

EXPLOITATION OF THE ELDERLY

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I am frequently asked what someone should do if they are fairly sure that their loved one is being taken advantage of at the hands of a neighbor, son, daughter, sibling or care giver. The simple answer is to call Florida's Department of Children and Families (DCF) hotline and report your suspicion of elder abuse. Alternatively, you could institute a guardianship to protect the person who is being abused, but this can get expensive and may not result in the protection desired. Another alternative is to seek out a lawyer who can investigate and may file a lawsuit under Florida's Adult Protective Services, Chapter 415, Florida Statutes.

Florida's Adult Protective Services statute is designed to protect the elderly and disabled from exploitation by others. The statute even provides what the legislature was thinking when the law was written. Here is a sample of that language:

“It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all disabled adults or elderly persons in need of them.”

The statute protects an elderly and infirm person who is now in the last remaining years of life and has accumulated enough wealth to live those years out comfortably; but, is the target of a third party who has managed to convince the elderly person to hand over those last few thousand dollars by intimidation, threat, or undue influence.

Chapter 415 of the Florida Statutes defines “exploitation” as a person who:

“1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or

2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

(b) "Exploitation" may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;

2. Unauthorized taking of personal assets;
3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.”

As you can see the definition of exploitation is very broad with its focus on protecting an elderly or disabled person from being manipulated by a third person for their personal benefit and not the infirm person's benefit. So how does exploitation occur?

The general consensus seems to be that exploitation of an elderly person is not a family member, but a friend or neighbor who hides behind the classic shield of being showered with gifts from the elderly person because the infirm individual is convinced that their children want nothing to do with them or that their children are conspiring to place them into a nursing home. In many cases this is simply a fabricated story to isolate the infirm and elderly person from the truth.

The exploiter (e.g. a caretaker) isolates the elderly person by not allowing him or her to communicate or socialize with their friends. When family or friends call or visit, the exploiter intercedes and tells them that all is well and typically will interject themselves into any conversation such friends and family members attempt to have with the elderly person. The classic case is an exploiter who prevents the elderly person from answering any questions placed before him or her by speaking for them. In short, the infirm person never speaks because the exploiter has seized control of the conversation. In addition, when family or friends pre-schedule a visit, the exploiter makes certain that the elderly person is out of the house or answers the door stating that the elderly person is resting and that he or she will call them (which never occurs) upon waking.

This is a slow process that takes place over an extended period of time. The isolation eventually causes the elderly person to submit to the exploiter's propaganda that they are all that the elderly person has in the form of friends. Furthermore, the exploiter continually suggests that the elderly person's family and close friends have abandoned them and without the exploiter's help the elderly person will be placed in a nursing home to wither away. Lacking any outside influences to expose the exploiters charade, the elderly person is eventually convinced of the family and friend's fabricated conspiracy.

The legislature has provided two means of protecting the elderly from such abuse and exploitation. One is through a civil complaint and the other is criminal. Chapter 415 is a civil remedy and not criminal. There is a separate statute for criminal abuse and exploitation of the elderly which is not within the scope of this article. Suffice it say, the legislature provided a very broad means of bringing an exploiter to civil court and letting the judicial system decide if the elderly person has been the subject of neglect, abuse or exploitation. The legislature provided that the elderly person may recover actual and punitive damages for such abuse, neglect, or exploitation. More importantly, persons who can bring a civil complaint for exploitation of an

elderly person include the exploited person as well as that person's guardian, or organization acting on behalf of the exploited person, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation of the infirm person.

As you can see, Chapter 415 of the Florida Statutes provides a means for the elderly and disabled person to fight back and recover their lost funds and dignity. If you believe that you or a loved one has been the victim of misappropriation, abuse or neglect to one's person or property; or, that your parent has been victimized by a third party, please contact the Department of Children and Family Services or your attorney who can investigate your claims and recover misappropriated funds as well as the last remaining dignity that an infirm person possesses.

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