

FIGHTING ELDER FINANCIAL EXPLOITATION WHOSE JOB IS IT ANYWAY?

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Learning Objectives

- Know the revisions to the Adult Protective Services laws
- Understands the parallels of a civil and criminal investigation
- Know how to develop collaborative strategies for conducting effective investigations
- Know the definition of elder financial exploitation

Key Points

- Every year thousands of at-risk adults lose all or part of their life savings to financial exploitation
- Many of these crimes occur within a family setting, and often are dismissed as a “civil matter”

What is Financial Exploitation?

- **Illegal or improper use of an older adult's funds, property or assets**
- **Since not all older adults use the banking system, consider cash, gold, jewelry, antiques, and homes as assets**



It really is all about the money!



Why are Seniors Targeted?



- TRUSTING AND POLITE
- MORE ASSETS
- LESS LIKELY TO REPORT FRAUD
- INDEPENDENT/ISOLATED

WATCH FOR SCAMS USING...

- Phone
- Door to door sales
- Flyers on your car, home door, mailbox
- Emails
- Websites
- Telephone
- Text messages
- More...



BOILERROOMS....

- <https://youtu.be/4zakyg3thfY>

Vulnerabilities for Victimization

- **Social Isolation**
- **Bereavement**
- **Dementia and diminished capacity**
- **Dependence on another to provide care**
- **Financially responsible for adult child or spouse**
- **Substance abuse**
- **Depression or other mental issues**

➤ **Want:**

- **Want the abuse to end but may also want a relationship with the abuser**
- **To try to be a “good” parent**
- **To be perceived as a “good” parent**

➤ **May:**

- **Protect the adult child rather than self**
- **Recant or be reluctant to work with authorities**

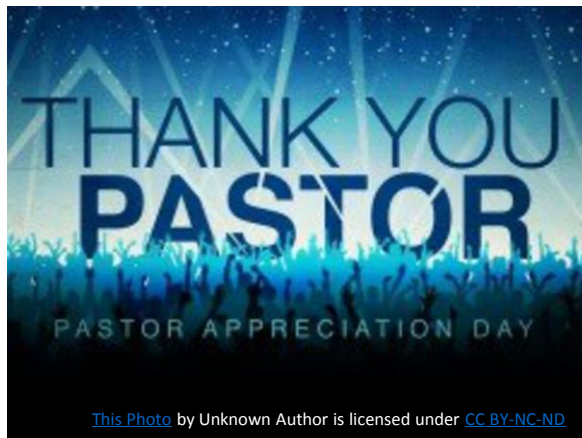
**Elderly Victims
Often ...**

Involved Consultants

- **Medical Care and Assessments**
 - Cognitive screening and testing
 - Under treated/over treated medical care
- **Sexual Assault Experts**
- **Financial experts to review documents**
- **Legal Advice or Protections**
- **Law Enforcement**

Exploiters





A family's
LoveTM
is forever

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Exploiters: Who Are They?

- Trusted individuals
- New friends
- Unique trust relationship
- Financial Advisers
- Caregivers

- Creates fear
- Prey on vulnerabilities
- Creates dependency
- Creates lack of faith in ones abilities
- Induces shame and secrecy
- Keeps the victim unaware
- Isolate from others and information
- Random acts of kindness

Common Tactics

Exploiters Often

- **Lie**
- **Manipulate**
- **Charm**
- **Justify their behavior**
- **Blame the victim**

➤ Unauthorized use of a powers:

- Breach of fiduciary duties
- POA/guardianship is not a license to steal
- Just because a POA or guardianship was used does not make it a civil matter – actions may be criminal

**Misuse of
power by
Fiduciaries**

Persuasion Tactics





Justifications

Consent as a Defense



Cognitive Limitations

- A victim may suffer from Alzheimer's disease, dementia, a developmental disability or some other type of impairment
- Temporary dementia may be caused by; trauma, lack of food, water, sleep, medications (too much, not enough), infections, running a fever – Once the condition passes, cognitive skills usually improve

Consent is not Valid if ...

- Generally, to give legal consent an individual must:
 - Have decision-making capacity
 - Have knowledge of true nature of act
 - Act freely and voluntarily
- Victim lacks capacity
- Undue Influence negates consent



Source: Undue Influence: The Criminal Justice Response (YWCA of Omaha, 2006)



Where do we report?

What are your experiences?

Role of Adult Protection Services

- Not a criminal investigation
- Limited by the ORC (5101.61-72)
- Age, impairment, community
- Primary mission to put protective services in place
- Autonomy/self-determinations
- Adult has right to refuse services



Case Acceptance - assist adults who are in danger of harm, unable to protect themselves and have no one else to assist them

Age Criteria 60 (Plus) and

- 1) Must be impaired and/or disabled;
- 2) Must have an allegation of abuse, neglect, self-neglect or exploitation;
- 3) Must reside in the community.

Ohio Revised Code 5101.61-5101.71

ADULT
PROTECTIVE
SERVICES

Mandatory Reporting ORC 5101.63

- Any mandatory reporter who has reasonable cause to believe
- That an adult is being abused, neglected, or exploited; or is in a condition which is a result of abuse, neglect, or exploitation
- Shall immediately report to the County Department of Jobs and Family Services or the local designated Adult Protective Services agency

NEW Mandated Reporters Include:

- Pharmacist
 - Dialysis Technician
 - Hospital 5122.01
 - Health Dept. Employee
 - Humane Society Agent
 - Firefighter
 - Ambulance Driver
 - Financial Planner
-
- EMT/First Responder
 - Building Department
 - CPA
 - Real Estate Broker
 - Notary Public
 - Bank/S & L/Credit Union Employees
 - Investment Advisor

Exploitation – 5101.60

Role of Law Enforcement



- No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services:
 - Without the consent of the owner or person authorized to give consent
 - Beyond the scope of the express or implied consent of the owner or person authorized to give consent
 - **By deception**
 - **By threat**
 - **By intimidation**

Theft (ORC 2913.02)

Enhanced Penalties

- **"Elderly person" 65 or older**
- **"Disabled adult"**
 - **some impairment of body or mind**
 - **unable to work at any substantially remunerative employment 12 months**
 - **without any present indication of recovery**
 - **or certified as permanently and totally disabled by an agency of this state or the United States**

Enhanced Penalties

- Theft - 2913.02
- Identity Fraud - 2913.49
- Unauthorized Use of Property - 2913.04
- Misuse of Credit Card - 2913.21
- Unauthorized Use of M/V - 2913.03
- Forgery - 2913.21
- Securing writings by Deception - 2913.43
- Securities Fraud

Scams

- Common:
 - Grandparents
 - Computer Repair
 - Credit Repair
 - Home Improvement/Reverse Mortgage
 - Living Trust/Estate Planning
- Not so “Common”
 - Fiduciary Relationship –
 - Investment Advisers
 - Attorney
 - Insurance Salesperson

Home Improvement Scams



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Criminal Investigation

- Civil vs Criminal
 - Case preparation
- Referral or reported
- Financial records
- Witnesses
- Medical documentation
- Filing charges

- **Competent versus
“Incapacitated Adult”**
- **Willingness to prosecute**
- **Restitution**
- **Relationship**
 - **Family**
 - **Friendship**

“Don’t want to get anyone in trouble”

**Victim
Responsibilities**



Fraud

Ohio Division of Securities

Register/license	Register/license the securities professionals, and products they sell
Investigate	Investigate complaints from investors
Examine	Examine the Book and Records of all State Licensed Investment Advisers – bring necessary Administrative Actions against
Outreach	Outreach to Ohioans about securities fraud and how not to fall prey to this devastating exploitation
Protect	Work with the Elder Abuse Commission to protect Senior Investors

Explore the Relationship

- Evidence of Impairment
- Position of Trust
- Inability to Act Independently
- Fear or Anxiety
- Never Comes Alone
- Promises of Wealth or Prizes
- Romance



Consumer Prosecution Section





What Can You Do?

Screening Questions

- Who manages your money day to day?
- How is it going?
- Do you run out of money at the end of the month?
- Do you regret or worry at the end of the month?
- Do you worry about financial decisions?
- Have you given power of attorney to another person?
- Do you have a will?
- Has anyone recently changed it?

Collaborative Approach

- **Common Goal**
- **Requires a Trusting Relationship**
- **Expertise**
- **Open Communication**
- **Motivated Partners**
- **Action Plan/Results**



Interdisciplinary Response

- **Adult Protective Services I-Teams**
 - **Community Plans of Cooperation**
 - **APS I-Team are mandated in the ORC**
 - **APS**
 - **Domestic Violence**
 - **Law Enforcement**
 - **Legal**
 - **Aging Network**
 - **Mental Health**



Pending Ohio Legislation

Senate Bill 158 (Senator Wilson)

If the victim of the offense is an elderly person, (**no impairment/diagnosis required**) in addition to any other penalty imposed for the offense, the offender shall be required to pay full restitution to the victim and to pay a fine of up to fifty thousand dollars. The clerk of as Reported by the Senate Judiciary Committee court shall forward all fines collected under division (B)(3) of this section to the county department of job and family services to be used for the reporting and investigation of elder abuse, neglect, and exploitation or for the provision or arrangement of protective services under sections 5101.61 to 5101.7 1 of the Revised Code.

Ohio Budget Bill

Effective September 29, 2018

- HB 78 – pending, some HB 78 language was used in the budget
 - Added mandatory reporters - to include bank employees, accountants, real estate brokers and financial advisers
 - Expanded the definition of exploitation- (person, not caretaker)
 - Added the definition of abandonment
 - Allowing a county prosecutor to petition courts for orders related to the provision of adult protective services
 - Codified the Elder Abuse Commission

Summary

- **The exploiter is often a family member, a caregiver or other trusted loved one**
- **Exploiters may use various tactics to unlawfully obtain a victim's "consent" to obtain assets**
- **Investigate and take steps to protect the victim's remaining assets**
- **Guardianships and Powers of Attorney are not licenses to steal**



Consumer Resources

- Do Not Call Registry = 888-382-1222, www.donotcall.gov
- Opt Out Programs = 888-567-8688, www.optoutforprescreen.com
- Annual Credit Reports = 877-322-8228, www.annualcreditreport.com
- Ohio Attorney General, Consumer Protection =
- Ohio Division of Securities = 877-NVEST411, www.com.ohio.gov/secu
- Ohio Dept. of Job & Family Srvs.= 877-644-6562, www.jfs.ohio.gov

Questions?

