Protecting Against Elder Exploitation

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As baby boomers continue to retire and advance in age, increasing numbers of elderly Americans are at significant risk of falling prey to schemes targeted at separating them from their money. Cases of elder abuse frequently go unreported, since the victims are often ashamed or unable to speak up. While many seniors have the mental acuity to safeguard their assets, the combination of cognitive decline and accumulated wealth make some other seniors vulnerable to financial crimes.

As a financial planner, how can you optimally guide your senior clients, who have diminished financial capacity and decisional abilities, on recognizing the warning signs? Assess the following financial and estate planning considerations, so your clients and their loved ones have assurances that they can prevent financial exploitation and capably protect their money.

Safeguarding Senior Clients

Congress, the financial services industry, as well as state regulators and legislators, have recently approved new laws and rules to help protect seniors and their assets. On the federal level, the Senior Safe Act—which was signed into law on May 24, 2018— allows banks, investment advisers, and brokers to report suspected fraud to law enforcement without the fear of being sued, as long as they have been trained to identify and report suspicious activity.

In addition, FINRA recently passed the following two rules that have positively impacted the protection of senior investor clients:

FINRA Rule 4512. This rule requires broker-dealers to make a reasonable effort to obtain the name and contact information of a "trusted contact" (who is at least 18 years old) for each client.

FINRA Rule 2165. This rule provides broker-dealer member firms with a safe harbor to place temporary holds on the disbursement of funds or securities if a member reasonably believes a client is being exploited financially.

Several states have also proposed or adopted similar legislation to safeguard senior investors, including provisions regarding self-reporting and training (see serveourseniors.org for more). SEC-registered investment advisers are affected by these laws if they have representatives licensed in these states.

Look out for your elderly clients and encourage them to designate a trusted contact, who is a trusted family member or close friend, to call if you have a reasonable belief that they might be a victim of financial exploitation. Most importantly, a trusted contact is an additional resource to help you and your clients' investment custodian act expeditiously should your client suffer diminished capacity to manage their money or become a target of fraud.

Understand that naming a trusted contact gives you, as the financial planner and the investment provider, permission to speak with the trusted contact to address possible red flags that might indicate your client is being financially exploited. For example, you can reach out to your client's trusted contact if you notice worrisome signs, such as uncharacteristic cash withdrawals or sudden wire transfers.

Your clients may already have a power of attorney (POA) or durable POA listed. Be mindful that the authority given to a trusted contact, who cannot act on your clients' behalf, is different from that granted to a person with a POA. Trusted contacts are unable to view account information, execute transactions, or inquire about account activity unless they are already an authorized party, such as a trustee or POA. Trusted contacts can, however, confirm your clients' current contact information and discuss your clients' mental or physical health status.

Speak to your clients about selecting someone as a trusted contact who is not already authorized to conduct business or receive information on their behalf. Naming two different people as a trusted contact and POA is important, because the vast majority of elder abusers are unfortunately family members or people who are closest to the victim, according to the National Adult Protective Services Association (napsa-now.org). Tell your clients to update this information should circumstances change.

Watching for Warning Signs

Be sure to spend time with your clients so you can observe any signs of trouble. Pay attention to the following behavioral changes or situations in your senior clients:

- Sudden or unexplained changes to wills, trust, powers of attorney, or beneficiaries
- Reluctance to talk about financial matters
- Unpaid bills or mail piling up
- Withdrawals from existing relationships, as well as new friends or significant others

When you do spot these red flags, you should take steps to halt losses and recoup lost funds, which can include notifying law enforcement, adult protective services, and the Federal Trade Commission (FTC) to report scams.

If your clients are receiving too many unsolicited phone calls, you can encourage them to place themselves on the FTC's National Do Not Call Registry (donotcall.gov) to reduce these telemarketing calls. Be aware that fraudsters use increasingly sophisticated techniques to create the appearance of validity. For example, with the proliferation of digital communication, scam artists have been known to impersonate clients' friends and family online to request emergency funds for bad situations.

Educating Planners

Your professional staff members can develop the skills to ask the following appropriate questions to identify and stop elder financial exploitation, including these from the AARP Public Policy Institute's BankSafe Training (aarp.org/ppi/banksafe/training):

- "That's more cash than you usually take out. Do you have something fun planned?"
- "How well do you know the person you are wiring money to?"
- "The transaction seems out of pattern for you. Do you mind giving more information?"

Use the following list, suggested in the Schwab Advisor Services article "Encourage Clients to Establish a Trusted Contact," to develop senior and vulnerable risk assessment tools to educate your colleagues (advisorservices.schwab.com):

- Establish a protocol for how to deal with suspected impairment
- Track retail clients ages 60 and older and schedule regular check-ins (note that the SEC, FINRA, states, and investment providers use different ages to define a "senior citizen")
- Develop policies for responding to potential red flags
- Report all cases of suspected elder financial abuse

Planning to Prevent Elder Abuse

Protecting against elder exploitation starts years in advance of the first signs of your clients' declining health in the aging process. Be proactive in talking to your clients about their plans for the future when they are young, healthy, and mentally competent, so that it is more challenging for someone to take advantage of them later in life.

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Discuss with your clients what they want you to do in the event they are no longer able to care for or manage their finances independently. In coordination with the counsel of an estate planning attorney, you can ensure essential documents, such as a will, general durable power of attorney, a living will, and medical power of attorney, are appropriately in place to manage your clients' affairs in the event they are incapacitated. Your clients will want to give careful thought before appointing family members or friends who can pay bills and oversee finances if they can no longer do so.

Finally, consider consolidating investment accounts, if possible, to make your elderly clients' finances more manageable. Be sure to maintain your clients' beneficiary designations according to their wishes. Simplifying money management will make it easier for you and your clients' loved ones to spot any unusual withdrawals so that you can swiftly avoid potential financial fraud. ■