

Protecting Your Parents from Exploitation

Northern Illinois Chapter
Employee Assistance Professionals
38th Annual Conference



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For Discussion Today

- Startling Statistics
- Exploitation Hypothetical
- How to Protect Yourself

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Theft. Theft. Theft!

- SIX MILLION seniors fall victim to fraud every year.
- Cognitive conditions such as dementia and Alzheimer's disease increase vulnerability.

Category	Annual Cost to Seniors	Defining Feature	Examples
Exploitation	\$16.99 Billion	Operating openly claiming consent of the victim	<ul style="list-style-type: none"> • Hidden shipping and handling or subscriptions • Work-from-home schemes • Quick weight loss or dietary products • Excessive Gifts • Misleading financial advice

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Theft. Theft. Theft!

Category	Annual Cost to Seniors	Defining Feature	Examples
Criminal Fraud	\$12.76 Billion	Anonymous illegal activity	
Con artists	\$9.85 Billion	Attempt to get you to give them money	<ul style="list-style-type: none"> Grandparent scam Nigerian prince emails Fake lottery winnings Sweetheart Scam (Online dating sites)
Identity Theft	\$2.91 Billion	Opening or using accounts without authorization	<ul style="list-style-type: none"> Opening new credit cards, bank accounts, or loans Car title or home equity loans on your property Using card data by phishing, in data breach or from the mail

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Theft, Theft, Theft!

Category	Annual Cost to Seniors	Defining Feature	Examples
Caregiver abuse	\$6.67 billion	Abuse of trusting relationship	<ul style="list-style-type: none"> Theft by family members or caregivers Rewritten wills or powers of attorney Borrowing money hoping senior will forget Sometimes combined with physical abuse or neglect

➤ Seniors lose \$36.48 billion each year to Elder financial abuse, this is more than twelve times what has been previously reported in years past.

Statistics From: True Link Report on Elder Financial Abuse, 2015. True Link is a Financial Services firm based in San Francisco, CA

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Elder Abuse and Neglect Stats-Illinois

- The Elder Abuse and Neglect Program has seen a **41% increase** in reported cases since 2004
- 1 in 4 victims were age 86 or older
- Almost 7,000 reports of financial exploitation

Source: Illinois Department on Aging Annual Report 2013

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Elder Abuse and Neglect Stats-Illinois

- 75% of the abusers were either the spouse, child or other relative
- Family members responsible for 20% of all reports, only 8% self reported.
- 69% of the victims were female

Source: Illinois Department on Aging Annual Report 2013

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Mickey Rooney

- He and his wife had food and water withheld from them by his stepson in order to control him.
- Over \$400,000 was allegedly taken.
- His mail, ID cards and passport were withheld and when he asked his stepson for information he was told "it was none of his business".
- His son took control of all his finances and forced him to do performances he did not wish to do.

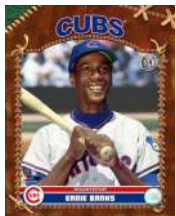


"I was eventually and completely stripped of the ability to make even the most basic decisions in my own life. If elder abuse happened to me, Mickey Rooney, it can happen to anyone." Mickey Rooney

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Ernie Banks

- New set of estate planning documents were signed 3 months prior to his death.
- Caregiver, Regina Rice, in control of everything. His family was completely excluded from new will and trust.
- Rice prevented his children from speaking to their father in his last few months.
- Issue when did dementia start and how significant was the disease when he signed new documents.



Mr. Cub has been widely respected as a positive role model in baseball. He became involved in charity work throughout his life after baseball. In 2013, President Obama awarded Banks the National Congressional Medal of Honor.

He died at age 83 from a heart condition. Dementia was listed as a "significant condition contributing" to his death.

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Watch Out for Scams

Common Scams
Handout in Folder



Description of 30 Scams

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Common Exploitation Scams

- Fraudulent Deeds
- Drafting and Executing New Estate Planning Documents
- Conversion of Money and Property



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Common Scenarios

- Breach of Fiduciary Relationship
- Undue Influence
- Caregiver Exploitation
- Lack of Mental Capacity



John S. Johnson (Johnson & Johnson) with 3rd wife Barbara Plasecka, former maid and 42 years his junior.

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Common Exploitation Scams

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Suzanne's Story

- Suzanne is a 70 year old engineer
- Married to Richard for 40 years
- One daughter, Wendy
- Suzanne has dementia
- Richard does everything for Suzanne
 - Driving, pays all the bills, keeps her organized



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The Unexpected Happens

- Richard dies unexpectedly of a heart attack
- Wendy wants Suzanne to move into her home
- Suzanne wants to stay in her marital home
- Wendy brings in part-time caregivers
 - Help with laundry, cooking, getting dressed
- Wendy comes home once a month to pay bills



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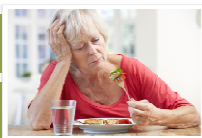
Suzanne is Solo

Suzanne was incredibly lonely

Starts to attend church

Meets a fellow parishioner named Tony, 59 years old

Tony starts to court Suzanne and drives her to church



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Tony's is Troublesome

59 year old male (10+ age gap)

Divorcee

Never worked

Lives off of previous wife's alimony

Very attentive to Suzanne



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Cohabitation



Fast Forward ~ One year later.....

Tony suggests to Suzanne that they live together

Perfect time now as Tony's lease up on his apartment

Tony suggested they could get rid of the 'nosey caregivers'

Tony would be the only caregiver Suzanne needed

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Joint Accounts



Suzanne adds Tony to her bank accounts

Convenient for Tony to do 'grocery shopping and take care of household things'

Tony suggests they meet with her stockbroker so he could use those funds to take care of her

Tony suggests they meet with her attorney to discuss revising her will so "he would be taken care of"

Suzanne readily agrees, "anything for you"

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Wendy Worries



Initially thrilled her mom had a new companion in her life

HOWEVER, Suzanne's behavior started changing

Suzanne used to be a cautious decision maker

Wendy and Tony have argument

Tony tells Wendy to discontinue coming to Suzanne's home

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For Discussion

Does Wendy have any legal recourse to protect her mother?

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Remedies

- Powers of Attorney
 - Healthcare
 - Property
- Temporary Guardianship
- Plenary Guardianship
- Trusts (Irrevocable, Special Needs, IRA Inheritance, Veterans Asset Protection)

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Powers of Attorney

Legal document granting authority:

- to another
- whom you trust
- to act for you
- in certain circumstances
- Your "legal clone"



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Power of Attorney for Health Care



- Appoints an agent to make health care decisions on your behalf if you become incapacitated.
- A Health Care Power of Attorney gives your agent general directives that must be followed but allows flexibility.
- Your agent can decide what you would have wanted done in each scenario.
- A Health Care Power of Attorney is also useful because it allows your doctor or the hospital to release all necessary medical information to whomever you choose as agent.

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Power of Attorney for Property

- Appoints an agent to manage your financial affairs upon incapacitation
 - Avoids guardianship and probate proceedings
 - Includes authority to manage real estate
 - Can change title on property
- Especially useful to manage assets that cannot be owned jointly:
 - Health Savings Accounts
 - IRA's
 - Retirement Plans
 - Property not put in trust



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Diminished Capacity

Attorneys must constantly make assessments regarding a client's capacity (assess cognition not to diagnosis)

- Some clients are obviously incapacitated, while others may suffer from varying degrees of incapacity.
- Capacity is not an "all or nothing" condition. A client may have greater capacity in some situations than others. it runs along a continuum and can vary according to time of day, the task presented, life stressors, medication and other pressures.

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Definition of Decisional Capacity

All persons have the right to make their own decisions, even if we think it is irrational or a poor choice.

- Ability to understand and appreciate the nature and consequences of a decision regarding medical treatment
- Ability to reach and communicate an informed decision
- Ability to weigh the risks versus benefits

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When a patient lacks decisional capacity, medical decisions may be made by:

First: An agent under valid power of attorney for health care.

Second: A court-appointed guardian of the person, acting as surrogate under the Health Care Surrogate Act.

Third: Another surrogate under the Health Care Surrogate Act.

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What if the Patient with Diminished Capacity has NO Planning in Place?

Illinois Healthcare Surrogate Act "Best Interests" Standard:



The patient's best interests as determined by the surrogate decision maker.



The surrogate shall weigh the burdens on and benefits to the patient of the treatment against the burdens and benefits of that treatment.



The surrogate shall take into account any other information, including the views of family and friends, that the surrogate decision maker believes the patient would have considered, if able to act for herself or himself.

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The Surrogate Decision Maker will be one of the following (in order of priority listed below):

- 1 The "guardian" of the patient's person;
- 2 The patient's spouse (or partner);
- 3 Any adult son or daughter of the patient;
- 4 Either parent of the patient;
- 5 Any adult brother or sister of the patient;
- 6 Any adult grandchild of the patient;
- 7 A "close friend" of the patient;
- 8 The guardian of the patient's estate.

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Temporary Guardianship

An Elder Law Attorney's Tool For Protecting his or her Client or his or her Client's Loved One From Financial Exploitation.

- **A Sense of Urgency:** An elderly person who is being financially exploited can easily have his or her entire estate exhausted in a matter of days.
- Once you learn about financial exploitation and decide to take action, your goal is to be in front of the Judge asking for the entry of a Temporary Guardianship in 2-3 days.



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Plenary Guardian of the Person



- Make medical decisions;
- Residential placement of the disabled person with court approval;
- Ensures that the disabled person receives proper professional services;
- Release of medical records and information;
- Limited powers with regard to mental health decisions (cannot admit a disabled person to a mental facility).

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PLENARY GUARDIAN OF THE ESTATE

Make financial decisions;

Entering into contracts;

Take actions to benefit the estate for tax purposes;

Estate Planning;

File lawsuits;

Sell real estate;

Apply for government benefits, investigate and pursue eligibility for government benefits to conserve estate assets



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TRUSTS



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Irrevocable Trusts

- Primary use is to facilitate gifts to children and/or individuals that require asset protection.
- Grantor can't make changes to the trust or retain the right to take the money back.
- Most complex estate tax reduction strategies incorporate irrevocable trusts.



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Irrevocable Life Insurance Trusts

- So long as irrevocable trust owns insurance policy, proceeds will be excluded from estate of insured
- Proceeds will be protected from grantor's and beneficiaries' creditors
- Life insurance proceeds can provide access to liquidity to pay estate tax



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Irrevocable Life Insurance Trusts

Operations of Trust

- (1) Grantor establishes the Trust in which he designates trustees and beneficiaries
- (2) Grantor annually gifts cash to trust which trustee uses to pay insurance premiums
- (3) Upon death of grantor, trustee collects insurance proceeds, which he may loan to estate to pay resulting estate taxes
→ **thereby eliminating need to dissolve business to pay estate tax and allows business to continue**



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Lifetime Gifting

- 2013 & Beyond
 - \$5 million lifetime gift exemption (indexed for inflation)
 - Maximum tax rate of 40%
 - Annual exclusion gifts \$14,000 per donee per year.
- Method to reduce estate during your lifetime.



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Special Needs Trusts

- An essential aspect of estate planning for disability is the proper use of Special Needs Trusts.
- Focusing on the strategies for proper estate planning/administration with Special Needs Trusts.

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When & Why is Special Needs Planning Required?

- Child's 18th Birthday
- Upon the death of a parent/grandparent
- Planning for a parent's disability
- Planning for gifts from relatives during life of parents
- Loss of SSI/SSDI benefits due to poor planning
- Maximize public & private resources
- Identify short & long-term financial costs
- Develop an overall planning strategy

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The History & Purpose of Special Needs Trusts

SNT's protect a disabled person's eligibility for current or future public benefits while simultaneously allowing the person with disabilities access to additional funds to pay for expenses not covered by public benefits.

The purpose is to **supplement** public benefits and not to **supplant** them.

NOTE: If someone only receives benefits from Social Security Disability (i.e. SSD or SSDI) or Medicare, it may be unnecessary to create a special needs trust because they are not "Means-Tested." (Based on Asset Availability)

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Three Types of Special Needs Trusts:

Self-Settled Special Needs Trust

Third-Party Special Needs Trust

Pooled Special Needs Trust

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Self-Settled Trust

Purpose:

	Allows SSI and Medicaid beneficiaries to maintain eligibility for benefits when they have transferred their assets into the self-settled trust.
	Reserves funds in the trust for expenses not covered by government benefits
	Will shelter substantial sums of money during the disabled persons lifetime and allow them to enhance their quality of life.

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Self-Settled Trust

When & Why?

- This type of SNT is established for the individual with disabilities who seeks to set aside his *own* assets for his *own* benefit.

Most self-settled SNTs are established to protect the proceeds of:

- A personal injury or birth injury settlement,
- Outright inheritance;
- Won a lottery;
- Assets existing prior to the disability.

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Third Party Trust

Created and Funded by a Third Party for the Benefit of a Person with Special Needs

	Hypotheticals
	A grandparent's will creates a SNT for a child with disability that will be funded at grandparent's death.
	An aunt creates and funds a SNT for her nephew who has a disability during her lifetime.
	Parents include a testamentary SNT for their child with disabilities pursuant to a divorce decree & the trust is funded upon their death.

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Third Party Trust

Protect governmental benefits eligibility for disabled persons who receive assets through an inheritance or gifting.

Allow trust assets to be reserved for expenses not covered by government benefits.

May offer creditor protection for the disabled beneficiary.

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Pooled Trust

Established By

This SNT must be established by a parent, grandparent, guardian, the court, an agent under power of attorney, or the individual, for the sole benefit of the disabled person during his or her lifetime.

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Pooled Trust

Funded By

This trust is funded with assets which belong to the disabled person, or assets which they are entitled to receive.

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Protect your IRA's Government could be the BIG WINNER

The Inherited
IRA



Dad has a \$400,000 IRA
Both kids inherit \$200,00 each
40% Federal Income Tax = \$80K
3.75% IL Income Tax = \$7,500
Net After Taxes - \$112,500 each

Want to know how to stretch out the distributions over your children's expectancies?

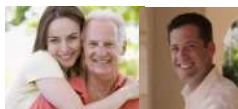
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IRA Trust

- Trust is beneficiary of your qualified retirement accounts
- Each beneficiary has their own trust
- Distributions to the beneficiary are stretched out over their lifetime.
- Eliminates all of the income tax being paid in a single year.
- Account grows income tax free for maximum growth potential.
- Assets are protected from divorcing spouses and creditors.

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IRA Inheritance Protection Trust



The goal is to stretch out the distributions their life expectancies

\$311,464
Over 17 years

\$342,501
Over 20.2 years

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Veteran's Asset Protection Trust

Veterans Asset Protection Trust (VAPT) is designed to hold the veteran's assets in order to qualify for pension benefits from the Department of Veterans Affairs (VA).

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Veteran's Asset Protection Trust



VAPT Works For You!

- Protects your Principal Residence
- Protects all other assets
- Protects VA eligibility
- Protects Medicaid eligibility
- Protects from income tax
- Protects from estate tax

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Thank you!
Kerry R. Peck

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