

TITLE ALERT

Title Alert 2016-09

**June 30, 2016
PA - STANDARD**

Financial Abuse of Elders and Dependent Adults

Purpose: To provide guidance and establish requirements for preventing, detecting, and responding to financial abuse of elders or dependent adults in real estate transactions.

Background: Authority and capacity issues in the typical real estate transaction must be carefully considered because (1) most states permit rescission of a real estate transaction or mortgage involving undue influence, duress, incompetency, incapacity, or lack of authority, and (2) nearly every title insurance policy provides affirmative coverage against such defects. These issues are often present in instances of elder and dependent adult financial abuse, which continues to rise along with the proportion of older Americans relative to the general population. The United States Census Bureau projects that nearly 20% of the U.S. population will be over the age of 65 by the year 2030.

According to the National Adult Protective Services Association, financial exploitation of seniors and adults with disabilities is a fast-growing form of abuse. Such abuse is often carried out by those in a position of trust relative to the victim, such as: caretakers, family members, friends, attorneys, bank employees, pastors, and doctors or nurses. In addition to the risk of being taken advantage of by those closest to them, older Americans are also at risk of suffering from reduced cognitive ability as a result of Alzheimer's and other dementia-related diseases.

To combat this form of exploitation, many states have enacted elder and dependent adult abuse legislation that provides a statutory cause of action for rescission or other damages, separate and apart from those available at common law. Some of these statutes also impose an affirmative duty on financial institutions to report instances of suspected abuse.

On March 23, 2016, the Consumer Financial Protection Bureau ("CFPB") issued a non-binding advisory and a report with recommendations for preventing, recognizing, reporting, and responding to financial exploitation of older Americans.¹ Although the advisory and recommendations are non-binding, many financial institutions have adopted programs to comply with the CFPB's recommendations and other state laws. As a result, many of these financial institutions now require, through closing instructions and other governing documents, title companies and settlement service providers to report suspected abuse to the financial institution.

In light of these issues, it is critical for the Company and Approved Attorneys to remain vigilant with respect to authority and capacity issues, particularly as they relate to elder and dependent adult abuse concerns.

Standard: If you suspect financial abuse of an elder or dependent adult in your transaction, inform your lender customer (if any) and contact us for further assistance.

¹ A copy of the advisory is available at: http://files.consumerfinance.gov/f/201603_cfpb_advisory-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf

A copy of the recommendations and report is available at: http://files.consumerfinance.gov/f/201603_cfpb_recommendations-and-report-for-financial-institutions-on-preventing-and-responding-to-elder-financial-exploitation.pdf

Personnel involved in underwriting and title examination should be alert for the following red flags in a transaction:

- Recent, uninsured deeds in the chain of title (these are a common element in most instances of fraud and forgery).
- Use of powers of attorney (you should always inquire as to the reason why using a power of attorney is necessary).
- Free and clear property (this is not a red flag by itself. Many seniors own property free and clear, but free and clear properties are targeted by fraudsters, or even family members willing to take advantage of the situation.).
- Documents signed outside of escrow (these are always a red flag).
- Sales or loan proceeds paid over to somebody other than the borrower or seller (also a red flag of fraud in general).

Personnel involved in real estate settlement services and closings should also be alert for the following red flags in a transaction:

- The person appears disoriented.
- The person appears to be led or controlled by another person (a friend does most of the talking).
- The person seems unaware of dates and times.
- The person seems to lack understanding of the transaction.
- Anything else that disagrees with your intuition.

If you have any questions, please feel free to contact us.

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NOTE TO APPROVED ATTORNEYS: Under the Approved Attorney system, the scope of our relationship is limited to the functions of underwriting and the issuance of title insurance policies on your behalf and does not include closing or escrow services. We sometimes provide information and recommendations with regard to your closing or escrow business as a courtesy to you. Moreover, some communications, depending on whether noncompliance could impact on liability under our policies or closing protection letters, should be considered directives. This Title Alert is being provided to you with those considerations in mind.

* * * * This Title Alert should become a permanent part of your records to assure compliance with its requirements. * * * *

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