

RETIREMENT

How an Elder Law Attorney Can Help Protect Your Aging Parents From Financial Mistakes

If you are worried about older family members or friends whose financial judgment is raising red flags, help is out there — from an elder law attorney.



Over the many years I've been in law practice, a client's adult child has more than once called with an urgent need to come into the office, saying, "It is about Mom and Dad. Their judgment about the financial things they were always on top of seems to have fallen off of a cliff. We have to protect them from themselves, but how?"

Usually, they add, "But they are both highly independent and would not stand for control of their finances to be taken away."

It doesn't have to be.

I am getting more and more of these calls as our population ages, and the issue often is because my advice to an older couple — "you need to cut ties with this crooked contractor" — is rejected, and they decide to stay with the con to their detriment.

Guarding against future financial mistakes

When adult children see their aging parent(s) begin to act impulsively or make financial decisions that aren't sound, this is the time to have a consultation with an elder law attorney — before things get worse. These lawyers focus on the legal needs of older adults, including:

- Long-term-care planning
- Medicaid eligibility
- Estate planning and trusts
- Powers of attorney and health care directives
- Asset protection
- Guardianship and conservatorship
- Elder rights and elder abuse prevention

Today, we look at how an elder law attorney can address financial vulnerability and exploitation by putting safeguards — guardrails — in place that reduce the chances of future mistakes while preserving the parent's dignity and independence as much as possible.

Effective preventive financial tools

The elder law attorneys I know are among the most compassionate individuals in the legal profession. The last thing an aging parent who has always been in control of their finances wants is to lose that ability.

How can a family protect them without giving the impression that they are taking over a parent's life?

Elder law attorneys use a win-win strategy that demonstrates family support instead of completely limiting Mom or Dad's financial freedom.

An elder law attorney can design a limited authority framework that:

- Requires a second signature for contracts or large purchases
- Allows a child to access/monitor accounts
- Allows the parent to have day-to-day control up to a specified dollar amount
- Instructs the parent's bank to flag and stop attempted withdrawals or payments to anyone over a specified limit and notify the adult child if that is attempted
- Requires the signature of an adult child or named person for amounts over a set dollar figure
- Arranges for a copy of the monthly bank statements to be sent to a designated relative or third party
- Employs anti-exploitative measures, including fraud alerts from all three credit bureaus, credit card spending limits, trusted-contact notifications and automatic bill pay, which may reduce a parent's confusion on which bills to pay

Also, if a parent has signed a questionable or predatory contract, an elder law attorney can identify grounds for cancellation and speak with the company or reach out to lawyers familiar with the legal issues involved.

For example, I am frequently contacted by attorneys whose clients have become victims of timeshare and rooftop solar sales scams.

What a durable power of attorney accomplishes

An elder law attorney can set up a proper (more on what's considered "proper" in a moment) durable financial power of attorney, which allows a trusted family member to handle financial affairs if the parent becomes mentally or physically incapacitated because of illness or accident.

A durable power of attorney for health care — aka medical power of attorney or health care proxy — is also essential.

Trusts protect assets from scams and impulsive decisions

Depending upon a family's assets and needs, an elder law attorney will explore using a trust as a way to protect older people from making poor decisions, squandering their funds or being a target of scammers.

The concept is simple: Control of assets is given to a responsible child or professional fiduciary/trustee, who manages these assets while restricting the aging parent's direct access.

The objective of all trusts is the preservation of assets for the benefit of the parent or designated beneficiaries.

Why hire an attorney when most of this stuff is free online?

I am occasionally asked, "Why spend the money on an elder law attorney when I can get all the forms and information for free online, or pay just a few dollars for a kit with fill-in-the-blank forms that promise to be as good as hiring a lawyer?"

My answer: What you pay an attorney to draft proper estate planning documents is often much lower than the costs of fixing a botched DIY plan.

Growing up, our parents loved and cared for us. We owe them the same now.

NYSUT NOTE: Making sure our parents are cared for is one of our most important duties. With the NYSUT Member Benefits Trust–endorsed [Legal Service Plan](#), you can have a telephone consultation with an attorney who will guide you through finding solutions for your elder's needs. That's just one of the many services you'll have at your fingertips for a small annual fee.

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After attending Loyola University School of Law, H. Dennis Beaver joined California's Kern County District Attorney's Office, where he established a Consumer Fraud section. He is in the general practice of law and writes a syndicated newspaper column, "You and the Law." Through his column, he offers readers in need of down-to-earth advice his help free of charge. "I know it sounds corny, but I just love to be able to use my education and experience to help, simply to help. When a reader contacts me, it is a gift."

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