Winter 2018/2019

Estate Planning Update Winter 2018/2019 - Addressing Elder Financial Fraud

Financial fraud against elders is an increasing problem in our society. It is understandably a difficult topic for families to address because it touches on issues including loss of self-reliance and autonomy. Financial exploitation of the elderly is unfortunately very common—studies estimate that anywhere from one in six to one in three adults over age 65 has been a victim of a financial crime. As discussed further below, there are many reasons to believe it is on the rise as people live longer lives and families are more spread out. A number of factors contribute to the likelihood of elder financial abuse, including:

- **Wealth**. Those who have planned well enough to retire generally have significant financial resources and can be seen as targets. In addition, the general shift in society from pensions to individually managed retirement plans and investments leaves more funds directly under the management of retirees.
- **Cognitive Changes**. Aging can bring about cognitive changes that increase vulnerability. While the reasons are not fully understood, as people age they can become overly trusting and more likely to accept claims or promises that are unlikely to be true. People may become more likely to act rashly or impulsively. Someone who is financially risk-averse, cautious and skeptical can begin to lose these qualities. These changes can be a common part of aging, separate from any diagnosed illness.
- **Dependency**. An older person may become overly dependent on a relative or third-party caregiver, becoming more generous or less likely to say no to requests. The strain placed on family members by caregiving responsibilities may lead to conflict and disagreement about what arrangements are fair within the family.
- **Social Isolation**. Social isolation of older individuals and the ensuing lack of social support is a risk factor that can lead to exploitation.

Protecting elders from financial abuse is not a simple task. It can be difficult for all involved to address the emotional and social factors associated with sharing financial information and asking for help with decisions rather than making them independently. Expressing concern or offering help with financial matters may be interpreted as a threat to independence. Some suggestions for approaching these issues are:

- **Watch for Warning Signs**. Unusual financial activity, excessive gifts to caretakers and changes in spending patterns can all be causes for concern. Changes in communications with family members about finances can also be a sign of a problem. Keep in mind that caretakers, while in a position to take advantage, are also in a good position to spot and communicate these warning signs.
- **Communicate**. Simply spending time in conversation, in person or on the phone, may make it easier for family members to spot problems, and for the elder to bring up concerns or ask for assistance.
- **Ask for Advice**. Estate planning attorneys, accountants and financial advisers may be able to facilitate communications among family members and offer solutions, particularly if they have long-standing relationships with the elder. Advisers should be able to draw on their experience in similar situations and offer objective but caring assistance.
- **Use Estate Planning Documents**. Powers of attorney and revocable trusts can be used as vehicles to allow family members or advisers to participate in management of the elder's affairs. Revocable trusts in particular can be customized to facilitate shared responsibilities or oversight—see this article, "Planning for Incapacity Using Revocable Trusts," in our

June 2018 Update. It is important to stress there are many ways to share responsibilities rather than "taking over"all of the elder's financial affairs.

- **Circles of Support**. We are all dependent, to a greater or lesser extent, on family, friends, neighbors and others. Particularly in a world where family members often live far from each other, maintaining social circles and staying involved with others allows for mutual support.

While potential fraud against elders is not a pleasant topic to consider, it helps to have an increased level of awareness of some of its causes and how to recognize it. It may also be helpful to know many others around us are experiencing the same concerns and working through the same potential solutions.