges by card issuer.
- Implementing fraud alert protection with credit reporting agencies.
- Trust instrument and will contests invalidating asset disposition provisions in favor of abuser.
- Legal actions voiding gifts and other inter vivos transfers.
- Recovery and return of misappropriated non-cash assets from abuser by court ordered restitution.
- Imposition of constructive trusts on stolen assets.
- Obtaining money judgments against abuser.
- Instituting criminal procedures allowing court ordered restitution to victim.
- Making FDIC claims.