

ELDERLAW[®]

NEWS

Legal News For Older Americans

Special Edition

SPECIAL EDITION: ELDER ABUSE, NEGLECT AND EXPLOITATION

I. WHAT IS ELDER ABUSE?

A. Any physical and psychological abuse of an elderly person, theft of elderly person's money or property, and the intentional or unintentional failure to take care of an elderly person.

B. Gov't. reports that 1 in 20 older persons are victims.

II. THE MAJOR TYPES OF ELDER ABUSE?

Federal definitions of elder abuse may be found in the 1987 Amendments to the Older American Act of 1965, 42 U.S.C. §§3001-3058ee. There are three (3) broad categories of elder abuse: (1) domestic elder abuse; (2) institutional elder abuse; and (3) self-abuse.

III. DOMESTIC ELDER ABUSE.

A. Refers to the maltreatment

According to the AARP, senior citizens are the largest segment of the population defrauded each year.

of an older person by someone who has a special relationship with the elder (a spouse, a sibling, a child, a friend, or a caregiver).

B. The most prevalent form of abuse is by younger family members who are responsible for the care of their elder relatives.

C. The National Center on Elder Abuse has defined seven (7) types of domestic elder abuse: (1) Physical abuse (2) Sexual

abuse (3) Emotional abuse (4) Financial or material exploitation (5) Neglect (6) Self-neglect and (7) Abandonment.

IV. INSTITUTIONAL ELDER ABUSE.

A. Refers to abuse that occurs in residential facilities for older persons (e.g., nursing homes, foster homes, group homes, board and care facilities, etc.). Perpetrators usually are persons who have a legal or contractual obligation to provide elder victims with care (paid caregivers, staff, professionals)

B. The Department of Health and Human Services has identified seven (7) types of abuse of nursing home residents: (1) Physical abuse (2) Misuse of restraints (3) Verbal abuse (4) Physical neglect (5) Medical neglect (6) Emotional neglect and (7) Personal property abuse.

V. SIGNS OF FINANCIAL EXPLOITATION.

A. Refers to the illegal or improper use of an elder's funds, property, or assets. Examples include cashing an elderly person's checks without authorization/permission; forging a signature; misusing or stealing money or possessions; coercing or deceiving an older person into signing any documents (e.g., contracts or will); and the improper use of conservatorship, guardianship, or power of attorney.)

B. Signs of financial exploitation include:

1. The elderly client has recently signed papers without realizing their purpose;

2. Large withdrawals made from accounts;

3. The elderly person relinquishes ownership of her home;

4. The caretaker is evasive when asked about financial plans, or asks only about finances, but no personal questions about the elderly person;

5. Sudden changes in bank account or banking practices;

6. The inclusion of additional names on an elder's bank signature card;

7. Abrupt changes in a will or other financial documents;

8. Unexplained disappearance of funds or valuable possessions;

9. Substandard care provided because bills unpaid despite adequate finances;

10. Elder's signature being forged;

11. Sudden appearance of previously uninvolved relatives; and,

12. The provision of services that are not necessary.

VI. METHODS OF STOPPING EXPLOITATION.

1. Direct Deposit of SSA checks.

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2. Limiting Agent's power under Durable Financial Powers of Attorney.

3. Civil Remedies:

3.1 Setting aside an improvident gift, Stancavish v. Stancavish, A-5472-95T5 (NJ Sup. Ct. App. Div. 1997); Petrucchio v. Petrucchio, 205 N.J. Super. 577 (App. Div. 1985).

3.2 Imposing a constructive trust, Stancavish v. Stancavish, supra at 9.

3.3 Compelling the reconveyance of real property, Cohen v. Cohen, 78 N.J. Super. 365 (App. Div. 1963).

3.4 Lawsuits alleging assault, battery, conversion, theft.

3.5 If the victim resides in a facility, lawsuits alleging a violation of residents' right statute.

4. Criminal Remedies: battery, assault, fraud, theft, etc.

5. Adult Protective Services Act, N.J.S.A. 52:27D-406, et seq. - to help vulnerable adults who lack the ability or capacity to protect themselves.

6. Guardian Ad Litem - to protect the interests of an incompetent person in a litigation. See, In re Grady, 170 N.J. Super. 98 (Ch. Div. 1979), mod., 85 N.J. 235 (1981).

7. Guardianship - N.J.S.A. 3B:12-1, et seq.

8. Conservatorship - N.J.S.A. 3B:13A-1, et seq.

9. Prevention of Domestic Violence Act of 1991, N.J.S.A.

2C:25-17, et seq. - to prevent violence against the elderly.

10. Civil Commitment- N.J.S.A. 30:4-27.1, et seq.; R. 4:74-7. A person can be involuntarily committed to a psychiatric facility if he or she is dangerous to self or others.

VII. CONSUMER FRAUD EFFECTING THE ELDERLY.

A. According to the AARP, senior citizens are the largest segment of the population defrauded each year.

B. Frauds Targeted Against the Elderly.

1. Health Care Fraud - Older consumers are easy prey for individuals selling miracle cures, anti-aging devices, etc.

2. Insurance Fraud - false advertising, failure to pay claims, misrepresenting the cost of insurance and period of coverage.

3. Telemarketing Fraud - contests, sweepstakes, products and charitable solicitations.

4. Mail Fraud - Phony solicitations through the mail for sweepstakes and products.

5. Securities Fraud - Seniors are frequently solicited to invest in risky deals.

6. Home Repair and Improvement Scams - unscrupulous contractors seeking to make fraudulent repairs on seniors' homes.

7. Home Equity Scams - Homeowners are induced to mortgage their homes so that they could make purchases, etc.

C. NJ Laws Protecting the Elderly From Consumer Frauds.

1. The New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, et seq. - prohibits fraudulent conduct in connection with the "sale or advertisement of any merchandise or real estate."

2. The New Jersey Door to Door Home Repair Sales Act of 1968, codified at N.J.S.A. 17:16C-95- protects senior citizens from overreaching door to door salesmen.

3. Home Repair Financing Act, N.J.S.A. 17:16C-64-1, et seq. - to protect homeowners who entered into installment payment contracts for home repairs and improvements. The statute sets forth requirements for the form and content of installment payment contracts.

4. The Second Mortgage Loan Act, N.J.S.A. 17:11A-34, et seq. - covers lender licensing requirements, the maximum charges, fees services, points and premiums to be assessed.

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