

Identifying the Con to Fight Elder Abuse

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Financial Abuse Defined W & I Code 15610.30

- (a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:
- (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

W & I Code 15610.30 cont'd

- (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both
- (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 1575 of the Civil Code.

Effects on Victim of Financial Elder Abuse-Why We Should Care

- The Sleepless Night
- Depression- loss of hope/faith
- 90 lb. weakling
- Death
- New Met-Life Study
- Case Example

Overview of How to Identify Financial Elder Abuse

- Sweetheart and other new friends. Scams (Lotteries)
- Family predators-Black sheep on white horse
- Lifestyle or spending changes
- Scams (Lotteries)
- Changes in title of assets
- Elder applies for loan they do not need
- Cash transactions/atm withdrawals
- Changes in support/advisor network-friends, caregivers, doctors, accountants and attorneys
- Unnatural concern about the elder's finances by former stranger

Other Indicators

- Insistent demand that the elder must do it NOW
- Discussion of the transaction at an unusual or inappropriate time.
- Discussion of the transaction in an unusual place.
- Extreme emphasis on consequences of delay.

More Red Flags

- The use of multiple persuaders.
- Absence of opportunity to consult independent advisors
- Affirmative statements that there is no time to consult financial advisers or attorneys
- Insistent demand that the elder must do it NOW
- Discussion of the transaction at an unusual or inappropriate time.
- Discussion of the transaction in an unusual place.
- Extreme emphasis on consequences of delay

Undue Influence and How Abusers Gain Control

- Isolation
- Threats
- False Statements
- Physically weaken the victim
- Create Dependency
- Gain Trust

Isolation

- Open mail
- Control phone calls (ie. Buy answering machine)
- Discourage visitors, outings, contact with friends and family
- Keep at home and limit outside activity
- Natural Isolation

Control

- False statements
 - "I'll take care you for the rest of your life."
 - "Without me, you will lose your house and be dumped into a nursing home".
 - "Only I can help you, no one else cares about you".
- Withholding food/water or miscalculating to breakdown and weaken the will of the elder
- Threats of physical harm or abandonment

Restatement Definition

- The Restatement defines Undue Influence as exertion of “such influence over the donor that it overcame the donors free will and caused the donor to make a donative transfer the donor would not otherwise have made” Rest.3d Property 8.3

California Definition Civil Code 1575

- Undue influence consists:
 1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
 2. In taking an unfair advantage of another's weakness of mind; **or**,

Civil Code 1575 cont'd

- **3.** In taking a grossly oppressive and unfair advantage of another's necessities or distress

Presumptions and Confidential Relationships

- A presumption of undue influence under the first provision of CC §1575 or under the common law arises when there is a fiduciary or confidential relationship (ie. special relationship)

Proof

- Direct evidence of undue influence is rarely obtainable and determination is made from totality of facts and circumstances. Keithley v. Civil Service Bd. (1970) 11 Cal. App. 3d 443, 451
- Determination and proof of undue influence depends on facts and circumstances of each case. Stewart v. Marvin (1956) 139 Cal. App. 2d 769, 775