

How to Spot Elder Financial Abuse

Training materials from the
California Bankers Association





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Elder Financial Abuse and the Need for Response

Recent statistics from the American Association of Retired Persons (AARP) indicate that the population of older Americans (65+ years old) is expected to at least double to more than 71 million by the year 2030. These same statistics indicate that, in 2002, one in eight Americans was an older American.

With these statistics and projections, it is clear that the U.S. should be preparing itself for the many changes that will accompany this explosion in the older population. California, as the state with the largest population of older Americans, needs to be particularly prepared and aware of the issues that will come to affect its older citizens. One such issue is the problem of elder financial abuse.



What Is Elder Financial Abuse?

Elder financial abuse is a specific form of a more general crime, the crime of financial abuse. Financial abuse is defined in California’s Elder Abuse and Dependent Adult Civil Protection Act (Welfare & Institutions Code section 15600 et seq.) as “occurring when any person or entity takes, secretes, appropriates or retains real or personal property of an elder or dependent adult with the intent to wrongfully use or defraud, or who assists in doing so.”

Elder financial abuse is, of course, the perpetration of this crime against elder citizens and dependent adults, who may be especially vulnerable due to physical or mental incapacity.

It is important to remember that it is one of the roles of the bank employee to help reduce fraud, not to keep customers from making informed, yet ill-advised decisions. There is a difference between keeping a customer from being victimized and saving a customer from his or her own foolishness. The “Legal Issues” section clearly spells out the role of the bank employee. Before undertaking any elder financial abuse training program, CBA encourages every financial institution to intently review the “Legal Issues” section and consult with its own legal counsel.

Common elder financial abuse scenarios

- **Misappropriation of income or assets** - Perpetrator obtains access to an elder’s Social Security checks, pension payments, checking or savings account, credit card or ATM, or withholds portions of checks cashed for an elder.
- **Charging excessive rent or fees for service** - Perpetrator charges an elder an excessive rent or unreasonable fees for basic care services such as transportation, food, or medicine.
- **Obtaining money or property by undue influence, misrepresentation, or fraud** - Perpetrator coerces an elder into signing over investments, real estate or other assets through the use of manipulation, intimidation or threats.
- **Improper or fraudulent use of the power of attorney or fiduciary authority** - Perpetrator improperly or fraudulently uses the power of attorney or fiduciary authority to alter an elder’s will, to borrow money using an elder’s name or to dispose of an elder’s assets or income.
- **Pigeon drop** - Perpetrator claims to have found a sum of money and offers to split it with an elder provided the elder first withdraws an amount equal to his or her share as a sign of good faith.



What Is Elder Financial Abuse? continued...

Common elder financial abuse scenarios

- **Fake accident ploy** - Perpetrator convinces an elder that the elder's child has been seriously injured or is in jail and needs money for medical treatment or bail.
- **Telemarketing and mail fraud** - Perpetrator persuades an elder to buy a valueless or nonexistent product, donate to a bogus charity or invest in a fictitious enterprise.
- **Fake prizes** - Perpetrator tells an elder that he or she has won a nonexistent prize and either asks the elder to send a check to pay the taxes on this nonexistent prize or obtains the elder's credit card or checking account number to pay for shipping and handling charges for the prize.
- **Unsolicited work** - Perpetrator arrives unexpectedly at an elder's residence and offers to perform work for a reasonable fee; after starting the work, the perpetrator insists that the elder pay more than originally agreed before the work will be completed.

Just as there are ways to prevent other crimes, there are ways to prevent elder financial abuse from occurring. Consumer education is perhaps the best weapon against elder financial abuse and there are many organizations that are working diligently to make sure that messages about elder financial abuse and its prevention are being heard by older Californians.

There is also a role for the banking industry to play in the prevention of elder financial abuse and it's a role that we take seriously. Because of the regular contact many older Californians have with the personnel in bank branches, front-line bank employees may observe suspected cases of elder financial abuse. By asking careful questions, while observing legal limits, bank employees can work with law enforcement and county Adult Protective Service offices to keep older Californians from being victimized.



How to Spot Possible Cases of Financial Abuse

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he following are some common “red flags” of which front-line and supervisory bank personnel should be aware to help them determine whether elder financial abuse may be occurring:

Your elder customer:

- Engages in bank activity that is erratic, unusual or uncharacteristic.
- Withdraws large sums from his or her account in a secretive manner.
- Engages in bank activity that is inconsistent with the older person’s ability (such as use of an ATM card despite the fact that the customer is house-bound).
- Suddenly acquires new acquaintances, particularly those who take up residence with the customer.
- Makes changes to property titles, will or other documents and is confused about the consequences of those changes.
- Executes a power of attorney and is confused by the consequences of this action.
- Doesn’t have amenities for which he or she can pay (complains about having no heat despite the fact that he or she can afford to have it).
- Indicates that some of his or her property is suddenly missing.
- Indicates that he or she is being evicted.
- Has obvious health or mental problems that are not being treated.
- Indicates that his or her mail is no longer being delivered to the customer’s home.
- A normally friendly customer begins to withdraw socially from bank employees or is afraid to engage in conversation with them.
- Consistently accompanied by someone who encourages him or her to withdraw large amounts of cash or is not allowed to speak for him or herself while conducting business at the bank.
- Afraid of the person who accompanies him or her to the bank or is worried that he or she will be harmed for not giving money to a caregiver or companion.



How to Spot Possible Cases of Financial Abuse continued...

Other warning signs of potential elder financial abuse:

- Customer frequently forgets items needed to conduct business, such as a checkbook, deposit slip.
- There is a noticeable change in the appearance and grooming of your customer.
- Customer becomes disoriented, doesn't know where he or she is or indicates that he or she is forgetting where things are.
- Customer becomes paranoid about money in his or her accounts and the bank's handling of this money (which may trigger a review by a professional agency to determine whether or not there was any validity).
- Customer brings strangers into the bank to assist in conducting business.
- Customer's mood or disposition changes dramatically, or the customer begins to fear bank employees.



Reporting

Banks want to do the right thing when they observe suspected elder financial abuse, yet this area involves complex legal and customer relations considerations. California law encourages banks to report suspected elder abuse by providing some legal protections. In addition to reporting suspected elder financial abuse, banks may consider not processing a transaction requested by the elder or the elder’s representative. An elderly customer may be offended if a bank insinuates that the elder is being victimized. The customer’s family may likewise take offense if a bank questions a transaction. For these reasons, it is important that banks adopt and strictly adhere to procedures for handling suspected elder abuse. The legal considerations are detailed later in the “Legal Issues” section. What follows are reporting procedures that banks may want to adopt, after consulting as appropriate with legal counsel. Banks should be aware that in certain circumstances, it may be appropriate to make a report to APS and file a Suspicious Activity Report under federal law. See the “Legal Issues” section for further information on when an SAR may be required.

First Steps

The following steps are suggested to *help bank tellers determine if questionable transactions* should or should not be processed:

- **The teller should attempt to learn the reason for large transactions or frequent withdrawals.** If the withdrawal is unusually large for the elder, ask the elder (not the person accompanying him or her) the reason for the change in activity. If the elder is prevented from answering or the person accompanying the elder answers, this may be a sign of financial exploitation.
- **The teller should check authorization and documentation to act for the elder.** It is common for people who commit financial exploitation to exaggerate about their authority to act for an elder. The suspect may claim to be helping the elder out or may explain that the elder is unable to visit the bank in person. It is important to check all documentation including signature cards, guardianship and Power of Attorney to be sure that the person claiming to act for the elder has the authority to do so.
- **The teller who suspects fraud should contact a supervisor immediately.** Together, the



Reporting continued...

supervisor and teller can review the account history, the pattern of transactions, and the transaction in question to determine if the transaction should be processed, stopped or reported to bank security or a senior bank officer.

- **The teller may choose to explain to the elder that a supervisor must review large or unusual transactions.**

The following steps are suggested to *help bank supervisors determine if questionable transactions* should or should not be processed:

- The supervisor should separate the customer from any companion so that the supervisor is able to speak with the elder alone. The elder who is prevented from speaking for himself or herself is a potential fraud victim.
- The supervisor may warn the customer of the dangers of carrying, withdrawing or wiring large amounts of cash. Some banks may decide to offer customers a fraud alert form (see samples in the “Resources” section).
- The supervisor should notify a senior officer of the bank of any questionable transaction.
- If an elder is thought to be in immediate physical danger, banks may want to notify law enforcement. If the customer is in immediate danger of losing his or her money, banks may wish to consider delaying the transaction and confer with legal counsel or a senior officer of the bank. Banks may already

have other established procedures for dealing with such situations, in which case, those procedures should be followed. The senior bank officer also has the ability to refuse to complete the transaction, but this brings with it some legal concerns and possible consequences (see the “Legal Issues” section).

Employee Response Checklist

- Learn the reason for large transactions or withdrawals.
- Check authorization and documentation to act for elder customer.
- Notify a supervisor immediately.
- Gather as much evidence as possible to assist in any resulting investigation.
- Consult with a senior bank officer when necessary.
- Ask elder customer to speak with a senior bank officer.
- If customer is in immediate danger, notify police or call APS.

Contacting authorities and reporting procedures

Each bank should develop a written protocol for reporting suspected elder financial abuse. The protocol should include the following:

- When the teller has a concern, whom do they tell and when should a supervisor or other senior officer be told?
- Who will make the report to the local or state agencies?



Reporting continued...

- What role, if any, does the designated senior officer have in the reporting of suspected elder financial abuse?
- What information should be gathered and provided to local or state agencies or law enforcement?

Remember: Financial institution personnel are not required to prove that elder abuse is taking place - that is the job of local and state agencies and law enforcement. The proper role of bank employees is to report suspected cases of elder financial abuse. Though bank employees may be in a position to help identify potential cases of elder financial abuse, there is no expectation that they will become experts on proving the existence of elder financial abuse.

Sample reporting procedures

To help financial institutions develop their own reporting protocols, CBA suggests consideration of the following as a suggested set of reporting procedures:

- Employee or branch manager makes an internal report (may be oral) to a designated senior officer of the suspicious circumstances as soon as possible, but employee does not contact authorities directly
- The designated senior bank officer reviews internal report, determines whether or not reasonable cause exists to believe that exploitation is occurring, and may complete a

written report for the financial institution's internal records.

- The designated senior bank officer makes an oral report of suspected abuse to Adult Protective Services as soon as possible, if appropriate. Oral reports should include:
 - Name, age (or estimated age), address and telephone number of elder;
 - Name, relationship and address of suspect if known;
 - Description of suspicious circumstances;
 - Bank name, office address and name of employee who made referral; and
 - Name of any other agencies or authorities involved.
- Senior bank officer may alert other bank branches to cases of suspected elder financial abuse.
- After oral notification, senior bank officer may submit a written report to APS or law enforcement, or file a federal Suspicious Activity Report (SAR).

NOTE: For more information on how APS may investigate reported cases of suspected elder financial abuse, please refer to "Appendix A - APS Investigations."



Legal Issues

California law regarding elder financial abuse

California has adopted the Elder Abuse and Dependent Adult Civil Protection Act (Welfare & Institutions Code section 15600 et seq., or the “Act”).

The Act defines “financial abuse” as occurring when any person or entity takes, secretes, appropriates or retains real or personal property of an elder or dependent adult with the intent to wrongfully use or defraud, or who assists in doing so. It protects both elders 65 and over, and dependent adults. A “dependent adult” is a California resident between the age of 18 and 64 who has physical or mental limitations that restrict his or her ability to carry out normal activities, or to protect his or her rights.

The Act defines reporters of possible abuse as either “mandated” or “non-mandated.”

“Mandated reporters” include any person who has assumed full or intermittent care or custody of an elder or dependent adult, regardless of compensation or license, elder or dependent adult “care custodians,” health care practitioners, employees of Adult Protective Services and law enforcement officers. Failure of mandated reporters to report is a misdemeanor.

All other persons, including financial institutions and their employees as such, are “non-mandated” reporters, if they know, or reasonably suspect an

elder or dependent adult has been, or is in the process of becoming, a victim of abuse of any kind.

The Act provides that a non-mandated reporter of known or suspected elder or dependent adult abuse shall not incur civil or criminal liability as a result of a report, unless it can be proven that a false report was made and the person knew it was false.

Non-mandated reporters, like financial institutions and financial institution employees, have only two reporting options to be within the qualified safe harbor of the Act: to report to either county Adult Protective Services (APS), or a local law enforcement agency, including a prosecutor’s office.

In addition, non-mandated reporters should be able to show that reports have been made upon reasonable suspicion. “Reasonable suspicion” includes “. . . an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.” The kind of training contained in this guide is critical, not only to teach line staff to recognize



Legal Issues continued...

and act appropriately to signs of financial abuse, but to be able to articulate the specific reasons for the suspicion.

Sometimes a customer may wish to carry out a transaction even though financial institution staff have expressed concern or made a report to APS. Before processing the transaction, office staff should consult closely with a senior manager and/or legal counsel to evaluate available options, including giving the customer a written warning and/or refusing the request.

Those readers with responsibility for designing or managing a program for reporting of financial abuse of elders, or dependent adults, should always work closely with their own counsel and operations risk management staff to tailor the approach to the institution's own procedures and risk considerations.

Federal law regarding suspicious activity reports

In addition to reporting suspected elder abuse to Adult Protective Services, financial institutions may be required to file a Suspicious Activity Report (SAR) with the federal government. Federal law (31 U.S.C. 5318(g)) requires financial institutions to file SARs in the instances noted below. Federal law also prohibits notifying any person involved in the transaction that the financial institution has made a report. The SAR must be made promptly after

detecting any known or suspected violation of law or regulation involving the following:

- 1. Insider abuse involving any amount.** An SAR would be required if a financial institution employee, director, officer, or agent committed or aided the commission of suspected financial elder financial abuse.
- 2. Violations aggregating \$5,000 or more, where a suspect can be identified.** An SAR would be required if one or more financial elder financial abuse transactions aggregating \$5,000 or more are conducted through the financial institution AND a suspect can be identified.
- 3. Violations aggregating \$25,000 or more, regardless of whether a suspect can be identified.** An SAR would be required if one or more financial elder financial abuse transactions aggregating \$25,000 or more are conducted through the financial institution, even if no suspect can be identified.
- 4. Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.** An SAR would be required if one or more transactions aggregating \$5,000 are conducted in order to disguise funds or assets derived from financial elder financial abuse.



Other Ways for Banks to Help

- Develop and distribute educational materials alerting customers to scams and how to recognize the potential for elder financial abuse.
- Conduct senior seminars or other presentations on elder financial abuse. (CBA can assist you in putting together these types of presentations.)
- Generate media attention on the issue of elder financial abuse and its prevention.
- Stay apprised of current trends in elder financial abuse and techniques for stopping it.
- Sensitize employees to abuse so that they recognize and report it.
- Train appropriate personnel in techniques for interviewing older customers.
- Offer older customers safe alternatives with banking services designed to meet their special needs.
- Conduct regularly scheduled visits and offer limited banking services at places convenient to older people, including senior centers and housing providers.
- Take a proactive approach to developing new procedures and product lines, including:
 - Mechanisms for detecting unusual account activity;
 - Alerts on accounts;
 - Procedures for verifying suspicious transactions; or
 - Protected accounts for seniors.



Preventing Elder Financial Abuse

- The following tips may be useful to your customers in helping them be more aware of and preventing elder financial abuse:
- Use direct deposit for all checks.
 - Do not leave valuables in plain view.
 - Sign your own checks and do not sign “blank checks,” even for family members.
 - If someone is helping you to manage your finances, get a trusted third person to review your bank statement.
 - Don’t sign anything without reading it carefully.
 - Do not lend any money in return for a general promissory note.
 - Do not sign over money or property to anyone in return for care, even a family member or friend, without having the agreement reviewed by an attorney.
 - Establish a relationship with the personnel at your bank.
 - Cultivate friends of all ages so you maintain a strong support network.
 - Become familiar with resources in your community designed to help older people and their families.
 - Execute a Power of Attorney that will grant financial decision-making power to a trusted friend, relative or attorney. Make sure you know and trust this person and that you trust them. A Power of Attorney can be as limited or as broadly defined as you wish and can be revoked at any time. Give your bank a copy of this.
 - Put all financial instructions in writing and be specific.
 - Keep accurate and complete financial records of all transactions.
 - Gather all important documents together (wills, insurance policies and bank account information) and tell someone you trust where these documents are kept.
 - Never give out credit card numbers over the phone unless you placed the call.
 - Never give out your Social Security number or bank account number over the phone.
 - Don’t make donations to charities you don’t know.
 - Get several estimates before you have any work done to your home.



Preventing Elder Financial Abuse continued...

- Do not pay for any work in advance of its completion and remember that all contractors must be licensed by law.
- Do not pay cash to persons you hire.
- If something seems “too good to be true” (such as being told that you won a prize for a drawing you did not enter, or that someone can get you a 100% return on your investment), it is probably a scam.

After You Report - What Happens Next

When the bank places the call to APS, it should quickly state that the call is regarding possible elder financial abuse, which will let APS know that a quick response is needed. The APS agency will ask the bank employee details about the situation. For further information about how APS handles the report of suspected elder financial abuse, please see “Appendix A: APS Investigations.” APS may contact the financial institution for further information during the course of its investigation.



APPENDIX A: APS INVESTIGATIONS

The APS investigator will proceed to make an unannounced on-site visit to the alleged victim (unless there are circumstances which make that unadvisable) and contact anyone having information that could shed light on the situation. The elder will be interviewed alone. The APS investigator might call law enforcement. All relevant documents and records will be sought.

The APS investigator will determine if there is any wrongdoing, offer assistance to the victim and take steps to correct the situation. If, however, the elder seems clear about his or her decision, although it may not be a prudent one, APS believes that the elder's right to self-determination is a mandate.

The APS agency can also respond to calls about the following:

- **Neglect** - Failure to provide basic care
- **Physical abuse** - Excessive force, physical assault
- **Psychological abuse** - Threats, denial of civil liberties
- **Sexual abuse** - Forced or coerced sexual contact
- **Abandonment** - Desertion, withdrawal of duties
- **Self-Neglect** - Inability to care for self

The complainant's name and the investigation report are confidential unless ordered released by a court. The elder can review parts of the report upon request.

Services offered the elder can include, but are not limited to: case management; assistance with financial, legal, housing and medical needs; and assistance with money management. If a crime has been committed, the APS agency will work with law enforcement and the District Attorney's office on possible prosecution and restitution. Civil action may also be initiated.

APS Investigation Guidelines

The following guidelines on how APS investigates reports of suspected elder financial abuse are from the Goldman Institute on Aging's San Francisco Consortium for Elder Abuse Prevention:

APS Guidelines for Investigating Financial Abuse:

- Interview victims and alleged abusers separately.
- Determine the relations between the parties.
- Is the suspect a member of the victim's family?
- Is he or she in a position of trust?
- Does he or she live with the victim?
- Determine the extent of the victim's estate, including real properties, bank accounts, certificates of deposit, stocks, home



APPENDIX A: APS INVESTIGATIONS continued...

furnishings, personal belongings, and vehicles.

- Find out who owns the victim's home, whose name is on the deed, who pays the rent and who pays the taxes.
- Determine whether the victim is literate.
- Find out whose names are on bank accounts, investment accounts and stocks.
- Find out who is the representative payee, attorney-in-fact or guardian.
- Find out who pays the bills.
- Found out how the older person's pension, Social Security or other income checks are received and deposited in the bank.
- Secure samples of the victim's and the alleged abuser's signatures.
- Determine what documents signed by the victim have placed the estate in the suspect's control. These may include Powers of Attorney, bank signature cards or vehicle pink slips.
- Get copies of whatever documents were signed.
- Collect evidence from other agencies.
- Check for previous criminal charges against the alleged abuser.
- Determine the victim's mental status.
 - Is the victim mentally capable of understanding documents, testifying or assisting in the investigation?
- If the person is incapacitated, or his or her capacity is questionable, contact family members, friends or service providers to obtain mental health evaluations and histories. These should include information about the length of time that the victim has had diminished capacity in order to determine if he or she was able to

give consent at the time it was given.

- If questionable purchases have been made, find out the value of the purchases, by and for whom they were made, the value of the purchases in relation to the abuser's salary, and whether there has been a history of gift giving.
- Determine whether the older person's estate is still at risk of theft, misappropriation, or embezzlement. If so, secure the estate as soon as possible.
- Follow the funds! Determine who has (or had) possession of all misappropriated funds or property.

Follow-up on Misused Bank Accounts

- Contact the bank immediately and request that it "flag" the account, and observe with caution.
- Access information regarding the account by visiting the bank with the client. If the client is homebound and hasn't granted anyone power of attorney, have the client sign a release of information form for the bank or arrange a home visit by bank personnel.
- Close the misused account and have the client open a new account. This can be done in person or via a letter signed by the client. Make sure any direct deposits are transferred to the new account.
- Request copies of past canceled checks, bank statements, and withdrawals to look for forgery or unusual activity. If forgery or misuse of funds is apparent, the client can sign an affidavit with the bank and it will be investigated. The police or FBI may get involved at this point.

