

Patterns in Cases Involving Financial Exploitation of Vulnerable Adults

By Douglas G. Chalgian



FAST FACTS

Vulnerability and incapacity are two different things.

Irresponsible children often become financially dependent on older adults.

Memory loss is only one feature of age-related cognitive decline that gives rise to exploitation.

Clients who meet with me about elderly family members who are being, or have been, financially exploited are frequently surprised when, shortly into telling me their stories, I can take over and fill in the details. It happens a lot these days. The clients often say, “I guess you’ve been doing this a while” or “I guess our situation isn’t so different after all.” Both are true. I have been at this for some time, and I have come to realize there are patterns to these cases—facts that come up again and again. Typically, cases involve more than one of these factors. The following are some of the most common.

Cognitive impairment

It almost goes without saying that in many cases in which a vulnerable adult was financially exploited, the victim suffered from some form of cognitive impairment. What is perhaps more surprising is the fact that this isn’t always the case.

In terms of cognitive impairments, the most common is memory loss often associated with Alzheimer’s disease. But there are other impairments that commonly arise in these cases, such as frontal lobe dementia, stroke-related dementia, and alcohol-induced dementia. Each of these, and several others, can affect the brain in a variety of ways. Memory loss is one, but impaired judgment and loss of executive function can also play a role in causing an elder to become vulnerable to exploitation.

Forms of mental illness are also common among the aged population and can cause elders to become vulnerable. The prevalence of depression is high. In addition, older folks suffer from the same variety of mental health disorders as the general population, including paranoia, anxiety disorders, and narcissism. These conditions can combine with age-related cognitive impairments to exacerbate the situation and increase vulnerability.

Elders with relatively healthy brains also can be victimized. Many of the reasons are explained in more detail in the text to follow. Often, older people are simply more trusting, less suspicious, and lonelier—making them easy targets. As my law partner likes to say, “Vulnerability and incapacity are two different things.”

Financial dependence

Financial dependence is an insidious problem. Children who “failed to launch” and those who became self-sufficient adults but subsequently fell on hard times may find themselves looking for financial support from their parents. This may be fine while the parents are fully competent and able to choose to help their struggling children. As the parents become impaired and vulnerable, however, it is common for dependent children



to take advantage of the situation and operate on the misguided assumption that because their parents supported them while they were competent, they would want to continue that support after they are no longer able to make that decision.

I explain to family members that simply being older does not mean you cannot make bad decisions. Young people make bad decisions all the time. But once a parent is no longer capable of deciding whether his or her resources should be preserved for self-care or given to a struggling child, the law assumes that the resources should be preserved. An established pattern of giving may be some evidence in a proceeding regarding the exploitation of a parent, but it is not generally going to prevail in court. Unless the parent, while competent, created legal documents that expressly provide for a disadvantaged child after the parent becomes impaired, the court will not presume this was his or her intent.

Asset preservation

Many elders live in fear of seeing the resources they accumulated during a lifetime of hard work dissipate

on their care costs. This fear is exacerbated by a well-established industry of lawyers and financial planners who put on so-called “chicken dinner seminars” for elders where a presenter paints a bleak picture about the future if steps are not immediately taken to “protect their assets.” These programs are designed to sell irrevocable trusts and other legal products as well as financial products offered by the presenters. What isn’t explained at these programs is that the loss of control of resources will affect the quality of care choices that elders will have in the future.

Because these programs are so prevalent, in addition to buying into the products being sold at the seminars, the perception among the aged that they must do something to protect their assets can lead to all sorts of bad decisions. It also opens the door to self-serving strategies cooked up by overreaching children whose interest in preserving their parents’ resources is really about preserving their inheritance. It is not uncommon for children to pressure parents to give them assets based on the proposition that they need to do so to avoid losing their life savings, when in fact the proposed strategy does nothing to protect the elders and serves only to benefit the children.

While there are appropriate times and strategies to protect assets for elders facing long-term care costs, the concern over this issue, the amount of wealth being transferred, and the strategies commonly employed and promoted are, in many (probably most) cases, not in the elders' best interests and are instead a common form of financial exploitation.

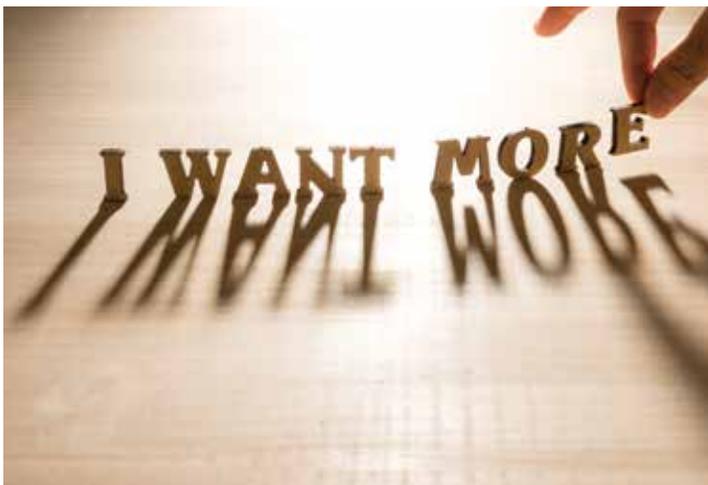
Care services

Many elders are able to remain independent solely because their children (typically daughters) are willing to make great sacrifices to provide care for their parents. That said, the awkward issue of when and how children should be compensated for these services frequently arises. In the vast majority of cases, children performing such services ask for little or nothing in return, but in a minority of cases, the caregiving child may take advantage of a fearful or impaired elder to obtain an inappropriate financial benefit. At their worst, such interactions amount to suggestions as brutally direct as, "If you don't give me (blank) I will have to put you in a nursing home." Of course, many times the appreciative parent desires to do something to benefit the caregiving child. Unfortunately, it can be difficult in these situations to discern the line between a purposeful gift to the child versus overreaching.

So-called "professional caregivers" can also be a source of exploitation. The "dad married the caregiver" scenario isn't just a movie plot. It is not uncommon for elders who lose a spouse of many years to suffer from depression, loneliness, and insecurity, giving rise to vulnerability. When an elder needs assistance with self-care or becomes acquainted with a caregiver who was in the home during a period of care for the now-deceased spouse, relationships between elders and hired caregivers can lead to financial exploitation. This fact pattern most commonly involves an older man and a younger female caregiver.

Isolation and alienation

In some families—most commonly in second-marriage situations—a caregiver seeking to exploit an elder will take aggressive steps to alienate the elder from family members perceived as a threat to the caregiver's objectives. These situations commonly result in the elder revising his or her estate planning documents when under the control of the individual exploiting the relationship. The elder often makes these changes after being persuaded by the exploiter's portrayal of other family members. For



*

In the vast majority of cases, children performing such services ask for little or nothing in return, but in a minority of cases, the caregiving child may take advantage of a fearful or impaired elder to obtain an inappropriate financial benefit.

*

instance, a second wife might alienate a spouse from children of the first marriage by telling the elder that the children are after his money or want to place him in a nursing home. Once the perpetrator has successfully convinced the elder to buy into the story, the elder is asked to sign new estate planning documents, benefiting the perpetrator to the detriment of other family members.

This process of alienation is frequently associated with isolation and control. In these cases, it is not uncommon for the perpetrator to convince the elder not to see other family members or to listen in on phone calls and review e-mails and other correspondence between the elder and family members.



Pride and reserved capacity

Perhaps somewhat surprisingly, victims of financial exploitation are often high achievers, elders who in their work life were recognized as successes in business, academia, and the arts. The reasons these types of individuals may be targets of exploitation are numerous and include:

- They have resources. Because of their success, they likely have sizable estates that inherently attract the attention of people with bad intentions—people who exploit vulnerable adults.
- They have troubled family dynamics. High achievers are frequently type-A personalities. As adults, they were driven to succeed, and a corollary of this quality is that they may be critical and judgmental of those around them. They may have failed to validate their children and others, leading to family dysfunction. Alcohol and drug abuse is also more common in dysfunctional families as well as among high achievers.

- They can fake it. In the world of cognitive impairment there is the concept of “reserved capacity.” That is, given their intellect, high achievers can still operate at a reasonable level when they become cognitively impaired—often at a level that masks the true severity of their impairment. These cases are particularly challenging to prove, since the victims may have appeared in many ways perfectly capable of managing their daily affairs, and unless there was a timely evaluation by a highly skilled medical expert, the ability to prove vulnerability may be difficult.
- They have big egos. High achievers are characteristically proud people who do not take their declining mental abilities sitting down. They may rage against the proposition that they need help or can’t make their own decisions. Many of these cases will involve the vulnerable adults’ dismissing a series of doctors who suggest their health may be declining, and turning on family members who propose they need help.

Conclusion

For lawyers, cases involving financial exploitation of vulnerable adults are especially tricky. They often combine legal concepts with medical concepts and family dynamics. The cases are typically brought at a time after the actions being contested occurred, and frequently relate to periods for which suitable medical evidence is unavailable. Nonetheless, the epidemic of exploitation in our aged population demands that these cases be handled and that attorneys educate themselves sufficiently to do so. ■

© 2014 Douglas G. Chalgian



Douglas G. Chalgian is a founding partner of the Chalgian & Tripp Law Offices, PLLC. He is past chair of the SBM Elder Law and Disability Rights Section and the Probate and Estate Planning Section. He is certified in elder law by the National Elder Law Foundation and is a Fellow of the American College of Trust and Estates Counsel. He is an adjunct professor at the Western Michigan University Thomas M. Cooley Law School and a regular speaker and author for ICLE.