Protecting Mom & Dad's money

What to do when you suspect financial abuse

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Tabloid coverage of the Brooke Astor case helped raise awareness of elder financial abuse

The New York Post called it the "swindle trial." Jurors likened it to a "Shakespearean tragedy." When New York socialite Anthony D. Marshall was convicted of defrauding and stealing from his elderly mother, philanthropist Brooke Astor, reports detailed how he conspired with lawyer Francis Morrissey to amend her will in his favor, took millions without her consent, and lifted paintings from her walls while she languished in her Park Avenue home. The trial painted a portrait of greed and filial neglect. Both men were sentenced to one to three years in prison and are currently out pending appeal.

Elsie Brooks's lifestyle was a world apart from Astor's, but their stories are tragically similar. When she was 72 she sold her mobile home and moved in with her daughter and granddaughter in Monterey, Calif. She decided she didn't want to deal with her finances any longer and let the two take control. But her daughter, Lisa Karen MacAdams, and granddaughter, Christi Schoenbachler, drained Brooks of jewelry, furniture, and an annuity worth almost $90,000, and abandoned her at a nursing facility, according to court documents. They were convicted of grand theft and financial elder abuse, both felonies, and two counts of misdemeanor elder abuse. Last summer, a California appeals court stayed one of Schoenbachler's misdemeanor charges.

Elder financial abuse is "the ultimate betrayal," says Colleen Toy White, a superior court judge in Ventura County, Calif., who sees roughly 40 cases of such abuse each month. "It's shocking to see how vulnerable the elder person is."

We've told you about scams by strangers, among them fraudulent sweepstakes phone calls and investments, and grandparent scams ("Scamnation!," October 2012 issue). Far more insidious are deceptions by neighbors, friends, employees, and relatives—the very people entrusted to care for and protect seniors.

Such abuse can be financially and emotionally devastating. And experts say it's likely to increase because of a stalled economy and an aging population. Awareness is rising thanks to cases such as Astor's. Yet because seniors might not recognize when it happens to them or are too ashamed to speak, the crime lurks largely out of sight.

In a randomized New York telephone survey released in 2011, for instance, seniors mentioned being victims of financial exploitation more frequently than any other type of abuse. Yet the study estimated that only 1 in 44 incidents of financial elder abuse is officially documented.

"Nearly every time I lecture on financial abuse, people will approach me with their personal stories," says Elizabeth Loewy, a Manhattan assistant district attorney and lead prosecutor on the Marshall case. "They will talk to me about their grandmother, aunt, or neighbor, usually a senior with cognitive issues, who had 'this problem.' And it's like a light will go on, and they'll ask, 'So this could be a crime?' "

Unreported crimes

Financial exploitation of elders is broadly defined as the illegal or improper use of the funds, property, or assets of people 60 and older. In the New York survey, 4.2 percent of older people surveyed said that they'd been exploited by family members or others. In a national study from 2009, 5.2 percent of older Americans said they'd been victimized by family members, and 6.5 percent said they'd been exploited by others. A seminal national study by the MetLife Mature Market Institute found that the cost of such abuses is at least $2.9 billion a year. Yet John Migliaccio, the institute's director of research and gerontology, acknowledges that the study's methodology—pulling from compiled news reports of abuse—underestimates the crime's true price. "What we're seeing is a tip of the iceberg," he says.

Nevertheless, the study reports some startling facts: In 107 cases, seniors lost an average of more than $145,000 from fraud committed by family, friends, caregivers, and neighbors. In 159 cases involving fraud by strangers, the average loss was more than $95,000.

Studies of investment abuses tell similar stories. In a survey last year of about 2,600 financial planners by the Certified Financial Planner Board of Standards, 56 percent said they knew older clients who had been subject to unfair, deceptive, or abusive practices. Among reported cases, the average loss estimate was $140,500; the median was $50,000. Only a quarter of surveyed CFPs said the crimes' perpetrators rarely or never knew the victim.

Law-enforcement and social-services professionals see exploitation rising sharply. Rhode Island Attorney General Peter Kilmartin's office opened 128 financial-elder-abuse cases in 2011, a 40 percent rise from 2010. Paul Greenwood, a deputy district attorney in San Diego and head of the county's elder-abuse protection unit, says the office will prosecute about 200 cases this year. "I've never been busier," he says.

Better reporting contributes to that growth, Greenwood says. So does the flat economy. "As people become more desperate from the economy, they need that extra money," says Sally Smith, adult protective services case manager supervisor at the Franklin County (Ohio) Office on Aging.

Caregivers and freeloaders

In a classic elder-abuse scenario, the predator isolates the older person, creating an environment of manipulation, intimidation, and fear

Experts say it's not only the volume of cases that have swelled but also the variety. Greenwood says fraud committed by strangers such as unlicensed home contractors and phone sweepstakes scammers is bigger than ever. So are crimes involving people in close contact with seniors. Ninety percent of abusers are family members or trusted others. Of all reported elder-abuse cases, financial exploitation is reported most frequently.

"The referrals we get run the gamut, from someone having their Social Security check being taken to an account drained of over $200,000," Smith says.

Professional caregivers pose particular risks because of their closeness to the victims and, perhaps, their generally low wages. We unearthed numerous cases in which health aides, either in the home or in an institution, had taken items, cash, or Social Security checks from their elderly charges, or worse. The New York study found that 12 percent of elder abuse was perpetrated by home health aides.

"I see a lot of middle-aged women, unskilled caretakers," Toy White says. "For the first time in their lives that we know of, they start to steal. The temptation of the money is so great."

New "friends" also can be perpetrators. Cynthia Gartman, president of Ikor, a for-profit advocacy and guardianship service based in Kennett Square, Pa., recalls an elderly woman with diminished mental capacity supporting a number of predators, including a minister. One was taking the woman shopping once a week so that she'd buy the freeloader groceries and supplies.

In a classic elder-abuse scenario, the predator isolates the older person, creating an environment of manipulation, intimidation, and fear. In 2012, Rodney Chapman of Damariscotta, Maine, was sentenced to five years in prison after pilfering the life savings—more than $300,000—of his widowed neighbor, Gwendolyn Swank, now 86. According to a court document and police reports, Chapman played on Swank's fears of reported drug trafficking in the area and encouraged her to pay phony law-enforcement agents for her protection. On several occasions, he ordered the frightened woman to hide in her house. He took away her phone, restricted visitors, coerced her into drinking whiskey, and limited when she could drive. Investigators later determined that Chapman had spent some of Swank's money to renovate his home and "blew" the rest.

"By the time we intervened, she was down to living on peanut butter and rice cakes," Lincoln County, Maine, Detective Robert McFetridge told the Bangor Daily News in June 2012. "She was really a prisoner in her own home."

The ne'er-do-well grandson

Arthur Green fought back when he says his relatives tried to evict him from his home.

By far the most disturbing abuse is by family members themselves. Kin who seem reliable can turn bad from greed or desperation. They can coerce an older relative into giving up money or control of assets, threaten or intimidate, or like Astor's son, steal outright. They can ask a cognitively impaired person for repeated loans and never try to repay. Or they can abuse power of attorney or a joint account to siphon funds. "You especially want to trust family members," says Utah Attorney General Mark Shurtleff. "But even your loved ones could try to hurt you."

Those cases can also involve neglect or physical abuse. "Financial abuse is often the motivator for beating up Grandpa or neglecting Mom," says Kathleen Quinn, executive director of the National Adult Protective Services Association, which represents state and local programs that investigate abuse of vulnerable adults and takes steps to protect the victims. "You're not getting her the care she needs because you want the money for yourself."

An archetypal exploiter is a ne'er-do-well son, nephew, or grandson, living on Grandma's couch and borrowing or stealing money. He might have emotional scars or a drug habit, or he might view his elderly relative as an easy source of cash.

Another threat is a relative acting as a caregiver who starts with good intentions but then siphons money from her charge's accounts. "Many will write themselves a check to gift money to themselves," says Steve Starnes, a certified financial planner in McLean, Va., who counsels advisers on dealing with the elderly. "They feel like, 'I'm looking after my loved one and I deserve something in return.' "

At the heart of these cases is a grievous breach of trust. Arthur Green, 74, of Brooks, Maine, signed over the deed to his lakefront home and adjoining cottage to his granddaughter, Nevin Bennoch, assuming that he could live there rent-free through retirement, according to Green's attorney, Denis Culley, of the nonprofit Legal Services for the Elderly in Augusta, Maine. Instead, Bennoch and other family members moved into Green's house, put the cottage up for sale, and began a campaign of harassment, Culley said. When Green, a former construction worker, was served with an eviction notice, he contacted Culley, who fought successfully to return his properties. Without the agency's help, Green says, "I'd probably be under a bridge in a cardboard box."

Sometimes prosecutors and judges characterize such financial shenanigans as civil cases, rather than criminal ones, which could prevent or delay their resolution. Prosecutors also may be unwilling to use seniors as witnesses if their mental capacity is in question. And often the victim may not want to talk, out of shame or fear of losing their independence. Smith of the Franklin County Office on Aging recalls a client who was sitting in the dark because her son was taking her Social Security checks and not paying her utility bills. She refused to press charges.

Predators who succeed once often try again. "You don't want to admit that you were taken the first time," says Jaye Martin, executive director of Maine's Legal Services for the Elderly. "So you don't say no when they keep coming back."

As in domestic-abuse cases, victims may fear their abuser's wrath if they report them—or they might be afraid of losing them. "Most of the time the person who's exploiting her is her caregiver," Smith says. "So if they go to jail, who's going to take care of her?"

In fact, the similarity to domestic violence helps explain why elder financial abuse goes underreported. “It took people a while to wrap their heads around the idea that domestic violence was a crime,” says Loewy, the Manhattan assistant district attorney. “We’re where domestic violence was about 20 years ago.”

What’s being done

Judge Colleen Toy White handles about 40 financial-elder-abuse cases a month.

Those problems haven’t stopped law--enforcement and other professionals from pushing to improve awareness and prevention of financial exploitation of older people. With little federal coordination and funding, most activity happens at the state level. Experts we interviewed in several states mentioned improvements in recent years in the communication among adult-protective-service workers, emergency medical personnel, police officers, prosecutors, and other workers to identify and deal with suspected crimes.

Strained state budgets challenge more progress. Some jurisdictions in California, for instance, have established dedicated courts like that of Toy White to handle the growing number of elder-abuse cases. A spokeswoman for the California Administrative Office of the Courts expressed concern about the elder courts’ survival in the face of state budget cuts. In spite of a burgeoning elderly population, Maine’s Legal Services for the Elderly has seen its funding remain flat over the past decade, Martin says.

In 25 states, financial institutions are required to report suspicious withdrawals from seniors’ accounts and other uncharacteristic activity, according to the American Bankers Association. The ABA says it supports its member banks with education, including training that focuses on teaching employees to identify behavioral and transactional indicators that could signify financial abuse.

But a recent Government Accountability Office report found examples where bank employees missed opportunities to identify elder exploitation. Banks’ misconceptions about federal privacy laws also may make them unwilling to release bank records to investigators, the report found.

On the federal level, the Consumer Financial Protection Bureau, established by the 2010 financial-reform law, houses the Office of Financial Protection for Older Americans, which works to prevent abusive and fraudulent financial practices related to seniors. Several agencies publish material on preventing and avoiding identity theft, phone scams, consumer frauds, investment cons, and other swindles for seniors and others.

But a potentially powerful federal weapon against financial elder abuse remains stuck in neutral. The Elder Justice Act, part of the 2010 health-care reform law, authorized more than $700 million over four years for preventing and dealing with elder abuse, neglect, and exploitation, mostly by funding state adult protective--services agencies. Congress, however, has failed to fund the “discretionary” expenditure despite a sharp rise in need. According to a 2012 report by the National Association of States United for Aging and Disabilities, almost 70 percent of state adult protective--services agencies reported a rise in caseloads of up to 20 percent in the past five years; 16 percent saw rises of 20 to 30 percent.

That lack of funding could backfire. Without timely intervention, victims stand a greater chance of becoming indigent and dependent on government support. A 2012 study by the Utah Division of Aging and Adult Services, for instance, found that older financial-abuse victims in 2010 who resorted to the state’s Medicaid program for their care had lost an average of $480,000. Such victims could cost the program almost $9 million, the study projected. “It costs victims, families, financial institutions, and the taxpayer,” says Quinn at the National Adult Protective Services Association.

Protect yourself

Protective-services professionals like Sally Smith, left, report a rise in abuse.

Preventing financial exploitation by the people you know might require taking legal precautions; at the very least you'll need to have some uncomfortable conversations with friends and family. You might need to revisit plans you've made before—and create new ones.

Hire the right professionals. Engage a CPA or certified financial planner to handle such concerns as how much money you can withdraw safely from retirement funds. Hire an estate-planning attorney with elder-law expertise to write your will and power-of-attorney documents; they can also craft trusts, which can limit relatives' access to your money. A professional daily money manager can help you deal with bill--paying, insurance claims, phone calls to financial institutions, and troubleshooting. (Learn where to find professionals.)

Set up your documents. Consider carefully to whom you give power of attorney. Though legally that person is your fiduciary—charged with acting in your best interest—in practice he or she could do anything with your money, even without your knowledge. Don't assume the person closest to you will do the best job; you might be better off giving it to someone more detached and financially secure.

Experts told us that for no extra cost, the power-of-attorney document can be drawn up with limits, such as assigning a relative or friend to monitor the person with power of attorney, mandating a periodic written report of financial transactions, or assigning joint powers of attorney, which requires two signatures on every check. You can also split the chores, giving one person authority over financial matters and another control of health decisions. Have your lawyer hold the physical papers granting power of attorney, to ensure that your appointee can't prematurely present it to your investment company or bank to gain unnecessary access.

Arrange your everyday accounts. Set up direct deposit of payments such as tax refunds, pension benefits, and Social Security. As of March 1, 2013, all Social Security benefits must be paid electronically or on a debit card. (Go to ssa.gov/deposit for details.) Set up automated bill pay with your bank for your mortgage, utility bills, and other regular expenses. Have financial institutions send statements and alerts to a trusted person who has no access to any of your accounts to check for fraud.

Avoid sharing a large bank account or a credit card with another person. If you need or want someone else to pay bills for you, create a shared account and arrange to transfer only enough money each month to cover the bills. Get to know officers and tellers at your local bank or credit union. Ensure that they have an up-to-date signature card and contact information on file.

Secure your home. Make sure any caregiver you're considering undergoes a background check. Don't assume that a placement agency will do a thorough one. Insist on a national, rather than a state, criminal check. To monitor in-home help, consider installing a surveillance camera if state law permits it.

Don't leave mail in an unsecured mailbox. Shred documents with identifying information. List and photograph all jewelry and valuables, so they can be traced to pawn shops if necessary. Keep small valuables in a locked drawer and photographs of them in a separate place.

Safeguarding relatives

The most important action you can take on an older relative's behalf is to make sure he or she gets out and about.

The most important action you can take on an older relative's behalf is to make sure he or she gets out and about. Elder abuse is correlated highly with social and physical isolation. In addition to making regular and unplanned visits yourself, arrange for outings and visits with friends, neighbors, clergy, and volunteers.

Lay down the ground rules. Hold a family meeting to discuss who will look after the older relative physically and financially. If one relative will handle the bulk of the care, have an attorney draft a "personal-care agreement" that outlines how much he or she should receive for services. "It's reasonable for a family member to be paid," says Starnes, the CFP. "That'll keep a lot of caregivers out of trouble, knowing what the limits are."

Set up a limited account. If you're concerned about your relative's abilities to make financial decisions, set up a small account at a local bank for her. The account could, for instance, include a debit card and checks and have a spending limit of, say, $300. Arrange with the bank to investigate checks written for more.

Be available. Accompany your relative to meetings with financial advisers and doctors; they can help you make plans for her protection. "Often people are nervous about having that conversation, but it doesn't have to be approached in an adversarial mind-set," Starnes says. "It can be, 'Mom, you've done such a great job, and I just want to help.' "

Watch for these warning signs

Be suspicious if the elderly person has a new "best friend," becomes socially isolated, never seems to be available or able to come to the phone, or is hesitant to have contact with others unless his or her caregiver is present. Also be on alert for:

- Unpaid bills when someone else has been designated to make payments.
- Missing property, large or unexplained withdrawals from bank accounts, or transfers between accounts.
- Excessively large reimbursements or "gifts" to caregivers or friends.
- New authorized signers on a person's bank account.
- Changes in banks or attorneys.
- Bank statements and canceled checks no longer coming to the person's home.
- Unfamiliar signatures on checks and other documents.
- Changes in spending patterns, such as purchases of items the senior doesn't need.
- Lack of personal amenities such as clean clothes and grooming items.
- Changes in documents such as a will or power of attorney, or a change in beneficiaries that the senior can't completely explain or comprehend.
- Excessive interest in the senior's finances by a caregiver, friend, or relative.

What would you do? Scenario Solution(s)

You visit your father every few weeks. Recently you looked at his bank statement and saw several checks that he can't explain.

Did your father write the checks? If he didn't and does not know who did, he should file a police report. A common tactic of abusers is to write checks to themselves from their victim's checkbook, expecting the senior to later forget or be confused about writing the check. If your father did write the checks and doesn't recall doing so, he may have a capacity problem. If that's the case, you should have him assessed by his physician, says Roger Demers, special assistant attorney general, Rhode Island Department of Attorney General.

You've given your favorite nephew several loans. His requests are getting larger and more frequent. He can get very angry when challenged, so you're reluctant to say no.

If you have a hard time refusing his requests, get someone to assist you with your finances. Then you can tell the nephew that you are no longer handling your money and he will have to go through the other person with his requests. That takes you out of the position of having to say no and lets him know that someone else is looking over things, so he might be more likely to stop asking, suggests Sally Smith, adult protective services case manager supervisor, Franklin County (Ohio) Office on Aging.

Several times when you've called your aunt's home in another state, her caregiver tells you she's sleeping, or too tired, or just can't come to the phone.

Contact law enforcement to conduct a "well check." They will make contact with your aunt and report back to you what they find. Whenever you suspect abuse, neglect, or exploitation, immediately contact your state's abuse hotline, says Allison Bryant, statewide elder-abuse prevention coordinator for the Florida Department of Elder Affairs.

The woman who drives you is like a daughter. Once, when you weren't well, you gave her your ATM card to do errands for you. Now, when you ask her where the card is, she changes the subject.

Close that account, check to make sure that no unauthorized withdrawals have been made, and sever the relationship. If there are such withdrawals, make an immediate police report, says Paul Greenwood, deputy district attorney in San Diego and head of the county's elder-abuse protection unit.

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Your brother lives with your mother. He doesn't have a job, and he doesn't pay rent. When he drinks, he is mean to your mother. You think that she's been giving him money and that she is afraid of him.

Ask her whether you can take control over her funds so that you are the go-to person if he has questions about her money, says Debra G. Speyer, elder-law attorney in Philadelphia. Talk to her when he isn't around. Unfortunately, if she's been enabling him his whole life, chances are you're not going to get her to stop, says Sally Smith, adult protective services case manager supervisor, Franklin County (Ohio) Office on Aging.

If there are signs of physical abuse, involve the police, says Martha Crippen, elder-abuse investigator, Rhode Island Department of Attorney General.

Your brother, who has power of attorney for your father with Alzheimer's disease, won't let you look at your father's accounts. But recently your brother bought a fancy car, and you're suspicious.

> *The fancy car might be a red herring, but it might indicate that your brother is taking your dad's funds. Does your father have any capacity to discuss this with him? Perhaps a meeting with the three of you discussing this might help. If all else fails, you could go to court and request an independent conservator or guardian over your dad because of his dementia and request that the power of attorney be voided because of your brother's improprieties, says Debra G. Speyer, elder-law attorney in Philadelphia.*

Where to turn for information and help

Consumer Financial Protection Bureau's Office of Financial Protection for Older Americans receives and investigates consumer fraud complaints specifically related to mortgages, credit cards, banks, loans, and more.

Eldercare Locator (800-677-1116) refers and connects callers to local services in their communities, including meal and transport services, home care, support services, services for caregivers, and others.

National Academy of Elder Law Attorneys (703-942-5711) offers a search for lawyers specializing in durable powers of attorney, conservatorship, estate planning, elder abuse, and other concerns.

National Adult Protective Services Association provides a national map with links to abuse-reporting hotlines by state.

National Center on Elder Abuse has links to additional state directories of help lines, hotlines and elder-abuse prevention resources in all 50 states and the District of Columbia.

AARP Money Management Program pairs seniors of limited resources or people with disabilities with trained money-management volunteers. One service helps seniors who remain in control of their finances to balance their checkbooks and pay bills; the other focuses on those deemed incapable of handling their own funds. The program is offered in 21 states and the District of Columbia, though availability varies.

American Association of Daily Money Managers has members nationwide who can assist seniors with bill-paying, banking, insurance paperwork, and organizing records in preparation for income-tax filing, among other tasks.

National Association of Professional Geriatric Care Managers includes professionals who can facilitate aspects of seniors' lives, including monitoring home-care workers, managing medical appointments, and identifying potential exploitation risks, among other services. Some geriatric-care managers can also pay bills and handle paperwork.

AARP's Scams and Fraud page offers information on the latest frauds against older people.

Better Business Bureau Scam Stopper has information on common scams and instructions on reporting a scam. You can sign up for scam alerts on the site.