


**Adult Protective Services:
Elder Financial
Exploitation Prevention**


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Elder Financial Exploitation Basics

- o "Financial Exploitation" means the misuse of an elder (60+) person's property or financial resources
- o Largest category of abuse reports in Wisconsin (1,022 in 2007), after self-neglect
- o University of Chicago study: 3.5% of seniors over the age of 60 are exploited. 1 million seniors in Wisconsin = 35,000 exploited each year



Categories of Abusers

- o Family – namely adult children and grandchildren
 - 20% daughters, 24% sons, 15% other relatives
- o Professional criminals who target elderly
 - Examples: home repair scams and telemarketers
- o Hired, professional or voluntary caregivers
- o Friends or others in position of trust



Release of Financial Records:
Wis. Act 388

- o "46.90(5)(b)6. A review of any financial records of the elder adult at risk that are maintained by a **financial institution**.

The records **shall be released without informed consent** in either of the following circumstances:

- o To an **elder-adult-at-risk agency** or other investigative agency under this section.
- o The financial record holder **may** release financial record information by **initiating contact** with the elder-adult-at-risk agency or other investigative agency without first receiving a request for release of the information from the elder-adult-at-risk agency or other investigative agency."
- o Under a lawful order of a court of record.

What this means for you:

- o Financial institutions are **required** to respond to your request for records as part of your elder abuse investigation.
- o Financial institutions **may** voluntarily give you records before you request them.
- o The financial institution bears the cost of copying the documents under Wisconsin Statutes §221.1008.

State Law Immunity

- *"No person may be held civilly or criminally liable or be found guilty of unprofessional conduct for responding to a report or participating in an investigation if the response was performed in good faith under this subsection."*
- Wis. Stats. §46.90(4)(c)

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"Request for Financial Records" form

Phase 1
Phase 2
Phase 3

Go to:

<http://dhs.wisconsin.gov/aps/Publications/snwandmemos/>

Scroll down; under "SafetyNetWorks – AAR Info Memo 5" you will see the highlighted words "word fillable request forms" at the end. Click that link to obtain this form online.

**Financial Exploitation Safety Networks
ATTACHMENT #2**

**Instructions and Form for Requesting Financial Records in Response to a Report
of Financial Exploitation to an Elder Adult/Adult at Risk**

This process is split into three separate phases to avoid overburdening the financial institution or overwhelming yourself with paper. Each phase/request relates to different information that is needed to investigate a case. If you do not need one section/phase, delete that section before making your request of the financial institution. Also, whenever possible, direct the request to a specific person so that the same person at the financial institution is responding to subsequent requests.

Phase 1 asks for ownership documents such as signature cards for all types of accounts, including checking, savings, mortgages and safe deposit boxes and also copies of any power of attorney or guardianship documents.

Phase 2 focuses on a critical time period. For transaction accounts such as checking and some money market accounts, list the account numbers and request monthly statements. For other accounts, only periodic statements will be available. At some financial institutions, these statements may automatically include images of any checks.

Phase 3 focuses on documentation of any suspicious transactions. There may be cancelled checks available or they may be in the form of electronic images. For electronic payments, the detailed information may need to be obtained from the company that received the payment. This information is maintained for only two years. For debit card transactions, the documentation may be very sparse; law enforcement may need to request camera images of the person using the card at the ATM.

No charge for copies

Wisconsin statutes 221.1008¹ waives financial institution fees when a governmental unit, including a county, requests copies of documents. Since the financial institution is providing these copies at no charge, be especially careful not to make excessive requests.

Confidentiality

In order to protect the privacy of the adult at risk and in case of future use by law enforcement, it is very important that any records obtained through this request process be handled properly in accordance with the elder adults/adults-at-risk statutes, 46.90(6)(bw) and 55.043(6)(bw)².

¹ 221.1008 Record search. A bank is entitled to reimbursement for expenses and costs incurred in searching for, reproducing and transporting books, papers, records and other data required to be produced by legal process, unless otherwise prohibited by law from collecting these expenses and costs or **unless the person seeking the production is a government unit**, as defined in s. 108.02 (17).

²46.90(6)(bw) and 55.043(6)(bw) A person to whom a departmental report form or a record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this subsection.



TO: Name of Financial Institution
Contact Person if available

FR: Adult-at-risk worker
Phone number:
Email:
Fax number:
Address

DT: Thursday, October 08, 2009

RE: Adults-at-Risk Financial Exploitation Information Request for
Name of Adult at Risk

We have received a report about possible financial exploitation of your customer/member named in the accompanying records request. In order to respond to this report, protect your customer's finances and offer appropriate services, we are requesting financial records of your customer/member pursuant to the adults at risk statute, Wisconsin Statutes section 46.90 (5) (b) 6. and 55.043 (1r) (b) 6.

We will try to request only the critical records needed for our response and will work cooperatively with you to obtain the information we need without creating unnecessary burdens on your resources. If you can suggest alternative methods that can provide the same information, we would appreciate the suggestions.

Although fees for these records are waived by state statute (Wisconsin Statute 221.1008), we have no more interest in receiving excessive copies of unneeded records than you have in providing them. Please contact me with any questions, concerns or suggestions.

On behalf of the Elder Adults/Adults at Risk Agency of
County,

I request the following financial records³, for an elder adult/adult at risk who
may be the victim of financial exploitation as reported to this agency

Name of Customer/Member _____

Member's Current Address _____

Phase One Request for Financial Records (Ownership Documents)
<input type="checkbox"/> ownership documents for all accounts (open or closed) including loan accounts and safe deposit boxes
<input type="checkbox"/> signature cards
<input type="checkbox"/> copies of any power of attorney documents
<input type="checkbox"/> copies of guardianship or other court orders

Delete this table if you are not requesting this section of information.

³ pursuant to Wisconsin Statutes section 46.90 (5) (b) 6. and 55.043 (1r)(b) 6.

**Phase Two Request for Financial Records
(Transactions during a Specific Time Period)**

Periodic statements for the following accounts:

Monthly statements for the following transaction accounts:

	_____	from	_____	to	_____
	Account Number		date		date
	_____	from	_____	to	_____
	Account Number		date		date
<input type="checkbox"/> Money Market	_____	from	_____	to	_____
	Account Number		date		date
<input type="checkbox"/> Certificates of Deposit	_____	from	_____	to	_____
	Account Number		date		date
<input type="checkbox"/> Mortgage	_____	from	_____	to	_____
	Account Number		date		date
<input type="checkbox"/> Loan	_____	from	_____	to	_____
	Account Number		date		date

Delete this table if you are not requesting this section of information.

**Phase Three Request for Financial Records
(Documentation of any Suspicious Transactions)**

Any and all documentation for the following transactions:

Any transactions highlighted or circled on the attached statement copies and:

including, but not limited to, cancelled checks or electronic images where checks are not available. For electronic payments, I request any detailed documentation that is held by or can be obtained by the financial institution.

Delete this table if you are not requesting this section of information.

Please respond as soon as possible to protect the finances of your customer/member. Contact me with any questions or suggestions.

Elder adult-at-risk worker contact information:


Phone _____ Fax _____

Email _____


Address _____ City/Zip _____

Signed _____ Dated _____

Copying charges for these records are waived by Wisconsin Statutes, section 221.1008.





Immediate Steps to Take



Involve Law Enforcement.

Even if the crime happened awhile ago, if the older adult is willing, file a non-emergency police report.





Request help from the Individual's trustworthy family and friends, if any.

- o These are the individuals who can recognize the abuse patterns more easily and communicate best with the individual at risk, increasing your odds of having a cooperative victim and having more information to give to law enforcement and the DA.

Freeze the Individual's Credit and Obtain a Credit Report

- o \$10/agency (Equifax, Experian, TransUnion) or free with police report
- o Freeze Forms: www.privacy.wi.gov
- o Request a credit report to review credit cards, loans, etc. and look for abuse.
- o **NOTE:** The individual, a POA-F agent, or guardian must assist with these; if none of the above are able to do so because they are the abuser, go to the Probate Court to report them

If the Victim Owns a Home...

- o Check for ownership transfers using www.dor.state.wi.us
 - Under eRETR, click on "Search Records"
 - At the top, click on the "RETR Search" tab
 - After passing the disclaimer, click "Address" at the top and search for the person's address.



- o You should also look up your county's public records system to look at a property tax assessment of the individual's property; not every property will appear on www.dor.state.wi.us, so this is another way to check for property transfers.

- For example, in Dane County, you'd visit accessdane.co.dane.wi.us to look up public property tax records.

Obtain an Individual at Risk Restraining Order

- An Individual-at-Risk Restraining Order, also called a Temporary Restraining Order (TRO), is a court order that can be used to protect an individual from financial exploitation.
- §813.123 of Wisconsin Statutes, effective December 1, 2006

For Whose Benefit Can a TRO Be Used?

- “Adult at Risk”
 - At risk of abuse, neglect, or financial exploitation
 - Physical or mental impairment that impairs ability to care for needs
- “Elder Adult at Risk”
 - Adult at Risk age 60 or older

Why Use a TRO?

- Allows you to protect the assets immediately
- Prevents the abuser from finding out what you’re doing and taking all the assets out before you can act
- Gives the financial institution the legal authority they need to refuse access to funds to someone who technically has legal authority but is abusing it

○ Allows you to move more quickly on the abuse than a guardianship, conservatorship, or petition to review an agent's conduct would allow

Who Can Obtain a TRO

○ Who may file a petition?

- The individual at risk
- Any person acting on behalf of an individual at risk
- An adult-at-risk agency
- If anyone other than the individual at risk files the petition, that person/agency must serve a copy of the petition on the individual at risk and the court will appoint a GAL.

Consent of the individual at risk or his or her guardian is not required.

How to Obtain a TRO

○ The forms are on www.wicourts.gov. Go there and choose:

Forms
Circuit Court
Civil
Individual at Risk Restraining Order/Injunctions

What Must You Allege in the Petition?

- The respondent is engaged in or threatens to engage in financial exploitation of an adult-at-risk, *or*
- The respondent is interfering, or may interfere, with an investigation or delivery of services to an adult-at-risk and that interference, if continued, would make it difficult to determine if financial abuse is occurring or may recur

Specific information about how the respondent engaged in this conduct must be provided.

What Else Should I Request in the Petition?

- Include language directing the financial institution to not honor the abuser's request for assets
- Include language requiring a security freeze be placed on the individual at risk's credit
- Include any other specific language necessary to direct the asset source to stop giving assets to the abuser

Where Should I File the TRO?

- You must file the petition in either the court of the county where the behavior occurred, *or*
- In the court in the county where the respondent resides.
- The respondent does **NOT** need to be given notice of the TRO!

Procedure

- File "Petition for Temporary Restraining Order and Injunction"
- The court will issue or refuse to issue that order
- If the court issues the order, a date will be set for an injunction hearing within 14 days of the TRO being issued

Why Prosecutors Love Your TROs

- You have a statutory right to file the petition
- You can stop the abuse immediately
- You effectively freeze the accounts and protect valuable information that can be used as evidence

Silver Platter

- Concise cover letter with bullets
 - the parties involved
 - the types of financial abuse and amounts gone, generally
 - Any other abuse or important info
- Concise timeline of events associated with the exploitative financial transactions
- Use tabs to organize account information, property transfer information, etc.

Types of Crimes - Thefts

- Theft by bailee: Wis. Stat. § 943.20(1)(b)
 - Converting employer's money
- Theft by fraud: Wis. Stat. § 943.20(1)(d)
 - Obtaining property by deception
- Fraud Against a Financial Institution: §943.82(1)
- Misappropriation of Personal Identifying Information or Personal Identification Documents: Wis. Stat. §943.201
 - Using another's identifying information (Identity Theft)

Types of Crimes - Documents

- Forgery: Wis. Stat. § 943.38(1)
 - altering a writing
- Uttering: Wis. Stat. § 942.38(2)
 - knowingly passing a forged writing
- Fraudulent Writings: Wis. Stat. § 943.39
 - obtaining a signature by means of deceit

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Can't See the Forest For the Trees...

- You are not a forensic accountant; neither are the police or the DA.
- If no one can help you organize the accounts, focus on the big transactions that are obviously fraudulent.
- You don't need to have the case so perfect it is ready to go before the judge; you just need enough to get attention.

Case Example

- Uttering: §943.38(2)
- Unauthorized Use of Personal Identifying Information: §943.201(2)(a)
- Fraud Against a Financial Institution: §943.82(1) and §943.201(2)(a)

Older Adults as Witnesses

- Stigma vs. the Real Benefit
- Compliant Witness
- Non-Compliant Witness
- Preservation of Testimony

Contact the Elder Financial Empowerment Project

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