



What is elder financial abuse and how to prevent it?

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It goes without saying that older people should be entitled to do what they want with the money they have worked hard for. However, in many cases, older people will experience pressure from a family member or carer which could lead them to suffer hundreds of thousands of dollars of financial loss. This blog looks at elder financial abuse and the ways in which it is often perpetrated, as well as ways it can be prevented.

What is elder abuse?

Elder abuse is a form of abuse towards an older person which is often carried out by someone they are close to and trust, such as a family member, friend, carer or other trusted person.

It is a form of domestic violence and can involve:

- financial abuse;
- emotional abuse
- psychological abuse;
- neglect; or
- physical or sexual violence.

Elder abuse is becoming more prevalent and is an increasingly concerning issue in Australia, in part because we are living longer. It is not reported in many cases and can be particularly confronting and challenging to deal with.

The victim may feel embarrassed or fearful about disclosing elder abuse and taking necessary action, as they are often dependant on or trying to protect their abusive family member.

What is elder financial abuse?

Financial elder abuse is an illegal or improper use of an elderly person's property or finances.

[Seniors Rights Victoria](#) has reported that financial abuse is the most prevalent form of elder abuse seen by them, and the main perpetrators are adult children.

Common examples of elder abuse

The following are common examples of financial elder abuse:

- Adult children in a hurry to receive their inheritance and putting pressure on an elderly parent to assist them to get into the housing market. This example of elder abuse is on the rise due to the increasing unaffordability of housing.
- An adult child promising future care and accommodation in exchange for a transfer of the elderly parent's assets or funds to purchase a home. In many cases, after the assets are transferred or a home purchased in the name of the child, the elderly parent will be asked or told to move out.
- A family member forces an elderly person to make substantial direct debits from the elderly person's bank account or withdraw sums regularly for the family member's own use and benefit.
- An adult child prematurely takes control of an elderly parent's finances.
- Pressure from a family member towards an elderly person to change [their Will](#) or Power of Attorney to provide for or make an appointment in favour of that family member.
- An attorney under an [Enduring Power of Attorney](#) or a guardian or administrator under an order of the [Victorian Civil and Administrative Tribunal](#) ('VCAT') abusing a person whose affairs they hold power over.

How to prevent elder abuse from happening

Lawyers can have a role in assisting to protect elderly clients against current and potential financial abuse when those clients seek legal advice.

This can include:

- Ensuring an elderly client is interviewed on their own and in the absence of any other party, including children or a carer. In many cases, it may be appropriate to ask a carer or family member to leave the room in order to confirm the client's instructions and to make sure the decision and instructions are the client's own.
- Assessing an elderly client's capacity to ensure they are able to provide instructions, such as for a transfer of their assets, or that they have [testamentary capacity to make a Will](#).
- Looking for signs of undue influence. Care should be taken to ensure instructions are taken from the client and that those instructions reflect the client's genuine wishes. If a lawyer suspects instructions have been given under duress or undue

influence, further enquiries should be made to allay those suspicions before accepting instructions.

- Giving comprehensive, fully informed and independent advice so that the elderly client clearly understands the nature and effect of the proposed transaction. Confirm and clarify that advice in writing.
- Spending adequate time with a client to ensure they understand and appreciate the legal transaction involved and asking the client to confirm the reasons for a particular decision.

If you are concerned about an elderly family member, you can contact [Seniors Rights Victoria](#) who provide a helpline and free confidential legal advice and referral service for elderly Victorians.

Abuses of an Enduring Power of Attorney

An attorney acting inappropriately under an Enduring Power of Attorney on behalf of a principal is a common example of elder abuse.

Attorneys have duties which they must follow, including acting in good faith, with reasonable care and skill. They must also keep proper records of financial transactions.

An attorney is acting improperly if they are withdrawing funds from the principal's bank account and using those funds for their own use and benefit or selling or giving away the principal's possessions inappropriately. Improper conduct of the attorney can also include the attorney transferring the principal's house into their name without their knowledge or consent.

If you are the principal and have made an Enduring Power of Attorney in favour of a family member, to empower that family member to make decisions for you, and you believe they are acting inappropriately, you should [obtain legal advice](#). If you have capacity to do so, you can revoke their power to make decisions for you by signing a Revocation of the Enduring Power of Attorney.

If you suspect that an attorney under an Enduring Power of Attorney is acting inappropriately and you are a family member of the principal, you should also seek legal advice about how to put an end to the abuse.

Should attorneys fail to perform their duties properly, or engage in improper behaviour, they can be removed from their role by VCAT. An application to VCAT can be made by the closest relative of the principal or by another family member who has a special interest in their affairs.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.