



SECTION 2. Preventing Financial Exploitation

Using legal tools to protect
you and your property

SECTION 2.

Preventing Financial Exploitation

Most of us think that fraud is committed by strangers. Unfortunately, fraud against seniors can also be committed by family members. When this happens it is still fraud. Family members are more likely to financially exploit a senior they know by abusing a Power of Attorney, using the senior's money for their own benefit, or attempting to influence the senior to give them money.

Section 1 provided an overview of some legal tools and the ways they may be helpful. This section explains some of the ways that these very tools might result in financial exploitation, for example if the person named as your “attorney” inappropriately uses the Power of Attorney for their own advantage. Don't let this stop you from seeing a lawyer and exploring your legal options. If you are aware of the possibilities for abuse, you can better protect yourself and your interests when you create these documents.

Possible Abuse of

Powers of Attorney

The person you choose to handle your finances may be dishonest and steal money from your accounts – or they may be incompetent and mismanage your affairs.

Tips to Prevent Abuse

- Consult a lawyer to be sure you understand all of the legal requirements for creating a valid document.
- Ask the person you want to handle your affairs if they are willing. Discuss whether the attorney will get a fee, and if so, include a provision for payment in your POA. Remember, you can appoint more than one person as your attorney.

Possible Abuse of

Powers of Attorney

The person handling your finances may feel they deserve to be compensated and may use some of your money for their own benefit.

The person may deposit your pension cheques into their own account.

Tips to Prevent Abuse

- Choose someone you trust. Choose an honest, responsible person with experience (paying bills, keeping records). Think twice about appointing someone who is having their own financial hardships.
- Know your financial situation. Ask your attorney to keep you apprised of the financial matters they are handling for you such as investments, paying a variety of monthly bills, property tax, and so on. If you are able to, stay aware of your financial matters. Be on the alert for any unexplained withdrawals.
- Don't give your PIN to anyone – deposit your own cheques and make withdrawals. If you can't do this, arrange for automatic deposit of your pension cheques and other income sources.
- Inform others about your POA – your family, doctor, and bank.

TIP

If you suspect the person handling your finances is stealing your money, contact the police.

Powers of Attorney for Personal Care

The person handling your personal care may not be aware of your wishes.

The person may not respect your wishes.

The person may believe they have the right to change your will or be a beneficiary of your life insurance policy.

Tips to Prevent Abuse

- Consult a lawyer to be sure you understand all of the legal requirements for creating a valid document. Talk to the person(s) you want to make your personal care decisions.
- Consider the important personal and healthcare decisions that you anticipate your attorney will have to make when you are unable to do so. For example, if you have to go to a nursing home:
 - Where would you like to go?
 - What are your wishes for end of life care?
- Discuss your wishes for care and treatment with the person who is going to act on your behalf.
- Know that your attorney cannot make a will on your behalf or change your existing will. They have no authority to change your beneficiaries nor can they give their powers as your attorney to anyone else not named in your POA.

Possible Abuse of

Powers of Attorney for Personal Care

The person may try to tell you what to do and make decisions about your care when you feel that you are still capable of, and wish to, make your own decisions.

The person may try to control of all aspects of your life, like who can visit you, where you can go, etc.

The person may threaten to put you in a nursing home.

Tips to Prevent Abuse

- If you are concerned about abuse, consider creating two separate POAs and appointing separate attorneys to handle financial and personal matters. Or, consider having multiple attorneys who must act together when making decisions on your behalf. This can slow down decisions, but it may prevent abuse by one person.
- If there is no trusted individual available to act as your attorney, contact the Public Trustee about acting as your attorney or choose a professional.
- Going to a nursing home is voluntary. Nobody can force a competent person to have an assessment or go to a nursing home. See the booklet in your Toolkit ***Going to a Nursing Home.***

TIP

If you are mentally competent and your attorney is not handling your affairs in an appropriate manner, you can change or revoke your POA at any time.

Individuals who are not named in your will may try to influence you to change your will.

Family members may take possessions or property that you wish to leave to others in your will.

Individuals who do not like the way you plan to distribute your estate may not respect your wishes.

For more information on making a will and choosing and executor, see the series of pamphlets in the Toolkit on *Wills and Estate Planning*.

- Consult a lawyer. Make sure your executor has agreed to act in that role and appoint an alternate.
- Consider how you wish to distribute your estate. Do you want to leave bequests of specific items? To whom will you leave the remainder of your estate? Spouse? Children? Charities? If one of your beneficiaries has died, who do you wish to receive that person's share? Do you want the beneficiaries to receive it immediately or at some future time?
- Keep your original will in a safe place, such as a fireproof strong box in your home, or a safety deposit box at your bank.
- Review your will every few years especially if there are life changes that affect the will such as divorce, marriage, a change in assets, etc.
- Be aware that marriage may revoke a previous will – and family members that you wish to benefit may no longer get what you wanted them to have.

TIP

Your will is a private document and you do not have to share the contents with anyone.

Possible Abuse of

Shared Ownership

The other person may take over control of the joint property and possibly squander the assets.

Tips to Prevent Abuse

- Before you set up joint ownership, talk to your lawyer about how it might affect the way your property is distributed by your will.
- Make sure you have shared ownership with a trusted family member who will use the money in the account to pay for YOUR expenses.

Life Tenancies

After transferring your property, the person with shared ownership may not honour the life tenancy. For example, they may suggest that you should be in a nursing home or tell you to live elsewhere.

The person with shared ownership may not take care of the property or pay the taxes and other bills as they had promised.

Tips to Prevent Abuse

- A lawyer can tell you more about how to protect yourself if you set up a life tenancy.
- Make sure you have set up a life tenancy with a trusted family member who will respect your agreement.

Possible Abuse of

Pre-arranged Funeral Service Plan

Your family may argue over your wishes for your funeral and attempt to change the provisions of your contract.

Your family may discover that you have not paid for some of the services that you expected to get – and will not, or cannot pay for them.

You thought your plan was for a funeral service, but you purchased “insurance” towards your funeral plan and your family or executor has to decide your funeral arrangements.

Tips to Prevent Abuse

- Discuss your plans with family members so they are aware of your wishes and what you are purchasing.
- Give your executor a copy of the signed contract, Standard Form for Pre-Arranged Funeral Plans. Make sure they are aware of what is covered under the contract.
- Don't put your funeral plans into your will – it may not be read until after the funeral.
- If you wish to make additions to or confirm the provisions of the contract, it is a good idea to seek legal advice.

TIP

For a **Financial Concerns Checklist** see **Helpful Resources** in the Toolkit, or visit www.fcnb.ca/senior-financial-abuse-prevention.ca