

The background features abstract, flowing waves in shades of red, orange, and yellow, creating a dynamic and modern aesthetic. The waves are layered and semi-transparent, giving a sense of movement and depth.

FINANCIAL EXPLOITATION OF VULNERABLE ADULTS

Kristen Standifer



INTRODUCTION

What is the Department of Financial Institutions?

- State agency (five divisions)
- Regulates some of Washington's financial service providers including broker-dealers, investment advisers, mortgage brokers, payday lenders, trust companies, and state chartered banks and credit unions
- Administrative authority with a special prosecution fund

AGENDA

- Washington's Vulnerable Adult Statute

-  of Financial Exploitation

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POLL

- Who is registered as an investment adviser, investment adviser representative, broker-dealer, or securities salesperson?
- Who is employed at a state regulated bank or credit union?
- Who is employed in Oregon?
- Has anyone encountered a situation where they suspected financial exploitation of a senior was occurring?



AARP STUDY

In 2016 an AARP study found:

- 1 in 5 older Americans (50+) are victims of financial exploitation each year
- Losses total about \$3 billion annually or more than \$120,000 per victim
- Seniors are targeted
 - About \$18 trillion in assets (67% of all bank deposits)
 - Likely to suffer from problems with memory and judgment making them vulnerable to fraud





SENIORS ARE TARGETED

Anyone can be a victim of financial exploitation

Those aged 65 and older are particularly vulnerable

- Typically has savings or a retirement account
- May have equity in a home
- More likely to assume that others are honest and trustworthy

RISK FACTORS

Additional circumstances that put a person at risk of being exploited:

- Death of a loved one (including pets)
- Dependence on someone else to provide care, transportation, or other services
- Recent health changes (stroke)
- Loneliness/depression
- Willingness to listen to unknown callers, attend free lunch seminars, or invest in business opportunities

WASHINGTON VULNERABLE ADULT STATUTE

Washington Vulnerable Adult Statute (RCW 74.34.215 and 74.34.220)

- Enacted in 2010-We were one of the first states to enact a statute of this kind
- About 25 states and District of Columbia have enacted a similar statute

WASHINGTON'S STATUTE

- Expands the ability of financial institutions to help combat financial exploitation of vulnerable adults
- Washington defines “financial institutions” to include state chartered banks and credit unions, broker-dealers, and investment advisers



RELATED ACTS AND RULES

Since Washington enacted its statute:

- NASAA model act was adopted (2016)
 - About 18 states have enacted the NASAA model act in some form
 - Oregon enacted legislation that contain provisions from the NASAA Model Act at ORS 59.495
- FINRA Rules were adopted (2018)
 - Rule 2165 (allows for a temporary hold on a disbursement) and
 - Rule 4512 (provides for a trusted contact)
- Federal Economic Growth, Regulatory Relief, and Consumer Protection Act was adopted (2018)

KEY PROVISIONS

Key provisions of the Washington statute:

- Reporting responsibilities
 - Permissive most of the time
 - Mandated at other times
- Notification to 3rd parties
- Delay of disbursement of funds (a.k.a. transaction freeze)



KEY PROVISIONS

- Records sharing
- Immunity from civil and administrative liability
- Training requirements

DIFFERENCES

- Differences
 - Definition of financial institutions
 - Reporting responsibilities
 - Definition of the protected person
 - Length of transaction freeze

2017 ORS Legal Glossary

Chapter 59 / Section 59.485

2017 ORS 59.485¹

Required reporting by certain securities professionals of suspected financial exploitation

Text News Annotations Related Statutes

(1) Except as provided in subsection (4) of this section, a qualified individual who has reasonable cause to believe that financial exploitation of a vulnerable person with whom the qualified individual comes into contact has occurred, has been attempted or is being attempted shall, as soon as is practicable, notify the Department of Consumer and Business Services, either orally or in writing.

(2) A notification made under subsection (1) of this section must include the following information, if known:

- (a) The identity and address of the vulnerable person;
- (b) The identity of all persons that the qualified individual believes are responsible for the suspected or attempted financial exploitation; **and**
- (c) The nature and extent of the suspected or attempted financial exploitation.

WASHINGTON STATE LEGISLATURE

RCWs > Title 74 > Chapter 74.34 > Section 74.34.215

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House of Representatives 74.34.210 << 74.34.215 >> 74.34.220

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RCW 74.34.215

Financial exploitation of vulnerable adults.

(1) Pending an investigation by the financial institution, the department, or law enforcement, if a financial institution reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, the financial institution may, but is not required to, refuse a transaction requiring disbursement of funds contained in the account:

- (a) Of the vulnerable adult;
- (b) On which the vulnerable adult is a beneficiary, including a trust or guardianship account; or
- (c) Of a person suspected of perpetrating financial exploitation of a vulnerable adult.

(2) A financial institution may also refuse to disburse funds under this section if the department, law enforcement, or the prosecuting attorney's office provides information to the financial institution demonstrating that it is reasonable to believe that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted.

(3) A financial institution is not required to refuse to disburse funds when provided with information alleging that financial exploitation

COVERED ENTITIES

	Entities
Washington RCW 74.34.020(8)	Broker-dealers, investment advisers, state chartered banks and credit unions
Oregon ORS 59.495	Broker-dealers and investment advisers
NASAA Model Act	Broker-dealers and investment advisers
FINRA Rule 2165 FINRA Rule 4512	FINRA Members (Broker-dealers)
Federal Act	Credit unions, banks, savings associations, investment advisers, broker-dealers, insurance company/agents, and transfer agents

VULNERABLE ADULT DEFINED

Vulnerable adults include (RCW 74.34.020(22)):

- Persons age 60 and older, who need assistance in one or more aspects of their life (whether or not they actually receive it)
- Examples:
 - Physical disabilities, such as the inability to take care of all their physical day-to-day needs due to frailty, a chronic illness, or a disability
 - Persons with a mental decline or disability, confusion, or short-term memory problems

VULNERABLE ADULT DEFINED

Vulnerable adults may also include persons age 18 and older who:

- Have a developmental disability
- Live in a facility or
- Receive services from a caregiver

Once a vulnerable adult, the person will not necessarily always be a vulnerable adult

- Stroke

PROTECTED PERSON

	Term	Definition
Washington RCW 74.34.020(22)	Vulnerable Adult	<ul style="list-style-type: none">-Person 60 or older with a functional, mental or physical inability to care for self;-Person found statutorily incapacitated, has a developmental disability, is admitted to a facility, or receives home care; or-Person who receives services from an individual provider or personal aide
Oregon ORS 59.480 with reference to ORS 124.100	Vulnerable Person	<ul style="list-style-type: none">-Person over 65 years old;-Financial incapable person;-Incapacitated person;-Person with disabilities who is susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the person's physical or mental impairment

PROTECTED PERSON

	Term	Definition
NASAA Model Act	Qualified Person	Person age 65 or older or person defined under state's APS statute
FINRA Rule 2165	Specified Person	Person age 65 or older or person age 18 or older with a mental or physical impairment
Federal Act	Senior Citizen	Person age 65 or older

FINANCIAL EXPLOITATION

Financial Exploitation is defined as:

- Illegal or improper use, control, or withholding
- Of the property, income, resources, or trust funds of the vulnerable adult by any person
- For any person's profit or advantage other than the vulnerable adult's profit or advantage

RCW 74.34.020



FINANCIAL EXPLOITATION

Financial Exploitation includes:

- Use of deception, intimidation, or undue influence
- By a person in a position of trust or confidence
- To obtain or use the vulnerable adult's property, income, resources, or trust funds

FINANCIAL EXPLOITATION

Financial exploitation may be criminal conduct

- Stealing
- Improperly using debit card
- Using vulnerable adult's identity
- Forging checks



FINANCIAL EXPLOITATION

Financial exploitation may not be criminal,
but still improper

- An improper use of authority to obtain property of the vulnerable adult



FINANCIAL EXPLOITATION

Not all poor choices are financial exploitation

- Unless a guardian has been appointed, the law presumes that the vulnerable adult is capable of making his or her own financial decisions, even if that decision appears to be unwise
- For example, a vulnerable adult may give her children their retirement savings, even if that leaves her without a financial safety net



FINANCIAL EXPLOITATION

Directing the vulnerable adult to make a poor, risky, or substantial financial decision, and the vulnerable adult seems confused, fearful, or has developed memory problems may indicate financial exploitation

THE LAW ALLOWS REPORTING

- A person participating in “good faith” in making a report is immune from liability resulting from the report
- Washington case law defines “good faith.” One factor is whether the financial institution’s policies and procedures were followed
- An institution’s policies and procedures on reporting suspected financial exploitation should address who to report it to and who decides whether to report it

PERMISSIVE REPORTING

The law allows you to decide when financial exploitation should be reported, but does not require you to report it

Permissive reporting of financial exploitation

- Department of Social and Health Services Adult Protective Services, also referred to as APS
- Law enforcement

MANDATED REPORTING

Mandated reporting to all account signers and APS or law enforcement when a transaction freeze is used

HOW TO REPORT

In Washington

- Report to law enforcement by calling 9-1-1 (in an emergency) or by calling local law enforcement's non-emergency line, in less urgent situations or
- Report to Adult Protective Services by calling 1-866-END-HARM (1-866-363-4276)



HOW TO REPORT

In Oregon

- Report to law enforcement by calling 9-1-1 (in an emergency) or by calling local law enforcement's non-emergency line, in less urgent situations
- Report to Dept. of Human Services by calling 1-855-503-SAFE (1-855-503-7233)
- Report to the Dept. of Consumer and Business Services by calling 1-866-814-9710

REPORTING

	Report	When
Washington RCW 74.34.220(4)	<u>Permissive</u> APS or Law enforcement	There is a reasonable belief that financial exploitation is occurring or occurred
Washington RCW 74.34.215(4)	<u>Mandated</u> All account signers (may include suspected perpetrator) & APS or law enforcement	A transaction freeze has been put in place

REPORTING

	Report	When
Oregon ORS 59.485	<u>Mandated</u> Dept. of Consumer and Business Services	There is a reasonable belief that financial exploitation has occurred, has been attempted, or is being attempted
Oregon ORS 59.490	<u>Permissive</u> Third parties	There is a reasonable belief that financial exploitation has occurred, has been attempted, or is being attempted
Oregon ORS 59.495	<u>Mandated</u> All parties authorized on the account except suspected perpetrator; Dept. of Consumer and Business Services; Dept. of Human Services	When there is a delay of a disbursement

REPORTING

	Report	When
NASAA Model Act	<u>Mandated</u> Adult Protective Services, securities regulator	There is a reasonable belief that financial exploitation is occurring or occurred
FINRA Rule 2165	<u>Mandated</u> Trusted contact person and account signers (except perpetrator)	A transaction freeze has been put in place
Federal Act	<u>Permissive</u> Securities and Exchange Commission, state regulatory agency, law enforcement, Adult Protective Services	There is a good faith belief of suspected exploitation occurring and employees of covered entity received training on how to identify and report suspected exploitation while protecting privacy and integrity of the individual

SHORT-TERM TRANSACTION FREEZE

A financial institution may, but is not required to, impose a short-term transaction freeze

- The financial institution will not have legal liability for its decision to impose a freeze, or not to impose a freeze, when the decision is made in good faith
- This restricts a transaction requiring disbursement of funds contained in the account of a vulnerable adult, an account on which the vulnerable adult is beneficiary, or an account owned by the person suspected of perpetrating financial exploitation

SHORT-TERM TRANSACTION FREEZE

- Adult Protective Services may also request a freeze

RCW 74.34.215(2)



TRANSACTION FREEZE

- For transactions not involving the sale of a security the freeze may last up to 5 business days (10 days if a security is involved)
- Should be immediately lifted if it is determined that financial exploitation is not occurring
- May be extended (or shortened) by a court order

RCW 74.24.215(5)



TRANSACTION FREEZE

	Allowed	Length
Washington RCW 74.34.215	Yes	If a security is involved, 10 days otherwise 5 days
Oregon ORS 59.495	Yes	15 days and may be extended for another 10 days
NASAA Model Act	Yes	15 days and may be extended for another 10 days
FINRA Rule 2165	Yes	15 days and may be extended for another 10 days
Federal Act	No	N/A



NOTICE OF TRANSACTION FREEZE

When a transaction freeze is imposed reasonable efforts must be made to notify the following persons:

- All parties authorized to transact business on the account (orally or in writing) including the suspected perpetrator; and
- Adult Protective Services or law enforcement

OREGON NOTICE OF DELAY OF DISBURSEMENT

- When a transaction freeze is imposed reasonable efforts must be made to notify the following persons:
 - All parties authorized to transact business on the account except the suspected perpetrator
 - Dept. of Consumer and Business Services and
 - Dept. of Human Services

ORS 59.495

RECORDS REQUIREMENTS

	Records Requirement
Washington RCW 74.34.220(4)	Allows production of all relevant records
Oregon ORS 59.505	Upon request from Dept. of Consumer and Business Services, Dept. of Human Services, or law enforcement
NASAA Model Act	Requires production of records related to the suspected financial exploitation
FINRA Rule 2165	Requires retention of records relating to the transaction freeze

VULNERABLE ADULT STATUTE SUMMARY

- Financial exploitation happens
- Washington and Oregon have statutes to protect financial institutions that report financial exploitation in good faith
- A financial institution should have policies and procedures to address situations where a customer is a victim of exploitation to include who and how to report it
- Financial institution employees should be trained on how to spot and report financial exploitation



RED FLAGS OF FINANCIAL EXPLOITATION



IMPORTANT TO KNOW BASELINE BEHAVIOR

RED FLAGS OF FINANCIAL EXPLOITATION

Sudden changes in vulnerable adult's behavior or practices

- Vulnerable adult has never withdrawn money from an ATM; however, she starts withdrawing from ATMs at casinos
- Vulnerable adult has never written checks from investment account and starts using them for seemingly everyday expenses

RED FLAGS OF FINANCIAL EXPLOITATION

- Adding additional names to bank cards or signers on investment or bank accounts
- Bills going unpaid where there is enough money to pay them

RED FLAGS OF FINANCIAL EXPLOITATION

Abrupt changes in a will or financial documents particularly where there are other changes in behavior

- A new power or attorney, payee, or guardian
- Gardner acting as power of attorney

RED FLAGS OF FINANCIAL EXPLOITATION

Seemingly unnecessary home remodeling projects

- New windows every 3 years
- Staircases to the ceiling, interior windows into other rooms



RED FLAGS OF FINANCIAL EXPLOITATION

Sudden appearance of previous uninvolved family members particularly where:

- Vulnerable adult shows an unexplained change in behavior (nervousness, meekness) around that person or
- That person claims a right to the income, resources, or assets of the vulnerable adult



RED FLAGS OF FINANCIAL EXPLOITATION

Controlling behavior by a family member, caregiver, or other person

- Not willing to leave the room so that you may speak with the vulnerable adult privately

A professional who asks the vulnerable adult to make a “secret” major financial decision or without assistance from others

- Loan, investments, changes to a will
- Example



RED FLAGS OF FINANCIAL EXPLOITATION

Unexplained transfer of assets

- Vulnerable adult quitclaims her house to someone where the will provided a different disposition of it and the vulnerable adult still lives in the house and continues to pay for taxes and maintenance
- Example

RED FLAGS OF FINANCIAL EXPLOITATION

Individual that does not have deep pre-existing relationship or apparent qualifications becomes payee

- Other service providers
- However, service providers may be in a unique position to see vulnerable adult's changes in behavior and to notify friends and family of need for assistance

RED FLAGS OF FINANCIAL⁵¹ EXPLOITATION

The most ignored sign:

**THE VULNERABLE ADULT REPORTS BEING
EXPLOITED**



RED FLAGS SUMMARY

- Know the vulnerable adult's baseline behavior
- Watch for variations in behavior from baseline, which may be red flags of financial exploitation
- Investigate red flags





BEST PRACTICES



HONOR YOUR FIDUCIARY DUTY

Put your client's interests before
your own

AVOID CONFLICTS OF INTEREST



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"Try this—I just bought a hundred shares."



Avoid situations that have an
appearance of a conflict of
interest



TREAD CAREFULLY

When acting in multiple roles (trustee or power of attorney and investment adviser)

- Document services performed
- Avoid double charging a client for services
- Where possible client should have an independent, trusted party review documents (invoices, account statements)

EXAMPLE

Spokane Investment Adviser

- Acted as an investment adviser and trustee for a client who needed 24 hour care
- No one provided oversight of the fees charged to verify they were reasonable
- Double (or triple) charged for services

DISCLOSE, MITIGATE, AND AVOID CONFLICTS OF INTEREST

Examples of conflicts to disclose, mitigate, and avoid

- Outside sources of compensation
- Business interests that might impact or appear to impact advice

WAC 460-24A-220(20)

AVOID OTHER CONFLICTS OF INTEREST

Avoid engaging in business with a client such as borrowing from or loaning money to a client

WAC 460.24A.220(6), (7)



EXAMPLE

Seattle Investment Adviser

- “Borrowed” \$3.1 million from an elderly client to purchase a vacation home and rare 1955 Gullwing Mercedes
- The investment adviser did not disclose to the client that he was the borrower on the loan
- The loans were unsecured, undocumented, and had a low interest rate





- When the client threatened to sue to get her money back, the investment adviser moved other investors' money between funds to pay her
- The investment adviser failed to disclose these transactions to the investors in the funds
- The investment adviser put his interests before those of the investors when he borrowed the funds to repay the first investor to avoid being sued

BEST PRACTICES SUMMARY

Avoid, Disclose, and Mitigate conflicts of interest

A situation that creates an appearance of a conflict should be avoided or specifically disclosed and mitigated



RESOURCES

- DFI's website: www.dfi.wa.gov
- Washington Department of Social and Health Services website: www.dshs.wa.gov
- Oregon Department of Consumer and Business Services website: www.oregon.gov/dcbs
- Oregon Department of Human Services website: www.oregon.gov/dhs

RESOURCES

- FINRA

- Senior Helpline: Seniors may speak with FINRA staff regarding a securities account
- 1-844-57-HELPS (844-574-3577)



- NASAA

- Elder Investment Fraud and Financial Exploitation prevention program (EIFFE)
- www.nasaa.org/investor-education
- Conversation starters
- www.serveourseniors.org





QUESTIONS