

# SPOTLIGHT ON FINANCE

## Elderly and Vulnerable Adult Financial Exploitation Prevention Act

In 2017, the Tennessee General Assembly enacted Public Chapter 264, the “Elderly and Vulnerable Adult Financial Exploitation Prevention Act” (“EVAFEPA”). As part of this legislation, the Department of Financial Institutions has been working with financial institutions and other agencies in state government on efforts to educate the public regarding the rules and regulations applicable to the prevention of financial exploitation.

An elderly adult is defined in EVAFEPA, in Tenn. Code Ann. (“TCA”) § 45-2-1202 as “a person sixty-five (65) years of age, or older”. A vulnerable adult is defined in the same section of EVAFEPA as “a person eighteen (18) years of age or older, who, because of mental or physical dysfunction, is unable to fully manage the person’s own resources, carry out all or a portion of the activities of daily living, or is unable to fully protect against neglect, exploitation, or hazardous or abusive situations without assistance from others”.

Another statute, the Tennessee Adult Protection Act<sup>2</sup> (“TAPA Act”), defines “advanced age” in TCA § 71-6-102 as a person “sixty (60) years of age or older”.

With such a broad range of potential victims of financial exploitation, all generations should become more aware of this issue and the ways that financial exploitation can be prevented or avoided, as referenced in the EVAFEPA.

To know where to begin, one must know what constitutes financial exploitation. The Act defines this in TCA § 45-2-1202 as, “the unlawful appropriation or use of an elderly or vulnerable adult’s property, as defined in TCA § 39-11-106(a), for one’s own benefit or that of a third party.” The TPA Act defines exploitation as, “the improper use by a caretaker of funds that have been paid by a government agency to an adult or to a caretaker for the use or care of the adult”.

Exploitation may occur in forms of deception, false pretenses, coercion, harassment, duress and physical or verbal threats. Oftentimes, when this occurs, the victim is deprived of their vital financial resources for their personal needs. In a February 2016 Research Report regarding its Banksafe Initiative, the AARP Public Policy Institute states that “Americans ages fifty (50) years old and older are susceptible to fraud and financial exploitation in part because they own 67 percent

(67%) of U.S. bank deposits”. Also playing a role in elderly or vulnerable adult financial exploitation is health status, cognitive abilities and social isolation.



### Anyone Could Be A Victim of Financial Exploitation

Most reports we may see regarding the financial exploitation of an elderly or vulnerable adult tend to have a victim that we don’t know; unless, this situation involves a personal family member or friend. However, it seems when this crime happens to those that are famous, a brighter spotlight tends to focus on these situations and brings cases of elder financial exploitation into the forefront of the news.

In the September 2018 edition of the AARP Bulletin, two high profile elderly financial exploitation cases heightened awareness of this issue.

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## Anyone Could Be A Victim of Financial Exploitation...

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Prior to his death, Mr. Lee had been involved in a long-running legal situation with a memorabilia collector named Keya Morgan who attempted to isolate Mr. Lee to gain control of his \$50 million fortune. Mr. Morgan denied anything wrong in this matter; however, a Los Angeles, California court issued a temporary restraining order to keep him from being in contact with Mr. Lee.

The second case involved NASA astronaut pioneer, Buzz Aldrin. The 88-year-old astronaut alleged that his two youngest children were colluding with his former business manager to seize control of his estate by claiming that he had dementia. Aldrin sued all three people in June, in the Florida court system. His children and manager claimed no wrong doing and blamed his increased memory loss and confusion on his belief that they were attempting to gain his estate.

However, Aldrin advised his son has taken nearly half a million dollars from his personal bank account over the last two years. Aldrin further commented that his son has taken control of millions of dollars worth of space memorabilia and artifacts.

While both of these cases garnered national notoriety in various news publications, the fact remains that financial exploitation of the elderly is vastly underreported. Julie Schoen, of the National Center on Elder Abuse, commented in the AARP article, "It's such a hidden crime. Within families, victims don't want to prosecute." Schoen continues by stating, "There's a huge gap in our system when it comes to recording these crimes. We need better research."

Experts agree that utilizing some of the following steps can assist in protecting your aging loved ones and you:

- While a person is still mentally sharp, help them make a plan that designates power of attorney and health care directives.
- Stay connected with older loved ones through regular visits, phone calls, or email. If your elder is proficient with social media, it can also be used in keeping in contact.
- If your parents are under the care of a non-family member caregiver, develop a relationship with the caregiver, so they will know that you are paying attention to what is going on with their well-being.
- Become a "trusted contact" to monitor bank account and brokerage activity. This way you can be the point person for the financial institution to contact should there be any unusual activity in the accounts.
- Sign up for monitoring services that track financial activity and notifies of any withdrawals or spending that may not have been authorized from the elderly person's account(s).
- Set up accounts for direct deposit of checks or funds that are received. This way others cannot have access to checks received that would need to be deposited.
- Do not sign any documents that aren't understood. Take any documents that you don't understand to an attorney or a trusted financial or legal advisor for assistance.



## United States Senate Committee on Aging Identifies Top 10 Scams Targeting the Nation's Senior Citizens



The United States Senate Special Committee on Aging recently released their 2018 report, Protecting Older Americans Against Fraud: The report estimated that older Americans are losing over \$2.9 billion a year to a wide variety of financial exploitation frauds and scams from crooks trying to rob them of their pension benefits and retirement savings. While a great number of victims are exploited by strangers through the use of the telephone, mail, or the Internet, an even greater number of victims were targeted by family members or by other people that they trust.

In the Senate Committee on Aging's commitment to protecting older Americans against fraud and to bring awareness to this problem, they maintain a toll-free Fraud Hotline: 1-855- 303-9470 In 2018, the Fraud Hotline received over 1500 calls from across the country. Fifteen (15) calls were received from Tennesseans to the Fraud Hotline.

The Senate Report identified the following as the Top 10 Type of Scams impacting the nation's elderly.

Rank	Type of Scam
1	IRS Impersonation Scam
2	Robocalls/Unsolicited Phone Calls
3	Sweepstakes Scam/Jamaican Lottery Scam
4	Computer Tech Support Scams
5	Elder Financial Abuse
6	Grandparent Scams
7	Romance Scams
8	Social Security Impersonation Scam
9	Impending Lawsuits Scams
10	Identity Theft

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Number one on this list in many of the states was an IRS Impersonation Scam. While many variations of this scam were reported, they all had a consistent theme in that the scammers accused the victims of owing back taxes and penalties. Immediate payment was requested to be made via a certified check, credit card, wire transfer, or the use of a prepaid credit card, prepaid debit card, or gift cards. If payment wasn't made, the victim was threatened that their houses would be foreclosed, they would be subject to arrest, or in some cases, deportation was mentioned.

**Tennessee**

1. Romance Scams
2. Computer Tech Support Scams
3. Grandparents Scams
4. Sweepstakes Scams
5. Unsolicited Phone Calls

**United States Senate Committee on Aging Identifies Top 10 Scams Targeting the Nation's Senior Citizens...*(continued from page 2)***

The Internal Revenue Service, or IRS advises that their agency will never call about any taxes being owed without first mailing a bill. However, reports from the study found in some cases the fraudsters would advise they were following up on a letter the IRS previously sent to the victims, which makes this seem more legitimate.

Although the sixth (6th) most frequent scam on a national level affecting senior adults was the Grandparent Scam, it was the third highest scam impacting Tennessee senior adults.

In this scam, the imposters either claim to be the victim's grandchild, or else they pretend to be holding their grandchild in jail for an offense they have committed. In either scenario, they claim the grandchild is in trouble and needs money to aid them in an emergency, pay a hospital bill, travel out of a foreign country, or to get out of jail. The imposters tend to play on the grandparent's emotions and want them to refrain from advising the grandchild's parents of the matter.

The scammers stress the urgency of the need for money and more often than not, they will ask the grandparents to send a wire transfer. In some cases, they will make a second call, if funds were sent the first time, advising there was another legal fee that they were not aware of in the first call. This is typically the time that the grandparent, or senior adult realizes they have been scammed.

The top rated scam reported from Tennesseans in the 2018 Senate Special Committee on Aging Report involved Romance Scams. These typically occur when the victim may turn to online dating, in an effort to find companionship or love. The following is a case study that involved a Tennessean whom had fallen victim to this type of scam: "Gail" from Tennessee called the Fraud Hotline to report that she was the victim of a romance scam. A man contacted her via the online game, "Words with Friends," and they developed a romantic relationship. The man told her that he has \$12 million in gold and works on an oil rig in Nigeria, but he needed help to gain access to it. Gail sent the man \$500,000 and depleted her retirement account before she realized that this was a scam. A Fraud Hotline investigator filed a report with the FTC and IC3 on her behalf, and also sent her a copy of the Fraud Book to help her understand how else she may be targeted by him.

The crooks in a romance scam will often create profile pages on the online dating sites to make themselves appear more credible. Many times the crooks will call the victim on the phone to talk and prove they are indeed a real person. During these conversations, the scammer works to build trust with their victims, which tends to lead to the request for money through some form of reported financial hardship that has occurred in their life.

Other cases related to this type of scam have advised that the crook actually has promised to marry the victim and needs money for travel expenses, in order to complete the alleged nuptials.

The Senate Aging Committee has made the continuing fight against fraud that targets the nation's elderly or senior citizens a top priority. They feel that the implementation of the Fraud Hotline has been a valuable tool in this process. Investigators for the Committee have encouraged victims to these types of scams to report this information to their respective law enforcement officials. They feel improved data resources can help in the government's ability to bring the perpetrators these scams to justice and prosecute the crooks to get them in jail.

Again, should you know an elderly or senior adult who may have been approached in one of these types of scams, please have them report this instance to the Fraud Hotline at 1-855-303-9470, immediately, or visit [www.aging.senate.gov](http://www.aging.senate.gov).

## Financial Institutions Combating Elder Adult Financial Exploitation

A February 2019 report from the Consumer Financial Protection Bureau, or CFPB, identified through filings of Suspicious Activities Reports, which are commonly termed by the acronym “SARS” that financial institutions have reported instances of elder adult financial exploitation four times more often from 2013 to 2017.

[https://files.consumerfinance.gov/f/documents/cfpb\\_suspicious-activity-reports-elder-financial-exploitation\\_report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf)

The increased numbers of SARS filings by financial institutions appears to suggest that the threat of financial exploitation is being viewed as a more serious issue and it is being reported more often. SARS are filed with the Financial Crimes Enforcement Network, or FinCEN, which is a bureau of the United States Department of Treasury.



The mission of FinCEN is to safeguard the financial system from illicit use, combat money laundering, and promote national security through

the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.

Financial institutions submitted 63,500 Elder Financial Exploitation SARS in 2017. In these filings, there was a reported \$1.7 billion in suspicious activities for that year. The greatest amount of these losses were to older adults, with the average individual loss to an adult older than 70 years old being \$41,800.

The study period of 2013-2017 for the report indicates a slightly higher average for those over 70 years old.



The CFPB report advised that when the older adult knew the suspect in a SARS, a monetary loss was more common and the amount of the loss was greater. Even more troubling was that when a fiduciary, such as an agent under a Power of Attorney, was identified as the suspect, a loss was more likely to occur with a higher loss amount.

A known person in these cases included fiduciaries, family members, non-family caregivers, friends, neighbors, accountants and contractors.

The four (4) most common elder financial exploitation methods that occurred in the report were: Romance scams, Exploitation by a family member or fiduciary, Theft by a caregiver and Money mules.

A money mule situation occurs when the victim is sent money transfers where a retail store is the acting agent for a large money service business, or MSB. The transfers typically originate internationally. Once the funds are received, the victim is then asked to transfer the funds to an individual, usually in an African country. These instances are associated with “person in need scams”.



Sadly, the CFPB report commented that only 28% of the elder financial exploitation SARS that were filed reported the suspicious activity to a local, state or federal authorities.

Prompt filing of suspected elder financial exploitation can provide information to the appropriate law enforcement officials and certain regulators that can aid in the investigation of ongoing reviews, or identifying unknown situations.

### Tennessee by the Numbers

#### Federal Trade Commission 2018 Consumer Sentinel Data for Tennessee

##### Fraud & Other Reports

5th  
State Rank  
(Reports per 100K Population)

53,014  
Total Fraud & Other Reports

##### Fraud Losses

\$18.5M  
Total Fraud Losses

\$345  
Median Fraud Losses

