Using Consumer Tools and Resources to Help Survivors of Elder Abuse

NATIONAL CENTER ON LAW & ELDER RIGHTS

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Odette Williamson, National Consumer Law Center

Family, professionals, and caregivers often help older adults manage finances, personal care, and household tasks. Sometimes, the increased vulnerability of older adults may make them susceptible to financial exploitation and physical abuse by those they trust. They may feel trapped, lack the personal resources to leave, and feel afraid that they won't be able to manage alone.

Controlling access to money and resources is a common way that abusers control their victims. **Older adults with limited income may be particularly vulnerable as they may lack the surplus funds to leave the abuser and set up a new household.** Even when survivors have control over their finances, they may have come to rely on their abuser's income. Escaping one's abuser can be an expensive task and survivors may need assistance managing their financial obligations.

Helping survivors of elder abuse includes helping them get on financially stable ground so that they do not return to an abusive environment. This Practice Tip explores some of the financial difficulties that survivors face and common consumer law tools that can help.

Consumer Protections for Survivors of Elder Abuse

When survivors of elder abuse leave their abusers, the first priorities are often physical and emotional well being. Survivors may not be thinking of their financial affairs, especially if the finances were managed by their abusers. Advocates play a crucial role in assisting survivors to access resources or exercise legal rights.

1. **Prioritize debt payments.**

Survivors may need guidance on how to prioritize debts. High-priority debts are those that are secured by collateral, most commonly mortgages and auto loans. If survivors fall behind on mortgage payments, they may lose their homes. However, if the survivor has moved out to leave an abuser who is living in the shared home, the survivor should instead prioritize paying rent for the new home. Keeping current on auto loans is also critical if the survivor needs a car to get to work or as their primary method of transportation.

Unsecured debts are typically low priority. This includes credit card debts, medical bills, and personal loans. Unsecured debts are not typically subject to the same risk of repossession as secured debts, so survivors should pay these only after daily necessities and high-priority debts have been covered.

2. **Stop harassment from debt collectors.**

Survivors of elder abuse may be particularly vulnerable to abusive tactics by debt collectors. The Fair Debt Collection Practices Act, 15 U.S.C. § 1692 ("FDCPA"), prohibits debt collectors from engaging in deceptive, abusive, and harassing tactics. Most states also have debt collection laws, often with stronger protections than the FDCPA. Advocates should help survivors understand what debt collectors can and cannot do under these laws.

Though debt collectors may threaten to sue the survivor, many will not carry out this threat. The threat or even existence of a lawsuit does *not* make a debt high priority unless the creditor obtains a court judgment. In the event a collection suit is filed, survivors should work with a legal advocate to identify legal defenses to repayment and respond to the suit to avoid default judgment.

3. Understand garnishment exemptions for Social Security Income and disability benefits.

If a creditor obtains a judgment against the survivor, the survivor's income and property may be subject to seizure. Most states have exemption laws protecting specific kinds of property from seizure up to a certain amount, including clothing, household goods, and tools used for the survivor's employment. Federal law exempts a portion of wages from garnishment.

Survivors of elder abuse are likely to qualify for other exemptions from garnishment. Some forms of retirement income are protected from garnishment, including civil service retirement pay, military retirement pay, and ERISA-qualified pension plans. Additionally, Social Security and Supplemental Security Income (SSI) benefits are protected from garnishment. There is one exception to these protections—federal agencies, such as the IRS or the Department of Education, are authorized to garnish a portion of income from otherwise exempt sources to collect on debts owed.[1]

4. Timely report unauthorized use of credit and debit card.

Federal law protects survivors against the unauthorized use of a credit card or debit card if the abuser steals, borrows, or otherwise uses the survivor's credit card or debit card without permission. For credit cards, the survivor's responsibility for unauthorized use is limited to $50. Survivors may challenge an unauthorized charge or any other error (e.g., billed for incorrect amount) which appears on a monthly credit card statement.[2] Information regarding how to raise the dispute appears on the back of the credit card statement.

The extent of the survivor's responsibility for the unauthorized transfer of funds with a debit card 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: 1) when the unauthorized transfer occurred, 2) whether the access device was lost or stolen, 3) when a statement was sent, and 4) when the consumer reported the loss or theft of the access device or the unauthorized transfer of funds. Survivors can notify the financial institution by telephone, in writing, or in person.

5. Place fraud alerts and set up a security freeze.

Survivors who have had their identities stolen by their abusers have free tools available to protect and repair their credit. By federal law, effective September 21, 2018, consumers may place a security freeze on their credit report at no charge. A security freeze will stop all new accounts from being opened, preventing abusers from taking out credit in the survivor's name. In order to open their own accounts, the survivor will need to call the credit bureau to temporarily lift the freeze.

Alternatively, survivors may place a free fraud alert on their credit report. A fraud alert warns potential creditors that the survivor is a victim of identity theft. Any potential creditor will need to contact the applicant to verify their identity before opening a new account. Survivors who fear that their abuser may steal their identity in retaliation for leaving can request an initial fraud alert, which stays on the survivor's credit report for one year after which it may be renewed. Survivors who have been a victim of identity theft and filed a police report, may request an extended fraud alert, which remains on the credit report for seven years.

1 For this reason, income taxes and federal student loans should be categorized as high-priority when it comes to managing financial obligations.

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

Advocates should help survivors determine whether a security freeze or fraud alert will best protect their credit while they get their finances in order. To place a security freeze or fraud alert, the survivor must contact one of the three national credit bureaus (Experian, TransUnion, and Equifax).

6. **Protect against utility shutoffs.**

Many states provide protections from utility shutoffs for vulnerable populations. Electric and gas companies may be prohibited from terminating service for households with older adults or seriously ill members (for example, if someone requires a medical device such as a ventilator in their daily life). Similar protections may apply if the household income is below a certain threshold. In the event of a shutoff, advocates can help survivors contact the utility company to reinstate access immediately. Survivors and/or their medical providers may need to fill out and submit a form to the utility company to certify their protected status.

To obtain voice and broadband internet services, survivors should consider the federal Lifeline program. This program provides a monthly subsidy to low-income households for basic phone and internet services.

7. **Seek a protection order for restitution.**

Civil protection orders are a valuable tool to keep survivors safe from their abusers, but their economic power is often underutilized. Protection orders can require abusers to pay restitution for medical costs and compensatory losses incurred in fleeing the abuser, forbid the abuser from destroying the survivor's property, and ensure the survivor's safety when they retrieve their property from a shared home. When the abuser is ordered to vacate the shared home, they may be required to continue paying the mortgage or rent while the survivor lives there.

Most states include a "catch-all" provision in their protection order statutes for particularized requests. Survivors should work with their advocates to determine their economic needs and craft a request for a protection order that is closely tailored to those needs.

Additional Resources

- National Consumer Law Center: Guide to Consumer Rights for Domestic Violence Survivors (2006).

Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at NCLER.acl.gov.