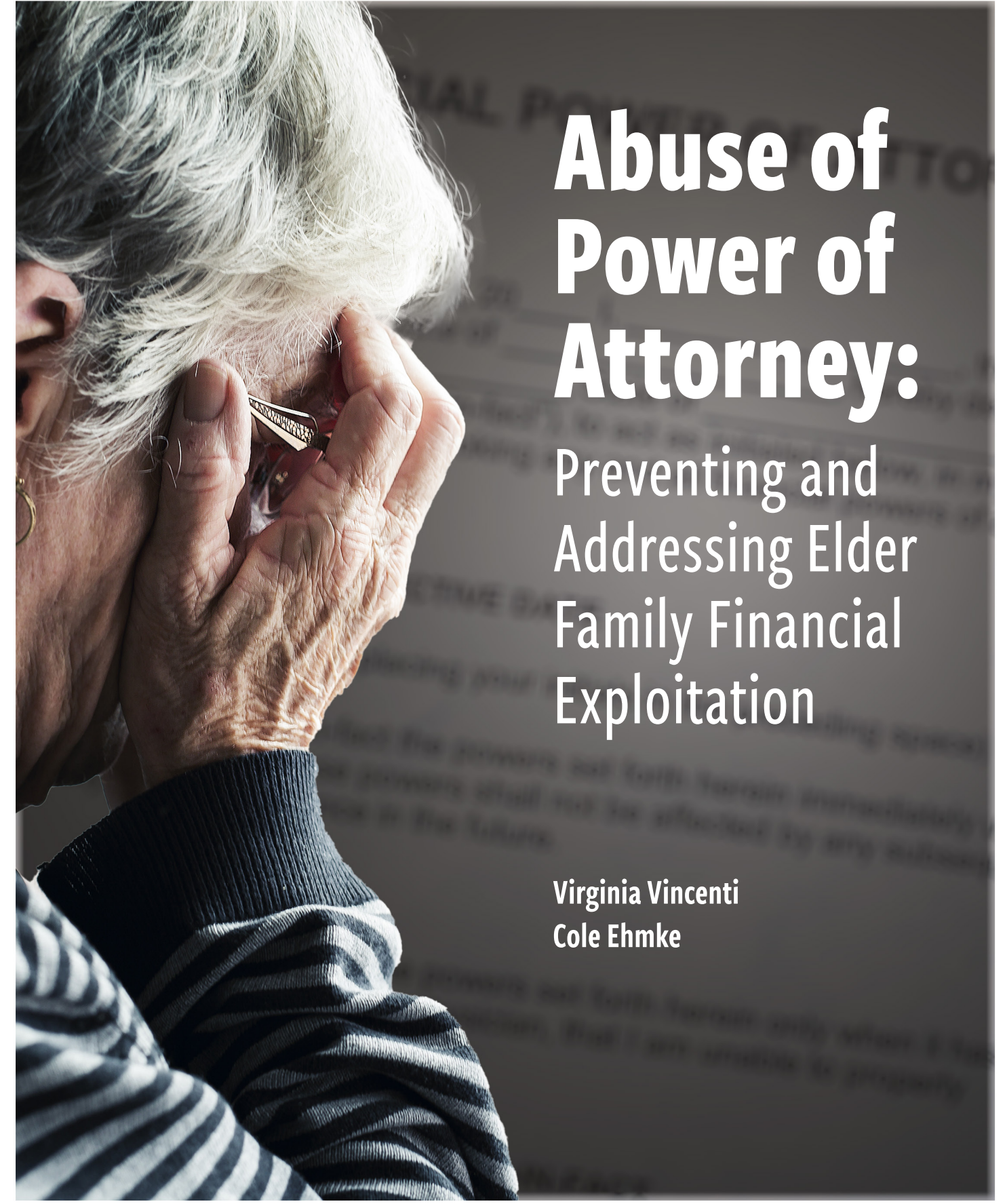




Abuse of Power of Attorney:

Preventing and
Addressing Elder
Family Financial
Exploitation

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Abuse of Power of Attorney: Preventing and Addressing Elder Family Financial Exploitation

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Abuse of Power of Attorney: Preventing and Addressing Elder Family Financial Exploitation

Virginia Vincenti and Cole Ehmke
University of Wyoming

A power of attorney is one of the most important estate planning documents you can create, but it is also one that can be misused.

A power of attorney (POA) allows a person you appoint – your “agent” or “attorney-in-fact” – to act in place of you – the “principal” – for financial purposes when and if you ever become incapacitated. In that case, the person you choose will be able to step in and take care of your financial affairs.

Those with POA are expected to act in the best interest of the principal they represent. Unfortunately, a power of attorney in the wrong hands or with too much power can cause tremendous problems. The largest source of financial exploitation is family members, especially adult children, who were granted POA by their older family member(s) in their estate plans. It often results in reduced wealth, emotional and psychological damage, diminished health, increased hospitalizations, earlier admission to nursing homes, and earlier death. The effects ripple to the broader family through emotional and interpersonal stress, family fractures and estrangements, and weakened family units. Families may feel the effects of stress and financial loss through multiple generations.

While it isn’t possible to entirely prevent the possibility of abuse, there are steps you can take in selecting the agent and drafting the document to reduce the chances.

This publication includes six parts:

1. **What is Elder Abuse?** Provides definitions of elder abuse and elder financial exploitation.
2. **Power of Attorney.** Describes POAs and their use, especially durable POAs, and includes suggestions for reducing potential misuse by agents.
3. **Elder Family Financial Abuse.** Describes the nature and extent of elder family financial exploitation (EFFE).
4. **Risk Factors for Elders, Perpetrators, and Families.** Lists certain characteristics or circumstances that put elders and families at greater risk of becoming victims, or which increase the likelihood that perpetrators will behave inappropriately when managing someone else’s funds.

5. **Elements of Fraud.** Describes elements that must be present for fraud to occur: pressure, opportunity, and rationalization. These motivations and justifications might induce someone to steal, and awareness of them can help prevent POA abuse.
6. **Responding to Suspected Exploitation.** Identifies steps to take if you suspect someone is experiencing financial abuse, including who must report suspected abuse, where reports can be made, and legal actions to take (both civil and criminal) to stop abuse or recover funds.

This publication is for adults of any age who wish to use a POA to plan for potential incapacity. It is also for professionals in financial planning, banking, health care, long-term care, counseling/therapy, religion, and law enforcement, and for those in the judicial system (attorneys and judges).

Table of Contents

Abuse of Power of Attorney: Preventing and Addressing Elder Family Financial Exploitation.....	1
Part 1: What is Elder Abuse?	2
Part 2: Power of Attorney.....	3
Part 3: Elder Family Financial Abuse	9
Part 4: Risk Factors for Elders, Perpetrators, and Families.....	11
Part 5: Elements of Fraud	13
Part 6: Responding to Suspected Exploitation	14
Summary	18
Wyoming Resources	20
National Resources.....	21
Example Acknowledgment Form	22
Endnotes and References.....	23

Part 1: What is Elder Abuse?

Elder Abuse: As defined by the Centers for Disease Control and Prevention (CDC), “Elder abuse is an intentional act, or failure to act, by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a risk of harm to an older adult.”¹

Elder Financial Abuse or Exploitation: Defined in the 2020 Reauthorization of the Older Americans Act as: “...the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, (who) 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.” 42 U.S.C. § 1395 et seq., 1396 et seq. (18) (A).

Financial Abuse or Exploitation (per the CDC): “The illegal, unauthorized, or improper use of an older individual’s resources by a caregiver or other person in a trusting relationship, for the benefit of someone other than the older individual.”

SELF-NEGLECT AS ANOTHER FORM OF ELDER ABUSE?

Self-neglect is another form of abuse when older persons engage in behaviors that threaten their own health and safety. Typically, it occurs when mentally competent older persons fail to provide adequate hygiene, food, water, medications, shelter, or safety precautions for themselves. Self-neglect, by definition, does not involve perpetrators.



IT HAPPENED: POWER OF ATTORNEY PROBLEMS

The University of Wyoming, as part of a multistate research project, conducted interviews of families who experienced elder family financial exploitation (EFFE). These excerpts come from real cases and illustrate the problem (false names were created):

1. My sister, Hilary, had been given a copy of the POA document naming both of us as co-agents so she could pay bills when Mom and Dad took weeks-long trips. Once when Mom was in the hospital, Hilary got Mom to sign a document to set up a savings account, which was kept secret from me for a long time. When I discovered clues that it existed, Hilary denied that there was such an account. After months of pressing Hilary to reveal it, I discovered that it had Hilary’s and her husband’s names on it, not as POA agents, but as joint owners with Mom with rights of

survivorship. They also had gotten Mom to sign a new POA document appointing Hilary’s husband, Eddie, as another agent.

2. Eddie took cash and possessions out of the house and tools and equipment from Dad’s shop for himself and sold other large equipment—the truck, the car, the camper, a tractor, and hay wagons. He had only one check. The rest were cash transactions—no receipts.
3. Hilary and Eddie were smart enough not to blatantly take \$20,000 that could be traced to them, but they did so many things, various things—there were seven or 10 different pharmacies where prescriptions were charged, creating suspicion that they were using the elder’s funds to pay for their own prescriptions.

Part 2: Power of Attorney

A power of attorney (POA) for finances is a legal document that allows one person (the principal) to appoint another person (the agent, or attorney-in-fact) to act on the principal's behalf with respect to personal financial affairs. A principal can create another POA that designates someone to be responsible solely for medical decisions, often referred to as a *medical (or health-care) POA*. Generally, the purpose of executing any POA document is for principals to appoint a person to act on their behalf in the event they are unable to act for themselves in the future.

They are often created because of concerns about later mental or physical disability, but POAs can also be created for convenience (say, if the principals were going to travel and wanted another person to perform business duties for them).

The principal has the authority to choose whether the POA agent's authority becomes effective immediately or whether the authority becomes effective only upon a determination that the principal no longer has the mental and/or physical capacity to manage his or her own affairs. The authority granted to the agent under the POA may be revoked at any time by the principal.

Loss of capacity is usually declared by a physician's certification. The authority of the agent automatically terminates upon the death of the principal. For details, see the box "Types of Power of Attorney Documents" sidebar.

Advance planning can reduce the risk that a POA agent will misuse the powers granted, causing a principal

POWER OF ATTORNEY TERMS

Principal. The person executing a POA who grants the power to their agent.

Agent (or attorney-in-fact). The person appointed to act in a fiduciary duty on behalf of the principal under a financial POA. Sometimes this person is referred to informally as the POA.

Fiduciary. A person who holds a legal or ethical relationship of trust and confidence, often relating to finances; this is a duty to always act in the best interests of the principal and never for self-serving purposes. An agent under a POA is one example. Trustees, guardians, and conservators are other examples of fiduciary roles. In Wyoming, the fiduciary duties of an agent under a POA are set forth in Wyo. Stat. § 3-9-114, "Agent's duties". Check the state laws in other states when necessary.

Guardians and Conservators. State laws vary, but in Wyoming, guardians and conservators have different definitions. A guardian is appointed to exercise the powers granted by the court, generally to represent the best interest of the principal. A conservator is given custody and control of only the property of the ward/principal. The same person can serve in both capacities. If someone planned ahead and signed a durable POA for finances and health care prior to becoming incapacitated, he or she will not need a conservator, because their POA agent can manage their financial affairs. See Wyo. Stat. Ann. § 3-1-101 through 3-1-111.

Incapacity. Generally thought of as the inability of an individual to properly manage her/his personal affairs. Whether an individual has incapacity is determined by a legal test of one's decision-making ability, which may be impaired as a result of mental illness, developmental disability, acquired brain injury, or diseases associated with aging, such as Alzheimer's and dementia. The principal has the ability to choose how his/her incapacity will be determined under his/her POA. Many states are working to expand their definitions of vulnerable adults to include vulnerability beyond current legal definitions of capacity.

Competence. A person may have capacity, but lack knowledge or skill to make needed decisions. Persons, depending on their health and experiences, may gradually lose competence as they age and become increasingly vulnerable.

Undue Influence. According to the American Bar Association and the National Center on Law and Elder Rights, undue influence occurs when people use their role and power to exploit the trust, dependency, and fear of others to deceptively gain control over the decision-making of another person. We are all influenced by people we have relationships with, and who can affect the way we choose to spend our money or share our assets. Families or others may worry that an older person has been inappropriately pressured, manipulated (sometimes through flattery, fear, and/or deception), or taken advantage of, because he or she has memory problems or is dependent on another person.

to become a victim of elder financial exploitation or other forms of abuse, the subject of guardianship proceedings, or both. With proper planning, principals can help protect themselves, while maintaining control over their lives.

What is a durable power of attorney?

A “durable” POA means the agent’s authority remains in effect after the principal becomes incapacitated and is unable to handle matters on his/her own. Durability eliminates

the need to go to court to have a conservator or guardian appointed, which involves declaring the principal as incapacitated. This concept is so useful that under Wyoming law all new powers of attorney are durable unless the POA specifically states otherwise. With a well-drafted durable POA, including documents with protective features, older people can take steps to protect their interests, indicate how they want and do not want matters handled, and name who they want handling their affairs.

TYPES OF POWER OF ATTORNEY

Durable General POA can become effective immediately upon the principal’s signing of the POA or be “springing” which means it becomes effective upon the incapacity of the principal. If the POA is springing, the principal must include in the POA the test for determining incapacity. Usually, the principal requires at least one health-care provider (usually the principal’s treating physician) to determine incapacity. Alternatively, the principal may allow his or her attorney or even the agent to make the determination. However, it is best to choose someone or a second person who has no conflict of interest, nothing to gain by declaring the principal incapacitated. The point is that the principal can choose how the incapacity will be determined. Whether the POA is effective immediately or springing, it is in effect if the principal is incapacitated.

Having a POA ensures that a legal conservator does not have to be appointed in the event the principal becomes incapacitated. Again, the principal has complete control over who is to be his or her agent. Generally, the agent is a fiduciary, required to act on behalf of principal in a manner that is consistent with what the principal would have done and in the principal’s best interest. The scope of authority under a POA often includes the power to pay bills, open financial accounts, manage personal finances, and sell property. However, the principal can place restrictions on the powers of the agent. A POA arrangement is terminated when the principal revokes the authority of the agent or when the principal dies.

Limited POA is often used for limited purposes, and often for only a limited period of time. As with a durable POA, a limited POA may be effective immediately or become effective only upon a certain triggering event. This type of POA can be used when a principal plans to go on a trip or anticipates a brief period of incapacity (such as when he or she will be in the hospital), but expects to fully regain

decision-making ability and capacity. One example is a POA that grants the agent authority to sell a home or other piece of real estate.

Medical or Health-Care POA is a type of **advance directive** in which a principal appoints a person to make medical decisions when the principal is unable to do so. In some states this directive is called a **durable POA** for health care or a health-care proxy. It can be used to grant power to make health-care decisions such as giving, withholding, or stopping prescriptions, medical treatments and services, or diagnostic procedures. As a practical matter, it is generally recommended that the principal execute a separate POA document for financial affairs and medical POA or advance health-care directives. The same or different persons can be appointed agents for these separate POAs.

Living Wills or Advance Health-Care Directives.

Advance directives guide choices for doctors and caregivers in making medical decisions if the principal is terminally ill, seriously injured, in a coma, in the late stages of dementia, or near the end of life. Agents under a medical POA will have a duty to make such medical decisions on behalf of principals in accordance with their wishes as they may be set forth in a living will or advance health-care directive. POA agents for health care or guardians who make medical decisions for principals are just as important in preventing EFFE as professionals making financial decisions, because sometimes perpetrators use medical decisions to support or hide their financial abuse.

Ability to Amend and Revoke. A principal has the authority to amend or revoke his/her POA documents at any time, so long as the principal has the capacity to do so. This means that the principal can modify the terms or scope of authority granted under the POA, as well as remove or replace the agent at any time.

To execute a POA in Wyoming, the principal must simply sign the POA document before a notary at a time when the principal still has the legal contractual capacity to execute the POA. This means the principal must understand the nature and effect of the POA. Because state statutes vary, check the laws in the state where the POA document was executed, as well as the laws in the state in which the principal is currently residing, to confirm the necessary requirements for properly executing a POA. A POLST (Provider Orders for Life Sustaining Treatment) is a legal medical order for specific medical treatments a patient signs after receiving a diagnosis of an advance illness or frailty at any age. It can be updated as the patient's health status changes. It does not allow a surrogate decision maker like a Health care POA does.

What is the agent's duty to the principal?

As a fiduciary, the position of an agent under a POA is one of trust and confidence. The agent is expected to place the principal's interests ahead of their own. The person serving as POA agent has a duty to follow the direction of the person granting the authority; however, the agent must act in the principal's best interest when the principal can no longer direct the agent. The agent must act in good faith, and only within the scope of authority granted in the POA. The agent owes specific duties to the principal, including to act loyally, prudently, and with care, to act with competence and diligence, to maintain accurate and detailed records, and to avoid creating any conflicts of interest. Agents must maintain precise and truthful banking and bookkeeping records on the principal's behalf, and be able to account for all of the money and property they handle. Unless the POA states otherwise, the agent is entitled to reimbursement of expenses and to reasonable compensation for their services.

A good resource for a POA agent acting in a fiduciary capacity is the publication *Managing someone else's money: Help for agents under a power of attorney*, from the U.S. Consumer Financial Protection Bureau.

Further, an acknowledgment form, signed by the agent, can help make clear what duties are required of the agent, and provide evidence that the agent understands the fiduciary role on behalf of the principal. The Wyoming statutory POA form includes an acknowledgment form for the agent. Additionally, as with the POA document itself, the principal may customize the agent's acknowledgment form. An example is at the end of this bulletin.

How can I avoid problems when creating a durable power of attorney document?

Durable powers of attorney are important legal documents granting significant access to and authority over your assets and personal financial affairs. Typically, POA agents are not subject to oversight by a court or third party. If principals become incapacitated and can no longer monitor the actions of the agent, this lack of oversight for a broadly written legal document makes it very easy for agents to abuse the authority they have been granted. For this reason, a POA has been called by some a "license to steal." Choosing the wrong person to serve as your POA agent can lead not only to financial exploitation, but also to other forms of abuse such as emotional/psychological, physical, and sexual.

To avoid these negative consequences, two things are needed. First, appropriate language should specifically set forth the scope of authority under which the agent can act. Second, a trustworthy and reliable individual should be appointed as agent. Even the best-drafted POA is subject to misuse without a reliable and trustworthy person serving as agent. Read about the risk factors (personal characteristics) that increase the potential for POA trust to be betrayed in Part 4.

In the POA document, a principal can include or limit specific actions that agents can perform, such as

- conducting any business with any banking or financial institution, including credit card companies, *e.g.*, make deposits/withdrawals, obtain bank statements, write checks to pay bills, and execute contracts,
- accessing safe deposit boxes registered in the principal's name,
- settling accounts, claims, and disputes, and demand, sue, collect, adjust, settle, or write off any debts owed the principal in any manner deemed legal and appropriate for the situation,
- collecting any Social Security, Medicare/Medicaid or other medical insurance payments, disability grants, unemployment benefits, pension payments, or other government benefits,
- investing money and monitoring/changing investments,
- preparing, signing, and filing income and other tax returns, and
- obtaining documents, *e.g.*, death certificates for other relatives and information from any relevant governmental agency.

Gifting Provisions. In general, it may also be advisable to prevent an agent from gifting assets. Without a prohibition or limits, an agent may be tempted to gift the principal's assets to himself, his family, his associates, or others against the principal's best interests. Under Wyoming law, an agent may not make a gift of the principal's property unless the POA expressly gives them the authority to do so. However, in many estate planning scenarios, it is important to grant the agent authority to make gifts. Consider including language to prevent the agent from making gifts to himself/herself or otherwise receiving or benefitting from the gift. Another option could be to allow for the appointment of a special agent, such as a disinterested financial advisor, accountant, or attorney, to have the limited authority to make gifts on the principal's behalf if needed for any estate planning, tax planning, or Medicaid planning purposes.

Appointing multiple agents. Another safeguard is to appoint multiple or co-agents to act at the same time. The principal may choose to limit the powers of each agent, so that there is a balance of power and a system of checks and balances to prevent one agent from misusing the authority granted to him/her under the POA. Limiting powers to specific activities may make management of an overall estate more complicated because more people would need to be involved to conduct general business, but it could also reduce the risk of EFFE, depending on the limitations included.

In some situations, it might be more protective to have a co-agent or a monitor who is also bound by fiduciary responsibility designated in the POA and advance directive documents. This means that co-agents or monitors would be legally required to be attentive, to know what is happening, and to report suspected misuse of powers designated by the principal. It is best if people selected as co-agents have a history of working well together and a commitment to do shared decision-making. (See details about reporting misuse later in this bulletin.) As a monitor, a trusted relative or friend designated in a POA document can be given authority to access accounts to monitor transactions without authority to make transactions.

Why shouldn't I use do-it-yourself forms?

While do-it-yourself POA forms are inexpensive and readily available on the Internet, they are a one-size-fits-all solution that often lack the specific language needed to protect either the principal or the agent. Using a do-it-yourself form also bypasses the thorough process of thinking through and selecting the appropriate scope of authority granted to

the agent. And they certainly don't help evaluate the risk factors of prospective POA agents. Without clear and proper language in the POA document about many issues, even well-intended agents who undertake measures to preserve the principal's estate or allow them to remain living at home could find themselves facing accusations of abuse or exploitation. The shortcomings of the document may not even become apparent until it is too late to fix the problems. Further, a one-size-fits-all option may not comply with state-specific rules pertaining to the POA, potentially causing problems with the effectiveness and enforceability of the POA in a given state.

It is best to work with a trusted, competent attorney to prepare a customized POA to ensure the wishes of the principal are put into effect, and that both the principal and the agent are protected. Although it may seem like an unnecessary cost at the outset, the legal fees spent on preparing a well-drafted and individually tailored POA will be much less than the potential cost of the misuse and abuse that may occur under a do-it-yourself form. To find such an attorney, word-of-mouth is a good way to start. The bar association in the state where the principal resides is another resource. It can help you find an attorney and it may have a program to charge a reduced hourly rate for people with lower incomes.

In addition, bar associations have measures in place to protect residents from unethical behavior on the part of attorneys. Complaints may be registered with the association, and their registry may be reviewed to help you select an attorney.

Setting up the power of attorney to protect all involved, including the agent

Sometimes even legitimate use of a POA document can lead to suspicions of abuse. For instance, if a principal wants to protect his/her estate from being consumed by the costs of long-term care by becoming eligible for Medicaid, then some principals might engage in financial planning that reduces their estate to be poor enough to qualify for Medicaid. In that case, the agent's activities may look suspicious.

An agent who gifts or transfers assets for less than fair market value without having clear authorization to do so in the POA could face accusations of criminal abuse, exploitation, and abandonment. Serious problems could also arise if an agent chooses to pay himself/herself or other family members for providing home care for the principal without having clear permission included in the POA. These might include denial

of Medicaid eligibility for the principal or other legal liability for the agent.

It is, therefore, important to consult with a trusted estate planning attorney who has experience in elder law and who is willing to consider proactive and possibly unconventional approaches to prevent abuse during the development of a POA document. Likewise, long-term care planning in general is an intricate and extremely complex process that should not be undertaken without the advice of an experienced elder law or long-term care asset-protection attorney. The many Medicaid qualification rules and regulations regarding the transfer or gifting of assets are beyond the scope of this bulletin but be cautioned that violation of Medicaid qualification rules may result in extended periods of ineligibility for Medicaid services, and any fraudulent transactions or unauthorized gifting of a principal's assets may expose the agent and any other involved individual involved to both criminal and civil liability.

What if I do not think any of my relatives are good candidates?

One method to protect an elder from abuse and exploitation may be to have another set of eyes watching what the agent does. Some people appoint two co-agents to serve simultaneously, believing that if one is busy the other can do the task, they can watch out for the other's missteps, and they can divide the responsibilities to fit their expertise. The concept can be appealing in theory, but may be harder to successfully carry out. The key to success is choosing the right two co-agents. (See the Perpetrator Risk Factors in Part 4 for characteristics to view with caution). If no suitable candidate is identified, an institution or professional with relevant knowledge and skills might be the best choice.

Appoint Co-Agents

If the principal wants to consider appointing co-agents to share responsibilities and increase accountability, then all parties need to understand the law governing multiple agents under a POA and the standard for a co-agent's liability for the actions of the other agent. Under the Wyoming Uniform Power of Attorney Act, if two or more agents are acting, the default rule is to allow each co-agent to exercise his/her authority independent of the other. See Wyo. Stat. § 3-9-111(a). Further, unless the POA document provides otherwise, the co-agent that is not involved in the wrongdoing or abuse of power under the POA will not be held liable for the acts of the other agent. See Wyo. Stat. § 3-9-111(c). However, if a co-agent has actual knowledge

that a breach of fiduciary duty has been committed by the other agent, the co-agent then has an affirmative duty to take action to protect the principal and the principal's assets. In Wyoming, the person must make this report with a law enforcement agency or the Wyoming Department of Family Services (DFS-Adult Protective Services) (or report to APS in the state where the principal resides). Anyone who in good faith makes such a report pursuant to state law is immune from civil liability for making the report. See Wyo. Stat. § 35-20-103.

The principal may deviate from this general rule and specifically provide whether the co-agents must act together and whether the requisite level of approval is unanimous decision or majority vote (if more than two acting co-agents). The principal could further establish any other rules or procedures that establish a system of checks and balances for the co-agents to afford the principal some additional level of comfort and protection against potential wrongdoings by one agent.

Other reasonable co-agent arrangements could be made, depending on the expertise and availability of the agent(s) to handle specific responsibilities. For instance, one person could handle medical decisions (under a health care POA), whereas another could handle financial decisions (though they would have to agree about paying for care, and this would have to be specifically addressed in both the POA and any medical POA or advance directive). Another option could be for one to handle operational support, such as getting groceries and taking the principal to doctor's appointments, whereas the other agent pays the bills and handles the finances. Agents do not have to live near the principal if they are able to check in frequently with each other and the principal.

Appoint Successor Agents

Another practice is to name the second agent as a successor—a backup or contingent—who serves when the first appointed agent is unable or unwilling to perform the duties. That way, only one agent is responsible and has the legal authority to act on behalf of the principal at a time. If the current agent abuses his/her power, the agent can be removed and replaced. While including language in the POA document that requires the agent to consult with family members about proposed action may sound like a solution, it will only work if the agent and the persons to be consulted are on good terms. Thus, their personal characteristics and relationships and interpersonal skills should be important considerations if co-fiduciaries are desired.

REVOKING A POWER OF ATTORNEY

Unless incapacitated, the principal may revoke a POA at any time by signing and dating a new document clearly expressing the intent to revoke the current POA document. There is no legal duty to immediately appoint a new attorney in fact, but it would usually be in the best interest of the principal to do so.

As a precaution, notice of the revocation and a copy of the new POA document with the new POA agent should be provided to all banks, financial institutions, investment firms, and all other interested parties or third parties involved in the principal's affairs or with whom the agent may have been dealing.

Notice of such revocation should be provided to the agent whose authority was revoked *after* all others have been informed. Otherwise, an unscrupulous agent could continue to act fraudulently under a revoked POA document without the principal's knowledge. Working with unsuspecting third parties, the agent could continue to perpetrate the very misdeeds that were the reason for the revocation.

Reasons for revocation include

- Change of mind of principal (should be based on knowledge of risk and protective factors, not just emotion; however, a competent principal is free to have a change of mind for any reason);
- Agent misuse of powers granted, or becoming incapacitated;
- Agent and/or alternate not wanting to continue to perform the duties; and
- Dissatisfaction with agent's decision-making.

Require Accountings

Likewise, it might sound like a good idea to include language in the POA document that requires the agent to provide regular accountings to the principal and others whom the principal may designate. In practice, however, such requirements can be difficult to enforce if the agent fails to comply. Traditionally, the agent's duty to account is owed only to the principal. When the principal becomes incapacitated, he/she may not be able to pursue or even understand an accounting. Under Wyoming law, this concern is addressed by allowing the principal's family members and other interested persons the legal standing to demand an accounting and pursue further legal action and judicial oversight in the event the agent fails to cooperate with those who have standing. Those interested persons are the spouse, guardian, health-care agent, parents, descendants, presumptive heirs, named beneficiary(ies), caregiver, or any person being asked to accept a POA. See Wyo. Stat. § 3-9-116.

Even though this relatively new law (in place since 2017) is an improvement from the old law in which the principal was the only one entitled to an accounting, the downside is that interested persons may ultimately have to petition a court to force a recalcitrant agent to provide an accounting, which involves expense and delay. Often at this point, it may be too late, as the agent may have already depleted the principal's assets and may attempt to cover up any wrongdoing by falsifying accounting records. Without oversight authority that allows for documents to be obtained immediately (as evidence), if the perpetrator is clever, it is likely no one will even know the exploitation is occurring.

In summary, laws addressing powers of attorney have evolved over the years to expand protections for a principal. A well-drafted POA document can help to avoid elder abuse, but it needs to be customized to each principal's unique and individual situation. For the best protection, consult with a trusted, respected estate planning attorney who has experience in elder law and who is willing to consider incorporating non-traditional preventative features.



Part 3: Elder Family Financial Abuse

What is elder abuse and family financial exploitation?

Elder financial exploitation occurs when someone acts to the disadvantage of an older person and the stakeholders named in the principal's will. Elder family financial exploitation (EFFE) is "the illegal or improper use of the funds, property, or assets of people 60 and older by family members, most often adult children."⁵ This crime is often committed with other forms of abuse simultaneously, such as emotional, psychological, physical, sexual, abandonment, and neglect.

Does elder family financial exploitation happen often?

Elder financial exploitation by family members in the U.S. has been estimated to occur for about 5.2% of adults over age 65⁶ and is a growing problem nationally, with family members having been identified as the largest group of perpetrators⁷. Persons of all income levels,⁸ including those

whose only income may be Social Security and/or a small pension, are exploited. The national prevalence is impossible to determine accurately, because of variations in state data collection and underreporting by victims and their close relatives and/or friends who might suspect abuse. Studies have estimated that there are as many as 24 unreported cases for every reported case with as few as only one out of 44 reported financial abuse cases receiving service from agencies serving elder abuse victims.⁹

Why is the problem growing?

With the aging of the U.S. and global populations and people living longer, more older adults are expected to fall victim to the crime of EFFE, regardless of the amount of their wealth or income. Those who live in rural areas may be more vulnerable, because of isolation and distance from law enforcement, Adult Protective Services' offices, and other services. Again, careful selection of POA agents and incorporating preventive features in POA documents is

imperative—as such documents give enormous power to the agent who could exploit the principal.

What are the consequences of elder family financial exploitation?

Elders who experience EFFE are more likely to experience diminished financial, emotional, psychological, and physical health and die earlier.¹⁰

Many victims end up losing about half of their wealth, or even become impoverished. The financial losses often extend to family members who attempt to intervene when EFFE is suspected or discovered. For some, efforts to end the exploitation have led to bankruptcy. EFFE can also financially impact businesses, Medicaid (when elders are impoverished by EFFE), social service agencies, and charities included in elders' wills.¹¹

Non-financial consequences for victims and other family members¹² can include destroyed family relationships, psychological impacts such as generalized loss of trust, and health-related stress conditions. In short, the financial and other costs associated with this crime are staggering, especially if unreported cases are considered.

OK, maybe this is a big problem, but it will not happen in my family

Too many victims and their family members make statements like this early in the POA process; however, the

statistics show that it happens more frequently than we might expect. What's more, perpetrators who are members of the family, especially adult children, often get much more from victims than non-family members. They tend to use more means and possibly more frequent small transactions, making detection harder than for large, one-time scams often directed at older adults.

People also tell themselves things such as: "It's not my place in the family to speak up," or "It isn't as bad as it appears. My suspicions must be wrong," and "The relative (who is serving as the POA agent) would never do anything wrong." If there is wrongdoing or even suspected wrongdoing, it IS your obligation by law to speak up, especially if you suspect laws may have been broken or trust betrayed. If you sense that something is wrong, you may be right. The person appointed POA agent might be skillfully covering up their actions.

Other false assumptions about who should be selected as fiduciaries, such as POA agents, are that males are more responsible at financial management than women and that the best persons to give all powers to are those who live closest to the elders. These assumptions about gender and geographic proximity to the elders (principals) are not appropriate criteria for choosing fiduciaries.



Part 4: Risk Factors for Elders, Perpetrators, and Families

Risk Factors for Elders

Even with imperfect statistics on elder abuse, we know that elders who have certain characteristics or circumstances such as isolation and lack of social support are at greater risk. Losing friends and family members, along with losing physical and mental capacity, often isolates elderly people. Additional factors are in the table below.

Risk Factors for Perpetrators

Perpetrators of elder abuse can be caregivers both paid and unpaid, family and non-family, POA agents and non-agents, who range from well-intentioned and overwhelmed, to cruel and uncaring. Many factors come into play, including lack of respite from constant caregiving responsibility, dysfunctional family dynamics, and even lack of certainty about what an elderly family member wants. Perpetrators often share common characteristics and circumstances. They may fear being deprived of an inheritance should the elderly person spend all their savings on care, or they may be dependent on the elder. They may seek to isolate the elder physically and/or emotionally from the community or other family members to gain more control over them and to hide financial abuse.

Risk Factors for Families

Families in which elder financial abuse has occurred also have common characteristics. Primary among them is a pattern of unwillingness to talk about or address family problems. Here are three examples from people interviewed in University of Wyoming research:

My mother, as a coping mechanism, just dealt with things matter-of-factly. You just had to suck it up. My dad absolutely did not discuss feelings. That was a waste of time. Communicating with anybody was a waste of his time. We were all supposed to just read his mind.

We didn't have our own views; we had our parents' views. That was the only way we really knew. So, growing up, we didn't have our own points of view. And, when we were in school, there were no different viewpoints or looking at things differently. It was kind of shut down at our house.

My mom was always famous for "Just let it go. It's not worth fighting about; just let it go." So, conflict wasn't talked about or resolved in our family.

The table below shows three categories of risks. First are those that might make an elder more susceptible to abuse. Second are those that might increase the inclination of a family member POA agent to misuse designated powers of attorney. Third are family dynamics that might increase the possibility of EFFE occurring or going undiscovered.



Table 1. Three Categories of Risks for Elder Family Financial Exploitation.

Elder Risk Factors	Perpetrator Risk Factors	Family Risk Factors
• Increases with age, but depends on capacity to make sound decisions • Cognitive impairment • Physical function impairment • Lower education • Widowed, separated, divorced • Isolation physically and/or emotionally • Weak self-esteem • Psychological distress, depression • Susceptibility to flattery and other means of undue influence • Loneliness and/or low levels of social support • Past experiences of domination/acquiescence • Unreasonable/unfounded trust generally or in appointed agent(s) • Past abuse/financial exploitation • Addiction • Inadequate planning for late-life incapacity • Lack of knowledge and experience with financial management	• Addictive behaviors • Relationship problems • Lack of empathy, egoism • Pattern of blaming others, avoiding responsibility for own actions • Controlling/manipulative behaviors • Lying or telling half-truths to deceive • Ageist attitude, devaluing elderly people, especially women • Impulsiveness or self-control problems • Lack of clearly defined goals or self-centered goals • Identity tied to competitive values • Self-esteem tied to possessions, prestige, status • Money-management problems, financial instability • Financial entitlement attitude, possibly based on sense of earlier unfair treatment or indulgence or experience of earlier and current enabling of financial irresponsibility	• Avoidance of conflict • Unresolved conflict, jealousies, resentments • Dominating-coercive relationships • Poor family communication skills • Poor group problem-solving skills • Family enabling of irresponsible behaviors of potential or actual perpetrators • Keeping of family secrets • Lack of/inconsistent trust in one another • Consequences of trauma in the family • Family mental health issues • Family pattern of financial management problems • Lack of empathy for each other • General reluctance or refusal to seek help when needed

People often choose a relative to manage their finances who lives nearby, and has time to take them to doctor's appointments and get groceries. Appointing someone, however, with any combination of the perpetrator risk factors to serve as POA agent increases the risk of being financially exploited and abused. When choosing a POA agent, the principal should choose someone who is financially stable, who is steady, willing, and able to serve, who has good interpersonal skills, who can hold firm if pressured to do something that is not in the elder's best interest and/or is ethically or legally questionable, and who does not exhibit the perpetrator risk factors.

If no relatives are an appropriate choice, the principal should consider a trusted and competent professional with appropriate knowledge of financial, medical, and/or legal expertise or an institution such as a bank. Co-agents may also be the best choice if they have different expertise and can work well together. EFFE is a betrayal of trust; therefore, the persons chosen as agents, successor agents, co-agents or other fiduciaries should be carefully considered, and the powers bestowed upon them should be well-founded. The same person does not have to have all the powers.

Part 5: Elements of Fraud

The late American criminologist and sociologist Donald Cressey is credited with developing the “fraud triangle,” in which three elements must be present for fraud to occur: pressure, opportunity, and rationalization. Fraud is using persons’ vulnerability to convince them to hand over property, money, or other valuables, including information, under false pretenses. It is different from theft, which is taking property or assets directly.

1. **Pressure motivates an individual to commit fraud.**

Pressure can include almost anything: unforeseen medical expenses, lavish lifestyles, occupational goals, struggles with addiction, or a “never enough” mentality. Pressure can stem from both personal and professional issues. Pressure coming from a significant financial problem unsolvable through legitimate means may motivate an agent to commit financial exploitation.

2. **Opportunity provides a pathway to commit fraud.**

Opportunity is typically created during end-of-life (estate) planning by weak proactive, preventative features, poor financial management oversight, or choice of the wrong persons as fiduciaries. Failure to establish adequate procedures to detect fraudulent activity also increases the opportunity for fraud to occur. This element of the fraud triangle is the easiest to control, as the principal—if mentally competent to revise previously developed estate planning documents—can add deterrents. Deterrents can include limiting access to bank accounts or credit cards, involving more than one person in financial decisions, adding someone who can monitor transactions, and/or insisting on the fiduciary keeping financial records and inventories accurate and up to date and shared with designated persons regularly. It is important to have an inventory of financial and personal assets as part of estate planning documents. It is also important to provide a copy to a professional such as an attorney and to other family members so that assets cannot be easily stolen without someone knowing.

3. **Rationalization is the justification a person uses to commit fraud.** Many fraudsters do not view themselves as criminals, but as honest people caught in bad circumstances. In the case of EFFE, they feel justified to continue established enabling patterns of parents providing financial help whenever they needed it in the past, to compensate themselves for what they perceive as earlier family injustices, or to take their presumed “fair”

share of inheritance early. They may use rationalizations like, “I was only borrowing the money;” “I was entitled to the money for what I have or am doing to help my older relatives;” “I had to provide for my family;” or “Mom or Dad would have wanted me to have it.”

If you are thinking of entrusting another person with the authority to make financial decisions for you, be aware of motivations and justifications that might induce someone to steal. Reduce the opportunities, in part by choosing an agent who you believe is competent and truly trustworthy (without risk factors). Another alternative is to carefully choose a professional or an institution to oversee your affairs.

Families with some of the family risk factors might consider addressing the ways the family interacts before the older relatives become dependent. The first step is to improve communication. Developing ground rules for discussing sensitive topics can help family members address conflict. This is best done before the power structure of the family changes after the implementation of a POA.

The older person might be quite attached to—or otherwise feel dependent on—the person whom others perceive as suspicious or problematic. Family members might feel apprehensive about stirring up family conflicts by voicing concerns about a sibling or other relative. They might be afraid of the fight that could result. Not confronting the situation, however, makes the problem and its related tensions likely to continue and possibly become worse.

On the other hand, if there is nothing to hide, a review of financial transactions, for instance, could help clarify the situation and reduce tensions. Enlisting professional help to facilitate family meetings might improve the process, especially when tense relationships are involved. Consider seeking help from a counselor or trained mediator.

POWER OF ATTORNEY

When preparing important planning documents like a POA, principals should take extra care in selecting the person(s) to be their POA agents as well as include specific terms, limitations, and reporting obligations even if they believe the problem won’t happen in their family.

Part 6: Responding to Suspected Exploitation

What if there is a problem?

If an older adult is being abused or might be at risk of being abused or exploited, don't ignore it.

Take steps if you know or suspect an older person is experiencing financial abuse and possibly other forms of abuse from an adult child, other relative or from anyone. Among them:

Check to see if the victim(s) is aware of the situation. Get a sense of how the victims see the situation. They might not be aware of suspicious activity, or not recognize the signs of financial abuse by a caregiver or POA agent. They also could be afraid of what might happen if they complain.

Even if the older adult(s) refuses your help, keep checking in with them. Enlist others who can express their feelings of concern to them. Sometimes a peer or a neutral party, such as another family member or a geriatric care manager may have a better chance of getting through.

Avoid confronting the abuser yourself unless you have the elder's permission, and can take steps to protect financial assets. Confronting an abuser may motivate the abuser to engage in further fraud (steal more money before safeguards are put in place) or hide criminal activity (destroy evidence) or put the older person in danger of retaliation.

Make sure the older adult has access to medical services. A deteriorating physical or mental condition may be improved with good medical care, so share your concerns with the elder's medical provider if possible.

Gather information and make and date contemporaneous notes (notes made at the time or shortly after an event occurs) to support a criminal or civil investigation. Include the name and address of the victim, the date and location of the suspected abuse, and specifics of the abuse. Include the license plate and description if a vehicle is involved. The more information you can provide, the better the chance action can be taken to stop the abuse, perhaps recover lost assets, and prevent physical and emotional damage to the elder and potentially the whole family. Dated contemporaneous notes made shortly after an event or revelation are important because they represent the best recollection of what you witnessed and what was said by whom. Collect emails and other documentation as supporting evidence.

Where should abuse or suspected abuse be reported?

If you suspect that an older parent—or any other older person or vulnerable adult—is being financially exploited, it is important to act. If you have a reasonable suspicion of abuse, it is better to err on the side of the vulnerable adult. And if you see subsequent abuse, continue to call and report, because each report provides a snapshot of what is taking place at a particular time and builds on earlier reports. Report abuse to the following entities (see contact details are at the end of the document):

Adult Protective Services (APS) is a victim services agency for elders. APS offices exist throughout the country, and their role is to provide social services to vulnerable adults including older adults and adults with significant disabilities who have been abused, neglected, or exploited. Although its location in state government may vary in different states, in Wyoming, APS is a division of the Wyoming Department of Family Services (DFS) with field offices in each county. Their mandate is to investigate allegations and stop abuse while it is occurring.

Law enforcement includes local police and sheriff's departments, the state bureau of criminal investigation, and the city or county attorney. Other options include the (1) state department of health's long-term care ombudsman program, which regulates care facilities; (2) Medicaid Fraud Control Unit within the state attorney general's office; and (3) U.S. Postal Inspection Service if the U.S. mail is involved in the fraud.

State bar associations investigate problems involving attorneys. In Wyoming, complaints may be made to the state bar association. If the principal is living in another state, contact the comparable unit in that state.

The U.S. Department of Justice's Elder Justice Initiative maintains a "Report Abuse" page.

Many seniors do not report the abuse they face, even if they are able. Some fear retaliation from the abuser, whereas others view having an abusive caretaker as better than having no caretaker and being forced to move out of their own home. When the caregivers are their children, they may feel ashamed that their children are inflicting harm, they may blame themselves, or they may not want children they love to

get into legal trouble. However, they may admit to the abuse if asked. It can be a challenge to respect older adults' right to autonomy, while at the same time make sure they are properly cared for. Remember, it is probably better to raise the issue and perhaps provoke unpleasant feelings or a family disagreement if that is what it takes to bring an important issue to light.

Who should report concerns?

Anyone who has a reasonable suspicion or knowledge that an adult is being abused, abandoned, exploited, neglected, or intimidated, or is self-neglecting, should make a report to the Wyoming Department of Family Services' (DFS) Adult Protective Services (APS) elder abuse hotline or to local law enforcement. Anyone making such a report in good faith is immune from civil liability, even if the investigation indicates that there is no wrongdoing. Names of those who file such reports are kept confidential.

Who are mandatory reporters?

Most states have enacted laws that mandate the reporting of elder abuse by certain professionals, but in Wyoming, *everyone* is a mandatory reporter. According to Wyoming law, everyone must report suspected abuse, neglect, or exploitation of a vulnerable adult or child if they have reasonable cause to believe that it may be occurring. To that end, it is important for a report to be accompanied by as much documentation as possible. Penalties for having a reasonable belief and not reporting are a misdemeanor with up to \$1,000 fine and/or up to one year in jail. Reports are generally directed to an agency authorized to initiate an investigation such as the DFS/APS in Wyoming. Other states place APS in similar or other units in state government.

Attorneys cannot act in any way contrary to the benefit of their client, but sometimes it may not be clear who the attorney's client may be—for example, both the adult child of a senior and the senior may have the same attorney. If that child is a fiduciary for the senior, it creates a conflict of interest. For this reason, attorneys in some states are exempt as mandatory reporters, but

ETHICAL DILEMMA: WHEN HELPING HURTS

An unfortunately common and especially heartbreaking scenario is when the abuser is an adult child with mental illness or a substance abuse problem. The recognized social worker and attorney, Jean Callahan, writes about confronting such ethical dilemmas and when helping hurts in the book *Elder abuse multidisciplinary teams: Planning for the future*.

One story focuses on a case involving an 89-year-old woman called 'Mrs. A,' who lives with her 59-year-old son. The son, who suffers from mental illness and is financially dependent upon his mother, financially exploits her. According to neighbors, the son would scream at his mother throughout the day, and they suspected that he was neglecting her basic needs. According to the story that a caseworker shared with Callahan, there was evidence that the son was living off his mother's Social Security income and was not paying the rent on their apartment. The son regularly brought his mother to the bank to withdraw her monthly income and appeared loud and aggressive to her, according to a bank teller. Under the Code of Federal Regulations, banks and other financial firms are required to file a Suspicious Activity Report (SAR) to the U.S. Treasury's Financial Crimes Enforcement Network (www.fincen.gov/), for any suspicious transaction over \$5,000, any transaction involving illegal activity, and/or a transaction that is out of character for a particular customer. 12 C.F.R. § 21.11. Authorities took steps to remove the son from the home, while seeking to arrange help for the son from a mental health agency. The outcome, however, was not what Mrs. A wanted.

Despite her advanced age, her frail condition, and the abuse she had endured, she still felt an obligation to care for her son at home. While counselors explained to Mrs. A that living with her son was seriously compromising her own health and well-being, this may be one of those cases in which a simple happy ending is not possible. Many older people in similar situations report they continue to experience a different kind of suffering—one that is no less painful.

Callahan concludes by emphasizing "the ethical dilemmas at play: how to help the victim of abuse, while minimizing the negative repercussions to a perpetrator who is also needy, and the difficulty of balancing the victim's safety with that person's right to make choices in life."

Jean Callahan. (2015) "When Helping Hurts: Confronting Ethical Dilemmas in Casework." *Elder abuse multidisciplinary teams: Planning for the future*, p. 12.



this does not solve the problem. If a conflict of interest such as representing a suspected abuser of an elder who is also a client, the ethical code of attorney practice indicates that the attorney should cease representing that client, but sometimes they do not cease representing a suspected perpetrator. Sometimes an attorney even facilitates or colludes in exploitation of elders.

What happens after I make a report?

A Wyoming DFS caseworker, law enforcement officer, or both will contact the vulnerable adult and caregiver to arrange a home visit and complete an assessment of the situation. The person making the report may be contacted for further information. A report of suspected abuse/exploitation is not an accusation. It is a link to services for families who would not voluntarily seek help or for older adults who may not be aware that they are being exploited.

The local DFS office, perhaps working with law enforcement, might select one or more of three processes: an investigation, an assessment, and/or prevention services.

If there is an investigation, the result will be a finding of either “substantiated” or “unsubstantiated.” If the report is

substantiated, then the name of the person who abused the elder is entered into the Wyoming DFS central registry of child and vulnerable adult abuse and neglect. Substantiated investigations are referred to the county/district attorney for possible legal action.

If the report finding is unsubstantiated, then the caseworker concluded there was insufficient information regarding the allegation for any formal action. The person reporting the suspected abuse is not liable if abuse or exploitation was not substantiated.

What information will assist with an investigation?

If an investigation should develop into a civil or criminal case, you may be able to assist the prosecuting attorney by:

- providing any contemporaneous notes taken as suspicious actions or comments are observed and dated,
- writing a narrative of the facts,
- collecting documents such as bank and investment statements,
- making a list of persons possibly involved in the case,
- logging a timeline of events,
- creating a chart of activity (accounts and assets involved),
- preparing a genogram—a family tree—to illustrate the family connections,
- identifying missing assets (or conducting an inventory of financial and personal assets), and
- drafting questions for depositions or interrogations.

What criminal actions may be pursued?

Legal authorities have a range of criminal justice actions to assist victims of abuse. Often when elder financial exploitation occurs, a crime has been committed. Possible criminal activity includes:

- Felonious restraint (W.S. 6-2-202),
- False imprisonment (W.S. 6-2-203),
- Blackmail; aggravated blackmail (W.S. 6-2-402),
- Simple assault; battery (W.S. 6-2-501),
- Aggravated assault and battery; female genital mutilation (W.S. 6-2-502),

- Reckless endangering (W.S. 6-2-504),
- Abuse, neglect, abandonment, intimidation, or exploitation of a vulnerable adult (W.S. 6-2-507),
- Domestic assault (W.S. 6-2-510),
- Domestic battery (W.S. 6-2-511),
- Theft (W.S. 6-3-402),
- Forgery (W.S. 6-3-602),
- Unlawful use of credit card (W.S. 6-3-802),
- Unauthorized use of personal identifying information (W.S. 6-3-901), or
- Unauthorized impersonation through electronic means (W.S. 6-3-902).

In some cases, the victim may have experienced more than one type of abuse (physical, sexual, verbal/emotional, financial/economic, and cultural/identity), so different actions may be pursued.

In addition, state law regulates some facilities and programs, notably long-term care facilities. The Wyoming Long-Term Care Ombudsman Program has the responsibility to investigate, advocate, and mediate on behalf of adults receiving long-term care services.

If the principal resides in another state, similar laws may apply.

What civil actions should be considered?

Law enforcement and the county or district attorney may or may not decide to pursue criminal actions; however, having a report on file could be useful if suspicions of abuse continue. Individuals can pursue their own private or civil actions. The principal, if not incapacitated, may revoke legal documents, including the POA, and create new POAs (actions that do not require a court).

Civil actions (actions that require a judge) to protect an elder include the following:

- **Ask a court to compel the agent to comply with the POA**, perhaps subject to increased reporting requirements.
- **Ask a court to limit or terminate the appointment of a guardian or conservator who is a perpetrator.**

- **Ask a court to issue a temporary restraining order** to limit the contact or activities of any person interacting with the elder.
- **Ask a court to declare the principal incapacitated**, and appoint a guardian (to be responsible for the person's well-being) or conservator (to be responsible for the person's assets). Such court-appointed fiduciaries may or may not be family members.
- **Ask a court for protection orders or injunctions.**
- **Initiate eviction** or other removal proceedings against an abuser through the county sheriff's office.

Private actions to consider:

- **Hire a fraud investigator or certified fraud examiner** to gather facts and collect evidence regarding crimes.
- **Obtain a separation or divorce** for the elder if a spouse is abusive or exploiting financially.

Actions that can rectify elder abuse may include:

- **Seeking an accounting of the elder's estate**, perhaps through a court order.
- **Pursuing private legal action to recover assets**, including (1) suing the agent to undo transactions

READING STATE STATUTES

State legislatures create statutes that command or prohibit activities, as well as define activities. The laws are organized into broad categories—called titles—with subcategories of chapters, articles, and sections.

Wyoming law addresses abuse and neglect of vulnerable adults in Wyo. Stat. Ann. § 6-2-507 (Title 6 – Crimes and Offenses; Chapter 2 – Offenses Against the Person; Article 5 – Assault and Battery; Section 507 – Abuse, neglect, abandonment, intimidation, or exploitation of a vulnerable adult; penalties). The duty to report is under Wyo. Stat. Ann. §35-20-103.

The Wyoming State Statutes (laws) are available at this easy-to-navigate site: www.wyoleg.gov/StateStatutes/StatutesDownload. All other state legislatures provide the text of statutes on their websites. FindLaw® is a good comprehensive and reputable source: www.findlaw.com. Federal statutes/codes can be found on the United States Code website: uscode.house.gov.

(recession); or (2) suing the agent for stealing (reversion), which may be settled outside of court.

- **Pursuing a negotiation, mediation, or arbitration to recover assets.**
- **Rescinding transfers or voiding documents due to fraud, incapacity, or undue influence** (concerning the latter, see sidebar for explanation).
- **Redraft the POA document** to have some protections, such as another person who is allowed to review the finances of the principal.

Remedying financial exploitation can be challenging. Judicial procedures can be cumbersome and subject to delays. Evidence and witnesses might be unavailable, or the elder may not have the capacity to testify. It may be difficult to prove the elder was incapacitated at an earlier point in time. The elder or the family may not have the resources for a judicial battle. Worst of all, the perpetrator may lack money for restitution. In many cases, only a small portion of the lost funds are recovered. Consequently, *prevention* is much more effective than trying to address abuse and exploitation after the fact.

Summary

Elder financial exploitation—one form of elder abuse—is the unauthorized or improper use of the resources of an elder for monetary or personal benefit, and other forms of gain carried out by a caregiver or another person in a relationship involving an expectation of trust.

The problem is widespread and often intertwined with other forms of abuse and neglect. Financial exploitation can have devastating financial consequences for victims, and be costly to families, businesses, and taxpayers. It also has devastating effects on the emotional and psychological well-being and relationships of victims and their families, and can lead to health problems and even earlier death of victims if the abuse goes unreported.

Often perpetrators are family members, such as adult children, entrusted to manage a parent's finances under a POA document. Such documents are especially susceptible to being abused, because they can confer broad powers to conduct business and manage finances for the principal.

Selecting a POA agent is an extremely important decision. It may seem sensible to assign the role of agent to a relative

VICTIMS MIGHT DENY VICTIMIZATION, BECAUSE THEY...

- Do not know what is happening
- Do not want to cause a fuss or create conflict
- Are dependent on the perpetrator
- Are used to complying with people with authority and power
- Are used to being dominated
- Worry that complaining will be too emotionally, financially, and psychologically stressful
- Want to maintain a positive public image of the family
- Want to protect a relative from the legal system
- Feel isolated without a support system
- Feel embarrassed about failure as a parent
- Fear the legal system and the potential to testify
- Fear retaliation
- Fear being put into a nursing home
- Fear not being believed

who lives nearest or the one who is in most frequent communication. This person, however, may not have the knowledge, skills, or values to be effective in managing another's finances, especially when the principal has declining physical and mental health. Thus, avoid naming someone as POA agent who possesses risk factors that may lead them to become perpetrators. Professionals working with older adults could encourage them to consider risk and protective factors when making decisions for future dependency.

When drafting a POA, include protective features and accountability requirements in the documents. Best practices for establishing a protective durable financial POA document include the following:

1. Limiting the decision-making authority of the agent.
2. Selecting a successor agent to succeed the initial agent.
3. Explicitly imiting self-dealing and/or transactions that conflict with the principal's wishes and expectations.
4. Remaining engaged in the financial decision-making process, to the extent possible.
5. Identifying additional interested parties for oversight and accountability who will remain diligent in tracking and recording financial decisions and transactions.
6. Thoroughly reviewing and tailoring the scope of authority granted to the agent.
7. Not using a generic do-it-yourself or one-size-fits-all form.

If financial abuse is suspected, report it to Adult Protective Services or law enforcement promptly. In fact, as discussed above, you have a mandatory obligation to report because everyone in Wyoming is a mandatory reporter when it comes to elder abuse (the same is true for child abuse or the abuse of any vulnerable adult). Timeliness in seeking assistance is important in preventing the situation from becoming worse and even life threatening. In the case of financial exploitation, once the resources are reduced or depleted, recovery is often difficult.

Screening Questions

The American Bar Association recommends asking the following questions to identify possible financial exploitation.

1. Who makes decisions about your money and property? How is that going?
2. How do you get cash when you need it? Any problems with that?
3. Does anyone have access to your bank account(s)? How is that going?
4. Have you noticed any suspicious or unusual items on bills? Does someone have your bills sent to them instead of you?
5. Have you noticed money missing from your bank account(s), or checks missing from your checkbook?
6. Are any of your belongings missing from your home? Are there any items missing from your safe deposit box, or has your agent entered your box without your permission and knowledge?
7. Have you signed or are you considering signing documents that you do not understand, because someone encouraged, forced, or deceived you?
8. If you have a POA, does your agent (a fiduciary) do things that you do not want the person to do?
9. Does your paid caregiver make you pay extra for things that the caregiver is supposed to do or get for you anyway?
10. Did you want that person to come with you to this appointment? Did that person insist that you come see a certain attorney? Did that person take you to see other attorneys before the one you have now?
11. Do you live with anyone? When did that person move in? Why? Whose name is on the property title (lease)? Does that person pay a share of your mortgage?



Wyoming Resources

1. **Wyoming Department of Family Services, Adult Protective Services.** dfs.wyo.gov. Phone: (307) 777-7564 or (800) 457-3659.
2. **Wyoming Department of Health, Aging Division.** wyo.gov/aging. Phone: (307) 777-7995 or (800) 442-2766.
3. **Wyoming Attorney General's Office, Consumer Protection Unit.** To report instances of fraud (e.g., home equity fraud, telemarketing fraud, mail fraud, health fraud). Phone: (800)-438-5799.
4. **Wyoming Attorney General's Office, Division of Victim Services.** ag.wyo.gov/victim-services-home-page. Phone: (307) 777-7200.
5. **Wyoming Long-Term Care Ombudsman Program.** health.wyo.gov/admin/long-term-care-ombudsman-program. Phone: (307) 777-2885.
6. **Legal Aid of Wyoming.** Non-profit organization committed to providing legal services to Wyoming seniors, veterans, and other people who are low income. Clients must be at or below 200% of the federal poverty level to receive services. www.lawyoming.org. Phone: (307) 432-0807.
7. **Wyoming State Bar.** www.wyomingbar.org. Phone: (307) 632-9061.
8. **Wyoming Guardianship Corporation.** A non-profit organization that provides guardians and conservators for incapacitated persons when no other person is willing or able to serve in that capacity. wyoguardianship.org. Phone: (307) 635-8422.
9. **Wyoming Center on Aging (WyCOA)** at the University of Wyoming. It offers resources to health-care professionals, older adults, caregivers, and students. www.uwyo.edu/wycoa. Phone: (307) 766-2829.
10. **Wyoming Senior Citizens Inc.** A private non-profit organization that provides a variety of services to seniors and their caregivers, including its Senior Companion Program, Wyoming Long-Term Care Ombudsman Program, Wyoming State Health Insurance Information Program, Senior Medicare Patrol Program, and Foster Grandparent Program. www.wyomingseniors.com. Phone: toll-free (800) 856-4398; Casper office (307) 235-5959; Cheyenne office (307) 634-1010; Riverton office (307) 856-6880.
11. **University of Wyoming Extension** 11-part series on estate planning and advance directives. These bulletins, which were co-authored by the co-author of this publication, Cole Ehmke, are available for free at www.uwyo.edu/uwe.
12. **University of Wyoming, College of Law Estate Planning Practicum.** Free estate planning. www.uwyo.edu/law. Email: wyowills@uwyo.edu. Phone: (307) 766-6441.
13. **Wyoming Services for Independent Living (WSIL).** Helps individuals with disabilities to live as independently as possible. Services include information, referrals, counseling, assistance with developing independent living skills, individual and systems advocacy, and transitions from institutional care to more independent arrangements. www.wysil.org. Phone: Cody office (307) 586-4141; Jackson office (307) 733-7757; Lander office (307) 332-4889; Rock Springs office (307) 362-4159.
14. **U.S. Department of Veterans Affairs (VA)/Wyoming.** The VA offers a wide variety of services for those who have served in the military and their families. Those services include medical benefits, health care, disability, home loans, life insurance, education, training, vocational rehabilitation, and burial and memorial services. www.va.gov. In Wyoming, the VA has (1) medical centers in Cheyenne and Sheridan; (2) outpatient clinics in Afton, Evanston, Laramie, Rawlins, Torrington, Wheatland, and Worland; (3) community-based outpatient clinics in Casper, Cody, Gillette, Newcastle, Riverton, and Rock Springs; vet centers in Casper and Cheyenne; regional benefit and intake offices in Cheyenne; and a national cemetery in Cheyenne. Contact information is at: www.va.gov.
15. **Protection and Advocacy System Inc.** A federally funded nonprofit corporation established to protect the rights of people with disabilities. www.wypanda.com. Phone: (307) 632-3496.
16. **AARP Wyoming.** A resource on a wide variety of topics concerning older adults. states.aarp.org/wyoming. Email: wyaarp@aarp.org. Phone: (866) 663-3290.

National Resources

Consumer Financial Protection Bureau. www.consumerfinance.gov

- *Managing someone else's money: Help for agents under a power of attorney.* Consumer Financial Protection Bureau.
- *Managing someone else's money: Help for court-appointed guardians of property and conservators.* Consumer Financial Protection Bureau.
- *Managing someone else's money: Help for trustees under a revocable living trust.* Consumer Financial Protection Bureau.
- *Managing someone else's money: Guides for government fiduciaries.* Consumer Financial Protection Bureau.

Military Consumer (for veterans). www.militaryconsumer.gov

National Center on Elder Abuse (NCEA). The NCEA serves as a national resource dedicated to the prevention of mistreatment of elders. NCEA is a source of information, data, and research, and provides technical assistance and training to states and community-based organizations. www.ncea.acl.gov

Elder Financial Protection Network. www.bewiseonline.org

U.S. Department of Justice's Elder Justice Initiative. www.elderjustice.gov

National Center for Victims of Crime. www.ncvc.org

U.S. Department of Health and Human Services

- **Administration on Aging.** Provides resources intended to connect people with disabilities, older adults, caregivers, families, and professionals to federal, national, and local programs and information. www.acl.gov
- **National Institute on Aging.** One of the 27 institutes and centers of the National Institutes of Health, U.S. Department of Health and Human Services. Its mission is to conduct and support research on aging and the

health and well-being of older people. Its website contains up-to-date information on numerous health and aging topics. www.nia.nih.gov

- **Eldercare Locator.** www.eldercare.acl.gov Phone: (800) 677-1116.
- **MedlinePlus®:** This U.S. National Library of Medicine website contains resources from the federal government and national associations. medlineplus.gov/elderabuse.html

National Committee for the Prevention of Elder Abuse (NCPEA). The NCPEA is an association of professionals, practitioners, and researchers from various disciplines working together to address abuse, neglect, and exploitation of older and vulnerable adults. Its website contains information on elder abuse and how communities, professionals, and citizens can act to help prevent it. www.preventelderabuse.org

U.S. Department of Housing and Urban Development (HUD). This agency provides information and resources regarding housing. HUD can assist in finding low-income rental housing, as well as mortgage assistance and debt counseling. <http://hud.gov>

Other resources include:

- Medical professionals, including doctors, nurses, paramedics, and others who work in public or private hospitals, mental-health centers, clinics, home-health agencies, and assisted-living and nursing-home facilities
- Local food banks and pantries
- Local banks and financial institutions
- Elder law attorneys
- FindLaw, source for learning about the law, www.findlaw.com
- Federal statutes/codes, uscode.house.gov

Example Acknowledgment Form

Acknowledgment Form for Agent under Power of Attorney

I, the undersigned agent, execute this Acknowledgment Form, and by such execution do hereby affirm that I:

1. Have read the power of attorney signed by _____, as principal, on _____ [date] (the POA document).
2. Understand that when I accept the authority granted under the POA, a special legal relationship is created between the principal and me, and that this relationship imposes legal duties and responsibilities upon me.
3. Acknowledge that it is my obligation to understand my duties and responsibilities under the POA and the law, including, but not limited to, Wyo. Stat. Ann. § 3-9-101 through 3-9-403, Uniform Power of Attorney Act.
4. Understand that this form is not intended to replace legal authority or advice, and that I may consult with an attorney, possibly at the principal's expense, if I have questions about this form or my duties and responsibilities as agent.
5. Understand that I must act in good faith, do nothing beyond the authority granted in the POA, and disclose in writing my identity as an agent whenever I act for the principal, except as otherwise instructed by the principal.
6. Understand that, unless the POA states otherwise, I must also:
 1. act loyally for the principal's benefit,
 2. avoid conflicts that would impair my ability to act in the principal's best interests,
 3. act with care, competence, and diligence, and
 4. keep a detailed, accurate record of all receipts, disbursements, and transactions made on behalf of the principal.
7. Understand that I must provide accountings of transactions I conduct as agent, if required by the POA or by law, including, but not limited to Wyo. Stat. Ann. § 3-9-114.
8. Understand that, unless otherwise provided by the POA or by law, I must not take, borrow, encumber, become an owner of or dispose of the principal's assets for my or another person's personal benefit.
9. UNDERSTAND THAT IGNORANCE OF THE LAW IS NO DEFENSE, AND THAT IF I MISUSE MY AUTHORITY AS AGENT UNDER THE POA, I MAY BE SUBJECT TO CRIMINAL PROSECUTION AND/OR CIVIL LIABILITY.

By signing below, I hereby acknowledge my duties and responsibilities in acting as an agent on behalf of the principal.

Date: _____

Signature of Agent

Printed Name of Agent

Address, Telephone

Provide a copy to the principal, attorney for principal, and agent.

Endnotes and References

- 1 Centers for Disease Control and Prevention (2020). Elder abuse. www.cdc.gov/violenceprevention/elderabuse.
- 2 Wyo. Stat. Ann. § 3-9-104. In Wyoming, a conservatorship is necessary for the management of the personal financial affairs of an individual; a guardianship is for authority over the person. In other states, a guardianship encompasses the financial management.
- 3 Wyo. Stat. Ann. § 3-9-112.
- 4 Wyo. Stat. Ann. § 3-9-201.
- 5 Stranger, T. (September 29, 2015). Financial elder abuse costs \$3 billion a year. Or is it \$36 Billion? Consumer Reports. www.consumerreports.org/cro/consumer-protection/financial-elder-abuse-costs--3-billion-or-is-it-30-billion-.
- 6 Acierno, R., Hernandez, M.A., Amstadter, A.B., Resnick, H.S., Steve, K., Muzzy, W., & Kilpatrick, D.G. (2010). Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The National Elder Mistreatment Study. *American Journal of Public Health*, 100(2), p. 292–297.
- 7 Lachs, M.S., & Pillemer, K.A. (2015). Elder abuse. *New England Journal of Medicine*, 373, p. 1,947–1,956, doi:10.1056/NEJMr1404688.
- 8 Deane, S. (June 2018). Elder financial exploitation: Why it is a concern, what regulators are doing about it, and looking ahead. U.S. Securities and Exchange Commission, Office of the Investor Advocate, ii + 34 p.
- 9 Lachs, M.S., & Berman, J. (2011). Under the radar: New York State Elder Abuse Prevalence Study. Final report: Prepared by Lifespan of Greater Rochester Inc., Weill Cornell Medical Center of Cornell University, and New York City Department for the Aging, p. 50.
- 10 Jackson, S.L., & Hafemeister, T.L. (2016). Theory-based models enhancing the understanding of four types of elder maltreatment. *International Review of Victimology*, 22(3), p. 289–320.
- 11 National Adult Protective Services Association (2018). Elder financial exploitation: Get informed; Retrieved from www.napsa-now.org/policy-advocacy/exploitation/; AND Ress, D. (2016). Elder financial abuse costs millions in Virginia, state report says. Retrieved from www.dailypress.com/government/dp-nws-elder-abuse-20161219-story.html.
- 12 Vincenti V.B., & Bolkan, C. (2016). Family consequences of elder financial exploitation by relatives with power of attorney. American Association of Family & Consumer Sciences Annual Conference, Bellevue, Washington.
- 13 Schuchter, A., & Levi, M. (2016). The fraud triangle revisited. *Security Journal*, 29(2), p. 107–121, doi:10.1057/sj.2013.1.
- 14 Wyo. Stat. Ann. § 3-9-114(h) “Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal...”
- 15 National Information Management and Support System (2017). Multistate Research Project W3191: Elder financial exploitation: Family risk and protective factors.

