How to Stop Elder Abuse & Exploitation

Training Materials
From the Nebraska Bankers Association

- Recognizing Common “Red Flags”
- Determining Questionable Transactions
- Protecting Your Customers
- Reporting Abuse, Neglect, or Exploitation in Nebraska

Extraordinary Service for Extraordinary Members
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Elder Abuse, Exploitation & the Need for Response

Statistics from the most recent United States Census indicate that the population of older Americans (65 years old plus) was 247,518 (13.5 percent of the total Nebraska population) in 2010. By 2030, Nebraska’s total population is projected to be 1,820,247 and the projected population of Nebraskans age 65 and over will be 375,811 (20.6 percent). As many as one in five Nebraskans could be elderly in 2030.

Those aged 85 and over are the most rapidly growing elderly age group.

With statistics and projections such as these, it is clear that Nebraska should be preparing itself for the many changes that will accompany this explosion in the older population.
What Is Elder Abuse & Exploitation?

According to the National Center on Elder Abuse, elder abuse refers to intentional or negligent acts by a caregiver or “trusted” individual that cause (or have the potential to cause) harm to a vulnerable elder. The most common categories of abuse are neglect, physical abuse, sexual abuse, financial abuse and exploitation, emotional or psychological abuse and neglect (including verbal abuse and threats), abandonment, and self-neglect.

Elder abuse is an under-recognized problem with devastating and even life-threatening consequences. Every day, headlines throughout the U.S. paint a grim picture of seniors who have been abused, neglected, and exploited, often by people they trust the most. Abusers may be spouses, family members, personal acquaintances, professionals in positions of trust, or opportunistic strangers who prey on the vulnerable.

How big is the problem? No one really knows. Relatively few cases are identified, as elders often are reluctant to report the mistreatment. Experts estimate that only one in five cases or fewer are reported, which means that very few seniors who have been abused get the help they need.

One thing is for certain: elder abuse can happen to any older individual—you your neighbor, your loved one, or even you.

Elder abuse can occur anywhere—in the home, in nursing homes, or in other institutions. It affects seniors across all socio-economic groups, cultures, and races. Based on available information, women and “older” elders are more likely to be victimized. Dementia is a significant risk factor.

Each state has laws that authorize the provision of Adult Protective Services in cases of elder abuse, but state law varies in terms of age of eligibility to receive protective services, the types of abuse, neglect, and exploitation covered, investigation responsibility and procedures, and reporting laws.
In Nebraska, Adult Protective Services serves vulnerable adults who are defined as persons 18 years and older who have a substantial mental and/or functional impairment. Persons eligible for Adult Protective Services have a substantial physical limitation or mental condition that prevents them from living independently or providing self-care. These persons are unable to protect themselves from abuse, neglect, or exploitation.

The types of abuse covered are physical abuse, cruel punishment, unreasonable confinement, sexual abuse, sexual exploitation, neglect (including self-neglect), and exploitation. (See Neb. Rev. Stat. §28-348 to §28-387.)

- **Abuse** means any knowing or intentional act on the part of a caregiver or any other person that results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult.
- **Neglect** means any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable adult, due to physical or mental impairments, to perform self-care or obtain essential services to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.
- **Exploitation** means the taking of property of a vulnerable adult by any person by means of undue influence, breach of a fiduciary relationship, deception, or extortion or by any unlawful means.

It is important to remember that one role of the bank employee is to help reduce fraud, not to keep customers from making informed, yet ill-advised decisions. There is a difference between keeping a customer from being victimized and saving a customer from his or her own foolishness. The “Legal Issues” section clearly spells out the role of the bank employee. Before undertaking any elder abuse training program, the NBA encourages every financial institution to intently review the “Legal Issues” section and consult with its own legal counsel.
Common Elder Abuse Scenarios Relating to Financial Affairs

- **Misappropriation of income or assets** – Perpetrator obtains access to an elder’s Social Security checks, pension payments, checking or savings account, or credit or debit card, or withholds portions of checks cashed for an elder.

- **Excessive rent or fees for service** – Perpetrator charges an elder excessive rent or unreasonable fees for basic care services such as transportation, food, or medicine.

- **Money or property obtained by undue influence, misrepresentation, or fraud** – Perpetrator coerces an elder into signing over investments, real estate, or other assets through the use of manipulation, intimidation, or threats.

- **Improper or fraudulent use of the power of attorney or fiduciary authority** – Perpetrator improperly or fraudulently uses the power of attorney or fiduciary authority to alter an elder’s will, to borrow money using an elder’s name, or to dispose of an elder’s assets or income.

- **Pigeon drop** – Perpetrator claims to have found a sum of money and offers to split it with an elder provided the elder first withdraws an amount equal to his or her share as a sign of good faith.

- **Fake accident ploy** – Perpetrator convinces an elder that the elder’s child has been seriously injured or is in jail and needs money for medical treatment or bail.

- **Telemarketing and mail fraud** – Perpetrator persuades an elder to buy a valueless or nonexistent product, donate to a bogus charity, or invest in a fictitious enterprise.

- **Fake prizes** – Perpetrator tells an elder that he or she has won a (nonexistent) prize and either asks the elder to send a check to pay the taxes on the prize or obtains the elder’s credit card or checking account number to pay for shipping and handling charges for the prize.

- **Unsolicited work** – Perpetrator arrives unexpectedly at an elder’s residence and offers to perform work for a reasonable fee; after starting the work, the perpetrator insists that the elder pay more than originally agreed before the work will be completed.
How to Spot Possible Abuse & Exploitation

The following are some common “red flags” of which frontline and supervisory bank personnel should be aware to help determine whether exploitation of a vulnerable adult may be occurring. Your customer may be experiencing elder abuse or exploitation if he or she:

- Engages in bank activity that is erratic, unusual, or uncharacteristic.
- Withdraws large sums from his or her account in a secretive manner.
- Engages in bank activity that is inconsistent with the older person’s ability (such as use of an ATM card despite the fact the customer is house-bound).
- Suddenly acquires new acquaintances, particularly those who take up residence with the customer.
- Makes changes to property titles, his or her will, or other documents and is confused about the consequences of those changes.
- Executes a power of attorney and is confused by the consequences of this action.
- Doesn’t have amenities for which he or she can pay (complains about having no heat despite the fact that he or she can afford to have it).
- Indicates that some of his or her property is suddenly missing.
- Indicates that he or she is being evicted.
- Has obvious health or mental problems that are not being treated.
- Indicates that his or her mail is no longer being delivered to the customer’s home.
- Begins to withdraw socially from bank employees or is afraid to engage in conversation with them, although the customer is normally friendly.
• Consistently is accompanied by someone who encourages him or her to withdraw large amounts of cash or is not allowed to speak for himself or herself while conducting business at the bank.

• Is afraid of the person who accompanies him or her to the bank or is worried that he or she will be harmed for not giving money to a caregiver or companion.

Other Warning Signs

• Customer frequently forgets items needed to conduct business such as a checkbook or deposit slip.

• A noticeable change occurs in the appearance and grooming of your customer.

• Customer becomes disoriented, doesn’t know where he or she is, or indicates that he or she is forgetting where things are.

• Customer becomes paranoid about money in his or her accounts and the bank’s handling of this money (which may trigger a review by a professional agency to determine whether there is any validity).

• Customer brings strangers into the bank to assist in conducting business.

• Customer’s mood or disposition changes dramatically, or the customer begins to fear bank employees.

Financial Concerns Checklist for Elders

Does your elderly customer have any of the following common concerns?

• I have trouble paying bills because the bills are confusing to me.

• I don’t feel confident making big financial decisions alone.

• I don’t understand financial decisions that someone else is making for me.

• I give loans or gifts more than I can afford.

• My children or others are pressuring me to give them money.
• People are calling me or mailing me asking for money or to participate in lotteries.
• Someone is accessing my accounts or money seems to be disappearing.

Who Is Most at Risk?

Financial exploitation can diminish or destroy an older adult’s economic stability and quality of life. Often financial exploitation goes hand-in-hand with other types of abuse and neglect such as verbal/emotional abuse, physical abuse, and neglect of care. If you believe an older person is being exploited, then he or she may also be abused and neglected. If you see that an older person is neglected or abused, then he or she may also be taken advantage of financially.

The following factors can increase the risk of abuse and/or financial exploitation:

• Adults who are frail, ill, disabled, depressed, or lonely.
• Adults who are physically or emotionally dependent upon others.
• Adults who need help with finances or have never before managed their finances.
• Adults who are confused or have dementia.
Reporting Abuse & Exploitation

Banks want to do the right thing when they observe suspected exploitation, yet this area involves complex legal and customer relations considerations. Nebraska law does not require bank employees to report suspected vulnerable adult abuse, neglect, or exploitation. While not obligated to report, bank employees may voluntarily elect to make a report to Adult Protective Services. (See Neb. Rev. Stat. §28-372.)

Such a voluntary report may be made upon “reasonable cause to believe that a vulnerable adult has been subjected to abuse, neglect, or exploitation or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation.” For purposes of the Adult Protective Services Act, a vulnerable adult is defined as “any person 18 years of age or older who has a substantial mental or functional impairment or for whom a guardian may have been appointed under the Nebraska Probate Code.” (See Neb. Rev. Stat. §28-371.)

An older adult may be offended if a bank insinuates that the customer is being victimized. The customer’s family may likewise take offense if a bank questions a transaction. For these reasons, it is important that banks adopt and strictly adhere to procedures for handling suspected exploitation of a vulnerable adult. The legal considerations are detailed later in the “Legal Issues” section. What follows are reporting procedures that banks may want to adopt, after consulting as appropriate with legal counsel. Banks should be aware that in certain circumstances, it may be appropriate to make a report to Adult Protective Services and file a Suspicious Activity Report (SAR) under federal law. See the “Legal Issues” section for further information on when a SAR may be required.

If you see irregular banking activity and judge that the older adult may not be able to protect his or her interests, then you have reasonable cause to question a bank transaction. Trust your professional experience. Bank personnel see many different people and understand banking and banking behavior. Only a relatively few persons or activities cause concern of exploitation.
Consider the following when determining whether an older adult may be in jeopardy:

- Is there more than one person in the bank that has the same concern?
- Is there a question that a customer is not freely making a banking transaction?
- Is the customer using informed consent?
- Is there a possibility that the transaction is happening without the older adult’s consent by trickery, intimidation, or coercion?
- Is the older adult confused and cannot give consent?
- Is there suspicious financial activity coupled with changes in or unusual behavior? If both are happening, then there is good reason to be concerned.

Bank personnel should note:

- The more quickly a report is made, the faster the exploitation can be stopped.
- Bank personnel do not need “proof” that exploitation is occurring. Suspicion, not proof, is adequate.
- It is the job of Adult Protective Services and/or law enforcement to determine if exploitation is occurring.

First Steps

The following steps are suggested to help bank tellers determine if questionable transactions should or should not be processed:

- The teller should attempt to learn the reason for large transactions or frequent withdrawals. If the withdrawal is unusually large for the customer, ask the customer (not the person accompanying him or her) the reason for the change in activity. If the customer is prevented from answering or the person accompanying the customer answers, this may be a sign of financial exploitation.

- The teller should check authorization and documentation to act for the elder. It is common for people who commit financial exploitation to exaggerate their authority to act for an elder. The suspect may claim to be helping the elder or may explain that the elder is unable to visit the bank in person. It is important to
check all signature cards, as well as guardianship/conservatorship and power of attorney documentation, to be sure the person claiming to act for the elder has the authority to do so.

- **The teller who suspects fraud should contact a supervisor immediately.**
  Together, the supervisor and teller can review the account history, the pattern of transactions, and the transaction in question to determine if the transaction should be processed, stopped, or reported to bank security or a senior bank officer.

- **The teller may choose to explain to the customer that a supervisor must review large or unusual transactions.**

The following steps are suggested to help bank supervisors determine if questionable transactions should or should not be processed:

- **The supervisor should separate the customer from any companion so that the supervisor is able to speak with the customer alone.** The customer who is prevented from speaking for himself or herself is a potential fraud victim.

- **The supervisor may warn the customer of the dangers of carrying, withdrawing, or wiring large amounts of cash.** Some banks may decide to offer customers a fraud alert form (see a sample at the end of this handbook).

- **The supervisor should notify a senior officer of the bank of any questionable transaction.**

- **If a customer is thought to be in immediate physical danger, banks may want to notify law enforcement.** If the customer is in immediate danger of losing his or her money, banks may wish to consider delaying the transaction and confer with legal counsel or a senior officer of the bank. Banks already may have other established procedures for dealing with such situations, in which case those procedures should be followed. The senior bank officer also has the ability to refuse to complete the transaction, but this brings with it some legal concerns and possible consequences (see the “Legal Issues” section).
Employee Response Checklist

- Learn the reason for large transactions or withdrawals.
- Check authorization and documentation to act for the customer.
- Notify a supervisor immediately.
- Gather as much evidence as possible to assist in any resulting investigation.
- Consult with a senior bank officer when necessary.
- Ask the customer to speak with a senior bank officer.
- If the customer is in immediate danger, notify police or call Adult Protective Services.

Contacting Authorities & Reporting Procedures (Voluntary)

Each bank should develop a written protocol for reporting suspected exploitation of a vulnerable adult. The protocol should include the following:

- When the teller has a concern, who do they tell and when should a supervisor or other senior officer be told?
- Who will make the report to the local or state agencies?
- What role, if any, does the designated senior officer have in the reporting of suspected exploitation?
- What information should be gathered and provided to local or state agencies or law enforcement?

Remember: Financial institution personnel are not required to prove that exploitation is taking place; that is the job of Adult Protective Services and law enforcement. Though bank employees may be in a position to help identify potential cases of exploitation of a vulnerable adult, there is no expectation they will become experts on proving the existence of abuse, neglect, or exploitation.
Suggested Reporting Procedures

To help financial institutions develop their own voluntary reporting protocols, the NBA suggests consideration of the following as a suggested set of reporting procedures:

- Employee or branch manager makes an internal report (may be oral) to a designated senior officer of the suspicious circumstances as soon as possible, but employee does not contact authorities directly.

- The designated senior bank officer reviews internal report, determines whether or not reasonable cause exists to believe that exploitation is occurring, and may complete a written report for the financial institution’s internal records. If customer is in immediate danger, consider voluntary notification of law enforcement or Adult Protective Services.

- The designated senior bank officer makes an oral report of suspected abuse to the appropriate law enforcement agency or to Adult Protective Services as soon as possible, if appropriate. Oral reports, which may be made by telephone with the caller giving his or her name and address, and if requested by the department, shall be followed with a written report within 48 hours and should include to the extent available:
  - Name, address, and age (or estimated age) of the vulnerable adult;
  - Address of the caregiver(s) of the vulnerable adult;
  - The nature and extent of the alleged abuse or the conditions and circumstances that would reasonably be expected to result in such abuse;
  - Any evidence of previous abuse including the nature and extent of the abuse;
  - Any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse and the identity of the perpetrator(s).

- The senior bank officer may alert other bank branches to cases of suspected exploitation of a vulnerable adult. After oral notification, the senior bank officer may submit a written report to Adult Protective Services or law enforcement, or file a federal Suspicious Activity Report (SAR).
## Sample Three-Step Reporting

<table>
<thead>
<tr>
<th>PERSONAL RELATIONSHIP EXPLOITATION</th>
<th>CONFIDENCE CRIMES (SCAMS)</th>
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| 1. Employee always makes oral report to security/designated manager no later than beginning of next business day.  
Employee does not contact APS. | 1. Employee makes oral report to security/management (preferred).  
Emergency procedure: Employee makes report to law enforcement prior to notifying security/management. |
Contents of Report to APS:  
• Name, age (estimate), address, and telephone number of victim.  
• Name, relationship, and address of suspect (if known).  
• Description of suspicious circumstances.  
• Origin of the report: institution name, branch, address, and reporter name.  
• Other agency(ies) involved (if any). | 2. Security/management makes immediate report to law enforcement, unless emergency situation.  
Contents of Report to Law Enforcement:  
• Name, age (estimate), address, and telephone number of victim.  
• Full description of suspect.  
• Description of incident.  
• Location of incident (financial institution, branch, and address).  
• Description of suspect’s car and license number (if known). |
| 3. Written report filed by security/management for internal review. | 3. Written report filed by security/management for internal review. |
Legal Issues:  
Nebraska Law Regarding Abuse, Neglect, and Exploitation

Nebraska has adopted the Adult Protective Services Act. (See Neb. Rev. Stat. §28-348 to §28-387.) The act defines “abuse” as any knowing or intentional act on the part of a caregiver or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult. (See Neb. Rev. Stat. §28-351.)

For purposes of the act, a “vulnerable adult” is defined as “any person 18 years of age or older who has a substantial mental or functional impairment or for whom a guardian may have been appointed under the Nebraska probate code.” (See Neb. Rev. Stat. §28-371.)

The act protects vulnerable adults, in part, from “exploitation,” which is defined as “the taking of property of a vulnerable adult by means of undue influence from a breach of a fiduciary relationship, deception, or extortion, or by any unlawful means.” (See Neb. Rev. Stat. §28-358.)

Individuals who are required to report cases of abuse include any physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility that is licensed by the Department of Health, or a human services professional or paraprofessional not including a member of the clergy who has “reasonable cause to believe that a vulnerable adult has been subjected to abuse or observes such adult being subjected to conditions or circumstances which reasonably would result in abuse.” Such mandated reports shall be made to the appropriate law enforcement agency or to Adult Protective Services. (See Neb. Rev. Stat. §28-372.)

All other persons, including financial institutions and their employees as such, are not required to report instances of abuse but “may report abuse if they have reasonable cause to believe that a vulnerable adult has been subjected to abuse or have observed being subjected to conditions or circumstances which reasonably would result in abuse.” (See Neb. Rev. Stat. §28-372.)

Extraordinary Service for Extraordinary Members
The Adult Protective Services Act provides that “any person participating in an investigation or the making of a report pursuant to the act or participating in a judicial proceeding resulting there from shall be immune from any liability except: 1) as otherwise provided in the act, 2) for malfeasance in office or willful or wanton neglect of duty, or 3) for false statements of fact made with malicious intent.” (See Neb. Rev. Stat. §28-375.)

In cases requiring a report of abuse, neglect, or exploitation the report should be made to the appropriate law enforcement agency or to the Adult Protective Services hotline. Such report may be made by telephone, with the caller giving his or her name and address and, if requested by the department, shall be followed with a written report within 48 hours. To the extent available, the reports shall contain:

- Name, address, and age of the vulnerable adult;
- Address of the caregiver(s) of the vulnerable adult;
- Nature and extent of the alleged abuse or the conditions and circumstances which would reasonably be expected to result in such abuse;
- Any evidence of previous abuse including the nature and extent of the abuse;
- Any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse and the identity of the perpetrator(s).

Any person commits knowing and intentional abuse, neglect, or exploitation of a vulnerable adult if he or she through a knowing and intentional act causes or permits a vulnerable adult to be: a) physically injured; b) unreasonably confined; c) sexually abused; d) exploited; e) cruelly punished; f) neglected; or g) sexually exploited. Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult is a Class IIIA felony. (See Neb. Rev. Stat. §28-386.)

Upon the receipt of a report of abuse, neglect, or exploitation, it is the duty of the law enforcement agency: a) to make an investigation if deemed warranted because of alleged violations; b) to take immediate steps, if necessary, to protect the vulnerable adult; and, c) to institute legal proceedings, if appropriate. (See Neb. Rev. Stat. §28-373.)

It is the duty of Adult Protective Services to investigate each case of alleged abuse and to provide such adult protective services as are necessary and appropriate under the circumstances. (See Neb. Rev. Stat. §28-374.)
Sometimes a customer may wish to carry out a transaction even though financial institution staff have expressed concern or made a report to Adult Protective Services. Before processing the transaction, office staff should consult closely with a senior manager and/or legal counsel to evaluate available options, including giving the customer a written warning and/or refusing the request.

Those readers with responsibility for designing or managing a program for reporting the abuse of vulnerable adults should always work closely with their own counsel and operations risk management staff to tailor the approach to the institution’s own procedures and risk considerations.

**Federal Law Regarding Suspicious Activity Reports**

Financial institutions may be required to file a Suspicious Activity Report (SAR) with the federal government in cases involving suspected elder abuse. Federal law (31 U.S.C. 5318(g)) requires financial institutions to file SARs in the instances noted below. Federal law also prohibits notifying any person involved in the transaction that the financial institution has made a report. The SAR must be made promptly after detecting any known or suspected violation of law or regulation involving the following:

- **Insider abuse involving any amount.** A SAR would be required if a financial institution employee, director, officer, or agent committed or aided the commission of suspected elder abuse.

- **Violations aggregating $5,000 or more, where a suspect can be identified.** A SAR would be required if one or more elder abuse transactions aggregating $5,000 or more are conducted through the financial institution AND a suspect can be identified.

- **Violations aggregating $25,000 or more, regardless of whether a suspect can be identified.** A SAR would be required if one or more elder abuse transactions aggregating $25,000 or more are conducted through the financial institution, even if no suspect can be identified.

- **Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.** A SAR would be required if one or more transactions aggregating $5,000 are conducted in order to disguise funds or assets derived from elder abuse.
How Banks Can Help

- Develop and distribute educational materials alerting customers to scams and how
to recognize the potential for elder abuse.
- Conduct senior seminars or other presentations on elder abuse.
- Generate media attention on the issue of elder abuse and its prevention.
- Stay apprised of current trends in elder abuse and techniques for stopping it.
- Sensitize employees to elder abuse so they recognize and report it.
- Train appropriate personnel in techniques for interviewing older customers.
- Offer older customers safe alternatives with banking services designed to meet
their special needs.
- Conduct regularly scheduled visits and offer limited banking services at places
convenient to older people, including senior centers and housing providers.
- Take a proactive approach to developing new procedures and product lines,
including:
  - Mechanisms for detecting unusual account activity;
  - Alerts on accounts;
  - Procedures for verifying suspicious transactions; or
  - Protected accounts for seniors.

For more information, view the video titled “Preventing Elder Financial Exploitation:
Preventing Elder Abuse & Exploitation

Just as ways exist to prevent other crimes, there are ways to prevent exploitation from occurring. Consumer education is perhaps the best weapon against scams and exploitation and many organizations are working diligently to make sure that messages about elder abuse and its prevention are being heard by older Nebraskans.

The office of the Attorney General in Nebraska has many downloadable resources at www.ago.ne.gov, including a senior fraud brochure and Consumer Protection Guide.

In addition, the Nebraska Department of Health and Human Services has resources on its website at http://dhhs.ne.gov/Pages/aging.aspx.

The banking industry also has a role to play in the prevention of exploitation of vulnerable adults. Because of the regular contact many older Nebraskans have with the personnel in bank branches, frontline bank employees may observe suspected cases of exploitation of vulnerable adults. By asking careful questions, while observing legal limits, bank employees can work with law enforcement and Adult Protective Services (APS) officials to keep older Nebraskans from being victimized.

The following tips may be useful to your customers in helping them be more aware of and preventing exploitation:

- Use direct deposit for all checks.
- Do not leave valuables in plain view.
- Sign your own checks and do not sign “blank checks,” even for family members.
- If someone is helping you manage your finances, get a trusted third person to review your bank statement.
- Don’t sign anything without reading it carefully.
- Do not lend any money in return for a general promissory note.
• Do not sign over money or property to anyone in return for care, even a family member or friend, without having the agreement reviewed by an attorney.
• Establish a relationship with the personnel at your bank.
• Cultivate friends of all ages so you maintain a strong support network.
• Become familiar with resources in your community designed to help older people and their families.
• Execute a power of attorney that will grant financial decision-making power to a trusted friend, relative, or attorney. Make sure you know and trust this person. A power of attorney can be as limited or as broadly defined as you wish and can be revoked at any time. Give your bank a copy of this.
• Put all financial instructions in writing and be specific.
• Keep accurate and complete financial records of all transactions.
• Gather all important documents together (wills, insurance policies, and bank account information) and tell someone you trust where these documents are kept.
• Never give out credit card numbers over the phone unless you placed the call.
• Never give out your Social Security number or bank account number over the phone.
• Don’t make donations to charities you don’t know.
• Get several estimates before you have any work done to your home.
• Do not pay for any work in advance of its completion and remember that all contractors must be licensed by law.
• Do not pay cash to persons you hire.
• If something seems “too good to be true” (such as being told you won a prize for a drawing you did not enter, or that someone can get you a 100 percent return on your investment), it is probably a scam.

After You Report – What Happens Next
When the bank voluntarily makes a report to Adult Protective Services or the appropriate law enforcement agency, it should quickly state that the call is regarding possible exploitation of a vulnerable adult, which will let Adult Protective Services or the law enforcement agency know that a quick response is needed. Adult Protective Services or the law enforcement agency will likely ask the bank employee details about the situation.

For further information about how Adult Protective Services handles the report of suspected exploitation of a vulnerable adult, please see “Nebraska Adult Protective Services (APS) Investigations” on page 24 of this manual.
Nebraska Adult Protective Services (APS) Investigations

In most Adult Protective Services investigations, the initial visit with the alleged victim is made unannounced. Every attempt is made to interview the alleged victim in person and alone. Collateral contacts are made with persons or entities having some knowledge of the situation or having some information that will assist the investigator. APS will notify law enforcement of all reports it receives and may ask for investigation assistance from them as needed. APS will collect all relevant documents and records as they apply to the investigation.

The role of the APS investigator is to determine if the allegations may be substantiated, offer assistance to the victim, take steps to correct the situation, and, when appropriate, refer the case to the county attorney or the attorney general for possible prosecution. Because the individuals served by the Adult Protective Services Program are adults, the adult has the right to refuse services if they have capacity. If the victim does not have capacity and it appears the best interest of the client can be served by legal intervention, APS will take steps to legally intervene. APS will always try to intervene in the least restrictive and least intrusive mode possible while respecting the adult victim’s right to self-determination.

In Nebraska, the APS Program serves adult victims of abuse/neglect and financial exploitation who are over the age of 18 and have a substantial mental or functional impairment or for whom a guardian has been appointed by a court of competent jurisdiction.

Forms of maltreatment identified in Nebraska’s Adult Protective Services Act are:

- **Abuse** – Abuse means any knowing or intentional act on the part of a caregiver or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation of a vulnerable adult.

- **Physical Injury** – Damage to bodily tissue caused by nontherapeutic conduct, including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, and shall include, but not be limited to, physical pain, illness, or impairment of physical function.
• **Unreasonable Confinement** – Confinement that causes physical injury.

• **Cruel Punishment** – Punishment that intentionally causes physical injury.

• **Sexual Abuse** – One person sexually assaults or has sexual contact with another person without their consent or when they knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct.

• **Sexual Exploitation** – This includes, but is not limited to, unlawful intrusion as described in *Neb. Rev. Stat. §28-311.08* and causing, allowing, permitting, inflicting, or encouraging a vulnerable adult to engage in voyeurism, in exhibitionism, in prostitution, or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult.

• **Neglect (includes self-neglect)** – Any knowing or intentional act or omission on the part of a caregiver to provide essential services or the failure of a vulnerable adult, due to physical or mental impairments, to perform self-care or obtain essential services to such an extent that there is actual physical injury to a vulnerable adult or imminent danger of the vulnerable adult suffering physical injury or death.

• **Exploitation** – The taking of property by means of undue influence, breach of a fiduciary relationship, deception, extortion, or any unlawful means.

The name of the person making a report is protected and is not released unless ordered by a court or permission is obtained from the person making the report.

Services offered to the adult victim of abuse can include, but are not limited to, service coordination; assistance with financial, legal, and housing needs; assistance with medical needs; and assistance with money management.

The following information is shared and includes steps that might be taken by APS during its investigation. This is not a complete list and not every step listed may occur. These are provided to give some knowledge of what APS will be doing while investigating allegations of abuse/neglect or financial exploitation.

- Interview the victim and the alleged perpetrator separately. The perpetrator may be interviewed either by law enforcement or by the APS worker.
Establish the relationship between the parties. Is the alleged perpetrator a family member? Is the alleged perpetrator in a position of trust or a fiduciary? Does the alleged perpetrator live with or have easy access to the victim?

Determine the extent of the victim’s estate, including real properties, bank accounts, certificates of deposit, stocks, home furnishings, personal belongings, vehicles, etc.

Ascertain the names on the titles of properties and any financial accounts.

Determine if the client is current on all obligations and monthly expenses.

Find out if the client can read and write.

Ascertain the names of individuals who are listed on all assets and how those accounts are held.

Determine if the client has a guardian, a payee, or a power of attorney and who that person is and when it took effect.

If the capacity of the adult victim is in question, obtain a medical evaluation or an evaluation by a mental health professional.

Collect evidence from other agencies.

Determine if ATM transactions that have taken place were completed by the victim or if they were done by someone not authorized to do so.

**Following Up on Suspected Misused Bank Accounts**

Some or all of these actions may occur:

- APS may contact the bank and request that it “flag” the account and observe with caution.

- Access information regarding the account by visiting the bank with the client, if possible. If the client is not able to physically go to the bank, obtain a release of information from the client and obtain information from the bank that way. If the client is unable to sign a release of information, a subpoena may be issued to obtain needed financial records.
• Request copies of past canceled checks, bank statements, and withdrawals to look for forgery or unusual activity. If forgery or misuse of funds is present, the client may sign an affidavit with the bank for investigative purposes.

• APS may assist the client to close the misused account and open a new account.

Suspected financial abuse should be reported to any law enforcement agency, or to the 24-hour, toll-free abuse hotline at 800-652-1999.

Information provided herein is to assist financial institutions in understanding what may take place when Adult Protective Services is involved in investigating financial exploitation. Nebraska law protects all persons over the age of 18 with a substantial mental or functional impairment. While most of the cases investigated do involve an elder, many of the reported cases involve people with disabilities. Your cooperation is vital to protecting these vulnerable Nebraskans.

One in 14 cases of abuse of a vulnerable adult is reported as compared to one in four of child abuse.

Common Myths

The primary concern is the possibility that the bank may incur civil and/or criminal penalties for violation of federal and state laws regulating the disclosure of personal financial information. Banks are also fearful that a customer may bring an action for damages against the bank for revealing private information. In states that have enacted or considered enacting mandatory reporting laws covering banks, there is the additional fear that the bank may be liable if it fails to report suspected financial abuse.

The Right to Financial Privacy Act (RFPA) provides that, in most circumstances, a customer must be given prior notice and an opportunity to challenge the government’s action in court before the government can obtain customer information from a bank. However, the limitations of the RFPA apply only to the federal government and, thus, place no restrictions on the actions of state or local authorities in obtaining financial records. 

1The RFPA is codified at 12 U.S.C. §3401 et seq.
Therefore, if a bank reveals customer financial information to APS or to state or local law enforcement, either as part of a voluntary or mandatory report of suspected exploitation or in response to a request for bank records in connection with an APS investigation, the bank does not risk prosecution by the federal government for a violation of the RFPA.

Financial Services Modernization Act

The Financial Services Modernization Act passed in 1999 (also known as the Gramm-Leach-Bliley Act, or GLBA) contains strong privacy protection. It requires notification to customers before disclosures of their records and an opportunity to disapprove the proposed disclosure. However, Section 502(e) of the GLBA contains exceptions to this privacy protection. The following three\(^3\) are relevant to state reporting programs:

- (e)(3)(B) permits disclosure “to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability.”
- (e)(5) permits disclosure “to the extent specifically permitted or required under other prevision of law . . . to law enforcement agencies . . . or for an investigation on a matter related to public safety.”
- (e)(8) permits disclosure “to comply with federal, state or local laws, rules, and other applicable legal requirements.”

\(^3\)PL 106-102 (S. 900) (1999).
ATTENTION: As part of our customer service program, we ask you to read and sign this form before you withdraw cash from your account.

Please consider the following questions before you withdraw $___________ from your account:

- Has anyone asked you to withdraw money to help with a criminal investigation?
- Has a stranger or someone from another country asked you to make a withdrawal for any reason?
- Has anyone befriended you and is now asking you to reinvest your money or to share cash or valuables?
- Have you been pressured or threatened by a stranger, friend, or family member for money or access to your account?
- Has someone told you that you need home repairs and is asking for an immediate cash payment?

_if the answer to any of these questions is “yes,” it is likely that you have been misguided and are being taken advantage of financially. We recommend that you speak with a bank representative before completing this transaction._

I have read and understand the above statement. I request this financial institution complete my transaction.

Customer: _______________________________ Date: __________________________

Bank Representative: _______________________________
Download and print the Fraud Alert Form on the reverse side of this page at http://bit.ly/FraudAlertForm.

Please print and copy as needed for use within your financial institution.
To obtain additional “How to Stop Elder Abuse & Exploitation” handbooks, please contact the Nebraska Bankers Association.

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