

# Ethical & Professional Responsibility Challenges of Elder Financial Abuse

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## The Elder Population



Elderly people

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## Household Income

Changes in Household Income		
Age Group	Change in Median Real Household Income Since 2000	Change in Median Real Household Income Since 1967
15-24	7%	18%
25-34	-2%	21%
35-44	-1%	32%
45-54	-4%	35%
55-64	4%	49%
<b>65 and Older</b>	<b>24%</b>	<b>130%</b>

SOURCES: Census Bureau and Haver Analytics  
Federal Reserve Bank of St. Louis

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## Older Americans & Wealth

People over the age of 50, who make up about 1/3 of the population:

(1) Hold 61% of the bank accounts and 70% of bank deposits;

(2) Control over 70% of the nation's wealth



Individuals who are age 75 and older have the highest median net worth in our country.

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## Older Americans & Wealth

### **Life expectancy gap between the richest and poorest Americans:**

**On average, the richest men are expected to outlive the poorest men by 15 years and the richest women are expected to outlive the poorest women by 10 years.**

**Raj Chetty, et al., The Association between Income & Life Expectancy in the US, 2001-2014 (JAMA 2016)**

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## AGE & GENDER (U.S. 2016)

### **U.S. Population by Gender (2016)**

#### ***Number of Males per 100 Females:***

<b>Total Population</b>	<b>97</b>
<b>Ages 65-74</b>	<b>88</b>
<b>Ages 75-84</b>	<b>76</b>
<b>Ages 85 and older</b>	<b>53</b>

**Source: U.S. Census Bureau, 2016.**

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## Living Alone

**Percentage of Noninstitutionalized Persons Age 65+ who live alone (without a spouse or partner):**

**Men 20%      Women 35%**  
**46% of women age 75+ live alone**

Source: U.S. Census Bureau, 2016.

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## Age & Diminishing Capacity

**Starting at age 65, the risk of developing Alzheimer's disease doubles every 5 years.**

**By age 85 years and older, between 25% and 50% of people will exhibit signs of Alzheimer's disease.**

**About 5.8 million Americans are currently exhibiting signs of Alzheimer's disease.**

**(1) 5.5 million of these individuals are over age 65.**

**(2) Two-thirds of these individuals are women.**

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## Age & Diminishing Capacity

**The average time between the appearance of the first symptoms of impairment to a diagnosis of dementia is 2.8 years.**

(Brookmeyer et al., Baltimore Longitudinal Study of Aging, 2002).

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## ELDER FINANCIAL ABUSE (“EFA”)

**The National Committee for the Prevention of Elder Abuse defines EFA as “the illegal or improper use of an older person’s funds, property or resources.”**

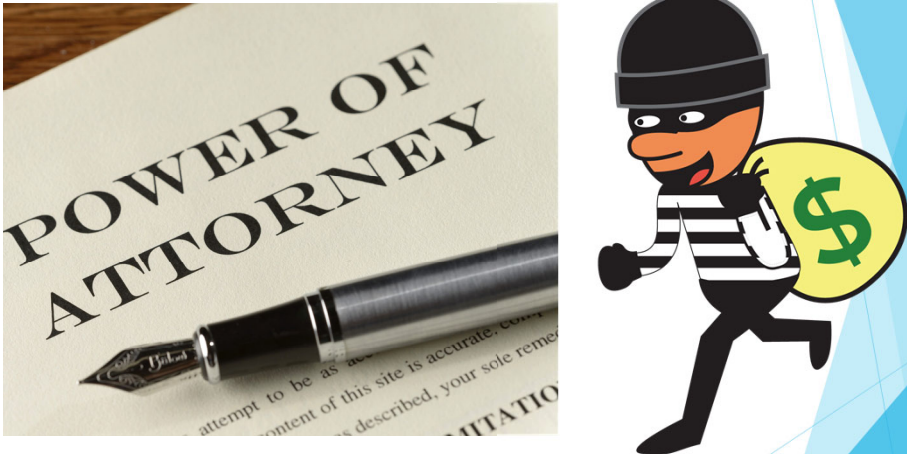
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For every reported case of elder financial exploitation, **43 go unrecognized.**



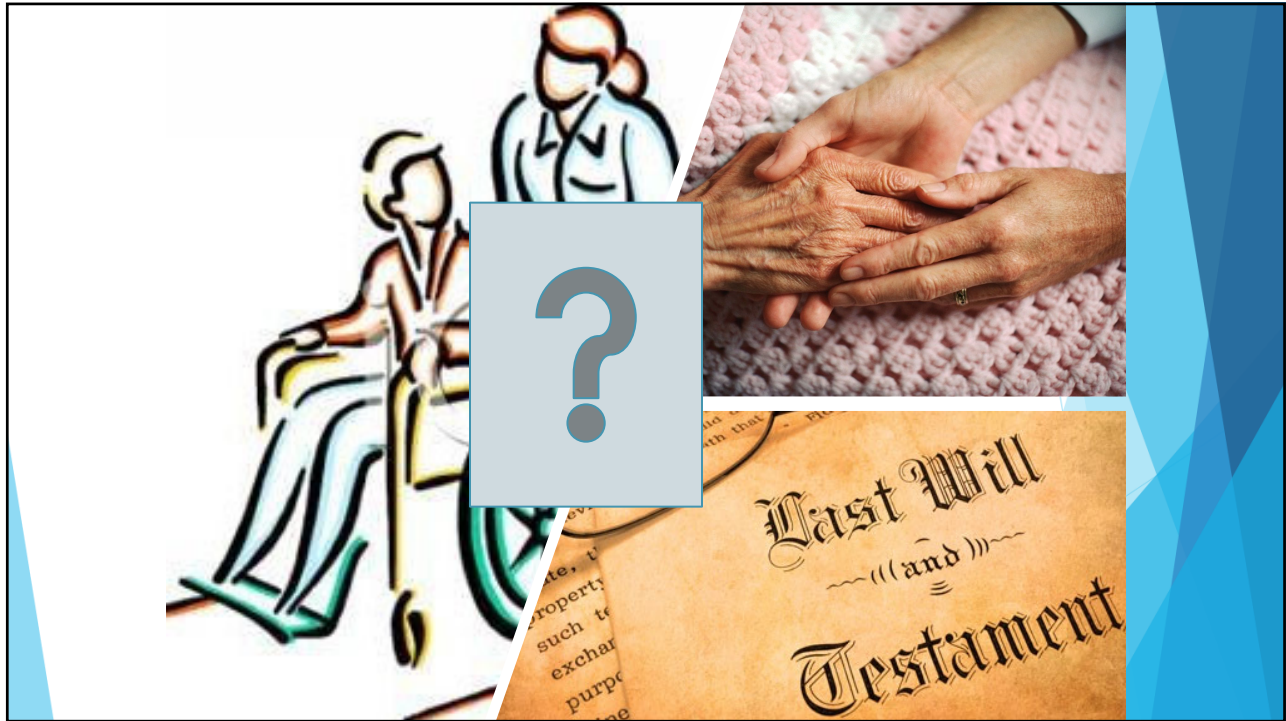
The infographic consists of a dark blue square containing 44 small, light blue human icons arranged in three rows: 14 in the top row, 14 in the middle row, and 16 in the bottom row. One icon in the middle row is highlighted in white, representing the single reported case.

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The image is split into two parts. On the left, a close-up of a document with the words "POWER OF ATTORNEY" in large, bold, black letters. A silver fountain pen lies diagonally across the bottom of the document. Below the main title, smaller text is partially visible, including "attempt to be as accurate as possible", "content of this site is accurate. Com", "described, your sole reme", and "SITATIO". On the right, a cartoon burglar wearing a black mask and a black and white striped shirt is running to the right. He is carrying a large, glowing yellow dollar sign with a green "\$" symbol.

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## EFA in Times of Disaster

### **“Cures” for COVID 19**

**“Silver Solution”**

**“Miracle Mineral Solution” = Drinking  
Chlorine Dioxide (an industrial  
disinfectant)**

**“Virus cards”**

**Virus “zappers”**

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## Grandparent Scam

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## SWEETHEART SCAM

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## Perpetrators of EFA

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## Victims of EFA



“Between the ages of 70 and 89, white, female, frail and cognitively impaired. She is trusting of others and may be lonely or isolated.”  
(MetLife 2011 Study)

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## Victims of EFA

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## Victims of EFA

**A 2017 study (Wood & Lichtenberg) described the “perfect victim” of EFA as a pre-dementia, mildly cognitive impaired individual who still retains control of his or her assets but who is still operating freely in the community because his or her impairments have not yet been recognized.**

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## Why Are Elders Targeted?

**FINANCIAL LITERACY**  
(knowledge of the basic concepts essential to make effective and sound financial choices) **DECLINES** on average 2% per year after an individual reaches age 60

**FINANCIAL CONFIDENCE**  
(confidence in one’s ability to make effective choices) **does NOT** decline with age and, in some individuals, it **rises**

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## Why is EFA Not Being Reported?



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## Consequences of Reporting

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## CONFIDENTIALITY RULES

***Model Rule of Professional Conduct 1.6***  
**“(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”**

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## CONFIDENTIALITY RULES

***MRPC 1.6*** **“(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:.... (6) to comply with other law or a court order.”**

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## CLIENT WITH DIMINISHED CAPACITY

***MRPC 1.14*** (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including **consulting with individuals or entities that have the ability to take action to protect the client** and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

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## Actions Professionals Can Build Into Their Estate Planning & Elder Law Practices

- 1. Familiarize yourself with the varieties and indicators of EFA.**
- 2. Understand your own responsibilities as a mandatory or permissive reporter of EFA.**
- 3. For lawyers, be clear from the outset of the relationship who your client is (and who is not your client) and the professional responsibility rules if someone else is paying you for the client's legal services.**
- 4. Information Gathering and Screening.**
- 5. Educating and Counseling.**
- 6. Monitoring.**

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## Actions Professionals Can Build Into Their Estate Planning & Elder Law Practices

- 7. Familiarize yourself with reputable professionals in your area (Geriatric Care Managers, Daily Money Managers, etc.) who specialize in counseling and protecting seniors.**
- 8. Explore in advance with your client ways in which you will be able to intervene appropriately if you suspect diminishing capacity or EFA.**
- 9. When providing “protective action” for a client whose capacity has been diminished, examine “less restrictive alternatives.”**
- 10. Beware of “compassionate ageism.”**

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## Avoid Ageist Stereotypes



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