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

Jennell Huff CRA/Outreach Coordinator Bank of the Rockies





DISCLAIMER

Presentations are intended for educational purposes only and do not replace independent professional judgment and advice. This information contained herein represents the views and opinions of the presenter, not those of her employer. The information provided in this presentation does not, and is not intended to, constitute legal advice. Presenter assumes no liability or responsibility for any errors or omissions in the content contained in the presentation; and there is no guaranty of accuracy or completeness of the same.

What is the fastest growing crime in the 21st century in the United States?



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



It generally involves:

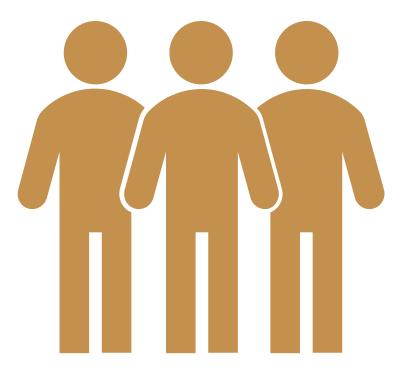
Family or Caregivers Utilization of legal documents to steal assets

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

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



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.



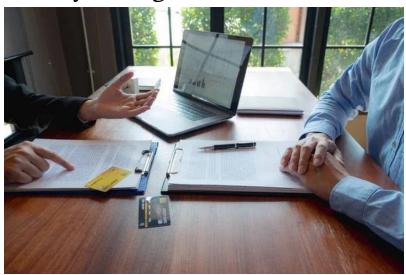
THIS IS WHERE YOU, THE NOTARY, COME IN





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 <u>NOT</u> just to identify the signers.....



• You have to <u>make sure</u> that elderly and/or vulnerable signers are <u>"knowingly and</u> <u>willingly"</u> signing the documents that are being notarized.



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

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 <u>only</u> 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

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*.

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



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

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

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*?

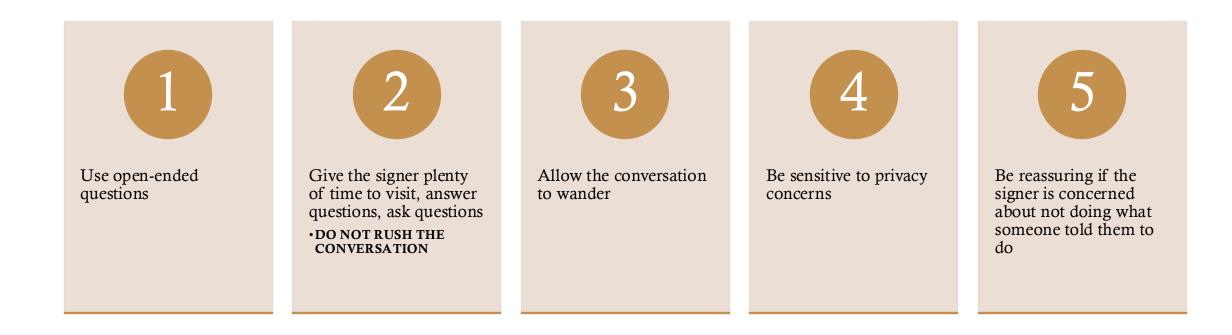
Does the signer understand what the document is?

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

HELPFUL TIPS



YOU, THE NOTARY, ARE THE SAFETY NET

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



PROVE

The notary creates the official record of the transaction

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



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

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

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

