

Financial Exploitation of Senior Alabamians: The Scams, Pain, and Tactics for Prevention

**Satellite Conference and Live Webcast
Thursday, May 10, 2018
1:00 – 2:30 p.m. Central Time**

Produced by the Alabama Department of Public Health
Video Communications and Distance Learning Division

Faculty

**Amanda W. Senn, JD
Acting Deputy Director
Enforcement / General Counsel
Alabama Securities Commission**



The ASC regulates the securities industry for main street investors in Alabama. Includes registration / licensing of most financial professionals and the products offered to investors. The Agency conducts audits and examinations of the industry. ASC also provides Investor Education statewide.

ASC is a law enforcement agency and has prosecutorial authority.

More About the ASC:

- **ASC is located in Montgomery, Alabama in The Alabama Center for Commerce Building at 401 Adams Avenue**
- **ASC has 58 employees**
- **ASC is a self-funded agency and returns \$8-12 million in revenue to the Alabama General Fund each year**

Our Authority: ALABAMA SECURITIES ACT

- **CODE OF ALABAMA 8-6-1 ET SEQ**
- **REQUIRES REGISTRATION OF DEALERS AND SALESMEN**
- **REQUIRES REGISTRATION OF SECURITIES UNLESS EXEMPTED**
- **THE ACT APPLIES TO SALES OR OFFERS TO SELL OR BUY**

Section 8-6-2(10) Definition of a Security:

- **Any note, stock, treasury stock, bond, debenture,**
- **evidence of indebtedness,**
- **certificate of interest or participation in any profit-sharing agreement,**
- **collateral-trust certificate, pre-organization certificate or subscription, transferable share,**
- **investment contract,**
- **voting-trust certificate,**
- **certificate of deposit for a security,**

Section 8-6-2(10) Definition of a Security:

- certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease.
- annuity contract unless issued by an insurance company,
- bankers' or trustees' shares, investment participating bonds,
- investment trust debentures, units, shares, bonds and certificates in, for, respecting, or based upon any form of securities or collateral,

Section 8-6-2(10) Definition of a Security:

- subscriptions and contracts covering or pertaining to the sale or purchase on the installment plan of any security as herein defined, or
- subscription or contracts covering or pertaining to the sale or purchase of beneficial interest (fractionalized) in title to property, profits or earnings, or
- any right to subscribe to any of the foregoing, or any instrument of any kind commonly known as a security

What is a Security?

- The Howey Test is a three step process used to determine if a product or offering is an investment contract or a security. It stems from a 1946 Supreme Court case involving the SEC vs. W. J. Howey Company.
 1. An investment of money or other tangible consideration
 2. In a common enterprise

What is a Security?

3. With reasonable expectations of profit derived solely from the efforts of others
- i.e. Investing money into a business where a profit is gained without effort on the investor's part

Securities Violations

- Securities and Investment fraud
- Failure to register security
- Failure to register agent/hire
- Companion charges
 - Theft
 - Forgery
 - Conspiracy
 - Financial exploitation of an elderly victim

Top Investor Threats

New Threats

- Crowdfunding and Internet Offers
- Inappropriate Advice or Practices from Investment Advisers
- Scam Artists Using Self-Directed IRAs to Mask Fraud
- EB-5 Investment-for-Visa Schemes
- Binary Options Trading
- High-Yield Investment and Ponzi Schemes
- 'Prime Bank' International Programs
- Digital Currency: Cryptocurrency and ICO's

Top Investor Threats

Persistent Threats

- Gold and Precious Metals
- Private Offerings / Crowdfunding
- Risky Oil and Gas Drilling Programs
- Promissory Notes
- Foreign Currency Transactions
- Proxy Trading Accounts
- Real Estate Investment Schemes
- Reg D/Rule 506 Private Offerings
- Unlicensed Salesmen Giving Liquidation Recommendations

The Suspect:

- **Anyone** - Generally no defining characteristics except in Elder Exploitation cases
- **Fraud against Seniors:**
 - Gain victim's trust and confidence
 - Isolates elder from friends, relatives, banker, financial advisor, attorney
 - Always present during meetings and speaks for elder

The Suspect:

- Defensive or hostile toward visitors or interviewers
- Primarily focused on money matters
- Promise of lifelong care in exchange for signing over property
- Suspect has no other visible means of support- freeloader
- Implausible explanations about elder's finances
- Verbal abuse- yelling and infantilizing elder

Victims of Securities Fraud

- Anyone can be a victim of financial fraud, but more prevalent among senior adults
 - Largest segment of the American population
 - Control more than 70% of the country's disposable income

Victims of Securities Fraud

- Face greater pressure on their financial security making them feel overwhelmed and compelled to do something FAST
- This risky financial behavior can leave seniors vulnerable to financial crimes
- Cognitive disability and emotional fragility
- Less likely to be reported

Special Senior Laws! Looking out for Alabama's Finest Generation

- PROTECTING ALABAMA'S ELDER'S ACT
- Ala. Code §13A-6-190, et seq
- Financial Exploitation of an elderly person
 - Age 60 or older

Special Senior Laws! Looking out for Alabama's Finest Generation

- The use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an EP's property with the intent to deprive OR the breach of a fiduciary duty to any EP by the person's guardian, conservator, POA which results in an unauthorized appropriation, sale, or transfer of the EP's property

Protecting Alabama's Elders Act Cont'd

- Penalty
 - First: exceeds \$2,500
(Class B felony)
 - Second: \$500 to \$2,500
(Class C felony)
 - Third: \$500 or less
(Class A misdemeanor)

Protecting Alabama's Elders Act Cont'd

- Prosecution
 - Expansive venue - any county in which any part of the crime was committed
 - 7 year SOL; no defense that accused reasonably believed that V was not an elderly person

The Protection of Vulnerable Adults from Financial Exploitation Act

The Protection of Vulnerable Adults From Financial Exploitation Act, No. 2016-141, mandates reporting to the Alabama Securities Commission and the Alabama Department of Human Resources by "qualified individuals" (agents, investment adviser representatives, and persons who serve in a supervisory, compliance, legal, or member capacity of a broker-dealer or investment adviser) who reasonably believe that financial exploitation of a vulnerable adult may have occurred, been attempted, or is being attempted.
Ala. Code § 8-6-170 et seq. (1975)

The Protection of Vulnerable Adults from Financial Exploitation Act

- Qualified Individuals who suspect financial exploitation may delay disbursing funds from a vulnerable adult's account
- Provides immunity from administrative and civil liability for actions taken consistent with the Act
- Requires that broker-dealers and investment advisers comply with certain requests for information

Financial Exploitation: Red Flags

- Unusual financial activity within financial accounts- change of bank, redirection of automatic deposits, sale or mortgage of real estate and other assets
- The financial activity is inconsistent with the elder's abilities or needs, interests
- Elder is not aware of or does not understand recently completed financial transactions or arrangements

Financial Exploitation: Red Flags

- New will drawn up in favor of a new friend or recently arrived relative
- New POA executed by elder***
- Forged / suspicious signatures on documents or checks
- Suspicious or manipulated documents / records

Devastating Consequences

- Earsie Delchamps: Church friend stole granddaughter's college fund
- Ms. G: Son stealing from grandmother's brokerage account, POA
- Ms. Smith of Foley, AL: Self directed IRA in real estate development in Utah
- Mr. Burdette's victim's Carl and Jean-Proton Therapy, 82 and 83 returned to work as optometrist, food stamps

Devastating Consequences

- Mr. and Mrs. A: Gold and precious metals, never met D
- Mr. Little: Unsuitability, long term

How to Avoid Financial Victimization

- If it sounds "too good to be true", it probably is! Ask- why is it being offered to me, then??
- Due diligence: never make pressured decisions to invest, take the time to consider and research

How to Avoid Financial Victimization

- Develop a refusal script- be prepared to say no!
- Learn to spot persuasion tactics: scammers play on your emotions, look for emotional triggers. Don't judge by appearances- fraudsters can be savvy dressers and smooth talkers!

Underreporting is a Problem!

- Not sure where to go or what to do
- Feeling that reporting will not make a difference
- Threats and intimidation from the perpetrator
- Loss of esteem in the victim's social group, embarrassment

Underreporting is a Problem!

- **Concern that reporting may result in a family member or friend being arrested or prosecuted**
- **Lack of confidence in the ability of authorities to respond and assist*****

How Can the ASC Help?

- **Register or license investment professionals**
- **Investigate complaints and potential cases involving fraud**
- **Enforce state securities laws and regulations**
- **Examine brokerage and investment advisor firms**
- **Provide investor education**

Contact Information

**Amanda W. Senn, JD
Acting Deputy Director
Enforcement / General Counsel
Alabama Securities Commission
(334) 242-2394
Amanda.Senn@asc.alabama.gov**