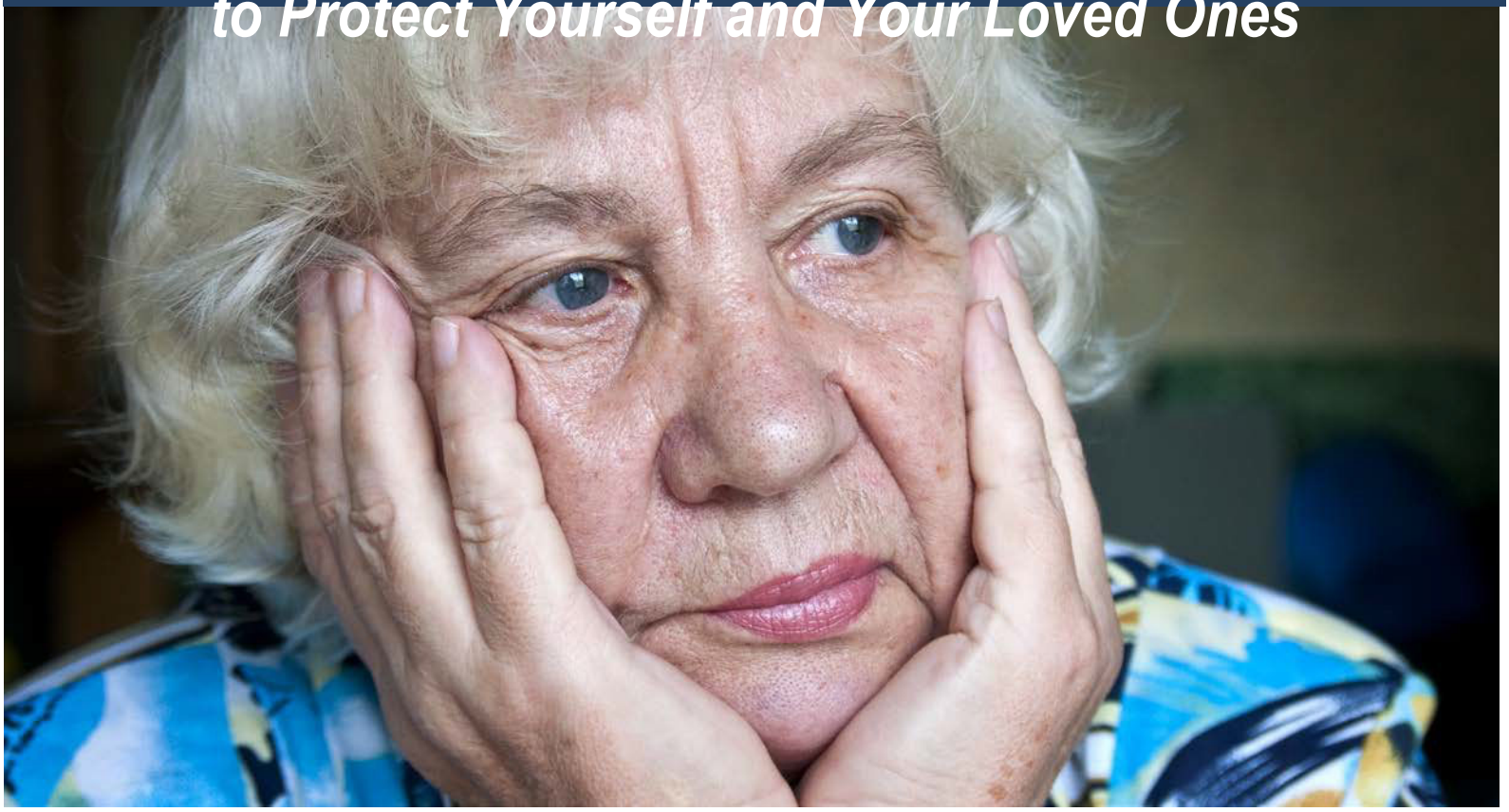
The Truth About Elder Abuse

What You Need to Know to Protect Yourself and Your Loved Ones



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ABOUT THE FIRM

The SLATON SCHAUER LAW FIRM, PLLC exclusively practices estate planning law. This focus ensures that our clients obtain the best possible legal advice in this complex field. Your situation-- family or business, simple or complicated-- is in safe hands with the Slaton Schauer Law Firm, PLLC. Our estate plans are always tailored to meet both your goals and your family's needs. We listen to your concerns and discuss your unique circumstances, getting to know you and your family as individuals. We're sensitive to the personal nature of each situation that enters our firm, and we work with you to determine the best path forward. Different situations require different solutions; no single "cookie cutter" plan fits everyone.

Regina Schauer has been practicing law for over 25 years. Her experience and accolades include 8 years of service as a judge, working in a prosecutor's office, being named Judge of the Year by the Department of Human Services, and being honored as Attorney of the Year by Legal Aid. Before she began practicing exclusively in estate planning Regina ran two international programs where she assisted in adoptions of Russian orphans. She helped to place these children into loving American homes, giving them a chance at a decent and productive life. Regina has 3 children, so she personally understands how both family dynamics and generational legacies must be carefully considered in estate planning.

Andrew T. Slaton-Freeman has a background in complex contracts, the defense industry, and business organizations. This includes work with scientific entities at Texas A&M University (especially contracts between research institutions and outside vendors), experience with a large military contractor, and litigation for the Texas Office of the Attorney General. He is Regina's oldest son, and is committed to upholding the family values and client focus of the Slaton Schauer Law Firm, PLLC for generations into the future. When he's not at work, Andrew enjoys taking his dog on hiking trips, volunteering in the local community, and playing tabletop games.

Both Regina and Andrew are members of American Academy of Estate Planning Attorneys (AAEPA). The AAEPA is a prestigious, invitation-only organization which has fewer than 15 members in all of Texas. To remain in good standing with the AAEPA an attorney must meet qualifications that include significant education requirements; these are more than double those required of most attorneys in Texas. Andrew has also been accepted into the Texas Bar College. This is an honorary society for attorneys who have obtained even more additional education. Both attorneys at the Slaton Schauer Law Firm, PLLC approach estate planning law from a skillful, academic perspective, with a passion for providing the very best estate plans

possible at a reasonable cost to clients. This care helps to fuel our passion for both legal education and local volunteerism.

If you or your loved ones would like a complimentary consultation with us to discuss your estate planning options, we are happy to answer questions, discuss the differences between wills and trusts, explain various types of trusts, and explore other estate planning tools that may be correct for your situation. This knowledge can help to empower you in making informed decisions to protect yourself, your family, and even your legacy. We look forward to meeting you.

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THE TRUTH ABOUT ELDER ABUSE: WHAT YOU NEED TO KNOW TO PROTECT YOURSELF AND YOUR LOVED ONES

Imagine this: You are physically frail, and you have to rely on other people for help with the most basic daily tasks. You need assistance getting out of bed in the morning, bathing and getting yourself dressed, preparing meals, and getting out of the house to go grocery shopping or to visit friends. On top of this, your memory isn't what it used to be. You have trouble recalling recent events and your math skills are starting to slip.

Now, imagine that the person you rely on for help is systematically stealing your money, threatening and screaming at you, or even physically assaulting you. This may be your child, your spouse, or your paid caregiver. You don't know where to turn for help, and you're not sure you have the words to express what is happening to you, anyway. You feel alone, helpless, and in despair.

For too many senior citizens, this is a daily reality.

Elder abuse is a quiet but growing epidemic. The National Center on Elder Abuse reports that millions of seniors are abused each year.[1] It is difficult to come up with an accurate figure, because only a fraction of victims report their abuse. It is believed that incidents of elder abuse are severely underreported to adult protective services, and only about 1 in 14 are brought to the attention of authorities.[2] This means we need to educate ourselves about elder abuse and be watchful in protecting our loved ones and ourselves.

WHAT IS ELDER ABUSE?

The Nursing Home Abuse Center defines elder abuse as "undertaking intentional actions that result in the harm or risk of harm to an elderly person by a trusted person or caregiver of an elderly person."[2]

Each state has its own laws defining what qualifies as criminal elder abuse and neglect. But, elder abuse can generally be broken down into the following categories:

FINANCIAL EXPLOITATION

One of the most common forms of elder abuse is the financial exploitation of seniors. America's population is aging and there is a greater concentration of wealth among older people. This,

[1] https://ncea.acl.gov/whatwedo/research/statistics.html#prevalence/ (2015)

[2] https://www.nursinghomeabusecenter.com/elder-abuse/statistics/ (2018)

coupled with the cognitive impairment that affects approximately one-third of those over the age of 71, makes the elderly prime targets for financial exploitation and fraud.

Exploitation by Family Members

Often, the first scenarios that come to mind when we hear about financial exploitation are telemarketing scams or email fraud. More frequently, however, the perpetrator is a member of the victim's own family.

This was the case for well-known actor Mickey Rooney. In 2011, 90-year-old Rooney testified before the U.S. Senate Special Committee on Aging about his experience as the victim of financial exploitation.

After suffering for years, he went to court and got a restraining order against his stepson, whom he accused of intimidating and bullying him, depriving him of medication and food, while also draining his financial accounts. The court also put a temporary conservator in charge of Rooney's accounts.

The actor told the Senate committee, "Over the course of time, my daily life became unbearable… I felt trapped, scared, used, and frustrated. But above all, I felt helpless. For years I suffered silently, unable to muster the courage to seek the help I knew I needed."

The most frequent form of financial exploitation of the elderly is a relative spending a senior's money without permission. Other forms of financial exploitation include:

- Forging an elderly person's signature
- Intimidating or tricking an elderly person into signing over control of financial accounts or other property
- Intimidating or tricking an elderly person into signing a deed, Will, or power of attorney
- Promising care for an elderly person in exchange for money or property and then failing to follow through on the promise

Often, the person taking advantage of an elderly relative has a history of financial problems, mental illness, or drug or alcohol abuse. This, coupled with a history of dependence on the elder, can lead to a perfect opportunity for exploitation when the elder enters a state of mental decline or physical frailty.

Exploitation by Strangers

Family members are not the only people who exploit the elderly for financial gain. Senior citizens are prime targets for schemes like identity theft, telemarketing fraud, and home improvement scams.

When non-family members victimize elders, they often follow certain patterns. According to the National Committee for the Prevention of Elder Abuse/MetLife Mature Market Institute Study *Crimes of Occasion, Desperation, and Predation Against America's Elders*,[3] women are twice as likely as men to be victimized by strangers, and most victims fit the following profile:

- They are between the ages of 80 and 89
- They live alone
- They need some level of help with health care or home maintenance
- They are visibly vulnerable (living alone, obviously confused or mentally impaired, or with limited mobility)

According to the study, there was another unique quality that made an elderly person a prime target for all types of perpetrators. The study's authors described this as a "combination of tenuous, valued independence and observable vulnerability."

We have all known older friends and family members who fit this profile: they're fiercely independent, but they may not be fully able to do everything for themselves. These are the people who need our help, but they don't realize it yet – or they just won't admit it.

Signs of Financial Exploitation

It is often difficult to determine if an elderly loved one has been a victim of financial exploitation. After all, many victims have not retained meticulous math skills, so they might not realize they have been taken advantage of. And those who realize they have been victimized, are often too embarrassed to come forward.

One thing you can do is to be aware of patterns in your loved one's finances. For example:

- Unusual financial transactions, like bank account withdrawals or transfers, that your loved one does not remember or cannot explain
- Unpaid bills, eviction or foreclosure notices, or utility shutoff notices
- Newly-signed legal documents, such as a Will or a power of attorney, that your loved one does not understand
- Missing property
- The sudden appearance of a new caregiver or close "friend"
- Living arrangements that fall far below your loved one's financial means
- A caregiver who expresses an unusual interest in your loved one's finances

[3] https://ltcombudsman.org/uploads/files/issues/mmi-elder-financial-abuse.pdf (2011)

PHYSICAL ABUSE

Physical abuse of the elderly is defined as the use of any kind of physical force or violence that causes pain or injury. It includes actions like hitting, pushing, slapping, biting, and pinching, but it also includes the inappropriate use of physical or chemical restraints.

This common type of elder abuse can happen in an institutional setting like a nursing home or an assisted living facility, or it can even happen in the elderly person's own home.

This is exactly what happened to a Minnesota woman in 2010.[4] She didn't want to be identified, so we'll call her Jane. Jane and her 57-year-old son had an argument over money. The argument ended with Jane's son choking her as she sat in her rocking chair, then pushing or throwing her down a flight of stairs. It wasn't until 45 minutes later, after he had stepped over Jane as he went outside to bury $36,900 in the backyard, that he called an ambulance.

Jane suffered a broken hip, broken ribs, and a dislocated shoulder. She'll spend the rest of her life in a nursing home. Her son was charged with third-degree assault.

Like many victims, Jane didn't want to talk about her experience for fear that her son would retaliate against her. Because so few victims speak up, it is important to be aware of the signs of physical abuse.

PHYSICAL SIGNS

- Sprains, strains, or broken bones
- Burns
- Restraint marks or abrasions on arms or legs
- Traumatic tooth or hair loss
- Bruising

Bruising can be a particularly tricky sign to interpret because many seniors are prone to accidental bruising – particularly those who take medications, like blood thinners, that increase the chance of bruising. Accidental bruising tends to appear in predictable places, like the arms and legs. There are some kinds of bruising, however, that are seldom accidental. These include:

- Bilateral bruising (bruises that show up on both extremities at the same time)
- Bruises on the ears, neck, genitals, buttocks, or the soles of the feet
- Multicolored bruises, indicating that an elderly person suffered repeated injuries to the same area at different times

[4] http://minnesota.publicradio.org/display/web/2011/04/27/elder-abuse

Behavioral Signs

- An elderly person who refuses to explain injuries, or who attempts to explain injuries in a way that does not make sense
- An elderly person who suddenly becomes isolated, withdrawn, or secretive
- An elderly person who behaves with fear toward a caregiver
- Repeated similar injuries
- Family members or caregivers who give inconsistent explanations for an elderly person's injuries
- Injuries that are not treated in a timely manner

SEXUAL ABUSE

The sexual abuse of an elderly person happens when that person is forced, tricked, or manipulated into any form of unwanted sexual contact. It is also any form of sexual contact to which the elderly person does not have the capacity to give his or her consent.

Perpetrators of sexual abuse can be caregivers, employees of nursing homes and other care facilities, family members, or spouses of elderly victims. About 83% of victims of elder sexual abuse reside in a nursing home at the time of the abuse.[5]

Elders with psychological impairments such as dementia are at greater risk for assault and abuse because they have trouble communicating their experiences. Perpetrators know that this kind of victim is unlikely to fight back and that the abuse has little chance of being reported, so they feel free to attack these most vulnerable of victims. What makes the abuse of psychologically impaired elders even more heartbreaking is that they tend to have a more severe traumatic reaction to the assault than other populations.

This is why it is especially important for caregivers and family members to be aware and watch for signs of sexual abuse, which can include:[5]

- Genital pain or bleeding
- Bruising to the genitals or thighs
- Trouble walking or sitting
- Torn, stained, or bloody underclothes
- Sexually transmitted diseases

Although women are most frequently the victims of sexual abuse, it is important to remember that elderly men can also be the victims of this kind of abuse.

[5] https://www.nursinghomeabusecenter.com/elder-abuse/types/sexual-abuse/ (2018)

PSYCHOLOGICAL ABUSE

An elder does not need to suffer physical injuries to be the victim of abuse. Words can cause harm, too. Consider this scenario:

Bob is 90 years old and lives with his son, Joe, and his daughter-in-law, Ellen. Bob can be difficult to care for. He has never gotten along well with Ellen; he is a picky eater and is very vocal when things are not to his liking. He has also lost a good deal of mobility over the past several years and he doesn't always make it to the bathroom.

Lately, Ellen has become increasingly frustrated when Bob soils himself. She has started berating him when he has "accidents," and she threatens to leave him sitting or lying in his own waste. Ellen always ends up changing Bob's clothes and bedding, but her threats and demeaning treatment of him are psychological abuse.

Psychological abuse includes verbally threatening or intimidating an elderly person, withholding emotional support from him or her, or subjecting an elderly person to fear, isolation, or emotional distress.

Signs of psychological abuse include an elderly person who:

- Is withdrawn or fearful in response to a caregiver
- Is generally upset or agitated
- Is withdrawn, listless, or apathetic
- Tells you that a caregiver is abusive, harsh, or mean

A caregiver who behaves and responds harshly toward an elderly person may also be a sign that psychological abuse may be happening.

NEGLECT

Neglect happens when caregivers fail to provide the care an elderly person needs to remain healthy, both physically and mentally. This constitutes more than half of all reported cases of elder abuse.[6] There are three kinds of neglect.

1. *Active neglect* occurs when a caregiver intentionally withholds food, clothing, medical care, medication, or other necessities. Sometimes this happens because the caregiver benefits financially due to the neglect, and sometimes the neglect stems from conflict between the caregiver and the elderly person.

[6] https://www.helpguide.org/articles/abuse/elder-abuse-and-neglect.htm

2. *Passive neglect* happens when a caregiver fails to fulfill his or her duties, but doesn't do it on purpose. Passive neglect can happen for any number of reasons. Caregivers often become overwhelmed, experience illness or disability themselves, or are ignorant of the needs of the elderly person who depends on them. Sometimes – particularly when the caregiver is a family member – the caregiver runs out of the resources needed to care for an elderly loved one. These essential resources can include time, energy, money, and training.

3. *Self-neglect* occurs when an elderly person refuses to accept outside help but can't take care of him- or herself.

Risk Factors

Elders with physical or mental disabilities or other high-level needs who are heavily dependent on others for help with daily activities are at increased risk for neglect from caretakers. While people with mental health issues, including dementia and substance abuse problems, are also at high risk for self-neglect.

Signs of Neglect

If you have an elderly friend, family member, or neighbor in one of these high-risk groups, pay close attention for the following signs of neglect:

- A home that is unsafe, unsanitary, unclean, or is infested with pests
- Not enough food in the home
- Lack of power, heat, or water in the home
- Poor personal hygiene
- Inadequate clothing or dressed improperly for the weather
- Bedsores or skin rashes
- Dehydration
- Unattended medical conditions (soiled bandages, infections, unattended injuries, or bedsores)
- Absence of medical aids like glasses, hearing aids, dentures, or walkers
- Obvious emotional distress
- Withdrawn, detached, or depressed state of mind
- Fear of his or her caregiver
- A caregiver who is frequently frustrated, overwhelmed, or exhausted
- A caregiver who obviously lacks necessary caregiving skills

WHAT YOU CAN DO

PROTECT YOUR LOVED ONES

The best way to protect elderly friends and loved ones from abuse and neglect is to remain aware and concerned.

The elders who are most at risk for abuse, neglect, and exploitation are those who lack a strong network of alert and involved family members and friends. Perpetrators count on the ability to isolate, intimidate, and control their victims. The more caring and informed people an elder has involved in his or her life, the less likely he or she will be victimized.

If someone else is the primary caregiver for your elderly loved one, stay informed and involved when it comes to care giving decisions. Remain active and interested in your loved one's life, and encourage other family members to do the same.

Know the warning signs, and don't be afraid to ask about situations that make you uncomfortable or suspicious. Just remember that often, elderly people who are being victimized are not vocal about what is happening to them. Sometimes, it is due to mental impairments that keep them from expressing what is happening. In other cases, they don't speak up because they are embarrassed, intimidated, or afraid they won't be believed.

Keep in touch with your elderly friends, family members, and neighbors. Visit as often as you can. If you can't visit, make time for regular phone calls. Better yet, see if you can arrange for regular video chats through a service like Skype, ooVoo, or FaceTime. This allows you to see as well as hear your loved one so that you can get a clearer idea of his or her condition.

GET HELP

Lend a helping hand. If you know a caregiver who seems overwhelmed, offer to fill in for a while and provide a respite break. You might even consider getting together with members of your church or civic group to organize regular breaks for the caregiver.

If you suspect someone is being abused, try to talk to him or her alone. Ask some simple questions, and be sure to listen carefully to the answers. Pay attention to what they say, but also watch for nonverbal clues. Listen to your gut instincts.

If you believe an elderly family member or friend is the victim of abuse, neglect, or financial exploitation, get help immediately. In an emergency, call 911 or your local police department.

If the situation is not an emergency, then the location of the abuse is a factor.

If the abuse occurred or is occurring in a long-term care facility, such as a nursing home or an assisted living facility, you should contact your state's long-term care ombudsman and report the abuse. Each state has a long-term care ombudsman who serves as an advocate for residents of nursing homes, assisted living facilities, and other long-term care facilities. Ombudsmen help residents of these facilities to understand and enforce their rights. To locate an Ombudsman visit www.ltcombudsman.org/ombudsman or call 202-332-2275.

If the situation is ***serious, threatening, or dangerous, call 911 or the local police*** for immediate help. For additional resources contact the National Center on Elder Abuse at https://ncea.acl.gov/ or 1-855-500-3537 (ELDR) to locate an adult protective agency in your area. Your local adult protective agency can also guide you in filing any appropriate police reports, as well as finding the necessary services to help your elderly loved one

Protect Yourself

One of the most important things you can do to protect yourself from abuse and neglect as you age is to be prepared. Meet with your estate planning attorney and establish a disability plan to put people you know and trust in charge of your affairs in case you become incapacitated.

You might have heard that a Revocable Living Trust can be an excellent tool for planning your estate, but did you know that it can also be an indispensable disability planning tool? Not only can a properly structured Revocable Living Trust be used to distribute your property without the need for probate after your death, you can use it to appoint someone you trust to take charge and manage your property in case you become disabled while you're still alive.

In addition to a Revocable Living Trust, you can create a Property Power of Attorney, appointing a trusted individual to manage your financial accounts for you in the event that you become unable to manage your own affairs.

In some states the Durable Power of Attorney and Living Will are combined into one document called an Advance Health Care Directive. This planning tool lets you put a trusted loved one or friend in charge of your medical decision making in the event that you are too ill or injured to handle these important choices for yourself.

Taking steps to plan now, while you're healthy, can help shield you from exploitation and fraud as you age.