

Financial Exploitation of Older Adults

A Guide for Civil Legal Aid Attorneys in Pennsylvania



Produced by



Adapted from information from

NATIONAL
CENTER ON
**LAW &
ELDER
RIGHTS**

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About This Guide

Elder abuse is a growing issue faced by older adults, and the effects of abuse can negatively impact the physical health, mental well-being, financial stability, safety and security of victims. Elder abuse may have both criminal and civil remedies. Elder Abuse includes physical abuse, sexual abuse, neglect and financial exploitation. Elder financial exploitation is the most prevalent form of abuse experienced by older adults.

While acts of elder 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 elder abuse in your state.

This Guide was produced by the Pennsylvania Department of Aging and [SeniorLAW Center](#), with assistance from [Community Legal Services of Philadelphia](#), and adapted from information from the [National Center on Law and Elder Rights](#).¹ NCLER has additional training and resources on a variety of Elder Abuse topics, including: Legal Basics of Financial Exploitation, Undue Influence and Elder Abuse, Elder Financial Abuse and Medicaid Denials, and Civil Litigation as a Remedy for Financial Exploitation. NCLER is developing a series of resources to help aging professionals address the legal aspects of elder abuse, and all resources are available on ncler.acl.gov. SeniorLAW Center frequently provides trainings and education on elder abuse and financial exploitation and both its Victim Services Group and PA SeniorLAW HelpLine act as a resource on these issues throughout the Commonwealth.

Introduction to Financial Exploitation

Financial exploitation of older adults is a prevalent yet underreported, underinvestigated, underprosecuted and underrecognized problem. As a result, determining exact statistics is difficult; however, studies have estimated that 1 in 10 older adults have been financially exploited.² In Pennsylvania, over 28,000 older adults experienced abuse in 2016-17. Financial exploitation has many faces, including theft, ID theft, unauthorized use of credit cards, undue influence, deceptive and unfair business practices, abusive debt collection practices, abuse of powers of attorney, deed fraud and contractor fraud. 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 or their homes. 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 MetLife study of elder abuse released in 2012 estimated that the annual national financial loss resulting from elder financial abuse exceeded \$2.9 billion. <https://www.giaging.org/documents/mmi->

[elder-financial-abuse.pdf](#). More recent studies estimating those figures at well over \$30 billion per year have not been substantiated.

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.”³

One Pennsylvania statute defines financial exploitation as: “An act or course of conduct by a caretaker or other person against an older adult or an older adult's resources, without the informed consent of the older adult or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the older adult.”⁴ However, the hearty discussion surrounding defining “financial exploitation” in Pennsylvania continues and every practitioner should check the most current statutory and case law definition applicable to each client’s case.

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 the abuser and 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 at the end of this Guide 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 wouldn't be considered 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](#).⁵

Mandated Reporter Policy

In Pennsylvania, attorneys are not mandatory reporters of suspected financial exploitation and/or abuse. For additional information on mandatory abuse reporting, see the [Pennsylvania Department of Aging](#) website.

However, 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 and thoroughly with your client. Under the Pennsylvania Rules of [Professional Conduct Rule 1.4](#), you must communicate the issue, options, and implications of any potential action.⁶ 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 elder abuse to Adult Protective Services can result in a case worker investigating the report, which could include a home visit and other actions with which your client may not be comfortable. 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.

Capacity Concerns

Diminished capacity is a risk factor for exploitation, and you need to understand your ethical obligations pursuant to [Pennsylvania Rule of Professional Conduct, Rule 1.14](#).⁷ 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 your duty to your client may be affected as this occurs.

Pennsylvania statutes provide the following standards of capacity for specific legal transactions and guardianship.

Transaction Legal Standard	Statutes & Case Law	Standard
Testamentary Capacity	20 Pa.C.S.A. § 2501 <i>Estate of Hastings</i>, 387 A.2d 865, 867 (Pa. 1978), citing <i>Brantlinger Will</i>, 210 A.2d 246 (1965); <i>Hunter Will</i>, 205 A.2d 97 (1964); <i>Sommerville Will</i>, 177 A.2d 496 (1962); <i>Williams v. McCarroll</i>, 97 A.2d 14 (1953)	“Any person 18 or more years of age who is of sound mind may make a will” “A testatrix possesses testamentary capacity if she knows those who are the natural objects of her bounty, of what her estate consists, and what she desires done with it, even though her memory may have been impaired by age or disease.”
Capacity to Execute a Financial or General Power of Attorney	See generally <i>In re McKinney</i>, 27 Fid. Rep.2d 359 (Chester Cty. O.C. 2007). <i>In re DeStefano</i>, 2009 Phila. Ct. Com. Pl. LEXUS 235, *23, citing <i>In re Robinson</i>, 28 Fid. Rep.2d 65, 82 (Montgomery Cty. O.C. 2008).	No statutory reference to standard of capacity to execute a Power of Attorney. Tripartite test: “at a minimum the principal had to understand the nature of the authority given to the agent, he had to understand what assets would be subject to that power, and he had to understand the notice provision.”

Contractual Capacity, Capacity to Convey Real Property, Donative Capacity	<i>Estate of McGovern v. Commonwealth</i>, 512 Pa. 377, 384 (1986), quoting <i>Taylor v. Avi</i>, <u>415 A.2d 894</u> (Pa. Super. 1979). <i>Taylor v. Avi</i>, <u>415 A.2d 894</u> (Pa. Super. 1979), citing <i>Law v. Mackie</i>, <u>373 Pa. 212</u>, 95 A.2d 656 (1953); <i>Aiman v. Stout</i>, 42 Pa. 114 (1862); <i>Dulnikowski v. Stanziano</i>, <u>195 Pa.Super. 508</u>, 172 A.2d 182 (1961). <i>Lawrence's Estate</i>, 132 A. 786 (1926).	"Under Pennsylvania law, it is presumed that an adult is competent to enter into an agreement, and a signed document gives rise to 'the presumption that it accurately expresses the state of mind of the signing party.'" "It is well settled that mere weakness of intellect resulting from sickness or old age is not legal grounds to set aside an executed contract if sufficient intelligence remains to comprehend the nature and character of the transaction, and no evidence of fraud, mutual mistake or undue influence is present." "A presumption of mental incapacity does not arise merely because of an unreasonable or unnatural disposition of property."
Guardianship	<u>20 Pa.C.S.A. § 5501</u> <u>20 Pa.C.S.A. § 5512.1(a)</u>	"'Incapacitated person' means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety." "Determination of incapacity.--In all cases, the court shall consider and make specific findings of fact concerning: (1) The nature of any condition or disability which impairs the individual's

		capacity to make and communicate decisions. (2) The extent of the individual's capacity to make and communicate decisions. (3) The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts. (4) The type of guardian, limited or plenary, of the person or estate needed based on the nature of any condition or disability and the capacity to make and communicate decisions. (5) The duration of the guardianship. (6) The court shall prefer limited guardianship.”
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[Pennsylvania Rule of Professional Conduct 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.⁸

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/Detecting the Signs of Elder Abuse

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 elder abuse.

The signs and symptoms of elder abuse can be detected in all practice areas. Elder financial exploitation cases do not always present as elder 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](#) that may be helpful.⁹ See also [the Pennsylvania Department of Aging's website on protective services](#).

Below are some examples of how an elder 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.
- A client comes in complaining that their home repair contractor has disappeared after taking their money but before starting or completing their work.
- A client is being ejected from a home they helped to purchase and/or renovate
- A client's cell phone has been cut off as unnecessary
- A client is bouncing checks and does not know why

For more guidance on screening for elder 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.¹⁰

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 filing for a domestic violence protection order or a change of guardian), 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. Pennsylvania permits those without the financial resources to pay the costs of litigation to file a petition to proceed *in forma pauperis* which, if granted, would enable the older adult to file without paying costs. [Pa. R.C.P. 240](#). An attorney representing such a litigant must also file a *praecipe* in accordance with Rule 240. There are no filing fees in Pennsylvania for protective orders under the Pennsylvania Protection from Abuse Act or the Pennsylvania Protection of Victims of Sexual Violence or Intimidation Act.

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. Protective orders can also include the exclusion of the perpetrator from the client's residence and order the perpetrator to relinquish their weapons. Orders can last up to three years. Under the Pennsylvania Protection from Abuse Act, a relationship defined in the statute must exist between the parties. Neighbors, non-intimate friendships and strangers do not qualify for protection under this Act. However, under the Pennsylvania Protection of Victims of Sexual Violence, a victim of sexual violence or intimidation by someone other than a family or household member may qualify for protection. While these orders are civil, a perpetrator who violates the order could face criminal consequences.	Pennsylvania Protection From Abuse Act: 23 Pa. C.S. § 6101 et seq. (part of Domestic Relations code) Definition of "Abuse." The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood: (1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, etc. (2) Placing another in reasonable fear of imminent serious bodily injury. (3) The infliction of false imprisonment pursuant to 18 Pa.C.S. §2903 (relating to false imprisonment). (4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services). (5) Knowingly engaging in a course of conduct which place the person in reasonable fear of bodily injury.

			Pennsylvania Protection of Victims of Sexual Violence or Intimidation Act definitions: 42 Pa.C.S. §62A “Sexual violence.” Conduct constituting a crime under any of the following provisions between persons who are not family or household members: 42 Pa.C.S.A. §62A03 18 Pa.C.S. Ch. 31 (relating to sexual offenses), except 18 Pa.C.S. §§3129 (relating to sexual intercourse with animal) and 3130 (relating to conduct relating to sex offenders). 18 Pa.C.S. §4304 (relating to endangering welfare of children) if the offense involved sexual contact with the victim. 18 Pa.C.S. §6301(a)(1)(ii) (relating to corruption of minors). 18 Pa.C.S. §6312(b) (relating to sexual abuse of children). 18 Pa.C.S. §6318 (relating to unlawful contact with minor). 18 Pa.C.S. §6320 (relating to sexual exploitation of children). For sample forms, see PA LawHelp; AOPC forms. Practice Tip: Most counties have their own forms; check local counties, local court procedures (service, etc.) and for victim assistance.
To get the perpetrator out of their home	Eviction or Ejectment	If the perpetrator currently lives with your client, it may be necessary for you to help your client legally remove the perpetrator. As described above, when the situation complies with the statutory requirements, a Protection from Abuse order removing the perpetrator from the home is usually the fastest course. Other legal means to remove a perpetrator from your client’s home depend on the perpetrator’s claim to occupancy. If there is a lease	Practice Tip: In many circumstances, judges hearing requests for protection orders are reluctant to remove perpetrators who have nowhere else to live. Be prepared to address this issue. In Pennsylvania, the Landlord and Tenant Act of 1951, as amended (68 P.S. §250.101, <i>et seq</i>) and the Rules of Civil Procedure for Magisterial District Judges govern eviction actions. PA has special protections permitting early lease terminations by victims of domestic violence.

		agreement with the perpetrator, your client will have to bring an eviction action to have the tenant evicted from the home. If there is no formal lease agreement, your client would have to file an ejectment action. If the perpetrator is simply a trespasser, you can seek assistance from law enforcement to have them removed. It is unlawful to lock out a tenant without a court order.	Rule 1051 <i>et seq.</i> of the PA Rules of Civil Procedure and 68 Pa.C.S. 250.511 govern actions in ejectment. Practice Tip: If your client is in immediate danger by staying in the home, you should look at alternate housing including shelter options. At present, Pennsylvania does not have any shelters specifically for older adults. Practice Tip: 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. Practice Tip: When there is a dispute about the status of a perpetrator (tenant, legal occupant, trespasser), law enforcement will usually decline to remove the occupant without a court order. Having the required paper work can make all the difference.
To stop money from being taken from their bank account	Freeze or Close Bank Account	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.	Although some legislation has been proposed, Pennsylvania does not currently have any banking laws which would permit the freezing of an account for any period of to "stop the bleeding". Until such laws may be enacted, your client is likely to have to close the account from which the perpetrator has taken funds and open a new one. Practice Tip: 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. Warning: changing the account for automatic deposit can often take a month or more. Do not close the current bank account until this procedure is finalized. Practice Tip: Change passwords on bank accounts regularly and make certain those passwords are secure.

			Practice Tip: Advise your clients to create their own Social Security online account to manage their benefits and prevent identity theft. See https://www.ssa.gov/myaccount/landing-page-generic.html
To stop their agent from misusing a power of attorney document or not fulfilling their fiduciary obligations	Revocation	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. 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.	Pennsylvania does not require any specific form of revocation of a power of attorney. See Chapter 56 of Title 20 Pa.C.S.A. Decedents, Estates and Fiduciaries, for guidance on drafting power of attorney documents. While Pennsylvania does not require a specific form of power of attorney to handle financial matters, there is a required statutory notice which must be signed by the principal. See 20 P.C.S.A 5601(c) for the form of notice. Practice Tip: 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. If the client still has the original, make sure it is destroyed. If the agent has the document, try to get it back and destroy it. Although not required by PA law, a copy of the revocation should be sent, via certified mail, return receipt requested, to the agent being stripped of his/her agency
To change their guardian because the current guardian is misusing funds or taking their property	Termination or Change of Guardianship	If your client has a guardian who is guilty of misconduct, such as committing elder abuse, the court has the discretion to remove the guardian and appoint a new guardian. You can also petition the court to limit the authority of the guardian or terminate the guardianship altogether if the client's capacity has returned.	In Pennsylvania, the procedure to request modification or termination of a guardianship is through a review hearing. 20 Pa.C.S.A. § 5512.2 provides that upon petition from the incapacitated person, guardian or any interested party, the court shall promptly conduct a review hearing where there is alleged a significant change in the person's capacity, a change in the need for guardianship services or that the guardian has failed in their duties or to act in the best interest of the incapacitated person. The court may terminate or modify the guardianship. 20 Pa. C.S.A. § 5517. No particular form is required to request the review hearing, and many Orphans' Courts will schedule a review hearing in response to a letter from the incapacitated person explaining the circumstances and asking for a review hearing. Note that the burden of

			proof (by clear and convincing evidence) in a review hearing is on the party advocating continuation of the guardianship, not the incapacitated person. <u>20 Pa.C.S.A. § 5512.2(b).</u> <u>Practice Tip:</u> Review the <u>ABA’s PRACTICAL Tool for Lawyers</u> for assistance in determining whether your client should be considered for less restrictive options than guardianship.
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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.

At this time, Pennsylvania does not have a specific cause of action for elder abuse. However, state legislators are developing proposals for such an action. Be sure to check current Pennsylvania law to verify whether these proposals have passed into law.

You need a legal remedy to...	Consider	Why?	Statutes & Practice Tips
Require the perpetrator to account for the funds and property of your client	Accounting by Fiduciaries Temporary Order 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 Pennsylvania, accounting by fiduciaries is used to address breach of contract, trespass, or conversion claims.	Accounting by Fiduciaries (<u>Pa. R.C.P. No. 1534</u>) <u>Plaintiff must allege:</u> 1) Existence of a fiduciary relationship; 2) Fraud or misrepresentation; 3) Accounts that are mutual or complicated; or 4) Lack of an adequate remedy at law <u>Statute of Limitations (42 Pa.C.S. § 5527):</u> 6 yrs <u>Relevant Case Law:</u> Haft v. US Steel Corp., 342 Pa. Super. 404 (1985) <u>Notes:</u> Be sure to check local ordinances for specific filing times, Statute of Limitations, and court procedures <u>Online Forms:</u> <u>PA LawHelp</u>

			Temporary Order to Freeze Assets (70 P.S. § 1-515) Online Forms: PA LawHelp
Recover damages from the perpetrator, where the perpetrator was acting as your client's agent	Breach of Fiduciary Duty (Tort)	If your client's funds or property were mishandled by their agent (through a POA or other agent relationship), they might have a claim for breach of fiduciary duty. Generally, an agent is required to act in the best interests of the principal (your client). If this breach occurred, your client may be able to recover traditional tort damages.	Breach of Fiduciary Duty (13 Pa. C.S.A. §3307) Plaintiff must prove: 1) That a fiduciary relationship exists; 2) That the fiduciary has committed misconduct; and 3) That the misconduct cause them to suffer damages. Misconduct typically includes: 1) Situations of self-dealing or personal interest conflicts; and/or 2) The fiduciary injuring or acting contrary to the interests of the person to whom a duty of loyalty is owed <u>Statute of Limitations (42 Pa. C.S.A. § 5525): 4 yrs</u> Online Forms: PA LawHelp Agent Breaching Fiduciary Duty to Principal Plaintiff must show that the agent: 1) Acted adversely towards the principal's interests; 2) Acted in bad faith; 3) Acted in any manner inconsistent with his agency to the principal in any part of the transaction; or 4) Failed to disclosed any interest which would naturally influence his conduct in dealing with the principal <u>Statute of Limitations (42 Pa. C.S. § 5524(7)): 2 yrs</u> <u>Relevant Case Law: <i>Yenchi v. Ameriprise Fin., Inc.</i>, 639 Pa. 618 (2017).</u>

Recover damages from a perpetrator who was a hired caregiver, the company employing the perpetrator and/or their insurance company	Breach of Contract	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.	Breach of Contract; Plaintiff must plead: 1) The existence of a contract, including its essential terms; 2) A breach of a duty imposed by the contract; and 3) Resultant damages <u>Statute of Limitations (Pa. C.S. §5525):</u> 4 yrs <u>Relevant Case Law:</u> <i>Guerra v. Redevelopment Auth. Of Phila.</i>, 27 A.3d 1284 (2011). <i>See also</i> 11 Standard Pa. Practice 2d §66:46 <u>Online Forms:</u> PA LawHelp Respondeat Superior; an employer will be held liable for its employees' negligence if: 1) The employee acted; 2) During his scope of employment; and 3) The employer was, or could have been, exercising some control, either directly or indirectly, over the employee's activities.
Recover damages from the perpetrator where a "theft" occurred. The perpetrator does not have to be an agent or hired caretaker	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. Pennsylvania defines conversion to be the deprivation of an owner's right to use or possess a chattel without the owner's consent or lawful justification.	Conversion; Plaintiff must show: 1) The defendant deprived the plaintiff or interfered with his right; 2) To a chattel; and 3) Without the plaintiff's consent or without lawful justification. <u>Statute of Limitations (42 Pa. C.S. §5524(3)):</u> 2 yrs <u>Note:</u> Money may be considered a chattel <u>Relevant Case Law:</u> <i>Chrysler Credit Corp. v. Smith</i>, 434 Pa. Super. 429 (1994). <u>Online Forms:</u> PA LawHelp

Recover damages from the perpetrator for using deceitful means to induce your client to transfer property, funds or sign an agreement	Fraud or Constructive Fraud (Tort)	Proving fraud, while sometimes difficult, can provide options for your client to “undo” certain transfers or agreements as well as possibly recover punitive damages. Generally, it involves the intentional misrepresentation or concealment of a material fact, which the victim relied on and caused them harm.	Fraud; Plaintiff must prove: 1) A misrepresentation; 2) A fraudulent utterance thereof; 3) An intention to induce action thereby; 4) Justifiable reliance thereon; and 5) Damage as a proximal result. <u>Statute of Limitations (42 Pa. C.S.A. §5524(7))</u> : 2 yrs <u>Relevant Case Law:</u> <i>Gibbs v. Ernst</i>, 538 Pa. 193 (1994). <u>Online Forms:</u> PA LawHelp Creation of a Trust Induced by Fraud, Duress, or Undue Influence (20 Pa. C.S.A. §7736) Home Improvement Fraud (70 P.S. § 517.8) Constructive Fraud: <i>See Lichtenstein v. Kidder, Peabody & Co.</i>, 777 F. Supp 423 (W.D. Pa. 1991). <u>Note:</u> intent is not an element of constructive fraud; thus, one may still have “good faith” and still commit constructive fraud Unfair Trade Practices and Consumer Protection (73 Pa.C.S.A. §201-1) Plaintiff must prove PA common law fraud: 1) A misrepresentation; 2) Material to the transaction; 3) Made falsely; 4) With the intent of misleading another to rely on it; 5) Justifiable reliance resulted; and 6) Injury was proximately caused by the reliance. <u>Note:</u> PA courts are currently debating whether common law fraud must be proven; be sure to research where the court stands on this issue during your client’s case.
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Reverse transactions or agreements that are damaging to your client	Rescission/Undue Influence (Remedy)	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. 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.	Contract Rescission; Party must prove: 1) Another party to the agreement made a false representation of fact; 2) The false representation, if innocently made, was material; 3) Scierter; 4) Justifiable reliance; and 5) Damages <u>Relevant Case Law:</u> <i>Westport Ins. Corp. v. Hanft & Knight, P.C.</i>, 523 F. Supp. 2d 444, 455 (M.D. Pa. 2007) <u>Note:</u> Lease rescission is subject to the Doctrine of Laches (See 1974 Pa. Dist. & Cnty. Dec. LEXIS 31 (1974)). Undue Influence (20 Pa. C.S.A. §2501) If looking to void a document, party must sufficiently prove 1) imprisonment of body or mind, fraud, threats, misrepresentations, circumstances of inordinate flattery; or 2) physical or moral coercion; 3) to such a degree as to prejudice a testator’s mind and destroy his or her free agency
Recover damages from a perpetrator- statutory protections	Statutory causes of action- Pennsylvania Unfair Practices and Consumer Protection Law	Any consumer victim who purchases goods or services for personal use and suffers monetary or property loss due to seller’s use of unfair or deceptive acts or practices may bring a private action under this Act to recover damages. Victim can recover actual damages, treble damages in the court’s discretion and reasonable attorneys’ fees.	See <u>73 P.S. §§201-1-201.9.2</u> See <u>73 P.S. §§201-2 (4)</u> for definition of “unfair methods of competition” and “unfair or deceptive acts or practices” See <u>73 P.S. §201.9.2 (a)</u> Private Actions

Seek compensation for lost funds	File for compensation funds through Victims' Compensation Assistance Programs	Pennsylvania's VCAP program has 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.	In order to be eligible for Victims Compensation Assistance Program, the crime must have occurred in Pennsylvania, the victim must have reported the crime to the proper authorities within 72 hours of discovery of the crime (which for older adults may occur much later if they are not handling their own funds) (unless good cause for the delay is provided) and a claim must be filed with VCAP no later than two years after the crime has occurred. Please see the VCAP Manual for Compensation Assistance for additional eligibility criteria and exceptions. Practice Tip: The Crime Victim's Compensation Fund is the payer of last resort, which means that the victim/claimant must utilize all other sources of insurance, public benefits, pensions or settlements that could pay for expenses related to the injury before compensation can be considered. See the Manual for definitions of collateral resources.
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Tools for Addressing Stranger Financial Exploitation & Scams

Scams and fraudulent practices are infinite in their variety and those aimed at older adults include an ever-changing array of deceptions, from imposter scams to phony lotteries, from home improvement to mortgage scams. Scammers use deception, 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, fraudulent marketing practices and scams taking advantage of social media and technology.¹¹

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](#)¹², details the actions an advocate can take when responding to identity theft, along with unauthorized credit and debit card use. [identitytheft.gov](#)¹³, the [Consumer Financial Protection Bureau](#)¹⁴ and the [Department of Justice](#)¹⁵, as well as the [Pennsylvania Attorney General's office](#)¹⁶, offer information on the [scams targeting older adults](#)¹⁷, [reporting options](#)¹⁸, and [steps for recovering from identity theft](#)¹⁹. 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

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 can be handled through a multidisciplinary team (discussed below). If there is a criminal conviction, the court may be able to enter an order for restitution.

Several Pennsylvania District Attorneys have established Elder Justice Units or special protocols for elder abuse victims. Establishment of these elder justice units and protocols is encouraged, recognizing the challenges of elder victims.

The U.S. Department of Justice has an Elder Justice Task Force in the [Eastern District of Pennsylvania's U.S. Attorney's Office](#).²⁰ The following Assistant US Attorneys are the current Elder Justice Coordinators in the Eastern District of Pennsylvania: David Degnan (David.Degnan@usdoj.gov) and Michael Macko (Michael.Macko@usdoj.gov). The Task Force provides coordination among state and local agencies, various legal service and aging network organizations, and law enforcement who are combating elder abuse. Additionally, the Task Force can evaluate complaints, investigate scams, and provide training.

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 financial exploitation issues, you should consider how the

exploitation may impact your client's future Medicaid eligibility, Medicare Low Income Subsidy, PACE benefits and/or the state's Property Tax Rebate, and alert your clients to these possibilities.

Legal services attorneys can also represent nursing home residents in appealing involuntary nursing home discharges due to nonpayment caused by financial exploitation. The federal Nursing Home Reform Law and its implementing regulations provide robust rights and protections for nursing home residents. [42 U.S.C. §§1395i-3, 1396r](#); [42 C.F.R. §483](#). Nursing facilities are prohibited from involuntarily discharging residents except in a limited number of enumerated circumstances and must comply with a number of requirements including issuing an advance written notice of the intent to discharge the resident. [42 U.S.C. §§1395i-3\(c\)\(2\)](#) and [1396r\(c\)\(2\)](#); [42 C.F.R. §483.15\(c\)\(1\)\(i\)](#). Moreover, nursing facilities must provide a safe discharge, meaning that they can only discharge the resident to a location where their needs will be met. [42 U.S.C. §§1395i-3\(c\)\(2\)\(C\), 1396r\(c\)\(2\)\(C\)](#); [42 C.F.R. §483.15\(c\)\(7\)](#); [28 Pa. Code §201.25](#). Residents have the right to appeal the discharge through the Department of Human Services' fair hearing system. Pennsylvania's procedures governing involuntary nursing home discharge appeals are located at [55 Pa. Code § 1181 Appendix N](#). Additional resources can be located at the [National Consumer Voice for Quality Long Term Care website](#). Older adults who are dependent on an abuser for care may worry that if they take legal action they will lose their caregiver and be forced into a nursing home. In these situations, legal services advocates can help the client apply for publicly-funded long term services and supports (LTSS). These programs provide a broad range of services, including home care attendants, which enable older adults to continue living in their home despite having functional impairments. Many LTSS programs are funded by Medicaid, while some are funded by state funds. To get information about what services are available, a good starting point is the [Pennsylvania Link to Aging and Disability Resources](#). To apply for LTSS programs, call the PA Independent Enrollment Broker at (877) 550-4227. For more information and tips on handling these cases, NCLER offers a [guide](#).²¹

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 a [Volunteer Income Tax Assistance program](#) if there is one in your area.²² In Pennsylvania, free income tax assistance can also be found at tax clinics sponsored by local law schools (including Villanova University Charles Widger School of Law). Be sure to check with local branches of organizations such as [AARP](#), United Way and [PathWays PA](#) as well.²³

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](#).²⁴ [CFPB](#) resources including sample [letters](#) are also available on their website.²⁵ Additional resources are available through [Pennsylvania's Attorney General](#)²⁶ and the [Department of Justice](#).²⁷

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 (including as Social Security, disability and pension payments) and/or homestead, for example, is beyond the reach of creditors. If judgments have already been entered, determine whether the judgment can be vacated or if the case can be re-opened. In Pennsylvania, you have 10 days to make a motion to vacate a judgment. You can use the Form of Agreement to Extend Time (provided in [Pa.R.C.P. 237.6](#)) if your motion falls within the 10 days.²⁸ To make a motion to vacate a judgment after 10 days, you must show a reasonable explanation or legitimate excuse for the inactivity or delay, due diligence of the plaintiff, and a showing of a meritorious defense.²⁹ You can locate other interactive forms on vacating judgments at [PA LawHelp](#). Be sure to check local courts and consumer clinics for potential forms as well. In some circumstances, filing in Bankruptcy Court for relief may be warranted.

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.

Older Adult Protective Services

Adult Protective Services (APS) is a social services program provided by state and local governments serving older adults and adults with disabilities who need 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.

The Pennsylvania Department of Aging is responsible for oversight and implementation of the Older Adults Protective Services Act (OAPSA). In Pennsylvania, the Area Agencies on Aging (AAA) provide Protective Services (PS) for older Pennsylvanians aged 60 and over who are victims of abuse, neglect, exploitation or abandonment. To be eligible for protective services an older adult must be incapacitated and in imminent risk of danger to his/her person or property and have no responsible caregiver. Any person who suspects that an incapacitated older adult is being abused, neglected, exploited or abandoned may make an abuse report. Reports of abuse may be made by, or on behalf of, an older adult, directly to a local AAA. Reporters of abuse or neglect of an older adult may remain anonymous and have legal protection from retaliation, discrimination and civil or criminal prosecution.

An AAA Protective Services Caseworker will investigate reports of abuse, neglect, abandonment, or financial exploitation. If a case is considered “protective”, the older adult will be evaluated to determine his/her needs; will be provided assistance to alleviate the risk of harm; may refuse help if he/she has capacity, and has the right to have all information regarding his/her case handled confidentially.

Area Agencies on Aging

Area Agencies on Aging (AAAs) are public or private non-profit agencies designated to address the needs and concerns of all older persons at the regional and local levels. Pennsylvania has fifty-two AAAs throughout the state that provide services or resources for a specific geographic region. When working with older adults in Pennsylvania, it is important to become familiar with the AAA where your client resides. AAAs are the entry point into the aging network and provide services either directly or by contract for services for older adults.

AAAs receive reports of all types of abuse including financial abuse. Where reports of financial abuse are made to AAAs, an intake process is followed and in some cases an investigation of the reported abuse is conducted. In some financial abuse cases, the AAA may be instrumental in assisting in an acceptable resolution for the older adult and in some cases, AAAs may contact law enforcement.

For additional information on your local AAA and available services through the AAA, see www.agingcare.com/local/pennsylvania-department-of-aging-harrisburg-area-agency-on-aging-pa.

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.

For more information on Pennsylvania’s Ombudsman Program and their contact information see [the Pennsylvania Department of Aging website](#).

For more information about your local ombudsman, contact your local Area Agency on Aging. See [the Department's website](#) for more information on the Area Agencies on Aging. Local ombudsmen sit on their county and state level Elder Abuse Prevention Task forces as they are available.

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. Though exact numbers and locations are projected to be collected in 2019, there are numerous MDTs currently operating in Pennsylvania. For

information on local MDTs, contact your local Adult Protective Services. For information on developing team in your area, the US Department of Justice offers a [guide](#).

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.

Additional Resources

- 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](#)
- Advocacy: Center for Advocacy for the Rights and Interests of the Elderly, <https://www.carie.org/>
- Training, outreach and other resources on financial exploitation: SeniorLAW Center, www.seniorlawcenter.org and PA SeniorLAW HelpLine 877-727-7529
 - PA Elder Abuse Hotline: 1-800-490-8505, provided by PA Department of Aging: <http://www.aging.pa.gov/>
Provided by PA Attorney General's Office
- Identity Theft Hotline – A Service of Social Security Administration: (877) ID-THEFT (877-438-4338) <http://www.idtheft.gov>
 - report identity theft to the Federal Trade Commission
 - <http://www.ssa.gov/pubs/10064.html> Informational brochure
- Department of Health – Complaint Hotline (800) 254-5164
 - Handles complaints regarding nursing home care
- Office of the Victim Advocate
 - <http://www.ova.state.pa.us>
- Free Annual Credit Report: www.annualcreditreport.com (877) 322-8228
 - Get a free copy of your credit report every 12 months from each credit reporting company. Federally authorized.

Endnotes

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- ¹ <https://ncler.acl.gov/>
- ² <https://ncea.acl.gov/whatwedo/research/statistics.html#14>. Also see Lachs, M., & Pillemer, K. (2015). Elder abuse. *New England Journal of Medicine*, 373, 1947–56. doi: 10.1056/NEJMra1404688.
- ³ <https://www.acl.gov/about-acl/authorizing-statutes/older-americans-act>
- ⁴ 35 P.S. § 10225.103 (2016).
- ⁵ <http://www.nationalcenterdvtraumamh.org/trainingta/trauma-informed-legal-advocacy-tila-project/>
- ⁶ Pa. RPC 1.4.
- ⁷ Pa. RPC 1.14.
- ⁸ https://www.americanbar.org/groups/law_aging/resources/capacity_assessment.html
- ⁹ <https://www.maine.gov/pfr/securities/documents/Checklist%20for%20Lawyers.pdf>
- ¹⁰ <https://ncler.acl.gov/Files/Legal-Issue-Spotting,-Intake-Referrals-Practice-Gu.aspx>
- ¹¹ <https://www.consumer.ftc.gov/features/scam-alerts>
- ¹² <https://ncler.acl.gov/pdf/Legal%20Basics-%20Protecting%20Older%20Adults%20Against%20Scams.pdf>
- ¹³ <https://identitytheft.gov/>
- ¹⁴ <https://www.consumerfinance.gov/>
- ¹⁵ <https://www.justice.gov/>
- ¹⁶ <https://www.attorneygeneral.gov/>
- ¹⁷ <https://www.consumer.ftc.gov/features/feature-0030-pass-it-on>
- ¹⁸ <https://www.ftccomplaintassistant.gov/#crnt&panel1-1>
- ¹⁹ <https://www.consumer.ftc.gov/topics/identity-theft>
- ²⁰ <https://www.justice.gov/usao-edpa>
- ²¹ <https://ncler.acl.gov/pdf/Elder-Financial-Abuse-and-Medicaid-Denials.pdf>
- ²² <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers>
- ²³ <http://pathwayspa.org/index.php/programs/vita/#>; https://www.aarp.org/money/taxes/aarp_taxaide/
- ²⁴ <https://www.identitytheft.gov/>
- ²⁵ <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/sample-letters-dispute-credit-report-information/>
- ²⁶ <https://www.attorneygeneral.gov/>
- ²⁷ <https://www.justice.gov/>
- ²⁸ <https://www.pacode.com/secure/data/231/chapter200/s237.6.html>
- ²⁹ Pa. R.C.P. 237.3. See also Pa. R.C.P. 3051(b).