What is Elder Abuse?

(Excerpt from “Exploitation and Abuse of the Elderly During the Great Recession: A Maine Practitioner’s Guide” by Denis Culley & Hanna Sanders, Maine Law Review - Volume 62)

According to the National Center on Elder Abuse, “elder abuse” refers to the intentional or negligent acts by a caregiver or trusted individual that causes—or potentially causes—harm to a vulnerable elder. Financial exploitation, neglect, physical and sexual abuse, abandonment, and emotional or psychological abuse—including verbal assault and threats—are all types of elder abuse. Current statistics show that women and elders over the age of eighty are more likely to become victimized, and mistreatment is most often perpetrated by the victim’s own family members.

In 2008, there were more than 14,000 reported cases of elder abuse in Maine. However, Maine statutes do not define “elder abuse.” While some other states have moved toward specifically criminalizing financial abuse of the elderly, Maine has not. As it stands now, “Under Maine law, elder abuse of a competent adult is not a unique crime or civil cause of action.” In Maine, the age of the victim is not relevant to any criminal action taken on behalf of a victim and—as aside from the Improvident Transfer of Title statute—is not relevant to civil actions.

The State of Missouri offers a workable definition of financial abuse of an elder in its criminal code:

A person commits the crime of financial exploitation of an elderly or disabled person if such a person knowingly and by deception, intimidation, or force obtains control over the elderly or disabled person’s property with the intent to permanently deprive the elderly or disabled person of the use, benefit or possession of his or her property thereby benefiting such person or detrimentally affecting the elderly or disabled person.

As staff attorneys with Legal Services for the Elderly, the vast majority of elder abuse cases that we deal with involve financial exploitation with close relatives defrauding, diverting, or baldly stealing money from their mothers, fathers, aunts and uncles, or grandparents. The methods of removing money from the elder vary from subtle to brutally simple—and sometimes quite brutal—but the constants of an emotionally or physically vulnerable elder, a degree of isolation, and a sense of entitlement within the financial abuser remain. Another disheartening constant is the utter lack of contrition among abusers.

We have routinely witnessed elders who deed over their home or parcels of property (with or without the retention of a life estate), make gifts of large sums of cash, make loans with no written promise of repayment, co-sign a promissory note when the borrower has no source of income, mortgage their property up to—or over—fair market value, or add a joint holder to bank accounts. These transactions are often contemplated and completed based on the elder’s emotions and fear and are usually not accompanied by any counsel or legal advice.

3. ME. REV. STAT. ANN. tit. 33, §§1021-1025.
4. MO. REV. STAT. § 570.145 (West 2009).
5. An internal survey of the seven currently serving LSE staff attorneys of 2009 revealed no recollection of a single case in which an exploiter (whether defined by judgment from a court or via agreement in settlement) expressed remorse for their acts.
6. See infra Section IV. A, including fears related to property recapture by the State of Maine’s Medicaid program.
The elder may experience the loss of their home or financial ruin at the hands of an exploiter. Due to the fact that the elderly population is typically retired and lives on a fixed income, it is nearly impossible to bootstrap up again once an elder’s life savings or nest egg has been wiped out. Although the monetary figure could range from a couple of thousand dollars for the very-low income to hundreds of thousands of dollars for the wealthy, the results of financial exploitation are the same: shame, embarrassment, emotional anguish, depression, and always abandonment by the exploiter once the last of the accessible money has been stripped from the elder. The elder victim may also experience physical manifestations from the experience of exploitation. Statistics show an increase in morbidity and mortality rates among the victims of elder abuse. Former Maine Attorney General Steven Rowe referred to such abuse as “financial violence.” Facing such an experience towards the end of life seems to drain all the hope and vitality, as well as the financial resources, out of an elderly person. Relationships are compromised, the ego is severely battered, and the elder’s personal judgment will forever be questioned by the elder herself and by others.

7. ELDERMISTREATMENT: ABUSE, NEGLECT, AND EXPLOITATION IN AN AGING AMERICA, supra note 10, at 340.
8. Steven Rowe, then-Attorney General, State of Maine, Address to the Statewide Conference on Elder Abuse, Neglect and Exploitation at the Augusta Civic Center (May 3, 2004).