

## MEMORANDUM

TO :  
FROM : Steven Riess (steve@riesslaw.com)  
RE : Senior center liability for facilities use by financial abusers  
DATE : April 5, 2007

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### QUESTION PRESENTED

Can a senior center incur civil liability for elder financial abuse if it permits its facility to be used by a presenter who then commits elder financial abuse of an attendee?

### BRIEF ANSWER

Yes. By permitting an abuser to use its facilities for a presentation, a senior center is increasingly likely to be named as a co-defendant in an elder financial abuse lawsuit based upon direct, vicarious, and joint enterprise theories of liability.

### DISCUSSION

Welfare & Institutions Code § 15610.30 defines financial abuse as follows:

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

Thus a person who wrongfully takes money or other property from an elder is liable for damages for elder financial abuse. Such damages now include compensatory damages for the loss sustained, reasonable attorney's fees (Welfare & Institutions Code § 15657.5), punitive damages (Civil Code § 3294), treble damages (Civil Code 3345), and costs (Code of Civil Procedure § 1032).

#### **1. Persons Who Enable Abusers May Also Be Liable For Financial Abuse**

The definition of financial abuse includes wrongful conduct by a "person or entity." The word "person" includes a corporation as well as a natural person (Civil Code § 14) ; the word "entity" includes all manner of organizations, associations, and affiliations, both formal and informal and includes natural persons, partnerships, joint ventures, corporations, limited liability companies, loosely affiliated individuals, and informal business organizations. By including the term "person or entity" in the definition of who may be liable for financial abuse, the statute contemplates that non-

natural persons may be directly liable for such wrongs. However, a non-natural person, such as a not-for-profit senior center, must normally act through a natural person. Therefore, including non-natural persons in the definition of financial abuse suggests that wrongful conduct may, at least sometimes, be imputed from a natural person to a non-natural person. This interpretation is strongly supported by Welfare & Institutions Code § 15610.30(a)(2), which provides that financial abuse occurs when an entity “assists” in taking the property of an elder. Thus, a person (be it a natural person such as the manager of a senior center or an organization such as the senior center itself) who assists or enables a natural person in committing elder financial abuse, may be directly liable for civil damages. This direct liability would be in contrast to the vicarious liability which might result from an entity authorizing or ratifying the wrongful conduct.

## **2. Financial Predators and Senior Centers**

Purveyors of elder financial abuse, be they trust mills, annuity agents, or reverse-mortgage brokers, have historically reached their target market through senior centers and other venues where seniors tend to gather. Such predators typically follow a scheme whereby they seek to cast themselves as experts in their field and as trusted advisors. This is how former Commissioner John Garamendi of the Department of Insurance described the problem in connection with the sale of annuities:

“The Department of Insurance is aware of a number of unlawful marketing schemes designed to accomplish the sale of annuities principally to senior citizens through the use of misrepresentation of identity and/or purpose. The initial approach to clients may be to solicit senior citizens at ‘seminars,’ purportedly to educate participants about the benefits of living trusts, retirement planning, long term nursing care and explanations of Medicare Part D. The approach may be through mass mailing, telemarketing, door-to-door solicitation, or even while providing entertainment at senior related functions. Sometimes high CD rates or reverse mortgages are offered in newspaper ads or in banks in a classic bait and switch. Regardless the initial area of interest to the senior, the senior is eventually sold an annuity. Seniors characteristically perceive the agent as a legal advisor or estate planner and not as an insurance agent because the representatives misrepresent themselves as experts in the initial subject area. They gain the trust and confidence of the senior, and then misuse that trust to sell an annuity that is oftentimes unsuitable for the senior.

“Because of this perception that the salesperson has their best interests in mind, seniors may conclude that they need not totally understand what the pros and cons of an annuity are for their specific situation. They may not be told, or if told, they may not understand, the impact of surrender penalties on their net worth, or far-off annuitization dates on their liquidity, or the sale of an annuity or other investment to buy the annuity offered on the taxes they will owe.” (California Insurance Bulletin Notice November 18, 2005.)

It is also common for predators to identify themselves with misleading organization names that imply that they are advocates or protectors of the rights of seniors. They often are able to secure the use of senior center facilities for their presentations by misrepresenting that their “free seminars” provide seniors with valuable educational information and materials relating to estate planning, Medi-Cal eligibility, financial advice, and matters of similar interest to seniors. Senior Centers promote these presentations by publicizing events in newsletters, bulletins, and announcements, and often duplicate and distribute presenters’ promotional materials. As described by former Commissioner Garamendi, the predators’ primary objective is to promote themselves as trusted and reputable professionals and encourage seniors to later contact them for individualized assistance. In these subsequent contacts, predators are able to obtain detailed financial information from seniors upon which they can solicit the sale of expensive and unsuitable, inappropriate, and sometimes patently fraudulent goods and services.

### **3. Senior Centers Implicitly Endorse the Honesty and Trustworthiness of Presenters**

Senior centers which innocently permit their facilities to be used for such purposes may incur liability based upon the wrongful acts of persons who previously used their facilities for promotional purposes and by which they were introduced to their victims. Such liability may arise either primarily through “assisting” the active wrongdoer in the financial abuse, or vicariously by acting through the primary wrongdoer. Such assistance may not be merely nominal, as the key to the presenter’s ability to abuse his victim is his ostensible credibility as a trusted financial professional. This credibility may be substantially enhanced by the implicit endorsement which results from the senior center hosting the event. (See Civil Code § 2317; *Myers v. Stephens* (1965) 233 Cal.App.2d 104.) Where the senior center receives a fee for the use of its facility, a joint enterprise theory may further support a victim’s allegations that the senior center is either directly or vicariously liable for the active wrongdoing of the abuser. (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 893.) As a practical matter, many abusers are or become judgment proof when litigation is commenced and often disappear from the jurisdiction. Accordingly, a senior center may become an increasingly attractive target of such litigation by virtue of its continuing presence in the community.

## **CONCLUSION**

The number of lawsuits filed by plaintiff’s attorneys for alleged elder financial abuse has recently increased exponentially. This is partially because the financial abuse of elders has grown to epidemic proportions and receives ever-increasing publicity from the media – it is also a result of a greater awareness by plaintiff’s attorneys of the substantial monetary damages which may be recovered. In the past, senior centers have unknowingly facilitated abusers in their efforts to exploit elders. It is likely that senior centers that allow their facilities to be used by abusers to introduce themselves to seniors will soon become co-defendants in such actions.