

# Financial Exploitation of Older Adults

*A Guide for Civil Legal Aid Attorneys in Nevada*



*Created By:*



*With Help From:*

**NATIONAL  
CENTER ON  
LAW &  
ELDER  
RIGHTS**

# Financial Exploitation of Older Adults: A Guide for Civil Legal Aid Attorneys in Nevada

## About This Guide

Older person abuse is [defined](#) under Nevada law as the willful and unjustified infliction of pain, injury, or mental anguish, or the deprivation of food, shelter, clothing, or services necessary to maintain physical or mental health against a person who is 60 years of age or older. It is a growing issue faced by older adults, and the effects of abuse can negatively impact the physical health, mental well-being, and financial stability of victims. Elder financial exploitation is the most prevalent form of abuse experienced by older adults.

While acts of older person abuse may fall under various criminal statutes, civil legal aid attorneys are uniquely positioned to deploy legal strategies and advocacy to mitigate the effects of abuse and help older adults attain the remedies they seek. This Guide contains state-specific information, tools, and links to resources to help civil legal aid attorneys advise and represent clients who have experienced financial exploitation. Additionally, the resources and partner information shared at the end of the Guide will help you connect with community partners, prosecutors, and coalitions who are also working to prevent and address older person abuse in your state.

This Guide was produced by [Nevada Legal Services, Inc.](#) (NLS) and adapted from information from the [National Center on Law and Elder Rights](#) (NCLER). NLS is a non-profit organization providing free legal services to low income Nevadans. NLS is a state wide organization assisting every county in Nevada. NCLER has additional training and resources on a variety of Elder Abuse topics available on [ncler.acl.gov](http://ncler.acl.gov).

Acknowledgement: Nevada Legal Services would like to thank Jake Hummer, a law student at Harvard Law School, for his work in preparing this guide during his internship with the Reno office of Nevada Legal Services in the summer of 2020.

# Table of Contents

<b>Introduction to Financial Exploitation .....</b>	<b>4</b>
<b>Defining Financial Exploitation .....</b>	<b>4</b>
<b>The Role of Attorneys in Preventing &amp; Addressing Financial Exploitation .....</b>	<b>5</b>
<b>Interviewing &amp; Important Ethical Considerations.....</b>	<b>5</b>
Trauma-Informed Legal Advocacy.....	5
Mandated Reporter Policy .....	6
Capacity Concerns .....	6
<b>Screening .....</b>	<b>7</b>
<b>Legal Strategies.....</b>	<b>8</b>
Immediate Responses for Protection.....	8
Civil Legal Strategies for Redress.....	11
<b>Tools for Addressing Stranger Financial Exploitation &amp; Scams.....</b>	<b>15</b>
<b>Coordination with Prosecutors &amp; Criminal Proceedings .....</b>	<b>15</b>
<b>Associated Legal Issues .....</b>	<b>16</b>
Medicaid Denials .....	16
Federal Tax Consequences .....	17
Consumer.....	19
Housing .....	19
<b>Collaboration with Community Partners &amp; Enhanced Multi-Disciplinary Teams.....</b>	<b>20</b>
Adult Protective Services.....	20
Long-Term Care Ombudsmen .....	20
Multi-Disciplinary Teams .....	21
Home and Community Based Services.....	21
<b>Additional Resources .....</b>	<b>21</b>

## Introduction to Financial Exploitation

Financial exploitation of older adults is a prevalent and underreported problem. According to the [Nevada Aging and Disability Services Division](#), 6,033 reports of elder abuse were received by Elder Protective Services and law enforcement in Nevada but estimated that one in 14 crimes against older people are reported. This number is expected to grow in future years as the population of older adults increases.

Financial exploitation has many faces, including theft, ID theft, unauthorized use of credit cards, undue influence, deceptive and unfair business practices, and abusive debt collection practices. Financial exploitation is enormously costly to victims' health and economic security. Studies estimate the financial losses due to exploitation are in the billions of dollars. For many victims, the funds lost are their entire life savings.

Financial exploitation is enormously costly to victims' health and economic security. Studies estimate that, in total, elders have lost billions of dollars to financial exploitation. For many victims, the funds lost comprise their entire life savings. Financial exploitation is frequently committed by family members, trusted friends or caregivers. Reporting exploitation can take an emotional toll on the person and result in a loss of caregivers or companions. A [2015 report from True Link Financial](#) contains more information about estimated losses and effects of elder financial abuse.

## Defining Financial Exploitation

Financial exploitation is defined in the [Older Americans Act](#) as: "The fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets."

The State of Nevada defines the financial exploitation of an older adult as "Obtain[ing] control, through deception, intimidation or undue influence, over the older person's or vulnerable person's money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property; or [c]onvert[ing] money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property." [NRS 200.5092 3\(a\)-3\(b\)](#).

There are differing ways of categorizing types of financial abuse and exploitation, and the boundaries between them can be blurry, but one simple distinction divides financial exploitation into two types: those by a "known" person and those by a "stranger":

- **Known person:** Financial abuse/exploitation by a known person (a family member, close friend, caregiver, or person/organization in a position of trust) who breaches the trust between a vulnerable person and misuses the individual's funds to serve their own

needs at the elder's expense. Attorneys should be mindful of the distinction between family and non-family perpetrators, and how that can inform your approach to the matter. Remedies for these kinds of abuse are both civil and criminal.

- **Stranger or “new friend”:** Fraud, misrepresentation, or scams by a stranger or “new friend” who deceives the vulnerable person via an ever-changing variety of con games, such as bogus lotteries, sweetheart swindles, grandparent scams, fake charities, home repair fraud, IRS back taxes schemes, gift card scams, identity theft, etc.

This Guide focuses primarily on civil legal remedies for “known person” financial exploitation, but you can utilize the practice tips in this guide beginning on page 15 to assist your clients who have experienced stranger financial exploitation or scams.

## **The Role of Attorneys in Preventing & Addressing Financial Exploitation**

Civil legal remedies can provide valuable relief to older adults, including stopping ongoing abuse and obtaining restitution. Civil legal services programs are also generally equipped to handle the associated legal issues discussed in this guide, such as Medicaid, housing, and consumer issues. Some of your clients may not want to pursue criminal charges against a family member or friend, but are willing to explore their civil options. Additionally, some cases may not have the elements necessary for criminal prosecution. Civil legal remedies may be helpful whether or not a criminal prosecution is pursued. As a civil legal aid attorney, you can play an important role in the protection and recovery process by assisting with obtaining protection orders, recouping funds and other civil remedies that are addressed in this guide.

## **Interviewing & Important Ethical Considerations**

### ***Trauma-Informed Legal Advocacy***

Older adults who have experienced maltreatment are at risk of further harm if their legal matter is not handled in a trauma-informed manner by their advocate. Learning how to provide trauma-informed lawyering will help your client in their recovery process and also allow you to get more thorough information from your client in order to effectively represent them.

The family versus non-family distinction is important for advocates to recognize. The sensitivities involved with a family member perpetrator should inform the conversation between you and your client, and the trauma-informed lawyering tips in this guide should be especially utilized in this context. Additionally, a victim may be willing to pursue certain remedies against a non-family exploiter that they may be reluctant to consider if the exploiter is related.

Traumatic triggers can impact your ability to connect with your client. Triggers bring up the memory of a past event and may create a feeling of unease or fear. Each client's experience and triggers will be different, so it is important that you understand the various options that are available to make your client feel more comfortable. Providing options for the interview location, being careful to explain the process of the interview in advance, and taking breaks can all be beneficial when conducting a legal interview. If your client will have to go to court, you

should be mindful of the triggers that they may face, particularly if they will encounter the perpetrator of abuse. A run-through of the day can be helpful, as well as arranging for a supportive friend or family member to be present. For practice tips and more information about trauma-informed lawyering, resources are available through the [Trauma-Informed Legal Advocacy \(TILA\) Project](#).

### ***Mandated Reporter Policy***

In Nevada, lawyers are not legally required to report suspected elder abuse. However, many other professionals must do so, including physicians, social workers, policemen, coroners, and licensed psychologists. [NRS 200.5093\(4\)](#). Mandatory reporters must immediately or within 24 hours to the local office of the Aging and Disability Services Division of the Department of Health and Human Services. The statewide number is 1-888-729-0571.

As an attorney, if you have reason to believe that your client has experienced abuse, you have the option of permissive reporting to Adult Protective Services if your client consents to the report. Permissive reporting should be weighed carefully with your client. Under the [Nevada Rules of Professional Conduct \(NRPC\) 1.4](#), you must communicate the issue, options, and implications of any potential action. This includes explaining to your client what would happen next, including services that may become available to them, possible criminal charges against the abuser, the potential for a guardianship investigation and capacity assessment, and more, including possible negative implications. Reporting older person abuse to Adult Protective Services can result in a case worker investigating the report, which could include a home visit and other actions that your client may not be comfortable with. A complete understanding of the impact and potential benefits and detriments of reporting will help you advise your clients on permissive reporting and weigh the benefits and burdens of taking this action.

As an attorney, you will need to assess your reporting obligations and ethical duties, and then be clear with your clients about your obligations and confidentiality during initial interviews and subsequently if necessary. [Mandatory and Permissive Reporting for Lawyers](#).

### ***Capacity Concerns***

Diminished capacity is a risk factor for exploitation, and you need to understand your ethical obligations pursuant to the [NRCP Rule 1.14](#). The rule starts with a presumption of capacity, and directs attorneys to maintain a normal attorney-client relationship when reasonably possible. Capacity is not an on/off switch, and the standard of capacity will vary, depending on the nature of the decision that your client is required to make. Capacity level may change during your period of representation and you must be cognizant of how duty to your client may be affected as this occurs.

State statutes provide the standards of capacity for specific legal transactions and guardianship. In Nevada, limited capacity is defined as a non-minor that is “able to make independently some but not all of the decisions necessary for the person’s own care and the management of the person’s property.” [NRS 159.022](#). Further information about guardianship processes, including

the responsibilities of guardians, changing or ending guardianship, and temporary guardianship is available [here](#).

**[NRC 1.14](#)** also triggers protective action when an attorney reasonably believes a client has diminished capacity, there is potential for harm to the client, and the client cannot act in their own interest. To help you address issues of capacity in your cases, the handbook by the American Bar Association and American Psychological Association titled, **[Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers \(2005\)](#)** includes in-depth information and a 4-page worksheet to screen for incapacity.

Capacity determinations call into play the sometimes competing goals of preserving autonomy and promoting protection. Attorneys should consider certain factors such as grief, stress, and non-permanent medical conditions when assessing a client's capacity to make decisions. These are all factors that could be present for your client who has experienced abuse, and they are part of trauma-informed lawyering.

## Screening

Sometimes your client will come to you seeking help to end or recover from an abusive situation. Perhaps more frequently, however, you may also discover that someone is the victim of abuse in the course of representing them in another matter. Your legal services program should have a system in place for screening for financial exploitation and other forms of older person abuse.

The signs and symptoms of older person abuse can be detected in all practice areas. Elder financial exploitation cases do not always present as older person abuse. The older adult who comes in for help with utilities, rent or a consumer debt lawsuit may be struggling to pay her bills because she has been financially exploited. Or, an older adult may be facing eviction because of an abusive adult child who refuses to leave the home.

If elder financial exploitation is suspected, reviewing a client's bank account activity, credit card statements, other bills, budget, and any accountings that are available may help you identify problems. The Elder Investment Fraud & Financial Exploitation Prevention Program has developed a **[financial exploitation checklist and screening tool](#)**, and NCLER also offers a **[checklist on the Signs of Abuse, Neglect, and Exploitation](#)** that may be helpful. The Nevada Adult and Disability Services Division of DETR has information on its **[official website](#)**.

Below are some examples of how an older person abuse case might initially present in your office. These situations may not always involve abuse, but could raise red flags and prompt further investigation:

- A client is being encouraged to sign legal documents that they do not understand.
- A client is being evicted from a nursing facility due to non-payment, and a family member manages their finances.
- A client is seeking to modify their advance planning documents in an unusual way.

- A client is facing mortgage foreclosure, but has adequate income to pay the mortgage.
- A client has a reverse mortgage but did not understand the documents and did not have access to the funds.
- A client is being sued for a credit card debt, but they did not open the account or use the credit card.
- A client is being evicted from their apartment for a violation of the housing authority's guest policies.
- A client comes in for an appointment, and is accompanied by a coercive or overbearing family member or friend.

For more guidance on screening for older person abuse and other legal issues faced by older adults, utilize NCLER's skills training session on [Issue Spotting, Intake, & Referrals](#) which provides practical tips and visual guides for attorneys and support staff.

## Legal Strategies

When exploring the strategies in this section, you should keep in mind that some filing fees may be waived based on indigency. Although some court actions may be available for free (such as a domestic violence injunction or a change of guardian in a pre-existing), other actions, like removing an unwanted person from the household, often require a filing fee. This is especially important where an exploiter has deprived the elder of funds, or controls access to the funds. In Nevada, the state will waive a claimant's court fees if they satisfy the eligibility criteria and file both an application AND order. Further information about eligibility may be found [here](#).

### Immediate Responses for Protection

There are certain options that you should discuss with your client if they need protection from the perpetrator and immediate help to stop the abuse.

Your Client Wants...	Potential Steps to Take	Why this Action for this Situation?	Practice Tips & Statutes
To stop the perpetrator from contacting them or coming to their home	Motion for Restraining Order, Protective Orders, or Order of Protection	Protective orders, restraining orders, or stay away orders are civil orders from the court telling the perpetrator not to contact your client, approach them, or harm them again. While the order is civil, if the perpetrator violates it, they could face criminal consequences.	<p>In Nevada, courts may issue a protective order in response to a variety of issues, including harassment, stalking, and sexual assault. <b>NRS 200.571(1-2), 200.366(1);</b> see also the <a href="#">Nevada Protection Order Handbook</a>.</p> <p>There are two types of protective orders in Nevada. A temporary order for protection can last up to 45 days. An expended order for protection can last up to two years. <b><a href="#">NRS 33.080 (1, 3)</a></b>.</p> <p>The necessary court forms for filing for a protective order in Nevada may be found <a href="#">here</a>.</p>

<p><b>To get the perpetrator out of their home</b></p>	<p>Eviction or Ejectment</p>	<p>If the perpetrator currently lives with your client, it may be necessary for you to help your client legally evict the perpetrator.</p> <p>Even when there is no formal lease agreement, your client should have options for eviction.</p> <p>Some perpetrators may not qualify as tenants or have the protection of being a tenant, and could be considered house guests. State based options for the legal removal of house guests may include self-help or the assistance of law enforcement.</p>	<p>In Nevada, protective orders may be used to “[e]xclude the adverse party from applicant’s place of residence,” and prohibit them from “entering the residence.” <b>NRS 33.030(1)(b-c)</b>. This is the same order described in the above section. Nevada courts may order the abuser to stay away from the home for a period of time, formally move out of the home, surrender all keys to the living unit, and any other reasonable measures that would allow the victim to feel safe.</p> <p>If the abuser does not own the living space, you may pursue an eviction action. The process varies by situation, depending on several factors such as the kind of tenancy the abuser has in the home. Further general guidance about eviction may be found on <a href="#">Nevada Legal Services’ website</a> or <a href="#">the from the Civil Law Self Help Center</a>.</p> <p><i>Practice Tip:</i> If your client is in immediate danger by staying in the home, you should look at shelter options, including any elder shelter networks in your area. The Nevada Housing division has <a href="#">online resource page</a> that lists housing resources by region.</p> <p>If your client does not want to seek immediate court relief, for example against a family member, a certified letter from an attorney demanding that the person vacate the premises and stop any act of financial exploitation, with a specified move out date, can provide relief in some situations.</p>
<p><b>To stop money from being taken from their bank account</b></p>	<p>Freeze of Bank Account, Freeze of Credit Reports, Temporary Order to Freeze Assets</p>	<p>If the perpetrator has access to your client’s bank account or has been utilizing your client’s checks or debit card, you may want to help your client take steps to freeze their account from any further withdrawals and possibly advise them to open a new account.</p>	<p>Nevada residents to request that their credit records be frozen for a small fee. This fee is waived for victims of identity theft and for victims over the age of 65. <b>NRS 598C.300</b>. The credit freeze request must be made in writing to the three credit reporting agencies (Equifax, TransUnion and Experian). The agencies are given five days from receipt of the request to activate the freeze.</p>

			Your client may have automatic deposit of their Social Security, pension and other income in their current account. You will want to help them with arrangements to change the account information on the direct deposits.
<b>To stop their agent from misusing a power of attorney document or not fulfilling their fiduciary obligations</b>	Revocation	<p>Revoking a power of attorney document can be a helpful first step to stop the perpetrator from continuing to exploit your client while using the document.</p> <p>Legal capacity is required to exercise this option. Also, consideration must be given to the client’s ability to handle their own finances and other options/potential agents who can step in to replace the perpetrator.</p>	<p>The Nevada Bar offers guidance for POA drafting and revocation in their <a href="#"><u>informational brochure</u></a>.</p> <p>To revoke a power of attorney, your client should notify the attorney-in-fact in writing that the power has been revoked, then request that the attorney-in-fact return any copies of the POA document. The form should be signed by the client and notarized. You or the client should also send written notification to any financial institution or person that may have received a copy of the document, telling them that the POA has been revoked.</p> <p><i>Practice Tip:</i> Be sure to send the revocation and any new POA documents to the banks and other institutions that may have a copy of the previous POA document.</p>
<b>To change their guardian because the current guardian is misusing funds or taking their property</b>	Termination or Change of Guardianship	If your client has a guardian who is guilty of misconduct, such as committing older person abuse, the court has the discretion to remove the guardian and appoint a new guardian.	<p>Guidance for termination of guardianship in Nevada can be found at online at the <a href="#"><u>Guardianship Compliance Office</u></a>. Forms can be found at the <a href="#"><u>Nevada Self Help Center</u></a>. The governing statutes for termination or change of guardianship are <a href="#"><u>NRS 159.1905 – 159.199</u></a>.</p> <p>A guardianship can change for 2 reasons: the court approves the guardian's request to resign or the guardian is removed by the court.</p> <p>A guardianship can end for 3 reasons: the guardian dies, the incapacitated person dies, or it is determined that the incapacitated person is no longer incapacitated.</p> <p><i>Practice Tip:</i> Review the <a href="#"><u>ABA’s PRACTICAL Tool for Lawyers</u></a> for assistance in determining whether your client should be considered for less restrictive options than guardianship.</p>

### Civil Legal Strategies for Redress

After taking care of your client’s immediate needs, you will want to discuss options for possible recovery of funds, termination of fraudulent agreements, and more. Using the remedies outlined below, you can assist your client by filing a complaint for restitution, compensatory damages, or punitive damages. Abuse committed using a Power of Attorney or other fiduciary appointment can have real legal consequences. Many of the civil legal remedies available to your client are based on the perpetrator’s breach of their fiduciary responsibility.

Pursuant to [NRS 41.1359\(1\)](#), if an older person “suffers a loss of money or property caused by exploitation,” the **perpetrator is liable for “two times the actual damages incurred.”** This provision also applies to vulnerable persons, so long as the perpetrator knew that the victim was a vulnerable person.

You need a legal remedy to...	Consider	Why?	Statutes & Practice Tips
<b>Require the perpetrator to account for the funds and property of your client</b>	Action for an Accounting  Action to Freeze Assets	If the perpetrator was in a fiduciary relationship with your client, they may be subject to prove that they properly handled the funds and property of your client by supplying records and information.	In Nevada, for plaintiffs to prevail on an independent cause of action for an accounting, plaintiffs must establish the existence of a special relationship of trust whereby a duty to account may arise. <i>Wolfram v. Pardee Homes of Nev.</i> , 2014 Nev. Dist. LEXIS 3348 at *27 – *28 (citing <i>Teselle v. McLoughlin</i> , 92 Cal.Rptr.3d 696 (Cal. App. 4th 2009)).
<b>Recover damages from the perpetrator, and the perpetrator was acting as your client’s agent</b>	Breach of Fiduciary Duty (Tort)	If your client’s funds or property were mishandled by their agent (through a POA or other agent relationship), you might have a claim for breach of fiduciary duty. Generally, an agent is required to act in the best interests of the principal. If this breach occurred, your client may be able to recover traditional tort damages.	Should your client succeed in proving a breach of fiduciary duty claim, remedies exist to attempt to make them "whole." Generally speaking, remedies for breach of fiduciary duty are equitable in nature, meaning they are intended to put the person in the position they would have been had the breach not occurred. Remedies for breach may include money damages, injunctive relief, transfer or property or constructive trusts.  If the action is against an attorney, the statute of limitations is within 4 years after the plaintiff sustains damage or within 2 years after the plaintiff discovers the material facts which constitute the cause of action, whichever occurs earlier. <a href="#">NRS 11.207(1)</a> .  Otherwise, the statute of limitations for breach of fiduciary duty can vary between

			<p>one and six years depending on the nature of the action. <b>NRS 11.190</b>; <i>see also Stalk v. Mushkin</i>, 125 Nev. 21, (Nev. 2009) (applying varying time limitations for different parts of a claim of breach of fiduciary duty).</p> <p>Remedies for breach of fiduciary duty in Nevada can include punitive damages and unequal division. Gary R. Silverman, <i>I Spent the Money on Whiskey, Women and Gambling; The Rest, I Wasted</i>, 19 NEV. LAWYER 19, 23 (2011).</p> <p>If the court finds the property was converted, embezzled, or disposed, the victim can pursue double damages as provided in <b>NRS 41.1395</b>. Kim Boyer, <i>Department: Elder Law: Financial Exploitation: Using NRS 159.091 to Recover Property</i>, 10 NEV. LAWYER 21 (2002).</p>
<b>Recover damages from a perpetrator who was a hired caregiver, the company employing the perpetrator and/or their insurance company</b>	Breach of Contract, Unjust Enrichment	If the perpetrator was hired by or working for your client, the financial exploitation could be characterized as a breach of their contract to perform their work.	<p>A breach of a contract occurs when a party does not fully perform a duty under the contract that is due. Restatement (Second) of Contracts § 235: Effect of Performance as Discharge and of Non-Performance as Breach, Comment (b).</p> <p>Also, there is a difference between a tort action and contract action in good faith covenant cases. The tort action requires a special element of reliance or fiduciary duty. <i>Hilton Hotels Corp. v. Butch Lewis Prods.</i>, 808 P.2d 919, 923 (Nev. 1991) (citing <i>A.C. Shaw Const. v. Washoe County</i>, 784 P.2d 9 (Nev. 1989)).</p>
<b>Recover damages from the perpetrator where a “theft” occurred. The perpetrator does not have to be an agent or hired caretaker</b>	Conversion (Tort)	Generally, conversion is an intentional tort in which one person takes, uses or alters the property of another person without permission. Property can include money, tangible items and real property. Conversion can sometimes be characterized as the civil version of theft.	In Nevada in order to show conversion, a plaintiff must prove that the defendant wrongfully exerted dominion over personal property in denial of, or inconsistent with, title or rights therein or in derogation, exclusion or defiance of such rights. While conversion requires a physical act of dominion over personal property, liability for conversion is predicated upon general intent, which does not require wrongful intent and is not excused by care, good

			<p>faith, or lack of knowledge. <i>Winchell v. Schiff</i>, 193 P.3d 946, 950 (Nev. 2008).</p> <p>The full value of the property at the time of conversion is an appropriate measure of damages when the defendant is unable or unwilling to return the property. When the conversion causes a serious interference to a party's rights in his property the injured party should receive full compensation for his actual losses. The property value is not the sole measure of damages. <i>Winchell, supra</i>, at 950 – 51.</p> <p>The perpetrator of conversion is liable to two times the actual damages incurred against older persons. <b>NRS 41.1395</b>.</p>
<p><b>Recover damages from the perpetrator for using deceitful means to induce your client to transfer property, funds or sign an agreement</b></p>	<p>Fraud or Constructive Fraud (Tort), Constructive Trust, Unfair/Deceptive Trade Practices</p>	<p>Proving fraud, while sometimes difficult, can provide options for your client to “undo” certain transfers or agreements as well as possibly recover punitive damages.</p> <p>Generally, it involves the intentional misrepresentation or concealment of a material fact, which the victim relied on to their detriment.</p> <p>For property disputes, your client may consider pursuing constructive trust as a remedy in equity.</p>	<p>In Nevada, the elements for a claim of fraud or intentional misrepresentation are:</p> <ol style="list-style-type: none"> <li>1) Defendant makes a false representation or misrepresentation as to a past or existing fact;</li> <li>2) With knowledge or belief by defendant that representation is false or that defendant lacks sufficient basis of information to make the representation;</li> <li>3) Defendant intended to induce plaintiff to act in reliance on the representation;</li> <li>4) Justifiable reliance upon the representation by the plaintiff;</li> <li>5) Causation and damages to plaintiff as a result of relying on misrepresentation; and</li> <li>6) Must be proved by clear and convincing evidence and be pled with specificity.</li> </ol> <p>Jay Young, <i>Elements for a Claim of Fraud</i>, NEV. L. BLOG. (Sept. 2, 2015) (citing NRCP 9; NEVADA JURY INSTRUCTIONS 9.01; <i>Jordan v. State ex rel. Dep’t of Motor Vehicles &amp; Pub. Safety</i>, 110 P.3d 30, 51 (Nev. 2005); <i>J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.</i>, 89 P.3d 1009 (Nev. 2004)).</p> <p>The statute of limitations for fraud in Nevada is three years. <b>NRS 11.190(4)(c)</b>.</p>

			<p>One must prove the following in order for a court to impose a constructive trust: 1) confidential relationship between the parties; 2) retention of legal title by defendant against plaintiff would be inequitable under the circumstances; and 3) existence of trust is essential to the effectuation of justice. Jay Young Elements for a Claim of Imposition of a Constructive Trust, NEV. L. BLOG. (Sept. 10, 2015) (citing <i>Locken v. Locken</i>, 650 P.2d 803 (Nev. 1982)).</p> <p>For information on unfair trade practices, see N.R.S. §§ 598.0915 – 598.0918, 598.092 – 598.0925; see also Jay Young, <i>Deceptive Trade Practices Statutes</i>, NEV. L. BLOG. (Sept. 24, 2015).</p>
<b>Reverse transactions or agreements that are damaging to your client</b>	Rescission/Undue Influence	<p>As a remedy for fraud or undue influence, rescission or a reversal can be sought when your client was “induced” into a contract by a misrepresentation or undue influence by the perpetrator or if the client lacked necessary capacity at the time of the transaction.</p> <p>This could be considered in situations where your client may have added the perpetrator as a joint bank account holder or signed an agreement to transfer funds or property to the perpetrator or another party.</p>	<p>In order to establish undue influence under Nevada law, it must appear, either directly or by justifiable inference from the facts proved, that the influence destroyed the free agency of the testator. The influence that may arise from a family relationship is only unlawful if it overbears the will of the testator. <i>Caraveo v. Perez (In re Estate of Bethurem)</i>, 313 P.3d 237, 241 (Nev. 2013).</p>
<b>Recover real and personal property from the perpetrator</b>	Guardianship Proceeding	<p>Filing a civil lawsuit to recover the property can be costly and time consuming. An effective way to recover real property or personal property is by using <b><u>NRS 159.091</u></b> in a guardianship proceeding.</p>	<p>To proceed under <b><u>NRS 159.091</u></b>, the guardian can file a petition alleging that someone "has or is suspected or having concealed, embezzled, converted, or disposed of any property of the ward."</p> <p>"A citation should then be issued to the alleged perpetrator for the return of the money or property . . . [t]he guardianship court will hold a hearing to determine whether the ward was competent to make loans or gifts." Kim Boyer, <i>Department:</i></p>

			<p><i>Elder Law: Financial Exploitation: Using NRS 159.091 to Recover Property, 10 NEV. LAWYER 21 (2002).</i></p> <p>Keep in mind that <b>NRS 41.1359(1)</b> makes the perpetrator liable for two times the actual damages incurred against an older person.</p>
<p><b>Seek compensation for lost funds</b></p>	<p>File for compensation funds through Victims' Compensation Assistance Programs</p>	<p>Most of these programs have a very short time frame during which a victim can file for compensation and a police report must have been filed in a timely manner.</p>	<p>Crime victims in Nevada who have suffered financial loss should contact <b>the Victims of Crime Program</b> (VOCP) at <a href="mailto:VOCP@dcs.nv.gov">VOCP@dcs.nv.gov</a>, or the VOCP program manager at (702) 486-2740.</p> <p>The VOCP is dedicated to providing immediate financial assistance to victims of violent crimes that occur in Nevada.</p> <p>To contact the Nevada Attorney General's office, call 775-684-1100.</p>

## Tools for Addressing Stranger Financial Exploitation & Scams

Scams and fraudulent practices aimed at older adults include a wide range of illegal behavior from imposter scams to mortgage fraud. Scammers use deceptions, misrepresentation and threats to convince older adults to send money or provide personal or financial information. [Common frauds and scams](#) aimed at older adults include: imposter scams, identity theft, home improvement and mortgage-related scams, and fraudulent marketing practices.

If your client has been targeted by a scam, it is important to take immediate action to stop the scam and further depletion of income and assets. A NCLER Chapter Summary, [Legal Basics: Protecting Older Adults against Scams](#), details the actions an advocate can take when responding to identity theft, along with unauthorized credit and debit card use.

Identitytheft.gov, the Consumer Financial Protection Bureau and the Department of Justice, as well as many state Attorney General's offices, offer information on the [scams targeting older adults](#), [reporting options](#), and [steps for recovering from identity theft](#). Civil legal aid attorneys can play a role in helping their clients avoid future exploitation, reducing solicitations, and empowering them to move forward.

## Coordination with Prosecutors & Criminal Proceedings

In March 2016, the Department of Justice [announced](#) the launch of 10 regional Elder Justice Task Forces. These Task Forces provide coordination among state and local agencies, organizations, and law enforcement that are combating elder abuse. Additionally, the Task

Forces can evaluate complaints, investigate scams, and provide training centered on federal criminal actions. Although the [Elder Abuse Prevention and Prosecution Act](#) of 2017 now requires the creation of an Elder Justice Task Force in every federal district in the country, the original 10 Task Forces remain the only Task Forces listed on the DOJ website as of June 2018. A list of the original 10 Elder Justice Task Forces can be found [here](#). The closest of these task forces to Nevada is in the Northern District of California. Contact your local district to find out who your coordinator is, or reach out to NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).

If the prosecutor's office is pursuing criminal charges against the perpetrator, you will want to coordinate your civil case strategy to ensure that you are strategically bringing your civil case at the appropriate time and that you are not acting at cross purposes with the prosecution or failing to file within the statute of limitations for civil actions while a criminal action is being pursued. Coordination with the prosecutor may be accomplished through a multidisciplinary team (discussed below). If there is a criminal conviction, the court may be able to enter an order for restitution.

## **Associated Legal Issues**

Elder financial exploitation is often associated with a broad range of legal problems. Civil legal aid attorneys can help clients address not only the abuse, but also the other legal problems it has created. The next section provides examples of the issues you may be able to address for your clients.

### ***Medicaid Denials***

When someone applies for Medicaid to pay for long-term care, they need to provide financial records to prove their income and assets, and to show that they haven't transferred funds or property without getting fair market value for them. When someone has been financially exploited, they may have problems qualifying for Medicaid or maintaining their Medicaid eligibility. Issues that your client may face include:

- Being denied Medicaid eligibility because of missing bank records or financial information;
- Having to delay eligibility during a "penalty period" based on perceived "gifts;"
- Receiving an eviction or involuntary discharge from a nursing home or hospital due to nonpayment;
- Needing to apply for a "hardship waiver" to explain why funds are missing; and
- Needing to have a fraudulent deed transfer reversed and designated as never having occurred; such transfers are not eligible for "hardship waivers."

Legal services attorneys can play a critical role in ensuring that victims of elder financial exploitation can access Medicaid long-term care benefits by advocating on their behalf, helping construct the information needed to show that financial exploitation has caused the issue, and drafting hardship waivers. If you are assisting a client with issues with financial exploitation, you should consider how the exploitation may impact your client's future Medicaid eligibility, and

alert your clients to this possibility. For more information and tips on handling these cases, the NCLER offers a [guide](#).

The 2019 Nevada Medicaid Provider Training on appeals, adjustments, and voids provider training can be found [here](#). Appeals must be submitted to Nevada Medicaid electronically, no later than 30 calendar days from the date on the remittance advice, and included a completed [Formal Claim Appeal Request \(FA-90\)](#).

### ***Federal Tax Consequences***

Your client may be facing federal tax consequences if the financial exploitation included the early withdrawal of funds from their IRA. If your office provides federal tax assistance, you may want to connect your client to those services or to an outside tax professional. For clients who meet the eligibility guidelines, you can refer them to the [Volunteer Income Tax Assistance program](#) if there is one in your area, such as such as the [Volunteer Income Tax Assistance program](#) (VITA), [Low Income Tax Clinics](#) (LITCs), or [Tax Counseling for the Elderly](#) (TCE).

Program	Acronym	Eligibility	Cost	Services
<b>Volunteer Income Tax Assistance</b>	VITA	Income < \$59,000 (2019)  Persons with disabilities  Limited English proficiency	Free	Basic income tax return preparation
<b>Tax Counseling for the Elderly</b>	TCE	Age 60+	Free	Pensions and retirement-related issues
<b>Low Income Tax Credits</b>	LITC	Income < 250% of Federal Poverty Line (FPL)  Persons for whom English is the second language	Free/Low Cost	Assistance in resolving tax disputes with the IRS (e.g. audits, appeals, collection matters, federal tax litigation)  Tax return preparation (if necessary to resolve the dispute)  Education and outreach to ESL speakers

### ***VITA and TCE in Nevada***

Nevada has multiple VITA and TCE locations, all of which are in Las Vegas/Clark County. Below is a non-exhaustive list. Go [here](#) for full listing by the Nevada Free Taxes Coalition, or you may use the [IRS's VITA and TCE finder](#). Please note that some providers may only offer services during certain months of the year. Taxpayers requiring assistance in other languages might also explore options in California.

Provider	Address	Phone Number	Languages	Dates and Other Info
<b>Alexander Library</b>	1755 W Alexander North Las Vegas NV 89032	702-633-2880	English Spanish	Appointment Only February – April
<b>Gear Up</b>	1455 E Tropicana Ave. Ste. 650 Las Vegas NV 89119	Not provided	English Spanish Tagalog	Walk in welcome February – April
<b>Nevada Free Taxes Coalition</b>	598 S Decatur Blvd Las Vegas NV 89107	702-987-4625	English Spanish	Appointment Only February – April
<b>Stupak Community Center</b>	250 W Boston Avenue Las Vegas NV 89102	702-229-2488	English Spanish	Appointment Only February – April
<b>East Las Vegas Community Center</b>	250 North Eastern Avenue Las Vegas NV 89101	Not provided	English Spanish	Walk in welcome February – April
<b>Nevada Hand – Sky View Pines Family Apartments</b>	21 W Owens Ave. Las Vegas NV 89030	702-410-2763	English Spanish	Appointment Only February – April
<b>Filipino-American Heritage Foundation</b>	2870 S Maryland Pkwy #120, Las Vegas, NV 89109	702-461-9053	English Spanish Tagalog	Call for address/dates/times
<b>Nevada Partners</b>	690 West Lake Meade Blvd North Las Vegas NV 89030	Not provided	English Spanish	Drop off available Walk in Welcome February – April

*LITCs in Nevada*

Nevada does not have any LITC Tax Clinics (see [Low Income Taxpayer Clinic Map](#) on IRS LITC Information Page). A full listing of LITCs can be found [here](#).

## *Consumer*

If the financial exploitation experienced by your client included the unauthorized use of their credit cards or accounts unknowingly opened in their name, he or she may be left with credit card bills that they cannot pay. Working with the fraud department of the credit or banking institution may help your client—it is important that you or your client reach out to the financial institutions as soon as possible. Many will have defined windows of time in which the fraud must be reported. For more information about the steps your client will need to take, use [identitytheft.gov](https://identitytheft.gov). CFPB resources including sample [letters](#) are also available on their website. Additional resources are available through your state’s Attorney General and the Department of Justice.

If your client is facing consumer credit lawsuits or existing credit judgments, you will want to determine whether your client can assert any defenses to the credit card lawsuit, such as fraud. You can also evaluate whether your client is “collection-proof,” meaning their income and/or homestead, for example, is beyond the reach of creditors. If judgments have already been entered, determine whether the judgement can be vacated or if the case can be re-opened.

In Nevada, a judgment can be vacated within six months for certain matters including mistake, inadvertence, surprise, or excusable neglect, newly discovered evidence that could not have been discovered within 28 days of written notice of judgment, and fraud; for other matters, the judgment can be vacated within a reasonable time. [NRCP 60](#).

Nevada Consumer Affairs has a [webpage on senior fraud](#), describing over 20 different common scams that target seniors including health care fraud, counterfeit prescription drugs, and internet fraud. You can contact Nevada Consumer Affairs in Las Vegas at (702) 486-2750 or Carson City (775) 684-1910.

## *Housing*

In some cases of financial exploitation, rent, mortgage or tax payments may not have been made, and the victim is left facing eviction or foreclosure. Subsidized housing evictions can be an issue as well if the perpetrator has been staying in the home in violation of the housing guidelines.

In some cases, the perpetrator of financial abuse may have stolen funds from an older adult that should have been paid to a skilled nursing facility, which could result in threat of eviction from a nursing home or assisted living facility for failure to pay. A NCLER issue brief on [Defending Evictions from Nursing Homes and Assisted Living Facilities](#) provides information on the notices, documentation, and situations that are required by law for a nursing home to evict a resident, and offers strategies for defending an eviction or appealing a decision.

Nevada Legal Services has a [webpage](#) dedicated to housing rights and eviction as well as a [Powerpoint Presentation](#) from UNLV Boyd School of Law.

## **Collaboration with Community Partners & Enhanced Multi-Disciplinary Teams**

Collaboration with aging services providers, community partners, and the justice system is an important component of your effective representation of your client. It is important that you are aware of the programs and organizations that are available to help your client with their non-legal concerns. You should connect your client to supportive services when needed, including nutrition services, counseling, safety planning, and shelter options.

### ***Adult Protective Services***

Adult Protective Services (APS) is an emergency social services program provided by state and local governments serving older adults and adults with disabilities who want assistance because of abuse, neglect, self-neglect, or financial exploitation (adult maltreatment). APS receives and responds to reports of adult maltreatment and works closely with clients and allied professionals to maximize client safety and independence. If you are working with older adults, you should become familiar with your local APS's reporting procedures, as well as the services and resources that they can provide. This will be helpful in weighing whether your client wants to involve APS in their case, as discussed in the earlier section on mandated reporting. Once a report is substantiated, APS and other senior services providers can arrange for myriad supportive services for your clients, which can be key to their ongoing safety and recovery.

These services can include housing, health care services, food, medical supplies, transportation, and mental health services. When legal aid and APS have an established relationship, they can better understand each other's scope of services, constraints, and ability to refer.

In Nevada, APS is done through the [Aging and Disability Services Division](#). Nevada APS will investigate, which begins within 3 working days of being reported, evaluate, and arrange/refer to other services. To connect with an APS unit in their area, your client should call the Older Adult Abuse Hotline at (702) 486-6930 for Las Vegas/Clark County and (888) 729-0571 for statewide/other areas, or the Nevada Aging and Disability Services Division Administrative Office at 1-800-922-2275.

### ***Long-Term Care Ombudsmen***

The Older Americans Act requires every state to have a Long-Term Care Ombudsman (LTCO) program that addresses complaints and advocates for improvements in the long-term care system. Ombudsmen advocate for residents of nursing homes, board and care homes, assisted living facilities, and other adult care facilities. Because LTCO are often a first point of contact for long-term care residents, they may be the first to notice the warning signs of financial exploitation or be the first person a resident confides in regarding financial exploitation. LTCO are a key community partner in preventing and identifying financial exploitation. In Nevada, the statewide LTCO program managed by the State Long Term Care Ombudsman through the Aging and Disability Services of the Nevada Department of Health and Human

Services. Contact information for the LTCO program can be found [here](#). The Nevada LTCO program also has a helpline at 1-888-282-1155.

### ***Multi-Disciplinary Teams***

One of the most notable forms of collaboration on elder exploitation cases is through multi-disciplinary teams and enhanced multi-disciplinary teams (MDTs and E-MDTs). MDTs are partnerships among public, private and non-profit organizations with the goal of improving outcomes for victims of elder financial exploitation. Most teams include a prosecutor, adult protective services, civil legal services, financial institutions, forensic accountant and other members. The collaboration on these teams fosters accountability and improved cooperation among agencies. There are not currently any formal MDTs or E-MDTs in Nevada. For information on developing team in your area, the US Department of Justice offers a [guide](#). In the State of Nevada, the Aging and Disability Serviced Division of the Department of Health and Human services has been involved prior MDT meetings in Washoe, Carson City, Lyon, and Churchill counties. If you are interested in developing a new team in your area, contact the [Aging and Disability Serviced Division](#).

As a civil legal aid attorney, if you are participating in a multi-disciplinary team model, you should remain aware of your ethical responsibilities and ensure that there are procedures in place to protect attorney-client confidentiality. Procedures can include implementing confidentiality agreements, excluding client names from conversation, and consent forms. Visit the [Multidisciplinary Technical Assistance Center](#) for additional forms and information.

### ***Home and Community Based Services***

If your client's abuser also serves as their caretaker, the Home and Community Based Waiver (HCBW) Program may help to replace any assistance your client loses once they rid themselves of the abuser. HCBW provides non-medical services to older persons in their own home rather than in a nursing facility. A waiver is available to persons aged 60+ who meet income and asset guidelines and are found medically eligible for nursing home coverage, though applicants younger than 65 must be permanently disabled in accordance with Title XVI standards. These eligibility requirements are 1) be 65 years of age or older, 2) be at risk of institutionalization (nursing home placement) if services are not provided (meet Level of Care for nursing home placement), and 3) be financially eligible (call for current income guidelines). To learn more about the waiver and find out how to apply, click [here](#).

## **Additional Resources**

### ***National***

- General Information & Resources on Elder Abuse: [National Center on Elder Abuse](#)
- Webinars & Practice Guides: [National Center on Law & Elder Rights](#)
- Ethics & Practice Guidance: [ABA Commission on Law & Aging](#)
- Statutes, Information & Webinars: [U.S. Department of Justice, Elder Justice Initiative](#)

- Long-Term Care Ombudsman Resource: [Long-Term Care Ombudsman Resource Center](#)

***State of Nevada***

- Statutory definitions for elder abuse and other related terms: [NRS 200.5093](#)
- Nevada Older Person Abuse Hotline
  - Las Vegas/Clark County: (702) 486-6930
  - Statewide/All other areas: (888) 729-0571
- [Nevada Adult Protective Services](#)
- [Elder Law Section of the State bar of Nevada](#)