

# Legal Remedies to Financial Exploitation of Property: *Let's Get Grandpa's House Back!*

**David Godfrey**, Senior Attorney at the ABA Commission on Law & Aging  
**Lori Stiegel**, Senior Attorney at the ABA Commission on Law & Aging  
**Denis Culley**, Staff Attorney at Maine's Legal Services for the Elderly

January 21, 2016

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- NLRC is a Partnership of five national organizations providing legal support to aging advocates
- On this website you can request technical assistance, case consultation and training
- <http://nlrc.acl.gov>

The screenshot shows the NLRC website homepage. At the top, the NLRC logo and the text "National Legal Resource Center" are displayed. To the right, there is a search bar with "NLRC website" entered and a "Go" button. Below the header is a navigation menu with links: Home, About, Library, Legal Service Development, Provider Resources, Aging Network, Find Legal Help, Legal Training, and Case Consultation. The main content area features a vertical sidebar on the left with numbered links: 1 Library, 2 Legal Service Development, 3 Email Discussion List, 4 Aging Network, 5 Find Legal Help, 6 Legal Training, 7 Case Consultation, and 8 Elder Abuse Prevention. The main content area is dominated by a large banner image of hands clasped together. To the right of the image, the text reads "9 Supported Decision-Making" and "Find resources on empowering all persons in decision-making". Below the banner is a "Latest News & Events" section with a list of articles, including "Knowing and Improving Your Credit Score" and "HHS Research Briefs on Elder Abuse Prevention Intervention Demonstration Grants". To the right of the news section is a "Connect with NLRC" section featuring a "Tweets" widget with two tweets from @NLRCgov. The bottom of the page has a decorative bar with colored segments.

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7 Case Consultation  
8 Elder Abuse Prevention

9 Supported Decision-Making

Find resources on empowering all persons in decision-making

**Latest News & Events**

- ▶ Knowing and Improving Your Credit Score @ (09/14/2015)
- ▶ HHS Research Briefs on Elder Abuse Prevention Intervention Demonstration Grants (08/10/2015)
- ▶ Elder Justice Coordinating Council's Report to Congress PDF (08/10/2015)
- ▶ Blog on Age Discrimination in Employment @ (07/16/2015)
- ▶ Seniors & the Law - A Guide for Maturing Californians (07/16/2015)

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- Representing Clients in Guardianship Actions: Winning the Case for Supported Decision Making
- Restoring Public Benefits Compromised by Elder Financial Exploitation
- Legal Remedies to Financial Exploitation: "Let's Get Grandpa's House Back!"
- Recovering Assets Lost to Financial Abuse: "Can I get their Money Back?"
- Transactional Capacity and Vulnerability to Elder Abuse





## Presenter – Lori Stiegel

- Lori is a Senior Attorney at the American Bar Association Commission on Law and Aging. She began her career at the Senior Advocacy Unit of Bay Area Legal Services in Tampa, Florida.
- Lori has developed and directed all of the Commission's work on elder abuse. She has published extensively; trained judges, lawyers, court clerks, physicians, law enforcement officers, community corrections officers, adult protective services professionals, financial services professionals, and others; and was a member of the National Academy of Sciences Study Panel on the Risk and Prevalence of Elder Abuse.
- She has testified before a U.S. Senate committee and has appeared on or been quoted in ABC News, NPR, and numerous magazines and newspapers.



# Presenter – Denis Culley

- Denis works as a Staff Attorney for Maine's Legal Services for the Elderly in the Augusta office. He represents Maine residents sixty and older before courts and in administrative hearings before state agencies along with providing other civil legal services to Maine's elderly. Two growing components of his practice are dealing with the aftermath of financial exploitation of the elderly and foreclosure defense work.
- He began his work with Legal Services for the Elderly in the fall of 2004. Since that time he has represented hundreds of elders in state and federal administrative appeals and in all divisions of Maine's State Courts.





## Moderator – David Godfrey

- David is a senior attorney to the ABA Commission on Law and Aging in Washington DC. He is responsible for the ABA's role in the Administration on Aging funded National Legal Resource Center and for producing the National Aging and Law Conference. He is a board member of the National Academy of Elder Law Attorneys. Prior to joining the Commission he was responsible for elder law programming at Access to Justice Foundation in Kentucky. David earned his B.A. with honors at Rollins College in Winter Park, Florida, and his J.D. cum laude from the University Of Louisville School Of Law in Kentucky.



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# Financial Exploitation

- Financial Exploitation (FE) is the illegal or improper use of funds, property or assets of the older person.
- FE crosses racial, ethnic, and economic lines.
- Research shows that FE is most often committed by family members.
- The loss can be catastrophic for the elderly victim's financial stability, physical health, and mental health.



# Extent & Cost of Problem

- Prevalent: 1 in 20 (Acierno et al.)
  - Study didn't assess most vulnerable
- Largely unreported: 1 in 43.9 cases reported (NYS prevalence study)
- Costly:
  - MetLife: Annual losses \$2.9 billion
  - Utah study: \$52 million lost by victims, businesses, and government in 2009



# Exploitation of Real Property

- Impact of loss
  - Homelessness
  - Involuntary co-housing
  - Institutionalization
  - Impoverishment
  - Potential Medicaid penalties
- Legal remedies may be more fruitful
  - Often easier to get property returned than cash



# Focus on Civil Remedies

Issue	Criminal Courts	Civil Courts
<b>Key Goals</b>	<ul style="list-style-type: none"> <li>• Protect society</li> <li>• Punish/hold accountable the perpetrator</li> <li>• Protect the victim</li> <li>• Order the perpetrator to provide restitution to the victim</li> </ul>	<ul style="list-style-type: none"> <li>• Protect the victim</li> <li>• Compensate the victim for harm caused</li> <li>• Determine whether actions were lawful and undo those that were not, or order that certain actions be taken</li> <li>• Resolve disputes</li> </ul>
<b>Burden of Proof</b>	“Beyond a reasonable doubt”	<ul style="list-style-type: none"> <li>• “Preponderance of the evidence”</li> <li>• “Clear and convincing evidence”</li> </ul>
<b>Victim’s Role in the Lawsuit</b>	Witness to the events that are the subject of the lawsuit and has no control over the case	Subject of the lawsuit and usually has some control over the case

Source: “Legal Issues Related to Elder Abuse: A Desk Guide for Law Enforcement” (Stiegel, 2015)



# What Civil Lawyers Can Do

- Prevent
  - Screening
  - Counseling
  - Drafting protections & oversight into legal documents
- Protect
  - Revoking documents
  - Divorce or legal separation
  - Protection orders
  - Injunctions
  - Supported decision-making
  - Guardianship/conservatorship
- Pursue the Property
  - Recover assets or obtain damages



# Selected Civil Remedies: Asset Recovery

- Accounting
- Breach of contract
- Breach of fiduciary duty
- Constructive trusts
- Conversion
- Fraud
- Rescission
- Restitution
- Undue influence



# Case Example: John

John's wife was dying so he hired a caregiver. After his wife died, the caregiver offered to take care of him for the rest of his life in exchange for his house. Having no children or other family, John thought caregiver's offer was a good deal and deeded his house to her. Within two weeks caregiver threw John out of the house.



# Complexities: Self-Determination

- Adults' have right of self-determination
- Balanced by societal interests
  - Protection of others
  - Protection from self
  - Protection from others
- Self-determination may be undermined by:
  - Incapacity
  - Undue influence



# Case Example: Aunt May

Jane moved in with her Aunt May and became her aunt's agent pursuant to a financial power of attorney. Aunt May never married and has no children. Jane has been taking May to her medical appointments, purchasing May's groceries and paying May's bills with May's checkbook. Although Jane is a co-owner of a joint bank account with May all of the deposits to the account are from May's pension.

Aunt May's dementia progressed to the point that Jane placed her in Serenity Manor – a boarding home. Since May's mortgage was paid long ago and she lived frugally there should have been sufficient funds in her account to pay the Manor until May's home could be sold.

The Manor calls. May's monthly bill has not been paid for months. They have learned that May's home was transferred to Jane two years ago. They want to evict May.



# Case Example: Ruth and Vince

Ruth and Vince lived in their farmhouse for all fifty years of married life. As Vince's dementia worsened Ruth was overwhelmed and losing her eyesight. Their daughter Judy helped with some errands and handled her parent's finances.

One day Judy arrived at the house with a notary friend and presented her parents with a deed. She directed them to sign the deed as way to "save the house from the state" and stay out of a "home." They signed, putting the house "in Judy's name."

Judy paid no money to her parents and reserved no life estate for them. Two months later Judy served a Notice to Quit on her parents.



# Complexities: Capacity

- Does not equate with age or disability
- May be difficult to assess
- May be affected by medications and conditions, e.g. malnutrition, depression, delirium, etc.
- Increases vulnerability to abuse
- May be a symptom of abuse, neglect, or exploitation



# Complexities: Capacity

- Assessment of:
  - Capacity to have lawyer-client relationship
    - May or may not necessitate clinical evaluation
  - Capacity for financial or other decisions
    - Will necessitate clinical evaluation
- Reports of elder abuse from or about persons with diminished capacity should be taken seriously



# Case Example: Martha

Larry was a handyman for Martha. Martha's husband of 50 years had died a few years earlier. Martha was legally blind and had other physical impairments that made it difficult for her to ambulate. Martha told Niece that she would never leave her home, but a few months later Martha had sold her house and moved into a small condo with many stairs in a distant neighborhood. Martha's former long-term Neighbor said that Larry had cut off contact between Martha and Neighbor, who had been friends for almost 50 years, prior to the move. Martha indicated to APS that Larry did her grocery shopping, helped her pay bills, took her to doctor appointments, read her mail, took her dog to the veterinarian, and took her out to dinner occasionally. Larry's children cleaned the condominium. Martha said that she had sold her house and moved into the condominium because Larry was concerned that her old house was unsafe. Martha also indicated that she had not met any neighbors in the condo subdivision and that she did not keep in touch with any of her old friends. Martha claimed that she and Larry were going to be married. Investigation revealed that Larry's name is on the title to the condo.



# Complexities: Undue Influence

- Psychological Definition
  - Use of power and control
  - Exploit trust, dependency and fear
  - Substitution of one person's will for the true desires of another
  - Purpose: deceptively gaining control

Source: Margaret Singer



# Complexities: Undue Influence

- Method of exploiting or sexually abusing
- Can happen to adult of any age
- Easier to commit if capacity diminished
- Pattern of tactics akin to cults, brainwashing, domestic violence, & grooming for sexual abuse
- Victim doesn't recognize it
- Victim identifies with perpetrator

Source: Undue Influence: The Criminal Justice Response (YWCA of Omaha, 2006)



# Complexities: Legal Remedies to Undue Influence

- Break the suspect's control
  - Guardianship/conservatorship (but capacity?)
  - Mental health commitment
  - Writ of habeas corpus?
- Undo actions resulting from the influence
  - Use legal remedies to set aside deeds, gifts, changes to wills or trusts, etc.



# Complexities: Realities of Undue Influence

- UI is difficult to understand and prove
  - States may have limited case law and little or no statutory law
  - Rebuttable presumptions help but not all states have them
  - Concept recently applied to elder abuse
  - Concept even more recently applied to criminal law
- Raise UI in court only when necessary
  - Can't explain what happened in any other way, e.g., fraud
  - Can't show lack of consent or of capacity in any other way

Source: Undue Influence: The Criminal Justice Response (YWCA of Omaha, 2006)



# Policy Issues

- Encouraging civil lawyers to handle cases
  - Creating/expanding/clarifying remedies (e.g., UPOAA/Maine's ITTA & POA statutes)
  - Awarding attorneys' fees and costs to victims when they win civil cases against exploiters (e.g., California's Elder & Dependent Adult Civil Protection Act; UPOAA/Maine's POA statute)
- Determining dollar values of cases
- Sharing stories with public, media, funders, policymakers
- Participating in MDTs, task forces, etc.



# Why Elder Financial Exploitation is Maine Legal Services for the Elderly's Highest Priority

- Theft of assets – especially real estate – equals actual impoverishment (and all that goes with poverty in old age) and can lead to homelessness.
- Transfer of assets, especially large assets like a home and land in a cash poor/land rich state can lead to Medicaid penalty for “transfers for less than value”
- **The Triple Whammy** – Impoverishment, Homelessness, Medicaid penalty
  - Penalty accrues to elder *not* to the exploiter.

# Legal Services for the Elderly

- Mission is to provide free, high quality legal services to Maine's socially and economically needy elderly age 60 and over.
- Services are limited to situations where basic human needs are at stake.
- LSE handles in excess of 5,000 matter each year.
- Services include statewide helpline and services provided locally by staff attorneys. Most seniors are served entirely by phone with only those most at risk being assigned a local staff attorney.
- Funding sources include Older Americans Act, grants, other sources.



# LSE Outreach and Community Education

- LSE Website - <http://www.mainelse.org/>
- Elder Rights Handbook – <http://www.mainelse.org/handbook>
- Participation on Maine Council for Elder Abuse Prevention.
- Statewide public awareness campaign – TV, radio and newspaper outreach focused on financial exploitation by family members.
- Presentations and outreach to elders, providers, professionals
- CLEs and presentations to Attorneys in Maine, region and nationwide – including ethics CLEs in cooperation with Maine Bar counsel.
- Participation in local multi-disciplinary Elder Abuse Task Forces.



# Intake and Case Detection

- We use both objective and subjective approaches to identify cases at the time of initial intake and service through the Helpline.
- An objective approach is to have POA revocation requests go to an Area Office attorney for review as we know that type of situation may be a red flag for other issues, including financial exploitation.
- And our subjective approach involves having our Helpline Attorneys be alert for situations (consumer debt, credit problems, inability to pay bills, tax liens, etc.) that have exploitation as the underlying cause. They also are aware of risk factors like an adult child living with a senior.
- We are also going to be adding the use of a formal evidence-based elder abuse screening tool, called the EASI tool, to the mix in 2016.



# Making the Case – Strategies and Goals

- **Above all else – merit and collectability**
- LSE is not in competition with the private bar. Fee producing cases are generally assigned out with a very helpful, engaged, handoff – seeking to leverage the private bar at all times in all ways.
- Practical focus is on “house” cases due to collectability (emphasis on early, ex parte, attachment and trustee process if indicated).
- Maine’s unique Improvident Transfer of Title Act as favored cause of action – in part, due to the special nature of the remedy available.



# Practical and Procedural Considerations

## Step 1: ATTACHMENT

In house cases attachment (preferably ex-parte) is essential so that:

- There is actually something to “win” if the matter is decided by court.
- To stop loss of value through sale, encumbrance (mortgage, home equity line of credit, leasing out), other cash out (timber sale, soil mining, subdivision, sale of copper plumbing or appliances, etc.) of real estate or chattels.
- To send an early message to the court and to get an early evaluation of merits of the case.



# Other Early Procedural Concerns

## Step 1A – THE COMPLAINT

“A short and plain statement of the claim showing that the pleader is entitled to relief, and, a demand for judgment for the relief which the pleader seeks.” M.R. R. Civ. P. 8(a)

- While brevity and focus are important, the complaint is your chance – without objections or constriction by the rules of evidence – to tell the story as fully as you know it at this point.
- Focus on the **elements** but also show and tell the elder’s story.
- Be careful what you wish for by focusing on the prayer for relief and not overreaching. Think twice about seeking punitive damages.



# Next Steps: Discovery, Scheduling Orders and Alternative Dispute Resolution [“ADR”]

- Early discovery – especially document requests – essential to evaluating whether depositions are required, the prospects for settlement and/or summary judgment. ADR is very early in standard order in Maine courts.
- The standard scheduling order is not elder friendly. Lengthy orders create increased risks of mortality and morbidity. Consider filing a motion seeking an order to shorten the litigation schedule.
- ADR is mandatory in some Maine courts. Mediation is common in all trial courts in Maine. Settlement (fair settlement that does not endorse a damaging transfer) is generally the very best option for elders. Mandatory ADR can mean negotiating with thieves. Nevertheless, if settlement can be had it is generally best. Saving face for Defendant(s)/family members is often a major concern in settlement. See, think twice about punitive damages.



# Some Causes of Action

## UNJUST ENRICHMENT

- A benefit conferred upon the defendant by the plaintiff;
- An appreciation or knowledge by the defendant of the benefit; and
- the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without payment of its value.

## ABUSE OF A CONFIDENTIAL RELATIONSHIP

- The actual placing of trust and confidence in fact by one party in another
- A great disparity of position and influence between the parties to the relation.

FRAUD (must be plead with particularity)

CONVERSION



# More Causes of Action

BREACH OF CONTRACT

NEGLIGENCE (presumes of duty of care)

NEGLIGENT HIRING OR RETENTION/RESPONDEAT SUPERIOR

DECLARATORY JUDGMENT (deed/document dispute)

CONSTRUCTIVE FRAUD – obtained benefit through undue influence, breach of fiduciary relationship or breach of confidential relationship

UNDUE INFLUENCE - The actual placing of trust and confidence in fact by one party in another party and a great disparity of position and influence between the parties to the relationship. Challenging elements to meet.



# Improvident Transfer of Title Act

## ["ITTA"]

### Title 33 M.R.S.A. § § 1021 through 1025

- Transfer of 10% or more of assets or *any* real estate
- To a person who has a confidential or fiduciary relationship with the elder
- By a “dependent” or “partially dependent”
- Elder (60 or older)
- For less than full consideration
- Without *independent* representation by counsel
- If elements established transfer is deemed the result of undue influence.
- Undue influence is the heart of ITTA
- **Remedy goes back to the moment of transfer !!!**



# Value of ITTA

- If the presumption of undue influence is not rebutted by the Defendant the court is granted authority to impose an equitable remedy and instructed that it “*shall* grant appropriate relief” including avoidance of the transfer, rescission or reformation of a deed, imposition of a constructive trust and/or commanding the return of property. § 1023(2). The ITTA is not an exclusive remedy and may be joined to any other cause of action in law or equity. 33 M.R.S.A. § 1024. The judicial remedy of rescission or reformation of a deed, see § 1023, makes ITTA especially attractive in a situation wherein a Defendant is **otherwise uncollectable**.
- In short, if a practitioner can hit the elements the Improvident Transfer of Title Act might provide a royal road to relief by way of early settlement or judgment pursuant to M.R. Civ. P. 56.



# Some Notes on the ITTA

- To this moment, this statute, promulgated in 1987 through the work of LSE staff, is unique in American law.
- It is the presumption of undue influence that is the great benefit to the litigator. “At the heart of the Improvident Transfers of Title Act is a presumption of undue influence.” *First Union Nat'l Bank v. Curtis*, 2005 ME 108, ¶ 4, n2, 882 A.2d 796.
- Though the elements are tailored to elder financial exploitation cases, they can be a challenge to demonstrate – i.e. dependent status.
- Cost shifting (attorneys fees) is not available pursuant to Maine’s Improvident Transfer of Title Act. Such a provision might allow many more civil actions addressing financial exploitation of the elderly.



# Judicial Relief in Probate Court

## Title 18-A M.R.S.A. § 5-916 – Bad Agent Remedy

**(a).** The following persons may petition the Probate Court or the Superior Court for the county in which either the principal or the agent resides to construe a power of attorney or review the agent's conduct and grant appropriate relief ...

- Principal or agent, conservator or other fiduciary, health care POA agent, principal's spouse or registered domestic partner, presumptive heir of principal, beneficiary of trust etc., governmental agency with regulatory authority to protect welfare of principal, principal's caregiver or person who demonstrates sufficient interest in principal, a person asked to accept the power of attorney.



# Agent's Liability in Superior or Probate Court

- **Agent's Liability** for malfeasance or nonfeasance is described in **18-A M.R.S.A. § 5-917**. Upon violation of her duty the agent is liable to the principal or the principal's successors for the amount required to "restore the value of the principals property to what it would have been had the violation not occurred." There is also a cost shifting provision that provides for possible reimbursement to the principal or the principal's successor for attorney's fees and costs "paid on the agent's behalf."
- Probate court may provide a rapid path to trial (or at least initial exposure to the authority of a robe) and can be elder-compatible.



# Litigation Strategies

- **Start with the Remedy.** What does your client really want? Can it be gotten? What cause of action/prayer for relief might actually get it?
- “Paper” the case – attempt to the full extent possible to tell the story of the exploitation using bank records, deeds, bills, legal documents.
- In some cases testimonial evidence from client may not aid your case. The same frailties that may make your client an attractive victim will likely make them a poor witness.
- With frail/vulnerable client, try to find a (truly) trusted person near the elder who you can rely on for logistical support (perhaps someone with a fax machine, internet access, a reliable car and a cell phone with voicemail). *But, see, the “shadow client” in next slide.*
- Attempt to set cases for early **summary judgment**. See, early discovery, esp. documents.
- Take your **best** shot at ADR/mediation. “Build a golden bridge over which your enemy may retreat.” *Sun Tzu* Saving face for exploiter may be required for settlement.



# Pitfalls and Perils

- The shadow client. Especially public interest providers are at risk of being accessed by those around the client to serve their ends – ratifying an exploitative transfer, pushing away a truly supportive sibling, using the attorney as a cudgel to settle old scores, etc.
- Beware the overly possessive relative! “She’s *my* mother!” Control/ownership of an elder can be part of a larger, exploitative, agenda.
- Evil handyman – the handyman relationship can be surprisingly intimate and symbiotic but can turn parasitic with devastating results.
- Reluctant law enforcement – “It’s a civil matter”
- The lever of love is powerful – “Love is a thing that does rule every nation” – Old English folk song. Parents can forgive almost anything at any time.
- The damage is done. Financially exploited elders are at much greater risk of mortality and morbidity. They may have also lost their greatest love.



# The Longer View at LSE and for All Advocates for Victims of Elder Exploitation

- Awareness
- Prevention – i.e. beware joint accounts, beware the agent who wants to *be the POWER* of Attorney.
- Better tools for actual recovery – Improved ITTA and other legal tools.
- Heightened Awareness among law enforcement and heightened cooperation with law enforcement.
- In Maine, work on the F.A.S.T. Team
- Encouraging visibility, respect and dignity for our elders.



# Broader Impact

Collaborative innovations and work in the past year includes:

- The AG Elder Financial Exploitation Task Force and resulting legislation and training initiatives;
- The FAST team that is being developed;
- The Maine Council for Elder Abuse Prevention education efforts including an annual Elder Abuse Summit and Roundtable;
- Training done on prosecuting these cases at the annual prosecutors' conference;
- Training done on investigation of these cases for all APS workers;
- Joint regional trainings for Adult Protective Services, Long Term Care Ombudsman and LSE; and
- Senior Safe program focused on financial institutions.



# Selected Resources

- Lori A. Stiegel, “An Overview of Elder Financial Exploitation,” 36 Generations 2 (Summer 2012), [http://members.asaging.org/members\\_online/members/viewitem.asp?item=GEN362&catalog=ISSU&pn=1&af=ASA](http://members.asaging.org/members_online/members/viewitem.asp?item=GEN362&catalog=ISSU&pn=1&af=ASA)
- Denis Culley & Hanna Sanders, “Exploitation and Abuse of the Elderly During the Great Recession: A Maine Practitioner’s Perspective,” <https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=62+Me.+L.+Rev.+429&srctype=smi&srcid=3B15&key=18f7f3389af5a7ca97b27a99682280c2>
- <http://bangordailynews.com/2012/08/02/news/midcoast/elderly-brooks-man-victim-to-financial-exploitation-tells-his-story/>
- <http://bangordailynews.com/2012/06/27/news/midcoast/elder-abuse-case-in-lincoln-county-exposes-insidious-pattern-of-abuse-manipulation/>
- Denis Culley & Jaye Martin, “No Higher Calling – Representing Victims of Financial Exploitation,” 34 Bifocal 5 (June 2013), [http://www.americanbar.org/publications/bifocal/vol\\_34/issue\\_5\\_june2013/no\\_higher\\_calling.html](http://www.americanbar.org/publications/bifocal/vol_34/issue_5_june2013/no_higher_calling.html)
- Sally M. Wagley, “Maine’s Improvident Transfers Act: A Unique Approach to Protecting Exploited Elders,” 36 Bifocal 1 (Oct. 2014), [http://www.americanbar.org/publications/bifocal/vol\\_36/issue\\_1\\_october2014/maines\\_improvident\\_transfers\\_act.html](http://www.americanbar.org/publications/bifocal/vol_36/issue_1_october2014/maines_improvident_transfers_act.html)



# Selected Resources: Undue Influence

- Stiegel/NLRC 2011 webinar on The Role of Undue Influence in Elder Abuse, <http://www.nclc.org/national-elder-rights-training-program/the-role-of-undue-influence-in-elder-abuse.html>
- Quinn, M.J., Goldman, E., Nerenberg, L., and Piazza, D. (March 2010) “Undue Influence: Definitions and Applications, Final Report to the Borchard Foundation Center on Law and Aging, available at [www.courts.ca.gov/documents/UndueInfluence.pdf](http://www.courts.ca.gov/documents/UndueInfluence.pdf)
- Brandl, B., Heisler, C.J., and Stiegel, L.A. (2006) Undue Influence: The Criminal Justice Response, YWCA of Omaha, available at [www.ncall.us](http://www.ncall.us).
  - Trainer Guide: <http://ncall.us/content/undue-influence-teaching-plan>
  - Participant Guide: <http://ncall.us/content/undue-influence-participant-materials>
  - PowerPoint Slides: <http://ncall.us/content/undue-influence-powerpoint-slides>



# Selected Resources: Capacity

- American Bar Association & American Psychological Association Capacity Assessment Guides:
  - ABA Commission on L. & Aging & Am. Psychological Assn., Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers (2005)
  - ABA Commission on L. & Aging, Am. Psychological Assn., & Nat'l College of Probate Judges, Assessment of Older Adults with Diminished Capacity: A Handbook for Judges (2006)
  - ABA Commission on L. & Aging & Am. Psychological Assn., Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists (2008) [this guide contains the most information on UI of the three]
- All three guides can be accessed at [www.americanbar.org/groups/law\\_aging/resources/capacity\\_assessment.html](http://www.americanbar.org/groups/law_aging/resources/capacity_assessment.html)



# MANAGING SOMEONE ELSE'S MONEY

Help for agents under a  
power of attorney

**cfpb**

Consumer Financial  
Protection Bureau

# Selected Resources: CFPB “Managing Someone Else’s Money” Guides

- Four national guides for: agents under POA, court-appointed guardians of property, trustees under revocable living trust, SSA rep payees & VA fiduciaries
- Set of four state-specific guides for: AZ, FL, GA, IL, OR, VA
  - FL & VA are available now; AZ, GA, IL, OR are forthcoming
- Tips & Templates for state adaptation of the national guides
- <http://www.consumerfinance.gov/managing-someone-elses-money>



# Contact Information

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# Questions?



# Legal Remedies to Financial Exploitation of Property: *Let's Get Grandpa's House Back!*

**David Godfrey**, Senior Attorney at the ABA Commission on Law & Aging  
**Lori Stiegel**, Senior Attorney at the ABA Commission on Law & Aging  
**Denis Culley**, Staff Attorney at Maine's Legal Services for the Elderly

January 21, 2016

**NCLC**<sup>®</sup>  
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National Elder Rights Training Project for the National Legal Resource Center.  
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# Next Elder Abuse and Prevention Webinar in the Series

**February 16, 2016 @ 2:00PM (EST)**

*Recognizing and Remediating Elder Financial  
Abuse in Medicaid Denials*

*Registration open at [www.nclc.org](http://www.nclc.org)*



# Just a Reminder

- Please fill out the evaluation when you sign-out
- I will email you the PowerPoint and recording in a few days
- Thank you to our speakers!



Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. [www.nclc.org](http://www.nclc.org)