

# Financial Exploitation of Older Adults

## A Guide for Civil Legal Aid Attorneys in California



*Produced by Justice in Aging with support from the California Community  
Foundation.*

*Adapted from information from the National Center on Law & Elder Rights.*

**JUSTICE IN AGING**  

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**FIGHTING SENIOR POVERTY THROUGH LAW**

# Financial Exploitation of Older Adults: A Guide for Civil Legal Aid Attorneys in California

## About This Guide

Elder abuse is a growing issue faced by older adults, and the effects of abuse can negatively impact the physical health, mental well-being, and financial stability of victims. Elder abuse includes physical abuse, sexual abuse, neglect, and financial exploitation. Elder financial exploitation is the most prevalent form of abuse experienced by older adults.

While acts of elder abuse may fall under various criminal statutes, civil legal aid attorneys are uniquely positioned to deploy legal strategies and advocacy to mitigate the effects of abuse and help older adults attain the remedies they seek. This Guide contains state-specific information, tools, and links to resources to help civil legal aid attorneys advise and represent clients who have experienced financial exploitation. Additionally, the resources and partner information shared at the end of the Guide will help you connect with community partners, prosecutors, and coalitions who are also working to prevent and address elder abuse in your state.

This Guide was produced by Justice in Aging with support from the California Community Foundation, and adapted from information from the [National Center on Law and Elder Rights \(NCLER\)](#). NCLER has additional training and resources on a variety of Elder Abuse topics, including: Legal Basics of Financial Exploitation, Undue Influence and Elder Abuse, Elder Financial Abuse and Medicaid Denials, and Civil Litigation as a Remedy for Financial Exploitation. NCLER is developing a series of resources to help aging professionals address the legal aspects of elder abuse, and all resources are available on [ncler.acl.gov](http://ncler.acl.gov).

## Introduction to Financial Exploitation

Financial exploitation of older adults is a prevalent and underreported problem. In California, hundreds of thousands of older adults experience abuse each year.<sup>1</sup> Financial exploitation has many faces, including theft, ID theft, theft of public benefits, unauthorized use of credit cards, undue influence, deceptive and unfair business practices, and abusive debt collection practices. Financial exploitation is enormously costly to victims' health and economic security. Studies estimate the financial losses due to exploitation are in the billions of dollars. For many victims, the funds lost are their entire life savings. Financial exploitation is frequently committed by family members, trusted friends, or caregivers.<sup>2</sup> Reporting exploitation can take an emotional toll on the person and result in a loss of caregivers or companions.

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<sup>1</sup> *Elder Abuse Issue Brief*, Center of Excellence on Elder Abuse & Neglect, University of California, Irvine (2013), Available at: [http://www.centeronelderabuse.org/docs/COE\\_IssueBrief2013\\_final.pdf](http://www.centeronelderabuse.org/docs/COE_IssueBrief2013_final.pdf)

<sup>2</sup> Peterson, J., Burnes, D., Caccamise, P., Mason, A., Henderson, C., Wells, M., & Lachs, M. (2014). Financial exploitation of older adults: a population-based prevalence study. *Journal of General Internal Medicine*, 29(12), 1615–23. doi: 10.1007/s11606-014-2946-2

## Defining Financial Exploitation

Financial exploitation is defined in the [Older Americans Act](#) as: “The fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.”

[California’s Elder and Dependent Adult Civil Protection Act](#) (EADACPA) also provides a [definition of elder financial exploitation](#):

(a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

There are differing ways of categorizing types of financial abuse and exploitation, and the boundaries between them can be blurry, but one simple distinction divides financial exploitation into two types: those by a “known” person and those by a “stranger”:

- **Known person:** Financial abuse/exploitation by a known person (a family member, close friend, caregiver, or person/organization in a position of trust) who breaches the trust between a vulnerable person and misuses the individual’s funds to serve their own needs at the elder’s expense. Attorneys should be mindful of the distinction between family and non-family perpetrators, and how that can inform your approach to the matter. Remedies for these kinds of abuse are both civil and criminal.
- **Stranger or “new friend”:** Fraud, misrepresentation, or scams by a stranger or “new friend” who deceives the vulnerable person via an ever-changing variety of con games, such as bogus

lotteries, sweetheart swindles, grandparent scams, fake charities, home repair fraud, IRS back taxes schemes, gift card scams, identity theft, etc.

This Guide focuses primarily on civil legal remedies for “known person” financial exploitation, but you can utilize the practice tips at the end of this Guide to assist your clients who have experienced stranger financial exploitation or scams.

## **The Role of Attorneys in Preventing & Addressing Financial Exploitation**

Civil legal remedies can provide valuable relief to older adults, including stopping ongoing abuse and obtaining restitution. Civil legal services programs are also generally equipped to handle the associated legal issues discussed in this Guide, such as Medicaid, housing, and consumer issues. Some of your clients may not want to pursue criminal charges against a family member or friend, but are willing to explore their civil options. Additionally, some cases may not have the elements necessary for criminal prosecution. Civil legal remedies may be helpful whether or not a criminal prosecution is pursued. As a civil legal aid attorney, you can play an important role in the protection and recovery process by assisting with obtaining protection orders, recouping funds, and other civil remedies that are addressed in this Guide.

## **Interviewing & Important Ethical Considerations**

### *Trauma-Informed Legal Advocacy*

Older adults who have experienced maltreatment are at risk of further harm if their legal matter is not handled in a trauma-informed manner by their advocate. Learning how to provide trauma-informed lawyering will help your client in their recovery process and also allow you to get more thorough information from your client in order to effectively represent them.

The family versus non-family distinction is important for advocates to recognize. The sensitivities involved with a family member perpetrator should inform the conversation between you and your client, and the trauma-informed lawyering tips in this Guide are especially helpful in this context. Additionally, a victim may be willing to pursue certain remedies against a non-family exploiter that they may be reluctant to consider if the exploiter is related.

Traumatic triggers can impact your ability to connect with your client. Triggers bring up the memory of a past event and may create a feeling of unease or fear. Each client’s experience and triggers will be different, so it is important that you understand the various options that are available to make your client feel more comfortable. Providing options for the interview location, being careful to explain the process of the interview in advance, and taking breaks can all be beneficial when conducting a legal interview. If your client will have to go to court, you should be mindful of the triggers that they may face, particularly if they will encounter the perpetrator of abuse. A run-through of the day can be helpful, as well as arranging for a supportive friend or family member to be present. For practice tips and more information about trauma-informed lawyering, resources are available through the [Trauma-Informed Legal Advocacy \(TILA\) Project](#).

## ***Mandated Reporter Policy***

In California, lawyers are not specifically designated as mandatory reporters of elder abuse. The statute defines mandated reporters in the [California Welfare & Institutions Code § 15630\(a\)](#), within the EADACPA:

“(a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.”

The full statute can be found in the [California Welfare & Institutions Code § 15630](#).

However, if you have reason to believe that your client has experienced abuse, you have the option of permissive reporting to Adult Protective Services if your client consents to the report. Permissive reporting should be weighed carefully with your client. Under the [California Rules of Professional Conduct, Rule 1.4](#), you must explain a matter “to the extent reasonably necessary to permit the client to make informed decisions.” This includes explaining to your client what would happen next, including services that may become available to them, possible criminal charges against the abuser, the potential for a guardianship investigation and capacity assessment, and more, including possible negative implications. Reporting elder abuse to Adult Protective Services can result in a case worker investigating the report, which could include a home visit and other actions that your client may not be comfortable with. A complete understanding of the impact and potential benefits and detriments of reporting will help you advise your clients on permissive reporting and weigh the benefits and burdens of taking this action.

As an attorney, you will need to assess your reporting obligations and ethical duties, and then be clear with your clients about your obligations and confidentiality during initial interviews and subsequently if necessary. The California Department of Social Services offers an online training on reporting responsibilities entitled, [Mandated Reporting: Elder and Dependent Adult Abuse and Neglect in California](#). The [California State Bar’s Ethics Hotline](#) provides free consultations on ethical questions, such as the disclosure of confidential information.

## ***Capacity Concerns***

Diminished capacity is a risk factor for exploitation, and because you will likely represent clients with capacity issues, you need to understand your ethical obligations. California’s Rules of Professional Conduct do not have a rule that specifically addresses a lawyer’s responsibilities in representing clients with diminished capacity. However, California’s [Ethics Opinions](#) from the state bar may offer guidance on specific issues related to capacity. Additionally, the ABA’s [Model Rules of Professional Conduct \(MRPC\) 1.14](#) may be instructive. It starts with a presumption of capacity, and directs attorneys to maintain a normal attorney-client relationship when reasonably possible.

Capacity is not an on/off switch, and the standard of capacity will vary, depending on the nature of the decision that your client is required to make. Capacity levels may change during your period of representation and you must be cognizant of how duty to your client may be affected as this occurs.

State statutes provide the standards of capacity for specific legal transactions and guardianship. [California Probate Code §§ 810-813 \(Part 17\)](#) defines legal capacity for acts, including entering a contract, making conveyances, making medical decisions and executing planning documents.

- Testamentary Capacity: [California Probate Code § 6100.5](#)
- Contractual Capacity: [California Civil Code § 39](#)
- Medical Decision Capacity: [California Probate Code § 813](#)

To help you address issues of capacity and ethics in your cases you can reference NCLER's [webinar training](#) and accompanying [guide](#) that includes in-depth information and a 4-page worksheet to screen for incapacity.

Capacity determinations call into play the sometimes competing goals of preserving autonomy and promoting protection. Attorneys should consider certain factors such as grief, stress, and non-permanent medical conditions when assessing a client's capacity to make decisions. These are all factors that could be present for your client who has experienced abuse, and they are part of trauma-informed lawyering.

## Screening

Sometimes your client will come to you seeking help to end or recover from an abusive situation. Perhaps more frequently, however, you may also discover that someone is the victim of abuse in the course of representing them in another matter. Your legal services program should have a system in place for screening for financial exploitation and other forms of elder abuse.

The signs and symptoms of elder abuse can be detected in all practice areas. Elder financial exploitation cases do not always present as elder abuse. The older adult who comes in for help with utilities, rent or a consumer debt lawsuit may be struggling to pay her bills because she has been financially exploited. Or, an older adult may be facing eviction because of an abusive adult child who refuses to leave the home.

If elder financial exploitation is suspected, reviewing a client's bank account activity, credit card statements, other bills, budget, and any accountings that are available may help you identify problems. The Elder Investment Fraud & Financial Exploitation Prevention Program has developed a [financial exploitation checklist and screening tool](#) that may be helpful.

Below are some examples of how an elder abuse case might initially present in your office. These situations may not always involve abuse, but could raise red flags and prompt further investigation:

- A client is being encouraged to sign legal documents that they do not understand.
- A client is being evicted from a nursing facility due to non-payment, and a family member manages their finances.

- A client is seeking to modify their advance planning documents in an unusual way.
- A client is facing mortgage foreclosure, but has adequate income to pay the mortgage.
- A client has a reverse mortgage, but did not understand the documents and did not have access to the funds.
- A client is being sued for a credit card debt, but they did not open the account or use the credit card.
- A client is being evicted from their apartment for a violation of the housing authority's guest policies.
- A client comes in for an appointment, and is accompanied by a coercive or overbearing family member or friend.

For more guidance on screening for elder abuse and other legal issues faced by older adults, utilize NCLER's skills training session on [Issue Spotting, Intake, & Referrals](#) which provides practical tips and visual guides for attorneys and support staff.

## Legal Strategies

When exploring the strategies in this section, you should keep in mind that some filing fees may be waived based on indigence. Although some filings for court actions may be available for free (such as certain restraining orders or a change of guardian), others may require a filing fee. This is especially important when an exploiter has deprived the elder of funds, or controls access to the funds.

In California, a filing fee waiver may be requested using form [FW-001](#). There are several ways that your client could qualify for a waiver:

- If they are currently receiving public benefits, such as Medi-Cal, food stamps, SSI, CalWorks, Tribal TANF and others; or
- If their income amounts are less than the amounts listed on section 5b of FW-001; or
- The court finds that they cannot afford their basic household needs and the court fees.

The California Courts [website](#) provides more detailed information on filing fee waivers.

**Immediate Responses for Protection**

There are certain options that you should consider and discuss with your client if they need protection from the perpetrator and immediate help to stop the abuse

Your Client Wants...	Potential Steps to Take	Why this Action for this Situation?	Practice Tips & Statutes
<p><b>To stop the perpetrator from contacting them or coming to their home</b></p>	<p>Seek an Elder Abuse Restraining Order or Domestic Violence Restraining Order</p>	<p>Protective orders, restraining orders, or stay away orders are civil orders from the court telling the perpetrator not to contact your client, approach them, or harm them again. While the order is civil, if the perpetrator violates it, they could face criminal consequences.</p>	<p>California’s Elder and Dependent Adult Civil Protection Act (EADACPA) <b><u>provides the elements and procedure for seeking a Protective Order</u></b> for an older adult who has experienced abuse as defined by the statute. Generally, the elements are as follows:</p> <ul style="list-style-type: none"> <li>• The client must be 65 or older, or be between 18 and 64 and have certain mental or physical disabilities that keep them from being able to do normal activities or protect yourself; and</li> <li>• Is a victim of physical or financial abuse, neglect or abandonment, treatment that has physically or mentally hurt them or deprivation (withholding) by a caregiver of basic things or services you need so you will not suffer physically, mentally, or emotionally.</li> </ul> <p><i>Note: For elder and dependent adult protective orders, an Emergency Protective Order (EPO) is not available if the ONLY type of abuse is financial abuse. See CA <b><u>Family Code § 6250(d)</u></b>.</i></p> <p>Older adults under 65 who are not considered dependent adults who have experienced abuse may also be able to obtain a Domestic Violence Restraining Order in situations where the person is a spouse, partner or relative. Advocates can also see if a Civil Harassment Restraining Order is appropriate.</p> <p><b><u>California Courts' website</u></b> provides information about obtaining protective orders and restraining orders, including links to the necessary forms.</p>

<p><b>To get the perpetrator out of their home</b></p>	<p>Eviction or Ejectment or a move-out order pursuant to a restraining order</p>	<p>If the perpetrator currently lives with your client, it may be necessary for you to help your client legally evict the perpetrator.</p>	<p>The protective orders and restraining orders detailed above may be used to compel the perpetrator to move out of the home of the older adult. If the older adult requires an immediate move-out, they will have to allege violence or threats of violence and their right to live in the residence.</p> <p><b>California Courts’ website</b> offers guidance and forms for eviction proceedings where a traditional landlord-tenant relationship exists.</p> <p><b>Practice Tip:</b> If your client is in immediate danger by staying in the home, you should look at shelter options, including any elder shelter networks in your area. California’s new <b>HomeSafe</b> program seeks to prevent evictions and homelessness in instances of elder abuse. Local APS offices may be able to provide more specific information about the availability of elder shelter options.</p> <p><b>Practice Tip:</b> if your client does not want to seek immediate court relief, for example, against a family member, a certified letter from an attorney demanding that the person vacate the premises and stop any act of financial exploitation, with a specified move out date, can provide relief in some situations.</p>
<p><b>To stop money and/or property from continuing to be spent, sold or accessed by the perpetrator</b></p>	<p>Pre-Judgment Attachment  and/or  Freeze of Bank Account/ Removal of Perpetrator’s Name from Bank Account</p>	<p>A pre-judgment attachment can put a hold on the perpetrator’s assets and prevent sales/transfers or hiding assets while the civil matter is pending. This may help your client recover more of the stolen funds if a judgment is awarded.</p> <p>If the perpetrator has access to your client’s bank account or has been utilizing your client’s checks or debit card, you may want to help your client take steps to freeze their account from any further withdrawals and possibly advise them to open a new account.</p>	<p>Authorization for the issuance of a pre-judgment attachment in elder abuse cases is found in <b>CA Welfare &amp; Institutions Code § 15657.01</b>. Generally, the court will award a pre-judgment attachment when:</p> <ul style="list-style-type: none"> <li>• The claim made is one upon which an attachment may be issued.</li> <li>• Probable validity of the claim that attachment is based on has been established.</li> <li>• There is no other purpose for the attachment other than recovery on the claim. The amount to be secured by the attachment is greater than zero.</li> </ul>

			<p><b>California Government Code §7480 (b)</b> provides law enforcement (including APS) with access to account activity information and records when a crime report has been filed. When working with law enforcement advocates, this could be a helpful tool for civil legal aid attorneys to obtain information about their client’s account activity.</p> <p><b>Practice Tip:</b> Your client may have automatic deposit of their Social Security, pension and other income in their current account. You will want to help them with arrangements to change the account information on the direct deposits.</p>
<b>To stop their agent from misusing a power of attorney document or not fulfilling their fiduciary obligations</b>	Revocation of Power of Attorney	<p>Revoking a power of attorney document can be a helpful first step to stop the perpetrator from continuing to exploit your client while using the document.</p> <p>Legal capacity is required to exercise this option. Also, consideration must be given to the client’s ability to handle their own finances and other options/potential agents who can step in to replace the perpetrator.</p>	<p>Information on the modification and revocation of Powers of Attorney is in <b>CA Probate Code §§ 4150-4155</b>. See also, the “Action for an Accounting” remedy in the Redress section below for removing an agent when there is breach of fiduciary duty.</p> <p><b>Practice Tip:</b> Be sure to send the revocation and any new POA documents to the banks and other institutions that may have a copy of the previous POA document.</p>
<b>To change their conservator because the current conservator is misusing funds or taking their property</b>	Termination or Change of Conservator	<p>If your client has a conservator who is guilty of misconduct, such as committing elder abuse, the court has the discretion to remove the conservator and appoint a new conservator.</p>	<p>In California, information on grounds and process for removing a conservator is in the <b>Probate Code</b>. Grounds for termination include “continued failure to perform duties,” “gross immorality,” and “any other case in which the court in its discretion determines that removal is in the best interest of the ward or conservatee.”</p> <p><b>Practice Tip:</b> Review the <b>ABA’s PRACTICAL Tool for Lawyers</b> for assistance in determining whether your client should be considered for less restrictive options than conservatorship.</p>

## Civil Legal Strategies for Redress

After taking care of your client’s immediate needs, you will want to discuss options for possible recovery of funds, termination of fraudulent agreements, and more. Using the remedies outlined below, you can assist your client by filing a complaint for restitution, compensatory damages, or punitive damages. Abuse committed using a Power of Attorney or other fiduciary appointment can have real legal consequences. Many of the civil legal remedies available to your client are based on the perpetrator’s breach of their fiduciary responsibility.

California’s Elder and Dependent Adult Civil Protection Act (EADACPA) provides [a private cause of action](#) for elder and dependent adult abuse. When it is proven by preponderance of the evidence that a defendant is liable for financial abuse, the court shall award compensatory damages, other remedies otherwise provided by law, and attorney’s fees and costs. Many of the remedies discussed below are found in the EADACPA.

The EADACPA defines “elder” as any person residing in the state, 65 years of age or older, and the statute of limitations is within four years after the plaintiff discovers, or should have discovered the facts constituting the financial abuse.

*Note: If a settlement agreement or stipulated judgment is being considered, there are restrictions on perpetrator requests. Requiring that certain complaints or reports be withdrawn or prohibited as a condition of the settlement is not permissible under [California Welfare and Institutions Code § 15657.8](#). This includes prohibitions on cooperating, contacting or reporting to APS, local law enforcement, the California Department of Aging, the local long-term care ombudsman and others.*

You need a legal remedy to...	Consider	Why?	Statutes & Practice Tips
<b>Require the perpetrator to account for the funds and property of your client</b>	Action for an Accounting  Action to Freeze Assets	If the perpetrator was in a fiduciary relationship with your client, they may have to prove that they properly handled the funds and property of your client by supplying records and information.	<a href="#">California Probate Code</a> outlines judicial proceedings concerning powers of attorney. A petition may be brought to require an agent to produce an accounting or report, and then the court can determine whether the POA should be revoked if the POA has violated or is unfit to perform the fiduciary duties, the principal lacks capacity to revoke and it is in the principal’s best interest. This action is helpful both to get information about a POA’s activities if financial exploitation is suspected and to remove them as POA even if the client lacks capacity.

<p>Recover damages from a perpetrator who was a hired caregiver, the company employing the perpetrator and/or their insurance company</p>	<p>Breach of Contract</p>	<p>If the perpetrator was hired by or working for your client, the financial exploitation could be characterized as a breach of their contract to perform their work.</p>	<p>The <b><u>California Consumer Legal Remedies Act</u></b> (CLRA) covers unfair or deceptive practices in the sale of goods or services. The CLRA also has <b>additional remedies</b> for elder or disabled adults and has factors for <b><u>tripling an award for a senior or dependent adult</u></b>.</p>
<p>Recover damages from the perpetrator where a “theft” occurred. The perpetrator does not have to be an agent or hired caretaker</p>	<p>Conversion (Tort)</p>	<p>Generally, conversion is an intentional tort in which one person takes, uses or alters the property of another person without permission. In California, property includes tangible items and real property, and not money or intangible property, with some exceptions. Conversion can sometimes be characterized as the civil version of theft.</p>	<p>The elements for conversion include:</p> <ul style="list-style-type: none"> <li>• Plaintiff’s ownership of the property</li> <li>• Defendant’s conversion by a wrongful act or disposition of plaintiff’s property rights and</li> <li>• Damages</li> </ul> <p>Damages that can be recovered are outlined in <b><u>CA Civil Code § 3336</u></b>.</p>
<p>Recover damages from the perpetrator for using deceitful means to induce your client to enter an agreement</p>	<p>Actual Fraud or Constructive Fraud</p>	<p>Proving fraud, while sometimes difficult, can provide options for your client to “undo” certain transfers or agreements or recover damages. Generally, it involves misrepresentation or concealment, which the victim relied on and caused them harm.</p>	<p>In California, there are separate definitions for actual and constructive fraud. Remedies can include the contract remedy (rescission) or tort remedy (affirm contract &amp; collect damages).</p> <p>Actual fraud is defined in <b><u>CA Civil Code §1572</u></b> and includes acts with an intent to deceive:</p> <ul style="list-style-type: none"> <li>• The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;</li> <li>• The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;</li> <li>• The suppression of that which is true, by one having knowledge or belief of the fact;</li> <li>• A promise made without any intention of performing it; or,</li> <li>• Any other act fitted to deceive.</li> </ul>

			<p>Constructive fraud, is defined in <b>CA Civil Code §1573</b> as “in any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or, in any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.”</p>
<p><b>Reverse transactions or agreements that are damaging to your client</b></p>	<p>Rescission/Undue Influence</p>	<p>As a remedy for fraud or undue influence, rescission or a reversal can be sought when your client was “induced” into a contract by a misrepresentation or undue influence by the perpetrator or if the client lacked necessary capacity at the time of the transaction.</p> <p>This could be considered in situations where your client may have added the perpetrator as a joint bank account holder or signed an agreement to transfer funds or property to the perpetrator or another party.</p>	<p>If you are seeking rescission of a contract, you will need to show there was a lack of consent to enter a contract. <b>CA Civil Code §1567</b> states that consent is not real or free when obtained through:</p> <ul style="list-style-type: none"> <li>• Duress;</li> <li>• Menace;</li> <li>• Fraud;</li> <li>• Undue Influence; or</li> <li>• Mistake.</li> </ul> <p><b>CA Civil Code § 1688</b> states that “a contract is extinguished by its rescission.”</p> <p>The EADACPA at <b>CA Welfare &amp; Institutions Code § 15610.70</b> provides the considerations for a finding of undue influence, which include the vulnerability of the victim, the apparent authority of the perpetrator, tactics, controlling necessities of life, and more.</p> <p><b>CA Civil Code § 3399</b> provides guidance for revising a contract in instances of fraud or mistake, and <b>CA Probate Code § 21380</b> outlines when fraud or undue influence is presumed in donative transfers.</p>

<p><b>Seek compensation for expenses such as lost wages, medical expenses and relocation expenses.</b></p>	<p>File for compensation funds through Victims' Compensation Assistance Programs</p>	<p>Most of these programs have a very short time frame during which a victim can file for compensation, and a police report must have been filed in a timely manner. In California, the application must be completed within three years of the crime (there may be exceptions) and the crime must have been reported to a law enforcement agency (although some exceptions may be made).</p>	<p>In California, the crime victim's fund will pay for expenses that arise as a result of a violent crime, which involved physical injury, threat of physical injury or death. Examples of covered expenses include relocation expenses, mental health services, and medical/dental services. For full information about how to apply and locations to submit an application, visit the <a href="#">California Victim Compensation Board</a>.</p> <p><b>Practice Note:</b> If a civil action related to the crime is filed and the victim has applied for funds, the California Victim Compensation Board must be notified within 30 days of filing.</p>
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## Tools for Addressing Stranger Financial Exploitation & Scams

Scams and fraudulent practices aimed at older adults include a wide range of illegal behavior from imposter scams to mortgage fraud. Scammers use deceptions, misrepresentation and threats to convince older adults to send money or provide personal or financial information. [Common frauds and scams](#) aimed at older adults include: imposter scams, identity theft, home improvement and mortgage-related scams, and fraudulent marketing practices.

If your client has been targeted by a scam, it is important to take immediate action to stop the scam and further depletion of income and assets. A NCLER Chapter Summary, [Legal Basics: Protecting Older Adults against Scams](#), details the actions an advocate can take when responding to identity theft, along with unauthorized credit and debit card use. Identitytheft.gov, the Consumer Financial Protection Bureau and the Department of Justice, as well as many state Attorney General's offices, offer information on the [scams targeting older adults](#), [reporting options](#), and [steps for recovering from identity theft](#). Civil legal aid attorneys can play a role in helping their clients avoid future exploitation, reducing solicitations, and empowering them to move forward. Additionally, attorneys can refer to California's [Consumer Legal Remedies Act](#) for possible legal options when clients have been the victim of unfair or deceptive sales practices. Additionally, the [California Senior Medicare Patrol](#) can help older adults navigate issues involving [Medicare fraud](#).

## Coordination with Prosecutors & Criminal Proceedings

If the prosecutor's office is pursuing criminal charges against the perpetrator, you will want to coordinate your civil case strategy to ensure that you are strategically bringing your civil case at the appropriate time and that you are not acting at cross purposes with the prosecution or failing to file within the statute of limitations for civil actions while a criminal action is being pursued. Coordination with the prosecutor may be accomplished through a multidisciplinary team (discussed below). If there is a criminal conviction, the court may be able to enter an order for restitution. [Recovering Compensation for Victims of Elder Abuse in California: A Guide for Professionals Helping Victims of Physical and Financial Abuse](#) has information for advocates to seek restitution on behalf of their clients and describes some of the potential actions that prosecutors can take.

The Department of Justice has Elder Justice Task Forces and Assistant US Attorney Elder Justice Coordinators in each federal district in the country. The contact information for California's current Elder Justice Coordinator can be obtained by contacting the [Department of Justice Elder Justice Initiative](#). The Task Forces provide coordination among state and local agencies, organizations and law enforcement who are combating elder abuse. Additionally, the Task Forces can evaluate complaints, investigate scams, and provide training centered on federal criminal actions.

## Associated Legal Issues

Elder financial exploitation is often associated with a broad range of legal problems. Civil legal aid attorneys can help clients address not only the abuse, but also the other legal problems it has created. The next section provides examples of the issues you may be able to address for your clients.

### *Medi-Cal and Public Benefits*

Older adults who have experienced financial exploitation are often in need of public benefits. Sometimes they may already be receiving benefits and need to retain or increase them after abuse, or they may need new benefits to make up for lost funds and/or to cover long-term care services. Unfortunately, the financial exploitation may put them in a position to be disqualified due to stolen funds being perceived as "gifts," missing documentation, or returned funds creating excess resources.

*SSI:* 45% of people receiving Supplemental Security Income (SSI) benefits in California are 65 years of age or older. The funds, therefore, provide a critical income support for many older adults. When stolen funds are being returned to an older adult after exploitation through settlements, judgment awards, or victim compensation funds, attorneys will want to be aware of protections to avoid having these returned funds considered income or resources. Some of these include:

- Reissued Benefits from SSI: When funds are reissued to the beneficiary due to the misuse of funds by a rep payee, they are not a countable resource for 9 months following the month the restitution is received. [SI 01130.602 Restitution Payments for Misused Benefits](#)
- Victim Compensation Funds: When a victim of crime receives funds from a state compensation fund, such as the California Victim Compensation Board, they are excluded as a resource for

nine months following the month the funds were received. [SI 01130.665 Victims' Compensation Payments](#)

- Return of Stolen Funds: If stolen funds are replaced or returned, they may be excluded as a resource for nine months. [SI 01130.630 Cash and In-Kind Items Received for the Repair or Replacement of Lost, Damaged, or Stolen Excluded Resources](#)

*Medi-Cal:* When someone applies for Medi-Cal to pay for long-term care, they need to provide financial records to prove their income and assets, and to show that they haven't transferred funds or property without getting fair market value for them. Transfer issues may also arise in accessing SSI benefits. When someone has been financially exploited, they may have problems qualifying for Medi-Cal. Issues that your client may face include:

- Being denied eligibility because of missing bank records or financial information;
- Having to delay eligibility during a "penalty period" based on perceived "gifts;"
- Receiving an eviction or involuntary discharge from a nursing home or hospital due to nonpayment; or
- Needing to apply for a "hardship waiver" to explain why funds are missing.

Legal services attorneys can play a critical role in ensuring that victims of elder financial exploitation can access Medi-Cal long-term care benefits by advocating on their behalf, helping construct the information needed to show that financial exploitation has caused the issue to avoid a period of ineligibility, and drafting hardship waivers. If you are assisting a client with issues with financial exploitation, you should consider how the exploitation may impact your client's future Medi-Cal eligibility, and alert your clients to this possibility.

For more information and tips on handling these cases, Justice in Aging has a webinar training, [Financial Exploitation in California: Addressing the Impact on Public Benefits](#).

### ***Federal Tax Consequences***

Your client may be facing federal tax consequences if the financial exploitation included the early withdrawal of funds from their IRA. If your office provides federal tax assistance, you may want to connect your client to those services or to an outside tax professional. For clients who meet the eligibility guidelines, you can refer them to the [Volunteer Income Tax Assistance program](#) if there is one in your area.

### ***Consumer***

If the financial exploitation experienced by your client included the unauthorized use of their credit cards or accounts unknowingly opened in their name, he or she may be left with credit card bills that they cannot pay. Working with the fraud department of the credit or banking institution may help your client—it is important that you or your client reach out to the financial institutions as soon as possible. Many will have defined windows of time in which the fraud must be reported. For more information about the steps your client will need to take, use [identitytheft.gov](http://identitytheft.gov). CFPB resources including sample

[letters](#) are also available on their website. Additional resources are available through your state’s Attorney General and the Department of Justice.

If your client is facing consumer credit lawsuits or existing credit judgments, you will want to determine whether your client can assert any defenses to the credit card lawsuit, such as fraud. You can also evaluate whether your client is “collection-proof,” meaning their income and/or homestead, for example, is beyond the reach of creditors. If default judgments have already been entered, determine whether the judgement can be vacated or if the case can be re-opened. In California, the time in which a motion to vacate must be brought depends on the grounds for relief. Common grounds for relief can be found at California Code of Civil Procedure [§§ 473\(b\), 473\(d\), 473.5](#) and California [Civil Code § 1788.61](#). The [California Courts’ website](#) provides links to the forms that will be needed for the motion.

## **Collaboration with Community Partners & Enhanced Multi-Disciplinary Teams**

Collaboration with aging services providers, community partners, and the justice system is an important component of your effective representation of your client. It is important that you are aware of the programs and organizations that are available to help your client with their non-legal concerns. You should connect your client to supportive services when needed, including nutrition services, counseling, safety planning, and shelter options.

### ***Adult Protective Services***

Adult Protective Services (APS) is an emergency social services program provided by state and local governments serving older adults and adults with disabilities who want assistance because of abuse, neglect, self-neglect, or financial exploitation (adult maltreatment). In California, there is an [APS office](#) in each county. APS receives and responds to reports of adult maltreatment and works closely with clients and allied professionals to maximize client safety and independence. The California Department of Social Services’ website has [information](#) on the jurisdiction of state agencies for investigating different types of reports of abuse.

If you are working with older adults, you should become familiar with your local APS’s reporting procedures, as well as the services and resources that they can provide. This will be helpful in weighing whether your client wants to involve APS in their case, as discussed in the earlier section on mandated reporting.

Once a report is substantiated, APS and other senior services providers can arrange for myriad supportive services for your clients, which can be key to their ongoing safety and recovery. These services can include housing, health care services, food, medical supplies, transportation, and mental health services. When legal aid and APS have an established relationship, they can better understand each other’s scope of services, constraints, and ability to refer.

### ***Long-Term Care Ombudsman***

The Older Americans Act requires every state to have a Long-Term Care Ombudsman (LTCO) program that addresses complaints and advocates for improvements in the long-term care system. Ombudsmen advocate for residents of nursing homes, board and care homes, assisted living facilities, and other adult

care facilities. Because LTCOs are often a first point of contact for long-term care residents, they may be the first to notice the warning signs of financial exploitation or be the first person a resident confides in regarding financial exploitation. LTCOs are a key community partner in preventing and identifying financial exploitation. [The National Consumer Voice for Quality Long Term Care](#) provides a list of [California-specific resources](#), as well as general information about the LTCO program.

### ***Multi-Disciplinary Teams***

One of the most notable forms of collaboration on elder exploitation cases is through multi-disciplinary teams and enhanced multi-disciplinary teams (MDTs and E-MDTs). MDTs are partnerships among public, private and non-profit organizations with the goal of improving outcomes for victims of elder financial exploitation. Most teams include a prosecutor, adult protective services, civil legal services, financial institutions, forensic accountant and other members. The collaboration on these teams fosters accountability and improved cooperation among agencies. For information on developing a team in your area, the US Department of Justice offers a [guide](#). The National Center on State Courts created a [guide](#) for effective collaboration in elder abuse cases, and it contains information about many existing collaborations in California that address elder abuse, including MDTs and task forces. Additionally, the USC Center on Elder Mistreatment's Elder Abuse Multidisciplinary Team Project has a [draft list](#) of E-MDTs operating nationwide, sorted by state.

As a civil legal aid attorney, if you are participating in a multi-disciplinary team model, you should remain aware of your ethical responsibilities and ensure that there are procedures in place to protect attorney-client confidentiality. Procedures can include implementing confidentiality agreements, excluding client names from conversation, and consent forms. Visit the [Multidisciplinary Technical Assistance Center](#) for additional forms and information.

### **Additional Resources**

- General Information & Resources on Elder Abuse: [National Center on Elder Abuse](#)
- Webinars & Practice Guides: [National Center on Law & Elder Rights](#)
- [Webinars & Practice Guides: Justice in Aging](#)
- Ethics & Practice Guidance: [ABA Commission on Law & Aging](#)
- Statutes, Information & Webinars: [U.S. Department of Justice, Elder Justice Initiative](#)
- Long-Term Care Ombudsman Resource: [Long-Term Care Ombudsman Resource Center](#)
- Locate CA Resources & Organizations: [LawHelpCA](#)
- Long-Term Care Issues & Elder Abuse Resources: [California Advocates for Nursing Home Reform](#)
- Statewide Elder Abuse Coalition: [California Elder Justice Coalition](#)