

# The Title Agent's Role in Elder Financial Fraud Prevention – Know the Red Flags and How to Respond

## Description

According to the U.S. Census Bureau, there were 40.3 million Americans age 65 and older in the 2010 Census. In 2018, that number was estimated at 52 million, representing 16 percent of the U.S. population. Today's estimate is 73 million, a number driven by the aging of the Baby Boomers born between 1946 and 1964. The growth of this demographic, in part, explains why in the last few years, the title industry has seen a dramatic increase in elder financial abuse claims.

Historically, allegations for elder abuse have targeted the primary wrongdoer, such as the financial advisor, caregiver or relative, who took advantage of the elderly's mental vulnerabilities in order to obtain control over the victim's assets. Even though the underwriter and title agent may have no direct contact with the borrower to know his or her age, the title professional is now often included as a collateral defendant by victims in what are typically last-ditch efforts to maximize recovery of a loss of life savings.

Due to these lawsuits, courts are now starting to grapple with the question: What duty of care do title professionals owe those individuals age 65 or older? While this question lingers, the larger concern is claims created by elder abuse victims who file litigation to invalidate a lender's security interest or quiet title against a new owner. Keep in mind, these parties may have had nothing to do with the scam against the victim. Under their title insurance policies, the lender and new owner in this scenario can file claims with the title insurance underwriter, tendering their defense. As this type of litigation can frequently involve intrafamily disputes and voluminous discovery, the costs associated with defending the insureds are high as are the potential losses resulting from its resolution.

Mistakes are often made when title agents fail to investigate a red flag that could potentially lead to a discovery of elder abuse and prevention of a claim. If a red flag is ignored or otherwise missed, a title insurance underwriter could seek recoupment from the agent for their losses.

## Elder Abuse Red Flags

The American Land Title Association identified these common warning signals that title agents should investigate when evaluating whether an elderly party to the transaction may be suffering from reduced mental capabilities:

- The title agent never gets to speak directly with the person involved in the transaction;
- The person appears disoriented or has a lack of understanding;
- The person seems unaware of dates and times;
- The person seems to lack understanding of what the transaction is about;
- There are recent, uninsured deeds in the chain of title;
- There is a change in the contact person or other unauthorized user;
- The borrower is not allowed to speak for himself/herself;
- There is no documentation to support the third party's authority;

- There is use of power of attorney (POA) or a change in grant of a POA;
- The property is free and clear;
- The documents are signed outside of escrow;
- The sales or loan proceeds are paid to someone other than the borrower or seller; and
- The holder of the POA wants funds disbursed to himself/herself.

## Digging Further

Mark Heacock, NATIC's Mid-Atlantic region vice president and underwriting counsel, stated that whenever you see a refinancing of the property for no apparent reason, title agents should heed caution.

"If the proceeds of the refinance are directed to someone other than the elder owner, look out," he noted in a presentation hosted on NATIC University.

In addition, if a new caregiver, relative or friend suddenly begins conducting financial transactions on behalf of the senior adult without proper documentation, Heacock said that is clearly a red flag.

"Even with proper documentation, you need to raise the questions," he said. "Any kind of a change is a red flag."

The use of a POA in any transaction should prompt a title agent to ask questions on why it is being used, however; in a situation where a party to the transaction is elderly, it should trigger a deeper inquiry. Also, if the elder adult is reluctant to engage or cannot speak with knowledge about his/her own financial status, this should be investigated before permitting the transaction to close.

"For an absentee owner, check the tax records and see what's going on. Power of attorney? You need to talk to the principal, if possible. Question the notary. Say, 'Did this person really sign this power of attorney?' Other items to question: A gift deed by the elder, an uninsured deed in the chain of title, a recently released mortgage with no corresponding sale or refinance. You're the last stand against the abuse of that elder," Heacock said.

Suspicious behavior at the closing table should also be questioned. Heacock said be on the watch for excessive interest in an elder adult's finances and assets by the caregiver or person representing the elder person. In addition, if the elder borrower or seller expresses fear or submissiveness to a caregiver, remain vigilant and investigate.

"These signs aren't necessarily geared to elder abuse, but they are often tied," Heacock said.

## Increase Is Imminent

Of great concern are elderly suffering from Alzheimer's disease. According to the Alzheimer's Association, in 2020, one in 10 Americans age 65 and older has Alzheimer's-related dementia. Eighty percent of these 5.8 million Americans are age 75 or older, and almost two-thirds are women. The Alzheimer's Association predicts that by 2050, the number of people age 65 and older with Alzheimer's-related dementia may grow to a projected 13.8 million, barring the development of medical breakthroughs to prevent, slow or cure the disease.

“Sometimes, money problems can be an early clue to Alzheimer’s disease or other types of dementia. Title agents may be the last protection for seniors if they are being financially exploited by their children, caregivers or acquaintances,” Heacock said.

Financial elder abuse is increasing due to many factors. Older adults often are targeted because they have retirement savings, accumulated home equity or other assets. Moreover, elder people are living longer and more independently.

“Older Americans can be particularly vulnerable due to isolation, cognitive decline, physical disability, health problems and bereavement,” Heacock said. “In 1969, the American life expectancy was only 69 years of age. By 2012, it was up to 78.7 years of age. Decreasing cognitive abilities make seniors more susceptible to fraud or abuse. Even minimal decline affects their decision-making.”

In March 2016, the CFPB issued an advisory report to banks, credit unions and lenders with recommendations on how to train their employees to recognize, detect, prevent and respond to elder abuse. Elder financial abuse and financial exploitation is defined as the illegal or improper use of an elder person’s funds, property or assets.

“This recommendation trickles down to settlement agents,” Heacock said.

In a July 2019 report, the CFPB said its 2016 recommendations remain vital. The CFPB provided six categories of voluntary best practices to help financial institutions prevent elder financial abuse and intervene effectively when it occurs. These are:

- Develop and implement internal protocols and procedures for protecting account holders from elder financial exploitation;
- Train management and staff to prevent, detect and respond to suspicious events;
- Detect elder financial exploitation by harnessing technology;
- Report all cases of suspected exploitation to relevant federal, state and local authorities;
- Protect older account holders by complying with the Electronic Fund Transfer Act and Regulation E, and by offering age-friendly services that can enhance protections against financial exploitation;
- Collaborate with other stakeholders such as law enforcement, adult protective services and service organizations.

## How to Respond

According to the Office of the Comptroller of the Currency, only a small fraction of elder abuse incidents are actually reported. In 2013, eight federal regulatory agencies issued interagency guidance, clarifying that reporting suspected financial abuse of older adults to appropriate authorities are generally acceptable under the privacy provisions of the Gramm-Leach-Bliley Act. The CFPB recommends that “financial institutions report suspected financial exploitation of older adults to all appropriate local, state or federal responders, regardless of whether reporting is mandatory or voluntary under state or federal law.” The CFPB provides this checklist for responding:

- File reports with the appropriate Adult Protective Services agency and law enforcement.;
- File a Suspicious Activity Report with FinCEN;
- If the person resides in a nursing facility, assisted living facility or similar adult care facility, consider reporting the financial exploitation to the regional or local long-term care ombudsman.

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Title agents should also look to state law to see what is mandated for reporting suspicious activity.

“Almost all states have provisions providing immunity for good faith reporting of suspected elder financial exploitation. These “safe harbor” provisions provide immunity even when the activity observed wasn’t financial exploitation, as long as the reporter acted in good faith,” the CFPB noted in its 2016 advisory report. “If your gut is telling you something is wrong, or you see one or more of the red flags, tell the lender and terminate the transaction. Notify trusted third parties. We as title agents can play a role in helping to avoid this type of tragedy. Keep your eyes and ears open for it, and do something about it,” Heacock noted.

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### **Kelly McCarel**

As Vice President of Education and Content for North American Title Insurance Company (NATIC), Kelly McCarel delivers relevant information title agents need to achieve their business goals and remain compliant with state and federal laws. She brings nearly 20 years of experience as an education, marketing and communications professional to her position. Prior to joining NATIC, Kelly served in multiple leadership roles at October Research LLC, an award-winning multimedia publishing company serving the real estate, settlement services and mortgage lending industries. Previously, she managed a diverse platform of marketing and communications programs for an international healthcare company and developed educational and news content for several legal and real estate publications. She has focused her career on developing marketing and educational strategies using various forms of digital

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