

LIFE PLANNING SOLUTIONS

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PREVENTING ELDER ABUSE

Five years ago, my father (who is now deceased) moved into an Assisted Living facility. My brother had power of attorney for him and would check on him daily. He was also receiving copies of dad's bank statements just to monitor things, as dad was starting to show signs of dementia.

One day, my brother received a copy of dad's checking account statement, and saw that dad has written two large checks. One was for \$5,000 and one was for \$10,000. My brother asked dad, during his nightly stop, who he had paid and for what. Dad got defensive, and couldn't remember writing the checks.

My brother ordered check copies, and it turns out an old friend had been coming by to "visit," and asking for money.



Elder abuse is becoming a common and serious problem. Please forward this newsletter to anyone who needs this information.

Sherri

REPORTING ELDER ABUSE

I recently met a woman who believed her husband, who has dementia, was being targeted for financial exploitation. Helping this person led me to visit with the Georgia Department of Human Services Division of Aging.

They said that elder abuse can be in the form of physical abuse, neglect, mental or emotional abuse, or financial exploitation. And, they said that cases of financial exploitation are on the rise, particularly those involving elderly people with dementia. Also,

- Abuse of older and disabled adults (at-risk adults) is one of the most undetected and underreported problems in the U.S.
- Abuse of at-risk adults is usually inten-

tional. It can involve physically harming or distressing the at-risk adult or not doing something that a person has a duty to do, such as a caregiver not providing medications to an at-risk adult who needs them.

- The definitions, indicators and types of abuse apply to both older adults and adults 18 and older with any disability.

As soon as a potential case has been identified (a person reports that some form of abuse has occurred), the Division of Aging assigns an investigator to the case and the police get involved. You can report suspected cases by phone, or from their website: 1-866-552-4464 - Press 3, or <http://aging.georgia.gov/report-elder-abuse>

TEN LEGAL TIPS FOR CAREGIVERS

The following article is re-printed with permission from the American Bar Association's Commission on Law and Aging.

1. Understand Decisional Capacity

Be aware that capacity is not an all-or-nothing thing. A family member may have some capacities at some times but are gradually losing others. Financial capacity and financial judgment often decline before other functions. So it is important to get help to evaluate capacity. It will help give you a clearer picture of the current level of functioning, underlying diagnoses, ways to improve capacity, and the likely progression of symptoms.

Find your local resources through the Eldercare Locator at www.eldercare.gov or call 1-800-677-1116.

2. Know What Legal Authority You Have

Caregivers often have to assist a loved one with decision-making, sometimes informally by helping write out checks, providing helpful reminders, and sometimes formally by assuming legal responsibility for decisions.

Legal authority comes in three ways: (1) through a powers of attorney for financial decisions and for health care decisions (see below); (2) for health-care decisions only, many states authorize a close family member to step in as surrogate decision-maker for some or all treatment decisions, typically in a next-of-kin order of priority; and (3) through a guardianship or conservatorship proceeding in the local courts. This should be a last resort, where good planning was not done ahead of time.

3. Appoint a Health Care Agent

Your loved one and you should complete a Health Care Power of Attorney. This legal

tool appoints someone to make health-care decisions for you when you are unable to make them. You can also provide guidelines for how decisions should be made. Forms are available from many sources, but don't just grab one and fill out a form. Completing them requires thoughtful reflection and conversation about one's values and priorities in life. Look over the resources listed at <http://ambar.org/healthdecisions>.

4. Complete a Financial Power of Attorney

Don't rely only on joint bank accounts. They can be fine for limited amounts of money for daily bill paying, but not as the primary tool of financial management. Joint bank accounts raise questions about intended ownership, gifting, misuse of funds, rights of creditors, and inheritance that can make a mess of family finances.

You and your loved ones should designate someone trustworthy to manage your financial affairs through a power of attorney. Be careful not to assume that powers of attorney are simple, standardized documents. They are not. They need to be tailored to individual needs and circumstances. Without that, a power of attorney can be a blank check for financial exploitation.

Certain powers need special consideration in drafting, such as powers to make gifts, change beneficiaries of insurance, or to sell one's home. Financial reporting to another family member is an important option to consider.

Look for an attorney experienced in elder law. This is one matter in which the legal costs will be worth it. See "Find a Lawyer" at www.NAELA.org.

5. Manage Social Security/Veterans Benefits

Managing someone else's Social Security benefits requires being appointed as a representative payee. Powers of attorney are not

"We've put more effort into helping folks reach old age than into helping them enjoy it."

Frank A. Clark

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recognized by the SSA. Once approved, checks are paid to the caregiver, to be managed on behalf of the beneficiary. The Veterans Administration has a similar procedure for appointing what they call a VA fiduciary. Other government entities may have similar procedures. To find more information, go to www.ssa.gov or www.va.gov.

6. Know Your Rights of Access to Health Information

Health care providers can't disclose a patient's personal health information without consent, except in limited circumstances. While your loved one has capacity, they can consent to your access to information. But being an agent under a health care power of attorney legally authorizes access to health information when your loved one lacks capacity. Without that, health care providers have broad discretion under the law to determine whether it is in the patient's best interest to share information with you or any other family member. To learn more, see www.hhs.gov/hipaa/for-individuals.

7. Know the Signs of Abuse, Neglect, and Exploitation

Caregivers are the front line of protection against abuse and neglect and financial exploitation of loved ones. Individuals with diminished capacity are an especially vulnerable group. Be knowledgeable of the signs of abuse and exploitation and take action when you see red flags.

See the National Center on Elder Abuse for more information about spotting and responding to elder abuse, neglect, and exploitation: <https://ncea.acl.gov>.

8. Know Your Rights if You Face Family Responsibilities Discrimination (FRD)

Working and caregiving places enormous demands on caregivers. Being criticized, downgraded, or fired because of a need to

take periodic and sometimes unplanned time off to care for a loved one may constitute family responsibilities discrimination or FRD. FRD is employment discrimination based on one's caregiving responsibilities and not based on quality of work.

Most federal and state statutes don't prohibit FRD, but legal protections based on other laws may, such as laws prohibiting sex discrimination, hostile work environment, or discrimination based on association with a person with a disability. If you think you are encountering FRD, complain to the Equal Employment Opportunity Commission, www.eeoc.gov.

9. Understand your rights under the Family and Medical Leave Act (FMLA)

The FMLA entitles you to up to 12 weeks of unpaid job-protected leave per year to care for one's parent, spouse, or child. But the Act applies only to employers with more than 50 employees and requires you to have worked more than a year. Some employers voluntarily provide family and medical leave even though not required, and some even provide paid leave. Check your employee benefits. To learn more, see www.dol.gov/whd/fmla.

10. Consider a Personal Care Agreement

Caregiving often requires a financial sacrifice, especially if work must be cut back or given up because of caregiving responsibilities. Loved ones with financial means who receive care from a family member sometimes wish to provide compensation for the caregiver. This sounds like it should be a pretty simple arrangement, but it is not. It can create serious problems with health benefits such as Medicaid, tax questions, and family conflict. Use a formal personal care agreement to spell out terms and expectations. To do this, consult with a lawyer experienced in elder law. See "Find a Lawyer" at www.NAELA.org.

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HOW CAN ELDER ABUSE BE PREVENTED?

- Taking care of your health.
- Seeking professional help for drug, alcohol, and depression concerns and urging family members to get help for these problems.
- Attending support groups for spouses and learning about domestic violence services.
- Planning for your own future. With a power of attorney or a living will, you can address health care decisions now to avoid confusion and family problems later. Seek independent advice from someone you trust before signing any documents.
- Staying active in the community and connected with friends and family. This will decrease social isolation, which has been connected to elder abuse.
- Posting and opening your own mail.
- Not giving personal information over the phone.
- Using direct deposit for all checks.
- Having your own phone.
- Reviewing your will periodically.
- Knowing your rights. If you engage the services of a paid or family caregiver, you have the right to voice your preferences and concerns.
- If you live in a nursing home, call your Long Term Care Ombudsman. The Ombudsman is your advocate and has the power to intervene. A principal function of the Ombudsman Program is to investigate and work to resolve complaints made by or on behalf of long-term care residents.

To find the Long Term Care Ombudsman that is assigned to your county, go to <http://www.georgiaombudsman.org/>

Source: National Council on Aging
