

**Elder Financial Abuse Litigation
Guide**

**California Advocates for
Nursing Home Reform**

How to Recognize Financial Abuse

- *Inappropriate banking activity, such as unusually large withdrawals or withdrawals from automated banking machines when the elder cannot get to the bank

How to Recognize Financial Abuse

- *Signatures on checks that do not resemble the elder's signature

How to Recognize Financial Abuse

- *Legal documents signed when the elder is physically incapable of writing

How to Recognize Financial Abuse

- *Checks written out to "cash" being negotiated by the elder's caregiver

How to Recognize Financial Abuse

- *Checks signed by the senior but filled out by someone else

How to Recognize Financial Abuse

- *A surge of activity in accounts which have been static for years

How to Recognize Financial Abuse

- *Expensive gifts made by the elder to a caretaker

How to Recognize Financial Abuse

- *Checks or credit card transactions made out to direct mail or telemarketing promotions

How to Recognize Financial Abuse

- *Contributions going to newly formed religious or non-profit causes

How to Recognize Financial Abuse

- *Investments in time shares, real property, annuities or financial products

How to Recognize Financial Abuse

- *Large loans against equity in real property to finance investments

Possible Legal Document Abuse Indicators

- *Power of attorney given by the elder when he or she lacks mental capacity

Possible Legal Document Abuse Indicators

- *A will being made when the elder is not mentally competent

Possible Legal Document Abuse Indicators

- *Elder taking his or her name off of property titles

Possible Legal Document Abuse Indicators

- *The elder adding the name of a caretaker to real property or money accounts in exchange for
- *commitments of continued care and/or affection

Life-Style Change Indicators

- *Lack of amenities, such as personal grooming items or appropriate clothing, when the elder can well afford it

Life-Style Change Indicators

- *Under-deployment of the elder's existing resources that should be spent on personal care, housing, and maintenance

Life-Style Change Indicators

- *Missing cash, jewelry and personal belongings

Personal Relationship Abuse Indicators

- *Unusual interest by a family member in “conserving” the money being spent for the care of the elder

Personal Relationship Abuse Indicators

- *Reluctance or refusal by “responsible party” to spend money on the elder’s care

Personal Relationship Abuse Indicators

- *Recent acquaintances or long-lost relatives expressing affection for a wealthy elder

Personal Relationship Abuse Indicators

- *A caretaker taking an inappropriate level of interest in the elder’s financial matters

FINANCIAL ELDER ABUSE LAWS

- *In enacting EADACPA [WIC § 15600 (h)(i)] the Legislature found and declared that infirm elderly persons and dependent adults are a disadvantaged class

Defining Civil Elder and Dependent Adult Financial Abuse (Welfare and Institutions Code Section 15610.30)

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

(a) "Financial abuse"

(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.

(a) "Financial abuse"

(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.

(a) "Financial abuse"

(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 1575 of the Civil Code.

Defining Civil Elder and Dependent Adult Financial Abuse (WIC Section 15610.30)

(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.

Private Cause of Action - Civil Suits for Elder And Dependent Adult Abuse (WIC § 15657.5)

Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs.

Statute of Limitation for Financial Abuse (Welfare and Institutions Code § 15657.7)

Statute of Limitation for Financial Abuse (Welfare and Institutions Code § 15657.7)

Surviving Cause of Action (CCP § 377.30)

After the death of the elder or dependent adult, the right to commence or maintain an action shall pass to the personal representative of the decedent.

Civil Attorneys Freezing Assets (WIC § 15657.01)

An attachment may be issued in any action for damages pursuant to Section 15657.5 for financial abuse of an elder or dependent adult.

Wrongful Taking from a Decedent (Probate Code § 859)

If a court finds that a person has in bad faith wrongfully taken the property belonging to the estate of a decedent, conservatee, or trust, or has taken, concealed, or disposed of the property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in WIC § 15610.30, the person shall be liable for twice the value the property recovered by an action under this part.

Undue Influence (Civil Code Section 1575)

Undue influence is where a person who has the confidence or authority over another uses their relationship to take advantage of that person's necessities in a grossly oppressive manner.

Undue Influence (Civil Code Section 1575)

1. The use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;

**Undue Influence
(Civil Code Section 1575)**

2. Taking an unfair advantage of another's weakness of mind; or,

**Undue Influence
(Civil Code Section 1575)**

3. Taking a grossly oppressive and unfair advantage of another's necessities or distress.

**The Consumer Legal Remedies Act
(CLRA)**

The CLRA can be used in cases where goods or services have been sold through unfair or deceptive sales practices.

**The Consumer Legal Remedies Act
(CLRA)**

Plaintiff can be awarded restitution of their property, punitive damages, court costs and attorneys fees.

**The Consumer Legal Remedies Act
(CLRA)**

Civil Code Section 1761 defines what is mean by goods and services and who and what is covered by the act.

**The Consumer Legal Remedies Act
(CLRA)**

Section 1770 enumerates the various acts considered to be deceptive practices.

The Consumer Legal Remedies Act (CLRA)

Section 1780 lays out the remedies and procedures necessary in order to obtain the remedies.

The Consumer Legal Remedies Act (CLRA – Civil Code § 1782)

The person or party who allegedly committed the acts must notify and demand correction of the alleged violation thirty days prior to the commencement of any action.

Civil Code § 1780 (b) Additional Remedies up Elder or Disabled Adults

In addition the remedies specified, up to five thousand dollars (\$5,000) where the trier of fact:

Civil Code § 1780 (b) Additional Remedies up Elder or Disabled Adults

(1) finds that the consumer has suffered substantial physical, emotional or economic damage resulting from the defendant's conduct,

Civil Code § 1780 (b) Additional Remedies up Elder or Disabled Adults

(2) makes an affirmative finding in regard to one or more of the factors set for in subdivision (b) of Section 3345

Civil Code § 1780 (b) Additional Remedies up Elder or Disabled Adults

(2) makes an affirmative finding in regard to one or more of the factors set for in subdivision (b) of Section 3345

Civil Code § 1780 (b) Additional Remedies up Elder or Disabled Adults

and (3) finds that an additional award is appropriate.

Factors for Tripling an Award (Civil Code § 3345)

*when the defendant knew or should have known that his or her conduct was directed at senior citizens or disabled persons,

Factors for Tripling an Award (Civil Code § 3345)

*when the defendant's conduct caused senior citizens or disabled persons to suffer a loss of property that was essential to their well being,

Factors for Tripling an Award (Civil Code § 3345)

*and when the seniors or disable persons actually suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

False and Misleading Business Practices - Business and Professions Code

Use to pursue suits for unlawful and deceptive tactics against the elderly or dependent adults

False and Misleading Business Practices - Business and Professions Code

Business and Professions Code § 6126
Practicing law without a license

**False and Misleading Business Practices -
Business and Professions Code**

**Business and Professions
Code § 6175.3**

Attorneys selling financial
products to their clients

**False and Misleading Business Practices -
Business and Professions Code**

Business and Professions Code § 6450

Illegal paralegals:

“It is a misdemeanor for any paralegal to offer legal advice to the public or induce a person to make an investment, purchase a financial product or service, or enter into a transaction from which income or profit may be derived.”

**False and Misleading Business Practices -
Business and Professions Code**

Business and Professions Code § 1720

Unfair competition means any unlawful, unfair or fraudulent business act or practice or any unfair, deceptive, untrue or misleading advertising.

Business and Professions Code § 17206.1

Penalties and action for recovery:

P&P Code § 17206.1

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars for each violation.

Business and Professions Code § 17206.3

Additional penalties for seniors

(a) In addition to any liability for a civil penalty pursuant to Section 17206, any person who violates this chapter, and the act or acts of unfair competition are perpetrated against one or more senior citizens may be liable for a civil penalty not to exceed two thousand five hundred dollars for each violation.

Business and Professions Code § 17500

False or misleading statements:

“It is a misdemeanor for any person to induce a sale through an advertisement that is untrue or misleading information ... or which by the exercise of reasonable care should be known, to be untrue or misleading...”

Business and Professions Code § 17500.3
Home solicitations:

“It is unlawful for any person to solicit a sale at the residence of a prospective buyer without clearly revealing, before making any statements other than a greeting, that the purpose he or she has of being there is to effect a sale.”

**In the Guide to
Cases and Causes of Action**

- *Breach of Contract
- *Breach of Oral Contract

**Guide to
Cases and Causes of Action**

- *Breach of Fiduciary
Duty and Abuse of
an Elder

**Guide to
Cases and Causes of Action**

- *Breach of Written
Contract

**Guide to
Cases and Causes of Action**

- *Business and
Professions Code
- *§ 17200

**Guide to
Cases and Causes of Action**

- *Cancellation of
Instrument based on
Fraud in Factum

**Guide to
Cases and Causes of Action**

- *Competition Act
- *Constructive Fraud

**Guide to
Cases and Causes of Action**

- *Consumer Legal Remedies Act - CLRA

**Guide to
Cases and Causes of Action**

- *Conversion
- *Default Judgment
- *Elder Financial Abuse
- *Fraud

**Guide to
Cases and Causes of Action**

- *Injunctive Relief
- *Negligence
- *Negligent Inflection of Emotional Distress
- *Recession

**Guide to
Cases and Causes of Action**

- *Unfair Business Practices

CONCLUSION

There are many statutes litigators can use to fight for the rights of victims of elder abuse.