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If you have technical difficulties during the webinar, contact Jason Adams, who is providing technical support for this webinar. His email address is jadams@ovccttac.org.

Today’s session will be recorded and made available on the training website.

If you have questions, type them in the feedback box. We will address as many as possible throughout the webinar.
TODAY’S WEBINAR

Financial Exploitation in the Context of Guardianships and Other Legal Arrangements
ELDER JUSTICE INITIATIVE

• The **mission** is to support and coordinate the Department of Justice’s enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target older adults.

• The Initiative does so by—
  • Promoting justice for older adults.
  • Helping older victims and their families.
  • Enhancing state and local efforts through training and resources.
  • Supporting, organizing and presenting research to improve elder abuse policy and practice.
Introducing

Brenda K. Uekert (Ph.D.), Principal Court Research Consultant at the National Center for State Courts, has worked extensively in the areas of elder issues, domestic violence, and problem-solving courts. She is the founder and director of NCSC’s Center for Elders and the Courts—a national resource to the courts on aging issues, elder abuse and guardianship. Dr. Uekert is the author of the Elder Abuse Toolkits for prosecutors and courts and served as the Research Director on the National Probate Court Standards project. She directed the development of a multidisciplinary distance-learning course, Justice Responses to Elder Abuse, and is currently leading a national effort to modernize and improve conservatorship processes. Dr. Uekert staffs the Conference of Chief Justices and Conference of State Court Administrators Joint Committee on Elder and the Courts. She is on the advisory board of the National Center on Elder Abuse and is the 2016 recipient of “the Isabella” award from the National College of Probate Judges in recognition of her achievements in the field of guardianships. She has an undergraduate degree from the University of Wisconsin at Eau Claire and a M.A. and Ph.D. in Sociology from Syracuse University.
Financial Exploitation in the Context of Guardianships and Other Legal Arrangements

Brenda K. Uekert, Ph.D.
Director, Center for Elders and the Courts
National Center for State Courts

September 6, 2017
Before we begin:

- What options are available to older persons to help them with finances?
- What are the basic components of a power of attorney?
- What are the definitions of guardianships and conservatorships?
- What is financial exploitation?
Examples of Financial Help

- Supported decisionmaking
- Electronic bill-paying and deposits
- Joint bank accounts with a trusted person
- Properly drawn trusts
- Properly drawn durable power of attorney
- Representative payee (SS Admin, Veterans Affairs)
- Guardianship/conservatorship
Durable Power of Attorney (DPA)

- Legal document that allows someone to act on another’s behalf
  - Durable means the POA continues if incapacity occurs
  - A “springing durable power of attorney” becomes effective after a later time or when a certain event occurs
- Not subject to oversight by a court or third party
- “License to Steal”
Poll: Do you have a current durable power of attorney?
Guardianship

Guardianship of the Person

Guardianship of the Estate (Conservatorship)

There are approximately 1.3 million active adult guardianship or conservatorship cases in the United States, and at least $50 billion in assets under conservatorships.
Conservatorships

- Conservators are court appointed
- There is some level of court oversight (annual accountings, reviews)
- Generally, persons under conservatorship have some functional limitations
- Practices vary from court to court
Guardianship is both an essential tool and a dangerous weapon.

--Joanne Marlatt Otto
National Adult Protective Services Association
Financial Exploitation

The *illegal* taking, misuse, or concealment of funds, property, or assets of a *vulnerable* elder.
STOP AGEISM

We are entitled to make dumb money decisions, regardless of our age!
Can exploitation be prevented?
Prevention of DPA Abuse?

- Clear statement of agent’s duties
- Specific language required to give the agent “hot powers”
- Third party refusal to honor POA if abuse suspected
- Agent violating act must restore value

See AARP Public Policy Institute, POA Abuse: What States Can Do About It, 2009
Prevention of Conservator Abuse?

- Use as last resort
- Require criminal and credit background checks
- Create limited orders
- Mandate court approval prior to selling property
- Require restricted accounts
- Set fee schedules
- Audit accountings
What does exploitation by conservators look like?
How big is the problem?

- A study funded by the Office for Victims of Crime (OVC) found that—
  - States do not have the capacity to report the number of conservatorships in which instances of exploitation occur.
  - In many cases of exploitation, the estate was plundered prior to detection of the problem or before authorities with the power to intervene are notified. It is often too little and too late for the victims.
Characteristics of Exploiters

OVV Study Component: Exploitation in Minnesota

- N=139 cases in which auditors found “concerns of loss”
- 31 (22%) counted as exploitation (criminal charges, judicial findings of loss, orders for repayment, repayment)
- Only 2 cases (professional conservators) prosecuted
More from the Minnesota Study

- Half of the victims of conservator exploitation of adults were under the age of 65
- Women were disproportionately more likely to be victims than men
- Judicial discretion was a key factor in determining whether exploitation occurred
- Exploitation is typically addressed by removing the conservator and ordering repayment of misappropriated funds (FEW prosecutions)
- No action taken upon the death of the person under conservatorship
Exploitation by Professional Conservators

From the OVC study (national review of media stories)—

- Persons were isolated from their families, neglected, and placed in living conditions to which they were unaccustomed.
- Some worked off a profile of vulnerable adults:
  - High caseloads, sizeable estates, dysfunctional families
  - Lack of oversight created a “perfect storm.”
- In most cases reported in the media, conservators were not prosecuted.
Exploitation by Family Conservators

- Sale of house and keeping proceeds or selling “at discount” to family members
- Cash withdrawals
- Purchase of vehicles, even though the person under conservatorship doesn’t have a driver’s license
- Home repairs by unqualified family members
- Gifts or loans to family (early inheritance)
- Family members move into the person’s residence without paying rent or expenses
“There doesn’t seem to be a path for anyone to independently verify information from conservators. Once a decision was made to appoint a conservator, [he] lost his voice. His view as to how he was treated could be easily dismissed since he was already judged as incapacitated.”

-Interview with reporter from Roanoke Times (Virginia)
What can be done when exploitation is discovered?
Civil Remedies

DPA Abuse
- Revoke DPA
- Request accounting
- File lawsuit against agent
- Request court to appoint a guardian or conservator

Conservator Abuse
- Remove conservator and appoint successor conservator
- Order repayment of funds
  - Personal repayment
  - Bond reimbursement
- Require court approval before taking some financial actions

Referral to Adult Protective Services, Law Enforcement, Prosecution
Criminal Remedies

- Exploitation
- Embezzlement
- Forgery
- Fraud
- Larceny
- Money Laundering
- Theft
What are the challenges of holding the exploiter criminally responsible?
What is Criminal?

The illegal taking, misuse, or concealment of funds, property, or assets of a vulnerable elder.
What to look for...

- TRANSACTION FACTORS
- VULNERABILITY
Transaction Factors

- An assessment of the older person’s capacities was not conducted prior to the transfer of assets.
- The benefits received by the elder are not proportional to the assets or other items given up by that individual.
- The transaction may not be consistent with the vulnerable adult’s belief system.
- Common business or personal ethics are not followed.
- Alleged perpetrator does not give consideration of the effects on others.
Vulnerability “Risk Factors”

Good Health
Rational
Content
Mobile
Independent
Socially connected
Financially secure

Poor Health
Irrational
Depressed
Limited mobility
Dependent
Socially isolated
Financially insecure

DPAs
Conservatorships
Older person is vulnerable (lonely, depressed)

Another person takes advantage

Assets transferred during that period

Older person and/or transaction kept isolated, controlled, secret
Arrest & Prosecution Challenges

**Is it illegal?**
- Doubt 1: There’s a legal document giving someone power to make decisions
- Doubt 2: The older person agreed to the arrangement
- Doubt 3: The older person has dementia and/or poor recall
- Doubt 4: A family member insists he/she is acting at the request of the older person and on their behalf

**Is the older person vulnerable?**
- Did person have capacity at time of transaction(s)?
- Did the individual give his/her consent?
- Was undue influence used to persuade the older person to agree to the transaction?
Common Defenses: Financial Crimes

- **Consent**: He gave it to me. He insisted I take it.
- **Legal Authority**: I have power of attorney and am only doing what is best for my dad.
- **Strategic Spending**: We are spending down his assets so he can qualify for Medicaid.
- **Loan**: I planned to pay her back real soon.
- **Ownership**: It's my inheritance, and I'll use it when I need it.
Exploitation, regardless of the presence of a civil legal agreement, is a **criminal** activity!
What can you do about it?
Poll: Does your community have a FAST or similar team that handles exploitation cases?
Financial Abuse Specialist Teams

If YES
- Specifically look for DPA and conservator abuse cases.
- These cases are tough!
- Build your skills and crush assumptions that these cases are civil.

If NO
- Develop a collaborative team of stakeholders.
- Refer to the FAST section of the National Center on Elder Abuse website.
- Train team that crimes occur in the context of civil legal arrangements.
Thank you!

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Questions & Suggestions

Suggestions can be emailed to elder.justice@usdoj.gov
Elder Justice Initiative

Keywords:
- Elder Abuse
- Elder Caregiving
- Elder Abuse Training
- Elder Fraud
- Elder Abuse Protocols
- Elder Abuse Reporting
- Elder Abuse Community
- Elder Abuse Roadmap
- Elder Abuse Research & Self Neglect
- Elder Abuse Prevalence
- Elder Abuse Scams
- Elder Abuse Surveys
- Elder Abuse Mortality
- Elder Abuse Helping
- Elder Abuse Task Forces
- Elder Abuse Literature
- Elder Abuse Communities
- Elder Abuse Emotions
- Elder Abuse Policies
- Elder Abuse Reports
- Elder Abuse Research
- Elder Abuse Screening
- Elder Abuse Detection
- Elder Abuse Prevention
- Elder Abuse Education
- Elder Abuse Statistics
- Elder Abuse Awareness
- Elder Abuse Guardianship
- Elder Abuse Financial Exploitation
- Elder Abuse Government Documents
- Elder Abuse Residential Care
- Elder Abuse Informational
- Elder Abuse Financial
- Elder Abuse Neglect
- Elder Abuse APS
- Elder Abuse Victims
- Elder Abuse Families and Caregivers
- Elder Abuse Prosecutors
- Elder Abuse Crime
- Elder Abuse Forensic Markers
- Elder Abuse Cross-Cultural Interactions
- Elder Abuse Health Care Provider
- Elder Abuse Prevention
- Elder Abuse Team
- Elder Abuse Morbidity Incidence
- Elder Abuse Intervention
- Elder Abuse Risk Factors
- Elder Abuse Local Effort Safety
- Elder Abuse Senior Mental Health
- Elder Abuse Law Enforcement
- Elder Abuse Education Literature Review
- Elder Abuse Legal System
- Elder Abuse Sexual Abuse
- Elder Abuse Dementia
- Elder Abuse Institutional Abuse
- Elder Abuse Policies
- Elder Justice Diversity
- Elder Justice Reporting
- Elder Justice Roadmap
- Elder Justice Case
- Elder Justice Field
- Elder Justice Local
- Elder Justice State
- Elder Justice Peer
- Elder Justice Judicial
- Elder Justice Research

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