# Home Equity Theft and Other Emerging Scams Impacting Older Adults

NATIONAL CENTER ON LAW & ELDER RIGHTS

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Odette Williamson, Staff Attorney, National Consumer Law Center

Stacey Tutt, Senior Staff Attorney, National Housing Law Project

## The National Consumer Law Center

The National Consumer Law Center uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

The National Housing Law Project's mission is to advance housing justice for poor people and communities. We achieve this by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, and preserving and expanding the nation's supply of safe and affordable homes.

## Introduction

Reports of scams and fraudulent practices increased significantly during the pandemic. According to the Federal Trade Commission ("FTC") consumers reported losing more than $5.8 billion to fraud in 2021, an increase of more than 70 percent over the previous year.[1] Older adults were targeted by romance scammers, imposters, identity thieves, and other fraudsters. Older homeowners were pursued by equity thieves for the wealth they possess in their homes.

While older adults were less likely to report losing money to scams than younger consumers, when they did report such loss the dollar amount was significantly higher. Consumers eighty years old and over reported a median loss of $1,800 to fraud in 2021, an amount three times the median loss reported for consumers in other age groups.[2] This number underestimates the extent of the loss to older consumers as scams are significantly underreported.

Nearly 80% of older adults own homes. With the recent rise in home values, older adults who have owned their homes for a significant period of time are "equity rich," making them likely targets of equity stripping scams. Older adults on fixed or limited income, or those facing financial distress are particularly vulnerable to these deceptive solicitations.

Fraudulent practices and scams impact every community. Older adults in communities that are racially, ethnically, or linguistically isolated are particularly at risk. The FTC Fraud Surveys, for example, found that Latinos experience higher rates of fraud than other populations.[3] This includes government imposter scams, multi-level marketing and pyramid schemes advertised in both English and Spanish, fake job opportunities, and fake immigration assistance schemes.[4] Limited English proficient (LEP) older adults are exposed to scams in their own language, and may lack in-language information from reputable sources.[5]

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1 Federal Trade Commission, Consumer Sentinel Network Data Book 2021 at ftc.gov/reports/consumer-sentinel-network-data-book-2021.

2 Id. (for consumers 20 to 60 years old).

3 Vaca, Monica, et al., *Protecting Latino Communities, Information from the FTC*, NACA Webinar Series, September 2020, at slide 8.

4 Id. at 12-15.

5 *See, e.g.*, *HUD files charge alleging California foreclosure rescue companies scammed Hispanic homeowners*, HUD archives, HUD No. 16-002 (Jan. 12, 2016), archives.hud.gov/news/2016/pr16-002.cfm.

The impact of financial fraud and scams on older adults is devastating. Depending on the amount of money or assets taken, older adults can fall into poverty or homelessness. Older adults may be forced to rely on family members and friends, or need government assistance. Unlike their younger peers, older adults have less time and resources to rebuild their nest egg or otherwise recover financially from the scam. Financial scams also impact the emotional and physical health of victims as they struggle to live with fewer resources for food, medicine, housing, and other basic necessities. The financial strain and embarrassment may cause older victims to become fearful, depressed, or even suicidal.

Scams are perpetrated by a wide variety of individuals and businesses, including family members and caretakers. This issue brief focuses on scams perpetrated by strangers and businesses rather than financial exploitation by family members, caretakers, or trusted advisors, although the scams may be the same or share similar features.

## Key Lessons

1. Older adults are at risk for losing money, assets, and the home they need to age in place and weather the economic strain caused by the pandemic.
2. Scammers contact victims by telephone, including robocalls and text messages, and trick older adults into revealing personal financial information or sending money.
3. Older homeowners are at risk for a wide variety of sophisticated home equity scams.
4. It is important to take immediate action to stop the scam and prevent further loss of money and assets, and to protect the home.
5. Recovery of income and assets may be possible but is unlikely to make the older adult financially whole.

## Section 1: Home Equity and Other Scams Aimed at Older Adults

Most scams are perpetuated over the telephone, including through texts and robocalls to cell phones. The scammer will request personal or financial information or money once they gain the trust of the older adult. The information is used to access the consumer's bank account, open credit card accounts, or create other fake accounts in the consumer's name. Scams are also promoted heavily through email phishing scams, and online as well as direct mail.[6] Older adults with special types of assets (e.g., homes or pension plans) may be targeted for particular types of scams. Common types of scams include:

### Imposter Scams

An imposter scam involves an individual pretending to be someone else to get money or financial information from a consumer. Aside from the IRS, government imposters persuade older adults into disclosing financial information by offering assistance in obtaining medicine or equipment through Medicaid or Medicare. Others extract personal information through a fake verification process, by pretending to investigate fraudulent activity on Social Security accounts. Imposters also pose as employees of well-known businesses, or even family members. Popular scams include offers of technical support to fix non-existent computer problems by individuals claiming affiliation with well-known technology companies. Other imposters pose as family members, such as grandchildren, in need of emergency financial assistance.

6 Phishing commonly involves the use of scam emails to trick consumers into revealing financial information including account numbers and passwords.

### Identity Theft

Identity theft is the unauthorized access and use of an elder's financial or personal information. Consumers unwittingly disclose personally identifiable information (e.g., date of birth, social security number); this may lead to credit card fraud, tax fraud, and other financial scams. With tax-related identity theft, for example, scammers file fraudulent tax returns using stolen Social Security numbers to claim victims' unemployment and other benefits. A person's identity can be stolen as a result of a phishing or other online scam; lost or stolen wallet or purse; a data breach at a financial institution, retailer, or other business; high tech skimming of credit card information with a tool during a legitimate business transaction; or a dishonest employee appropriating a customer's information.

### Home and Mortgage-Related Scams

Older homeowners in financial distress due to the COVID-19 pandemic may be targeted by scammers promising access to federal or state anti-foreclosure programs or assistance obtaining relief from the mortgage company in exchange for an up-front fee. Unfortunately, these foreclosure rescue/loan modification scammers provide little or no service, and disappear with the money, leaving the homeowner in a worse position with little time to save the home. Homeowners also lose money to home improvement scams, and scams related to utilities and energy-efficiency upgrades. Information on homeownership and homes in foreclosure is easily obtainable from publicly-available databases, making it easy for scammers to tailor their solicitation to appeal to older consumers.

### Green Energy Financing Scams

Property Assessed Clean Energy (PACE) loans have taken root in several states, and programs are developing in others. Recent trends raise alarming questions about the potential for scams and abuse, especially against older consumers and in communities already devastated by disinvestment, redlining, and unaffordable lending. PACE programs offer loans for home improvements that may improve energy efficiency, such as solar panels, HVAC systems, and new windows, and also for other purposes, such as hurricane hardening. PACE loans are offered through home improvement contractors often going door to door with contracts on tablets that commit people on the spot to property tax liens that can increase taxes by thousands of dollars a year. That property tax lien is collected through a property tax assessment, paid on the property tax schedule, not necessarily monthly, and the lien takes priority over any existing mortgage. PACE programs must be authorized by state and local governments, but PACE programs are privately run, often with little or no government oversight. Because the transactions utilize electronic signatures, homeowners often don't realize until receiving their tax bill that they have been signed up and risk losing their home if they are unable to afford the PACE loan.

### Home Sale Predatory Practices

Older homeowners in financial distress may feel pressure to sell their homes to use their equity to address current financial needs. There are many scammers who prey on older adults through aggressive sales tactics, building rapport, and pressure to sign a contract today to sell their home for cash or enter into a listing agreement. Often, the scammers will downplay the value of the home to get a homeowner to sell it to them for less. In other instances, they may provide an upfront fee to the homeowner to get them to sign a 40-year listing agreement which obligates the homeowner to pay a future commission to the company. Unfortunately this means the homeowner does not receive the full amount of their hard earned equity to meet their ongoing expenses.

## Section 2: Consumer Protections

Consumers who have lost money or face economic distress due to home equity scams and other types of fraud must seek these protections to stay housed, keep the utilities connected, and obtain relief from aggressive debt collection practices.

Many types of practical or legal interventions may be necessary to protect the income, assets, and homes of older adults, or to prevent re-victimization. Some victims may seek civil legal assistance to address the scam and return of the money or property taken by the scammer. Financial relief may be difficult or impossible if the money or assets have been transferred. However, federal and state laws can provide protections up front, especially if steps are taken early, or aid in recovery of assets. Here are examples:

### Unauthorized credit card use

Federal law protects consumers against the unauthorized use of a credit card.[7] Unauthorized use most commonly occurs with identity theft when someone steals, borrows, or otherwise uses the older adult's credit card without permission. The consumer's responsibility for unauthorized use of a credit card is limited to $50. Consumers may challenge an unauthorized charge or any other error (e.g., billed for incorrect amount) which appears on a monthly statement.[8] Information regarding how to raise the dispute appears on the back of the credit card statement. Consumers are not responsible for new accounts opened with stolen personal information; this should be reported to law enforcement authorities and the credit card company.

### Unauthorized debit card use

Federal law also protects consumers against unauthorized, fraudulent, or illegal debits against bank accounts, such as those made with debit cards.[9] The extent of the consumer's responsibility for the unauthorized transfer of funds is determined by their promptness in notifying the financial institution. Generally, a consumer is not responsible for a timely reported unauthorized transfer of money. If a report is not timely made, the consumer may be responsible for $50, $500, or an unlimited amount depending on when the unauthorized transfer occurred, whether the access device was lost or stolen, when a statement was sent, and when the consumer reported the loss or theft of the access device or the unauthorized charge. To dispute an unauthorized transfer or other error appearing on a bank statement, for example, the consumer must notify the bank within 60 days.[10] Consumers can notify the financial institution by telephone, in writing, or in person.

### Abusive Robocalls

The vast majority of scams are promoted over the telephone, often autodialed calls with prerecorded messages (robocalls). With government imposter scams, the scammer will manipulate the caller ID to mimic a call coming from the government. Federal law generally prohibits abusive methods of contacting consumers, including robocalls and text messages to cell phones without prior consent.[11] Older adults inundated with telemarketing calls can register their telephone number with the National Do Not Call Registry, maintained by the FTC. Calls by or on behalf of tax-exempt nonprofit organizations are generally excluded from the law's coverage.

### Protections for Home and Off-Site Sales

The FTC's Cooling-Off Rule provides consumers with a three day right to cancel a sale made in the home or other off-site location such as hotels, restaurants, or the seller's temporary location.[12] The door-to-door salesperson must provide notice of the right to cancel as well as two copies of the cancellation form. Consumers do not have to provide a reason for cancelling the transaction.

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7 Truth in Lending Act, 15 U.S.C. § 1643.

8 The Fair Credit Billing Act, part of the Truth in Lending Act, 15 U.S.C. § 1666.

9 The Electronic Funds Transfer Act (EFTA), 15 U.S.C. §§ 1693–1693r.

10 15 U.S.C. § 1693f(a).

11 Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227.

12 FTC Cooling Off Rule, 16 C.F.R. § 429.

### Unfair and Deceptive Acts and Practices

Each state and the District of Columbia have enacted an unfair and deceptive acts and practices (UDAP) law aimed at preventing deceptive, fraudulent, and abusive practices in the marketplace. Many states allow for enhanced penalties where the victim is older or disabled.[13] Other state common laws, including fraud, unconscionability, breach of fiduciary duty, and contract law, may prove helpful in challenging scams.

### Practice Tip – Quick Action Necessary to Save Older Adults' Remaining Money and Assets

With any type of financial scam, the resources and assets that are depleted or stolen are difficult to recover. Quick action is necessary to preserve older adults' remaining assets, including reporting the scam to a law enforcement agency and obtaining legal assistance. Once the scam is discovered, steps should be taken immediately to secure bank accounts, and examine credit card and other financial accounts for unauthorized charges. Advocates should also contact the IRS and Social Security Administration to report the disclosure of sensitive financial information. If an older adult is hospitalized or otherwise incapacitated, family members can obtain permission to submit complaints on the person's behalf. Complaints can be submitted to federal agencies, such as the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB), and state attorneys general consumer complaint hotlines. Fraud is also a crime and local law enforcement may be willing to intervene.

## Conclusion

Money lost to financial scams and frauds depletes the resources older adults need to live independently. The loss of the home is devastating and may leave the elder homeless. Early intervention and assistance is the key to preventing further loss of resources and helping older adults to recover from the scam and preserve their home.

## Additional Resources

- NCLER Consumer Protection Trainings & Resources
- NCLER Housing Trainings & Resources
- Federal Trade Commission (FTC):
  - » National Do-Not-Call Registry
  - » Identity Theft
  - » File a complaint with the FTC
- Consumer Financial Protection Bureau (CFPB)
  - » Office of Older Americans
  - » File a complaint with the CFPB
- State attorneys general or local law enforcement
  - » National Association of Attorneys General

13 See, e.g., Arkansas, Ark. Code Ann. §§ 4-88-201–4-88-207; California, Cal. Bus. & Prof. Code § 17206.1; Delaware, Del. Code Ann. tit. 6, § 2581; Florida, Fla. Stat. § 501.2077; Georgia, Ga. Code Ann. § 10-1-851; Hawaii, Haw. Rev. Stat. § 480-13.5; Illinois, 815 Ill. Comp. Stat. § 505/7; Iowa, Iowa Code § 714.16A; Louisiana, La. Rev. Stat. Ann. § 51:1407(D); Minnesota, Minn. Stat. § 325F.71; Nevada, Nev. Rev. Stat. §§ 598.0933, 598.0973; New York, N.Y. Gen. Bus. Law § 349-c; Pennsylvania, 73 Pa. Stat. Ann. § 201-8(b); Tennessee, Tenn. Code Ann. § 47-18-125; Texas, Tex. Bus. & Com. Code Ann. § 17.47(c)(2); Wisconsin, Wis. Stat. § 100.264; Wyo. Stat. Ann. § 40-12-111.

- Legal Assistance
  - » Eldercare Locator
  - » Legal Services Corporation
  - » National Association of Consumer Advocates
  - » Volunteer Lawyers
- National Consumer Law Center
  - » Publication for consumers and advocates: National Consumer Law Center, *Guide to Surviving Debt*
  - » Publications for legal advocates: National Consumer Law Center, Home Foreclosures (2019) and National Consumer Law Center, Unfair and Deceptive Acts and Practices ($10^{th}$ ed. 2021)

**Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.**

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