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# THE ROLE OF A NOTARY IN PREVENTING EXPLOITATION OF THE ELDERLY AND OTHER VULNERABLE PERSONS

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# What is the fastest growing crime in the 21<sup>st</sup> century in the United States?



Financial abuse and other forms of maltreatment against the elderly and vulnerable



It generally involves:

Family or Caregivers  
Utilization of legal documents to steal assets

## Why is this such a big deal?

- Crimes such as these cost not only the victims, but society in general, billions of dollars each year
  - Adult maltreatment leaves millions of vulnerable people destitute annually
  - It is grossly underreported by both the victims and those who witness these crimes
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## OTHER IMPORTANT INFORMATION TO KNOW ABOUT ELDER ABUSE AND EXPLOITATION

- It occurs in every community, even yours
- It occurs among all social strata
- It is:
  - Under-recognized
  - Under-reported
  - Under-prosecuted
  - Not taken seriously enough





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# WHAT IS ELDER FINANCIAL ABUSE OR EXPLOITATION?

- The fraudulent or otherwise illegal, unauthorized, or *improper* act or process of an individual that uses the resources of an older (or vulnerable) individual for monetary or personal profit or gain.



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THIS IS WHERE YOU,  
THE NOTARY, COME IN



PREVENT



PROTECT



PROVE

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# PREVENTION IS KEY

- The notary is often the first line of defense
- The notary is often well positioned to stop the abuse or exploitation before it even starts
- Your job as the notary is NOT just to identify the signers.....



- You have to make sure that elderly and/or vulnerable signers are “knowingly and willingly” signing the documents that are being notarized.



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# YOUR FIRST LINE OF DEFENSE: BE PREPARED

- General Background Knowledge:
    - What types of documents are most likely involved in exploitation
    - What specific situational issues should you be aware of
    - What you, as a notary public, can and cannot – should and should not do
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# POTENTIALLY DANGEROUS DOCUMENTS

## Powers of Attorney

- *General* – Grants broad authority over the principal's affairs
- *Limited* – Specifies the actions the agent may take
- *Durable* – Lasts even if the principal is incapacitated
- *Medical* – Covers only medical care and issues
- ***REMEMBER: POA's cease upon the death of the principle***

## Property Deeds & Titles

- *Quit Claim Deed* – Transfers ownership without a loan
- *Deed of Trust* – Transfers ownership in concert with a mortgage loan
- *Titles* – Transfers ownership of personal property

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# PRECARIOUS SITUATIONS

General mental  
condition of an  
elderly or  
vulnerable signer

- Any diagnosis of Alzheimer's, dementia, etc.

Current  
medications

- Specifically, narcotics or opiates

What else may be  
going on

- Family issues, health issues, etc.

## • **Remember:**

- You, as the notary, are not in a position to diagnose. However, if you are aware of any of these issues, and/or you are uncomfortable notarizing the document, *you have the right to refuse to notarize.*

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# BE AWARE OF THESE WARNING SIGNS

- Lethargic, tired, sleepy
- Confused, disoriented
- Lack of enthusiasm
- Lack of interest
- Unwilling, or unable, to converse about general subjects
- Any verbal cues that the signer is uncomfortable or signing under duress
- Pressure on the part of the other parties
  - Too much enthusiasm
  - Emphasis on how important it is to sign *NOW*
  - Being pushy and controlling the situation





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# IT IS YOUR DUTY AS THE NOTARY TO CONTROL THE SIGNING CEREMONY

- Remember: **You** are the one who manages the situation
  - **Who**
    - Is in attendance
    - Speaks
    - Does *NOT* speak
  - **What**
    - Is done
    - Is *NOT* done
  - **When**
    - the notarization takes place
  - **How**
    - much time the signing ceremony takes

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# WHAT ELSE DOES THE NOTARY CONTROL?

## The Setting

- Ideally, the only people in the room should be:
  - The notary
  - The signer
  - Optional
    - Additional “witnesses” – IF required

## The Procedure



### General conversation

Inquire about the signer's general health  
Something about the weather  
Inquire about current events



### Why are you here today?

What are you signing?  
What does this document do?  
Is this replacing a current document



### The notary should assure the signer:

They can refuse to sign any documents  
They can interrupt at any time  
They can stop the signing ceremony at any time

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# CONTROL THE OUTCOME

**If the answer is “yes” to these questions, you can proceed with the signing ceremony**

Can the signer be properly identified as the person who is supposed to sign the document?

Can the notary determine the type of notarial act required?

Is the certificate language *appropriate* and *compliant*?

*Does the signer understand what the document is?*

*Does the signer understand what the transaction will do?*

**If the answer to these questions is “no”:**

- Explain why the request is being refused
  - Deficiencies in the document
  - Identification issues
  - Concerns regarding the signer’s understanding and/or intent
- Offer to set up an appointment at a later time
  - Explain what additional information is needed
  - Suggest a more appropriate time
- *Then what?*
  - *Say something*
  - *Do something*

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# HELPFUL TIPS

1

Use open-ended questions

2

Give the signer plenty of time to visit, answer questions, ask questions

• **DO NOT RUSH THE CONVERSATION**

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Allow the conversation to wander

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Be sensitive to privacy concerns

5

Be reassuring if the signer is concerned about not doing what someone told them to do

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YOU, THE  
NOTARY, ARE  
THE SAFETY NET



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# REPRESENTATIVE CAPACITY SIGNERS

**The notary must verify the agent's identity, capacity, and authority**

## Inquire

- Inquire if the principal is still alive

## Ask

- Ask to see the original or certified copy of the POA

## Review

- Review the POA to make sure that it covers the type of document presented

## Ask

- Ask if the agent knows if the POA has been revoked or modified

## Verify

- Carefully verify the agent's identity

**Be cautious – if not suspicious - of**

- Large amounts of money
  - Property transfers
  - Frequent transactions
  - Unusual requests
  - Nervous or defensive behavior of the representative
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# PROVE

The notary creates the  
official record of the  
transaction

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# YOUR NOTARY JOURNAL RECORD

- The notary journal is the *official record* of what occurred
  - The notary journal memorializes details that may be helpful in confirming:
    - That the notarization was properly performed
    - That the signer was properly identified as the person who was authorized to sign the document
    - That the signer *knowingly and willingly* signed the document
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# MORE INFORMATION ABOUT YOUR JOURNAL RECORD

- Provides important details about the notarization
    - *When* the notarial act was performed
    - *What type* of document was notarized
    - The *date* of the document
    - *What type* of notarization was performed
    - *Who* signed the document, including their signature in the journal
    - *How* the signer was identified
    - *Other relevant information*
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# WHAT IS CONSIDERED “RELEVANT INFORMATION”

**When performing a notarization for an elderly or vulnerable signer the notary should:**

Note the amount of time spent with the person

Note some of the questions asked and the answers provided (briefly)

Indicate who requested the service or who brought the person to the notary

Anything else that might be important to memorialize about the interaction


**When performing a notarization for someone signing in a representative capacity:**

- Indicate that you verified capacity and authority by reviewing the enabling document
- Note whether you saw an original or certified copy of the enabling document
- Include ***anything else*** you think is important to memorialize about the interaction


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# ALWAYS REMEMBER

Your notary journal record is considered *prima facie* evidence in court



Your act of service, and proper record of it, can very well become a deciding factor if there is ever litigation involving a notarial act that you performed



Montana notaries are a vital resource in combating abuse and exploitation of elderly and other vulnerable persons

