Elder Financial Abuse: Awareness & Prevention

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Oregon Department of Justice Elder Abuse Team

- Provide case support and assistance
- Specialize in complex financial cases
- Priority to protect assets timely

What is Elder Financial Exploitation (FE)?

What Elder FE is NOT

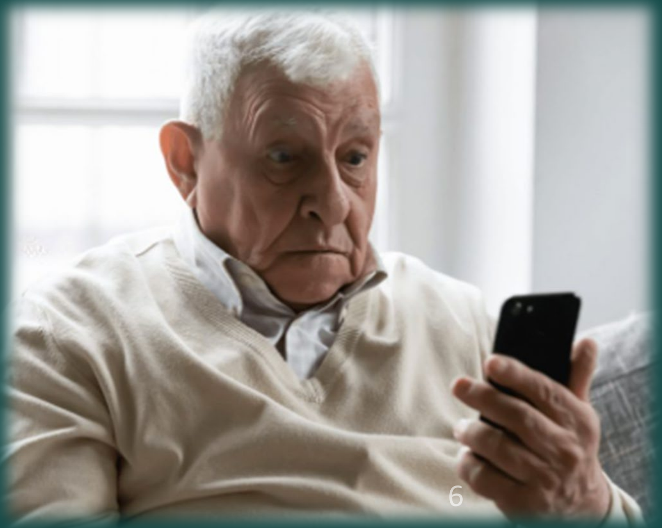
- *"Civil issue"*
- Stupid mistake made by the victim
- Small hiccup in the fabric of life

What Elder FE is

- THEFT
  - Careful calculation and manipulation by a bad actor with the sole intent of separating a person from their money, property or assets
- A criminal enterprise
- Destruction of carefully laid life plans and goals
- A problem that effects all Oregonians/Americans
  - Drain on government and social systems
  - Loss of circulation in US Commerce
  - Loss of tax revenue

Effects of FE on Oregon's Older Adults

- In 2023, APS reported $3.886 million loss from older adults (Scams/FE)
  - JUST in the months of **July, August, and September**
  - Thwarted attempts saved $645,094.00
- Older Americans are losing an estimated $28.3 BILLION to elder FE
  - Loss of generational wealth
  - Loss of financial stability
  - Causes depression, feeling of hopelessness
    - Suicide rate, humiliation, shame, grief



Let This Sink In…

Financial Exploitation is tied with Neglect when it comes to the lowest survivability rate of all the abuse types. -US DOJ EJI

What makes older adults more vulnerable to FE?

- Cognitive Decline*
  - Short term memory loss
- Loneliness, socially isolated, lack of supports
- Prior trauma history
- Mental illness
- Poor health
- Lower means
- Gender

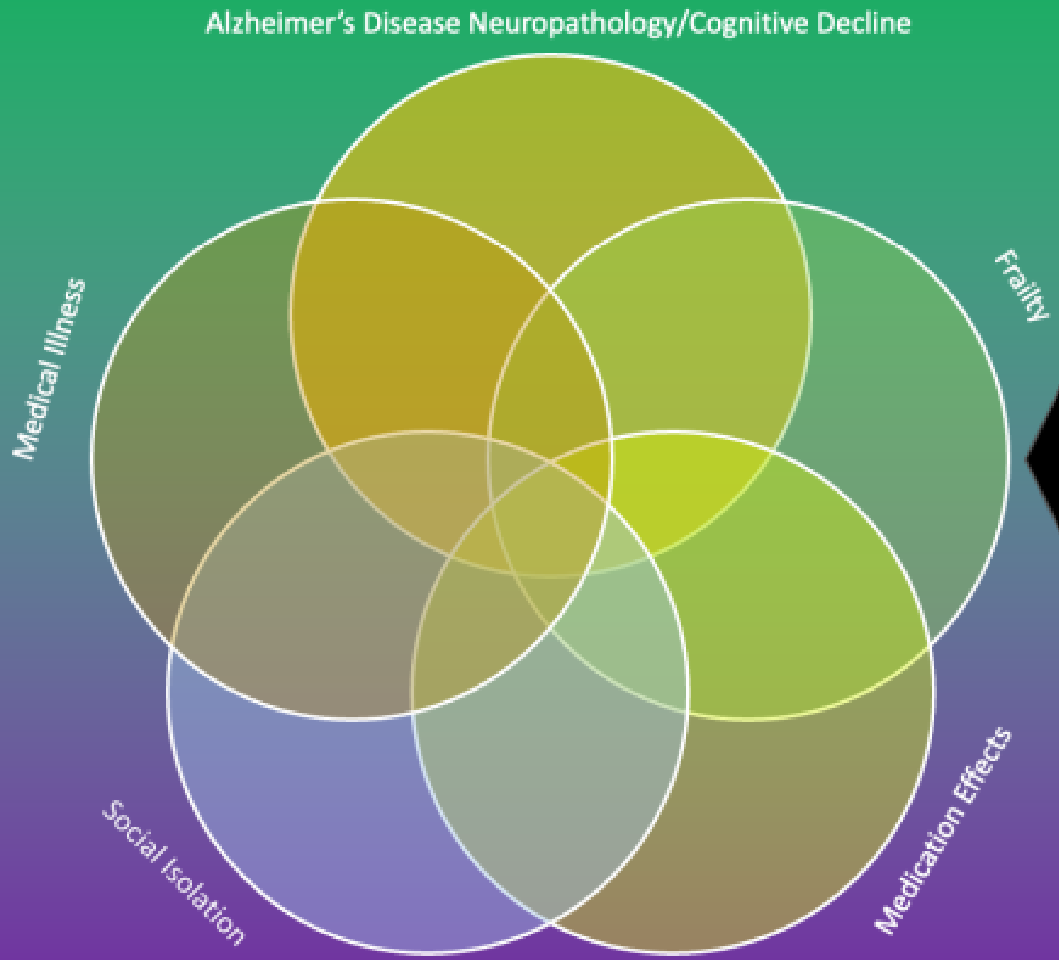
- **Cognitive Decline Misconceptions**
  - **Decline might be undetectable during "mini" tests (e.g. SLUMS, Mini Mental, MOCA)**
    - *"They seem really with it", "Sharp as a tack"*
    - Financial acuity is difficult to determine from a short conversation and typical testing conducted by MD's rarely addresses financial reasoning ability
    - Sometimes the earliest sign of dementia can be loss of financial reasoning skills and ability to detect red flags
  - **Normal Aging**
    - Just like other parts of our body, our brain ages and begins to decline in function and ability
      - The prefrontal cortex shrinks as part of normal aging as a result it can cause more mistakes with financial tasks as they can no longer recall memorized answers
    - Cornell study showed persons susceptible to FE had more brain atrophy and less connectivity in two key areas of the brain: Age-Associated Financial Vulnerability (AAFV)
      - One region signals a person when something significant is happening and the other tells them how to read social cues, such as the intention of others

Table. Possible Factors Contributing to Age-Associated Financial Vulnerability

Domain Factor	Mechanism
Cognitive/emotional	
Executive dysfunction	Reduced ability to multitask, organize by time, and abstractly comprehend future ramifications of current financial actions
Acalculia	Inability to quickly calculate figures mentally to verify numbers or to perform numerical calculations
Frontal disinhibition	Reduced ability not to commit to financial courses of action with potentially negative consequences
Anxiety	May increase pressure to take bad financial risks or not pursue appropriate financial safeguards
Reduced ability to discern trustworthy persons	Results in having less information by which to discern good financial opportunities from bad financial risks
Medical and functional	
Serious progressive illness	Serious underlying medical illness unresponsive to traditional therapy may motivate patients to seek expensive and unproven treatments, creating susceptibility to fraud
Impaired mobility	Reduced ability to extricate themselves from an environment in which they are being pressured to make financial decisions
Vision and hearing loss	Decreased likelihood that complex financial transactions and/or documents are fully comprehended before execution
Polypharmacy	May contribute to delirium, directly influencing vulnerability; expense of medication may also lead to inadvisable risk-taking
Psychosocial	
Depression	Associated with executive dysfunction (7); shame and guilt may also preclude older persons from revealing their predicament to trusted friends and family who could extricate them from exploited role
Social isolation	No beneficent person within the older person's social network to recognize, mitigate, or report financial exploitation
Loneliness	Patients may engage potential exploiters as a mechanism of fostering social connectedness
Environmental/societal	
Wealth concentration	High concentration of wealth in older populations makes them targets of potential exploiters
Information overload	Complex offering of products and services may paradoxically reduce sound decision making in the aging brain
Sophisticated marketing	The aging brain may be more susceptible to increasing use of behavioral economics and cognitive neuroscience to sway consumers

INTERSECTIONAL MODEL

CONTEXTUAL FACTORS
(pandemic, socioeconomic disparities, cultural factors, etc.)



PERPETRATORS
(scammers, caregivers or family members with selfish intentions, exploitative programs, etc.)

Duty.

What is your responsibility as an officer of the state?

- *"Notarization is the official fraud-deterrent process that assures the parties of a transaction that a document is authentic and can be trusted."* – National Notary Association

Following this principle is crucial in the prevention of elder financial exploitation.

Detecting Possible Fraud or Financial Exploitation

COMMON SENSE

- Reasonable Care standard: "that degree of care which a person of ordinary prudence would exercise in the same or similar circumstances"



Is it stinky?

Are you feeling any discomfort based on circumstance, behavior or tone of the interaction?

Elder Abuse Red Flags

In Oregon, an elder is a person 65/+

- Person owning the property is an older adult or vulnerable person
- The subject of the document is an older adult or vulnerable person
- Person facilitating the transaction, POA/family member/"friend", would be the beneficiary of the action
- Person benefitting also arranging the signing and is coaching the OA
- Deed with no consideration - Quit Claim Deed, Transfer on Death, etc.
- New POA overriding recent POA
- Open bickering or fighting between family members re: signing
- "Value" of the document
- Document prepared quickly
- Feeling of haste, pressure
- Request for notary when a doc does not require notarization
- You are offered more compensation
- Asking for response to a hospital or a care facility
  - *Memory care, Skilled Nursing, Rehabilitation

Elder Victim Red Flags

- The elder appears confused
- Is not talking, talks very little or allows others to steer the transaction
- Looks to others for guidance or assistance with answering questions
- Shows signed of fear or hesitation
- Appears infirm or unwell
- Is not able to repeat back to you what you have told them
- Makes unusual statements either indicating they might not be hearing well or they are not understanding what is going on

- Uses humor or charm to avoid answering or to distract and mask their lack of understanding
- Is unkept, has poor hygiene and does not appear to be caring for themselves or being cared for
    - Especially if another person identifies themself as the older person's caregiver

https://www.notarystars.com/consumer-education/preventing-financial-abuse-of-elders-what-every-notary-family-member-needs-to-know

Elder Abuse Perpetrator Traits

Elder Fraud perpetrators can be crafty and have been known to fool professionals, family members, friends and lay people.
Bottom line:
They are **criminals**.

- Most often family members but offenders can range from friends, neighbors, hairdressers, care givers, etc.
- Primary focus of offending is absorbing all the older persons assets
  - Most often over a period of years but have also seen success with short-term schemes
- Usually charming, likable, acts like they care about the older person and tell others repeatedly they are acting in the best interest
- Can be repeat “customers” if access is available or will seek out victims through vocation

Question about the signer’s ability to understand?

You may request consult with their doctor or request a written opinion addressing cognition.

Make sure you make detailed notes about observations and requests for additional professional assurance of contractual ability.

Determining Willingness & Awareness

Willingness

- Do the parties appear at ease?
- Are the parties able to answer questions about the document/transaction without hesitation or looking to others?
- Are the parties signing without hesitation?

Awareness

- Do the parties appear to have their mental facilities intact?
- Are the parties able to repeat back to you what you have explained to them?
- If questions are asked, are the parties able to ask meaningful questions?
- Incoherent? Disoriented? Incapacitated?

Your Power is Great

- Devastating loss can result following one Notary Action
- Every effort must be made to ensure protection of a vulnerable person or the person holding the asset
- You are an important “Guardrail” to prevent fraud

For Known Subjects

- If you are notarizing for persons known to you or a known person is one half of the parties involved, do not allow your personal thoughts and feelings to dissuade you from a complete assessment
- Blame it on the rules
  - If it feels uncomfortable tell them simply, *"Sorry for all this but I have to follow the rules/ask these questions for every transaction."*

Others Using Your Signature/Stamp for FRAUD

- Recommendation to always try and sign/stamp on the page with the subject’s signatures and some text of the document
- Fraud rampant
  - Legit notary signature page then used to legitimize other fraud docs
- If using a certificate, ensure the number of pages in the doc is included as well as a description of the document notarized
  - Make sure to note in journal if a certificate was used
  - Use the notary stamp to “join” the certificate to the docs

Goofy Loop Syndrome

- Do not get caught in the Goofy Loop
  - Stuck on repeat
  - No adaptation
  - Loss of control
- Let go of the need to win, these scenarios are often losers for everyone involved
- Maintain your ethics and professional poise
  - Do not get involved in squabbles
  - If a situation deteriorates, do not pick a side
    - Only offer mediatory information
  - Be the calm in the storm
  - End the contact if the parties are unwilling to cooperate

"Although it is very difficult to re-live these past circumstances, our family appreciates your recollection and recognition of how truly difficult this matter was. I hope in some way your presentation can instill how truly important the responsibility of a notary is. The impact their duties have are far-reaching and are not something to be taken lightly. A simple signature and stamp can have profound quality of life consequences. I urge your attendees to think about putting themselves in my mother's place, not just that of the notaries'."

Do NOT complete a notarization if:

1. You believe the subject is not competent or has the capacity to execute the record.

2. The subject is not freely signing the document.

3. If you question the identification that has been produced.

REMINDER: Negligence can result in a civil action against you

ORS 124.100

REMINDER: Complicity can result in a <u>criminal</u> action against you

ORS 161.450

You Cannot Predict Every Outcome

- Ultimately it is the actions of a bad actor causing the abuse
- Fraudsters can still prevail despite a thorough inquiry and inquiry examination of the document
- Try not to be discouraged
  - Know we can only make determinations based on the information we knew at the time

If an incident does occur…

- If you suspect abuse DO NOT complete the notarization
- Immediately report the incident
  - APS, Law Enforcement and the Notary Division

APS Abuse Hotline: 855-503-SAFE

- Be as helpful as possible
  - Provide an image of your book, allow book for inspection
  - If able, obtain a copy of the documents
    - Cell phone images work great
- Provide investigators with detailed information
  - Description of suspects
  - Attempt to identify persons involved
    - Photo of their ID
  - What were they driving?
  - What specific conduct gave rise to the suspicion?
    - Hunches are not enough

Weight of Responsibility

- Your job is important and necessary
- Your duty can be used against you and a fraud victim
- Always do your due diligence to try and prevent exploitation

Thank you for your continued dedication to your duty and being vigilant in protecting our most vulnerable Oregonians.

Any Questions?

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