

# Legal Reference for Elder Abuse and Financial Exploitation in the District of Columbia



**DC TROV**

The District's Collaborative Training & Response for Older Victims

## **Acknowledgements and Disclaimers**

In 2013, Network for Victim Recovery of DC, the Metropolitan Police Department, Adult Protective Services, Legal Counsel for the Elderly, and the United States Attorney's Office for the District of Columbia, and the Office of the Attorney General for the District of Columbia convened DC TROV: The District's Collaborative Training & Response for Older Victims.

DC TROV is a multidisciplinary team dedicated to improving the response to victims of elder abuse by increasing the ability of governmental agencies, victim assistants, law enforcement personnel, prosecutors, and local courts to recognize, assist, investigate, and prosecute elder abuse.

This quick reference guide is borne from the many training sessions that DC TROV held with MPD and others in the District of Columbia and with pro bono support from Sidley Austin, LLP.

The views herein do not reflect the individual organizations opinions or policies and have not been approved by individual organizations. The information provided is for quick reference and may not be kept up-to-date. This guide does not constitute legal advice. All information and content is for general purposes only.

Network for Victim Recovery of DC is a registered 501(c)(3) not-for-profit organization and therefore donations are tax deductible to the full extent of the law. Our federal tax ID number is 45-4888353.

## How to use this quick reference guide

This guide was designed specifically for the District of Columbia. It provides a quick reference to recognize the various types of elder abuse, how legal concepts and tools can be misused to commit elder abuse and the actions that law enforcement can consider if they suspect elder abuse has occurred.

This pocket guide is divided into 12 colored sections.

### White: Background Information

- Older Residents of Washington DC
- Types of Elder Abuse
  - Physical Abuse
  - Sexual Abuse
  - Emotional or Psychological Abuse
  - Neglect
  - Abandonment
  - Self-Neglect
  - Stalking
- Financial or Material Exploitation
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- Adult Protective Services
- Mandatory reporting
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- Consent
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## Multicolored PAGES: Legal Documents and Tools

	Light Yellow: Deeds and Life Estates
	Dark Green: Guardians/Conservators
	Light Green: Advance Directives: Health Care Power of Attorney, Health Care Proxy, Living will
	Teal: Joint Owners/Joint Accounts
	Dark Blue: Medicaid Planning
	Light Blue: District of Columbia Power of Attorney
	Violet: Long-term Care Facilities: Nursing Homes, Assisted Living, Board and Care Homes
	Light Purple: Representative Payees, VA Fiduciaries, and Other Government Benefit Money Managers
	Dark Yellow: Trusts
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	Orange: District Resources



## Older District Residents

According to the 2018 American Community Survey, of the estimated 702,455 District residents, 14.2% were over the age of 62. The rates of seniors living with disabilities in the District are comparable to the national average. However, there is a particularly vibrant deaf community due to the draw of Gallaudet University.

### Risk factors for being an older victim may include:

- Dementia
- Isolation, such as being homebound or homeless
- Being a prior victim of abuse
- Lack of social support, such as lack of family or friends nearby
- Living with other people
- Mental illness
- Physical impairments
- Substance abuse

There may be communication limitations including language proficiency, deafness, assistive device reliance, illiteracy, cultural barriers, and declining eyesight. Be patient. Be respectful.

## Types of Elder Abuse

Elder abuse includes physical, sexual, and psychological abuse; neglect; and financial exploitation. Elder abuse costs society billions of dollars annually in lost income and assets and in health care, social services, and legal system expenses.

Additionally, acts of elder abuse often violate one or more traditional criminal laws, such as sexual assault, battery, larceny, and murder.

The following pages include the major types of elder abuse, their general definitions as defined by The National Center on Elder Abuse (NCEA), possible indicators of each type with the inclusion of references to the Code of the District of Columbia where there is specific reference to elder abuse and financial exploitation of older adults. But briefly, below is a list of possible warning signs.

- Elder's report – sometimes subtle
- Medication: over- or under-utilization
- Elder's deviation from their typical behavior
- Bruises, black eyes, welts, lacerations, rope marks
- Injuries in various stages of healing
- Broken medical equipment (walker, glasses, hearing aid, etc.)
- Caregiver refuses to let you talk to senior alone
- Strong odors of urine or feces
- Lack of food
- Locks outside of doors (to lock older individual in a room)

- Non-traditional restraints (belts, neckties near bed)
- Damage to home caused by abusive behavior
- Unusual and/or inconsistent transactions
- New debit card, credit card &/or increased activity
- Withdrawals over daily maximum limit
- Sudden insufficient funds
- Bounced checks and/or nonpayment for services
- Unusual credit or debit transactions
- Wired funds
- Change to Internet banking
- Closed CDs, without regard to penalties
- New POA, account holder, change of address
- Coercion using or abuse of a pet by another

## Physical Abuse

Physical abuse is defined as the use or threat of physical force that may result in bodily injury, physical pain, or impairment. It may include but is not limited to such acts of violence as striking (with or without an object), hitting, beating, biting, pushing, shoving, shaking, slapping, kicking, pinching, and burning. In addition, inappropriate use of drugs, physical restraints, force-feeding, and physical punishment fall in this category.

**D.C. Code § 22–933. Criminal abuse of a vulnerable adult or elderly person, Abuse is defined in the D.C. Code § 7–1901. Definitions.**

### **Indicators could include but are not limited to:**

- bruises, black eyes, welts, lacerations, and rope marks;
- bone fractures, broken bones, and skull fractures;
- open wounds, cuts, punctures, untreated injuries in various stages of healing;
- sprains, dislocations, and internal injuries/bleeding;
- broken eyeglasses/frames;
- signs of being restrained;
- laboratory findings of medication overdose or under-utilization of prescribed drugs;
- an elder's report of being hit, slapped, kicked, or mistreated;
- an elder's sudden change in behavior; and
- the caregiver's refusal to allow visitors to see an elder alone.

### **Possible crimes include:**

- |                      |                |
|----------------------|----------------|
| • Assault            | • Elder abuse  |
| • Aggravated assault | • Kidnapping   |
| • Attempted murder   | • Manslaughter |
| • Battery            | • Murder       |
| • Domestic violence  |                |



## Sexual Abuse

Sexual Abuse is defined as non-consensual sexual contact of any kind with an elderly person. Actual or attempted sexual contact with any person incapable of giving consent is also considered sexual abuse. It includes, but is not limited to, unwanted and/or forcible touching, all types of sexual assault or battery, such as rape, sodomy, coerced nudity, and the taking of sexually explicit photos or videos. **D.C. Code § 22–933. Criminal abuse of a vulnerable adult or elderly person, Sexual Abuse is defined in the D.C. Code § 22–3001. Definitions.**

### **Indicators could include but are not limited to:**

- bruises around the breasts or genital area;
- unexplained venereal disease or genital infections;
- unexplained vaginal or anal bleeding;
- torn, stained, or bloody underclothing; and
- an elder's report of improper touching, being sexually assaulted or raped.

### **Possible crimes include:**

- Assault
- Aggravated assault
- Attempted murder
- Battery
- Domestic violence
- Elder abuse
- Rape
- Sexual assault
- Sexual battery
- Trafficking

## **Emotional or Psychological Abuse**

Emotional or Psychological abuse is defined as the infliction of anguish, pain, or distress through verbal or nonverbal acts. It includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment. In addition, treating an older person like an infant; isolating an elderly person from his/her family, friends, or regular activities; giving an older person the 'silent treatment;' and enforced social isolation are examples of emotional or psychological abuse. **D.C. Code § 22-933 Criminal abuse of a vulnerable adult or elderly person.**

### **Indicators could include but are not limited to:**

- being emotionally upset or agitated;
- being extremely withdrawn and non-communicative or non-responsive;
- unusual behavior usually attributed to dementia (e.g., sucking, biting, rocking); and
- an elder's report of being verbally or emotionally mistreated.

### **Possible crimes include:**

- Elder abuse
- Harassment
- Hate crimes
- Stalking

## Neglect

Neglect is defined as the refusal or failure to fulfill any part of a person's obligations or duties to an elder. Neglect may also include failure of a person who has fiduciary responsibilities to provide care for an elder (e.g., pay for necessary home care services) or the failure on the part of an in-home service provider to provide necessary care. Neglect typically means the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, hygiene, medical care, medicine, comfort, personal safety, and other essentials for well-being. **D.C. Code §22-934 Criminal Negligence.**

### **Indicators could include but are not limited to:**

- dehydration, malnutrition, untreated bed sores, and poor personal hygiene;
- unattended or untreated health problems;
- hazardous or unsafe living condition/arrangements (e.g., improper wiring, inappropriate temperatures, or no running water);
- unsanitary and unclean living conditions (e.g., dirt, fleas, lice on person, soiled bedding, fecal/urine smell, inadequate clothing); and
- an elder's report of being mistreated.

### **Possible crimes could include:**

- |                |           |
|----------------|-----------|
| • Elder abuse  | • Murder  |
| • Manslaughter | • Neglect |

## Abandonment

Abandonment is defined as the desertion of an elderly person by an individual who has assumed responsibility for providing care for an elder, or by a person with physical custody of an elder.

### Indicators include:

- the desertion of an elder at a hospital, a nursing facility, or other similar institution;
- the desertion of an elder at a shopping center or other public location; and
- an elder's own report of being abandoned.

**Abandonment NOT a crime** in the District. However, it is important to look at the possibility of financial exploitation of a vulnerable adult as described in **D.C. Code §22-933.01 Financial exploitation of a vulnerable adult or elderly person** and whether an adult child or guardian/conservator has taken over the pension check, assets or home of the elder.

## Self-Neglect

Self-neglect is characterized as the behavior of an elderly person that threatens his/her own health or safety. Self-neglect generally manifests itself in an older person as a refusal or failure to provide himself/herself with adequate food, water, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions. The definition of self-neglect excludes a situation in which a mentally competent older person, who understands the consequences of his/her decisions, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice. **Self-Neglect is defined in D.C. Code §7–1901.13(A).**

### **Indications could include but are not limited to:**

- dehydration, malnutrition, untreated or improperly attended medical conditions, and poor personal hygiene;
- hazardous or unsafe living conditions/arrangements (e.g., improper wiring, no indoor plumbing, no heat, no running water, [hoarding]);
- unsanitary or unclean living quarters (e.g., animal/insect infestation, no functioning toilet, fecal/urine smell);
- inappropriate and/or inadequate clothing, lack of the necessary medical aids (e.g., eyeglasses, hearing aids, dentures); and
- grossly inadequate housing or homelessness.

**Self-neglect is NOT a crime.** However, it has two connections to the criminal justice system:

- Self-neglecting behaviors may be an indicator or result of some other type of abuse (e.g., financial exploitation may result in an older person not being able to afford food or utilities); and
- An older person who is self-neglecting may come to the attention of the criminal justice system because of criminal behavior (e.g., law enforcement may be asked to investigate allegations that a self-neglector is abusing or neglecting a child or dependent adult, is committing animal abuse or neglect, or is violating municipal codes by hoarding animals or other things). **Provision of Protective Services §7-1905(c-1)**

## Stalking

Stalking can occur at any age. Later in life, a stalking victim is more likely to know the stalker and often occurs as part of domestic violence. Stalking is defined as severe intrusions on an individual's personal space and autonomy. **D.C. Code § 22–3131**  
**Legislative intent.** According to **D.C. Code § 22–3133** stalking is done with intent or the perpetrator should have known the actions would cause an individual to:

- Fear for his or her safety or the safety of another person;
- Feel seriously alarmed, disturbed, or frightened; or
- Suffer emotional distress.

A continuing act of stalking each 24-hour period is considered a separate occasion. The conduct on each of the occasions need not be the same as it is on the others.

Of note, the dangerous nature of stalking is strongly connected or leads to domestic violence and sexual assault.

### **Possible crimes, often associated with stalking could include:**

- Assault
- Burglary
- Conspiracy
- Criminal Mischief
- Eavesdropping
- Forgery
- Fraud

- Harassment
- Hate crimes
- Home invasion
- Murder
- Identity Theft
- Intimate partner violence
- Kidnapping
- Mail theft
- Nonconsensual dissemination of intimate images
- Protective order violations
- Robbery
- Sexual assault
- Theft
- Threats
- Trespass
- Utility theft
- Vandalism
- Vehicle tampering
- Vehicle theft
- Voyeurism
- Wiretapping



## Financial or Material Exploitation

According to **D.C. Code § 7-1901 Definitions**, "Exploitation" means the unlawful appropriation or use of another's "property", defined in **D.C. Code § 22-3201**, for one's own benefit or that of a 3rd person. Financial or Material Exploitation is defined as the illegal or improper use of an elder's funds, property, or assets. Examples include cashing an elderly person's checks without authorization; misusing an older person's money or possessions; deceiving an older person into signing any document (e.g., contracts or will); and the improper use of conservatorship, guardianship, or power of attorney. **DC Code §22-933.01 Financial Exploitation of a Vulnerable Adult.**

### Indicators could include:

- sudden changes in bank account or banking practice, including an unexplained withdrawal of large sums of money by a person accompanying the elder;
- the inclusion of additional names on an elder's bank signature card;
- unauthorized withdrawal of the elder's funds using the elder's ATM card;
- abrupt changes in a will or other financial documents;
- unexplained disappearance of funds or valuable possessions;
- substandard care being provided or bills unpaid despite availability of adequate financial resources;
- an elder's signature being forged for financial transactions or for the titles to possessions;

- appearance of previously uninvolved relatives claiming rights to an elder's affairs or possessions;
- unexplained sudden transfer of assets to a family member or someone outside the family;
- the provision of services that are not necessary; and
- an elder's report of financial exploitation.

**Possible crimes could include:**

- Elder abuse
- Embezzlement
- False instrument
- Financial exploitation
- Forgery
- Fraud (e.g., credit card, tax, or Medicaid),
- Identity theft
- Larceny
- Money laundering
- Theft
- Trafficking

## Perpetrators of Abuse

Older adults may be abused, neglected, or exploited by:

- *Family members*
  - Spouses or partners
  - Adult children
  - Grandchildren or great-grandchildren
  - Other relatives
- *Friends or Neighbors*
- *Caregivers*
  - Paid, such as staff of home care agencies or nursing homes
  - Volunteers
- *Fiduciaries, including*
  - Agents under a power of attorney
  - Court-appointed guardians or conservators
  - Trustees of a trust
  - Other professionals who have an obligation to act in their clients' best interest, such as financial advisors, lawyers, and real estate agents
- Risk factors for being a perpetrator may include:
  - Dependence of the perpetrator on the victim for financial or other forms of support
  - History of abuse, neglect, or exploitation
  - Living with the victim
  - Mental illness
  - Substance abuse

## Adult Protective Services

In the District of Columbia, Adult Protective Services (APS) investigates allegations of adult abuse, neglect, self-neglect, and exploitation of vulnerable, impaired adults 18 years and older without regard to income. **APS is defined in Chapter 19 of D.C. Code.** The statute requires APS to investigate:

- Within 24 hours in cases alleging risk of life-threatening harm.
- Within 10 working days where the circumstances do not present the risk of life-threatening harm.

APS must have the capacity to receive and investigate reports 24 hours a day, seven days a week at 202-541-3950. APS may release reports to law enforcement.

If a report alleges the existence of an immediate, substantial risk of life-threatening harm to an adult in need of protective services, the Department shall immediately notify the police, who shall conduct a prompt investigation to determine the need for police intervention. In addition, within 24 hours of the Department's receiving such a report, an APS worker shall commence an investigation to determine the need for protective services. These two investigations may be conducted either jointly or separately.

**D.C. Code §7–1904.3 Investigations.**

## Mandatory Reporting

In D.C., the APS law mandates that certain professionals or other individuals report suspected elder abuse to APS. It also requires APS to inform other agencies, such as law enforcement or the agency that licenses and certifies nursing homes, about reports under certain circumstances.

- **Mandatory Reporters according to D.C. Code §7-1903 Reporting Requirements.**
  - Conservator
  - Guardian
  - Health-care administrator
  - Licensed health professional
  - Police officer
  - Humane officer of any agency charged with the enforcement of animal cruelty laws
  - Bank manager
  - Financial manager
  - Social worker
- **When to Report:** when one knows or reasonably suspects that an adult needs protective service.
- **Where to Report:** Adult Protective Services (APS) or Metropolitan Police Department (MPD).

### **Actions to Consider if you identify a failure to report:**

- Consider whether failure or delay in making a mandated report resulted in the victim suffering further harm, other

victims experiencing elder abuse, or the perpetrator not being held accountable.

- Consider whether failure or delay in making a mandatory report allowed evidence to be lost, altered, or destroyed.
- Consider whether failure or delay in making a mandatory report is evidence of a cover up or conspiracy.
- A mandatory reporter's failure to make a report may be grounds for a fine, loss of license, or other disciplinary action by an employer or a licensing entity. **D.C. Code §7-1912.1(a)(5) Penalties; enforcement.**
- Make a report to APS if you suspect elder abuse and the case was not referred to your agency by APS.

## **Enhanced penalty for crimes against senior citizen victims**

Any person who commits any offense listed against an individual who is 65 years of age or older, at the time of the offense, may be punished by a fine of up to 1 1/2 times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 1/2 times the maximum term of imprisonment otherwise authorized for the offense, or both. **D.C. Code §22–3601 Enhanced penalty for crimes against senior citizen victims.**

This applies to the following offenses:

- Abduction
- Arson
- Aggravated assault
- Assault with a dangerous weapon
- Assault with intent to kill
- Assault with intent to commit any other offense
- Sexual Assault in the first and second degree
- Burglary
- Carjacking
- Armed carjacking
- Extortion or blackmail accompanied by threats of violence
- kidnapping
- Malicious disfigurement
- Manslaughter

- Mayhem
- Murder
- Robbery
- Sexual abuse in the first, second, and third degrees
- Theft
- Fraud in the first degree and second degree
- Identity theft
- Financial exploitation of a vulnerable adult or elderly person
- An attempt or conspiracy to commit any of the foregoing offenses

The person over 65 does not have to be considered “vulnerable” for this enhancement to apply.



## Consent

- According to **D.C. Code § 22–3001(4)** “**Consent**” means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent.
- The failure to get consent may be the element of a crime such as theft or sexual assault. **D.C. Code § 22–3006 Misdemeanor Sexual Assault.**
- Consent can be given in writing, verbally, or through behavioral indicators such as nodding.
- To give legally valid consent, a person must:
  - have decision-making capacity,
  - have knowledge of the true nature of an act, and
  - act freely and voluntarily.
- Reasons for the inability to provide consent may include:
  - lack of decision-making capacity,
  - undue influence, or
  - fraud and misrepresentations about the real circumstances of a transaction.

## Decision-Making Capacity

- Decision-making capacity (“capacity”) means the cognitive ability to make a decision. Sometimes referred to as competence or competency. **D.C. Code § 21–2203 Presumption of Capacity, § 21–2204 Certification of Incapacity.**
  - “Incapacitated individual” means an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator. **D.C. Code § 21–2011(11) Definitions – Power of Attorney.**
  - Capacity may fluctuate over time and even over the course of a day. People with dementia (which includes Alzheimer’s disease) often have more capacity earlier in the day and later in the day.
  - Just because a person is older or has an illness or condition that affects cognitive abilities does not mean the person lacks capacity. A person in the early to middle stages of Alzheimer’s disease or someone who has a developmental disability may have capacity to make some or all decisions.

- A person's decision-making capacity may be affected by alcohol, drugs (legal and illegal), nutrition, and even how much sleep they've had.
- There are different standards of capacity for different types of decisions. The law requires a lower standard of capacity to make a gift or a will than it does to sign a contract. Complex decisions usually require a higher standard of decision-making capacity. For financial matters, at the very least, a person must understand the nature of the decision being made and the potential effect of that decision. **DC Code §21–2047.02**
- The law presumes that adults have capacity, unless a court decides differently and appoints a guardian or conservator to make decisions for the adult. Provisions for **Guardianship, Protective Proceedings, and Durable Power of Attorney D.C. Code Chapter 20.**

## Undue Influence

- According to DC Code the definition of undue influence is the mental, emotional, or physical coercion that overcomes the free will or judgment of a vulnerable adult or elderly person and causes the vulnerable adult or elderly person to act in a manner that is inconsistent with his or her own wellbeing.  
**D.C. Code § 22-933.01(c) Financial exploitation of a vulnerable adult or elderly person.**
- Undue influence can be exerted over anyone but is easier to commit undue influence on someone who has diminished capacity.
- A victim of undue influence may not recognize what is happening.
- Even if a victim has capacity, undue influence invalidates consent.

## Relevance

- Consent, decision-making capacity, and undue influence—or some combination of them—are critical issues in many cases of elder abuse.
- A person is guilty of financial exploitation if the person intentionally and knowingly:
  - Uses deception, intimidation, or undue influence to obtain property or assume a legal obligation.
  - Violates any provision of law proscribing theft, extortion, forgery, fraud, or identity theft.

- Capacity to make past decisions will be the central issue in many elder abuse cases. It is possible for skilled clinicians to retroactively assess capacity. If a person clearly lacked capacity, his or her consent cannot be legally valid. But a person who had sufficient capacity to make a decision cannot have given valid consent if the decision was not knowing and voluntary due to coercion, fraud, or undue influence.

### **Actions to consider**

- Consider whether the alleged victim had capacity to make the decisions in question.
- Determine whether the victim has had a capacity assessment or whether one is necessary. Skilled clinicians can retroactively assess capacity. The Mini-Mental Status Exam (MMSE or mini-mental) that is widely used by APS **does not** assess decision-making capacity.
- Do not limit an investigation to the issue of capacity. Consider whether the alleged victim's decisions may have resulted from:
  - Coercion
  - Fraud
  - Intimidation
  - Misrepresentation
  - Threats
  - Undue influence



## Deeds and Life Estates

A deed is a legal document that transfers the ownership of real estate to someone else. A deed may be used to add someone as a joint owner of the property. A deed does not affect the owner's obligation to pay the mortgage if there is one. **D.C. Codes § 21–**

### **2011 Definitions.**

- There are different types of deeds. The type of deed seen most often in cases involving elder abuse is the **quitclaim** deed (often incorrectly called a quick claim deed). Quitclaim deeds transfer some or all of an owner's interest in a property without making any legal guarantee that the interest was valid. Valid reasons include:
  - Convenience/planning for loss of capacity;
  - Transfer of property after death without the costs and time to probate a will;
  - A trade for care and companionship.
- A life estate is created when an owner deeds real estate to someone else or adds another person's name to the deed but reserves the right to continue living on the property for the remainder of his or her life or until some other specified event occurs. It is possible to inherit a life estate in property from someone else. A person who inherits a life estate cannot sell or give away the property but only can use it for the remainder of his or her life.

## Relevance to Elder Abuse

- Deeds and life estates may be misused to commit financial exploitation in numerous ways. Some examples:
  - Someone who may benefit destroys a deed to prevent the owner from transferring property to someone else.
  - Someone steals the identity of the property owner and forges the deed.
  - An owner who lacks appropriate decision-making capacity is coerced, induced, threatened, or tricked into signing a deed.
  - An owner who has capacity signs a deed as the result of fraud, misrepresentation, or undue influence.
- Problems may come to light before or after the older person dies and there may be multiple victims including:
  - the older person whose property was stolen or estate plan altered;
  - other joint owners;
  - the person(s) who was intended to receive the property or proceeds from sale.

## Actions to consider

- The circumstances surrounding the preparation, signing, or destruction of a deed may constitute a District or federal crime relative to:
  - Conspiracy
  - Elder abuse
  - False instrument
  - Financial exploitation
  - Forgery
  - Fraud
  - Identity theft
  - Larceny
  - Theft



- Are there are other victims, such as joint owners whose interests were harmed?
- Is the alleged perpetrator in a position (e.g., a caregiver, guardian/conservator, or lawyer) to victimize other older people?
- If the older person has died, consider whether death may have been caused or hastened by someone who may benefit financially.
- A civil lawyer may be able to help restore ownership of the property or use of the life estate or obtain monetary damages for the misappropriation of the property. Legal Counsel for the Elderly provides free legal advice, assistance, and referrals to all District residents 60 years of age or older at 202-434-2120.
- Make a report to Adult Protective Services.



## Guardians/Conservators

A Guardian or Conservator is appointed by a court make personal and/or financial decisions for a person if a judge or a jury decides that the person lacks decision-making capacity. **D.C. Code § 21–2004. Effect of a finding of incapacity.**

- An individual that has been deemed incapacitated isn't legally incompetent and retains all their legal rights and abilities other than those expressly limited or curtailed in the order of appointment of a guardian or in a protective proceeding, or subsequent order of the court. **D.C. Code § 21–2011**

### Definitions.

- A **guardian** is appointed by the Court in response to the filing of a petition to make health care, quality of life, placement (housing), and legal decisions for an incapacitated individual who is eighteen or older.
- A **conservator** is appointed by the Court in response to the filing of a petition to handle income or assets of the ward for the support, care, and welfare of the ward so that they will not be wasted or dissipated.
- A guardian/conservator has a legal duty to act as a **fiduciary**. This means, generally, that the guardian/conservator must act in a totally trustworthy manner and make decisions that are consistent with decisions that the incapacitated person made before losing decision-making capacity or that are in the incapacitated person's best interest.

## Relevance to Elder Abuse

- Someone may wrongfully take an individual to another state to get or avoid a guardianship/conservatorship.
- A guardian's/conservator's misuse of legal authority may result in financial exploitation or neglect. For example:
  - The guardian/conservator exceeds the authority given by the court (e.g., makes health care decisions when not given that authority).
  - The guardian/conservator self-deals (e.g., pays his/her own bills with the incapacitated person's money or sells the incapacitated person's house below market rate to a relative).
  - The guardian/conservator acts contrary to incapacitated person's best interest (e.g., because of financial motives, the guardian/conservator fails to pay for adequate health care services, isolates the incapacitated person from family or friends, or fails to ask the court to end the guardianship/conservatorship when the incapacitated person regains capacity).

## Actions to Consider

- Consider whether a guardian's/conservator's breach of fiduciary duty District or federal laws relative to:
  - Elder abuse
  - Embezzlement
  - False instrument
  - Financial exploitation
  - Forgery
  - Fraud (e.g., credit card, tax, or Medicaid)
  - Larceny
  - Money laundering
  - Neglect
  - Theft

- Obtain and analyze the court's monitoring documents as evidence; determine whether reports have been submitted when required.
- Ask the person claiming to be a guardian/conservator to produce a court's order or letter. Investigate further if that person cannot or will not produce a court document, if the document does not name that person as the guardian/conservator, or if the document does not appear to allow the actions in question, ask the prosecutor's office for an opinion.
- Initiate actions to freeze the incapacitated person's assets or take other steps to stop the guardian/ conservator from dissipating remaining assets.
- Is the guardian/conservator in a position to do this to others?
- Consider notifying the court if a guardian/conservator is under criminal investigation.
- If the incapacitated person has died, consider whether death may have been caused or hastened by actions or inactions of the guardian/conservator.
- Abuse or misuse of authority by a guardian/conservator is a civil problem too. Civil law remedies may stop the guardian/conservator from exploiting or neglecting the incapacitated person or may lead to recovery of exploited money and property.
- Make a report to Adult Protective Services.



## Advance Directives: Health Care Power of Attorney, and Living Will

Advance directives are used to guide decisions about future health care if a person loses the capacity to make or the ability to express those decisions themselves.

- A **health care power of attorney** is used by a person (the principal) to give someone else (the proxy or agent) legal authority to make health care decisions for the principal. **D.C. Code §21-2205 Durable Power of Attorney for Health Care.**
- A person must have appropriate decision-making capacity to make an advance directive. And the Durable Power of Attorney for healthcare must be witnessed by 2 people. At least 1 cannot be related to the principal by blood, marriage or adoption and shall not be entitled to any part of the estate of the principal by a current will or the law.
- A declaration or **living will** does not authorize another person to make decisions. Instead, it instructs the proxy/agent, some other decision-maker (such as a guardian/conservator), or health care providers about the type of care (including emergency treatment) that a person wants. **D.C. Code §7-622 Declaration.**
- A Medical Orders for Scope of Treatment (M.O.S.T) Form is similar to a Do Not Resuscitate Order, instructing end of life emergency medical procedures to perform. **D.C. Code § 21-2221.04. MOST Form.**

- The MOST Form is divided into four (4) sections (A-D), simplifying patient preferences for life-sustaining treatments, including: Cardio-Pulmonary Resuscitation (CPR), Medical Interventions/Treatment Options, Antibiotics, and Medically-Assisted Nutrition. Any incomplete section of the MOST form implies full-treatment for that section. The form must be completed by the patient or their authorized representative and an authorized DC-licensed healthcare provider to be considered valid. **D.C. Code § 21–2221.04. MOST Form.**
- A proxy/agent must make decisions that are consistent with the principal’s instructions.
- As long as the principal has capacity, the principal can revoke a Power of Attorney for Health Care.
- Unless a Durable Power of Attorney for Health Care expressly provides otherwise, if the marriage or domestic partnership of the principal is dissolved, annulled, or terminated the designation of the former spouse or domestic partner as an attorney in fact to make health-care decisions for the principal is automatically revoked. **D.C. Code §21-2208 Revocation.**

### **Relevance to Elder Abuse**

- Elder abuse may occur before the advance directive is signed. **D.C. Code § 21–2202. Definitions Durable Power of Attorney.**
  - A person who lacks appropriate decision-making capacity to make an advance directive may be coerced, persuaded, threatened, or tricked into signing.



- A person with decision-making capacity may sign the advance directive because of undue influence, duress, fraud, or misrepresentation.
- Someone may prepare an advance directive that does not reflect the person's wishes.
- The signature on an advance directive may be forged.
- Providing health care treatment to a person whose advance directive indicates that such treatment is not wanted could be considered physical abuse. Failure to provide or arrange for treatment for a person whose advance directive indicates that such treatment is desired could be considered neglect.
- A proxy/agent may make treatment decisions that are inconsistent with the guidance provided in an advance directive (or otherwise known) and are not in the older person's best interest. Motives may include:
  - Hastening the older person's death to receive an inheritance or end the burden of acting as a caregiver.
  - Saving money.
  - Preventing changes to the status quo, such as having to move out of the older person's home or losing other financial support provided by the older person.
  - Preventing family members, Adult Protective Services (APS), or law enforcement from having access to the older person.
  - Covering up evidence of a crime.
- Family members may disagree about who the proxy/agent is, what health care instructions were provided, or what treatment should be given. These disputes may involve

allegations of elder abuse by one family member against another.

### **Actions to Consider**

- The circumstances surrounding the signing of an advance directive or the proxy's/agent's activities or decisions may violate DC or federal laws relative to:
  - Elder abuse
  - False instrument
  - Financial exploitation
  - Forgery
  - Fraud (e.g., credit card, tax, or Medicaid)
  - Identity theft
  - Larceny
  - Manslaughter
  - Murder
  - Neglect
  - Theft
- A proxy/agent named in a legally defective advance directive may not have legal authority to make decisions. However, the defective document may still provide evidence of the person's wishes. **D.C. Code § 21–2206. Rights and duties of attorney in fact.**
- Investigate further if a person claiming to be a proxy/agent cannot or will not produce the advance directive, if the document does not name that person as a proxy/agent, or if the document does not appear to authorize the decisions in question.

- Consider whether it is necessary to protect the older person from physical or financial harm by taking temporary custody of the older person.
- If the older person has died, consider whether death may have been caused or hastened by actions or decisions that were contrary to the older person's wishes.
- Civil law remedies may stop unwanted care, lead to provision of desired care, or lead to financial compensation for physical and emotional harm.
- Make a report to APS.



## Joint Owners/Joint Accounts

Bank or credit union accounts, investments, securities, real estate, and other forms of property can be owned by more than one person. This is generally called joint ownership. **D.C. Code § 26–506.06. Joint accounts.**

- The form of joint ownership governs how much of the property is owned by each joint owner, the rights of each owner to use or sell the property, and what happens to the property after an owner dies. **D.C. Code § 19–101.04 Family allowance.**
- Common forms of joint ownership include:
  - **Joint account:** an account in the name of more than one person.
  - **Joint tenancy:** usually means the surviving owner is entitled to all the property.
  - **Tenancy by the entirety:** usually refers to ownership by spouses, with the survivor entitled to all the property.
  - **Tenancy in common:** usually means each owner is entitled to a percentage of the property, and his or her survivors only inherit that percentage.
- There are many reasons for jointly owning property. Two common reasons include:
  - Convenience/planning for the possible loss of capacity.
  - Enabling property to be transferred after the older person's death without the costs and time associated with probating a will or the estate if there is no will in court.

## Relevance to Elder Abuse

Financial exploitation related to jointly owned accounts and property can occur if:

- A person named on a bank account only for convenience takes all or most of the money from the account. **D.C. Code § 7-1901 Definitions.**
- Someone who may benefit financially is involved in establishing a joint ownership that does not reflect the older person's true wishes through acts such as forgery, fraud, identity theft, misrepresentation, or undue influence.
- A person without capacity is coerced, induced, threatened, or tricked into establishing joint ownership that financially benefits another person.
- A joint owner who has capacity gives up his or her interest in property to another joint owner as a result of coercion, fraud, inducements, misrepresentation, threats, trickery, or undue influence.

## Actions to Consider

- The circumstances surrounding establishment of joint ownership or the sale or transfer of jointly owned property may constitute a District or federal crime relative to:
  - Conspiracy
  - Elder abuse
  - False instrument
  - Financial exploitation
  - Forgery
  - Fraud
  - Identity theft
  - Larceny
  - Theft

- If a joint owner was legally entitled to all the money in the account or to full control of the property, prosecution may be difficult or impossible.
- If the older person has died, determine whether the death was caused or hastened by a joint owner or someone else who may benefit financially.
- Consider whether there are other victims, such as the older person's intended recipients of the jointly owned property or other joint owners whose interests were harmed.
- Is the alleged perpetrator in a position (e.g., a caregiver, guardian/conservator, or lawyer) to victimize other older people?
- Civil law remedies may prevent further exploitation. They also may lead to recovery of property that was wrongfully taken or sold, or to monetary damages for that property.
- Make a report to Adult Protective Services.





## Medicaid Planning

Medicaid is a health and medical services program for certain individuals. Adults who do not have dependent children may be covered if they (1) are over age 65, or blind, or disabled; and (2) have low incomes and limited assets. **D.C. Code § 7-761.07.**

### Medicaid services.

- Medicaid pays for long-term care services provided to eligible individuals.
- Federal law allows individuals to spend down their assets in certain ways so that they can qualify for Medicaid. This is commonly referred to as **Medicaid planning**.

### Relevance to Elder Abuse

- Even though Medicaid planning is legal, the circumstances surrounding it may involve financial exploitation by an older person's relatives or other individuals who want to preserve assets for themselves. Examples include:
  - A person with limited decision-making capacity is coerced, persuaded, threatened, or tricked into engaging in Medicaid planning.
  - A person who has decision-making capacity participates in the process because of undue influence, duress, fraud, or misrepresentation.
  - A lawyer prepares Medicaid planning documents at the request of the older person's relative and never talks to the older person to ensure that he or she wants to do

Medicaid planning and has appropriate decision-making capacity.

- The older person's signature is forged on documents used for Medicaid planning.
- A guardian/conservator, agent under a power of attorney, or trustee of a trust engages in Medicaid planning without having legal authority to do so, or makes decisions that do not reflect the older person's wishes or are not in the older person's best interest.
- A lawyer or other person misappropriates the older person's assets under the guise of Medicaid planning.
- Family members may disagree about whether the older person should move into a nursing home or whether Medicaid planning should occur. These disputes may involve allegations of elder abuse by one family member against another.
- A person applying for Medicaid who seemingly had adequate assets to pay for long-term care (at least for a while) may be a victim of financial exploitation.
- The District's Medicaid office may deny benefits to a victimized older person because the spend-down of assets violated the Medicaid rules. The Medicaid agency will likely consider whether there was an investigation by Adult Protective Services (APS), law enforcement, or both agencies, and whether the perpetrator was prosecuted in any appeals process.

## **Actions to Consider**

- The circumstances surrounding the preparation or signing of documents for Medicaid planning purposes may constitute a District or federal crime relative to:
  - Conspiracy
  - Elder abuse
  - False instrument
  - Financial exploitation
  - Forgery
  - Identity theft
  - Larceny
  - Medicaid fraud
  - Theft
- Consider whether the alleged perpetrator in a position (e.g., a caregiver, guardian/conservator, or lawyer) to victimize other older people.
- A civil lawyer can help with recovering money or property from an exploiter. In addition, a civil lawyer can assist a victim in obtaining a hardship exemption if the Medicaid agency denies benefits.
- Make a report to APS.



## Powers of Attorney

A power of attorney is a legal document used by someone (the principal) to give someone else (the agent or attorney-in-fact) the authority to act for the principal. **D.C. Code Chapter 21 Uniform Power of Attorney**

- A principal must have decision-making capacity to sign a power of attorney. § 21–2082. Durable power of attorney not affected by incapacity.
- An agent’s authority ends when the principal revokes that authority or when the principal dies. **D.C. Code § 21–2084. Power of attorney not revoked until notice.**
- A durable power of attorney is a general power of attorney that stays in effect even if the principal loses decision-making capacity. Durability is relevant to the question of whether the agent had legal authority to take the actions in question. **D.C. Code §21-2081 Durable Power of Attorney Definition.** The rest of this section will use POA/DPA to mean a power of attorney that is durable.
- The purpose of the POA/DPA is to allow someone to act for the principal if he or she ever loses decision-making capacity. Therefore, a POA/DPA is usually written very broadly and gives the agent a lot of authority.
- Generally, a POA/DPA covers financial matters and a health care power of attorney covers health care decisions, but sometimes a POA/DPA will authorize an agent to make both financial and health care decisions.

- Usually a POA/DPA becomes effective when the principal signs it. DC code requires it be notarized.
- An agent has a legal duty to act as a fiduciary. Generally, this means that the agent must act in a totally trustworthy manner and make decisions that are consistent with decisions that the principal made previously or that are in the principal's best interest.

### **Relevance to Elder Abuse**

An agent can misuse a POA/DPA to financially exploit the principal. This can occur in several ways.

- Before the POA/DPA is signed:
  - A principal without appropriate decision-making capacity is persuaded, coerced, induced, threatened, or tricked into signing a POA/DPA.
  - A principal who has decision-making capacity signs the POA/DPA because of undue influence, duress, fraud, or misrepresentation.
  - An agent or someone helping the agent (e.g., a lawyer) prepares a POA/DPA that does not reflect the principal's wishes. For example, a lawyer may have prepared a POA/DPA at the request of the older person's relative without ever talking to the older person to determine if he or she wants the POA/DPA and has the capacity to make that decision.
  - A principal's signature is forged.

- After the POA/DPA is signed:
  - An agent exceeds the authority given. For example, an agent makes gifts when not given that authority.
  - An agent engages in self-dealing. For example, an agent pays his or her own bills with the principal's money.
  - An agent's actions conflict with the principal's expectations. For example, an agent has authority to make gifts but does so in a way that undoes or undermines the principal's plan for giving away assets after the principal's death.

### **Actions to Consider**

- An agent who commits POA/DPA abuse may have violated DC or federal laws relative to:
  - Elder abuse
  - Embezzlement
  - False instrument
  - Financial exploitation
  - Forgery
  - Fraud (e.g., credit card, tax, or Medicaid)
  - Identity theft
  - Larceny
  - Money laundering
  - Theft
- Investigate further if the alleged agent cannot or will not produce the POA/DPA, if the document does not name that person as the agent, or if the document does not appear to allow the decisions in question.

- If allowed by law, initiate action to freeze the principal's assets or take other steps to stop the agent from dissipating any remaining assets.
- If the principal has died, consider whether death may have been caused or hastened by an agent who may benefit financially.
- Are there are other victims, such as the intended recipients named in the principal's will?
- Is the agent in a position (e.g., a caregiver or a lawyer) to victimize other people?
- POA/DPA abuse is also a civil legal problem. Civil law remedies may stop the agent from exploiting the older person even more. These remedies also may result in recovery of exploited money or property.
- Make a report to Adult Protective Services.





## Long-Term Care Facilities: Nursing Homes, Assisted Living, Community Residence Facilities

Generally, nursing homes provide skilled nursing and medical care, rehabilitation services, custodial care, and other health-related services. Residential care facilities provide supportive services and non-medical care, which may include help with managing and taking medications. Assisted Living Residences combine housing, health, and personalized assistance, in accordance to individually developed service plans, for the support of individuals. More about how they are defined and regulated can be found in **D.C. Code Title 44 Charitable and Curative Institutions, Chapters 1, 1A, and 5.**

- All facilities are required to be licensed, no matter the number of beds, or they are operating illegally.  
**Subchapter III. Licensure and Inspection.**
- A number of agencies besides law enforcement may be involved in detecting, investigating, preventing, prosecuting, or remedying abuse, neglect, or exploitation of residents of nursing homes and other care facilities. **D.C. Code § 44–105.09. Abuse, neglect, and exploitation.**
- These may include:
  - Adult Protective Services (APS)
  - Long-Term Care Ombudsman
  - Attorneys General
  - Medicaid Fraud Control Unit
  - Coroner/Medical Examiner
  - Licensure and Certification Boards

## Relevance to Elder Abuse

- Residents of nursing homes and other types of long-term care facilities can be highly vulnerable to physical and sexual abuse, neglect, financial exploitation, and emotional/psychological abuse by:
  - Facility management and staff
  - Other residents
  - Contractors or other workers
  - Residents' own family members or guests
  - Family members or guests of other residents
- Elder abuse may occur in numerous ways in a long-term care facility. **D.C. Code § 44–105.03. Dignity.** Examples include:
  - **Physical abuse**
    - Broken bones
    - Bruises
    - Burns
    - Lacerations
    - Improper handling during bathing, other care
    - Transfers from one place to another
    - Hitting
    - Kicking
    - Punching or shoving
    - Inappropriate use of chemical or physical restraint
  - **Sexual abuse:** rape, nonconsensual or unwanted touching, and improper touching during bathing or medical treatment.
  - **Neglect:** the failure to provide or the inadequate provision of food, medication, treatment, basic care, and

- supervision may result in amputations, bed sores (also known as pressure sores or decubitus ulcers), dehydration, malnutrition, other medical problems, and death. Nurses or other staff may dilute or divert residents' pain medications to sell or for personal use.
- **Financial exploitation:** stealing a resident's belongings, benefit checks and spending money, credit cards, or identity.
  - **Emotional/psychological abuse:** belittling, humiliating, intimidating, teasing, threatening, or yelling at a resident.

### **Actions to Consider**

- Abuse, neglect, or exploitation occurring in a long-term care facility may violate District or federal laws relative to:
  - Elder abuse
  - False instrument
  - Financial exploitation
  - Forgery
  - Fraud (e.g., credit card, tax, or Medicaid)
  - Identity theft
  - Larceny
  - Manslaughter
  - Murder
  - Neglect
  - Rape
  - Sexual assault
  - Theft

- Determine whether other law enforcement agencies have concurrent jurisdiction.
- Consider whether the alleged perpetrator is in a position to victimize other residents and whether other residents may have been victimized already.
- A care facility's failure to conduct criminal background checks on its employees or contractors violates District law. **D.C. Code § 44–107.01. Staffing standards.**
- Determine whether the facility management or staff was required by either federal or District law to report suspected or known elder abuse or criminal activity and whether such reports were made. Health-care administrators and Licensed health professional as defined in **D.C. Code § 44–105.09. Abuse, neglect, and exploitation** are mandatory reporters.
- If facility management or staff say they could not report suspected crime or cannot provide requested evidence because they must protect residents' "protected health information" under the federal Health Insurance Portability and Accountability Act (HIPAA), talk to your agency's lawyer. The HIPAA law has exceptions for law enforcement investigations and for reporting suspected elder abuse.
- Take emergency custody of the resident if it is within your agency protocols and it would not cause the person further harm. Hospitalization may be necessary. APS, the long-term care ombudsman program, or other agencies with responsibility to protect or advocate for facility residents may

be able to make other temporary or permanent care arrangements.

- If the resident has died, consider whether death may have been caused or hastened by actions or inactions of facility staff or others.
- Civil lawyers may help residents or family members bring lawsuits against nursing homes or other facilities for failure to provide care or to protect residents from abuse, neglect, or exploitation.
- Make a report to the District licensure and certification agency if appropriate or required.
- Make a report to Adult Protective Services.



## Representative Payees, VA Fiduciaries, and other Government Benefit Money Managers

A federal or District agency can name an individual or an entity to manage money it provides to a beneficiary if the agency decides that the beneficiary lacks capacity to manage the money because of impairment. Agencies use different names for these money managers. For example, the Social Security Administration calls them “representative (rep) payees” and the Department of Veterans Affairs calls them “VA fiduciaries.” **For simplicity, this section will refer to all types of agency-appointed money managers as rep payees.**

- Each agency has its own rules about appointment of a rep payee and the rep payee’s duties.
- Rep payees have authority to manage only the money that the agency provides to a beneficiary.
- Rep payees may be required to file periodic reports with the government agency on how they managed a beneficiary’s money from that agency.
- A rep payee may have other legal authority over the beneficiary if the rep payee also has been named as an agent under a power of attorney, a guardian/conservator, or as trustee of a trust.
- A rep payee may be a beneficiary’s family member or friend, a professional, a public agency, or a private non-profit or for-profit agency. Federal law may allow some agencies to be paid for acting as a rep payee. Rep payees may be required to



obtain bonds, keep detailed records of the beneficiary's expenses, and to file reports with the agency.

- Rep payees have a legal duty to act as a **fiduciary**. This means, generally, that rep payees must act in a totally trustworthy manner and make decisions in a beneficiary's best interest.

### **Relevance to Elder Abuse**

A rep payee can commit financial exploitation by misusing authority over a beneficiary's money. For example, rep payees may:

- Fail to spend money on necessities, such as housing, food, and medical care.
- Exceed the authority given (e.g., control other money without legal authority to do so).
- Self-deal (e.g., buy things for the beneficiary that really only benefits the rep payee or pay his or her own bills with the beneficiary's money).
- Fail to follow the government agency's rules about charging the beneficiary for services.
- Mix the beneficiary's money with the rep payee's money.
- Keep the beneficiary's money although no longer serving as a rep payee (e.g., after the beneficiary has been murdered or died of natural causes).

### **Actions to Consider**

- A rep payee's actions may violate local, state, or federal laws relative to:
  - Elder abuse

- Embezzlement
- False instrument
- Financial exploitation
- Forgery
- Fraud (e.g., credit card, tax, or welfare)
- Identity theft
- Larceny
- Making false statements
- Neglect
- Theft
- Ask a rep payee to produce proof of authority. Investigate further if an alleged rep payee cannot or will not produce proof of authority from the government agency, if documents do not name that person as rep payee, or if documents do not appear to allow the actions in question.
- Determine whether the rep payee has filed reports required by the agency. If so, review the reports for evidence.
- If allowed by law, initiate actions to freeze a beneficiary's assets or take other steps to stop a rep payee from dissipating remaining assets.
- Is the rep payee in a position to victimize other people?
- If the beneficiary has died, consider whether death may have been caused or hastened by the payee.
- Make a report to the agency providing the benefits so it can investigate and take action. For example, it may end the rep payee's authority or pursue civil or criminal penalties.

- Rep payee abuse is also a civil legal problem. A civil lawyer may prevent more harm or recover exploited funds. Civil courts can:
  - Order a rep payee to account for how he or she spent the beneficiary's money.
  - Undo a rep payee's actions.
  - Order a rep payee to return the beneficiary's money.
- Make a report to Adult Protective Services.



## Trusts

There are different trusts for different purposes, examples include: planning for someone to manage your assets on your behalf if you lose decision-making capacity, avoiding the time and expense of probating a will, avoiding taxes, and planning for someone to manage assets for minor children or for adult children with disabilities. **D.C. Code Title 19 Chapter 13 Uniform Trust Code.**

- An adult must have decision-making capacity to make, revoke, or change a trust. **D.C. Code § 19–1301.04. Knowledge.**
- The person who creates the trust is generally known as the **grantor, trustor, or settlor. D.C. Code § 19–1301.03. Definitions.**
- People or institutions (such as banks) that manage trust assets are known as **trustees.**
- People or organizations for which assets are managed are usually referred to as **beneficiaries.**
- Depending on the type and purpose of a trust, one person may have more than one role. For example, a grantor also may be a trustee or a beneficiary.
- For a trust to be effective, ownership of the assets (**title**) must be transferred by the grantor to the trust.
- Whether the trustee or the trust holds the trust assets, trustees have a legal duty to act as a **fiduciary.** This means, generally, that a trustee must act in a totally trustworthy

manner in the interest of the beneficiary and trust and must manage the trust's assets as instructed by trust documents.

**D.C. Code § 19–1303.03. Representation by fiduciaries and parents.**

**Relevance to Elder Abuse**

- Financial exploitation related to trusts may occur if:
  - A grantor lacking decision-making capacity is persuaded, coerced, threatened, or tricked into signing trust documents.
  - A grantor who has decision-making capacity signs trust documents because of undue influence, duress, fraud, or misrepresentation.
  - Someone prepares trust documents that do not reflect the grantor's wishes.
  - Someone forges the grantor's signature.
  - A trustee changes or revokes a trust without having legal authority to do so or in ways that undermine the grantor's plans.
  - A trustee fails to follow the grantor's instructions for managing or distributing trust assets (e.g., by exceeding the powers given by the grantor).
  - A trustee uses trust assets for his or her own benefit or the benefit of others against the wishes of the grantor or the trust document. § 19–1304.06. Creation of trust induced by fraud, duress, or undue influence.
  - If a trust governing post-death distribution of assets fails because it was made under duress, then either the

grantor's will or District law determines who inherits those assets. Causing a trust to fail can undermine the grantor's plans and may constitute exploitation. **D.C. Code § 19–1304.06. Creation of trust induced by fraud, duress, or undue influence.**

- Problems may become evident before or after the grantor dies. There may be multiple victims:
  - the grantor whose assets may have been stolen or whose estate plan may have been altered; or
  - beneficiaries whose assets or inheritance may have been stolen.

### **Actions to Consider**

- The circumstances surrounding the preparation or signing of trust documents or distribution of trust assets may violate District or federal laws relative to:
  - Conspiracy
  - Elder abuse
  - False instrument
  - Financial exploitation
  - Undue influence
  - Forgery
  - Fraud
  - Larceny
  - Theft
- If the grantor has died, consider whether death may have been caused or hastened by a trustee, beneficiary, or someone else who may benefit financially.

- Determine whether D.C. law prevents someone who committed a crime against the grantor from being a beneficiary.
- Are there are other victims, such as beneficiaries?
- Is the trustee is in a position (e.g., a caregiver, trust officer, or lawyer) to do this to other older people?
- Civil law remedies may stop the trustee from exploiting the older person even more. Civil remedies also may result in recovery of exploited money or property.
- Make a report to Adult Protective Services.





## Reverse Mortgages

A reverse mortgage is a special type of loan for older homeowners (aged 62+) who have substantial equity in their homes but are “cash poor.” Homeowners can borrow against the equity in the home (equity is the difference between the market value of the home and the amount owed on any mortgage). The loan provides income that might enable the older person to continue living at home. **D.C. Code § 42–2703.07a. Reverse Mortgage Foreclosure Prevention Program.**

- A **home equity conversion mortgage (HECM)** is a type of reverse mortgage insured by the federal government and has special conditions. One condition is that a homeowner must meet with an unbiased counselor approved by the U.S. Department of Housing and Urban Development to learn about the pros and cons of reverse mortgages, their costs and requirements, and their alternatives.
- The **HECM for Purchase** is another type of reverse mortgage. The proceeds from the loan must be used to buy another home (usually smaller or more accessible).
- Most but not all reverse mortgages are HECMs.
- A reverse mortgage can provide income as a monthly payment, as a line of credit, or in one lump sum.

### Relevance to Elder Abuse

- Financial exploitation related to reverse mortgages can occur in several ways, such as:

- A homeowner lacking appropriate decision-making capacity is coerced, persuaded, threatened, or tricked to sign reverse mortgage documents.
- A homeowner who has decision-making capacity signs reverse mortgage documents because of undue influence, duress, fraud, or misrepresentation.
- An exploiter steals the homeowner's identity and obtains a reverse mortgage.
- An agent under a power of attorney misuses authority to get a reverse mortgage that the homeowner does not want.
- An agent under a power of attorney or someone else gets a reverse mortgage that the homeowner wants, but then steals the proceeds from the loan.
- An exploiter draws an unsuspecting homeowner into a property-flipping scheme that overcharges the homeowner and siphons the proceeds from the loan.
- An exploiter misleads a homeowner about the need to buy other financial products, such as annuities, to get a reverse mortgage.
- An exploiter inflates the appraisal to maximize the loan proceeds he or she intends to steal from the homeowner.
- An exploiter uses unfair and deceptive practices, such as false advertising about the costs and risks of reverse mortgages.
- Problems may come to light before or after the homeowner dies. There may be multiple victims:

- the homeowner whose property deed, equity, or loan proceeds may have been stolen,
- other people living in the home who may have to move out,
- the bank or other lender that provided the reverse mortgage, or
- the government that insured the mortgage.

### **Actions to Consider**

- The circumstances surrounding the preparation or signing of reverse mortgage documents or the distribution of loan proceeds may violate local, state, or federal laws relative to:
  - Conspiracy
  - Elder abuse
  - Embezzlement
  - False instrument
  - Financial exploitation
  - Forgery
  - Fraud (mortgage lending or bank fraud)
  - Identity theft
  - Larceny
  - Money laundering
  - Theft
- Are there are other victims, such as other people living in the home.
- Is the alleged perpetrator is in a position (e.g., a caregiver, guardian/conservator, or lawyer) to victimize other older people.

- Make a referral to the attorney general or the U.S. attorney, bank or other business regulators, or consumer protection agencies.
- A civil lawyer can help with revoking or changing a reverse mortgage, or with recovering misappropriated money or property
- Make a report to Adult Protective Services.



## Wills

A will is a legal document used by someone (the **testator**) to indicate who should receive the testator's money or property (the **estate**) after he or she dies. **D.C. Code Title 18. Wills.**

- A testator must have **testamentary capacity** to make, change, or revoke a will. This is a lower standard than decision-making capacity. D.C. Code defines that capacity as being of sound and disposing mind and capable of executing a valid deed or contract. **D.C. Code §18-102 Capacity to Make a Will.**
- A testator who has testamentary capacity can change a will at any time before death. This is done by making a new will or by adding a **codicil**, which is a new section that changes an existing will. **D.C. Code § 18–109. Revocation of wills; revival.**
- Wills do not become effective until the testator has died and the estate has been probated. **Probate** is the process in which a court decides if a will is valid, gives creditors the opportunity to make claims, and orders distribution of the estate. **People who expect to inherit under a will cannot take a testator's assets in anticipation of that inheritance. D.C. Code § 20–101. Definitions.**
- If a will does not exist or is not valid, then state law governs who will inherit the estate.
- There are assets that are not governed by a will and that transfer outside of the probate process. These are usually called **non-probate assets** and may include some types of jointly owned property, trusts, payable-on-death accounts, life insurance policies, annuities, and IRAs.

- The person responsible for probating the will and distributing the estate as ordered by the court is generally known as the **executor**. **D.C. Code § 20–101. Definitions.**
- The people or organizations that inherit the estate are generally known as **heirs**.
- Executors have a legal duty to act as a **fiduciary**. This means, generally, that the executor must act in a totally trustworthy manner and distribute the estate as ordered by the court.

### **Relevance to Elder Abuse**

A will can be used as a tool for financial exploitation. Problems may come to light before or after the testator dies. **D.C. Code § 20–108.01. Effect of fraud and evasion.** Examples of exploitation related to a will include:

- Someone takes money or property before the testator dies and justifies it by saying “I was going to inherit it anyway.”
- A person lacking testamentary capacity is coerced, persuaded, threatened, or tricked into signing the will.
- A person who has testamentary capacity signs a will because of undue influence, duress, fraud, or misrepresentation.
- Someone prepares a will that does not reflect the testator’s wishes.
- The testator’s signature is forged.
- A guardian/conservator, agent under a power of attorney, or other fiduciary changes or revokes a will without having legal authority to do so or in ways that undermine the testator’s estate plan.



- An executor fails to follow a court's order for distributing the estate.

### **Actions to Consider**

- The circumstances surrounding the preparation or signing of a will or the distribution of the estate may constitute a local, state, or federal crime relative to:
  - Conspiracy
  - Elder abuse
  - False instrument
  - Financial exploitation
  - Forgery
  - Fraud
  - Identity theft
  - Larceny
  - Theft
- If the testator has died, consider whether death may have been caused or hastened by an heir, a disinherited person, or someone else who may benefit financially.
- Consider whether there were other victims, such as the testator whose money or property may have been stolen or whose estate plans may have been changed, and the intended heirs whose inheritance may have been stolen.
- DC law prevents someone who committed a crime against the testator from inheriting. **D.C. Code § 19–320. Felonious homicide as barring inheritance; insurance policies; bona fide purchasers.**

- Consider whether the alleged perpetrator is in a position (e.g., a caregiver, guardian/ conservator, or lawyer) to victimize other older people.
- Encourage the testator or concerned individuals to seek legal assistance:
  - Before the testator dies, a civil lawyer can help with revoking or changing a will.
  - After the testator dies, a civil lawyer can challenge the validity of the will in probate.
- Make a report to adult protective service.

# Contact Information of Local Organizations in the District of Columbia

## Reporting

- Adult Protective Services (APS)  
202-541-3950 (24/7 Intake)
- Metropolitan Police Department (MPD) 9-1-1
- Office of the Attorney General Elder Justice Section  
202-727-3807 or elderjustice@dc.gov

## Victim Advocacy & Legal Services

- Network for Victim Recovery of DC (NVRDC)  
202-742-1720
- Legal Counsel for the Elderly at AARP  
202-434-2120
- Legal Aid Society of the District of Columbia  
202-628-1161
- District Alliance for Safe Housing (DASH)  
202-269-0528
- Long-term Care Ombudsman  
202-434-2190

## Health/Nutrition

- Department of Aging and Community Living (DACL)  
202-724-5626 (Call-In Line)
- Washington Hospital House Call Program  
202-877-0576 (24/7 On-Call Physician)

## **Shelters**

- So Others Might Eat (S.O.M.E.)  
202-797-8806
- ElderSAFE in Rockville, MD that accepts DC elder abuse victims  
301-816-5099
- District Alliance for Safe Housing (DASH)  
202-269-0528

## **Mental Crisis**

- Psychiatric Emergency Mobile Crisis  
202-673-9300 (9 AM – 1 AM Daily)