

# Financial Elder Abuse

## Overview

As the U.S. population ages, financial elder abuse claims are rapidly increasing. These claims no longer affect only nursing homes, heirs, or caregivers. Potential exposure has become a reality for any business that transacts with “elders,” including banks, investment funds and advisors, insurance companies, real estate brokers, accountants, retailers, and lawyers.

There are more than 75 million baby boomers. Every day, from now until 2030, more than 10,000 of them will celebrate their 65th birthday. By 2050, people aged 65 and older are expected to comprise 20 percent of our population. It has become imperative to understand the potential liability for financial elder abuse and institute adequate safeguards and controls.

While elder abuse historically indicated criminal behavior (such as theft or physical abuse), lawmakers are increasingly focused on financial abuse of the elderly, a segment of the population regularly identified as vulnerable and in need of added protection. Many states have enacted a complementary set of statutes that permit civil recovery for financial elder abuse. Some of those statutes:

- Create liability for **any** person or **business** that takes real or personal property (including money) of a person over the age of 65 for a wrongful use or with intent to defraud; and
- Allow recovery not only for compensatory damages but also emotional distress, punitive and treble damages, and attorneys’ fees.

In addition, regulatory entities such as the SEC and FINRA have approved new rules governing “vulnerable adults,” including elders. And many states that do not currently have civil elder financial abuse statutes or regulations are considering bills or proposals to add them.

Many common financial and business transactions and scenarios could potentially result in an elder abuse claim, including:

- The sale or purchase of a home, condominium, or timeshare
- A financial instrument or other investment alleged to provide insufficient returns
- Investment advice, such as stock trading by a broker
- A dispute over an insurance policy
- A product, service, or warranty alleged to be defective or supposedly overpriced

Meritorious or not, financial elder abuse lawsuits can be highly volatile and extraordinarily expensive to defend against or to settle because of the risk of significant judgments. The plaintiffs’ bar has recognized this as well and conducts seminars to solicit potential clients. Virtually every business needs to take steps to protect itself against these claims, and employ experienced counsel to defend against them when they are sued.

## Our Services

Carlton Fields lawyers are especially well-positioned to help clients navigate the growing threat these claims present. We understand the importance of building on our clients’ culture of preventing elder abuse, and have a deep understanding of present and potential regulations and statutes in this field. We counsel our clients about how to comply with these laws.

Knowing that plaintiff’s attorneys will bring superficial, non-meritorious claims, we also stand ready to defend against such litigation abuse. We have successfully litigated cases involving statutory and non-statutory elder financial abuse claims on behalf of clients in diverse industries. We enhance this practice with firm attorneys who provide a specialized understanding of the regulatory and legislative process to assist with compliance.

Our lawyers:

- Have litigated individual and class action cases that raised financial elder abuse claims against businesses in the insurance, accounting, and banking industries through jury trial in state and federal courts.
- Regularly counsel clients regarding compliance with state, federal, and other financial elder abuse statutes, rules, and regulations.

- Advise businesses on how to prevent and limit claims for financial elder abuse.
- Provide accredited continuing education seminars on financial elder abuse to help businesses limit the potential for these claims.
- Work with and respond to regulators who have concerns relating to financial elder abuse.

## Key Contacts

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# Related Capabilities

## RELATED INDUSTRIES

- Banking, Commercial, and Consumer Finance
- Real Estate

## RELATED PRACTICES

- Consumer Finance
- Estates, Trusts and Probate
- Financial Services Regulatory
- Life, Annuity, and Retirement Litigation
- Life, Annuity, and Retirement Solutions
- Real Property Litigation