

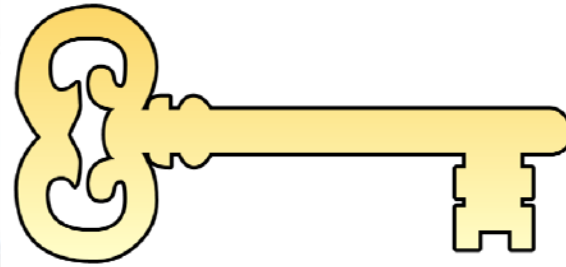
Protecting Elderly Investors from Financial Exploitation

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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**



Combating Exploitation

The role of financial institutions on preventing and responding to elder financial exploitation.



FINRA Receives SEC Approval on Rule Proposal Addressing Financial Exploitation of Seniors

WASHINGTON — The Securities and Exchange Commission has approved FINRA's rule proposal addressing financial exploitation of seniors. FINRA today issued [Regulatory Notice 17-11](#) announcing a February 5, 2018 effective date for the rule proposal.



Two Key Steps to Protect Investors

- Will be required to make reasonable efforts to obtain the name and contact information for a trusted contact person for a customer's account.
- Will be permitted to place a temporary hold on a disbursement of funds or securities when there is reasonable belief of financial exploitation.
- **New Rule 2165 and the amendments to Rule 4512 become effective February 5, 2018.**



Critical Measure

- Allow firms to investigate the matter and reach out to the customer, the trusted contact and, when appropriate, law enforcement or adult protective services, before disbursing funds when there is a reasonable belief of financial exploitation.
- New Account Application Template, a voluntary model brokerage account form that is provided as a resource to firms when they design or update their new account forms, to capture trusted contact person information.



Legislation

- **HB 78 – Ohio Elder Justice Act**
 - Formerly introduced as HB 24 and HB 49 language was imbedded Budget Bill 49
 - Added Mandatory Reporters - to include bank employees, accountants, real estate brokers and financial advisers
 - suspect elder abuse/exploitation required to alert adult protective services.
- **SB – 158 – Senator Steve Wilson, R-Maineville**
 - The Bill aims to add protection to Ohio’s elderly from financial harm and exploitation.
 - Add Mandatory Reporters - to include bank employees, accountants, real estate brokers and financial advisers
 - Public awareness, educate professionals and hold suspects accountable



Mandatory Reporters



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Mandatory Reporters

- Attorney
- Doctor
- Dentist
- Psychologist
- Counselor
- Senior service provider
- Clergy
- Fireman
- Paramedics
- Hospital employee
- Nurse
- Home Health
- Peace officer
- Nursing home employee
- Social Worker
- Bankers
- Investors



Mandatory Reporting

- 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 result of abuse, neglect, or exploitation
- Shall immediately report to the County Department of Jobs and Family Services

O.R.C. 5101.61



Immunity for Reporting

- Any person with reasonable cause to believe an adult is suffering abuse, neglect, or exploitation, who makes a report, testifies or acts responsibly in the discharge of their official duties:
 - Shall be immune from civil/criminal liability
 - Unless the person acted in bad faith or with malicious purpose

O.R.C. 5101.61



Only a Suspicion is needed

Why do you suspect exploitation?

What has been observed?

- Is missing money?
- Are bills or rent not being paid?
- Does the adult appear disheveled?
- Is there a new best friend overseeing finances?
- Was there an eyewitness to the transaction?



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Responding to Victims Criminal Versus Civil Response



Theft (ORC 2913.02)

- 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.



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



Types of Theft/Exploitation

- Identity theft
- Theft
 - Coercion
 - Extortion
 - Deception
- Abuse of legal authority (i.e., Power of Attorney)
- Fraud
- Scams



Common Scams

- Computer Repair Scams
- Fake Check Scams
- Imposter Scams
- Romance or Sweetheart Scams
- Sweepstakes Scams
- Grandparents Scam
- Home Improvement Scam
- Phony Charities



Imposter Scams



Sweepstakes Scam



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Exploitation – ORC

means the unlawful or improper act of a person using an adult or an adult's resources for monetary or personal benefit, profit, or gain when the person obtained or exerted control over the adult or the adult's resources in any of the following ways:

- Without the adult consent
- Beyond the scope of the adult content
 - By deception
 - By threat
 - By intimidation

ORC APS Definitions



Misuse of by Fiduciaries

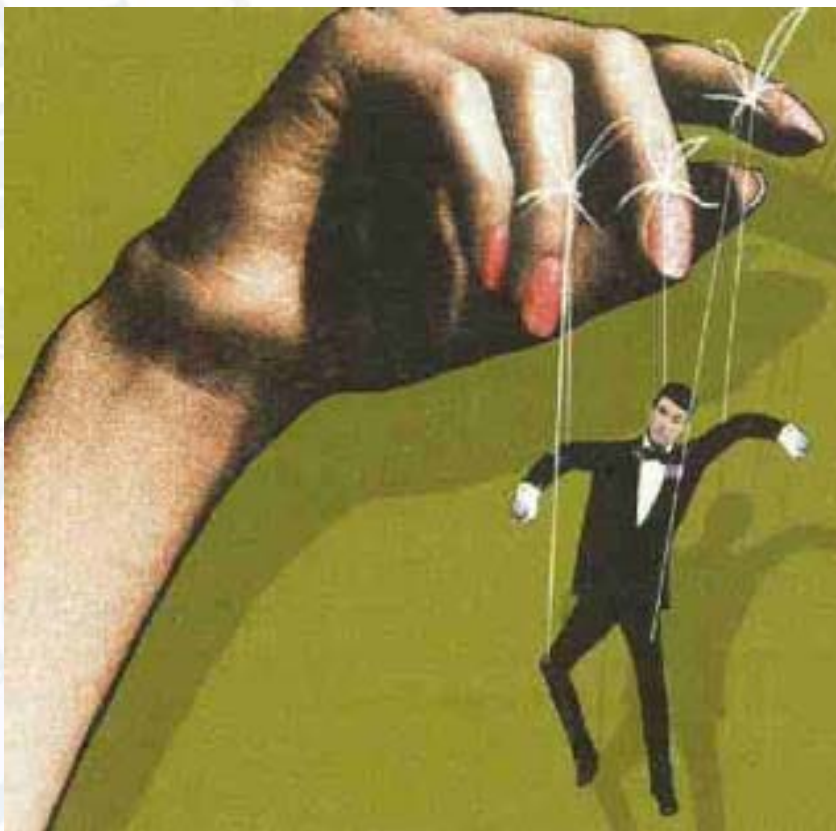
Unauthorized use of a powers

- 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



Abuse of POA

A caregiver may take advantage of a vulnerable's confusion to gain control of the senior's financial affairs and to gain access to the senior's cash and other assets.



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Who are Victims of Elder Exploitation ?

- Adults age 60 and over
- Gender: Majority of victims are female; but also older males
- All racial, ethnic, social-economic and religious backgrounds



Red Flags



- Social Isolation
- Bereavement
- Cognitive decline
- Dependence on another to provide care
- Financially responsible for adult child or spouse
- Substance abuse
- Depression or other mental issues



Where Does Exploitation Occur?

- Private residences
 - Houses
 - Apartments
 - Group homes
- Public settings
- Facilities
 - Long-term care
 - Assisted Living/Group Homes
 - Hospitals



Victim Responsibilities

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



“Helping out” “ Don’t want to get anyone in trouble”



Who Are the Exploiters ?

- Family members, partners, and trusted individuals
- Caregivers
- Faith leaders and representatives
- Interpreters/translators who have a unique trust relationship
- Con artists
- Scammers



Common Characteristics

Offenders/Exploiter often...

- Depend on the victim for housing or other types of financial support.
- Have a substance abuse problem that needs financial support.
- Make false promises “lifelong care” to the elder in exchange for money but may not follow through on the promise.



Exploiter Behaviors

Abusers often:

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



Are Motivated by

- Greed
- Power & Control



3 Key Factors Impact Consent

- Informed Consent
- Capacity
 - Mild Cognitive Decline (MIC)
 - Confusion
 - Impaired Judgment
- Undue Influence (UI)



Consent as a Defense

- Consent is only valid if:
 - Freely
 - Knowingly
 - Voluntarily



- The Adult must have the ability to understand the nature and consequences of one's acts



Consent Is Not Valid if

- Obtained by:
 - Force
 - Lies
 - Coercion
 - Manipulation
- Victim lacks capacity



Undue Influence

- Relationships of unequal power
- Commonly involves deception to take over victim's free will
- The exploiter uses manipulation to convince another person to make decisions contrary to his/her own best interest



Power & Control

- Threatening
- Target Vulnerabilities
- Neglecting
- Denies access to spiritual traditions
- Physical abuse
- Sexual abuse
- Psychological/emotional abuse

Created by the National Clearinghouse on Abuse in Later Life (NCALL) 2006



Early Detection



Evidence/Red Flags Exploitation

- Sudden transfer of assets
- Power of attorney (obtain a copy)
- Bank statements
- Copies of any financial records/documents that relate to the case



Evidence/Red Flags Exploitation

- Unauthorized withdrawals
- Abrupt changes in will/other legal documents
- Appearance of uninvolved relative/new
- “best friend”
- Unpaid bills



Screening Questions

- Who manages your money day to day?
- 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 changed it?



What is the Role of APS?



APS Investigations

- Not a criminal investigation
- Limited by the ORC (5101.60 -72)
- Primary mission to put protective services in place
- Least restrictive alternative
- Autonomy/self-determination
- Adult has the right to refuse services



APS - Ohio Revised Code

Case Acceptance - assist adults age 60, risk of danger or harm, unable to protect themselves and have no one else to assist them

Age Criteria 60 (Plus) and

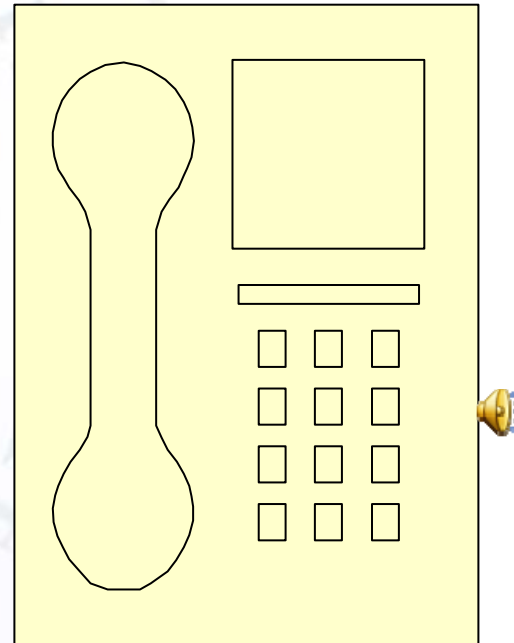
- 1) Must be impaired and/or disabled;
- 2) Must have an allegation of abuse, neglect, self-neglect or exploitation;
- 3) Must reside in the community.

5101.61-72



Types of Abuse

- Physical Abuse
- Sexual Abuse
- Emotional Abuse
- Neglect
- Self Neglect
- Exploitation



855-OHIO-APS



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Collaborative Approach

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



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Financial Exploitation Cases

- Ohio Attorney General
- Some District Attorneys have set up specialized elder abuse investigation and prosecution units
- Adult Protective Services Interdisciplinary Teams (APS I-Team)
- Triads



Interdisciplinary Response

Local County Adult Protective Services I-Teams

APS I-Team are mandated in the ORC

Community Plans of Cooperation and MOU's

- Team Players
 - APS
 - Domestic Violence
 - Law Enforcement
 - Legal
 - Aging Network
 - Mental Health



Summary

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



Resources

- [Ohio Attorney General](http://www.ohioattorneygeneral.gov/) www.ohioattorneygeneral.gov/
- [Ohio Department of Aging](http://aging.ohio.gov/information/oda/)
aging.ohio.gov/information/oda/
- [Ohio Long Term-Care Ombudsman](http://www.aging.ohio.gov/services/ombudsman/) -
www.aging.ohio.gov/services/ombudsman/
- [Ohio Department of Job and Family Services Office for Children and Families – Adult Protective Services](http://www.jfs.ohio.gov/ocf/aps.stm)
www.jfs.ohio.gov/ocf/aps.stm
- [Ohio Department of Health, Division of Quality Assurance](http://www.odh.ohio.gov/landing/phs_quality/quality.aspx)
www.odh.ohio.gov/landing/phs_quality/quality.aspx



Questions





How to contact us

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