

THE SKETCHLEY LAW FIRM

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EXPLOITATION

What is EXPLOITATION?

“Exploitation” means a person who:

1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

“Exploitation” may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
2. Unauthorized taking of personal assets;
3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

Fla. Stat. § 415.102(7) (2006).

NOTE: THIS DEFINITION IS NOT LIMITED TO ACTIONS BY CAREGIVERS.

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What is ABUSE?

“Abuse” means any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.

Fla. Stat. § 415.102(1) (2007).

NOTE: THIS DEFINITION IS LIMITED TO ACTIONS BY RELATIVES, CAREGIVERS, OR HOUSEHOLD MEMBERS.

What is NEGLECT?

“Neglect” means the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term “neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. “Neglect” is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death. Fla. Stat. § 415.102(15) (2007).

NOTE: THIS DEFINITION IS LIMITED TO ACTIONS BY CAREGIVERS OR THE VULNERABLE ADULT.

Does NEGLECT include SELF-NEGLECT?

It does now. Prior to legislative changes in 2006, neglect (or abuse or exploitation) was an action by another person. Therefore, “self-neglect,” which is the result of the refusal of the vulnerable person to receive care, was not covered by the Adult Protective Services Act. Fla. Dep't of Children & Family Servs. v. McKim, 869 So. 2d 760, 762 (Fla. Dist. Ct. App. 2004). Now, the definition includes omissions by the vulnerable adult.

Who is a CAREGIVER?

“Caregiver” means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person's guardian that a caregiver role exists. This includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of certain facilities. Fla. Stat. § 415.102(4) (2006).

Who is a VULNERABLE ADULT?

“Vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging. Fla. Stat. § 415.102(26) (2006).

What are some SIGNS OF EXPLOITATION?

The vulnerable adult:

- Has been isolated by the alleged exploiter from the outside world (including family or friends) and is prevented from taking phone calls or visits, reading his/her mail, and is not taken on errands or other outings.
- expresses paranoia that family members are out to steal his/her money (except for the exploiter)
- drastically changes banking or investment habits
 - large withdrawals
 - numerous withdrawals, frequently in round amounts like \$500.
 - conducts banking activities with alleged exploiter
 - writes checks to unusual recipients
 - Adds names to bank account signature card
 - transfers assets to one person
 - withdraws money despite severe adverse tax consequences or withdrawal penalties
 - changed beneficiaries on insurance policies or IRAs
 - conducts financial activity that is inconsistent with his/her abilities, such as ATM withdrawals when vulnerable adult, in reality, never leaves the house.
 - Suddenly refuses to discuss financial matters when he/she has done so in the past
- is missing household objects or money
- makes sudden changes to legal documents, including wills, trusts, contracts, the power of attorney, the durable power of attorney, property titles, deeds, or mortgages
- experiences changes in his/her physical or household appearance despite the funds to pay for such care
- does not pay bills in a timely manner
- is confronted by claims by the alleged exploiter of a right to inheritance, gifts, and/or “earnings” of assets belonging to the vulnerable adult.
- has a sudden close relationship with a much younger, mobile person (including marriage).

- has a caregiver who has no other means of support besides the vulnerable adult.

What are SIGNS OF ABUSE & NEGLECT?

- Isolation of the vulnerable adult by the alleged exploiter from the outside world (including family or friends) and is prevented from taking phone calls or visits, reading his/her mail, and is not taken on errands or other outings.
- frequent arguments or tension between the caregiver and the vulnerable adult
- changes in personality or behavior in the vulnerable adult, such that the the vulnerable adult is upset, agitated, apathetic, withdrawn, depressed, or non-communicative
- unexplained bruises, pressure marks, welts, lacerations, cuts, burns, broken bones, sprains, internal injuries, bite marks, restraint marks, dehydration, malnutrition, extreme hunger, untreated health or medical problems (bed sores), poor hygiene, contractures (muscles that are too stiff to move easily)
- unsanitary living conditions
- inappropriate clothing for the climate
- signs of physical altercations, such as broken eyeglasses, lamps, or frames
- over and under-utilization of prescribed drugs, marked by unusual laboratory findings
- allegations of abuse or neglect by the vulnerable adult
- the vulnerable adult engages in “soothing” activity, such as sucking, biting, or rocking (behaviors usually attributed to dementia)
- the caregiver is threatening, aggressive, or controlling

What do I do if I suspect ABUSE, NEGLECT, and/or EXPLOITATION?

Call DCF’s abuse hotline

DCF’s central abuse hotline (Fla. Stat. § 415.103) consists of a single statewide toll-free telephone number (**1-800-96-ABUSE**) any person may use to report known or suspected abuse, neglect, or exploitation of a vulnerable adult at any hour, on any day of the week.

The central abuse hotline accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited. Fla. Stat. § 415.103(1)(a). It also determines whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority. Fla. Stat. § 415. 103(1)(b). If a call does not meet the statutory criteria, the hotline is supposed to refer the caller to “other organizations.” Fla. Stat. § 415.103(1)(c).

If the hotline operator decides that if the caller's abuse meets the appropriate criteria, the hotline immediately identifies and locates prior reports of abuse, neglect, or exploitation through the central abuse hotline. Fla. Stat. § 415.103(1)(d). The hotline then determines if the report requires an immediate onsite protective investigation. If an immediate investigation is required, DCF's protective investigative district staff is immediately notified. At that time, the hotline notifies staff if there is any known information on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports. Fla. Stat. § 415.103(2).

Call local law enforcement

If the situation is an emergency and requires immediate intervention, the best course is to call law enforcement. If the situation is clearly not an emergency, the caller may be referred to the hotline to log a complaint at the central abuse hotline.

Regardless of who is initially called, the jurisdiction of local law enforcement and DCF eventually converges: DCF has working agreements with the jurisdictionally responsible county sheriffs' office or local police department that will be the lead agency when conducting any criminal investigation arising from an allegation of abuse. Law enforcement also cooperates with DCF to execute duties such as forced entry, emergency removal, emergency transportation, and the enforcement of court orders obtained. Fla. Stat. § 415.106(1).

The Department of Law Enforcement (FDLE) is also involved, and provides to DCF electronic access to Florida criminal justice information which is lawfully available and not exempt from Fla. Stat. § 119.07(1), for the purpose of protective investigations and emergency placement. Fla. Stat. § 415.1045(6).

Encourage the vulnerable adult to find legal representation, or obtain the legal capacity to represent the interests of the vulnerable adult

Even though a person meets the definition of a "vulnerable adult," he/she may still have the legal capacity to retain legal counsel to represent his/her rights against the exploiter. If this is the case, the vulnerable adult should make arrangements to seek legal counsel, or consider a voluntary guardianship of his/her property, which allows a guardian to institute legal proceedings on behalf of the vulnerable adult. The goal of such legal representation is to ensure the physical safety of the vulnerable adult, freeze any assets in the possession of the alleged exploiter, and ultimately recover any property taken wrongfully. Legal counsel may also help in acting as a liaison with the local state attorney for criminal prosecution of the alleged exploiter.

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If the vulnerable adult does not have capacity, the vulnerable adult may need to have an involuntary guardianship proceeding brought against him/her, so that a guardian may institute legal proceedings on behalf of the vulnerable adult.

It is recommended that an attorney who has experience in capacity, exploitation, and guardianship be utilized. Given the potential for the dissipation of assets, care must be taken to find an attorney who can act quickly.