Protecting Your Loved Ones from Financial Fraud and Abuse

Brought to you by 360 Degrees of Financial Literacy and America's Certified Financial Planners (CPAs)

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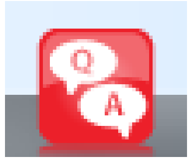

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Let's get this out of the way …

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Aging Requires This Planning

- The fastest growing demographic segment of the American population is those 85 years and older. In 2010, there were 5.8 million people aged 85 or older. By 2050, it is estimated that there will be 19 million people in that group.
- Almost ½ of those age 85+ have some cognitive impairment.
- The average age of diagnosis of Alzheimer's is 73.
- There are 75 million Baby Boomers. 5 million Boomers a year enter retirement.
- 90% of seniors have at least one chronic disease and 77% have two or more chronic diseases.
- Age 50 is the optimal age for financial decision making. Skills decline after that. By 2030 it is estimated that 1/5th of all Americans will be age 65 or older.

Silver Divorce A Growing Factor

- The number of divorces among older Americans has grown rapidly and such divorces have even earned a nickname, the “silver divorce.”
- Since 1990, the divorce rate for Americans over the age of 50 has doubled, and more than doubled for those over the age of 65.
- This trend suggests that careful consideration of such a possibility is a factor when designing an older person’s estate plan, in particular as it relates to the selection of agents.
- If an older consumer is likely to be divorced, is it reasonable or safe to rely on the current spouse to serve as a fiduciary?

Understand the Threat Elder Abuse and Fraud

- **Aging or chronically ill are targets.**
- **Chronic illness can create physical fatigue and this can make you vulnerable.**
  - ALS
  - Alzheimer’s’ disease

Theft of Personally Identifying Information (PII)

- **If you understand how thieves attack vulnerable victims it helps identify issues.**
- **Common identity theft Schemes abound.**
- **Newer, more advanced techniques continue to come to light.**
- **Criminal groups use synthetic money laundering schemes.**
- **Theft of personal identifying information from people with good credit records.**
  - Often these turn into criminal issues.

Thieves Target Wealth of Aging Consumers

- Wealth of investment accounts - Approximately $23 Trillion
- Target is large savings of people that are aging.
- People moving into or in retirement have substantial savings and are also a target.
- The groups targeting these people are well structured and sophisticated and have a wide variety of schemes to separate people from their money.

Money Laundering Schemes May Target You

- Creation of money laundering networks.
- Organized criminal groups have cash and seek opportunities to hide it.
- They need to create mules.
- Unwitting - These operators will use victims as money laundering mules without their knowing it.
- Witting - After most of their money stolen they target may be asked to deposit checks and other funds.

Family Perpetrators

- Family members and others are often the perpetrators.
- Adult children often lien on parents for loans and other resources.
- Adult child that has not separated financially from the parent might end up becoming financially abusive. They might stay too financially involved.
- Care takers have often taken advantage of those in their care.
- Finances have to be set up to minimize all of these risks. See discussion below.

Motives of those Committing Elder Financial Abuse

- Understanding motives may help you identify how to protect yourself.
- Who are bad actors that target aging consumer for exploitation.
- It’s more than “That’s where the money is”.
- Investment fraud scams.
- Self-directed IRAs is one way that bad actors unlock money from retirement accounts.

Wealth plus Vulnerabilities Attracts Perpetrators

- **Wealth plus loneliness.**
  - Creates vulnerabilities to romance scams.
  - Other scams.
- **Wealth plus incentive to invest**
  - Wealth depletion from recession.
  - Fear of outliving money
  - Desire to beat the market.
  - Risk of self-directed IRAs.

Wealth Plus Cognitive Deterioration attracts Perpetrators

- Creates opportunities for abuse from friends and family.
- These are some of the sadder cases as these people are subject to abuse by family and friends not just criminal elements.
- Rarely find family member that if you confront them about financial abuse they will not admit that they were taking advantage of an elderly person. They start out slowly. They justify it in their mind. They suggest that they are entitled because they are doing all the work and no one else in the family is doing anything. Then it builds up over time from a small amount per week to significant amounts. Often the perpetrator family feels they were owed the money and they will deny it was financial abuse and they don’t see themselves as stealing from the elderly but merely getting what was rightfully due to them.

Wealth Plus Cognitive Deterioration attracts Perpetrators

- Others have bad motives and identify an elderly person as a “soft target” because no one is watching or protecting their funds. The key is no one is looking over their shoulder.
- Families should make sure that the finances of the elderly family member should be transparent. Someone else must be involved. This is to detect financial abuse. That individual, e.g., the adult child caregiver might die who will step in?
- Simplicity and transparency should be the watchwords.
- Investment fraud is common. Insurance products can be so complex no one understands them. The elderly person may not see commissions. The same sales person might come back time and time again selling complex high commission products. It is purely greed.

Intimidation and Elder Abuse

- Intimidation is common regardless of cognitive and physical challenges.
- Sometimes it is intimidation: "If you don't keep your mouth shut I won't take care of you." If you don't keep your mouth shut who will take care of you? I will leave? There can even be threats.
- Often keep the elderly person isolated. This can make it difficult for the elderly person to request help. The perpetrator might be there preventing honest discussion. There should always be time to get the elderly person away from the care giver so that there can be honest discussions about what is going on.
- There is a reluctance to report this abuse there is often a sense of embarrassment.
- We're spending down the assets to qualify for Medicaid we saw on the internet that we can give a certain amount of gifts tax free.

Use a Different Paradigm to Plan

- The gist of such planning is to put a structure in place to address your evolving needs as you age or as your health issues or other chronic disease worsens.
- The traditional paradigm of a well person who then suddenly becomes incapacitated, while applicable to an acute medical event or injury, is simply the wrong construct to understand or plan for aging or chronic illness. The reality is often a slow, erratic loss of capabilities. Capabilities may wane, return and wane again, perhaps each cycle settling on a somewhat increased level of difficulty. You need to plan proactively and in advance to protect yourself from elder financial abuse.

The Issue is Real, Common, and Requires Different Planning

- **Aging and chronic disease makes you more vulnerable to financial abuse.**
- **Predators exploit gaps in financial and estate planning safety nets.**
- **“Traditional” planning is <u>NOT</u> adequate to address these issues and mitigate the risks involved. You need to do more!**

“Traditional” Planning May Not Suffice to Protect You

- The traditional or typical estate plan is often inadequate to provide for the safety and human needs of many of those who are vulnerable, aging, or living with chronic diseases or other challenges.
- Traditional estate planning relies to a significant extent on naming family fiduciaries as the primary means of providing protection from life’s challenges (e.g., a health care agent, an agent under a financial power of attorney, etc.).
- Sadly, most elder financial abuse is committed by someone known to the victim, often, a family member. Is naming family enough?
- Elderly and chronically ill consumers who lack the safety net of a spouse, siblings or other close family member to rely on for help, need to a different approach to planning.

POAs and Elder Financial Abuse

- Elder financial abuse is a significant problem for the aging, and as more consumers continue to age, the statistics will grow worse, absent planning.
- Major financial exploitation occurred at a rate of 41 per 1,000.
- You need to build a safety net/team and address this widespread risk.
- A common tool used in committing elder financial abuse is the ubiquitous power of attorney. In many cases after the agent has made transfers or payments, it is uncertain whether the principal intended those transactions or not. When the agent's actions were inappropriate, redress is often impractical or impossible.
- Creating a broader based and more comprehensive plan may offer the needed protection, not only for the vulnerable or isolated consumer, but for all consumers. This is important to consider because there is no certainty which people will become vulnerable, or when.

The REAL Issues with POAs

- Isolated consumers do not have trusted and appropriate people they can rely on to serve as agent.
- Vulnerable consumers need more than a typical power of attorney (POA) – there are no safeguards.
- Even if an appropriate agent is identified, educating the agent, preparing financial and legal matters to facilitate the agent operating, and more, is essential.
- Trust but verify should apply to every fiduciary appointment.

Fiduciaries – Carefully Consider Selection

- Consider the advisability of choosing such a person to serve in such a powerful capacity.
- How long is their relationship with the nominee?
- What is the financial status of the agent being considered?
- Does the candidate-agent have drug, gambling, criminal or other issues that might make naming her or him inadvisable?
- Is the relationship with the suggested designee realistically close? Is the aging consumer certain about that?
- If the suggested agent is a spouse, how long is the marriage?
- Does the candidate-agent have the sophistication to serve?
- What is the candidate’s age and health status?
- Vulnerable consumers need to seriously consider the use of joint fiduciaries, corporate fiduciaries, and other safeguards.

Name a Corporate Fiduciary

- Consumer need to understand the planning options – the pros and cons of naming a bank or trust company.
- A bank or trust company can, with proper planning, be placed in a position to assist with many aspects of that consumer’s finances, from bill paying, credit cards, and more as is appropriate for any particular phase of the consumer’s aging or disease.
- If the consumer is so isolated that he or she has no individual to name as the agent under a power of attorney, then there may be little choice to naming an institution.

Using a Corporate Fiduciary Will Change the Document Structure

- Corporate fiduciaries are not comfortable operating as agent under a typical POA.
- No institution is anxious to serve as an agent (many have policies not to serve at all) so a fully-funded revocable trust with the institution as a current or successor trustee or co-trustee may have to be the keystone of that consumer’s estate plan.
- This can limit the need and likely use of the POA.
- Still create a POA to catch assets or matters that were not transferred to the revocable trust.
- Most institutions will initially say no to the agent role, but often that initial response can be changed.

Safeguards

- While these steps require a lawyer creating documents to implement the planning involving a CPAs as the trusted adviser, and in appropriate circumstances other professionals (insurance consultant, care manager, etc.).
- Integrate a care manager provision. The trust could mandate that an independent care manager be hired to perform a quarterly assessment and issue a written report to the corporate trustee as well as a key friend or family member (or perhaps the trust protector).
- Limit the trust protector’s replacement power to solely naming a successor institutional trustee to avoid the risk of the protector appointing herself or her buddy thereby undermining the safety of the plan.
- Have a CPA named as a monitor to receive regular reports and to report any issues identified to the corporate trustee and trust protector.

Restructure Accounts to Make The Revocable Trust Plan Safer

- Create new checking and other accounts in the name of the revocable trust, and then to transfer appropriate assets (e.g., non-retirement accounts) to the trust.
- Consolidating accounts at the institution named as a successor trustee. This will make it easier for the corporate successor trustee, especially a corporate trustee, to step in to assist the consumer in an emergency.
- Switch credit cards to ones issued by the institution named as successor trustee to create a readily available records of transactions for the institutional successor trustee. Identifying what a “standard of living” means, or what the phrase “donations to charities to which principal historically made gifts” becomes a simple process.

Health Care Decision Making With No Agent

- Consider the use of a professional health care surrogate if state law permits.
- An isolated consumer with no family or friends to name as an agent may be able to hire (contractually designate) a professional, paid health care agent to act on his or her behalf.
- If this approach is used, the revocable trust could direct the successor trustee to pay the fees of, and costs incurred by, such a professional health care surrogate in carrying out the consumer’s wishes.
- Those wishes should be specified in the agreement with the hired surrogate and also included in the consumer’s living will.

Use a Living Will

- Obtain a clear and detailed living will providing a statement of the consumer’s medical wishes.
- Address personal wishes in a broad manner to encompass health care while alive, when incapacitated, end of life wishes, funeral and burial desires, etc.

Use a POLST

- A POLST, Physician Order for Life Sustaining Treatment (known by different names in some of the states permitting these) does not require an agent. It is an order that becomes part of the patient chart so it is self-activating.
- While a POLST cannot address all scenarios (e.g. it may only apply if death is anticipated to be near term) it can fill some of the gaps for consumers not having close family or friends to name as a health care agent.
- A POLST is binding on emergency medical workers, such as ambulance personnel, whereas a living will is not.

Integrate a Care Manager into the Planning Team

- A care manager can provide additional objectivity and assistance to a consumer with a limited or no family or close friends to rely upon.
- Care managers are mandatory reporters. They must by law report abuse. This is an important safeguard for vulnerable consumer.
- See suggestion above to mandate in the revocable trust that a quarterly (or other appropriate time period) evaluation/assessment be completed by an independent care manager.

Recordkeeping

- Automating the consumer's checkbook and finances can help address many of the practical issues for the vulnerable or aging consumer.
- Reminders can easily be set in Quicken and similar programs so that the consumer does not overlook important bills, tax filing deadlines, etc.
- These same reminders could assure an agent or successor trustee can quickly ascertain vital steps to be taken.
- Once the checkbook and other financial transactions are computerized, it becomes a simpler task to generate current and prior year expenditures by category and use that information to develop a realistic budget. That can provide vital data to interpret concepts such as "maintain grantor's standard of living…"

Paperless

- View the consumer's document management as part of the estate planning process.
- Not addressing this would be short-changing the consumer's plan and leave a vulnerability that abusers could capitalize upon.
- The boxes of old bank statements and tax returns so many retain in a basement or attic are a tempting target for home health aides, repair persons, and others. Having these documents scanned and then shredded can be a simple, yet powerful safeguard from financial abuse.
- If the consumer is not able to handle this, vendors can pick up the documents at the consumer's home, scan them, shred them, and deliver a DVD or portable hard drive with images of those documents.

Fraud Detection; Automate Finances

- Encourage aging consumers to enroll in a fraud and identity theft detection programs.
- Guide the aging or vulnerable consumer to automate all bank deposits a and bill paying. This can minimize the number of statements or checks arriving in their mailbox (a common attack point for abusers) and assure that key bills will be paid even if the consumer has a lapse or short term illness.

Tax ID Numbers

- Assign Tax Identification Numbers (TINs) to revocable trusts.
- Social Security Numbers appear on medical records and other documents.
- Using TINs for revocable trusts spreads consumer assets under various ID numbers making identity theft and perhaps some types of elder financial abuse more difficult.

Consolidate and Simplify

- Guide aging consumers to simplify financial matters to minimize the complexity and challenges that will face an agent having to operate in the future.
- Consolidating assets into a limited number of institutions will result in less paperwork and the need for fewer approvals an agent will need to obtain. This makes an agent’s work simpler, easier, and less costly.
- Consolidation will also make it easier for a monitor to oversee the agent’s activities.

Where to Turn for Help

Resources

- findapfs.org
- findacpacff.org
- aicpa.org/pfp/consumer
- 360financialliteracy.org
- **Among them:**
  - Checklists to use with your own return.
  - Today's PowerPoint presentation.
  - Archived recording of today's webcast.
  - Tips on choosing the right financial advisor.

Questions?