

How to stop elder financial abuse in your family

With the increasing proportion of people aged 65 and over, the problem of elder financial abuse is a growing concern.

While the full extent in Australia is unknown, conservative estimates suggest at least 10% of older Australians suffer from financial abuse each year. The surprising factor is that their adult children are often the perpetrators.

If an older person needs some cash and can't get out to a bank, why wouldn't they just give their ATM card to their son or daughter and ask them to make a withdrawal on their behalf? Or if they need some shopping, they think it natural to give some money to a son or daughter and ask them to pick up a few extra groceries.

While most of us have the moral compass to know that taking out extra cash or adding a few of our own groceries to the list without either asking or paying for it ourselves is akin to stealing, there are many elder law specialists who know that these and other (much bolder) acts of elder financial abuse are being carried out by some of the most trusted individuals and organisations.

Property is being transferred from a parent to a child on a promise that mum or dad will live in the house and be properly cared for. Bank accounts are being fleeced of thousands of dollars as trusted people with access – legally or otherwise – help themselves. Parents are being moved into aged care on the understanding that family will continue to care for them financially.

Because of the hidden nature of the problem, very few cases are reported. Often the truth is not revealed until relationships break down or death.

Briony Dow of the National Ageing Research Institute and the University of Melbourne says that when adult children abuse their parents, feelings of parental love and responsibility coupled with shame and guilt for having "failed" as a parent often stop the parent from seeking help and protecting themselves. Few parents would want to report their son or daughter to the police.

Power of attorney problem

Brian Herd, a Brisbane lawyer with CRH Law who specialises in elder abuse cases, believes the under-reporting of elder financial abuse is made worse (and even legitimised) through the appointment of the power of attorney.

By appointing an adult child as power of attorney (thereby giving them the authority to act for you in specified or all legal or financial matters), money withdrawals or property transfers by that person can be lawful.

People in these situations can be the victim of abuse, and they can also be the victim of undue influence where they end up making decisions to satisfy their children.

Enduring powers of attorney, which take effect once a person loses capacity, are the "wild west" says Herd.

An individual acting as the enduring power of attorney is under no obligation to report to anyone or tell anyone what he or she is up to.

Jessica Barker, a solicitor with Elringtons Lawyers says it is often where parents appoint their children to be their attorney and/or guardian that there is confusion around whether an attorney is acting in the parent's best interest – despite there being clear guidelines available.

Barker was recently contacted by an adult child attorney saying: "I've got power of attorney for mum and my sisters are telling me I should put mum's house into us kids' name because she doesn't need it anymore. Is that right?"

Unfortunately, the rise of the "inheritance impatience syndrome" seems to be increasing the confusion that some adult children are experiencing about how best to act as their parent's attorney, she says.

A common situation for a solicitor is to be called into a hospital to see someone who is on their deathbed and asked to draw up a power of attorney document so their financial affairs can be managed while they are bedridden and beyond.

There is often some urgency in these situations and a whole lot of issues need addressing – such as whether an attorney has previously been appointed, whether the person has capacity and ability to understand the nature of the document, the person's relationship with their chosen attorney(s), advising on the person's rights and responsibilities and the risks involved in making the appointment.

What to do

The issue of where to report suspected abuse is another grey area.

If a person has lost capacity and you suspect abuse, then the relevant public guardian in your state or territory may be able to step in. You could go to the police but they could easily dismiss it as a family or civil matter.

A third option is to apply to the relevant tribunal in your jurisdiction to have an attorney sacked.

Jessica Latimer, a principal lawyer and elder law specialist with Slater and Gordon Lawyers, says that while criminalising an abuse offence through the introduction of an elder abuse act may make it easier to prosecute someone, currently the legal system is able to respond and help older people recover financial losses.

As well as mediation there are state and territory property laws, power of attorney acts, claims for breach of fiduciary duties and breach of contract claims, which can all help.

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