Too often we hear stories of senior citizens being the victims of financial abuse: the relative who gets his name added to accounts as joint tenant and then proceeds to empty those accounts; the caregiver who takes her elderly charge from bank to bank, withdrawing cash that the caregiver then pockets; or the new “friend” who persuades the victim to cash in a certificate of deposit and takes the cash to “invest.”

The Financial Elder Abuse Reporting Act of 2005 (Senate Bill 1018 - the “act”) was enacted to combat such abuses. Effective January 1, 2007, “mandated reporters,” officers and employees of financial institutions must report suspected financial abuse of an elder (defined as any person 65 years or older) or “dependent adult” immediately by telephone to Adult Protective Services (APS) or local law enforcement. A written report must be filed within two days of the incidence of financial abuse. Failure to report can result in fines. Mandated reporters are immune from civil and criminal liability for filing such reports, even if it is later determined that no financial abuse occurred.

The standard under the act is an “objectively reasonable suspicion” by the mandated reporter that financial abuse has occurred. If a mandated reporter has direct contact with the elder or dependent adult and has observed, or has knowledge of, an incident that reasonably appears to be financial abuse, that incident must be reported. It is irrelevant whether that adult is a customer of the financial institution. For a mandated reporter who has no direct contact with the elder or dependent adult, but who reviews or approves documents, financial records, transactions in connection with providing financial services to that individual and reasonably suspects abuse based solely on the information in front of him, there is a duty to report the suspected abuse.

A mere allegation by the elder customer or a third party that financial abuse has occurred is not sufficient to trigger the act’s reporting requirement if the mandated reporter does not have independent knowledge or corroborating evidence of the alleged abuse, and reasonably believes that no such abuse occurred. There is no duty to investigate an accusation of financial abuse.

The act has been received with enthusiasm in the banking community, which has long been concerned with protecting its customers. The act now gives financial institutions a clearly articulated procedure to report financial elder abuse, coupled with the expectation that there will be prompt investigation of the reports and appropriate action taken by the authorities.

Financial institutions have taken steps to train their employees to recognize the warning signs of financial elder abuse and to establish compliance procedures to comply with the reporting requirements of the act. Some red flags of financial abuse are:

1. **Unusual account activity.** A recent increase in transactions in a dormant account; withdrawals from ATMs far from the customer’s residence; increased account activity with distributions to new payees; unusual or new wire transfers out of the United States.

2. **Account changes.** A single account converted to a joint account; statements no longer sent to a customer’s residence; change in beneficiaries of pay-on-death (POD)
accounts, IRAs etc; a change of attorney that results in a new will or trust in favor of a “new” friend or much younger relative.

3. **Changes in the customer’s behavior.** A customer is confused, withdrawn, doesn’t seem to understand the nature or purpose of the transaction.

4. **Undue influence by a third party:** A customer comes into the office with a third party, who speaks for the customer or pressures her into the transaction; the customer stops coming into the bank and is not available for telephone calls, while a third party conducts the customer’s business.

   Sadly, financial elder abuse is often perpetrated by a relative. Very common is the child (or grandchild) who moves back home to take care of the elderly parent and who seizes control of the finances by bringing the parent into the bank to add the child’s name to the accounts. The child then puts the parent on a small allowance, while spending the assets that “he is going to get anyway” or feels entitled to because of “all she is doing for dad.”

   Quite often the elder or dependent adult is unaware of the contents of the document he is signing; for example, an application for a loan presented by the trusted third party. The perpetrator deposits the loan proceeds into a joint account and withdraws the funds over time, all without the elder’s consent or knowledge, leaving the victim to repay the loan.

   Since innocent behavior can raise a red flag (grandchild is studying abroad and needs frequent wire transfers; son is added to the account to help mom pay her bills), it is necessary for the bank employee to proceed with caution and tact, always protecting the customer’s confidentiality by talking with the customer in a private setting apart from the relative or caregiver.

   While some customers may welcome the vigilance imposed by the act, other customers may be concerned about confidentiality and their independence, thereby finding questions by bank employees about their expenditures (however well-meaning or tactfully stated) as intrusive. Furthermore, if an APS investigator shows up at the customer’s door and no abuse has occurred (or the customer is in denial), the customer may well be humiliated or angry and close her account. Denial by the victim that financial abuse has occurred is widespread, due to many factors: the victim’s dependency on the perpetrator for care; intimidation by the perpetrator; shame for being duped; or disbelief that a loved one could take advantage. So there is that risk of financial institutions losing business by complying with the act.

   However, financial institutions have embraced the act as a way to protect their customers and will continue their vigilance against financial abuse of elder and dependent adults. It remains to be seen whether prosecution of financial elder abuse will increase due to the act, which will expire on January 1, 2013, unless extended.

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*Carol O'Neill is a graduate of Hastings College of the Law and spent over 18 years in private practice, specializing in planning and business succession planning, before joining The Mechanics Bank in Feb 2006. As Vice President of the Wealth Management Group, Carol advises bank customers about estate planning and business succession planning issues.*
However, as a "recovering attorney," she no longer prepares documents, leaving that important task to outside counsel.

All citations are to the Welfare and Institutions Code.

1 Banks, savings associations and credit unions §15630.1(b)
2 §15630.1(h)
3 §15610.27
4 "Dependent adult" is defined as “any person between 18 and 64 years . . . who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights . . . or whose physical or mental abilities have diminished because of age.” §15610.23(a)
5 §15630.1(d)(1)
6 Fines in the amount of $1,000 or $5,000 for willful failure to report must be paid by the institution, not by the individual employee, and can only be recovered in a civil suit brought by the Attorney General or district attorney or county counsel. §15630.1(f) and (g)
7 §15634(a) unless the reporter had actual knowledge that the report was false.
8 §15610.65
9 §15630.1(d)
10 §15630.1(e)