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FACT SHEET

Elder Financial Abuse

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

How to Recognize Financial Abuse

1. Transaction Abuse Indicators

- Investments in unsuitable financial products, time shares, or real property
- Larger than necessary loans against home equity to finance investments
- Inappropriate banking activity such as unusually large withdrawals or withdrawals from automated banking machines
- Signatures on checks that do not resemble the elder's signature
- Legal documents signed when the elder is physically incapable of writing
- Checks written out to "cash" being negotiated by caretakers
- Checks signed by the senior but filled out by someone else
- A surge of activity in accounts which have been static for years
- Expensive gifts made by the elder
- Checks or credit card transactions made out to direct mail or telemarketing promotions
- Contributions going to newly formed religious or non-profit causes
- Correspondence indicating the elder has won or will soon win a prize
- Threatening correspondance proporting to be from the IRS or a government agency demanding immediate payment under the threat of being arrested for non-compiance

2. Possible Legal Document Abuse Indicators

- Power of attorney documents signed by the elder when the elder lacks mental capacity
- Will being made when the elder is not mentally competent elder taking his or her name off of property titles
- The elder adding the name of a caretaker onto real property or money accounts in exchange for commitments of continued care, and or affection
- The elder makes hurried changes to a Will, Trust or Transfer on Death Deed

3. Life-Style Change Indicators

- Lack of amenities, such as personal grooming items or appropriate clothing, when the elder can well afford it
- Under-deployment of the elder's existing resources that could be spent on housing, personal care, housing and maintenance
- Missing cash, jewelry and personal belongings
- Decline in personal hygiene

4. Personal Relationship Abuse Indicators

- Family member interest in "conserving" the money that is being spent for of the elder's care
- Reluctance or refusal by "responsible party" to spend money on the elder's care

- New acquaintances or long-lost relatives spending time with the elder and expressing affection for the elder
- A caretaker with an inappropriate level of interest in the elder's financial matters

5. Undue Influence

- California Welfare and Institutions Code section 15610.70(a) defines undue influence generally as "excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity." California Welfare and Institutions Code sections 15610.70(a)(1)-(4) go on to enumerate factors to be considered. They include:

- The victim's vulnerability, evidence of which may include "incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability."
- The influencer's apparent authority, evidence of which may include "status as a fiduciary, family member, care provider, healthcare professional, legal professional, spiritual advisor, expert, or other qualification."
- The influencer's conduct, evidence of which may include "(a) Controlling necessaries of life, medication, the victim's interactions with others, access to information, or sleep; (b) Use of affection, intimidation, or coercion; (c) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes."
- The equity of the challenged result, evidence of which may include "the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship."

Warnings to Elders about How to Avoid Financial Abuse

When it comes to your finances, deal only with people you have known a long time and with companies or organizations with proven track records. Get everything in writing! Never accept a verbal promise or assurance if money or property is involved. Rarely will you benefit from mistakes or misunderstandings. Don't sign anything without carefully reading it and never feel pressured to sign before you are absolutely ready to live with your decision. Honor the "three day rule" by waiting before you sign any contract. The long you wait, the better. Never be in a rush to get into any kind of "deal". Take your time! Remember, it took a lifetime of work and sacrifice to build up your estate and you can lose it all with one stroke of a pen. (Refer to CANHR's Fact Sheet - Preventing Elder Financial Abuse.)

What to Do About Known or Suspected Elder Financial Abuse?

REPORT IT!

Who Reports?

Any concerned person, and all mandated reporters.

Who are Mandated Reporters?

Any person who has responsibility for the care or custody of an elder, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff or a public or private facility that provides care or services for elders; any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a country adult protective services agency or a local law enforcement agency. Officers and employees of financial institutions are also mandated reporters.

What is Reported?

Mandated reporters MUST report actual or suspected financial abuse, which is observed, evident, or described.

When to Report?

Immediately or as soon as possible by telephone, followed by a written report within two (2) working days.

Written Reports:

Form SOC 341 must be completed and signed by the mandated reporter.

Failure to Report

Failure to report, impeding or inhibiting a report financial abuse of an elder is a misdemeanor, punishable by six months in the county jail and a fine of one thousand dollars ($1,000).

Any mandated reporter who willfully fails to report financial abuse of an elder where that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail and a fine of five thousand dollars ($5,000).

Banks and financial institutions are mandated reporters under Welfare and institution Code §15630.1. Failure to report can lead to a $1,000 fine. Intentional failure to report can result in a $5,000 fine. There is no imprisonment or private right of actions against institution that fail to report financial abuse.

Where to Report

Elder Scams

Contact the county office of the District Attorney - check the California District Attorney's Association for current addresses and phone numbers at 916-443-2017 or **http://www.cdaa.org**.

Attorney Complaints

File a complaint with the State Bar of California if you believe your attorney acted improperly, and file complaints with state (**http://www.dca.ca.gov/consumer/complaints.shtml**) and local consumer protection agencies.

Insurance Agent Complaints

Contact the State Insurance Commissioner's Office at 1-800-927-4347 or **http://www.insurance.ca.gov**. If an attorney sold the annuity, also file a complaint with the State Bar Association at 1-800-843-9053 or **http://www.calbar.ca.gov**.

Mortgage Lenders & Brokers Complaints

If you believe that a real estate professional has committed fraud having to do with your reverse mortgage, file a complaint with the **California Department of Real Estate** at:
http://www.dre.ca.gov/Consumers/FileComplaint.html.
Also file a complaint with the **Federal Trade Commission** online or by phone, toll–free, at 1–877–FTC–HELP.

Adult Protective Services (APS) in your county by referring to California Department of Social Services Web site at **http://www.cdss.ca.gov/agedblinddisabled/PG1298.htm**.