Protecting Your Parents from Exploitation
Northern Illinois Chapter
Employee Assistance Professionals
38th Annual Conference

Presented by: Kerry R. Peck, Esq.
June 7, 2016

PECK RITCHLEY, LLC
ATTORNEYS AT LAW
CHICAGO | MOUNTAIN VIEW | NEW HAVEN
312 296 0909
www.PECKRITCHLEY.com

For Discussion Today

• Startling Statistics
• Exploitation Hypothetical
• How to Protect Yourself

Theft. Theft. Theft!

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

<table>
<thead>
<tr>
<th>Category</th>
<th>Annual Cost to Seniors</th>
<th>Defining Feature</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exploitation</td>
<td>$16.99 Billion</td>
<td>Operating openly claiming consent of the victim</td>
<td>Hidden shipping and handling or subscriptions, Work from home schemes, Quack weight loss or dietary products, Excessive Gifts, Misleading financial advice</td>
</tr>
</tbody>
</table>
Theft, Theft, Theft!

<table>
<thead>
<tr>
<th>Category</th>
<th>Annual Cost to Seniors</th>
<th>Defining Feature</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Fraud</td>
<td>$12.76 Billion</td>
<td>Anonymous illegal activity</td>
<td>Grandparent scam, Nigerian prince emails, Fake lottery winnings, Sweetheart Scam (Online dating sites)</td>
</tr>
<tr>
<td>Con artists</td>
<td>$9.85 Billion</td>
<td>Attempt to get you to give them money</td>
<td>Opening new credit cards, bank accounts, or loans, Car title or home equity loans on your property, Using card data by phishing, in data breach or from the mail</td>
</tr>
<tr>
<td>Identity Theft</td>
<td>$2.91 Billion</td>
<td>Opening or using accounts without authorization</td>
<td></td>
</tr>
</tbody>
</table>

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


Elder Abuse and Neglect Stats-Illinois

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

Source: Illinois Department on Aging Annual Report 2013
Elder Abuse and Neglect Stats - Illinois

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

Source: Illinois Department on Aging Annual Report 2013

Mickey Rooney

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

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

Ernie Banks

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

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

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

Common Scams
Handout in Folder

Description of 30 Scams

Common Exploitation Scams

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

Common Scenarios

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

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

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

Suzanne's Story

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

The Unexpected Happens

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

Suzanne was incredibly lonely
Starts to attend church
Meets a fellow parishioner named Tony, 59 years old
Tony starts to court Suzanne and drives her to church

Tony's is Troublesome

59 year old male (10+ age gap)
Divorced
Never worked
Lives off of previous wife's alimony
Very attentive to Suzanne

Cohabitation

Fast Forward ~ One year later.....
Tony suggests to Suzanne that they live together
Perfect time now as Tony's lease up on his apartment
Tony suggested they could get rid of the 'nosy caregivers'
Tony would be the only caregiver Suzanne needed
Joint Accounts

Suzanne adds Tony to her bank accounts

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

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

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

Suzanne readily agrees, "anything for you"

---

Wendy Worries

Initially thrilled her mom had a new companion in her life

HOWEVER, Suzanne's behavior started changing

Suzanne used to be a cautious decision maker

Wendy and Tony have argument

Tony tells Wendy to discontinue coming to Suzanne's home

---

For Discussion

Does Wendy have any legal recourse to protect her mother?
Remedies
- Powers of Attorney
  - Healthcare
  - Property
  - Temporary Guardianship
  - Plenary Guardianship
  - Trusts (Irrevocable, Special Needs, IRA Inheritance, Veterans Asset Protection)

Powers of Attorney
Legal document granting authority:
- to another
- whom you trust
- to act for you
- in certain circumstances
- Your "legal clone"

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

- Appoints an agent to manage your financial affairs upon incapacitation
- Avoids guardianship and probate proceedings
- Includes authority to manage real estate
- Can change title on property

- Especially useful to manage assets that cannot be owned jointly:
  - Health Savings Accounts
  - IRAs
  - Retirement Plans
  - Property not put in trust

Diminished Capacity

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

Definition of Decisional Capacity

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

- Ability to understand and appreciate the nature and consequences of a decision regarding medical treatment
- Ability to reach and communicate an informed decision
- Ability to weigh the risks versus benefits
When a patient lacks decisional capacity, medical decisions may be made by:

- **First:** An agent under valid power of attorney for health care.
- **Second:** A court-appointed guardian of the person, acting as surrogate under the Health Care Surrogate Act.
- **Third:** Another surrogate under the Health Care Surrogate Act.

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

**Illinois Healthcare Surrogate Act “Best Interests” Standard:**
- The patient’s best interests as determined by the surrogate decision maker.
- The surrogate shall weigh the burdens on and benefits to the patient of the treatment against the burdens and benefits of that treatment.
- The surrogate shall take into account any other information, including the views of family and friends, that the surrogate decision maker believes the patient would have considered, if able to act for herself or himself.

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

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

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

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

Plenary Guardian of the Person

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

Plenary Guardian of the Estate

- Make financial decisions;
- Entering into contracts;
- Take actions to benefit the estate for tax purposes;
- Estate Planning;
- File lawsuits;
- Sell real estate;
- Apply for government benefits, investigate and pursue eligibility for government benefits to conserve estate assets.
TRUSTS

Irrevocable Trusts

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

Irrevocable Life Insurance Trusts

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

Operations of Trust

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

Lifetime Gifting

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

Special Needs Trusts

- An essential aspect of estate planning for disability is the proper use of Special Needs Trusts.
- Focusing on the strategies for proper estate planning/administration with Special Needs Trusts.
When & Why is Special Needs Planning Required?

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

The History & Purpose of Special Needs Trusts

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

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

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

Three Types of Special Needs Trusts:

- Self-Settled Special Needs Trust
- Third-Party Special Needs Trust
- Pooled Special Needs Trust
Self-Settled Trust

Purpose:

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

Self-Settled Trust

When & Why?

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

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

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

Third Party Trust

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

Hypotheticals:

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

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

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

May offer creditor protection for the disabled beneficiary.

Pooled Trust

Established By

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

Pooled Trust

Funded By

This trust is funded with assets which belong to the disabled person, or assets which they are entitled to receive.
Protect your IRA’s  
Government could be the BIG WINNER

The Inherited IRA

Dad has a $400,000 IRA

Both kids inherit $200,000 each

40% Federal Income Tax = $80K

3.75% IL Income Tax = $7,500

Net After Taxes - $112,500 each

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

IRA Trust

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

IRA Inheritance Protection Trust

The goal is to stretch out the distributions over their life expectancies

$311,464  
Over 17 years

$342,501  
Over 20.2 years
Veteran’s Asset Protection Trust

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

VAPT Works For You!
• Protects your Principal Residence
• Protects all other assets
• Protects VA eligibility
• Protects Medicaid eligibility
• Protects from income tax
• Protects from estate tax

Thank you!
Kerry R. Peck

PECK RITCHIE, LLC
ATTORNEYS AT LAW
CHICAGO, NORTHFIELD, ORLAND PARK
312 261 0906
www.PECKRITCHIE.com