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**Protecting Aging And Infirm From Financial Abuse: Practical Steps To Take Now**

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People are aging and the incidence of elder financial abuse, and the permutations it can take are growing as well. There is lots of talk of these issues but what you need to do, for yourself if applicable or for loved ones that might be affected, is take action. There are a number of specific steps that might prove helpful and protective. First, let's look at some of the many forms this exploitation can take.

A recent article illustrated what appears to be a common occurrence which it dubbed “inheritance exploitation:”

“*After a live-in caretaker was hired to care for his mother full-time, the woman's step-son and other family members were allegedly denied access to their loved one, locked out of the family home and written out of estate planning documents that had originally named them as heirs. By the time the step-son sued for breach of fiduciary duty and financial elder abuse, the caretaker had already pocketed some $5 million, according to a lawsuit filed in the Superior Court of California in Alameda. Although the case against the caretaker was privately settled in mediation last month, the attorney for the plaintiffs, Michael Hackard, warned that cases of inheritance exploitation like this one are on the rise*.” [see article <https://www.fa-mag.com/news/what-advisors-can-do-about-inheritance-exploitation-43495.html?section=101&page=2>]

The statistics of those potentially at risk is alarming: “*The number of boomers in their 60s with living parents has risen since 1998 to about 10 million, according to an Urban Institute analysis of University of Michigan data. The Alzheimer’s Association estimates that 5.7 million Americans are living with Alzheimer’s*.”

Financial advisors can serve in a vital position to help in protecting their clients from elder abuse. There is no question that wealth advisers can serve a vital role in protecting people with these challenges, but to do so more needs to be done then typically occurs. Addressing how that role can be enhanced, and the role of other advisers on the planning team can reduce the risks of “inheritance exploitation” and elder financial abuse generally.

Financial professionals can restrict distributions from accounts if they have a reasonable belief that the client/account owner is being subjected to financial exploitation under FINRA Rule 2165. [see rule here http://finra.complinet.com/en/display/display\_main.html?rbid=2403&element\_id=12784]

The FINRA rule also appropriately broadens the discussion to include not just elderly clients (which most articles, unfortunately, restrict their discussion too) but clients with other health or cognitive challenges that make them susceptible to abuse. “…*the term “Specified Adult” shall mean: (A) a natural person age 65 and older; or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests*.”

The FINRA rule permits placing a temporary hold on disbursements from the accounts of customers who are believed to be at risk.

“*The member [financial adviser] reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and The member, not later than two business days after the date that the member first placed the temporary hold on the disbursement of funds or securities, provides notification orally or in writing, which may be electronic, of the temporary hold and the reason for the temporary hold to: (i) all parties authorized to transact business on the Account, unless a party is unavailable or the member reasonably believes that the party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and (ii) the Trusted Contact Person(s), unless the Trusted Contact Person is unavailable or the member reasonably believes that the Trusted Contact Person(s) has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and (C) The member immediately initiates an internal review of the facts and circumstances that caused the member to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted. (2) The temporary hold authorized by this Rule will expire not later than 15 business days after the date that the member first placed the temporary hold on the disbursement of funds or securities, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to paragraph (b)(3) of this Rule*.”

To best equip a financial adviser to provide this safety net a number of prerequisites need to be addressed. The adviser must have names and contact data for trusted contact persons to reach out to. But there are many more practical steps that can be taken that too often are not addressed in the planning process. Many of these steps are non-technical practical steps that the entirety of your planning team can foster. But these steps are rarely within the primary purview of any single adviser and are not the traditional planning steps most advisers take. But to combat, the growing epidemic of financial abuse of elderly and infirm, people need more.

Planning considerations:

* Many people have many accounts scattered at many institutions. This makes each account less significant to the financial adviser at each firm. It exponentially increases the number of advisers and accounts to address making identification of an issue more difficult. To protect against elder abuse, it may be safer to consolidate accounts at one or two institutions and deepen the relationship with the adviser at the firm (or if really necessary limited numbers of firms) so that the adviser has more contact, more knowledge and hence opportunity to react to potential elder abuse. This is a difficult or impossible task for a financial adviser to accomplish because you may view the recommendation to consolidate accounts with that adviser as self-serving. However, your other advisers encourage consolidation (e.g. the CPA, estate planning attorney, etc.) that recommendation may have more impact.
* Get a real financial plan based on a realistic budget completed by the financial adviser. That can provide a touchstone to evaluate suspect transactions. Without a budget and financial plan, only the most egregious distributions might be identifiable as inappropriate. For example, a wire transfer of $100,000 to a Caribbean account pertaining to a supposed lottery winning might be identifiable in all instances. However, if a care worker or family member were to take an elderly family member to the cash ATM machine several times a week and slowly pilfer money in that manner, would that be noticeable? Perhaps not without a budget to compare to historic cash withdrawals. Too many people do not address the fundamental basics of planning which are critical to protecting you as you age or deal with other health challenges.
* Automate every financial transaction feasible. If most bills are automatically charged to credit cards, credit cards automatically paid from a checking account, and deposits automatically made to the same account a number of protective benefits can be achieved. First, the number of bills, checks and other financial records that arrive by mail can be drastically reduced. That leaves less information for bad actors to abuse. Automating financial transactions reduces the amount of work necessary to pay bills and make deposits, thereby permitting more attention to be given to oversight then working in the financial weeds.
* Automate accounting records on a computer program, e.g. Quicken, so that a CPA or other independent or trusted person can monitor activity remotely. Consider if feasible having an independent firm, e.g. a CPA firm, handle bill payment. That provides a check and balance and independent oversight.
* Consider using a more robust revocable trust in lieu of relying on a durable power of attorney. Powers of attorney often have one person named agent to act on your behalf. That can foster financial abuse if the agent is the person who turns out to be the bad actor. A revocable trust can offer a number of safeguards. You can incorporate co-trustees. While this can be done in a durable power of attorney (and perhaps should be) other steps can include appointing in the trust document a trust protector. This is a person, who may be designated to act in a fiduciary capacity (and under some state laws fiduciary status is the only result). The protector can be given the authority to remove and replace the trustee if anything is suspected, demand an accounting from the trustee, and more. Having a protector as a check and balance for the trustees or co-trustees can be protective. Also, consider assigning the revocable trust a separate tax identification number so that accounts are not under your Social Security number to make it more difficult for bad actors to identify the account.
* Involve family and others in developing a financial and legal safety net. For example, once financial accounts have been consolidated have a consolidated statement sent to you. This can make it easier for you, even if you have some degree of challenges, to stay in control longer as one composite statement of all accounts with that institution can be far simpler to understand than a dozen or more different statements from different institutions. Then have a trusted family member, or if affordable, your independent CPA, receive duplicate copies of that statement. If a family member is named, consider naming a person who is not the agent under your durable power of attorney, nor the successor trustee under your revocable trust.
* If appropriate to the plan have consistency between all dispositive documents. The distributions under a will or revocable trust, if agreeable, can match the beneficiary designations under IRA and insurance policies, and so forth. That consistency sets a pattern that could be important if someone endeavoring to commit inheritance extortion or another type of financial abuse is able to manipulate you to change an account title (e.g. to POD to the perpetrator), change a will, etc. Also, consider re-signing the will or revocable trust a few months after the initial document is signed. Add a bequest to a new charity to show that you considered the document and made a change, but the dispositive scheme other than that remains intact. Consider having different witnesses. That too can create a history corroborating intent.

Financial abuse of the elderly or infirm appears to be more rampant then statistics can ever identify. So many of these acts are difficult or impossible to identify. Determining whether an elderly mother intended to give more money to a child who claims to have been a caregiver, or whether the purported caregiver was abusing the elderly parent, are difficult to differentiate. Taking proactive steps earlier on, with a collaborative team, looking at practical not just technical implications of planning, can provide more security.

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