

# Preventing Elder Financial Exploitation

## Talk About Payments Webinar

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**Scarlett Heinbuch**, Federal Reserve Bank of Atlanta

**Ronald C. Long**, Wells Fargo

**Naomi R. Cahn**, University of Virginia



Federal Reserve  
Bank *of* Atlanta

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Ronald C. Long

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Naomi R. Cahn

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# OUR EXPERTS



**Scarlett L. Heinbuch**

Payments Risk Expert,  
Federal Reserve Bank of  
Atlanta



**Ronald C. Long**

Head of Aging  
Client Services,  
Wells Fargo



**Naomi R. Cahn**

Director, Family Law  
Center, University of  
Virginia (UVA)

*Disclaimer: The views expressed herein are those of the speakers and participants and do not necessarily reflect the views of the Federal Reserve Bank of Atlanta or the Federal Reserve System.*

# Elder Financial Exploitation

## Definition:

**The illegal or improper use of an older adult's funds, property, or assets**

# “The Crime of the 21<sup>st</sup> Century”

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- Every day, nearly 10,000 adults in the United States turn 65
- Financial exploitation: Billions in losses for those 60+
- Conservatorships: 1.3 million adults, representing \$50 billion in assets (includes younger people and those with disabilities; majority are elders)

[201406\\_cfpb\\_guide\\_protecting-residents-from-financial-exploitation.pdf \(consumerfinance.gov\)](#)

[The United States of Elder Fraud - How Prevalent is Elder Financial Abuse in Each State? - Comparitech](#)

[https://www.ic3.gov/Media/PDF/AnnualReport/2020\\_IC3ElderFraudReport.pdf](https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3ElderFraudReport.pdf)

[https://www.eldersandcourts.org/\\_data/assets/pdf\\_file/0021/5844/ovc-brief-7.pdf](https://www.eldersandcourts.org/_data/assets/pdf_file/0021/5844/ovc-brief-7.pdf)

## Today's Session

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- What risks need to be understood to protect the elderly from financial exploitation?
- What are the differences among guardianship, power of attorney, and conservatorship?
- Are women more at risk for exploitation than men?
- What can financial institutions do to identify their elderly customers and protect them?

## Some Examples of Financial Exploitation\*



Mr. R, age 77

- Suffered from Alzheimer's and Parkinson's
- Church pastor gained authority to manage care and finances
- 130 ATM withdrawals; 9 months of unpaid nursing home bills
- Pastor was charged and convicted

Ms. X, age 74

- Living in a nursing home suffering from dementia
- Person with POA stole >\$100,000
- Sold victim's home to a relative for under market value
- Charged with felony theft, fraud and misuse of a POA



\* For more details, see the Consumer Financial Protection Bureau's [\*Protecting residents from financial exploitation: A manual for assisted living and nursing facilities.\*](#)

# Conservatorships in the Spotlight

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Britney Spears: Estimated net worth in 2021—\$70 million



Nichelle Nichols: Estimated net worth in 2021—\$8 million



Movie: *I Care A Lot* (based on true stories)

## Sources

[Nichelle Nichols Net Worth \(2021 Update\) \(celebritynetworth123.com\)](https://celebritynetworth123.com/nichelle-nichols-net-worth-2021-update/)

[Britney Spears Net Worth | Celebrity Net Worth](https://celebritynetworth123.com/britney-spears-net-worth/)

['I Care a Lot': The Shocking True Stories behind the Netflix Movie \(newsweek.com\)](https://www.newsweek.com/i-care-a-lot-netflix-movie-true-stories-1501111)

## Polling Question #1

In working with a 75-year-old client when concerns of potential scams or abuse may be at issue, a banker must remember that above all else, it is the customer's money and they can do with it what they want.

A. True

B. False



# The 45-Year Revolution

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- In 1975, 55% of liquid financial assets in bank deposits
- Today almost 73% of liquid financial assets in stocks, bonds, and mutual funds
- \$66 trillion in the hands of baby boomers heading into “de-accumulation” phase
- Retirement change from “defined benefit” to “defined contribution”
- Near-zero interest rates
- Internet as both an industry in which to invest and a tool making investments easier **BUT**
- Internet making fraud and abuse easier

# The Bottom Line on Financial Challenges

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*Population of baby boomers in the  
United States:*

70.6  
Million

- Older folks have lots of money that they are expected to manage.
- Health disruptions mean living longer.
- Mobility, smaller families, death, and divorce mean more are living alone.
- Living longer lonely and with money is a very tempting target for scammers.
- Longevity increases chances of dementia/diminished capacity.
- Together, these put pressure on elders, banks, and brokerage firms

# Does the Banking System Contribute to Greater Elder Financial Abuse?

- Virtually all seniors use traditional deposit accounts.
- Government now insures up to \$250,000.
- System is more transactional, as *personnel* may not “*know you*.”
- P2P, wires, ACH, and gift cards are used to target the rich.
- Philosophy is to promptly execute client’s request.
- Key privacy rights are strictly obeyed.
- Instruments vary on “recall.”
- Dignity, autonomy, and ageism must be balanced.



## Polling Question #2

Even when the banker knows the name and contact information for a trusted relative, the banker can never breach privacy to contact that person when the banker is concerned about abuse or diminished capacity of an elder customer.

A. True

B. False



# Initiatives of the Financial Industry

## Initiatives

- Creating language to implement temporary holds or delays
- Implementing “*Trusted Contact*” forms
- Providing educational materials
- Sponsoring surveys, studies, and training modules
  - [Money Smart for Older Adults](#), by CFPB & FDIC
  - [BankSafe](#), by AARP
  - [Senior Safe Act](#) of 2018
  - [Senior Investor Protection Playbook](#) (part of a full toolkit by SIFMA)
  - [HelpVul](#) pilot, NAPSA

## Elder Client Scenario: Romance Scam



- 68-year old client makes a large withdrawal from his annuity.
  - Advises agent that he is sending money overseas to a new girlfriend he met on an internet dating site.
  - Bob seems very happy with his new online relationship and believes she will be visiting him in-person sometime this summer.
  - Soon after the first request, Bob requests another large withdrawal to go to a new girlfriend in Alabama that he met through the same dating site.
- 
1. What actions can a financial institution take?
  2. What, if anything, could have been done to stop Bob from withdrawing more money after his first request?
  3. Bob has a 40 year-old son, Henri. What legal options are available to Henri?

# Five Types of Elder Abuse

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1. Physical abuse
2. Emotional or psychological abuse
3. Sexual abuse
4. Neglect by others (includes abandonment)
5. Financial or material exploitation

# Financial or Material Exploitation

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- Types:
  - Scams by strangers
  - Scams by professionals
  - Exploitation by family members/others
- Estimates? CFPB—Suspicious Activity Reports on Elder Financial Exploitation (2019)
  - 2017: 63,500 cases reported of elder financial exploitation—“likely represent a tiny fraction of actual incidents”
  - Financial institutions reported \$1.7 billion dollars, including both actual losses as well as attempts
    - Average amount of \$34,200; 7% greater than \$100K

Source: NBER 2020; CFBP, [https://files.consumerfinance.gov/f/documents/cfpb\\_suspicious-activity-reports-elder-financial-exploitation\\_report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf)



# Frequency

Study: Financial abuse by strangers may be more common than by family members, although loss appears to be higher when the scammer is known.

[https://www.nber.org/system/files/working\\_papers/w27225/w27225.pdf](https://www.nber.org/system/files/working_papers/w27225/w27225.pdf) (p. 7)



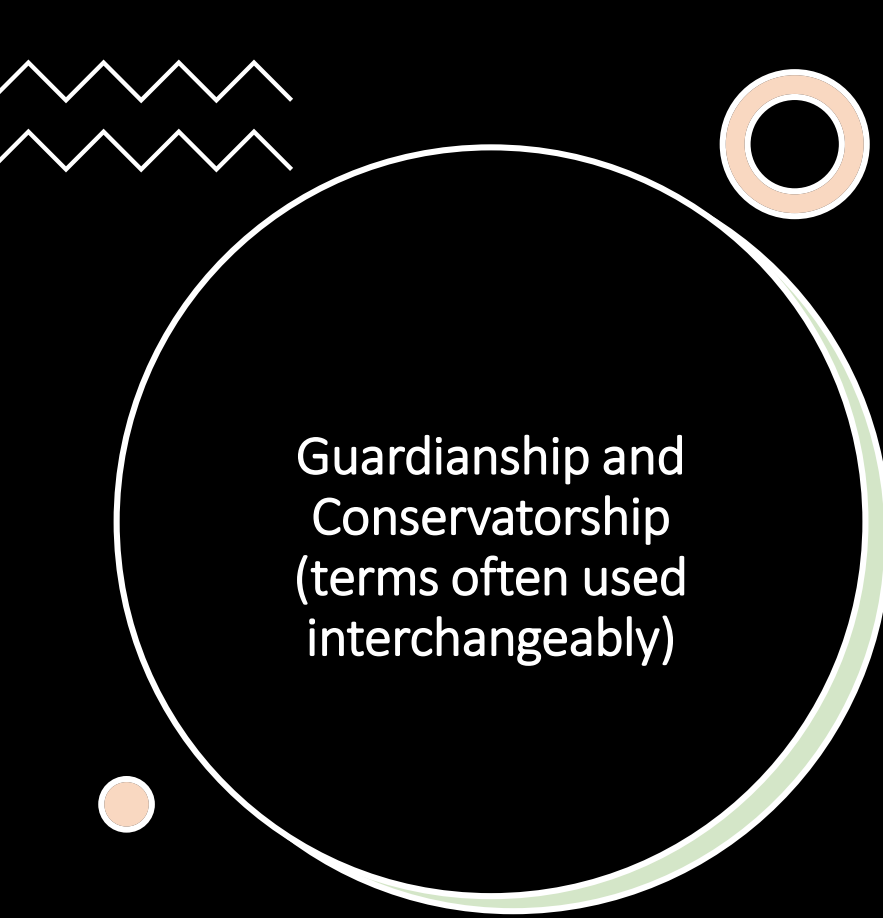
# PLANNING DURING LIFETIME

Financial Power of Attorney

Health Care Directive

Will/Revocable Living Trust

Multiparty accounts



Guardianship and  
Conservatorship  
(terms often used  
interchangeably)

- Guardianship (Adult)
  - “Guard the person”
  - Guardianships of minors also possible
- Conservatorship (Adult)
  - “Conserve” the individual’s financial assets
- Guardian/Conservator is a fiduciary



## Polling Question #3

**Someone subject to a conservatorship loses all rights to manage their own money and health.**

- A. True**
- B. False**



## **Guardianship:**

Court order authorizes one person or entity to exercise power over and on behalf of another person.

(“person subject to the guardianship”)

## **Guardianship Proceedings: Petition and Notice**

- Filing of petition
- Various protections for person subject to petition
- Court hearing

# Guardianship and/or Conservatorship

- Guardianship/Conservatorship
  - Option of last resort
- What is the goal of guardianship?

## Problems with Existing Court Monitoring and Reporting Requirements

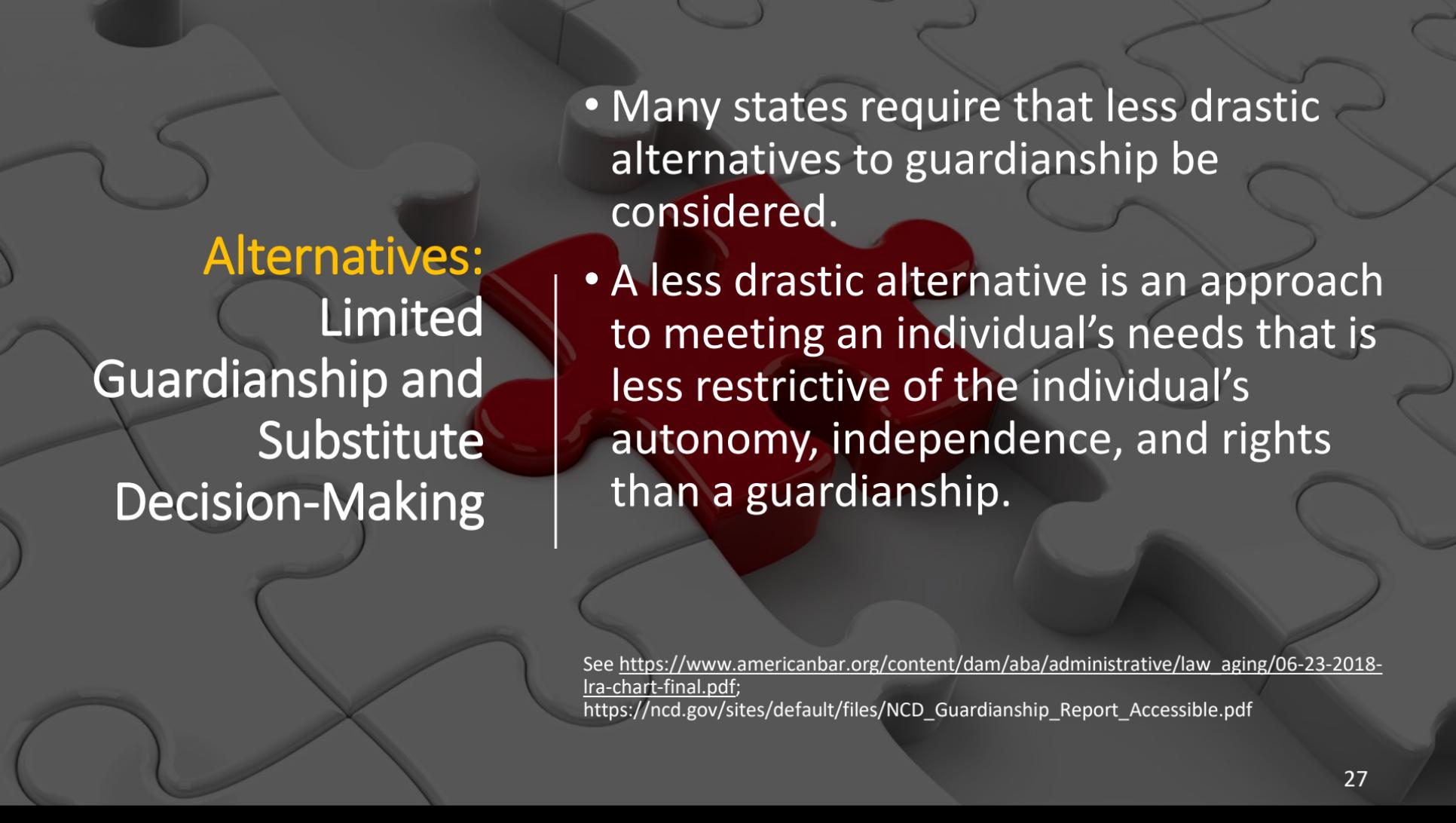
- The court monitors guardianships to ensure:
  - Guardians are carrying out their duties and responsibilities
  - Person subject to guardianship is receiving needed care and protection
- Problems? Yes.
  - Monitoring
  - Staffing
  - Resources
  - Lack of data

## 2021, David Godfrey, ABA Commission on Aging and the Law

“No one can give us a reliable assessment of the scope of the issues with guardianship, because no one knows how many adults have had a guardian appointed. Only a handful of states collect statewide data on adult guardianship. Nearly all data on adult guardianship is held at the local court level with no system available in most states for reporting this information into a statewide database. As a result, no one knows how many adults have had a guardian appointed, the demographics, what determinations the courts made in deciding a guardian was needed, who the guardians are, what reports are being filed, what those reports show, or even how many questions or complaints against guardians have been raised with the courts. Without technical assistance and funding most under resourced courts systems are unable to collect data. The result is we know there are problems, but we have no idea the true scope.”

[https://www.americanbar.org/groups/law\\_aging/publications/bifocal/vol-42/vol-42-issue-4-march-april-2021/challenges-in-guardianship-and-guardianship-abuse/](https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-42/vol-42-issue-4-march-april-2021/challenges-in-guardianship-and-guardianship-abuse/)

**What can be done?**



**Alternatives:**  
Limited  
Guardianship and  
Substitute  
Decision-Making

- Many states require that less drastic alternatives to guardianship be considered.
- A less drastic alternative is an approach to meeting an individual's needs that is less restrictive of the individual's autonomy, independence, and rights than a guardianship.

See [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/06-23-2018-lra-chart-final.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/06-23-2018-lra-chart-final.pdf);  
[https://ncd.gov/sites/default/files/NCD\\_Guardianship\\_Report\\_Accessible.pdf](https://ncd.gov/sites/default/files/NCD_Guardianship_Report_Accessible.pdf)

# Deputization

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Though one research paper calls it “deputization” of financial professionals, FINRA and state laws do permit financial professionals to:

- Pause or halt a transaction when the professional reasonably suspects fraud or abuse
- Reach out to a trusted contact or other qualified person to advise that the financial client might need help
- Receive qualified immunity when taking the above actions in good faith

# Federal Policies

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- [Senior Safe](#)
- [SAR “Elder” category added in 2013](#)
- Elder Abuse Prevention and Prosecution Act
- [CFPB “Advisory for Financial Institutions on Preventing and Responding to Elder Financial Exploitation”](#) (March 2016)
- [FDIC announced enhancements to its Financial Education Program for Older Adults](#) (March 2017)
- [CFPB, Treasury, and FinCEN memorandum emphasizing financial institutions’ role in preventing elder financial exploitation](#) (September 2017)



# Resources

[Elder Financial Exploitation: Why it is a concern, what regulators are doing about it, and looking ahead](#), Stephen Deane, U.S. Securities and Exchange Commission

[Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse](#), GAO

[Managing Someone Else's Money](#), CFPB

[Practical Tool for Lawyers, Checklist and Resource Guide](#), American Bar Association

[Protecting Older Adults from Fraud and Financial Exploitation](#), Consumer Financial Protection Bureau (consumerfinance.gov)

[Protecting Residents from Financial Exploitation](#), Consumer Financial Protection Bureau (consumerfinance.gov)

Senior Safe Act 2018 Fact Sheets

- <https://www.investor.gov/senior-safe-act-fact-sheet>
- [https://www.finra.org/sites/default/files/2019-05/senior\\_safe\\_act\\_factsheet.pdf](https://www.finra.org/sites/default/files/2019-05/senior_safe_act_factsheet.pdf)

[The Thinking Ahead Roadmap](#)

[The United States of Elder Fraud—How Prevalent Is Elder Financial Abuse in Each State?](#), Comparitech

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