

THE AUSTRALIAN

'Loved ones' pose biggest threat to old people's assets

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CAROLINE OVERINGTON THE AUSTRALIAN 12:00AM September 11, 2017

Australians are living longer, and even the most dilapidated of their homes is now worth a fortune, which sounds like a good news story until you begin reading about how the elderly are being abused, harassed and blackmailed by impatient kids and other family members — or even carers — who want to get their hands on the money.

It's not a new phenomenon. On the contrary, most people know some poor soul who got ripped off by greedy relatives near the end of their life. But a new survey on elder financial abuse, conducted on behalf of State Trustees Victoria, makes plain the scale of the problem.

Among the startling results: 91 per cent of respondents agreed that it was "easy for people to take advantage of older friends or family and exploit them for financial gain"; one in five knew somebody they suspected had been a victim of financial abuse; and one in 25 older people said they had experienced it themselves.

Even worse, in the vast majority of cases the perpetrator was a family member, with adult daughters accounting for 25 per cent of the reports, followed very closely by adult sons (24 per cent); but spouses were also in there (17 per cent), as were carers (4 per cent) and neighbours (3 per cent.)

State Trustees Victoria chief executive Craig Dent says financial abuse of the elderly "is one of the most serious emerging issues we have in society today. And it's not declining. Our day-to-day experience is of families with extreme dysfunction. And it's getting worse.

"When I joined in 2012, in the case I saw, there was often a reasonable level of co-operation in families. Maybe in one in three or one in four families you'd see a complete breakdown. Now, dysfunction is the default position."

What prompts the abuse? In simple terms, money, also known as "inheritance impatience", which refers to the frustration adult children feel when the older person doesn't die soon enough for the abuser, or favours one child over another, or maybe decides: to hell with it, I'm giving all my money to charity.

Abuse, too, can take many forms. It doesn't have to be pushing and shoving or even shouting. It's more about pressuring or emotionally blackmailing a person into giving up their assets, which can be their pension but also their house, and it can happen when they are still in fine fettle, or when they are very close to death.

In the leading case of *Wingrove v Wingrove*, endorsed by Australian courts, Sir James Hannen said "coercion in the grossest form" may concern an elderly person "in the last days or hours of life, who may become so weak and feeble that a very little pressure will be sufficient ... The sick person may be induced, for quietness' sake, to do anything."

But elderly people living at home, with maybe a few health problems, such as getting a bit forgetful or frail, can find themselves bullied, too. An Australian Law Reform Commission report says some of the reprehensible behaviour suffered by the elderly includes treating the person like a child; humiliating them about their care needs; repeatedly telling them they have dementia; threatening to withdraw affection; and preventing an older person from seeing family and friends (or worse, the grandchildren).

All these behaviours are designed to encourage or harass the elderly person into handing over money. It doesn't have to be cash. Financial abuse can mean using the elderly person's bank cards for your own living expenses; living in the older person's home for reasons other than for their benefit; stealing their things; refusing to repay loans granted by them; putting them in an aged care facility against their will, and then taking their house away; or forcing somebody to change their will.

There are, of course, laws to deal with this kind of thing but financial abuse of the elderly can be hard to detect, especially if the older person is isolated or lonely, or depends on the abusive family member for basic care.

The situation can be particularly bad in homes where English is not the first language; and in farming families, where the entire enterprise may well be at stake.

Then comes the problem of so-called "family agreements" where an elderly person is encouraged to sign their home over to a particular family member, who then promises to let them live there for the rest of their life.

The ALRC report cites "many examples of family agreements gone wrong", resulting in the older person losing their principal asset, typically their family home, and being forced into care. With the house gone, they can't afford a lawyer, and are usually running out of both time and energy for lengthy and expensive litigation.

In terms of what the community can do, Dent agrees that financial abuse can be hard to detect, and the signs may take an unusual form.

"One sign with an elderly neighbour, perhaps, is does their behaviour suddenly change? Perhaps they were very house proud, and suddenly the house is allowed to go. The lawns aren't being kept, because perhaps the bills aren't being paid. Or you suddenly see relatives moving in and you've never seen them before.

"Or the bank manager might notice that the son is bringing his mother to the bank every week and drawing out her money, and the bank manager knows the mother well and knows that she's estranged from her son."

But there are things you can do to protect yourself, too.

It's the same old boring advice, but the best way to protect yourself is to draw up a will, and to put a power of attorney in place for both legal affairs and medical matters. And maybe, when doing so, consider getting an independent party to be your executor or take the attorney role. Yes, they will charge fees, but Dent says "it can mitigate the risk of being financial abused".

"If you have somebody you trust, that is fantastic," he says, "but what about somebody that you know is going to be there in 10 or even 50 years' time? Somebody independent. We take great pride in making sure that the wishes of our clients are respected. We cannot be swayed by one member of the family over another.

"This often makes us very unpopular, but as I always says: the beneficiaries of the will are not our clients. You are our client."

The ALRC report suggests that public guardians, or trustees, be given the power to investigate elderly abuse "where they have a reasonable cause to suspect that an older person is at risk of being abused or neglected". But it acknowledges that such powers have to be balanced against a person's right to take care of their own affairs.

It's not unheard of for an elderly person to make a quite rational, sudden change to their will towards the end of their life. Nobody should have the right to stick their nose in.

It's your business what you do with your money. One of the submissions to the ALRC inquiry put it this way: "We are concerned that more powers will be directed to public advocates over families, (who are) in a naturally weaker position than public advocates already."

The Townsville Community Legal Service is likewise wary of handing too much power over to others, telling the committee that "many older persons find themselves in care because of the decisions of others, including medical professionals and appointed or substitute decision-makers."

Earlier this year, the NSW Trustee and Guardian was forced to scrap a new policy under which it wanted to force individuals, such as an elderly person's spouse, to buy bonds worth up to \$12,000 each, ostensibly to "protect vulnerable people from losses caused by the failures of those appointed to manage their money".

Hundreds of spouses and adult children simply refused to comply, with one angry spouse taking the matter to court, saying he was perfectly capable of managing his wife's affairs now that she had dementia, and he resented the implication that he needed to pay a bond to mitigate against mismanagement or, worse, theft.

He won the case, and such bonds are no longer mandatory.

Dent says a majority of respondents in the State Trustees survey had heard about a power of attorney but most didn't think it was absolutely necessary, mainly because they believed there were laws in place to stop people from being exploited by those they love.

"Yet many of them had also heard of cases where people didn't get what they wanted at the end of their life," he says.

"We urge Australians to protect their legacy. Whenever you get married, have kids, get divorced, get remarried, make sure you have a will in place, and that you regularly update your will. It really can mitigate the likelihood of elder abuse in later years, because your executor will know exactly what you wanted, and if you don't have a will, you're unable to share your voice on death."

Do the work while you're healthy and well, in other words, to help ensure that old age, as the saying goes, continues to remain better than the alternative.

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THREE CASE STUDIES

1. Vivienne, 75, went with her new partner to see a lawyer, ostensibly to make a new will. The partner was adamant that he be present for the meeting and was very keen to tell the lawyer what Vivienne wanted. After the lawyer insisted that she could not see Vivienne with him present, he reluctantly waited in the reception area. Within a very short time frame, it became apparent that Vivienne did not have the capacity to make a will, did not know why she had been brought to the appointment, did not know her date

of birth, had no idea about her assets, and although she could name her children, had no idea about their ages or relationship status. The law firm declined to make the new will but noted that Vivienne had already signed her most valuable asset — her superannuation, upon her death — over to her partner.

2. Tony held enduring power of attorney for his mother, Dawn, who had dementia and was unable to leave her nursing home. In 2015, Tony became aware that his brother Pete was visiting Dawn in the home and taking cash from Dawn's purse for "petrol expenses", as he lived more than an hour away. A short time later, Tony noticed that withdrawals of \$100 and \$200 were being made from Dawn's bank account every Friday by cheque. Tony knew that Dawn could not leave the nursing home and could not understand how she could be presenting cheques at the bank. He queried the transactions but the bank refused to speak to him, despite him having power of attorney. A staff member at the nursing home told Tony that Peter was appearing at the nursing home every Friday with a blank cheque for Dawn to sign, which was then being presented to the bank.

3. In 2010, Charlie, 99, granted his middle-aged granddaughter, Sally, power of attorney over an estate valued at \$1 million, including a \$720,000 home. A short time later, Charlie apparently consented to the sale of his home, after which he gave Sally the money so she could buy a new house in her own name, in which he could live for the rest of his life. There was no evidence that Charlie received independent financial advice and by 2013, notwithstanding the so-called "family agreement", Sally had moved him into a nursing home — and since Charlie had by then developed dementia, his claim on Sally's home could not be quantified by third parties, who believed he had been duped.

Case studies supplied by the Queensland Law Society. Names and identifying details have been changed.

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