



Consumer Protection Division of the Office of the Attorney General Pursues Asset Recovery On Behalf of Senior Citizens and Vulnerable Adults

Consumer Protection Division of the Office of the Attorney General is pursuing asset recovery on behalf of financially exploited senior citizens (aged 68 or older) and vulnerable adults (a person who lacks the physical or mental capacity to provide for his or her daily needs) by bringing a civil action for damages on their behalf against persons who financially exploited them by way of deception, intimidation or undue influence.

This initiative is the result of recent legislation, effective July 1, 2016, that was passed by the Maryland legislature and signed by the Governor during the 2016 legislative session. The new law is now codified as Commercial Law §13-204(15), which states that in addition to any other of its powers and duties, the Consumer Protection Division has the powers and duties to:

(15) (i) Bring a civil action for damages against a person who violates § 8-801 of the Criminal Law Article on behalf of a victim of the offense or, if the victim is deceased, the victim's estate;

(ii) Recover damages under this item for property loss or damage;

b) Conviction of offense of exploitation of vulnerable adults not prerequisite to action. -- A conviction for an offense under § 8-801 of the Criminal Law Article is not a prerequisite for maintenance of an action under subsection (a)(15) of this section.

Criminal Law § 8-801 states that:

(1) A person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is a vulnerable adult with intent to deprive the vulnerable adult of the vulnerable adult's property.

(2) A person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or

reasonably should know is at least 68 years old, with intent to deprive the individual of the individual's property.

The law is aimed at all abusers who financially exploit seniors or vulnerable adults, including persons who are close to and trusted by the victim (such as family members, caregivers, financial advisors, accountants, attorneys) as well as complete strangers using phony magazine subscriptions, prize scams, donations to nonexistent charities and retrieval of personal financial information under false pretenses.

Studies have shown that senior citizens and vulnerable adults are often reluctant to report abuse because they feel afraid, embarrassed, humiliated or ashamed. In addition, they frequently rely on the abuser for everyday functioning (such as caregivers and/or family members), and fear loss of their current life style or living arrangements if the abuse is reported; or they wish to protect the abuser, who may be a child or grandchild.

If you observe what you believe is financial exploitation of a senior citizen or vulnerable adult, or seek more information concerning whether financial exploitation is occurring, please immediately contact:

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FAQs

Q. What conduct is considered to be “undue influence”?

A. “Undue influence”, as defined by Criminal Law § 8-801, means:

(i) domination and influence amounting to force and coercion exercised by another person to such an extent that a vulnerable adult or an individual at least 68 years old was prevented from exercising free judgment and choice.

(ii) "Undue influence" does not include the normal influence that one member of a family has over another member of the family.

Q. What conduct is considered to be “deception”?

A. “Deception”, as herein relevant, and as defined by Criminal Law § 7-101, means **knowingly** to:

(i) create or confirm in another a false impression that the offender does not believe to be true;

(ii) fail to correct a false impression that the offender previously has created or confirmed;

(iii) prevent another from acquiring information pertinent to the disposition of the property involved; or

(vii) promise performance that the offender does not intend to perform or knows will not be performed;

(2) "Deception" does not include puffing or false statements of immaterial facts and exaggerated representations that are unlikely to deceive an ordinary individual.

Q. What conduct is considered to be “intimidation”?

A. Although not defined by statute, the ordinary everyday definition of “intimidation” is “to make timid or fearful; to frighten; or to compel or deter by or as if by threats.

Q. Who is a “vulnerable adult”?

A. “Vulnerable adult” is defined by Criminal Law § 3-604 and means “an adult who lacks the physical or mental capacity to provide for the adult's daily needs.”

Q. Does the abuser have to be charged with or convicted of the crime in order for the Attorney General to commence a lawsuit?

A. No - the law specifically states that conviction for an offense under Criminal Law § 8-801 is not a prerequisite in order for the Attorney General to commence a civil action. The Office of the Attorney General will consult with any state’s attorney’s office or other similarly situated agency actively pursuing a criminal investigation of the matter.

Q. What standard of proof is required in order for the civil action to be successful?

A. Unlike criminal actions that require proof beyond a reasonable doubt, any civil action brought by the Attorney General pursuant to this statute is governed by the normal and regular standard of proof governing civil actions in general – which is the “preponderance of evidence” standard. This means “to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true”.

Q. Do any restrictions apply to these civil actions?

A. Yes – the principal restriction is that the law applies only to conduct occurring after its effective date – which is July 1, 2016. However, the attorney general has authority to bring these civil actions for any proscribed conduct occurring after July 1, 2016, even if commenced prior to that date.