Discussion of Fiduciary Duty and California Trust, Estate, Elder & Conservatorship Cases for the Past Year, Plus (at the end) Indicators of Possible Financial Elder Abuse

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Estate of Moss
California Court of Appeal, Fourth District, Case No. D058547, March 20, 2012
(Service of will contest pleading on the attorney for the party who filed the petition for probate was sufficient service)

Holding that service of a will contest pleading on the attorney for the party who filed the earlier petition to probate the will that was being contested was sufficient service as the attorney for the party who filed the petition for probate was that party's ostensible agent for service of process for the purpose of the contest pleading. However, the Court also specified that its holding was limited to situations such as in the Estate of Moss case.

Scott S. v. Superior Court of Orange County
California Court of Appeal, Fourth Appellate District, Case No. G046468, March 14, 2012
(Conservator authority to consent to non-emergency medical treatment must be established by admissible evidence – declaration evidence is not sufficient)

Holding that in a LPS (Lanterman-Petris-Short) conservatorship a Conservator who is seeking authority to consent to non-emergency medical treatment for the Conservatee must show by competent admissible evidence that the treatment is medically necessary. In this case the Public Guardian for Orange County sought authority to amputate the Conservatee's infected toe. The Conservatee contended that the trial court erred by relying on a physician's written declaration to find that the amputation was medically necessary.

The Conservatee contended the Public Guardian could not show the amputation was medically necessary because the declaration was hearsay. The Public Guardian conceded the declaration was inadmissible hearsay. "But the Public Guardian asserted that the Conservatee's capacity to consent to medical treatment was "'the only issue in a proceeding brought under Welfare and

Institutions Code [section] 5358.2,'" and "'medical necessity is not a required element of proof under that statute.'"

"'Except in emergency cases in which the conservatee faces loss of life or serious bodily injury, no surgery shall be performed upon the conservatee without the conservatee's prior consent or a court order obtained pursuant to Section 5358.2 specifically authorizing that surgery.'" "(§ 5358, subd. (b).)"

"In sum: Before the court authorizes an LPS conservator pursuant to section 5358.2 to consent for the conservatee to nonroutine, nonemergency medical treatment, it must find (1) the conservatee lacks the capacity to give or withhold informed consent, and (2) the treatment is medically necessary — i.e., (a) the conservatee has a medical condition that requires the recommended treatment, and (b) without treatment, a probability exists the condition will endanger the conservatee's life or seriously threaten his or her physical or mental health."
On appeal the Court held that the trial court's finding that the amputation was medically necessary was invalid as the trial court's decision was based on inadmissible written declaration out-of-court hearsay testimony. The Court did find that the in-court testimony from a psychologist was sufficient to support the trial court's lack-of-capacity finding.

However, the Court also "express[ed] no opinion on what kind of evidence is required, other than admissible evidence. In particular, we do not hold the LPS conservator must in every case call the treating physician to testify about medical necessity, if other relevant evidence on that point is admissible."

<u>K.G., an Incompetent Person, etc., et al., Plaintiffs and Appellants v. Larry Meredith, as Public Guardian, etc., Defendant and Respondent</u>
California Court of Appeal, First Appellate District, March 8, 2012, Case No. A132087
(Required court finding before a conservatee (LPS conservatorship) can be denied medical decision making and for drugs and medications)

The decision in *K.G. v. Meredith* is lengthy and relates to more than one important issue. The following summary pertains to the nature of the finding that the trial court must determine before making a finding that a gravely disabled person under the Lanterman-Petris-Short Act lacks the right to make his or her own decisions on medical treatment for his or her grave disabilities, including involuntary administration of antipsychotic medication under Cal. Welfare & Institutions Code §5357(d); and the nature of the notice that must be provided to the proposed conservatee as a constitutional due process right. Although the case involves an LPS conservatorship, you might also find the decision relevant for similar medical decision and drug or medication issues that may arise in an ordinary conservatorship of the person with medical decision making authority.

In pertinent part Cal. W&I Code §5357(d) states:

"5357. All conservators of the estate shall have the general powers specified in Chapter 6 (commencing with Section 2400) of Part 4 of Division 4 of the Probate Code and shall have the additional powers specified in Article 11 (commencing with Section 2590) of Chapter 6 of Part 4 of Division 4 of the Probate Code as the court may designate. The report shall set forth which, if any, of the additional powers it recommends. The report shall also recommend for or against the imposition of each of the following disabilities on the proposed conservatee:

* * * * *

(d) The right to refuse or consent to treatment related specifically to the conservatee's being gravely disabled. The conservatee shall retain all rights specified in Section 5325."

On appeal, the Court of Appeal found:

"Petitioners are entitled to a judicial declaration that, before a trial court may impose a medical disability pursuant to section 5357(d), the court must find that the conservatee or proposed conservatee is incapable of making rational decisions about medical treatment related to his or her own grave disability, that is, lacks the mental capacity to rationally understand the nature of the medical problem, the proposed treatment, and the attendant risks. In doing so, the court must consider the *Riese* factors, i.e., (a) whether the patient is aware of the nature of his or her grave disability; (b) whether the patient is able to understand the benefits and the risks of, as well as the alternatives to, the proposed intervention; and (c) whether the patient is able to understand and to knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought and otherwise participate in the treatment decision by means of rational thought processes. To permit meaningful review, the record must reflect that the court was aware of this legal standard, that it considered evidence relevant to the standard, and that it made a finding utilizing that standard.

While we grant declaratory relief, we must remand for the trial court to consider whether mandamus relief should be granted. We do so for two reasons. First, remand will give the trial court an opportunity to consider whether the Public Guardian has taken, or will take, necessary action to comply with the law. Second, we recognize that the decisional incapacity finding is the superior court's responsibility, regardless of the forms submitted by the Public Guardian. The trial court is in the best position to determine in the first instance whether mandamus relief is appropriate."

The Court also held that as a constitutional right to due process the proposed temporary conservatee also must be served with more than simply notice of the hearing although the statutes do not require such. You should review the Court's decision for the complete detailed discussion. However, in pertinent part the Court stated:

"The notice provided by the Public Guardian to the proposed conservatees here did not describe the legal standard for imposition of the disability nor did it require any separate response. It provided contact information for the public defender's and patient's advocate's office, but did not ensure representation. The notices in the record do not set forth a date, time and place for a hearing on the petition or, in the alternative, a date the temporary conservator will be appointed if no objection is interposed. The revised notice form submitted by the Public Guardian is not materially different. The revised physician's *declaration* form prompts the declarant to provide evidence on each of the three *Riese* factors, but there is no indication that, contrary to the Public Guardian's prior practice, this declaration form itself will be served on the proposed conservatee before the court imposes the section 5357(d) disability. We do not believe that mere absence of objection by an unrepresented party to an inadequate notice given by the Public Guardian can be regarded as the equivalent of "informed consent" to involuntary medication. (See *Riese, supra*, 209 Cal.App.3d at p. 1320.)

We find that the current practice of imposing a section 5357(d) disability provides inadequate notice and opportunity to be heard and therefore violates due process. (FN:20) For the reasons stated *ante,* we remand for the trial court to consider the appropriateness of mandamus relief."

Christie v. Kimball
California Court of Appeal, Second District, Case No. B230286, January 26, 2012
(The Probate Court can order an accounting *sua sponte*)

Holds that the probate court can order an accounting *sua sponte* (i.e., on its own initiative) under its general powers and that generally an order compelling an accounting standing alone is not appealable. Let me just say, if there was any doubt, as a general matter, I would like to see judges take more initiative to get the information out there and available. I do note that there was an argument that the person requesting an accounting did not have legal standing for such. The trial court stated that it was not determining that issue (i.e., whether the person was entitled to an accounting), but was ordering an accounting for its own benefit so that the court could determine what was going on. Kind of a slippery slope. Generally I don't support having to provide an accounting when standing is lacking; however, many trust and estate issues raise equitable issues, such as in cases where there is reliable evidence of possible wrongdoing, undue influence or misappropriation. In many of those situations it is helpful that the court has discretion to act on its own.

Portico Management Group, LLC v. Harrison
California Court of Appeal, Third District, Case No. C062060, December 28, 2011

Holding that in appropriate circumstances a trust is not an entity that can be sued – instead, it is appropriate to sue the person who is the trustee of the trust when the identity of the trustee

becomes known – i.e., the party to the case should be named similar to the following manner: "(insert the trustee's name) as Trustee of the (insert the name of the trust) Trust Dated . . . ."

Estate of Roger Kampen
California Court of Appeal, First Appellate District, Case Nos. A129849 and A130313, November 14, 2011, Pub. Order December 9, 2011
(Damages recoverable against an estate executor for failure to timely distribute assets following an order of distribution.)

The Court's decision in Kampen is lengthy. It is a case that should be read if you are involved in issues relating to damages that can be recovered against an executor for breach of fiduciary duty, particularly in the context of damages that might be recoverable against an estate executor for significant delay in the distribution of estate assets following an order of distribution. The trial court did award damages against the executor including loss of compensation and the loss of value to the estate caused by the executor's delay. However, the beneficiary appealed, contesting the trial Court's manner of calculating damages, and also the trial Court's denial of interest during the time of delay following the order of distribution. The beneficiary argued that the damages should have been larger and should have included some manner of calculation relating to the beneficiary's lost claimed lost opportunity costs.
In summary, on appeal the Court affirmed the trial court's manner of calculating damage caused by the executor's delay, and held that interest did not accrue on the value of the estate following the order of distribution. The decision discusses many sub-issues pertaining to the calculation of damages in the context of an estate. For example, the Court held that an order of distribution is a final judgment that is in rem in nature, but it is not a money judgment; speculative damages are not recoverable; and the beneficiary of the estate "is not entitled to interest it could have earned on the cash in the estates. An executor is similar to a trustee in many respects but, unlike a strict trustee, an executor has no statutory duty to invest money belonging to the estate." The Court also upheld the trial court's partial holding against the beneficiary for laches relating to the beneficiary's delay in enforcing its rights.

Estate of Irving Duke
California Court of Appeal, Second District, Case No. B227954, December 4, 2011
(When holographic will was unambiguous, assets passed by intestacy as the will failed to address the circumstances)

Decedent Irving Duke's holographic will provided that on his death all of his property shall pass to his wife Beatrice, and that if Beatrice died at the same time that Decedent died all of his property was go pass to two charities. The will did not address the situation where Beatrice might predecease Irving. Beatrice did in fact die five years before Irving. The two charities

petitioned for probate of the will. Two of Decedent's nephews, who were not named in the will, argued that the condition under which the charities would have been entitled to distribution had not occurred, and that as a result Decedent's estate should pass pursuant to the intestacy statutes.

The court agreed with the Decedent's nephews, holding that as the will was unambiguous, extrinsic evidence could not be admitted in an effort to establish the Decedent's intent, nor could an argument be made as to the construction or reformation of the will. As the will was unambiguous, the clear result was that the Decedent's assets should pass in accord with the intestacy statutes—it would be improper conjecture or speculation for the court to engage in an effort to correct the dispositive clause.

Although I don't necessarily disagree that the will was unambiguous as far as its terms provided, it seems clear the will failed to address the situation where Beatrice predeceased Irving. Thus, it can be argued that the will was ambiguous as to the events that did actually occur, i.e., that Beatrice predeceased Irving. It is also a maxim in California probate law that a Decedent's estate should pass as the Decedent intended. Based on the wording of the will, it is also no more certain that Decedent intended his estate to pass by intestacy. Accordingly, it is arguable that extrinsic evidence should have been admitted as to Irving's intent. The court's ultimate bright-line rule doesn't necessarily do justice to the Decedent's intent.

Conservatorship of Cornelius
California Court of Appeal, First District, Case No. A131495, November 15, 2011

Temporary conservator was entitled to recover her attorneys' fees and costs for the temporary conservatorship of her father although dismissing the permanent conservatorship.

A daughter was appointed temporary conservator of her father. The evidence established a need for the temporary conservatorship; but the father's situation then improved. After the father objected to the permanent conservatorship the daughter then dismissed the petition for permanent conservatorship and petitioned for attorneys' fees and costs.

The court affirmed the daughter's recovery of attorneys' fees and costs, holding that §§2641(a) and 2642(a) make no distinction between temporary and permanent conservators.

"It is benefit to the conservatee, not establishment of a permanent conservatorship, that a court must look to in deciding whether a temporary conservator is entitled to reimbursement." "The relevant question is whether [the] temporary conservator . . . acted in good faith, based on the best interest of her father . . . in petitioning for conservatorship and in opposing his request to dissolve it."

Hernandez v. Kieferle
California Court of Appeal, Second District, Case No. B229653, October 31, 2011

The trial court invalidated a trust amendment designating the decedent's stepdaughter Claudine as the trustee and sole beneficiary of her stepmother Gertrude's estate. The designated beneficiary of the prior amendment, next door neighbor Florentina, contested the amendment under the Cal. Probate Code §21350 presumption that transfers to care custodians are the product of fraud, duress, menace or undue influence, arguing that Claudine as disqualified as a care custodian as Claudine lived with Gertrude and cared for her in the evenings. Gertrude's husband (Claudine's father) died 11 years prior to Gertrude.

Claudine argued that she was not disqualified as a care custodian pursuant to the §§21351(a) and (g) "heir" exceptions to §21350. The court held that the §§21351(a) and (g) exceptions applied and that Claudine was an "heir" pursuant to Cal. Probate Code §§44, 6402.2 and 6402.5 (issue of Gertrude's predeceased husband who died not more than 15 years prior) although her stepmother's estate did not actually contain property attributable to Claudine's father (who passed away 11 years prior).

A person is an heir of the transferor for the "related by blood or marriage" exception to §21350 disinheritance if an intestate rule identifies the person as the transferor's successor, even if the estate does not include the type of property distributed under the rule—an heir is anyone who could inherit by intestate succession even if they don't inherit under the case.

Estate of Giraldin
California Court of Appeal, Fourth Appellate District, Case No. G041811, September 26, 2011

The Court held that remainder beneficiaries of a revocable trust lack standing to compel an accounting or bring an action against the third party trustee for the alleged wrongful actions or omissions to act of the trustee that occurred prior to the time that the trust became irrevocable. While the trust remained revocable, the trustee only owed a duty to the trustor. The beneficiaries alleged that during the time that the trust remained revocable, and the third party trustee was serving as trustee, the trustor lacked mental capacity to make competent decisions, including decisions involving how he wanted to use and invest trust assets, and that the trustee wrongfully permitted the trustor to make those decisions and to take those actions.

Court held: respondents lacked standing to claim the wrongdoer had breached duties owed to them during the period prior to the trustor's death as the wrongdoer owned the beneficiaries no such duties.
We express no opinion on the merit of any theoretical claims that might have been asserted on the deceased trustor's behalf. None were.

Estate of Giraldin contradicts and criticizes the California Court of Appeal First District's holding in *Evangelho v. Presoto* (1998) 67 Cal. App. 4th 615, which held in a similar revocable trust situation that the remainder beneficiaries do have standing to bring a claim against the trustee's actions that were taken while the trust was revocable.

Will be cited for the proposition that there is no redress for wrongdoings against a deceased trustor or done against the trust while the trust was revocable.

Creates a split with the holding in *Evangelho v. Presoto*.
Seeks to create a bright line rule, perhaps ignoring that the Probate Court is a Court of Equity.
The holding might have been different if the claims had been brought on behalf of the deceased trustor; his successor in interest might have standing.

Case Takeaway:
The law is unsettled as different courts have held differently.
The remainder beneficiaries might still have claims and standing.
The estate representative and successor trustee probably still have standing and should consider pursuing claims, to be safe and not breach duties.
You will continue to see more of these situations, particularly with a rise in financial elder abuse.

Estate of Dito
California Court of Appeal, First District, Case No. A128921, August 23, 2011

The probate court found that Elenice was Frank's surviving spouse pursuant to §21610, et seq. as an omitted spouse, and was entitled to a share of Frank's estate as well as that both the prenuptial agreement and the surviving spouse's waiver in it were invalid and unenforceable.

Frank's daughter Barbara then initiated a probate court action, alleging that Elenice committed financial elder abuse against Frank and that as a result Elenice should be deemed to have predeceased Frank pursuant to Probate Code §259. On appeal, the court held that the primary right at issue under §259 was Frank's right to be free from abuse, which was distinct from the right of an omitted spouse pursuant to §21610. Further, §259 does not necessarily entirely disinherit an abuser who has other claims or rights that would allow her to inherit but rather restricts the abuser's right to benefit from her abusive conduct. Thus, Barbara's §259 claim did not affect or threaten the determination that Elenice was a surviving omitted spouse under §21610.

Case Takeaway:
Probate Code §259, disinheritance of a person who has committed elder abuse, is a right of the abused to not be abused. Section 259 prohibits the abuser from inheriting as a result of his or her

abuse, but does not prevent the abuser from inheriting under other legal rights that are unrelated to the abusive conduct.

Bullock v. Philip Morris
California Court of Appeal, Second District, Case No. B222596, August 17, 2011

The court affirmed a punitive damage award that is 16 times compensatory damages. The jury awarded $850,000 for compensatory damages and $13.8 million punitive damages.

As you may be aware, pursuant to modern case law guideposts (*BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559; *State Farm Mut. Automobile Ins. Co. v. Campbell* (2003) 538 U.S. 408) punitive damage awards generally are allowed in the range of 3 to 4 times compensatory damages and as an outside measure should not exceed 9 times compensatory damages as punitive damages must bear reasonable relationship to compensatory damages.

However, in *Bullock v. Philip Morris* the court held that higher punitive damages are appropriate for reprehensible conduct and physical or mental injuries, thus opening the door for enhanced punitive damages in other cases that present reprehensible conduct and resulting injuries.

Case Takeaway:
Allows higher punitive damages as a multiple of compensatory damages (16 times) where reprehensible conduct causes physical or mental injuries. Punitive damages generally are limited to 3 to 4 times compensatory damages and cannot exceed 9 times. Expect Bullock to be cited in elder abuse cases.

Carter v. Prime Healthcare Paradise Valley, LLC
California Court of Appeal, Fourth District, Case No. D057852, August 12, 2011

The primary issue was whether plaintiffs sufficiently pleaded a claim of physical elder abuse against a nursing home arising from the death of plaintiffs' father. The Court affirmed the trial court's dismissal of the complaint without leave to amend following defendants' demurrer.

To allege a claim of elder abuse plaintiffs must plead specific facts, not general allegations, evidencing oppression, fraud, malice or despicable conduct involving intentional, willful, conscious or reckless wrongdoing of a despicable or injurious nature with knowledge of possible serious resulting danger. Recklessness involves deliberate disregard of the high degree of probability that an injury will occur and rises to the level of a conscious choice of a course of action with knowledge of the serious danger to others.

Medical care physical elder abuse remedies in the nursing home context are only available for the egregious withholding of medical care for physical or mental needs—allegations of ordinary medical care negligence are not sufficient—the occurrence of a bedsore without more are not sufficient to survive a demurrer.

Case Takeaway:
An important elder abuse pleading case that favors defendants.
Plaintiff must plead specific facts similar to the facts that would be required to recover on a claim for punitive damages.
For example, in the nursing home context, allegations of a bedsore without more will not suffice.

Andersen v. Hunt
California Court of Appeal, Second District, Case No. B221077, June 14, 2011

The capacity to execute a trust is evaluated pursuant to Cal. Prob. Code §§810 to 813; however, "§§810 to 813 do not set out a single standard for contractual capacity, but rather provide that capacity to do a variety of acts, including to contract, make a will, or execute a trust, must be evaluated by a person's ability to appreciate the consequences of the particular act he or she wishes to take.

More complicated decisions and transactions thus would appear to require greater mental function; less complicated decisions and transactions would appear to require less mental function."

In the case of a simple trust or simple trust amendment, i.e., a less complicated decision, the standard that would be applied under §§810-813 is the standard applied under §6100.5 which govern the capacity to make a will or codicil.

The court in *Andersen* held that while the original trust document is complex, the amendments were not, as they only provided new percentages of the trust estate that each beneficiary would receive. Thus, the capacity should be evaluated under the lower §6100.5 standard, and not under a higher standard of mental functioning.

The court sought to distinguish the holdings in *Goodman v. Zimmerman* and *Walton v. Bank of California* (First District decisions) conflict with or contradict *Andersen v. Hunt*, stating that in those cases the proper standard by which to evaluate the capacity to make a trust or will was not in dispute. *Goodman v. Zimmerman* (1994) 25 Cal. App. 4th 1667, 1673–1679, in which the court applied the §6100.5 standard for testamentary capacity to evaluate a decedent's capacity to execute a new will and trust amendment.

Walton v. Bank of California (1963) 218 Cal. App. 2d 527, 541, in which the court applied a higher standard to evaluate capacity to enter an irrevocable inter vivos trust, stating that a person lacking capacity to make an ordinary transfer of property has no capacity to create an *inter vivos* trust.

Comments:
It seems to me that designating beneficiary percentages is not necessarily simple or lacking in complexity, but that the complexity of the action depends on all of the facts and circumstances including for example all of the relevant terms of trust, the assets, remainder interests, tax planning, natural beneficiary designations, etc., and the court's bright line criteria is not appropriate.

Bellows v. Bellows
California Court of Appeal, First District, Case No. A128875, June 9, 2011

In its November 2009 order the court ordered Trustee Frederick to provide an accounting of the trust assets and to distribute half of the assets to beneficiary Donald in 10 days.

Instead Frederick subsequently offered to give Donald a distribution plus half of the fees paid by the trust, i.e., $6,718.25, provided that Donald did not file a petition.

Frederick forwarded a check to Donald for $37,520.48, together with a letter advising that Donald is "authorized to negotiate the check when he has signed and returned the enclosed receipt of final distribution."

The receipt included an acknowledgment that the payment represented "a final distribution of the trust estate." Donald cashed the check, but did not sign and return the receipt.

Donald filed a motion to compel compliance with the court's November 2009 order and distribution. Frederick argued the motion should be denied as Donald had cashed the check in full satisfaction of his claim for half the trust assets.

The court held that Frederick at Trustee was required to make the distribution without any strings attached pursuant to §16004.5.

Section 16004.5(a): "A trustee may not require a beneficiary to relieve the trustee of liability as a condition for making a distribution or payment to, or for the benefit of, the beneficiary, if the distribution or payment is required by the trust instrument."

Note the §16004.5(b) exceptions: §16004.5(a) does not limit trustee's right to: (1) maintain a reserve for anticipated expenses; (2) seek a voluntary release or discharge of trustee's liability from the beneficiary; (3) require indemnification against a claim by a person other than the beneficiary; (4) withhold a portion of a required distribution that is reasonably in dispute; or (5) seek court or beneficiary approval of a trust accounting.

The court held that pursuant to §16004.5 Frederick as Trustee could not condition the payment on a release of liability, claims or other demands. Frederick was required to make the distribution to Donald without any strings attached.

However, §16004.5(b)(5) permits a trustee to seek beneficiary approval of an accounting of trust activities; under this section Frederick presumably could enter an agreement with Donald to resolve the attorney fee issue by distributing to Donald an agreed upon amount, if such an agreement could be reached. However, Frederick could not condition such an agreement on Donald releasing his right to an accounting or of other claims he might have against the trustee, or other issues in dispute.

Case Takeaway:
Be careful that a request for a beneficiary to approve or consent to an action of the trustee does not state or imply that consent or approval is required before a required, undisputed distribution is made.

Diaz v. Bukey
California Court of Appeal, Second District, Case No. B225548, May 10, 2011

A trust contained an arbitration clause requiring that any dispute arising in connection with the trust, including disputes between a trustee and any beneficiary be resolved by negotiation, mediation and binding arbitration.

The trust became irrevocable on death of the second trustor to die, whereupon one of the trustors' daughters became successor trustee. A second daughter ("Diaz") who was a beneficiary of the trust filed a petition against the successor trustee for breach of fiduciary duty and for failure to provide an accounting and distributions. The successor trustee filed a demurrer and a petition for order compelling arbitration and stay of proceedings, asserting that the trust's arbitration clause required the claims to be resolved by arbitration.

On appeal, the court affirmed that although the second daughter (Diaz) who had filed the petition alleging breach of trustee duty was a beneficiary of the trust, the successor trustee could not enforce the trust's arbitration clause against Diaz because Diaz had objected to arbitration and Diaz was not a signatory to the arbitration clause.

Case Takeaway:
A daughter who was a beneficiary of her deceased parents' trust could not be bound to the arbitration clause that her parents included in their trust because the daughter beneficiary was not a signatory to the clause.
Shouldn't she be bound to the clause if her parents so intended that she be bound if she wanted to inherit?

INDICATORS OF POSIBLE FINANCIAL ELDER ABUSE

Basically, possible elder or dependent adult financial abuse typically becomes apparent from a financial situation that appears to be unnatural or out of character for that specific customer, or for the typical similar person in society. So, what are some of the indicators that you might be looking for?

Increased or unusual banking activity.

An unusually, or out of the ordinary, large transaction.

The purchase of an unusual item or service.

Money being paid to or for the benefit of someone out of the ordinary. The person could be a stranger to the elder, a caregiver, a housekeeper, a neighbor, a friend, a gardener, or even a family member.

A change in account title or authority.

Someone improperly using his or her authority over the elder's account. Possible a trustee, attorney in fact, co-account holder, or other person.
Unusual credit card transactions or balances.

A change in deed or real property title or ownership.

Unusual ATM activity.

Telemarketing and mail fraud; fake prizes; fake accidents; unnecessary purchases or home improvements; getting a windfall upon the payment of money or by providing information.

Risky, unnecessary or unusual investments, insurance, warranties or annuities.

Unusual people accompanying the elder; new or unusual acquaintances; new “friends,” boyfriends or girlfriends.

The elder not speaking for himself, or herself; or some other person directing the elder, the situation or the proposed transaction.

The elder acting in a secretive or evasive manner; or perhaps in an overly defensive or hostile manner in response to questions or even in response to typical conversations.

The elder being forgetful, disorganized, disoriented, confused, or unaware of his or her surroundings or common events.

The elder acting paranoid or fearful about the bank, or about his or her accounts.

A change in the appearance, actions or demeanor of the elder; social withdrawal; unkempt; or health problems, including what is referred to as self abuse.

The elder being concerned about who will help or assist him or her, or take care of him or her.

Expressions of concern, pressure, worry or fear.

Excessive payment for a product or subscription, or for services; or payment for an unnecessary product or subscription, or for services.

Excessive or unnecessary borrowing by the elder, or someone on his or her behalf.

The elder wanting to avoid conversation.

Unusual or unnatural Will, Trust, Power of Attorney, Deed or mortgage terms or documents; or unusual or unnatural changes in the terms or conditions of those documents; or the unusual or unnatural selection or nomination of the person to exercise authority in or over those documents.

Documents, checks, payments, etc., missing, misplaced or stolen.

The elder being evicted, or loss of utilities.

The elder becoming isolated from others, either because of other people causing that isolation, or because of the elder’s lack of interest.

Forged, missing, or strange looking signatures.

Changes in financial institution.

Changes in account, IRA, or insurance beneficiaries.

Unpaid bills.

The sudden appearance, assistance or interest of strangers, friends or relatives.

New people helping the elder around the house, or with the yard; home improvements.

Associating with much younger people.

Reluctance to discuss financial matters.

The elder's increasing tiredness or depression.

The sudden or unexplained transfer of assets.

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