

PRESENTED AT

2018 Stanley M. Johanson
Estate Planning Workshop

November 16, 2018
Austin, TX

**FINANCIAL ABUSE OF ELDERS AND
OTHER AT-RISK ADULTS**

Kristen M. Lewis, Esq.

**FINANCIAL ABUSE OF ELDERS AND
OTHER AT-RISK ADULTS**

**Kristen M. Lewis, Esq.
Smith, Gambrell & Russell, LLP
Atlanta, Georgia
(404) 815-3640
klewis@sgrlaw.com**

I.	FINANCIAL ABUSE AND EXPLOITATION OF ELDERS AND OTHER AT-RISK ADULTS	1
A.	The scope of the societal plague	1
B.	The definition of “elder”	3
C.	The definition of financial abuse and exploitation	5
D.	Perpetrators of elder financial abuse	6
E.	Commonly cited reasons for elder financial abuse	8
II.	DETECTION AND REPORTING OF ELDER FINANCIAL ABUSE.....	9
A.	Indicators of elder financial abuse	9
B.	Reporting of elder financial abuse	11
III.	REMEDIES FOR ELDER FINANCIAL ABUSE	19
A.	Criminal prosecution	19
B.	Civil remedies	22
C.	Disinheritance statutes	24
D.	Registries of persons convicted of elder abuse	24
E.	Probate Court remedies	25
IV.	PREVENTION OF ELDER FINANCIAL ABUSE	27
A.	Federal initiatives	27
B.	Multi-disciplinary team of professional advisors	32
C.	Defensive use of the General Durable Power of Attorney	32
D.	Use of Revocable Living Trusts instead of Powers of Attorney.	37
E.	Enhanced screening of potential conservators, and monitoring of same once appointed	44
F.	Adoption of Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act	47
G.	Elder Mediation	49
H.	Recent FINRA Initiatives	51
	CONCLUSION	52
	APPENDIX.....	54

FINANCIAL ABUSE OF ELDERS AND OTHER AT-RISK ADULTS

Kristen M. Lewis, Esq.
Smith, Gambrell & Russell, LLP
Atlanta, Georgia
(404) 815-3640
klewis@sgrlaw.com

I. FINANCIAL ABUSE AND EXPLOITATION OF ELDERS AND OTHER AT-RISK ADULTS

A. The scope of the societal plague

1. In June 2011, the MetLife Mature Market Institute, in collaboration with the **National Committee for the Prevention of Elder Abuse** (“NCPEA”) and the Center for Gerontology at Virginia Polytechnic Institute and State University, released *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation and Predation Against America’s Elders* (hereafter referred to as the “2011 MetLife Study”) (available at <https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>). The 2011 MetLife Study analyzed data collected during the period from April through June 2010. It was designed to update a previous study released by MetLife in 2009, *Broken Trust: Elders, Family and Finances* (hereinafter referred to as the “2009 MetLife Study”), which analyzed data collected from April through June 2008 (available at <https://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf>). The key findings of the 2011 MetLife Study include the following.

a. The **annual** financial loss by victims of elder financial abuse is estimated to be at least **\$2.9 billion**, a 12% increase from the \$2.6 billion estimated in 2008.

b. **Women** were nearly twice as likely as men to be victims of elder financial abuse. See Laumann, E., Leitsch, S. & Waite, L. (2008). *Elder Mistreatment in the United States: Prevalence Estimates from a Nationally Representative Study*, *The Journals of Gerontology Series B, Psychological Sciences and Social Sciences*, 63(4), S248-S254. Most victims were between the ages of 80 and 89, **lived alone**, and required some level of help with either health care, other activities of daily living, or home maintenance.

c. The goal of the perpetrators was generally achieved through **deceit**, threats and emotional manipulation of the elder. “In addition, physical and sexual violence frequently occurred within the vortex of elemental greed and disregard for the victim that surrounded financial abuse.” 2011 MetLife Study at 3.

d. Elder financial abuse can be classified into three types of crimes.

(1) **Crimes of occasion** or opportunity are “incidents of financial abuse or exploitation that occur because the victim is merely in the way of what the perpetrator wants.” *Id.* at 4.

(2) **Crimes of desperation** are those “in which family members or friends become so desperate for money that they will do whatever it takes to get it.” *Id.*

(3) **Crimes of predation** or occupation occur “when trust is engendered for the specific intention of financial abuse later. A relationship is built, either through a bond of trust created through developing a relationship (romantic or otherwise) or as a trusted professional advisor, and then used to financially exploit the victim.” *Id.*

e. The 2011 MetLife Study concludes that “despite growing public awareness from a parade of high-profile financial abuse victims, it remains under-reported, under-recognized and under-prosecuted.” *Id.* at 23. Elder financial abuse continues to be the “**Crime of the 21st Century**,” one that is often at the heart of other forms of elder mistreatment.” *Id.* at 5. (This phrase is attributed to Fred Joseph, President of the North American Securities Administrators Association (“NASAA”) in 2009, in a joint announcement with the National Adult Protective Services Association (“NAPSA”), which can be accessed at <http://www.nasaa.org/5268/nasaa-napsa-unite-to-fight-financial-elder-abuse>.)

f. Although elder financial abuse sometimes occurs in isolation, “the interrelationship between financial, physical, sexual and emotional victimizations of elders is undeniable.” *Id.* at 18. The “dehumanization of victims that takes place in the process of financial abuse . . . creates **an avenue to further victimization.**” *Id.* at 17.

(1) Elders who have experienced abuse, even modest abuse, have a **300 % higher risk of death** when compared to those who have not been abused. See Dong X. *et al.* (2009), *Elder self-neglect and abuse and mortality risk in a community-dwelling population*, *Journal of the American Medical Association*, 302 (5), 517-526.

(2) A recent study commissioned by the **United States Government Accountability Office (“GAO”)** estimated that 14.1% of non-institutionalized older adults had experienced physical, psychological or sexual abuse, neglect or financial exploitation in the year preceding the issuance of the report. See *Stronger Federal Leadership Could Enhance National Response to Elder Abuse* (GAO-11-208, March 2011) (available at <http://www.gao.gov/assets/320/316224.pdf>).

(3) A recent study co-authored by researchers at Georgia State University and the Georgia Department of Human Services, Division of Aging Services, included the following statistic: “Elder abuse, in all its forms, **affects between two and five million American adults** over the age of 65.” See S. Strasser *et al.*, *A Survey of Georgia Adult Protective Service Staff: Implications for*

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Financial Abuse of Elders and Other At-Risk Adults

First appeared as part of the conference materials for the
2018 Stanley M. Johanson Estate Planning Workshop session
"Financial Abuse of Elders and Other At-Risk Adults: The Crime of the Twenty-First
Century"