

Fleeced by Trusted Loved Ones and Caregivers: Investigation and Prosecution of Financial Exploitation in Minnesota

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Law Enforcement Checklist: Potential Evidence in Elder Fraud Prosecutions¹

This checklist for law enforcement provides suggestions for evidence that may be useful in investigating and prosecuting elder financial exploitation cases. The list is not meant to be fully exhaustive, and particular items may not be relevant in your investigation or applicable in your jurisdiction. Obtaining this evidence may require a grand jury subpoena, search warrant or other court order.

- _____ Power of Attorney (POA) document(s) and accompanying rider(s) (current and past)
- _____ Health Care Proxies or Medical Power of Attorney document(s) (current and past)
- _____ Will(s) and Codicil(s) (current and past)
- _____ Trust(s)
- _____ Financial account information for victim, suspect, and relevant payees/payors, if applicable (closed and current accounts), including:
 - bank statements for savings, checking, investment accounts
 - any checkbook balance books (victim or suspect) or other miscellaneous balance sheets
 - account opening records
 - ATM records (often kept in a separate division)
 - ATM film and bank film, if not recycled
 - internal fraud documents, including Suspicious Activity Reports (SAR) and Currency Transaction Reports (CTR) – do not disclose to any party per federal law
 - copies of checks written on victim/suspect(s)' and others' accounts (front and back)
 - copies of deposits into victim's account
 - signature cards, and any other documents with victim's signature
 - wire transfer records
 - customer correspondence file

¹ Written by Tara Patet, Senior Prosecutor, City of St. Paul, MN; Jennifer J. Hasbargen, Assistant Anoka County Attorney, MN; and Page Ulrey, Senior Deputy Prosecuting Attorney, King County, WA; modified by Elizabeth Loewy, Esq.

- bank form POAs on file
- applications for online/internet banking
- witnessed handwriting samples from victim and suspect (from time at issue and time of referral to law enforcement)

_____ Credit information and credit card activity relating to victim and suspect

- Credit reports relating to victim and suspect (Experian, Transunion, Equifax), including requests to freeze
- receipts from any/all transaction at issue

_____ All real estate and/or personal property transfer documents and open/closed bank loan or mortgage documents, including:

- Contract of sale
- Appraisal
- Loan application
- loan ledger sheet
- copy of loan disbursement document
- copy of loan repayment document
- any correspondence regarding loan
- collateral agreement(s)
- notes or other instruments reflecting obligation to pay and payment schedule
- copies of real estate mortgage(s), chattel mortgage(s), or other security for bank loans
- appraisals related to real estate or personal property
- annual interest paid statement(s)
- loan amortization statement(s)
- deed (house/condo)
- stock certificate (co-op)
- proprietary lease (co-op)
- title document(s)
- rental agreement(s)

_____ Medical Assistance

- Medicaid/Medicare application and correspondence
- Application/records for other medical provider
- correspondence or notes between financial worker and applicant

_____ Residential Health Care Facility (Assisted Living, Nursing Home, Hospital) records (current and past), including:

- account history
- any documents with victim/suspect signature
- correspondence with suspect
- admission agreement (is suspect listed as financially responsible party?)
- brochures, pamphlets advertising facility
- HR file, training/educational materials for institutional suspects (if an issue)

_____ Documentation relating to other assets/investments/real estate of the victim, including:

- annuities, mutual funds, bonds, stocks, securities, certificates of deposit
 - account statements, annual interest statements
 - documents reflecting purchase of investment
 - documents reflecting redemption of investment
 - any records relating to commission made by broker/dealer
- relevant automobile titles and/or loan documents
- deed and title documents (see real estate and personal property transfer above)
- property appraisals
- HR file, training/educational materials related to institutional suspects (if an issue)

_____ Documentation for any income that does not automatically deposit into the victim's bank account (who is endorsing checks and where they are being deposited/cashed), including:

- Social Security
- tax refunds
- pension

- _____ Capacity evaluation of victim by geriatric expert(s), if capacity is an issue (past and current)
- _____ Medical records of victim, including psychological evaluations, from primary care provider and other specialists who may have seen or provided care to the victim dating back at least one year prior to incident
- _____ All past and current APS records pertaining to victim and suspect, including follow-up investigations
- _____ Conservatorship and/or guardianship documents, including court evaluator's report and annual accountings
- _____ Probate Court records
- _____ Judgments, liens, bankruptcies, lawsuits against suspect
- _____ State and Federal tax filings of victim and suspect (i.e. Gift Tax is paid by donor, often not paid when defense is that funds were "gifted")
- _____ Suspect's computer, which may contain any of the above information and/or emails pertaining to same
- _____ Telephone records (cell phone and landline) for victim and suspect
- _____ Telephone answering machine at victim's residence (suspect's/scammers messages)
- _____ Controlled call recording, if permitted in your state
- _____ Insurance policies on victim
- _____ Property insurance – look to see if missing/"gifted" valuables are still insured by victim



STATE OF MINNESOTA
COUNTY OF HENNEPIN
HENNEPIN COUNTY ATTORNEY

ADMINISTRATIVE SUBPOENA
(Order to Produce Records)

TO: [Bank or financial institution]

You are hereby ordered, pursuant to Minnesota Statutes §388.23, to produce the following records to the individual listed below as soon as possible:

Investigator: _____

Law Enforcement Agency: _____

Telephone Number: _____ Fax Number: _____

DESCRIPTION OF RECORDS

For all accounts where [ADD PERSON] is the account holder or a signatory, please identify the account name and account number. Date to receive requested information>>>.

This is in regards to a vulnerable adult investigation. See attached Exhibit A.

WARNING: Minnesota Statutes §388.23, Subd. 5, provides that the willful failure to produce the records is a crime. It could also result in an action to hold you in contempt of Court.

WARNING: Minnesota Statutes §388.23, Subd. 4, provides that you may not disclose the fact that this subpoena has been issued or the fact that the requested records have been produced except:

- (1) insofar as the disclosure is necessary to find and disclose the records, or
- (2) pursuant to court order.

Disclosure of the above-requested records could impede an ongoing criminal investigation
You may submit an itemized bill to the law enforcement agency for any reasonable expenses incurred in producing the records.

MICHAEL O. FREEMAN
Hennepin County Attorney

Date: _____

By _____
Assistant County Attorney

2014 Reference Guide
Investigation of Financial Exploitation
of Vulnerable Adults (VA) ¹

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Important Note for Case Submission:

Include all documents and evidence obtained during your investigation in the materials sent to the County Attorney’s Office for charging review. If the matters are too voluminous for submission electronically via *Pro Case*, they can be provided to us directly.

¹ The *2014 Reference Guide*, was prepared by Tracy Allen, an investigator with the Hennepin County Attorney’s Office and Hennepin County Human Services and Public Health Department. These materials are intended for training and educational purposes only.

Interviewing VA, Suspect and Witnesses:

Make Every Attempt To:

- Interview VA**
- Interview Suspect**

- * Run Criminal Record History
- * Driver's license information.

- **VA Interview:** It is important to get a taped interview of the VA if they are cognitively and/or physically able to do so. The VA's cognition or health may deteriorate by the time the case goes to court and they could be unable to testify.
- **Suspect Interview:** Make every attempt to interview the suspect - document your efforts to do so.

As in any criminal case, an interview of the suspect is a key part of the investigation – any statement is better than no statement - as it limits the defenses that a suspect can later fashion to fit the evidence. As these interviews are rarely custodial (and they should not be custodial), taking the time to arm yourself with information about the case, including financial documents, prior to the interview, is very important. Inquiry should be made into the suspect's knowledge of the VA's needs and limitations, the extent to which the suspect has appropriately used the VA's resources, the methods of access to the victim's resources and the suspect's use of the VA's resources for themselves or others. Additionally, it is important to show that every attempt was made to give the suspect a chance to tell their story – a jury will want to know that the investigation was thorough and fair.

Interview witnesses

- **Witness Interview(s):** The witnesses may be able to give information or witnessed things that the VA is unwilling or unable to tell us. For instance: A neighbor or friend could have witnessed someone coming to the house to get a check from the VA, or a PCA at a care facility may have witnessed interactions between the VA and the suspect.

Name	Birthdate	Address	Phone #

Obtaining Bank Records (for VA and Suspect)

- When working on or reviewing documents in your investigation please do not write on originals. Instead make 2 copies - one for yourself and one for HCAO - for working copies that can be written on. Keep the originals in the condition they were received.

Time Period for records

- When asking for bank records we recommend going back 6-12 months prior to when the alleged criminal activity started and/or when the Suspect first had access to the account(s).

* This could show that there was a dramatic change in bank activity when the Suspect gained access to the account or accounts.

Is there a saving account(s):

Then list the following:

Name of Bank	Account Numbers	Who is on the account

Is there a checking account(s):

Then list the following:

Name of Bank	Account Numbers	Who is on the account

Obtain the following bank records:

- account application(s), including signed application form;
- authorized signature card(s);
- copies of all photo identification, Social Security card, or other forms of identification of authorized user(s);
- copies of any letters, memorandum, or any other written correspondence sent to or received from authorized user(s);
- copies of all periodic reports/statements, monthly or otherwise, reflecting deposits by date and amount, withdrawals by date and amount, drafts (checks) by date and amount, and respective check numbers;
- copies of all items deposited (front and back of each financial instrument) in and all checks written (front and back of each check) from the account(s);
- Copies of all deposit slips;
- Copies of all withdrawal slips;

- copies of all cashier’s checks (front and back of each check) purchased with funds from the account(s);
- any Suspicious Activity Reports associated with the account(s);
- any Currency Transaction Reports associated with the account(s) ;
- any Verifications of Deposit generated in connection with the account(s) ;
- identification of any wire transfers to or from the account(s); and
- copies of any recordings, or documentation thereof, of telephone communication with authorized user(s) of the account(s).
- **Any Power Of Attorney instruments affecting ownership and/or authorization to conduct transactions on said account.**

This material can be obtained through an Administrative Subpoena.

ATM/DEBIT Card Log

Bank	Acct. #	Whose name	# of cards issued	Who has card(s)

In the Administrative Subpoena you can add to the documents requested ATM or Debit card information such as card numbers issued and to whom issued to.

Does VA have a safety deposit box?

You may see payments in bank records to a safety deposit box.

Where	Who has access	content

Obtaining Credit Card Records:

Obtain the following:

- The original credit application;
- Any and all credit card statements including where the statements were mailed for the above time period for any and all account(s);
- Who was issued credit cards and in whose name were they issued for any and all credit card account(s);
- Any and all checks (front and back) written on any and all credit card account(s) for the above stated time period;

- Names of individuals authorized to sign on credit card accounts, when that became effective and who authorized it;
- Any electronic files or activity made on any and all credit card account(s) during the above stated time period;
- Any correspondence (including voice recordings) for any and all account(s) for the above stated time period;
- Copies of any payments (front and back of checks) made on any and all accounts for the above stated time period;
- Documentation regarding any electronic transfers (what accounts the transfers went to) for any and all account(s) for the above stated time period;
- Documentation regarding electronic payments (what account did it come from) for any and all account(s) for the above stated time period;
- Documentation regarding any cash advances on the account (if electronic what account were they transferred to and if by check (front and back of check).
- **Any Power Of Attorney instruments affecting ownership and/or authorization to conduct transactions on any of the said accounts.**

This material can be obtained through an Administrative Subpoena.

Credit Card Log

Then list the following:

Name of Card Company	Account Number	In whose name	signors

Obtaining Information About Other VA Debt:

Are there new Loans or Loans to the suspect?

Bank or Loan Company	Account Number	Date of Loan

Does the VA have a Mortgage or is it paid off?

Bank or Loan Company	Account Number	Date of Loan

Does the VA have any Home Equity Loans?

Did the Suspect induce the VA to take out a line of credit or Equity Loan on their home?

Bank or Loan Company	Account Number	Date of Loan

Obtaining Information About VA’s Income Source(s):

It is important to identify all income sources for the VA in order to make sure all money is accounted for.

PENSION INCOME:

Does the VA get a Pension: \$_____ (amount if available)

Name of Company or Pension _____.

Include any confirmation or documentation of pension information is in the file.

CERTIFICATES OF DEPOSITS:

Does the VA have any CDs: \$_____ (amount if available)

Who holds the CD (financial institution)_____ .

Include any confirmation or documentation of pension information is in the file.

ANNUITIES/ INVESTMENT ACCOUNTS:

Does the VA have Annuities/Investment accounts: \$_____ (amount if available)

Name of Annuity Company(s)_____.

Include any confirmation or documentation of pension information is in the file

SOCIAL SECURITY INCOME:

Does the VA have Social Security Income: \$_____ (amount if available)

Does the VA have Social Security Disability Income: \$_____ (amount if available)

Does the VA have a Representative Payee? Who? Where does the check go or where is the money deposited?

If you are having difficulty finding where the victim banks, due possibly to VA’s cognitive issues or if the VA is unable or unwilling for any reason to communicate that information to you. If the VA receives social security income and gets it directly deposited then you can get the information regarding where it is deposited and the account number from Social Security. If Hennepin County Adult Protection is open they can obtain that information for you. There financial case aide can obtain social security information for you.

Other VA Assets Relevant to the Investigation:

Does the VA have a home?

Address	Who is on title

Does the VA have vehicle(s)?

Type of vehicle	Who is on title

Does the VA have any other property or real estate?

Address	Who is on title

Does the VA have any life insurance policies? Life insurance Policies may have a cash value depending on the type of policy.

Company	Account number	In Whose Name	Amount

Are there other valuables that have been liquidated: (Jewelry, antiques, family heirlooms, farm equipment, gold/silver coins, etc.)?

List

Locating VA Assets:

Tax Returns

- If tax returns are not available from victim you can locate the tax preparer. If that is unknown you may be able to find who the tax preparer is from looking at bank records and locating a check or payment made electronically to a tax preparer. Also using a **4506-T Request for Transcript of Tax Returns**, you can obtain a copy of tax returns.

Credit Report

- This can help you locate open accounts and find out if someone has opened an account or accounts fraudulently. **Annualcreditreport.com** is a source for credit reports. Everyone is allowed one free credit report annually.

Medical Assistance Application

- Again, this is a good way to obtain a lot of information. For instance, who filled it out and who signed it. Who is listed as the designated representative for the applicant. The application should have all asset information and bank accounts listed if disclosed appropriately.

Care Providers or facility

- Care providers/facilities might have information about banking if they were paid by the Victim or Suspect.

Bank accounts or Credit Card records

Bank records for the Victim and Suspect may show bank transfers, checks, deposits and/or electronic payments made to other accounts for Victim. If you do not have the Suspect's account information the Victim's bank records may lead you to the Suspect's account through bank transfers, deposits, checks and/or electronic payments and may lead to finding the bank information for the Suspect.

Payment or Bill History for the VA:

Facility or Home Care:

If the victim is in a facility or receiving home care. Are the bills being paid and/or current on the bills? If not:

- Get the facility account history: who is responsible to make the payments, where do bills get mailed/sent and letters attempting to collect (include admission agreement and who signed as responsible party).
- Get the home Care account history: who is responsible to make the payments, where do bills get mailed/sent and letters attempting to collect (include admission agreement).

Is there a Discharge Notice from facility or home care? Get that if there is.

Utilities

Utilities billing history: Water, Gas, Electric and Phone?

- Are utilities current: ___ Yes ___ No ___ N/A
 - Are there shut off notice(s): ___ Yes ___ No ___ N/A
- Get all documentation regarding bills not paid and any shut off notices.

Rent/Mortgage/Property Taxes/ Property Insurance

- Is Rent or Mortgage being paid and current? ___ YES ___ NO ___ N/A
- Are the Property Taxes are being paid & Current? ___ YES ___ NO ___ N/A
- Is the Property Insurance is being paid? ___ YES ___ NO ___ N/A

Get any documentation that shows that the mortgage is behind or in foreclosure, that property taxes are behind (You can get this through the Hennepin County Property Information Search site (known as PINS), and if the property insurance is not being paid.

Other Documents or Evidence:

1. Power of Attorney (POA) documents
2. Trust documents
3. Conservator/guardian documents

The above documents establish who has a fiduciary responsibility to the victim.

4. The VA’s Will or trust documents (if applicable to investigation):

Will or trust documents can establish what the VA’s wishes were or are if they are unable to provide that information themselves.

5. Medical Assistance Application and MAXIS notes (Maxis notes are notes the Economic Assistance makes on each case).

The MA application can show: Listed assets, bank accounts, income (if filled out correctly). It can also tell you who filled it out and signed it. Who is the victim's authorized representative. If Hennepin County Adult Protection is open they can get this information for you.

6. Personal Care Attendant Agreement

This can help provide information about what assistance the victim needs that helps establish his/her vulnerable adult status. Having a PCA establishes that a person is a vulnerable adult but having the agreement and services provided is documentation that is important. The PCA or PCA agency should be able to provide that documentation. If Hennepin County APS is open they can obtain this information for you.

7. If the VA is in a care facility or getting home care who signed the responsible person/party document. You should try to obtain this.

8. Property Sales by or for the benefit of the suspect

- If property has been sold.
- Get the following documents:
 - Listing documents:
 - Closing documents:

9. Medical Records

1. Neuropsych records.
2. Other medical records that confirm vulnerable adult status.
3. Are there any doctor's letters regarding the VA's capacity, medical notes or testing regarding the VA's capacity or notes about the suspect in medical records.

Hennepin County Adult Protection can help with gathering these records if there is a case open. They do not need a search warrant to get the records in most circumstances.

10. Video documentation

- Is there surveillance video/film?

If there is the possibility of getting video at the banks, ATMs, stores where credit cards are used, etc. this is important to try to get as soon as possible as this documentation is only kept for a limited amount of time by most of these institutions.

11. Are there gambling records for the Suspect at a local casino?

Important Note for Case Submission:

Include all documents and evidence obtained during your investigation in the materials sent to the County Attorney's Office for charging review. If the matters are too voluminous for submission electronically via *Pro Case*, they can be provided to us directly.

Resources:

If you have questions please contact the Financial Exploitation of Vulnerable Adult team in the Hennepin County Attorney's Office - Special Litigation - Complex Crimes Unit:

Susan B. Crumb
Assistant Hennepin County Attorney
612-348-5612
Susan.Crumb@hennepin.us

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John.Monnens@hennepin.us

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Paralegal
612-348-9877
Annette.Simmons-Brown@hennepin.us

Jeanne Werenicz
Victim Witness Advocate
612-348-9870
Jeanne.Werenicz@hennepin.us

EXHIBIT A- Bank

You, (the bank or entity subpoenaing records from), are commanded to produce the following items, records, or documents:

Copies of any and all records, documents, and electronic files regarding an account # (if you have any) and (dates range for documents) held in the (name of _____, birthdate and social security # if you have it) , including but not limited to:

- account application(s), including signed application form;
- authorized signature card(s);
- copies of all photo identification, Social Security card, or other forms of identification of authorized user(s);
- copies of any letters, memorandum, or any other written correspondence sent to or received from authorized user(s);
- copies of all periodic reports/statements, monthly or otherwise, reflecting deposits by date and amount, withdrawals by date and amount, drafts (checks) by date and amount, and respective check numbers;
- copies of all items deposited (front and back of each financial instrument) in and all checks written (front and back of each check) from the account(s);
 - Copies of all deposit slips;
 - Copies of all withdrawal slips;
- copies of all cashier's checks (front and back of each check) purchased with funds from the account(s)
- any Suspicious Activity Reports associated with the account(s);
- any Currency Transaction Reports associated with the account(s) ;
- any Verifications of Deposit generated in connection with the account(s) ;
- identification of any electronic/wire transfers to or from the account(s) and any documentation related to wire/electronic transfers; and
- copies of any recordings, or documentation thereof, of telephone communication with authorized user(s) of the account(s).

*** Any Power Of Attorney instruments affecting ownership and/or authorization to conduct transactions on said account and any instruments cancelling or otherwise amending POA.**

(Possibly if applicable Debit card or ATM Cards issued: card numbers, whom issued to)

EXHIBIT A- Credit Card

You, **(the bank or entity subpoenaing records from)**, are commanded to produce the following items, records, or documents:

Copies of any and all records, documents, and electronic files regarding an **account # (if you have any)** and **(dates range for documents)** held in the **(name of _____, birthdate, and social security number if you have it)**, including but not limited to:

- The original credit application;
- Any and all credit card statements including where the statements were mailed for the above time period for any and all account(s);
- Who was issued credit cards and in whose name were they issued for any and all credit card account(s);
- Any and all checks (front and back) written on any and all credit card account(s) for the above stated time period;
- Names of individuals authorized to sign on credit card accounts, when that became effective and who authorized it;
- Any electronic files or activity made on any and all credit card account(s) during the above stated time period;
- Any correspondence (including voice recordings) for any and all account(s) for the above stated time period;
- Copies of any payments (front and back of checks) made on any and all accounts for the above stated time period;
- Documentation regarding any electronic/wire transfers (what accounts the transfers went to) for any and all account(s) for the above stated time period;
- Documentation regarding electronic/wire payments (what account did it come from) for any and all account(s) for the above stated time period;
- Any documentation related to wire/electronic transfers;
- Documentation regarding any cash advances on the account (if electronic what account were they transferred to and if by check (front and back of check).

*** Any Power Of Attorney instruments affecting ownership and/or authorization to conduct transactions on any of the said accounts and any instrument cancelling or otherwise amending POA.**

EXHIBIT A- Investment accounts

You, **(the bank or entity subpoenaing records from)**, are commanded to produce the following items, records, or documents:

Copies of any and all records, documents, and electronic files regarding an **account # (if you have any)** and **(dates range for documents)** held in the **(name of _____, birthdate, and social security number if you have it)**, including but not limited to:

- account application(s), including signed application form;
- authorized signature card(s);
- copies of all photo identification, Social Security card, or other forms of identification of authorized user(s);
- copies of any letters, memorandum, or any other written correspondence sent to or received from authorized user(s);
- copies of all periodic reports/statements, monthly or otherwise, reflecting deposits by date and amount, withdrawals by date and amount, drafts (checks) by date and amount, and respective check numbers;
- copies of all items deposited (front and back of each financial instrument) in and all checks written (front and back of each check);
- copies of all cashier's checks (front and back of each check) purchased with funds from the account(s)
- any Suspicious Activity Reports associated with the account(s);
- any Currency Transaction Reports associated with the account(s) ;
- any Verifications of Deposit generated in connection with the account(s) ;
- identification of any electronic/wire transfers to or from the account(s) and any documentation related to electronic/wire transfers; and
- copies of any recordings, or documentation thereof, of telephone communication with authorized user(s) of the account(s).
 - Any and all distribution requests with signature of who is requesting distributions, copies front and backs of distribution checks and what address mailed to.
 - **Any Power Of Attorney instruments affecting ownership and/or authorization to conduct transactions on said account and any instruments cancelling or otherwise amending POA.**