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Aging & Exploited

The Role of the Trust & Estate Professional to Combat and Respond to Financial Exploitation of Older Clients.

by
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 Associate
 Connolly Gallagher LLP



Financial exploitation of aging and vulnerable adults is among the most significant challenges facing financial professionals. Attendees at this year's Delaware Trust Conference heard compelling comments on this topic from Dana G. Fitzsimons of Bessemer Trust, who described controversies involving elder abuse, overreaching, and contested guardianships.

I have seen this exploitation firsthand—and it is what drove me to join the private sector as a trusts and estates attorney at Connolly Gallagher.

For over a decade, I served as a prosecutor at the Delaware Department of Justice, specializing in crimes against vulnerable adults and financial exploitation of impaired adults. For eight years, I also led the office's Senior Protection Initiative, going into communities to speak with older adults, law enforcement agencies, and financial institutions about fraud and scams that target seniors.

I worked on a number of cases as a prosecutor that will stay with me throughout my career, but some stand out. One matter involved a victim who I will call Julia. Her late father worked as a painter his entire adult life. Her mother died when she was very young. Always living beneath his means, Julia's father was able to leave his chronically ill, isolated, and shy adult daughter (and only child) a residence in Brandywine Hundred, and enough money that ensured, with proper management, that Julia's needs would be met for the rest of her life. Julia's father died when she was 68 years old. Within six years of his death, every dollar was gone.

Julia's financial advisor made the report to our office that was the impetus for my involvement. The financial advisor spoke to Julia on numerous occasions about her withdrawals and their consequences and ultimately felt compelled to freeze Julia's accounts. Julia, furious, closed her accounts and stopped her communications with almost everyone. The advisor, who knew Julia and her family for decades, was at a total loss for what to do.

The advisor reported that Julia had been taking thousands of dollars from several IRAs and other investments, purportedly for home repairs. Then, Julia started taking large amounts of money to invest in manufactured housing communities in California. All of these actions were highly unusual for the shy, isolated Julia. The advisor had a relationship with her long before Julia's father died and Julia had always been just as frugal as her dad. Something was wrong, but Julia was adamant about her desires for the money.

Upon receipt of the report from Julia's investment advisor, and after several members of our team tried to engage Julia without success, I wrote her a handwritten letter and told her that people in her life are worried about her, that I know it can be hard to discuss such personal things, and to call me if she felt like talking.

About three weeks later, Julia called.

She was absolutely desperate. The IRS was garnishing her Social Security for draining the IRAs without tax withholdings. A special investigator and I spoke to Julia for over two hours. She described that all the trouble started with a young man that was coming around the neighborhood and doing odd jobs for various neighbors. The man offered to help her with repairs around the home and he would spend time with her. He developed a friendship with Julia, and she looked forward to his visits more than anything in the world.

While working on her home, the man said he discovered a family of raccoons living in Julia's attic and that it would take about \$10,000 to rid the home of the critters and remediate the damages. Julia ended up spending over \$100,000 on the alleged raccoon infestation. He took down a wall in her master bedroom and expanded the space, but left most of the work unfinished. Over the next few weeks, we would learn from Julia that she gave this man in excess of \$1 million. About \$150,000 was for a bogus "investment opportunity" he had for her in California and the rest went to "home repairs." Julia's home was worth about \$350,000 at the time. We had an expert come in and determine that there was approximately \$40,000 of work done to Julia's home. Not only had this man taken every penny Julia's father saved for her care and quality of life, but she was now left owing penalties and fees to the IRS. While she once had a home that was paid for and ample investments and cash, she now had less than nothing.

When Julia spoke about the man who had come into her life, it was clear that she was in love. My colleague and I immediately knew that Julia had not only fallen prey to home improvement fraud, but to a romance scam, as well. The man was already on our radar and was recently arrested for defrauding an elderly woman in an adjacent neighborhood for over \$20,000 to remediate a bogus rat infestation (he had the nerve to leave a box from a local pet store under her house—we pulled the footage from the store and there he was, buying rats.)

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Trusts

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As we got to know Julia and worked on her case, she began to realize the extent to which she had been victimized. As we uncovered every lie her perpetrator fed to her and built our case, we could see Julia's shock and disbelief that this had happened at all—it took a deep physical toll on her. The man convinced Julia that he was in love with her, and it was a hard day when we disclosed to her our evidence about his wife and family. All the while, she would play us daily voicemails of the man calling, asking for more money and growing increasingly threatening, insisting that she put him on the deed to her home.

Julia is not alone. Around the same time, we were working with a local man, a retired scientist, who sent over \$400,000 overseas in hopes of claiming a foreign lottery prize. But it was not just strangers—I routinely worked with older adults whose children and grandchildren felt entitled to every dime of their loved one's money, whether or not the aging adult's needs were met.

I learned quickly that there is no shortage of bad actors. They are close to home, over the phone, and lurking within the Internet. Perpetrators, whether known or unknown to their victims, are convincing, emotionally abusive, and ready to take everything. They groom their victims and tell them exactly what to say to family members, financial professionals, healthcare professionals, and law enforcement. New reports came to my desk at the Department of Justice almost daily. It is no wonder that the National Council on Aging estimates that older

adults are victimized annually out of at least \$36.5 billion dollars.

In 2021, I had the opportunity to join Connolly Gallagher's trust and estates team. I jumped, excited to focus my energies on prevention and to explore private remedies for this financial epidemic.

One of the greatest challenges in elder abuse is that adults have a right to make their own decisions—even poor ones. This autonomy is a celebrated hallmark of a free society. But how do trusted family members, caretakers, and financial professionals determine when spending decisions cross the line from free will, to cause for concern, to the need for swift intervention?

We all understand that estate planning allows us to make our wishes known in times of good health, or at least sound mind. Well-drafted documents are also critical evidence of a testator's financial goals and desires. These documents are dated, made in times of capacity, and often contain statements of intent. They detail to whom we want our most precious belongings and resources to pass, in what amounts, and under what conditions. Planning documents are personal and unique records. When a person has documents in place for years that name certain individuals, and then there are sudden drastic changes that include new people and exclude others, we have a paper record that tells a story over time. I had more than one prosecution where these documents were vital evidence.

Planning has the added benefit of reducing isolation. In my experience, the people most vulnerable to financial exploitation are lonely and have very few people in their life with whom to discuss decisions. The scammer over the phone may have a captive audience, because the adult has not spoken to anyone else in days or weeks. If there are trusted financial professionals with whom a potential victim must engage, it is an added layer of protection—not a bullet proof vest, but someone from the outside world to say that something is not right and to offer help.

Every professional in the financial industry should be aware of the tools Delaware law affords. Hopefully, your institution has a policy that provides direction if you suspect that a client is being financially exploited. 31 Del. C. § 3910 empowers financial institutions to implement such policies, place holds on transactions, and make reports to the DOJ, Division of Health and Social Services, and other appropriate institutions. Section 3910 further provides that any person or entity who makes a good faith report, shall have immunity from any liability, civil, administrative, or criminal that might otherwise exist as a result of reporting or holding or not holding the transaction. There is a similar provision covering broker-dealers and investment advisors under 6 Del. C. § 73-307.

I know it was incredibly difficult for Julia's financial advisor to freeze Julia's accounts and lose her as a client for doing



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so, but without that financial advisor making a report, several plausible and terrible outcomes could have befallen Julia. The adviser lost a client, but saved Julia's life.

Julia's perpetrator ended up serving just about two years in prison for his crimes. She will never get her money back. But, Julia now lives with family in New England and is slowly putting her life back together. While her perpetrator's accountability was meaningful, no punishment could make Julia whole, and two years certainly felt inadequate. As is usually the case with financial crimes, once the money is taken, it is gone, and there is very little anyone can do to put the pieces back together again. Most perpetrators are judgment-proof, and the emotional damage to victims cannot be undone. The best outcome is prevention and estate planning is a critical tool.

If you have not dealt with these issues yet, you will. We all need to be educated on the dynamics and red flags of abuse, so we are able look for it, know it as soon as we see it, and respond with swift and appropriate action. The challenges are immense, but our collective response can save lives.



Regina S. ("Gina") Schoenberg is an Attorney at Connolly Gallagher, focusing her practice on estate planning, administration, and litigation. With years of experience prosecuting matters of elder abuse and financial exploitation, she has seen firsthand the importance of having a comprehensive plan in place, regardless of net worth. Prior to joining Connolly Gallagher, Gina served for ten years as a Deputy Attorney General at the Delaware Department of Justice, where she was most recently the Deputy Director of Consumer Protection in the Fraud and Consumer Protection Division. As Chair of the Senior Protection Initiative, Gina served as the liaison between the Department of Justice, law enforcement, state agencies serving the population of older adults and persons with disabilities, and the public.



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