

**FRAUD AGAINST SENIORS:
SCAMS, FLIMFLAMS, PHISHERS, SPIES, AND SPAM**

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CHAPTER 5

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■ ***Professional Activities***

- 1974-1978 - Assistant District Attorney for Bowie County, Texarkana, Texas
- 1979-1980 - Private practice, solo practitioner, Cass County, Texas
- 1980-1981 - In-house counsel for Lone Star Steel Company, Dallas, Texas
- 1981-1986 - Associate with Lovelace & Thompson, Inc., Atlanta, Texas
- 1986-1995 - Partner with the firm of Lovelace & Dowd, Inc., Linden, Texas
- 1995-2005 - President of Lovelace & Dowd, Inc., Linden, Texas
- 2005-2010- Judge, Cass County Court at Law, Linden, Texas
- Life Fellow of the Texas Bar Foundation
- Regional Chair, Texas Assoc. of County Courts at Law, Judicial Region One, 2009-10; 2010-11
- Past Member, State Bar District 1-B Grievance Committee
- Past Chairperson, State Bar District 1-B Grievance Committee
- Author/speaker for State Bar of Texas PDP Ethics Seminar, Texarkana Bar Association, 1996
- Speaker panel for State Bar of Texas PDP Advanced Elder Law Seminar, Dallas, 2006
- Speaker, State Bar of Texas PDP Advanced Elder Law Seminar, Houston, 2007
- Speaker panel for State Bar of Texas PDP Advanced Elder Law Seminar, Dallas, 2008
- Speaker panel for State Bar Disciplinary Rules and Procedure, Texarkana Young Lawyers, 2009
- Speaker Panel for the University of Texas Law School Estate Planning, Guardianship, and Elder Law Conference, Galveston, 2009
- Speaker Panel for National Association of Counsel for Children CPS Seminar, Texarkana, 2009
- Member of Planning Committee and Speaker Panel for State Bar of Texas PDP Advanced Elder Law Seminar, Dallas, 2010
- Past President of Cass County Bar Association
- Former member of the Texas District and County Attorneys Association; Texas Trial Lawyers' Association; and the Texas Criminal Defense Lawyers Association
- Obtained "not guilty" jury verdict in capital murder case, 2003
- Lay speaker and Sunday School Teacher, Linden United Methodist Church

■ ***Education***

- Stephen F. Austin State University, Bachelor of Science, *Summa Cum Laude*, 1971
- Baylor University School of Law, Juris Doctorate, 1973

Law Related Publications, Academic Appointments and Honors

- Board of Directors of the Northeast Texas Restitution Center
- Who's Who Among Students in American Colleges and Universities
- Valedictorian, School of Liberal Arts, Stephen F. Austin University
- President of Alpha Chi National Honor Society, Stephen F. Austin University
- "An outline and guide for appearing before the grievance committee," Texarkana Bar Assoc. 1996
- "How to Defend the Accidental Fall Child Capital Murder Case," *Voice for the Defense*, 2004
- "Will Contests: Overview of Law and Procedure," *Advanced Elder Law*, 2007
- "Is it Time to Take the Keys? Katie's Law and Elder Texas Drivers," *Advanced Elder Law*, 2008
- "Fraud Against Seniors: Scams, Flimflams, Phishers, Spies, and Spam," *Advanced Elder Law*, 2010

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FRAUD AGAINST SENIORS: SCAMS, FLIMFLAMS, PHISHERS, SPIES, AND SPAM

I. INTRODUCTION

With the advent of the increased use of personal computers and email through the internet, instead of —snailmail,” and cell phones, instead of land lines, seniors using those and other electronic means of communication have increasingly come under attack by persons who would seek to use these devices as a means to defraud and swindle. In addition, fraudsters still use —land lines” to call seniors and offer these scams to anyone who will listen. Because seniors tend to have larger savings and investments than younger, less affluent Texans, and because some seniors may have impaired judgment due to advancing years and failing health, seniors are particularly favorite targets of unscrupulous scammers and crooks.

The aim of this article is to alert the elder law practitioner to the most common of these illegal practices in the hope that the attorney may help his client avoid these scams when possible, and to help the client explore available remedies when a client has fallen victim to one of these schemes. Much of the information related in this article regarding the various types of fraudulent activities visited upon seniors is contained in, and taken from, the websites of the Texas Attorney General, United States Secret Service, FBI, Federal Trade Commission, and other governmental websites cited below. For a more comprehensive treatment of each type of scam, please reference the materials contained at those sites.

As stated by Attorney General Greg Abbott, —Fraud against seniors is more widespread than most people realize, and timely information about the latest scams that target senior Texans can be a powerful protective weapon.” Citing Texas Attorney General Greg Abbott, —Attorney General Warns of Top Five Scams Against Senior Texans,” Texas Attorney General Website, www.oag.state.tx.us/consumer, November 19, 2009.

As stated by the Attorney General’s Office, the latest scams leveled by crooks against senior Texans fall into one of five general categories: (1) advance fee fraud; (2) home repair scams; (3) identity theft; (4) pigeon drop; and (5) investment scams. In addition to these five suggested by the Attorney General, this article will also include a discussion of (6) phishing and spyware. Although there are an almost infinite variety of these types of scams, each has certain characteristics that it shares with others in that same category. Each type will therefore be closely examined to determine its common characteristics with its cousins.

II. ADVANCE FEE FRAUD

Advance fee fraud has been defined as —a confidence trick in which the target is pressured to advance a sum of money in the hope of realizing a much larger gain in the future. Wikipedia, —Advance Fee Fraud,” November, 2009, page 8. This scam usually works by the scammer contacting the senior by phone, email, or in person, and by telling the senior that she has had some great stroke of luck. Some examples are: —You have won the Canadian Lottery;” —You have won the Spanish Lottery;” —You have been left a large inheritance by great Uncle Joe;” —You have won the Publisher’s Clearing House sweepstakes.”

Once the victim becomes excited by the good news, the scammer then lets the hammer drop: —Of course, you will have to pay a small amount up front for taxes and collection fees (usually \$2000 to \$3000) in order to get the money.” The scammer usually requests the money in cash or, more often, by wire transfer, so that it cannot be traced back to him. Once paid, the scammer is never heard from by the victim again.

A clever variation of this scam is by the use of a false check. The scammer actually forwards an official looking, but phony, cashier’s check for a large sum of money to the senior and tells the senior to go ahead and deposit the check in his account. After the check is deposited, the senior is instructed to wire transfer money from his account to the scammer to pay only for taxes and collection costs. After the senior deposits the phony check and wires the money to the scammer, the phony cashier’s check bounces and the senior loses the money from his account that he has wired to the scammer.

Seniors are not the only ones affected by the false check scam. Some of these scams are very sophisticated. A Houston attorney recently lost \$182,500 to a Japanese scammer using a form of the false check scam. As reported in The Texas Lawyer, (January 26, 2009), the attorney was contacted by an alleged overseas firm which contacted and hired him by email. The “client” stated that it needed the firm to collect over three million dollars from four customers in the United States which owed it money. The client agreed to pay a one-third collection fee to the attorney, and advised that one of its customers had agreed to make a partial payment on its account. The attorney accepted employment. Thereafter, the attorney received a \$367,000 check from one of the client’s —customers,” which was deposited in the firm’s trust account. Pursuant to directions, the firm then wire transferred \$182,500 to the Japanese scammer from the trust account. One week later, the attorney learned from the depository bank that the check was a fraud, and that the bank had wiped out the trust account by collecting the amount due from the attorneys’ account.

The lessons to be learned from the victims of advance fee check fraud appear to be:

When in receipt of a large check from an unknown source, wait until the check is finally cleared and payment has been credited to depositor's account before disbursing any funds.

Insist on a face to face meeting so that a personal evaluation can be made of the party requesting the services.

Do not wire transfer funds from a common source account. Instead write a check. If the deposit bounces, there may be time to cancel the check.

While there are many more variations of the advance fee scam, perhaps the best known is the scam commonly known as the —Nigeria Letter.” Although there are many versions of the —NigeriaLetter,” the following is a good representation of what the letter might look like:

—Dear Sir,

Confidential Business Proposal

Having consulted with my colleagues and based on the information gathered from the Nigerian Chambers Of Commerce and Industry, I have the privilege to request your assistance to transfer the sum of \$47,500,000.00 (forty seven million, five hundred thousand United States dollars) into your accounts. The above sum resulted from an over-invoiced contract, executed, commissioned and paid for about five years (5) ago by a foreign contractor. This action was however intentional and since then the fund has been in a suspense account at The Central Bank Of Nigeria Apex Bank.

We are now ready to transfer the fund overseas and that is where you come in. It is important to inform you that as civil servants, we are forbidden to operate a foreign account; that is why we require your assistance. The total sum will be shared as follows: 70% for us, 25% for you and 5% for local and international expenses incidental to the transfer.

The transfer is risk free on both sides. I am an accountant with the Nigerian National Petroleum Corporation (NNPC). If you find this proposal acceptable, we shall require the following documents:

- (a) Your banker's name, telephone, account and fax numbers.
- (b) Your private telephone and fax numbers —for confidentiality and easy communication.

- (c) Your letter-headed paper stamped and signed.

Alternatively we will furnish you with the text of what to type into your letter-headed paper, along with a breakdown explaining, comprehensively what we require of you. The business will take us thirty (30) working days to accomplish.

Please reply urgently.

Best regards

Howgul Abul Arhu”

This fraud is also known as the 419 fraud, Nigerian scam, Nigerian bank scam, and the Russian/Ukrainian scam. This scam usually begins by the victim receiving a letter or email purportedly sent to a selected number of recipients (but actually sent to many thousands). The usual story is that a person knows of a large amount of gold or unclaimed money which he cannot access directly. The money may be described as having belonged to a deposed African dictator who is trying to get the money out of the country and into a legitimate bank account in the United States. In order to do this, the dictator needs the use of the victim's bank or savings account. The sum may be in the millions of dollars. Sometimes the method described for accessing the money is quite elaborate. Often there is a series of communications that occur between the sender and the victim that are designed to gain the victim's trust. In any event, at some point the victim is persuaded to wire transfer money in order for the scammer to take the necessary steps to get the money or gold. Once wired, of course, the money is never returned and the scammer disappears.

Another variation asks for specific bank account information such as account numbers so that the money can allegedly be transferred into the account. In truth, the scammer uses the account number to access and withdraw money from the account. Many of these schemes originate in third world countries in Africa and still exist in one form or another. Most of the scammers are foreign nationals hiding under the protection of a country where enforcement for fraud is either ineffectual or nonexistent.

Besides the Nigerian Letter Scheme, there are many other variations of advance fee fraud. Here follows a list of some of the more common forms:

1. Fake auto purchase. The scammer advertises an automobile, usually on the internet, for a ridiculously low price. Sometimes the scammer says he is a wholesaler operating outside the U.S. and is retailing cars in the U.S. When contacted by the victim, the

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