

Power Failures

Power of Attorney Authority and the Exploitation of Elderly New Yorkers

Durable Power of Attorney, which enables one person to vest another person with authority to sign financial documents on his or her behalf, is one of the most commonly used legal devices in the United States. Convenient and flexible at its best, power of attorney at its worst can be employed to financially exploit senior citizens, draining their life savings within a matter of days.

SCAA's survey of New York State's 62 District Attorneys found that cases of egregious abuse of power of attorney authority are being referred to prosecutors, but many other cases are not. Prosecutors believe that they do not have the tools they need to detect, prosecute and ultimately deter the misuse of power of attorney for financial exploitation.

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Executive Summary

Elaine faced a dilemma. At age 71, she had been hospitalized with kidney failure and might be seriously ill for some time to come. But unless she paid rent and utilities regularly, she would lose her rental apartment. Elaine's younger sister Anne came to the rescue, agreeing to handle Elaine's financial affairs during the hospitalization. Anne suggested a common legal device called "power of attorney" to facilitate the arrangement.¹ Using power of attorney, Anne could legally sign documents on behalf of her older sister.

Elaine pulled through her illness. Upon visiting the bank, she discovered that Anne had used her banking account to pay more than bills. Armed with power of attorney authority, her sister had withdrawn most of her life savings – nearly \$50,000 – and gambled much of it away at casinos in Atlantic City. Fortunately, the New York County District Attorney decided to intervene. Anne entered a guilty plea and made restitution to her elder sister.

The kind of financial exploitation experienced by Elaine is by no means unusual in the United States, particularly among senior citizens. Financial exploitation of the elderly has become a booming criminal business in America. A 2004 study found that one in five elder abuse complaints to state Adult Protective Services agencies related to financial exploitation – more than 52,000 incidents in the 19 reporting states alone.² Such data can dramatically understate the incidence of financial exploitation, however, since it excludes complaints made directly to law

enforcement. In addition, many experts believe that the majority of financial exploitation incidents are never reported. The U.S. Senate Committee on Aging projects that 84% of all elder abuse cases go unreported, or up to five million such cases each year.³ That would mean as many as one million financial exploitation cases going unreported. Professional scam artists prey constantly on the elderly, using techniques such as identity theft and telemarketing fraud.

Elaine's exploitation was facilitated by a legal device called "durable power of attorney." As a seriously ill hospital patient, Elaine was in no condition to manage her own finances.

Someone else would have to pay insurers and creditors, buy and sell property, deal with financial institutions and conduct many

other financial transactions. So Elaine signed a form allowing her sister to conduct all these transactions in her name – the durable power of attorney.

Power of attorney authority is used thousands of times each year, and elder law attorneys will typically recommend power of attorney to any client of a certain age who wants assistance keeping financial affairs in order. The person who gives another authority to sign official documents using the power of attorney is known as the *principal*, while the person who receives that authority – typically a family member or close friend – is the *agent*. The power of attorney is easy to execute and adapt to specific needs. The relevant form can be obtained at any stationery store, downloaded from the internet or simply typed out, printed and signed by the parties. The principal's signature must then be notarized in the presence of witnesses. Additional clauses can be drafted and initialed by the parties without the involvement of an attorney.

The very features of simplicity and convenience that make power of attorney so commonly used by senior citizens also render it vulnerable to abuse. "Financial Durable Powers of Attorney continue to be the favorite vehicle for large-scale criminal financial exploitation

perpetuated upon vulnerable adults," states former United States Attorney John E. Lamp.⁴ The potential for exploitation springs from two factors: the broad authority vested in the agent and the vulnerability of the principal.⁵ Power of attorney authority enables the agent to buy or sell real estate, pay contractors, change the beneficiaries of insurance policies, transfer money at will, and much more. In theory, the agent is accountable to the senior citizen who signed the power of attorney form. In practice, mental and physical deterioration often prevents the principal from making decisions and reviewing the agent's transactions. Indeed, the point of making the power of attorney "durable" is to ensure

"Financial Durable Powers of Attorney continue to be the favorite vehicle for large-scale criminal financial exploitation perpetuated upon vulnerable adults," states former United States Attorney John E. Lamp.

that the principal's financial affairs can be taken care of in the event of mental or physical incapacity. As a result, the principal may be

the last to learn that he or she has been the victim of financial exploitation.

Some states have created safeguards in law to protect seniors who sign over their power of attorney, but New York is not one of them. In New York, the agent wields immense financial power without clear fiscal accountability.

Many cases of financial exploitation related to power of attorney in New York State have been documented in the past few years, but no concrete data exists on the nature or extent of this phenomenon. In theory, it would be possible for the State of New York to collect such data through the court system or through the Office of Children and Family Services. But the absence of model systems in other states suggests that such a reform would be hard to implement. Furthermore, parties to a power of attorney do not report their transaction to any central registry, which reduces even basic estimates of the number and kinds of powers of attorney currently in circulation to the level of guesswork.

The Albany Guardian Society commissioned SCAA to examine the only aspect of power of attorney abuse that seemed readily quantifiable: criminal prosecution by New York State's 62 county District Attorneys. We

distributed a survey to each District Attorney's office and conducted follow-up interviews with a number of respondents. The overall pattern is as unmistakable as it is troubling.

Summary of Findings

- **Only a small fraction of financial exploitation cases involving power of attorney appear to be referred to District Attorneys.** The 16 responding counties reported 163 referrals over two years, an annual rate of 9.5 referrals per 100,000 seniors. Projected statewide, this would represent 231 referrals, or 115 referrals annually.
- **The referral rate varies dramatically from one county to another.** The referral rate varied from a high of 34.8 referrals per 100,000 seniors to a low of 1.8. If all counties reported at the rate of the five counties with the highest rates (16.5), total statewide referrals would have been 403, 74% higher than the imputed rate of 231. The large intra-county gap may hint at the existence of "lost cases" in some counties that should have been referred for criminal prosecution but were not. However, variations in reporting may account for low referral rates in some counties.
- **Only one in seven power of attorney-related cases were prosecuted.** Of 163 referrals, 23 were prosecuted (14%), while 13 remain open (8%) and could be prosecuted in the future. The low prosecution rate suggests significant difficulties in building a case for criminal prosecution. However, 22 out of the 23 prosecuted cases resulted in convictions.
- **The suspect in more than half of all referrals was a family member.** Fewer than one in five (18%) of referrals involved a home care worker as the suspect. Over half of all referrals (56%) identified family members as suspects, and another quarter (24%) identified a friend of the alleged victim.

I. Issues in Power of Attorney

Power of attorney is a legal device that gives one person – the "agent" – authority to represent another person – the "principal" – and act on that person's behalf. The purpose is to assure third parties such as banks,

utilities and insurance companies that they can rely on the agent's authority. The types of financial authority conveyed to the agent are at the discretion of the principal, ranging from narrowly drawn authority to conduct a financial transaction (e.g., to sign documents on a house sale) to broad authority in managing the principal's financial affairs.

There are three types of power of attorney in New York: non-durable, durable and springing durable. A *non-durable* power of attorney lapses if the principal becomes incapacitated. A *durable* power of attorney does not lapse. The official form states: "The powers you grant below continue to be effective should you become disabled or incompetent." A *springing durable* power of attorney only becomes effective when triggered (or "sprung") by an event designated by the principal, typically loss of capacity.

Senior citizens typically execute the durable power of attorney in order to provide for financial continuity should they suffer mental or physical disabilities that render them unable to conduct financial transactions. Durable power of attorney provides an attractive alternative to guardianship, which costs money, consumes time and effort, and infringes on the senior's autonomy.

Power of attorney authority is simple to execute and use. The principal can fill out the form, which is available at stationery stores, and designate an agent (also known as the attorney-in-fact) without resort to a lawyer. The form must simply be notarized to become effective. New York has a standard durable power of attorney form. However, the principal can use any form desired. Once signed, the agent can act without the principal's knowledge and continue to act without regard for the principal's mental and physical capacity.

The convenience of the durable power of attorney is precisely the quality that makes it an attractive vehicle for financial exploitation. Once a senior citizen has become incapacitated, the agent faces little accountability for his or her stewardship of the principal's financial affairs. Unless explicitly stated in the power of attorney, no one else is authorized to supervise the agent or review financial records.

As a result, many power of attorney relationships have ended in financial exploitation. “Unscrupulous attorneys in fact (agents) can wipe out a vulnerable person’s lifetime savings in a matter of days,” notes Lamp.⁶ Home care aides have been known to befriend a senior, win their trust, and obtain the power of attorney, specifically for the purpose of defrauding them. Family members are also frequent offenders, although the road to exploitation is usually much longer. “When a family member is involved, conduct that began in the elder’s best interest may become abusive over time,” notes elder law attorney Kim Boyer. “After several years, when they see how much work is involved, often they begin to feel an ‘entitlement’ to the funds.”⁷ A family member who has been handling a senior’s finances for some time faces greater temptation and fewer checks on fraudulent activity. Such instances are likely to increase as the baby boomer generation retires, given this generation’s higher asset levels, greater longevity, and wider geographic dispersal from family members who might observe suspicious behavior.

Any legal device that turns over the financial affairs of a vulnerable senior citizen to someone else is bound to be misused occasionally. The difficulty with power of attorney in New York is its near-total lack of regulatory or accountability safeguards, which invites and facilitates fraud.

New York Law and the “Best Interest” Gap

The New York General Obligations Law sets forth the proper language for a durable power of attorney form and enumerates various categories of authority held by the agent, such as real estate transactions and bank withdrawals.⁸ General Obligations Law discusses the agent’s powers in elaborate detail, but is mostly silent on the agent’s duties.

One serious and oft-noted gap is the law’s ambiguity of language on fiduciary duty, a standard concept in agency law which holds the agent accountable for acting in the best interest of the principal. For example, a corporate board of directors has a clearly stated fiduciary duty to its shareholders. In some states, including California and Wisconsin, the agent holding power of attorney authority has a clearly stated fiduciary duty. This clarifies the

relationship, deters wrongdoing, and makes prosecution for fraud much simpler.

In New York, however, fiduciary duty is anything but simple. The New York General Obligations Law sets forth 14 different categories of financial transactions the agent can conduct on behalf of a principal, ranging from running a business to selling a house to filing a lawsuit to paying for the children’s dental care. Only one category, gift-giving, imposes any duty on the agent to act in the principal’s best interest. A provision added in 1996 states that the agent can “make gifts...only for purposes which the agent reasonably deems to be in the best interests of the principal...”⁹ This provision establishes a form of fiduciary duty, but in an ambiguous and cloudy form. In fact, the provision’s relevance to cases of clear impropriety was not even firmly established until a June 2006 ruling by the New York State Court of Appeals, *In the Matter of Ferrara*.¹⁰

The facts of the *Ferrara* case provide a cold reminder of the agent’s sweeping authority. In June 1999, a retired stockbroker named George Ferrara willed his life savings to the Salvation Army. In late January 2000, frail and suffering from multiple chronic conditions, Ferrara signed a power of attorney form designating his nephew Dominick as the agent. The form included a typewritten amendment stating that the agent could “make gifts without limitation in amount to John Ferrara and/or Dominick Ferrara.” George Ferrara had no legal representation, and a witness recounted that she did not “recall the word ‘gift’ having been mentioned” to Mr. Ferrara before he signed the power of attorney. On February 12, George Ferrara passed away. Only three weeks had passed since the signing, but in that time Dominick Ferrara had transferred “about \$820,000 of decedent’s assets to himself...and about \$300,000 in cash,” a sum representing virtually all of George Ferrara’s life savings.¹¹

The question posed by *Ferrara* was this: Could an agent use power of attorney authority to empty the principal’s life savings in the dwindling few days before death, even though the principal had recently willed the money to go elsewhere? At first, the answer appeared to be “yes.” The case went to the Rockland County Surrogate’s Court, which ruled for Dominick Ferrara, and then to the

Appellate Division, which affirmed the Surrogate's decision, concluding that "Dominick Ferrara had overcome the [presumption of impropriety] solely by virtue of the power of attorney."¹²

But Dominick Ferrara's luck ran out at the Court of Appeals. The Court of Appeals overturned the lower court decisions, ruling that the agent must "exercise gift-giving authority in the best interest of the principal."¹³ That so much effort should be required to deliver such a common-sense verdict testifies to the lack of protection afforded New York's senior citizens by the statute governing power of attorney.

Ferrara established an overdue protection for senior citizens who sign power of attorney, but a court verdict serves different functions from a law. Laws establish rules; verdicts interpret them and set precedents for future interpretation. *Ferrara* confined itself to the issue at hand, which was gift-giving. Agents continue to work without clear statutory guidance on their fiduciary duty in any other aspect of power of attorney. Worse, General Obligations Law still does not define the agent's duty or include any provision to warn agents that they have one. Prosecuting attorneys want statutory direction that they can take before a court, and no such direction presently exists.

There are other issues with General Obligations Law, most of which have been identified by the New York State Law Revision Commission in its 2003 study on power of attorney.¹⁴ For example, the General Obligations Law does not require the agent to keep records of financial transactions or to show existing records to state agencies that might be called in to investigate complaints of impropriety.

II. Procedures in Handling Power of Attorney Abuse

The great majority of agents holding power of attorney discharge their duties honestly and competently. Yet problems can arise, even when agents act in what they believe to be the principal's best interest. For example, the agent may be busy with personal affairs and neglect the principal's needs. The agent may be a family member feuding with other family members and fail to take their concerns seriously. The agent may flout the principal's desire to be consulted on important

transactions. Or the agent may simply exercise poor judgment in handling the principal's financial affairs. Power of attorney is a civil document, and occasional problems unrelated to financial exploitation are typically solved with civil remedies. A principal who is mentally competent can revoke the power of attorney and give it to someone else. If the principal no longer has mental capacity, the family must go to court to request the appointment of a guardian. This option is expensive and may appear demeaning to the senior citizen. For seniors who suffer dementia, however, there is little alternative.

Fraudulent use of power of attorney is much more serious. Revocation or guardianship are still the key civil remedies, but now criminal prosecution must also be considered. For the sake of convenience, this process can be viewed as having four stages: detection, investigation, referral, and disposition.

Detection: A family member may become suspicious if the agent shows signs of new wealth while the principal's needs are not being properly met. A financial institution may note a pattern of suspicious account transfers.

Investigation: Next, an investigation commences. The person who detected a potential case of fraud may contact the county office of Adult Protective Services, which investigates cases of neglect and abuse involving impaired and vulnerable adults, including the mentally ill, the disabled and the frail elderly. Other investigators include private attorneys and the local police department. Families will often contact their county District Attorney directly.

Rules and procedures differ depending on which agency is conducting the investigation. Generally speaking, however, the investigator will typically check to see if the principal's utilities have been turned off for non-payment, and will request transaction records from financial institutions. If warning signs merit further exploration, the investigator may seek to freeze the principal's assets. Freezing assets requires that some sort of legal action be pending, such as a petition for guardianship. A common maxim among experienced lawyers and caseworkers is "Stop the bleeding."

A senior's lifetime savings can be emptied in a matter of days. Facing clear evidence of fraud, the investigator will typically move quickly to freeze assets and, if possible, revoke the agent's power of attorney authority.

Referral: When a case is referred to the county District Attorney, a prosecutor is tasked with determining whether it meets the standard for larceny under the state Penal Law, and can therefore be criminally prosecuted. The standard is much more difficult to meet when the suspect has power of attorney authority, since all transactions are presumed to have the consent of the principal unless proven otherwise.

Disposition: The prosecutor determines whether to move forward with criminal prosecution. The prosecutor may determine, upon investigation, that the case is not appropriate for prosecution, and that relief should be sought through the civil court system.

III. Methodology

SCAA sent out a survey to all 62 county district attorneys. In the survey, we asked a series of questions about referrals for financial exploitation of the elderly: the nature of the referrals, the parties involved, the decision to seek or not seek criminal prosecution, and the final disposition of each case prosecuted.

19 out of 62 county district attorneys responded, a response rate of 31%. Three of those counties were excluded – two small counties because they reported no power of attorney referrals, and a larger one that reported referrals but was unable to quantify them. The remaining 16 counties represent 1.7 million of New York State's 2.4 million senior citizens, or 71% of all senior citizens residing in the state.

IV. District Attorney Survey Findings

A. Criminal Prosecution Rates

Summary of responses: The 16 counties reported a total of 163 referrals for misuse of Power of Attorney authority during a two-year period.

Adjusted for population, this represents a rate of 9.5 referrals per 100,000 seniors. The average rate across counties was 15.3, due to higher rates in counties with lower senior populations. This is a low rate, especially compared to national estimates of more than a million cases of financial exploitation annually. Many such cases may simply not be reported, either because they were not detected or were handled through civil remedies.

- **Rate variation due to reporting and referral deficiencies:** The referral rate varied dramatically from county to county, from a high of 34.8 to a low of 1.8. One upstate county with a population of 33,000 senior citizens reported more referrals than a downstate county with 280,000 senior citizens. The disparity results from at least three factors.
 - Referrers' awareness of criminal prosecution option: Referral volume depends largely on the extent to which law enforcement officers and other potential referrers understand that some instances of power of attorney abuse rise to the level of a criminal offense, which may vary from county to county. "I also experience the local police department failing to take cases involving POA abuse because they feel it is civil," notes Donna Planty, a prosecutor in the office of the Suffolk County District Attorney. "In spite of efforts by my office to educate the police department, this still occurs."
 - DA willingness to accept and encourage referrals: Referral volume also depends on the extent to which prosecutors believe that referrals of power of attorney related cases can be prosecuted as criminal acts. Historically, power of attorney cases have been handled in civil court. For example, one county was excluded from the study because a court precedent set an extremely high bar for criminal prosecution. As a result, prosecutors in that county do not accept power of attorney referrals.

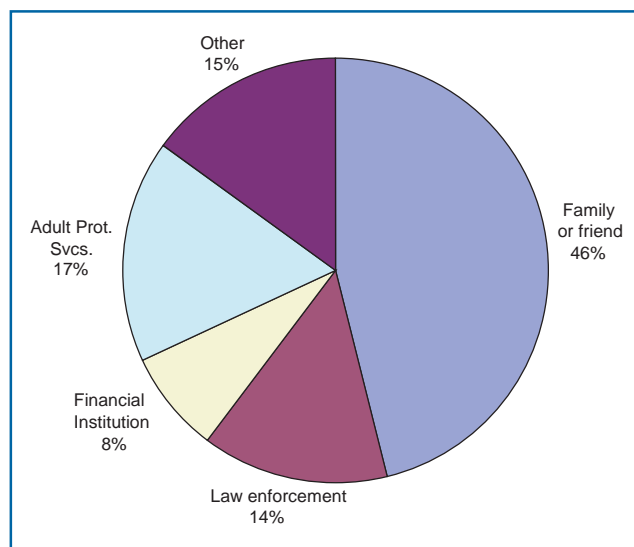
- Reporting: DA offices for the most part appear to have no recordkeeping category for power of attorney cases, so responses to the survey were informal. For example, three respondents chose to provide referral data in the form of an estimated range (SCAA chose the midpoint of the range for analytical purposes).
- **Statewide total:** If all counties statewide reported at the rate of the respondent counties, total referrals over two years would have been 231, for an average of 115 referrals annually.
- **Statewide total adjusted for reporting and referral deficiencies:** If all counties statewide reported at the rate of the 5 counties with the highest referral rates (16.5), total statewide referrals over two years would have been 403, for an average of 201 referrals annually – 74% higher than the projected statewide total of 115.¹⁵ The large gap between the median rate and the highest reported rates may represent “lost cases” that should have been referred to District Attorneys but were not. However, disparities in reporting may also account for some of the gap as well.

B. Nature of Referrals

- **Referral sources:** power of attorney referrals came from a variety of sources. Just under half of all referrals (46%) were submitted by a family member or friend, 17% by Adult Protective Services, and 14% by law enforcement officers. Chart 1 shows the full breakout. However, rates varied. Two counties received 40% of referrals from Adult Protective Services, while another received one-third of referrals from financial institutions.
- **Referrals from Financial Institutions:** Financial institutions represent an important first line of defense against financial exploitation of the elderly. Several counties reported receiving multiple referrals from financial institutions. However, more

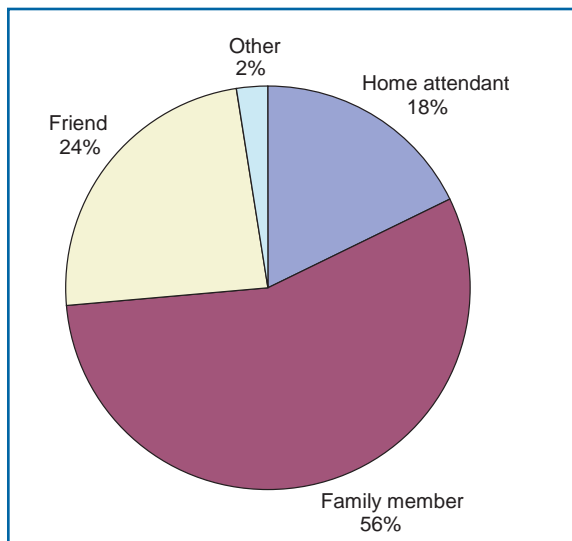
than half of counties (9 out of 16) reported receiving no referrals from financial institutions. While those institutions may be cooperating with law enforcement or Adult Protective Services, it is nonetheless a red flag for potential inconsistent policies among financial institutions.

Chart 1: Sources of Power of Attorney Criminal Referrals



- **Suspect/victim relationship:** Over half of all referrals (56%) identified family members as suspects, and another quarter (24%) identified a friend of the alleged victim. While cases of home care workers preying on vulnerable seniors have received media coverage, fewer than one in five (18%) of referrals reported by respondents involved home care workers. Chart 2 on the next page shows the full breakout. The dominance of the family/family relationship in this indicator was consistent across counties, although one county reported that half of its referrals involved home care workers.

Chart 2: Relationship Between Victim and Suspect in Referrals



C. Criminal Prosecution

- **Prosecution:** power of attorney cases appear to be difficult to prosecute. Of 163 referrals, 23 were prosecuted (14%), while 13 remain open (8%) and could be prosecuted in the future. Of the 23 prosecuted cases, 21 resulted in conviction by plea, one resulted in conviction by trial, and one in dismissal. Prosecution rates varied sharply. One county reported prosecuting all of its four referrals, while six counties prosecuted none.

V. Interview findings

SCAA followed up by interviewing selected prosecutors in District Attorney's offices, as well as experts in Protective Services for Adults agencies and non-profit service organizations that work with elderly victims of financial exploitation.

- Given the obstacles prosecutors face in power of attorney cases, the surprise is that any are prosecuted. Prosecutors stress the difficulty and uncertainty of cases involving power of attorney. Some of the root causes should be amenable to statutory/regulatory reform and collaborative efforts, while some may not.

- Prosecutors repeatedly cited the absence of a statutory "fiduciary duty" standard as a major obstacle to criminal prosecution. "District Attorneys will say that there is a lack of clarity in General Obligations Law," says Elizabeth Loewy, an Assistant District Attorney in New York County. "It makes prosecution much more difficult. You can put the case together from case law, but that's harder."
- The principal is often not helpful to prosecutors due to mental incapacity. "Most of the cases I have seen involving a POA, the document was either executed at a time when the principal lacked the capacity to understand what they were doing, or if executed prior to an incapacity, the POA was not used until the principal subsequently became incapacitated," states Suffolk County prosecutor Donna Planty.
- Some prosecutors noted the importance of financial institutions in bringing financial exploitation cases to their attention. Other prosecutors, however, did not report the existence of a strong partnership. Adult Protective Services staff also noted a significant disparity between financial institutions that provide willing assistance to financial exploitation investigations and those that provide only reluctant and minimal support.
- Some gray areas may be difficult to remedy. For example, agents sometimes state that the principal verbally authorized a suspicious transaction, and a principal with memory lapses may actually have done so and then forgotten the conversation.

VI. Summary

Those who financially exploit the elderly should be prosecuted to the full extent of the law. Such prosecution is essential to deter future offenders, to assist in financial recovery, and to maintain a just and equitable legal system.

Yet criminal prosecution is hard to conduct. Many obstacles are thrown in the way of prosecutors. Some are inherent to the muddiness of cases that tend to involve forgetful seniors and embarrassed families.

Other obstacles are externally imposed, and those obstacles can be overcome through statutory and regulatory reforms. Most important is to provide ongoing focus to helping seniors who may be victimized by financial exploitation of all kinds. No one policy remedy will solve the problem. Only a regular process of policy innovation, strong implementation and careful evaluation will work. Everyone involved in protecting senior citizens must work in concert. If they fail, many seniors will lose their life savings without anyone the wiser. If they succeed, those same seniors can live out their final years in dignity.

VII. Options for Reform

Financial exploitation through power of attorney is difficult to confront, since many standard anti-fraud measures in other fields (e.g., fingerprinting of agents) would badly damage a financial device that thousands of New Yorkers depend on to conduct their financial affairs. “A lot of things you can do have serious negative impacts on people who use power of attorney,” notes Lori Stiegel, associate staff director for the Commission on Law and Aging at the American Bar Association. SCAA offers the following options that may serve as a basis for reform. While the authors have benefited from discussions with many prosecutors, Adult Protective Services staff, advocates and others, SCAA alone is responsible for these proposals.

Prevention

1. Draft clear and mandatory language in the power of attorney form directed to the agent, explaining the agent’s fiduciary duty to the principal. Such language exists in the Uniform Power of Attorney Act: “You must...do what you know the principal reasonably expects you to do with the principal’s property or, if you do not know the principal’s expectations, act in the principal’s best interest[.]”¹⁶

Detection

2. Mandate in the state General Obligations Law that agents must maintain financial records of all transactions.

3. Establish a collaborative task force charged with strengthening the role of financial institutions in detecting and reporting possible financial exploitation of the elderly. Financial institutions may represent the most important front line of defense, and some respondents reported excellent relationships with financial institutions in their county. But the majority of respondents did not. The unevenness of financial institution cooperation suggests that real leadership is needed to develop the nuanced regulations and best practices that protect the needs of financial institutions, ethical agents and investigators of potential financial exploitation. In addition, education of financial institution staff needs to be more consistent and effective.

Investigation

4. Give Adult Protective Services agencies enhanced powers to obtain an agent’s relevant financial transactions in the course of an investigation.
5. Give Adult Protective Services agencies the power to petition a civil court in cooperation with financial institutions to prevent the agent from exercising control over assets during the term of an investigation. An unscrupulous agent can drain and squander the principal’s lifetime assets with astonishing speed. Duty constituted agencies need the power to “stop the bleeding” as rapidly as possible.

Referral

6. Establish a common referral standard for financial exploitation cases among District Attorneys so that trends can be tracked and monitored. The standard should be developed with the participation and support of District Attorneys and their staff.
7. Report data to the state Division of Criminal Justice Statistics on power of attorney-related referrals and disposition.

8. Educate law enforcement officers about standards for prosecuting power of attorney cases. Police officers are often reluctant to pursue fraud cases involving power of attorney due to the common belief that any transaction is effectively authorized, no matter how outlandish, if the perpetrator has power of attorney. Continuing education can provide accurate information that will guide law enforcement in handling power of attorney-related cases.

Prosecution

9. Clarify the fiduciary duty of agents in the General Obligation Law. Other states have clear and detailed standards spelling out the fiduciary duty owed by the agent to the principal. New York's statute, on the other hand, is vague and difficult to enforce. Clarifying that statute should be a high priority.
10. Establish financial exploitation through power of attorney authority as a theory of Grand Larceny in the New York State Penal Law.

Endnotes

- ¹ Both names have been changed.
- ² Pamela Teaster et al, *The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older*, The National Center on Elder Abuse, February 2006.
- ³ U.S. Senate Committee on Aging, as cited by Joanne Otto, "Background Paper on Financial Exploitation of the Elderly, 2005 White House Conference on Aging," National Adult Protective Services Association, *Victimization of the Elderly and Disabled*, May/June 2005.
- ⁴ John E. Lamp, "Durable power of attorney reform and streamlining investigations of vulnerable adult financial exploitation crimes: an outsider looking in," *Victimization of the Elderly and Disabled*, June 2004.
- ⁵ Any adult can execute a durable power of attorney, but almost all are senior citizens.
- ⁶ Lamp *ibid*.
- ⁷ Kim Boyer, "Elder Exploitation Litigation in Nevada: A Model for Effective Recovery of Assets," Accessed from <http://www.rlbolick.com/articles-10.htm>.
- ⁸ N.Y. Gen. Oblig. L. §§ 5-1501
- ⁹ New York General Obligations Law Section 5-1501 (m).
- ¹⁰ *Matter of Ferrara* (N.Y., No. 92, June 29, 2006).
- ¹¹ Ferrara *ibid*, p. 5.
- ¹² Ferrara *ibid*., p. 7.
- ¹³ Ferrara *ibid*., p. 10.
- ¹⁴ New York State Law Revision Commission, *Report on Proposed Revisions to the General Obligations Law in Relation to Powers of Attorney*, 2003
- ¹⁵ Counties with a senior population of less than 30,000 were excluded from this calculation.
- ¹⁶ Uniform Power of Attorney Act, drafted by the National Conference of Commissioners of Uniform State Laws, 2006. This act is intended as a model for states to adopt in statute.