

Five Ways to Discourage Financial Exploitation

On May 17, 2013, the Superior Court in Milford sentenced a West Haven man to 15 months for stealing more than \$300,000 from his Aunt. On February 27, 2012, a 54 year old Canterbury woman pleaded guilty to stealing more than \$10,000 from her mother's bank accounts and was sentenced in April, 2012, to up to 90 days in prison. Norwich police began investigating in February 2010 after receiving a phone call from the perpetrator's brother, who reported that the perpetrator, who had power of attorney over her mother's finances, had taken more than \$60,000 for her personal use. These are real cases reported in our local newspaper, *The Day*.

Financial exploitation continues to rise. At a 2012 conference of the National Academy of Elder Law Attorneys, most of the attorneys polled cited a growing trend of financial exploitation. One of the largest cases in our firm involves financial exploitation. From what we have seen, financial exploitation is one of the chief ways of depleting your life's savings. It ranks up there with long-term care expenses, a stock market crash, business failure or divorce.

The perpetrators come in the disguise of family members, friends, home care workers, and legal guardians. They can also be trusted advisors such as accountants, financial planners, and attorneys. Perpetrators are usually well known to the victim. They perpetrate their crime by isolating their victim from other family members and friends. They hide their wrongdoing by not disclosing financial transactions to the senior. They usually use a threat like "I will put you in a nursing home if you do not cooperate." Perpetrators usually provide care for their elderly victim for which the victim is grateful but also can become entirely dependent.

How do you prevent and stop financial exploitation?

Name more than one person as agent under your power of attorney and allow people other than your agent to petition for an accounting.

Most powers of attorney we see have one agent. That is efficient if all goes well. Nevertheless, it gives the agent tremendous power over your finances. Consider adding a second person as your agent even if your agents can each act alone. It creates another set of eyes to watch over your finances. In Connecticut, our statutes do not allow family members who are not the agent to petition a probate court for an accounting. All of our powers of attorney now add the right of selected family members or friends other than the agent to ask for an accounting. The Uniform Powers of Attorneys Act includes such a provision.

Require regular accountings of your agents and show them to other people.

Sometimes, it is uncomfortable to request that your agent provide documents confirming how they have managed your money. It questions their veracity, morals and judgment. They may be providing care to you in addition to managing your finances. Yet, managing someone's finances is a significant responsibility. We recommend that all financial statements go to the senior and that the agent provide quarterly summaries of checks written and investments made. We also recommend that you pay your agent a reasonable fee for this service! It is crucial for your financial future and your agent will appreciate the gesture.

Diversify your financial managers and share your statements among them.

If you have significant investments (over \$500,000), consider using more than one financial manager. By "financial manager" we mean more than just your financial planner or stock broker. Create a financial team of a financial advisor, accountant, attorney or trust officer. Having multiple financial managers gives you more perspective on your finances and helps assure that others are overseeing your finances.

Seek a voluntary conservatorship in probate court.

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When it comes to overseeing your finances, our probate court can play a crucial role. A voluntary conservatorship allows the court to oversee what your agent does by requiring periodic accountings. The court makes no finding that the senior is incompetent or cannot manage his or her financial affairs. Voluntary conservatorships can also protect your agent. After proper notice and a hearing approving the accounting, the court can exonerate your agent from all liability to other family members. We have requested voluntary conservatorships and they can work well to keep all family members involved and satisfied that a senior's finances are properly managed.

If something does not look right, do not hesitate to see your lawyer.

An experienced lawyer can help determine what to do if you suspect financial exploitation. There are criminal, administrative and civil court remedies if someone is fleecing a senior. The State's Attorney's Office can bring criminal charges and seek restitution. The Connecticut Dept. of Social Services Protective Services Program can intervene and investigate a complaint to stop the theft. Heirs and trust beneficiaries of the senior can seek damages through a lawsuit for undue influence, statutory theft, breach of fiduciary duty, conversion, negligence and breach of contract. If you need help deciding what to do, come see us. We have the financial and legal experience to help you.

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