

Legal Basics: Protecting Older Adults Against Scams

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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.

Introduction

With savings and assets accumulated over a lifetime, older adults are attractive targets for individuals promoting scams. Scams impact every community and often top the list of complaints received by government agencies. Older adults report losing more money, on average, due to scams than younger consumers.¹ While older adults do not report being defrauded at a higher rate than other consumers, the impact of the monetary loss may be greater for older consumers as they have less time and resources to rebuild their nest eggs or otherwise recover financially from the scam. Financial scams may also impact the emotional and physical health of victims seeking to recover financially while living with fewer resources.

Scams are perpetrated by a wide variety of actors, including family members, caretakers, trusted advisors and businesses. In this publication, we focus 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.²

Key Lessons

1. Older adults are targeted for frauds and scams as they have assets, accumulated over a lifetime, and primarily fixed but steady income.
2. The vast majority of scammers contact victims by telephone and request up-front payment of money by wire transfer.
3. It is important to take immediate action to stop the scam and further depletion of income and assets.
4. Civil action to recover income and assets may be possible but is unlikely to make the older adult financially whole.

Common Scams Aimed at Older Adults

The scams and fraudulent practices aimed at older adults include a wide range of illegal behavior from imposter scams to mortgage fraud. Scammers use deception, misrepresentation and threats to convince older

1 Federal Trade Commission, “FTC Recaps Consumer Complaint for 2018: Who’s on the List,” Lesley Fair, March 1, 2018, at [ftc.gov/news-events/blogs/business-blog/2018/03/ftc-recaps-consumer-complaint-data-2017-whos-list](https://www.ftc.gov/news-events/blogs/business-blog/2018/03/ftc-recaps-consumer-complaint-data-2017-whos-list).

2 The Older Americans Act, 42 U.S.C. § 3002(18)(A), defines financial exploitation 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.” Financial exploitation includes frauds and scams.

adults to send money or provide personal or financial information. The most common frauds and scams aimed at older adults are described below.

Imposter scam

An imposter scam involves an individual pretending to be someone else to extract money or financial information from an older adult. Imposters assume many identities, often posing as government officials, employees of well-known business, 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. Some imposters claim affiliation with a government agency to trick older adults into providing bank account information, purportedly to obtain new Medicare cards or receive Medicare or other government benefits. Other imposters pose as family members, such as grandchildren, in need of immediate financial assistance.

Identity theft

Identity theft is a crime that results in the unauthorized access and use of an older adult's financial or personal information. A person's identity can be stolen as a result of a lost or stolen wallet or purse; a data breach at a financial institution, retailer or other business; a phishing or other online scam aimed at consumers; high tech skimming of credit card information with a tool during a legitimate business transaction; or a dishonest employee appropriating a customer's information.³ The unauthorized release of personally identifiable information (e.g., name, date of birth, social security number) 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' refunds or obtain employment.

Home improvement and mortgage-related scams

Nearly 80% of older adults own a home. Unscrupulous home improvement contractors use high pressure tactics to encourage homeowners, especially those with deferred maintenance needs, to pay for incomplete or shoddy work. Another class of scammers target homeowners in financial distress with promises to reduce mortgage payments or otherwise stave off foreclosure 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. Consumers lose thousands of dollars to these scams each year making home improvement and mortgage-related scams profitable and common. Information on homeownership, and homes in foreclosures is easily obtainable from publically-available databases, making it easy for scammers to tailor their solicitation to appeal to older consumers.

Fraudulent marketing practices

Older adults are subject to fraudulent marketing practices related to several types of products or services including: sweepstakes, prize promotions and lotteries; healthcare-related products and services; investments, business opportunities, and work-from home programs; and charitable donations. Scammers promise cash prizes, products or services in exchange for money or a donation. Most schemes involve payment up-front, with the promise that the product, service or cash reward will be provided later. As with other scams, these schemes are commonly promoted over the telephone or through direct mail.

Understanding Scams and Early Intervention

Scams are perpetrated using a variety of tools. Most fraudulent schemes and scams play out over the telephone. Home-bound older adults may be particularly vulnerable to telemarketing fraud, especially if they have experienced cognitive decline or other age-related mental incapacity. Scams are also promoted through

³ Phishing commonly involves the use of scam emails to trick consumers into revealing financial information including account numbers and passwords.

direct mail, online, through free-meal financial seminars, and in newspaper and broadcast media. Older adults with special types of assets (e.g., homes, pension plans) may be targeted for particular types of scams.

Once the scammer gains the trust or cooperation of the older adult, he will request personal or financial information or money. Money is wired, using money transfer services such as MoneyGram or Western Union, placed on a prepaid card, or designated account. Other scammers access the consumer's bank account, credit card or create fake accounts in the consumer's name.

It is important for advocates to recognize the signs of a scam to intervene early and stem further loss of money and assets. Intervening can be challenging because most scams are not reported either to authorities or family members. The victim may feel embarrassed, guilty or fearful of the perpetrator. Once involved, steps should be taken immediately to secure bank accounts and other 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. Victims with impairments due to physical or mental disabilities may need the assistance of Adult Protective Services.

Consumer Protections for Victims of Financial Scams

Other types of practical or legal intervention may be necessary to protect the income and assets of older adults, or 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 redress 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.⁴ Unauthorized use, that is when someone steals, borrows or otherwise uses the older adult's credit card without permission, most commonly occurs with identity theft. 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.⁵ Information regarding how to raise the dispute appears on the back of the credit card statement.

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.⁶ The extent of the consumer's responsibility for the unauthorized transfer of funds is determined by her 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.⁷ Consumers can notify the financial institution by telephone, in writing or in person.

⁴ Truth in Lending Act, 15 U.S.C. § 1643.

⁵ The Fair Credit Billing Act, part of the Truth in Lending Act, 15 U.S.C. § 1666.

⁶ The Electronic Funds Transfer Act (EFTA), 15 U.S.C. §§ 1693–1693r.

⁷ 15 U.S.C. § 1693f(a).

Abusive robocalls

The vast majority of scams are promoted over the telephone, often autodialed calls with prerecorded messages (robocalls). Federal law generally prohibits abusive methods of contacting consumers, including robocalls and text messages to cell phones without prior consent.⁸ 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.⁹ 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.

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 elderly or disabled.¹⁰

Other state common laws, including fraud, unconscionability, breach of fiduciary duty, and contract law may prove helpful in challenging scams.

PRACTICE TIP

Responding to Identity Theft

Victims of identity theft can take the steps outlined below to report the scam. Recovering from identity theft may be an extended process involving closing fraudulent accounts, correcting credit reports and responding to other issues caused by the scam. Initially the consumer should:

- Request a fraud alert from one of the credit reporting companies. A fraud alert is a statement added to a consumer's credit report asking creditors to contact the consumer before issuing credit. Experian, Equifax or TransUnion can place an alert on the record of an identity theft victim, and alert the other credit reporting companies to do the same. The initial fraud alert lasts 90 days and can be renewed. Consumers can order copies of their credit report from the three companies and review them to make sure no additional fraudulent accounts have been opened or unauthorized charges made to existing accounts.
 - » Credit Reporting Companies
 - EXPERIAN: 1-888-EXPERIAN (1-888-397-3742), TTY (1-800-972-0322); experian.com
 - EQUIFAX: 1-800-685-1111; equifax.com
 - TransUnion: 1-800-888-4213; transunion.com
- Contact companies where accounts have been opened fraudulently and ask that the accounts be

⁸ Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227.

⁹ FTC Cooling Off Rule, 16 C.F.R. § 429.

¹⁰ 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.

closed or frozen. Identity thieves may open accounts with credit card companies, and to obtain cell phone, utility or other services. Closure of fraudulent accounts should be confirmed in writing. Passwords and PINs for existing accounts should be changed.

- File a report with the Federal Trade Commission (FTC) at [Identitytheft.gov](https://www.ftc.gov). The site allows consumers to create a personalized recovery plan that outlines steps to recover from identity theft.
- Report identity theft to law enforcement. A report can be filed with the local police or the police in the community where the identity theft took place. Consider other actions, such as contacting the Social Security Administration or IRS if a social security number was misused.

Conclusion

Consumers lose billions of dollars annually to financial scams and frauds. The emotional cost, however, is incalculable. Early intervention and aggressive assistance may prevent catastrophic loss of financial resources and help the older adult recover from the scam.

Additional Resources

- [Federal Trade Commission](#) (FTC)
 - » [Pass it On](#)
 - » [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](#)
- Legal Assistance
 - » [National Association of Consumer Advocates](#)
 - » [Find legal services/legal aid](#)
 - » [Volunteer lawyers](#)
- Publications
 - » National Consumer Law Center, *Unfair and Deceptive Acts and Practices* (8th ed. 2012)
 - » National Consumer Law Center, *Consumer Banking and Payments Law* (5th ed. 2013)
 - » National Consumer Law Center, *Guide to Surviving Debt* (10th ed. 2016)
 - » [Consumer Facts: Protect yourself from Identity Theft](#)

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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