Frequently Asked Questions (and Answers)
About
Elder Financial Abuse

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Question: What is Elder Financial Abuse?

Answer: The National Committee for the Prevention of Elder Abuse defines Elder Financial Abuse as the "illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder." The Federal Older Americans Act defines elder exploitation as the "fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets." The Centers for Disease Control and Prevention defines Elder Financial Abuse or exploitation as "the unauthorized or improper use of the resources of an elder for monetary or personal benefit, profit, or gain."

Elder Financial Abuse can be classified into three types of crimes, according to a recent study published by the MetLife Mature Market Institute (the "MetLife Study") in collaboration with the National Committee for the Prevention of Elder Abuse and the Center for Gerontology at Virginia Polytechnic Institute and State University (available at https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf). *Crimes of occasion or opportunity* are "incidents of financial abuse or exploitation that occur because the victim is merely in the way of what the perpetrator wants." *Id.* at 4. *Crimes of desperation* are those "in which family members or friends become so desperate for money that they will do whatever it takes to get it." *Id.* *Crimes of predation or occupation* occur "when trust is engendered for the specific intention of financial abuse later. A relationship is built, either through a bond of trust created through developing a relationship (romantic or otherwise) or as a trusted professional advisor, and then used to financially exploit the victim." *Id.* This MetLife Study concludes that "despite growing public awareness from a parade of high-profile financial abuse victims, it remains under-reported, under-recognized and under-prosecuted." *Id.* at 23. Elder Financial Abuse continues to be the "Crime of the 21st Century," one that is often at the heart of other forms of elder mistreatment." *Id.* at 5.

Question: **What is the definition of an "elder"?**

Answer: There is no generally accepted age at which a person becomes an "elder." Membership in AARP (formerly known as the American Association of Retired Persons) is open to persons 50 years of age and older. The Government Accountability Office also defines "seniors" as adults aged 50 and older. The Centers for Disease Control and Prevention defines elders as persons 60 years of age or older, as do the Elder Justice Act and numerous state statutes. The Office for Older Americans of the Consumer Financial Protection Bureau is "dedicated to the financial health of Americans aged 62 or older." Numerous state statutes define elders as persons 65 years of age or older. The 2010 U.S. Census recorded the greatest number and proportion of people age 65 and older in all of decennial census history: 40.3 million people, 13% of the total population. It is projected that by 2050, people aged 65 and older will comprise 20% of the total U.S. population.

Question: **What is the annual scope of loss to victims of Elder Financial Abuse?**

In 2011, the MetLife Study estimated the annual financial loss to victims of Elder Financial Abuse to be $2.9 billion. In 2015, TrueLink Financial, a for-profit company that offers fraud protection systems and products for seniors, published a report on Elder Financial Abuse (the "TrueLink Study") (available at https://truelink-wordpress-assets.s3.amazonaws.com/wp-content/uploads/True-Link-Report-On-Elder-Financial-Abuse-012815.pdf). The TrueLink Study estimated that 36.9% of seniors are affected by financial abuse in a five-year period, amounting to $36.48 billion annually. Of this, the TrueLink Study concluded that $16.99 billion is attributed to financial exploitation, $12.76 billion is attributable to criminal fraud, with scams accounting for $9.85 billion annually and identity theft accounting for $2.91 billion annually. $6.67 billion annually represents abuse by those in a position of trust.

Question: **What are some of the non-financial effects of Elder Financial Abuse?**

Answer: Studies have shown that elders who have experienced abuse, even modest abuse, have a 300% higher risk of death when compared to those who have not been abused. Although Elder Financial Abuse sometimes occurs in isolation, the MetLife Study concluded that the "interrelationship between financial, physical, sexual and emotional victimizations of elders is undeniable." *Id.* at 5. The TrueLink Study reported that the non-financial effects of Elder Financial Abuse include postponing necessary medical care; reducing nutritional intake because of budgetary shortfalls; depression; anxiety; and loss of independence. The caregivers of elder victims also experience loss: 27.9% report depression, stress or anxiety from dealing with the elder's financial loss; 18.2% report increased conflict with family and friends; 13.9% report a sense of hopelessness; 7.3% experience a loss of career advancement or work hours; and 9.1% experience damage to their marriages or significant relationships.

Question: Who is likely to be a victim of Elder Financial Abuse?

Answer: Women are nearly twice as likely as men to be victims of Elder Financial Abuse. Most victims are between the ages of 80 and 89, live alone, and require some level of help with either health care, other activities of daily living, or home maintenance, according to the MetLife Study. In addition to our elders (however defined), adults with disabilities are also often more susceptible to financial exploitation as a consequence of their disabling conditions. Nationally, 30% of adults with disabilities who utilize personal assistance services, or need support with their activities of daily living, report one or more types of abuse (*i.e.* physical, verbal or financial) by their primary care provider.

Question: Who are the perpetrators of Elder Financial Abuse?

Answer: The MetLife Study reported that 60% of the perpetrators of Elder Financial Abuse were male. The MetLife Study also reported that 51% of the cases of Elder Financial Abuse considered in that analysis involved strangers, including home repair scams, telemarketing scams, and strangers committing robbery and burglary. Mail or internet scams and identity theft are also included among the financial abuse perpetrated by strangers. Stranger elder abuse is more likely to be reported and publicized than abuse by known perpetrators.

Family, friends, neighbors, in-home caregivers and other known persons (*e.g.* agents acting under Powers of Attorney) accounted for 34% of the perpetrators included in the MetLife Study. This category of Elder Financial Abuse also includes legal Guardians appointed by state courts and Representative Payees under the auspices of the Social Security Administration. There are numerous factors that materially increase the risk of a person known to the elder engaging in Elder Financial Abuse. Those include (i) use of drugs or alcohol, (ii) high stress levels and low coping resources, (iii) lack of social support, including respite care options, (iv) high emotional or financial dependence on the elder, (v) lack of elder care training, and (vi) depression.

Business and financial service providers accounted for 12% of the perpetrators reported in the MetLife Study, including insurance advisors, bankers, attorneys, building contractors, and nursing home administrators. Also included are securities brokers and dealers, financial advisors, and others in the financial services industry. These perpetrators were involved with predatory lending, identity theft, embezzlement, and the sale of fraudulent or unsuitable investments or other financial products or services. "Free lunch" investment seminars are also frequently used by unscrupulous financial "professionals" to sell inappropriate investment products to elders.

Question: What are some of the reasons for Elder Financial Abuse?

Answer: Some of the most frequently cited reasons include the following. (i) The incidence of Alzheimer's Disease, and other dementias that undermine judgment, increases with age. Approximately 5.3 million Americans have some kind of dementia, and close to one-half of all people over 85 have Alzheimer's Disease or another kind of dementia. Two-thirds of those with Alzheimer's disease are women. http://www.alz.org/facts/overview/asp. Research indicates that people with dementia are at greater risk of Elder Financial Abuse than those without the condition. Diminished financial capacity is also more prevalent as one ages, *i.e*. the ability to manage money and financial assets to meet one's needs effectively. (ii) Elders have become largely socially isolated. Extended, multi-generational families are no longer common in our mobile society, as adult children no longer feel responsible for caring for their elderly parents. Thus, there are fewer persons in an elder's life who can realistically detect suspected Elder Financial Abuse. (iii) A recent study funded by the National Institutes of Health National Institute on Aging suggests that the area of the brain known as the "anterior insula" changes with age and adversely impacts "gut feelings" about the trustworthiness of potential predators. (iv) Elders with clinical depression are statistically more likely to be victims of Elder Financial Abuse or exploitation.

Question: What are some of the indicators of Elder Financial Abuse?

Answer: "Indicators" of Elder Financial Abuse are signs or other clues that a person has been victimized by a perpetrator. While any one indicator may be attributable to other causes, patterns or clusters of indicators may indicate an Elder Financial Abuse problem. The MetLife Study listed the following indicators:

a. Unpaid bills, eviction notices, or notices to discontinue utilities or other household services.

b. Withdrawals from bank accounts or transfers between accounts that the elder cannot explain.

c. Bank statements and canceled checks are no longer delivered to the elder's home.

d. New "best friends" in the elder's life.

e. Newly executed legal documents (*e.g.* a Power of Attorney) that the elder did not comprehend when signed.

f. Unusual activity in the elder's bank accounts (*e.g.* large unexplained withdrawals, frequent transfers between accounts, or numerous ATM withdrawals).

g. The care the elder receives is not commensurate with the size of her resources.

h. Third parties (*e.g.* caregivers or relatives) express excessive interest in the amount of money being spent on the elder.

i. The elder's belongings or other assets are missing.

j. Suspicious signatures on the elder's checks or other documents.

k. The elder does not possess any documentation about her financial affairs or arrangements.

l. The elder or her caregiver has implausible explanations about the state of her financial affairs.

m. The elder is unaware of, or does not understand, the financial arrangements that have been made for her.

n. Excessively large "reimbursements" or "gifts" to family members or friends.

o. New authorized signers on the elder's accounts.

p. Changes in banks or attorneys used by the elder for many years.

q. Large, unexplained charges to the elder's credit cards.

r. Missing or unaccounted for government benefits (*e.g.* monthly checks for Social Security, veterans benefits, SSI or SSDI, or Supplemental Nutrition Assistance (a/k/a "food stamps")).

s. The elder manifests an unusual degree of fear or submissiveness to a caregiver.

t. Isolation of the elder from family, friends, community, and other stable relationships (*e.g.* the elder is never alone or allowed to discuss finances without the caregiver present).

u. The elder appears intimidated and threatened (*e.g.* never looks at people directly).

v. The elder exhibits withdrawn behavior or a disheveled appearance.

w. The elder expresses anxiety about her ability to meet her financial obligations.

x. Significant changes in the elder's personal spending patterns (*e.g.* she purchases a new car even though she has not driven in many months or years).

y. Third parties develop a new close bond with the elder and exert influence over the elder's decisions.

z. Third parties withhold information from the elder or make false promises.

aa. Third parties suddenly acquire expensive possessions.

bb. Third parties exhibit defensiveness or hostility during appointments or phone calls with the elder.

cc. Third parties are reluctant to leave the side of the elder during appointments.

dd. Unexplained decreases in the number of the elder's bank or investment accounts.

ee. An increase in the number of the elder's credit card accounts.

Question: How is Elder Financial Abuse reported?

Answer: If the victim of possible Elder Financial Abuse resides in a long-term care facility, the State Long-Term Care Ombudsman ("LTCO") is tasked with investigating such reports. Long-term care facilities subject to LTCO oversight include the following: skilled nursing facilities (a/k/a "nursing homes"); assisted living facilities; "board and care" homes (often referred to as "personal care homes" or "host homes"); intermediate care facilities for with those with intellectual disabilities; and community living arrangements (*e.g.* "group homes"). Complaints to the LTCO may be initiated by a call to the State Unit on Aging, the Regional Area Agency on Aging, or the State LTCO Office by either the resident herself or on behalf of the resident by a friend, family member or other third party. The National Center on Elder Abuse maintains a database of all State LTCO contacts (State, regional and local), which can be accessed by calling the Elder Care Locator Service at 1-800-677-1116, or by visiting http://www.ncea.aoa.gov/Stop_Abuse/Get_Help/State/index.aspx. Residents can also initiate a complaint in person when LTCO staff make periodic site visits to the facilities in their jurisdiction.

Outside of a long-term care setting, the Adult Protective Services ("APS") agency provides a first-responder mechanism for investigating reports of Elder Financial Abuse. All 50 States and the District of Columbia have an APS agency to investigate reports of elder abuse, neglect or exploitation. The reporter of suspected abuse may call a "hotline" or a State APS office. The NCEA maintains a database of all State APS contacts, which can be accessed by calling the Elder Care Locator Service at 1-800-677-1116, or by visiting http://www.ncea.aoa.gov/Stop_Abuse/Get_Help/State/index.aspx.

The Older Americans Act provides funding for State legal services programs designed to address the needs of persons 60 years of age or older, and some States also maintain a "senior legal hotline" which provides brief telephone assistance and advice on civil legal matters to, and on behalf of, persons 60 years of age and older. A number of private law firms are offering *pro bono* legal services to the victims of Elder Financial Abuse. Law schools are also increasingly providing free legal services to victims of Elder Financial Abuse.

Question: Why are victims so reluctant to report Elder Financial Abuse?

Answer: The most cited reason for the under-reporting of Elder Financial Abuse is that the victims themselves refuse to report the abuse to relevant authorities. The MetLife Study suggests some of the following reasons:

a. The elder does not want her abusing family member to go to jail or to face public embarrassment.

b. The elder does not want government interference in her personal life.

c. The elder feels partially responsible for what has happened.

d. The elder believes that the abuse is simply part of doing business or taking risks.

e. The elder feels that admitting vulnerability will result in her being placed in a nursing home or other facility.

f. The elder fears that the abuser will harm her even more if it is reported.

g. The elder believes that no one will help remedy the abuse, or that any help will be "too little, too late."

h. The elder fears that prosecuting the abuse will be prohibitively expensive.

i. The elder may not recall the abuse because of dementia or other impairments.

Question: Who are "mandatory reporters" of Elder Financial Abuse?

Answer: Persons included as "mandatory reporters" of Elder Financial Abuse can vary significantly from State to State. While some States include "any person" having reasonable cause to believe that an elder or disabled adult has been the victim of abuse, or has been neglected or exploited, many States limit those persons to medical or therapeutic personnel, day care personnel, emergency medical services personnel, clergy members (outside of the confessional), and any person required to report child abuse. Twenty States and the District of Columbia specifically designate the employees of financial institutions or investment companies (which would include brokers and financial planners) as mandatory reporters of Elder Financial Abuse. Attorneys are mandatory reporters only in a handful of States. The penalties for the failure of mandatory reporters to report suspected Elder Financial Abuse range from no penalty at all, to monetary fines, to jail time.

Question: What are the criminal remedies for Elder Financial Abuse?

Answer: Many States recognize Elder Financial Abuse as a distinct crime. For those States that do not specifically recognize Elder Financial Abuse or exploitation as a distinct crime, basic criminal laws against theft, fraud, deception, larceny, forgery, and embezzlement can be invoked to prosecute Elder Financial Abuse and seek restitution for the elder. The burden of proof for a conviction under such statutes is typically "beyond a reasonable doubt." Sadly, prosecutors frequently refuse to pursue Elder Financial Abuse actions for a variety of reasons, including insufficient support of investigations by law enforcement personnel; limited budgetary resources; the effect of the incapacity or death of the victim on the ability to marshal sufficient probative evidence; and the refusal of the victim to cooperate with the development of the case.

Question: What are the civil remedies for Elder Financial Abuse?

Answer: Private civil actions under State law could include a complaint for restitution, compensatory damages, and punitive damages under one or more of the following: specific statutory causes of action for Elder Financial Abuse or exploitation; fraud or constructive fraud on the elder;

breach of fiduciary duty or aiding and abetting a breach of fiduciary duty to the elder; negligence; rescission of transactions that have damaged the elder; conversion of assets stolen from the elder; or an action for an equitable accounting of the actions of a fiduciary, whether as a Trustee or as an Agent acting under a Power of Attorney. The burden of proof for such claims is usually "preponderance of the evidence." Several States have enacted so-called "disinheritance statutes" modeled after the more commonly encountered "slayer statutes," which preclude a convicted perpetrator of Elder Financial Abuse from receiving benefits as a consequence of the death of the elder victim.

State Probate Courts (or other State courts with jurisdiction over incapacitated adults) generally have the power to order one or more of the following actions and remedies to redress Elder Financial Abuse: (i) appointment of a limited or full Conservator for the elder, with court-supervised responsibility for managing the elder's assets; (ii) revoking, suspending or modifying the elder's previously executed Powers of Attorney; (iii) the posting of bond and surety for persons handling the elder's financial affairs; (iv) court-supervised financial budgets to govern the cost of the elder's care; (v) a constructive trust imposed upon the assets of the elder that have been improperly taken; (vi) invalidation of deeds or contracts executed by the elder while laboring under a proven incapacity; (vii) invalidation of post-incapacity Wills executed by the elder; (viii) creation of a Revocable Living Trust or Will substitute for the elder under the authority of the Conservatorship statute or under the doctrine of "substituted judgment;" and (ix) invalidation of post-incapacity gifts or prior gifts induced by fraud, coercion or abuse.

Question: How can an elder's professional advisors help prevent Elder Financial Abuse?

Answer: Assembling a multi-disciplinary team of allied professionals to advise an elder on a consistent periodic basis can contribute significantly to the prevention of Elder Financial Abuse. Key members of such a team could include the following: estate planning attorney; elder law attorney; geriatric care manager; life care planner; investment advisor; government benefits specialist; home accessibility specialist; accountant; household manager; bookkeeper or bill payer service; and elder mediator. While the compensation of all of these allied professionals can be costly, the end result of their team efforts could save the elder multiples of that cost if significant Elder Financial Abuse is forestalled.

Question: How can an elder's General Durable Power of Attorney be used to perpetrate Elder Financial Abuse?

Answer: The General Durable Power of Attorney ("GDPOA") has often been described as "the most effective burglary tool since the crowbar." The

GDPOA is a technique whereby the Principal authorizes an Agent to act on her behalf until that authority is revoked by the Principal during her lifetime or upon her death. The authority granted under GDPOA is "durable" (*i.e.* it survives the Principal's subsequent incapacity or disability). While clients appreciate the simplicity and privacy afforded by this non-court-supervised alternative to a Conservatorship, this lack of formal oversight and accountability can facilitate hard-to-detect abuse of the broad authority typically embodied in the GDPOA.

Many commonly granted powers under a GDPOA can be used by an unscrupulous Agent to completely defeat the Principal's estate plan (often referred to as "hot powers"), including the following: tax-motivated transfers; gifts; exercise of Powers of Appointment vested in the principal; sale of assets subject to a specific bequest or devise in the Principal's estate planning documents; change of beneficiary designations for the Principal's non-probate assets (*e.g.* life insurance, retirement plans and accounts, or investment accounts with "transfer on death" or "pay-on death" designations); creation of joint interests embodying a "right of survivorship;" and transfers of assets to a trust that avoid the probate process. Before an elder executes a GDPOA that grants these "hot powers," the drafting attorney should conduct a full and frank discussion with the Principal regarding the scope of each and every power set forth under the GDPOA and the "worst-case scenario" for the illicit use of each power to determine if any given power could prove more problematic than helpful. Furthermore, the GDPOA could require the Principal to "opt-in" to each and every power granted under a GDPOA (especially the "hot powers" noted above) by initialing each power in the body of the document, as well as signing at the end of the document. While time consuming, this exercise could protect both the drafting attorney and the ultimate intended beneficiaries of the Principal's estate plan.

Question: What is the "defensive" use of a General Durable Power of Attorney?

Answer: In addition to the "opt-in" exercise noted above, a GDPOA could require advance notice to the Principal's heirs or beneficiaries who would be adversely impacted by the exercise of a given power. Alternatively, such required notice could be given to one or more of the Principal's independent professional advisors (*e.g.* an attorney or an accountant), who could be required to provide a written statement that the proposed transaction is in the Principal's best interests and consistent with her intent. The GDPOA could specifically set forth the Agent's duties and responsibilities, signed and acknowledged by the Agent, including the following: (i) a duty of loyalty, good faith and due care; (ii) the requirement to keep the Principal's property separate from that of the Agent; (iii) the requirement to clearly denote any of the Principal's property titled in the Agent's capacity as such; and (iv) the requirement to keep a contemporaneous record of each transaction undertaken by the Agent on behalf of the Principal, and a running account of all receipts and disbursements as Agent, together with a full annual (or more frequent) accounting to the Principal, her Conservator (if any), other persons designated in the GDPOA to receive this information, and to the Principal's executor or other personal representative within 90 days of the Principal's death. The GDPOA may also set forth specific prohibitions against the Agent using his authority to engage in self-dealing or conflicts of interest that inure to the benefit of the Agent, including any specific examples the Principal wishes to identify in advance (*e.g.* investments in the Agent's personal business or improvements to the Agent's personal residence or property). The GDPOA should also clearly outline whether and how the Agent is to be compensated for his services while acting as Agent, or reimbursed for reasonable out-of-pocket expenses incurred in the course of rendering such services.

Question: What about appointing co-Agents under an elder's GDPOA?

Answer: Appointing co-Agents under a GDPOA provides immediate oversight to the agency relationship. Absent a concerted conspiracy of ill-intentioned co-Agents, requiring the unanimous consent of the co-Agents before any action can be taken under the authority of the GDPOA could provide significant protection for the Principal.

Question: Who should the elder appoint to serve as an agent under her GDPOA?

Answer: It is obvious that the prudent choice of trustworthy Agents is integral to the proper and effective use of the GDPOA. Mere relationship, by blood or otherwise, is an insufficient basis for vesting such broad authority in a person. In assessing appropriate candidates to serve as an Agent or co-Agent under her GDPOA, the Principal should be realistically mindful of the characteristics of those who perpetrate Elder Financial Abuse, as discussed above.

Question: How can a funded "Revocable Living Trust" be used to prevent Elder Financial Abuse?

Answer: The Revocable Living Trust ("RLT") requires that title to the elder's assets be transferred to, and held in the name of, the Trustee during the elder's lifetime. Typically, the elder retains the right to revoke, amend or otherwise alter the provisions of the RLT during her lifetime (while competent to do so), by a written instrument executed with the same formalities as the original RLT agreement. If there are concerns about the elder being subjected to the undue influence of third persons, it may be advisable to require the consent of the Trustee (or another designated third party) to effectuate a revocation, amendment, or alteration of the

RLT agreement. Ideally, the elder should not serve as the sole Trustee, lest a perpetrator gain inappropriate access to the assets of the RLT before her diminished capacity is suspected or verified. The Trustees of a RLT can serve as the "gatekeeper" with respect to the elder's assets, restricting the access of those persons who would be tempted to engage in financial abuse or exploitation of the elder. A co-Trustee provides a "second set of eyes" to assist the elder in evaluating financial proposals from third parties and making the necessary follow-up decisions while the elder is able and inclined to participate in these determinations. As the elder's inclination or capacity to be involved in such matters declines (whether because of age, infirmity, or general disinterest), the co-Trustee can gradually take more responsibility as the elder cedes it. The co-Trustee who succeeds the elder upon a finding of incapacity is generally already knowledgeable about the elder's financial affairs and needs, thus facilitating the transition when the elder steps down as a co-Trustee.

Question: Can a Revocable Living Trust be used to address issues other than asset management?

Answer: The provisions of a funded RLT that apply during the client's lifetime can be customized to address the client's most significant personal concerns, including that her assets be used to support her in her accustomed standard of living (and not a lesser standard envisioned by those who would inherit what is left upon the elder's demise). Health care management issues are a critical concern of many elders, who fear that their adult children (or other beneficiaries or heirs-apparent) will eschew expensive in-home caregivers in favor of nursing home care paid for by government benefit programs, to assure a larger inheritance upon the death of the elder. The RLT provisions could require the Trustee to facilitate the hiring, compensation and retention of in-home caregivers for as long as this is medically prudent for the elder. A professional Geriatric Care Manager ("GCM") can work with the Trustee to develop and implement a care plan that allows the elder to "age in place" at home. Most GCMs can also assist in identifying potential exploitation risks faced by an elder.

Question: Who should serve as the Trustee of a funded Revocable Living Trust?

Answer: In order for a RLT to be effectuated as the elder intends, *i.e.* the full use of the elder's assets to fund a comfortable and fulfilling lifestyle, it is imperative that a line-up of disinterested Trustees be identified at the outset, *i.e.* persons who have no interest, as a remainder beneficiary of the RLT or otherwise, in the assets which remain in the RLT upon the elder's death. Human nature being what it is, even the best intentioned remainder beneficiary or heir could be tempted to skimp on distributions for the elder during her lifetime to help assure a larger benefit for himself upon the death of the elder. Options for disinterested Trustees are as varied as the particular facts of each client's life, and may ultimately be determined by the size of the RLT principal (since most corporate Trustees have relatively high minimums). Increasingly, private estate planning or elder law attorneys are agreeing to serve as Trustee of their client's RLTs or as co-Trustee with a corporate fiduciary.

Question: What is a court-appointed Conservator, and what role could a Conservator have in perpetrating Elder Financial Abuse?

Answer: A Conservator is a fiduciary appointed by a Probate Court (or other State court having jurisdiction over incapacitated adults), who remains under constant court supervision as the Conservator manages the assets of the "Ward." Notwithstanding the procedural safeguards embodied in the statutes of all 50 States and the District of Columbia concerning the appointment of Conservators and their monitoring after appointment, egregious abuse by court-appointed Conservators contributes significantly to the plague of Elder Financial Abuse. Such abuse could be forestalled if prospective Conservators were subjected to basic criminal and financial background checks, as well as a credit check and a fingerprint check. Many State courts do not require these readily available background checks. However, even if State law does not require such security background checks, an interested party could request that the court order such measures prior to the appointment of the Conservator. Although all States require statutorily mandated reports and accountings to be filed by Conservators, not all State courts adequately monitor and review the filing of such reports. Many State courts fail to sanction delinquent or malfeasant Conservators using available statutory penalties, such as removal from office, contempt orders, denial of compensation, or surcharge on a posted bond. State courts also often routinely fail to communicate with federal agencies about abusive Conservators. In many situations, the same person who is serving as a State court-appointed Conservator is also simultaneously serving as a Representative Payee for the elder's Social Security benefits, Veterans Administration benefits or federal retirement benefits.

Question: How can elder mediation help prevent Elder Financial Abuse?

Answer: Elders, their families and their advisors are increasingly using mediation as a tool to prevent the escalating conflict that often leads to Elder Financial Abuse. Mediation often results in faster resolution of disputes, allows the voice of the elder to be heard, and affords greater privacy to the parties than does litigation. Elder mediation is a voluntary alternative dispute resolution process. Although a court may require parties to attend mediation, it cannot order them to reach an agreement. Some of the myriad issues that may be appropriate for elder mediation in the context of forestalling potential Elder Financial Abuse could include the following:

a. Less-restrictive alternatives to a court-supervised Conservatorship for the management of the elder's care and finances (*e.g.* a RLT or GDPOA).

b. Identifying the proper persons to serve in fiduciary supportive roles for the benefit of the elder (*e.g.* as Trustee under a RLT or as Agent under a GDPOA).

c. Resolving disagreements between co-Agents or co-Trustees.

d. Identifying which allied professionals (*e.g.* investment advisors, attorneys, and accountants) will be retained to serve the elder's professional services needs.

e. Coping strategies to deal with the consequences of the elder's diminishing capacity in areas of financial management.

f. Assessing the financial implications of various residential options for the elder (*e.g.* aging in place at home with private caregivers versus a high-end "continuing care retirement community") and the options for funding the costs of same (*e.g.* the proposed sale of the elder's home or other investments).

g. The elder's problems with consumer credit or inappropriate spending.

Question: Why should I care about Elder Financial Abuse?

Answer: Elder Financial Abuse is a societal plague that impacts persons in all social classes and economic strata, from a *pro bono* client living alone in her government-subsidized studio apartment, to Brooke Astor in her opulent Park Avenue home surrounded by "caring" family members. 2013 was the "Year of Elder Abuse Prevention," sponsored by the federal Administration on Aging, an agency of the federal Administration for Community Living, to protect elders and raise awareness about elder abuse, neglect and exploitation. Yet, the plague continues.

The following is excerpted from an article by Phillip C. Marshall, *"Beyond Brooke: Brooke Astor and the Cause of Elder Justice,"* published in *Bifocal*, a Journal of the ABA Commission on Law and Aging, Vol. 36, No. 3, January-February 2015, at 67-71.

"To be complacent about elder justice is to be complicit in elder abuse.

In fact, our national negligence is a proximate cause of elder abuse.

When our elders lose their sight, it's natural; when we turn a blind eye to their plight, it's negligent.

When our elders lose their hearing, it's natural; when we are deaf to their cries for help, it's negligent.

When our elders lose their voice, it's natural; when we choose not to voice our concerns, it's negligent.

And when our elders' capacity is reduced, it's natural; when their physical and financial assets are reduced, without consent, it's criminal."

Readers of this series may be ideally situated to inform clients, friends and family members about the scope and devastating impact of Elder Financial Abuse. Educating the multi-disciplinary allied professionals who serve our elders is a critical first step towards stemming the rising tide of this plague.

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