



Q&A

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Financial Elder Abuse

California lawyers follow the money to protect seniors.

FOR YEARS, CLAIMS OF NURSING-home neglect have dominated elder-abuse litigation. But now, partly in response to recent legislation, attorneys are increasing their focus on financial-abuse claims for the over-65 crowd.

Like claims of physical abuse, elder financial-abuse cases—which can involve anything from a younger person stealing from a senior neighbor to Ponzi schemes targeting the elderly—trace their roots to the 1991 passage of the Elder Abuse and Dependent Adult Civil Protection Act (Cal. Welf. & Inst. Code §§ 15600–59). Then, in 2004, the Legislature lowered the burden of proof in financial cases from clear and convincing evidence to a preponderance of evidence (Cal. Penal Code § 367). The Financial Elder Abuse Reporting Act of 2005 requires banks to report suspected financial abuse of a senior. And in January the Elder Financial Restitution Act (Cal. Welf. & Inst. Code § 15657.01), also called SB 611, took effect, further encouraging lawyers to follow the money: Elder and dependent adults can freeze a defendant's assets if a judge finds evidence of a strong case—and the

plaintiff can post bond to cover the property value.

All this is meant to help address the 225,000 cases of physical and financial abuse that, according to the California attorney general's office, are reported each year against elders.

California lawyers, meanwhile, are reporting an uptick in business. Ingrid Evans, who helped start an elder financial-abuse practice at San Francisco's Renne Sloan Holtzman Sakai, says her office has been inundated with calls. Edward J. Corey Jr., of Weintraub Genshlea Chediak in Sacramento, calls elder financial abuse one of the fastest-growing "emerging" practice areas in the state.

Still, some attorneys are slow to litigate for the elderly. The applicable statutes are relatively new, explains Steven Riess, a San Francisco attorney who wrote SB 611. "Very little mandatory or persuasive decisional law exists," he says, "and few cases have risen to appellate court level."

Bo D. Phillips Jr., a business litigator with Reed Smith's Los Angeles and San Francisco offices, agrees that some lawyers may hesitate to bring cases "until the courts parse the language

[of the Act], or until the Legislature addresses it with some clarifications."

Another disincentive: Attorneys often have to piece together cases from financial or medical documents when a plaintiff is deceased or has diminished capacity. And further, seniors—embarrassed that they may have been duped—are often reluctant even to come forward to seek legal redress.

But the number of Californians over age 65 will double to 6.4 million by 2020. And many of those people are relatively wealthy: Seventy percent of the nation's personal wealth is in the hands of people over age 50. Their assets, along with declining physical and mental health, make them prime targets for abuse. As Prescott Cole, an attorney with California Advocates for Nursing Home Reform, puts it, "This is where the action is going to go, because we have elders who have control of the assets but are losing control of their mental faculties."

Kathryn A. Stebner, who last year settled an annuity case for a blind senior client, hopes the private bar will rise to the challenge. Says the name partner from San Francisco's Stebner & Associates, "Even though I've never thought of myself as interested in finances, I am interested in people not ripping off the elderly."
—Rebecca Beyer

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