

Financial Exploitation of Older Adults

A Guide for Civil Legal Aid Attorneys in Massachusetts

Created by:



With help from

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About This Guide

Elder abuse is [defined](#) under Massachusetts law as an act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person. It is a growing issue faced by older adults, and the effects of abuse can negatively impact the physical health, mental well-being, and financial stability of victims. Elder financial exploitation is the most prevalent form of abuse experienced by older adults.

While acts of elder abuse may fall under various criminal statutes, civil legal aid attorneys are uniquely positioned to deploy legal strategies and advocacy to mitigate the effects of abuse and help older adults attain the remedies they seek. This Guide contains state-specific information, tools, and links to resources to help civil legal aid attorneys in Massachusetts advise and represent clients who have experienced financial exploitation. Additionally, the resources and partner information shared at the end of the Guide will help you connect with community partners, prosecutors, and coalitions who are also working to prevent and address elder abuse in Massachusetts.

This Guide was produced by [Greater Boston Legal Services](#) and adapted from information from the [National Center on Law and Elder Rights](#) (NCLER). For additional training and resources on a variety of Elder Abuse topics, visit ncler.acl.gov.

Acknowledgements:

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Introduction to Financial Exploitation

Exploitation of older adults is a prevalent and underreported problem. According to the Massachusetts Executive Office of Elder Affairs, elder abuse reports have increased 68% since Fiscal Year (FY) 2011, and in FY 2017, Protective Services received over 30,000 reports of suspected elder abuse. This number is expected to grow in future years as the population of older adults increases.

Elder abuse often occurs in the form of financial exploitation. This non-exhaustive list includes, theft, misappropriation of property, Identity theft, unauthorized use of credit cards, undue influence, fraud, deceptive and unfair business practices, and abusive debt collection practices.

Financial exploitation is enormously costly to victims' health and economic security. Studies estimate that, in total, elders have lost billions of dollars to financial exploitation. For many victims, the funds lost comprise their entire life savings. Financial exploitation is frequently committed by family members, friends or caregivers. Reporting exploitation can take an emotional toll on the person and result in a loss of caregivers or companions. A [2015 report from True Link Financial](#) contains more information about estimated losses and effects of elder financial abuse.

Defining Financial Exploitation

Financial exploitation is defined in the [Older Americans Act](#) as: "The fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets."

The State of Massachusetts similarly defines financial exploitation as "an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person." It does not include cases in which the elderly person "knowingly consented to that act or omission," unless they did so due to "misrepresentation, undue influence, coercion, or threat of force." [M.G.L. c.19A, §14](#)

There are differing ways of categorizing types of financial abuse and exploitation, and the boundaries between them can be blurry, but one simple distinction divides financial exploitation into two types: those by a "known" person and those by a "stranger":

- **Known person:** Financial abuse/exploitation by a known person (a family member, close friend, caregiver, or person/organization in a position of trust) who breaches the trust of a vulnerable person and misuses the individual's funds to serve their own needs at the elder's expense. Attorneys should be mindful of the distinction between family and non-family perpetrators and how that can inform your approach to the matter. Remedies for these kinds of abuse are both civil and criminal.
- **Stranger or "new friend":** Fraud, misrepresentation, or scams by a stranger or "new friend" who deceives the vulnerable person via an ever-changing variety of con games, such as bogus lotteries, sweetheart swindles, grandparent scams, fake charities, home repair fraud, IRS back taxes schemes, gift card scams, identity theft, etc.

This Guide focuses primarily on civil legal remedies for “known person” financial exploitation, but you can utilize the practice tips in this guide (beginning on p. 14) to assist your clients who have experienced stranger financial exploitation or scams.

The Role of Attorneys in Preventing & Addressing Financial Exploitation

Civil legal remedies can provide valuable relief to older adults, including stopping ongoing abuse and obtaining restitution. Civil legal services programs are also generally equipped to handle the associated legal issues discussed in this guide, such as Medicaid (MassHealth in Massachusetts), housing, and consumer issues. Some of your clients may not want to pursue criminal charges against a family member or friend, but may be willing to explore their civil options. Additionally, some cases may not have the elements necessary for criminal prosecution. Civil legal remedies may be helpful whether or not a criminal prosecution is pursued. As a civil legal aid attorney, you can play an important role in the protection and recovery process by assisting with obtaining protection orders, recouping funds, and seeking other civil remedies that are addressed in this guide.

Interviewing & Important Ethical Considerations

Trauma-Informed Legal Advocacy

Older adults who have experienced maltreatment are at risk of further harm if their legal matter is not handled in a trauma-informed manner by their advocate. Learning how to provide trauma-informed lawyering will help your client in their recovery process and allow you to get more thorough information from your client in order to effectively represent them.

The family versus non-family distinction is important for advocates to recognize. The sensitivities involved with a family member perpetrator should inform the conversation between you and your client, and the trauma-informed lawyering tips in this guide should be especially utilized in this context. Additionally, a victim may be willing to pursue certain remedies against a non-family exploiter that wouldn't be considered if the exploiter is related.

Traumatic triggers can impact your ability to connect with your client. Triggers bring up the memory of a past event and may create a feeling of unease or fear. Each client's experience and triggers will be different, so it is important that you understand the various options that are available to make your client feel more comfortable. Providing options for the interview location, being careful to explain the process of the interview in advance, and taking breaks can all be beneficial when conducting a legal interview. If your client will have to go to court, you should be mindful of the triggers that they may face, particularly if they will encounter the perpetrator while there. A run-through of the day can be helpful, as well as arranging for a supportive friend or family member to be present. For practice tips and more information about trauma-informed lawyering, resources are available through the [Trauma-Informed Legal Advocacy \(TILA\) Project](#).

Mandated Reporter Policy

In Massachusetts, lawyers are not legally required to report suspected elder abuse. However, many other professionals must do so, including physicians, social workers, policemen, coroners, and licensed psychologists. [M.G.L c.19A §15](#) Mandatory reporters must immediately make a verbal report to the Massachusetts Elder Abuse Hotline at (800) 922-2275, followed within forty-eight hours by a written report on an [Elder Abuse Mandated Reporter Form](#) faxed to the local protective services agency.

Alternatively, if reporters have the name and address of the victim, they may [submit an online report](#) instead of verbal and written reports.

As a lawyer, if you have reason to believe that your client has experienced abuse, you have the option of permissive reporting to Adult Protective Services if your client consents to the report. Permissive reporting should be weighed carefully with your client. Under the [Massachusetts Rules of Professional Conduct \(MRPC\) Rule 1.4](#), you must communicate the issue, options, and implications of any potential action. This includes explaining to your client what would happen next, services that may become available to them, possible criminal charges against the abuser, the potential for a guardianship investigation and capacity assessment, possible negative implications of permissive reporting, etc. Reporting elder abuse to Adult Protective Services can result in a case worker investigating the report, which could include a home visit and other actions that your client may not be comfortable with. A complete understanding of the impact of reporting will help you advise your clients on permissive reporting and weigh the benefits and burdens of taking this action.

As an attorney, you will need to assess your reporting obligations and ethical duties, and then be clear with your clients about your obligations and confidentiality during initial interviews and in subsequent communications if necessary. In Massachusetts, you can find ethics opinions on reporting abuse with or without your client's consent.

Capacity Concerns

Diminished capacity is a risk factor for exploitation, and you need to understand your ethical obligations pursuant to the [MRPC Rule 1.14](#). The rule starts with a presumption of capacity and directs attorneys to maintain a normal attorney-client relationship when reasonably possible. Capacity is not an on/off switch, and the standard of capacity will vary, depending on the nature of the decision that your client is required to make. Capacity level may change during your period of representation and you must be cognizant of how your duty to your client may be affected as this occurs.

State statutes provide the standards of capacity for specific legal transactions and guardianship. In Massachusetts, the major statute governing guardianship is [M.G.L. c.190B, Article V](#). Further information about guardianship processes, including the responsibilities of guardians, changing or ending guardianship, and temporary guardianship is available [here](#). The necessary court forms may be accessed and downloaded [here](#). If the guardianship must be transferred into or out of Massachusetts, please also refer to the [state's guidance](#) regarding The Uniform Adult Guardianship & Protective Proceedings Jurisdiction Act, [M.G.L. c.190B Article 5A](#), as the filing procedure may differ.

MRPC 1.14 also triggers protective action when an attorney reasonably believes that (1) a client has diminished capacity, (2) there is potential for harm to the client, and (3) the client cannot act in their own interest. To help you address issues of capacity in your cases, the handbook by the American Bar Association and American Psychological Association titled, [Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers \(2005\)](#) includes in-depth information and a 4-page worksheet to screen for incapacity.

Capacity determinations bring into play the sometimes competing goals of preserving autonomy and promoting safety. Attorneys should consider certain factors such as grief, stress, and non-permanent

medical conditions when assessing a client's capacity to make decisions. These are all factors that could be present for your client who has experienced abuse, and they are part of trauma-informed lawyering.

Screening

Sometimes your client will come to you seeking help to end or recover from an abusive situation. Oftentimes, however, you may also discover that someone is the victim of abuse in the course of representing them in another matter. Your legal services program should have a system in place for screening for financial exploitation and other forms of elder abuse.

The signs and symptoms of elder abuse can be detected in all practice areas. Elder financial exploitation cases do not always present as elder abuse. The older adult who comes in for help with utilities, rent, or a consumer debt lawsuit may be struggling to pay her bills because she has been financially exploited. Alternatively, an older adult may be facing eviction because of an abusive adult child who refuses to leave the home.

If elder financial exploitation is suspected, reviewing a client's bank account activity, credit card statements, other bills, budget, and any accountings that are available may help you identify problems. The Elder Investment Fraud & Financial Exploitation Prevention Program has developed a [financial exploitation checklist and screening tool](#) that may be helpful. The Massachusetts Office of Consumer Affairs and Business Regulation has also identified additional warning signs in its [official blog](#).

Below are some examples of how an elder abuse case might initially present in your office. These situations may not always involve abuse, but could raise red flags and prompt further investigation:

- A client is being encouraged to sign legal documents that they do not understand.
- A client is being evicted from a nursing facility due to non-payment, and a family member manages their finances.
- A client is seeking to modify their advance planning documents in an unusual way.
- A client is facing mortgage foreclosure, but has adequate income to pay the mortgage.
- A client has a reverse mortgage but did not understand the documents and did not have access to the funds.
- A client is being sued for a credit card debt, but they did not open the account or use the credit card.
- A client is being evicted from their apartment for a violation of the housing authority's guest policies.
- A client comes in for an appointment, and is accompanied by a coercive or overbearing family member or friend.

For more guidance on screening for elder abuse and other legal issues faced by older adults, utilize NCLER's skills training session on [Issue Spotting, Intake, & Referrals](#) which provides practical tips and visual guides for attorneys and support staff.

Legal Strategies

When exploring the strategies in this section, you should keep in mind that some filing fees may be waived based on indigency. Although some court actions may be available for free (such as a domestic violence injunction or a change of guardian in a pre-existing case), other actions, like removing an unwanted person from the household, often require a filing fee. This is especially important where an exploiter has deprived the elder of funds, or controls access to the funds. In Massachusetts, the state will waive a claimant’s court fees if they satisfy the eligibility criteria and file an [Affidavit of Indigency](#). Further information about eligibility may be found [here](#).

Immediate Responses for Protection

There are certain options that you should discuss with your client if they need protection from the perpetrator and immediate help to stop the abuse.

Your Client Wants...	Potential Steps to Take	Why this Action for this Situation?	Practice Tips & Statutes
To stop the perpetrator from contacting them or coming to their home	Motion for Restraining Order, Protective Orders, or Order of Protection	Protective orders, restraining orders, or stay away orders are civil orders from the court telling the perpetrator not to contact your client, approach them, or harm them again. While the order is civil, if the perpetrator violates it, they could face criminal consequences.	<p>In Massachusetts, courts may issue a wide variety of protective orders when the perpetrator is a relative or a current or former household member. Among other measures, they may order the perpetrator to refrain from abusing your client, prohibit them from contacting your client entirely, order them to vacate and stay away from your client’s household and workplace, or order them to compensate your client for any losses suffered as a direct result of the abuse. <u>M.G.L. c.209A §3.</u></p> <p>A person must first establish that abuse has occurred, which is defined under state law as: “(a) attempting to cause or causing physical harm; (b) placing another in fear of imminent serious physical harm; [or] (c) causing another to engage involuntarily in sexual relations by force, threat or duress.” <u>M.G.L. c.209A §1.</u></p> <p>The necessary court forms for filing for a restraining order in Massachusetts may be found here.</p>
To get the perpetrator out of their home	Eviction or Ejection	If the perpetrator currently lives with your client, it may be necessary for you to help your client legally eject the perpetrator.	In Massachusetts, the most efficient way to eject the abuser from the victim’s home is through a 209A protective order, otherwise simply known as a restraining order. <u>M.G.L. c.209A §3.</u> This is the same order described in the above section. Massachusetts courts may order the abuser to stay away from the home

		<p>Some perpetrators may not qualify as tenants or have the protection of being a tenant, and could be considered house guests. Such a person may be removed with the assistance of law enforcement.</p>	<p>for a period of time, formally move out of the home, surrender all keys to the living unit, and any other reasonable measures that would allow the victim to feel safe.</p> <p>If the abuser does not own the living space, you may pursue an eviction action. The process varies by situation, depending on several factors such as the kind of tenancy the abuser has in the home. Further general guidance about eviction may be found here.</p> <p><i>Practice Tip:</i> If your client is in immediate danger by staying in the home, you should look at shelter options, including any elder shelter networks in your area. The Massachusetts Shelter and Housing Alliance has written a helpful guide, Resources for Older Homeless and Low-Income Adults, which includes resources and other useful information.</p> <p>If your client does not want to seek immediate court relief, for example against a family member, a certified letter from an attorney demanding that the person vacate the premises and stop any act of financial exploitation, with a specified move out date, can provide relief in some situations.</p>
<p>To stop money from being taken from their bank account</p>	<p>Freeze of Bank Account</p>	<p>If the perpetrator has access to your client’s bank account or has been utilizing your client’s checks or debit card, you may want to help your client take steps to freeze their account from any further withdrawals and possibly advise them to open a new account.</p>	<p>If the perpetrator and victim are married and have a joint bank account, and if the victim files for a <u>Divorce</u> or a <u>Complaint for Separate Support</u>, the Massachusetts Probate and Family Court will temporarily freeze the couple’s accounts through an <u>“automatic restraining order.”</u> This prevents either person from spending money out of their accounts for anything other than “reasonable expenses of living” like food and rent, and prevents either spouse from taking out a loan that the other will need to repay.</p> <p>For individual accounts, only the person whose name is formally on the account can access the funds through the bank. Your client should also be able to ask the bank to cancel</p>

			<p>or place a hold on their account to prevent further activity. Protective Services can also freeze a bank account after obtaining a protective order.</p> <p><i>Practice Tip:</i> Your client may have automatic deposit of their Social Security, pension and other income in their current account. You will want to help them with arrangements to change the account information on the direct deposits.</p>
<p>To stop their agent from misusing a power of attorney (POA) document or not fulfilling their fiduciary obligations</p>	<p>Revocation</p>	<p>Revoking a POA document can be a helpful first step toward stopping the perpetrator from continuing to exploit your client while using the document.</p> <p>Legal capacity is required to exercise this option. Also, consideration must be given to the client’s ability to handle their own finances and other options/potential agents who can step in to replace the perpetrator.</p>	<p>General guidance for POA drafting & revocation can be found at mass.gov.</p> <p>To revoke a power of attorney, your client should notify the attorney-in-fact in writing that the power has been revoked, then request that the attorney-in-fact return any copies of the POA document. You or the client should also send written notification to any financial institution or person that may have received a copy of the document, telling them that the POA has been revoked.</p> <p><i>Practice Tip:</i> Be sure to send the revocation and any new POA documents to the banks and other financial institutions that may have a copy of the previous POA document.</p>

<p>To change their guardian because the current guardian is misusing funds or taking their property</p>	<p>Termination or Change of Guardianship</p>	<p>If your client has a guardian who is guilty of misconduct, such as committing elder abuse, the court has the discretion to remove the guardian and appoint a new guardian.</p>	<p>General guidance for termination of guardianship can be found here.</p> <p>A guardianship can <i>change</i> for 2 reasons:</p> <ul style="list-style-type: none"> • The court approves the guardian's request to resign. • The guardian is removed by the court. <p>A guardianship can <i>end</i> for 3 reasons:</p> <ul style="list-style-type: none"> • The guardian dies. • The incapacitated person dies. • It is determined that the incapacitated person is no longer incapacitated. <p>The form for the petition of the removal of a guardian can be found here.</p> <p><i>Practice Tip:</i> Review the ABA's PRACTICAL Tool for Lawyers for assistance in determining whether your client should be considered for less restrictive options than guardianship.</p>
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Civil Legal Strategies for Redress

After taking care of your client's immediate needs, you will want to discuss options for possible recovery of funds, termination of fraudulent agreements, and more. Using the remedies outlined below, you can assist your client by filing a complaint for restitution, compensatory damages, or punitive damages. Abuse committed using a Power of Attorney or other fiduciary appointment can have real legal consequences. Many of the civil legal remedies available to your client are based on the perpetrator's breach of their fiduciary responsibility.

You need a legal remedy to...	Consider	Why?	Statutes & Practice Tips
Require the perpetrator to account for the funds and property of your client	Action for an Accounting, or Action to Freeze Assets	If the perpetrator was in a fiduciary relationship with your client, they may be subject to prove that they properly handled the funds and property of your client by supplying records and information.	The judgment in an action for an accounting should adjudicate the account and show the balance due from one party to the other. Nolan, Joseph R., <u>Sartorio, Laurie J., Equitable Remedies, 3d (Vol. 31, Massachusetts Practice Series), § 19 (2018).</u>
Recover damages from a perpetrator who was acting as your client’s agent	Breach of Fiduciary Duty (Tort)	If your client’s funds or property were mishandled by their agent (through a POA or other agent relationship), you might have a claim for breach of fiduciary duty. Generally, an agent is required to act in the best interests of the principal. If this breach occurred, your client may be able to recover traditional tort damages.	Should your client succeed in proving a breach of fiduciary duty claim, remedies exist to attempt to make her "whole." Generally speaking, remedies for breach of fiduciary duty are equitable in nature, meaning they are intended to put the person in the position they would have been had the breach not occurred. Remedies for breach may include money damages, injunctive relief, transfer or property or constructive trusts
Recover damages from a perpetrator who was a hired caregiver, the company employing the perpetrator and/or their insurance company	Breach of Contract	If the perpetrator was hired by or working for your client, the financial exploitation could be characterized as a breach of their contract to perform their work.	<i>A breach of a contract</i> occurs when a party does not fully perform a duty under the contract that is due. Restatement (Second) of Contracts § 235 Effect of Performance as Discharge and of Non-Performance as Breach, Comment (b)
Recover damages from the perpetrator where a “theft” occurred. The perpetrator does not have to be an agent or hired caretaker	Conversion (Tort)	Generally, conversion is an intentional tort in which one person takes, uses or alters the property of another person without permission. Property can include money, tangible items, and real property. Conversion can sometimes be characterized as the civil version of theft.	One who <i>intentionally and wrongfully</i> exercises <i>acts of ownership, control or dominion</i> over personal property to which he has no right of possession at the time is liable for the tort of conversion . <u>Spooner v. Manchester</u> , 133 Mass. 270, 274 (1882). <u>Abington National Bank v. Ashwood Homes, Inc.</u> , 19 Mass. App. Ct. 503, 507, 475 N.E.2d 1230, 1232 (1985). <u>Bleicken v. Stark</u> , 61 Mass. App. Ct. 619, 622 n. 2, 813 N.E.2d 572, 576 n. 2 (2004) (citing Abington). Who is liable? The converter is liable for the fair market value of the property at the time of the conversion plus interest from the date of the conversion to the date of

			<p>judgment. <u>Clapp v. Haynes</u>, 11 Mass. App. Ct. 895, 897, 414 N.E.2d 359, 361 (1980) review denied 383 Mass. 890, 441 N.E.2d 1042 (1981), quoting <u>Epstein v. Boston Housing Auth'y</u>, 317 Mass. 297, 299–300, 58 N.E.2d 135, 137–138 (1944).</p>
<p>Recover damages from the perpetrator for using deceitful means to induce your client to transfer property, funds or sign an agreement</p>	<p>Fraud or Constructive Fraud (Tort)</p>	<p>Proving fraud, while sometimes difficult, can provide options for your client to “undo” certain transfers or agreements as well as possibly recover punitive damages. Generally, it involves the intentional misrepresentation or concealment of a material fact, which the victim relied on to their detriment.</p>	<p>Elements of fraud:</p> <p>Client “must allege and prove that the defendant (1) made a false representation (2) of a material fact (3) with knowledge of its falsity (4) for the purpose of inducing the plaintiff to act thereon, and that (5) the plaintiff relied upon the representation as true and (6) acted upon it to his damage.” (numbers added). <u>Barrett Assoc., Inc. v. Aronson</u>, 346 Mass. 150, 152 (1963).</p>
<p>Reverse transactions or agreements that are damaging to your client</p>	<p>Rescission/Undue Influence</p>	<p>As a remedy for fraud or undue influence, rescission or a reversal can be sought when your client was “induced” into a contract by a misrepresentation or undue influence by the perpetrator, or if the client lacked necessary capacity at the time of the transaction. Massachusetts courts recognize undue influence when a person’s free will was destroyed such that the person was compelled to do something they didn’t want to do.</p> <p>This could be considered in situations where your client may have added the perpetrator as a joint bank account holder or signed an agreement to transfer funds or property to the perpetrator or another party.</p>	<p>Massachusetts definition: <u>Neill v. Brackett</u>, 234 Mass. 367, 369 (1920).</p> <p>Elements of undue influence:</p> <p>Elder must “prove that (1) an unnatural disposition was made (2) by a person susceptible to undue influence to the advantage of someone (3) with an opportunity to exercise undue influence and (4) who in fact has used that opportunity to procure the contested disposition through improper means.” <u>Howe v. Palmer</u>, 80 Mass. App. Ct. 736, 740-41 (2011).</p>

<p>Seek compensation for lost funds</p>	<p>File for compensation funds through Victims' Compensation Assistance Programs</p>	<p>Most of these programs have a very short time frame during which a victim can file for compensation and a police report must have been filed in a timely manner.</p>	<p>Crime victims in Massachusetts who have suffered financial loss should contact the Victim Compensation Division of the Attorney General's Office. Through the Victim-Witness Fund, the Victim Compensation Division can provide victims of crime with up to \$25,000 per crime.</p> <p>To contact the Attorney General's office, call 617-727-2200.</p> <p>Attorneys and clients who are deaf, hard of hearing, or speech-impaired can use the AG office's TTY line: 617-727-4765.</p>
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Tools for Addressing Stranger Financial Exploitation & Scams

Scams and fraudulent practices aimed at older adults include a wide range of illegal behavior from imposter scams to mortgage fraud. Scammers use deceptions, misrepresentation, and threats to convince older adults to send money or provide personal or financial information. [Common frauds and scams](#) aimed at older adults include: imposter scams, identity theft, home improvement and mortgage-related scams, and fraudulent marketing practices.

If your client has been targeted by a scam, it is important to take immediate action to stop the scam and further depletion of income and assets. A NCLER Chapter Summary, [Legal Basics: Protecting Older Adults against Scams](#), details the actions an advocate can take when responding to identity theft, along with unauthorized credit and debit card use. Identitytheft.gov, the Consumer Financial Protection Bureau and the Department of Justice, as well as the Massachusetts Executive Office of Elder Affairs and the Massachusetts Attorney General's offices, offer information on the [scams targeting older adults](#), and [steps for recovering from identity theft](#). Civil legal aid attorneys can play a role in helping their clients avoid future exploitation, reducing solicitations, and empowering them to move forward.

Coordination with Prosecutors & Criminal Proceedings

In March 2016, the Department of Justice [announced](#) the launch of 10 regional Elder Justice Task Forces. These Task Forces provide coordination among state and local agencies, organizations, and law enforcement that are combating elder abuse. Additionally, the Task Forces can evaluate complaints, investigate scams, and provide training. Although the [Elder Abuse Prevention and Prosecution Act](#) of 2017 now requires the creation of an Elder Justice Task Force in every federal district in the country, the original 10 Task Forces remain the only Task Forces listed on the DOJ website as of June 2018. Eventually, each federal district will have its own Elder Justice Task Force, with an Assistant US Attorney serving as Elder Justice Coordinator. A list of the original 10 Elder Justice Task Forces can be found [here](#). The closest of these task forces to Massachusetts is in the Eastern District of Pennsylvania.

If the prosecutor's office is pursuing criminal charges against the perpetrator, you will want to coordinate your civil case strategy to ensure that you are strategically bringing your civil case at the appropriate time and that you are not acting at cross purposes with the prosecution or failing to file within the statute of limitations for civil actions while a criminal action is being pursued. Coordination with the prosecutor can be coordinated through a multidisciplinary team. If there is a criminal conviction, the court may be able to enter an order for restitution.

Associated Legal Issues

Elder financial exploitation is often associated with a broad range of legal problems. Civil legal aid attorneys can help clients address not only the abuse, but also the other legal problems it has created. The next section provides examples of the issues you may be able to address for your clients.

Medicaid Denials

When someone applies for MassHealth to pay for long-term care, they need to provide financial records to prove their income and assets, and to show that they haven't transferred funds or property without getting fair market value for them. When someone has been financially exploited, they may have problems qualifying for MassHealth or maintaining their MassHealth eligibility. Issues that your client may face include:

- Being denied eligibility because of missing bank records or financial information;
- Having to delay eligibility during a "penalty period" based on perceived "gifts;"
- Receiving an eviction or involuntary discharge from a nursing home or hospital due to nonpayment;
- Needing to apply for a "hardship waiver" to explain why funds are missing; and
- Needing to have a fraudulent deed transfer reversed and designated as never having occurred;

Legal services attorneys can play a critical role in ensuring that victims of elder financial exploitation can access MassHealth long-term care benefits by advocating on their behalf, helping construct the information needed to show that financial exploitation has caused the issue, and drafting hardship waivers. If you are assisting a client with issues with financial exploitation, you should consider how the

exploitation may impact your client’s future MassHealth eligibility, and alert your clients to this possibility. For more information and tips on handling these cases, the NCLER offers a [guide](#).

Information on appealing MassHealth denials in Massachusetts can be found [here](#) and [here](#).

Federal Tax Consequences

Your client may be facing federal tax consequences if the financial exploitation included the early withdrawal of funds from their IRA. If your office provides federal tax assistance, you may want to connect your client to those services or to an outside tax professional. For clients who meet the eligibility guidelines, you can refer them to a [volunteer assistance program](#), such as the [Volunteer Income Tax Assistance program](#) (VITA), [Low Income Tax Clinics](#) (LITCs), or [Tax Counseling for the Elderly](#) (TCE).

Program	Acronym	Eligibility	Cost	Services
Volunteer Income Tax Assistance	VITA	Income < \$54,000 Persons w/disabilities Limited English proficiency	Free	Basic income tax return preparation
Tax Counseling for the Elderly	TCE	Age 60+	Free	Specializes in pensions and retirement-related issues
Low Income Tax Clinics	LITCs	Income < 250% of the Federal Poverty Line (FPL) People for whom English is their second language	Free or Low Cost	Assistance in resolving tax disputes with the IRS (e.g. audits, appeals, collection matters, federal tax litigation) Tax return preparation (if necessary to resolve the dispute) Education and outreach to ESL speakers

VITA and TCE in Massachusetts

There are four providers of VITA and TCE in the state of Massachusetts, all of which are in the Greater Boston area and are listed below. Please note: these providers may only offer services during certain months of the year.

Taxpayers requiring assistance in Russian and Portuguese might also explore options in Rhode Island, as Rhode Island has two providers that serve Portuguese speakers and one that serves Russian speakers.

Provider	Address	Phone Number	Languages
CEOC VITA	11 Inman St Cambridge, MA 02139	617-868-2900	English, Spanish
Trustman Family Learning Center	341R Saint Paul St Brookline, MA 02446	855-687-7345	English, Spanish, Chinese
Brookline HA Family Center	22 High St Brookline, MA 02445	855-687-7345	English, Spanish, Chinese
Brighton Branch/Boston Public Library	40 Academy Hill Rd Brighton, MA 02135	855-687-7345	English, Spanish, Chinese

LITCs in Massachusetts

Massachusetts has four LITCs, each of which is listed below. Only one of the clinics is located in Western Massachusetts.

Provider	City	Phone Number	Languages
Bentley University Multi-lingual Tax Information Program	Waltham, MA	800-273-9494 781-891-2083	English, Spanish, Portuguese, Russian, Chinese, Haitian Creole
Legal Services Center of Harvard Law School LITC	Jamaica Plain, MA	866-738-8081 617-522-3003	English, Spanish
Springfield Partners LITC	Springfield, MA	413-263-6500	English, Spanish, Vietnamese
Greater Boston Legal Services LITC	Boston, MA	800-323-3205 617-371-1234	All languages through interpreter services

Consumer

If the financial exploitation experienced by your client included the unauthorized use of their credit cards or accounts unknowingly opened in their name, your client may be left with credit card bills that they cannot pay. Working with the fraud department of the credit or banking institution may help your client—it is important that you or your client reach out to the financial institutions as soon as possible. Many will have defined windows of time in which the fraud must be reported. For more information about the steps your client will need to take, use [identitytheft.gov](https://www.identitytheft.gov). Consumer Financial Protection Bureau (CFPB) resources, such as sample [letters](#), are also available on their website. Additional resources are available through you're the Massachusetts Attorney General and the Department of Justice.

If your client is facing consumer credit lawsuits or existing credit judgments, you will want to determine whether your client can assert any defenses to the credit card lawsuit, such as fraud. You can also evaluate whether your client is “collection-proof,” meaning their income and/or homestead, for example, is beyond the reach of creditors. If judgments have already been entered, determine whether the judgement can be vacated or if the case can be re-opened. In Massachusetts, [MRCP Rule 60](#) determines when a judgment can be vacated. To access the Massachusetts form for vacating judgment, click [here](#).

You may consider referring your client to [Greater Boston Legal Services](#), as they handle some of these types of consumer cases.

Collaboration with Community Partners & Enhanced Multi-Disciplinary Teams

Collaboration with aging services providers, community partners, and the justice system is an important component of your effective representation of your client. It is important that you are aware of the programs and organizations that are available to help your client with their non-legal concerns. You should connect your client to supportive services when needed, including nutrition services, counseling, safety planning, and shelter options.

Adult Protective Services

Adult Protective Services (APS) is a social services program serving older adults and adults with disabilities who need assistance because of abuse, neglect, self-neglect, or financial exploitation. APS receives and responds to reports of adult maltreatment and works closely with clients and allied professionals to maximize client safety and independence. If you are working with older adults, you should become familiar with your local APS's reporting procedures, as well as the services and resources that they can provide. This will be helpful in weighing whether your client wants to involve APS in their case, as discussed in the earlier section on mandated reporting.

Once a report is substantiated, APS and other senior services providers can arrange for myriad supportive services for your clients, which can be key to their ongoing safety and recovery. These services can include housing, health care services, food, medical supplies, transportation, and mental health services.

In Massachusetts, APS units are housed at the Aging Services Access Points, or ASAPs, which are private, nonprofit agencies that provide direct services to elders. There are more than 25 ASAPs statewide; however, not all ASAPs have an APS unit. To connect with an APS unit in their area, your client should call the Massachusetts Central Intake Unit for Protective Services at 1-800-922-2275, which is available 24 hours per day, 7 days per week.

Here is a non-exhaustive list of ASAPs that contain an APS unit:

- Elder Services of Worcester Area
- Bristol Elder Services
- Central Boston Elder Services
- Elder Services of Merrimack Valley
- LifePath
- Montachusett Home Care Corporation
- North Shore Elder Services
- Old Colony Elderly Services
- South Shore Elder Services
- Tri-Valley Elder Services
- Springwell

For a list of ASAPs and their contact information, click [here](#).

Long-Term Care Ombudsmen

The Older Americans Act requires every state to have a Long-Term Care Ombudsman (LTCO) program that addresses complaints and advocates for improvements in the long-term care system. Ombudsmen advocate for residents of nursing homes, board and care homes, assisted living facilities, and other adult care facilities. Because LTCO are often a first point of contact for long-term care residents, they may be the first to notice the warning signs of financial exploitation or be the first person a resident confides in regarding financial exploitation. LTCO are a key community partner in preventing and identifying financial exploitation.

In Massachusetts, the statewide LTCO program is headed by the State LTC Ombudsman housed at the Executive Office of Elders Affairs. They oversee the local LTCO programs, which are contained within the ASAPs (see above). Contact information for the LTCO program as well as for the Program Directors of each local ombudsman program can be found [here](#). To see which local ombudsman program covers your city, click [here](#).

Multi-Disciplinary Teams

One of the most notable forms of collaboration on elder exploitation cases is through multi-disciplinary teams and enhanced multi-disciplinary teams (MDTs and E-MDTs). MDTs are partnerships among public, private and non-profit organizations with the goal of improving outcomes for victims of elder financial exploitation. Most teams include a prosecutor, adult protective services, civil legal services, financial institutions, forensic accountant and other members. The collaboration on these teams fosters accountability and improved cooperation among agencies.

There are not currently any formal MDTs or E-MDTs in Massachusetts. For information on developing team in your area, the US Department of Justice offers a [guide](#).

As a civil legal aid attorney, if you are participating in a multi-disciplinary team model, you should remain aware of your ethical responsibilities and ensure that there are procedures in place to protect attorney-client confidentiality. Procedures can include implementing confidentiality agreements, excluding client names from conversation, and consent forms. Visit the [Multidisciplinary Technical Assistance Center](#) for additional forms and information.

Home and Community Based Services

If your client's abuser also serves as their caretaker, home and community based services (HCBS) may help to replace any assistance your client loses once they rid themselves of the abuser. HCBS allows certain MassHealth recipients to receive care in their own home rather than in a nursing facility. A "Frail Elder Waiver" is available to persons aged 60+ who meet income and asset guidelines and are found medically eligible for nursing home coverage, though applicants younger than 65 must be permanently disabled in accordance with Title XVI standards. These eligibility requirements can be found in [130 CMR 519.007\(B\)](#). To learn more about the waiver and find out how to apply, click [here](#).

Additional Resources

- General Information & Resources on Elder Abuse: [National Center on Elder Abuse](#)
- Webinars & Practice Guides: [National Center on Law & Elder Rights](#)
- ABA Resources on Elder Abuse: [American Bar Association](#)
- Ethics & Practice Guidance: [ABA Commission on Law & Aging](#)
- Statutes, Information & Webinars: [U.S. Department of Justice, Elder Justice Initiative](#)
- Long-Term Care Ombudsman Resource: [Long-Term Care Ombudsman Resource Center](#)
- Statutory definitions for elder abuse and other related terms: [M.G.L. c.19A §14](#)
- Massachusetts Elder Abuse Hotline: (800) 922-2275