

LITIGATION OF CLAIMS UNDER

Maryland's Statute Against Financial Exploitation

Trust & Estates Art. §§ 13-601 through 609

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Litigation of the SAFE Act

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LITIGATION OF THE SAFE ACT: THE TIP OF THE SPEAR

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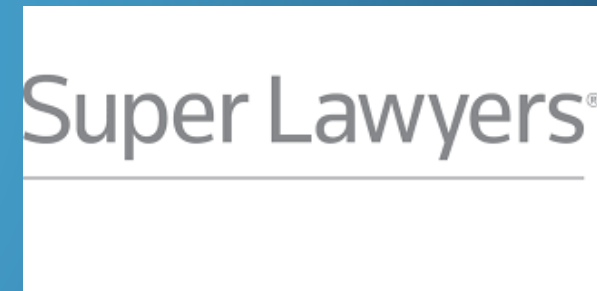
Trust & Estate Disputes

Business Disputes

Other (Un)Civil Matters

Likes Difficult Cases

Tech Guru





Materials, Links
& Resources Here

Representative Clients

- Amur Equipment Finance
- Arbor Care Tree Experts, Inc.
- Baltimore Recycling Center, Inc.
- Bizfi f/k/a Merchant Cash and Capital
- Blue Sea Construction, Inc.
- Brandywine Construction & Management, Inc.
- Brimrose Corporation of America
- Brixmor Property Group, Inc.
- Canon Financial Services Inc.
- Direct Capital Corporation
- Forest Hill Nature Preschool
- Greetings & Readings
- OnDeck Capital
- Retail Capital, LLC d/b/a Credibly
- Tip Top Cleaning Services

➔ READ MORE

News, Opinion & Tech

Remote Work: Adam Spence Presents Seminar to State Bar Association and Other Organiza...

APRIL 21, 2020

Can I Breach My Contract Because of COVID-19? Maybe.

APRIL 6, 2020

Simple "How-To" Instructions for Video Calls with Zoom and Google Hangouts

MARCH 27, 2020

Does Your Business Need to Shut Down? Find out Here

MARCH 24, 2020

➔ READ MORE

...d we can bank, buy movie tickets and
...me as no surprise that judges, jurors,
...nd presenting cases.



ONLY INTER VIVOS
TRANSFERS

NOT WILLS OR
TRUSTS

INTERPLAY OF SAFE ACT CLAIMS & WILL CAVEATS

- ▶ **Exploitation often involves taking assets and changing Will**
- ▶ **Recovery of assets goes to Estate**
- ▶ **Must file Caveat of Will in Orphan's Court if client "cut-out"**
- ▶ **Transmit Will Caveat for jury trial and consolidate with SAFE claims**

BEST PRACTICES FOR ESTATE PLANNING ATTORNEYS

- ▶ Take Prolific Notes
- ▶ You are Not the Target (maybe)
- ▶ Don't take it Personally
- ▶ Doctor Letter?
- ▶ Client Video?

TYPES OF ACTS COVERED BY SAFE ACT SECT. 13-601.C.1 & 2

Direct Fraud / False Pretenses

Taking in Fiduciary Capacity

- Misuse of Bank Account (including Joint)

Undue Influence

Taking When Lacks Capacity

Failure to Use Assets for Care



DOES NOT COVER
TRANSACTIONS
BEFORE
OCTOBER 1, 2021

CANNOT SUE
BANKS

NUTS AND BOLTS OF SAFE ACT LITIGATION



STATUTE OF LIMITATIONS
IS 5 YEARS FROM DISCOVERY
UNDER § 13-607

COMMON LAW
FIDUCIARY CLAIMS MAY BE LONGER!

STANDING

- § 13-605

- ▶ Attorney in Fact, Guardian, or Other Fiduciary
- ▶ Health Care Power
- ▶ Spouse, Parent or Descendent
- ▶ Presumptive Heir
- ▶ Named Beneficiary
- ▶ Personal Representative

POSSIBLE COUNTS IN COMPLAINT

- ▶ SAFE ACT Claim
- ▶ Constructive Fraud - Undue Influence
- ▶ Unjust Enrichment
- ▶ Breach of Fiduciary Duty

EQUITABLE
RELIEF
AVAILABLE

- ▶ Review of Power of Attorney under § 17-103 (Maryland PoA Act)
- ▶ Injunctions and Declaratory Relief
Remedy in SAFE Act - § 13-604

SAFE ACT -
PROVING
“MANAGEMENT
OF PROPERTY”
§ 13-601.J.1

Control of Finances
Bank Records (Checks, etc)

SAFE ACT-
PROVING
“CONFIDENTIAL
RELATIONSHIP”
§ 13-601.J.2

- ▶ Powers of Attorney
- ▶ Control of Finances
- ▶ Doctor Visits
- ▶ Witness Testimony
- ▶ Medical Records
- ▶ Expert Testimony?
- ▶ Focus on Susceptibility?
 - A. Physical frailty OR
 - B. Mental frailty

SAFE ACT - BURDEN OF PROOF

- ▶ Common Law Burden
- ▶ Must prove confidential relationship by clear & convincing evidence
- ▶ Once shown, burden shifts - *Figgins v. Cochrane*, 174 Md. App. 1 (2007)

PROVING DAMAGES

- ▶ Quick books Analysis or Spreadsheets based on Bank Records
- ▶ Could present through
 - A. Client
 - B. Defendant
 - C. Expert (CPA)

USING QUICKBOOKS

- ▶ Use ***Expense Categories*** for Thefts
 - ▶ Perpetrator is Main Category
 - ▶ Sub-Categories from records
 - ▶ Cash
 - ▶ Pets
 - ▶ Best Buy Purchases
 - ▶ Walmart Purchases
 - ▶ Liquor Purchases
 - ▶ “Loans”
- ▶ Each Entry Should have Bates-Stamp Reference for use at trial

5:32 PM



09/19/22

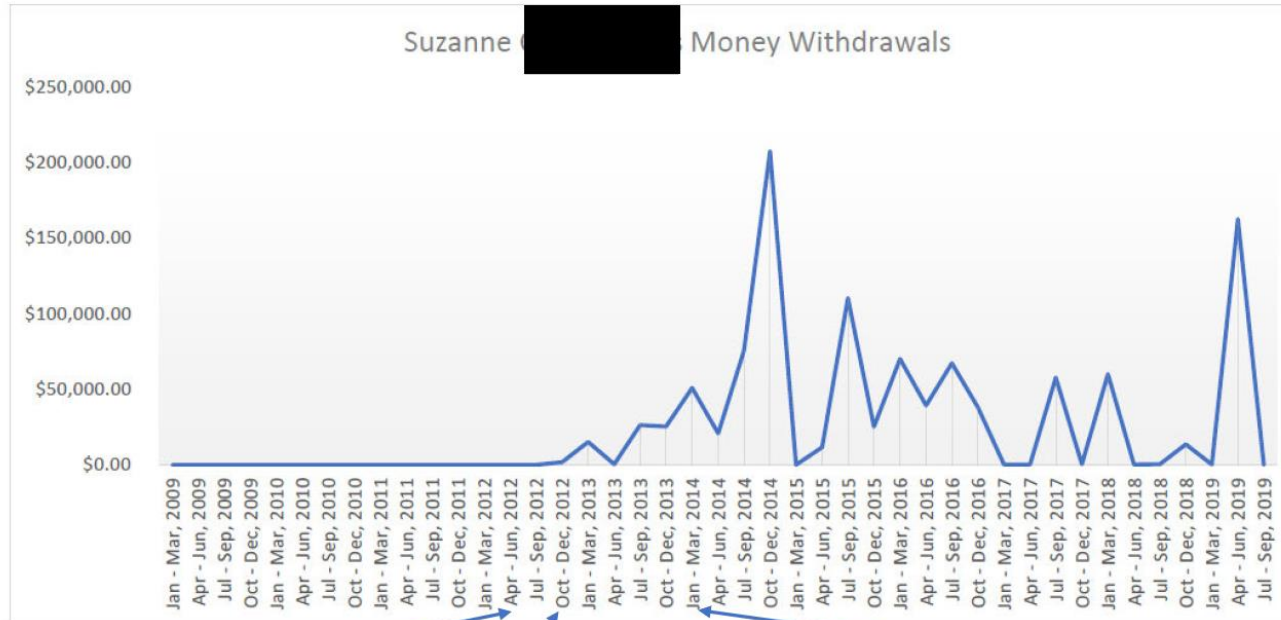
Accrual Basis

Profit & Loss Detail

April 16 through August 16, 2019

Date	Num	Name	Memo	Amount
Ordinary Income/Expense				
Expense				
Cash to				
04/16/2019		M&T Bank	counter transfer - no match txfr found (MT 172;MT 412)	15,000.00
04/30/2019	1279		WF 116; WF 966	6,000.00
05/07/2019	1282		WF 126; WF 966	5,000.00
05/25/2019	1288	Credit Line Payment...	WF 970	35.93
06/03/2019	1327		"Mgmt Fees" - WF 143; WF 970	5,000.00
06/14/2019		Cash Withdrawal	WF 146; WF 970	1,000.00
07/01/2019	1336		"Prop Mgmt" - WF 150; WF 974	5,000.00
08/14/2019		Cash Withdrawal	Branch W/D - WF 154; WF 977	1,760.00
Total Cash to				38,795.93
Total				38,795.93
Total Expense				38,795.93
Net Ordinary Income				-38,795.93
Net Income				-38,795.93

TYING MEDICALS WITH FINANCIALS



2012 Suzanne now writes all checks

- Nov. & Dec. 2013
- "Baseline Dementia"
 - "Cannot remember not to use arm"
 - "Cannot remember which is left side"

- March 2014
- Unable to answer questions of substance
 - Unable to remember had pacemaker
 - Constantly confused
 - Didn't know why at hospital

POWER OF THE SAFE ACT

Use the Power of the SAFE Act
to obtain Prompt and Powerful
Settlements

SAFE HARBOR DEFENSE

No Violation For Estate Plan to

- A. Reduce Taxes Or
- B. Maximize Eligibility For Public Benefits

BAD FAITH CLAIMS UNDER SAFE ACT

- ▶ Potential for Weaponization
- ▶ Ends Justifies the Means
- ▶ Still other tools regardless of SAFE Act
- ▶ Sanctions Under § 13-606(e)

MATERIALS

- ▶ SAFE Act
- ▶ Selected Legislative History
- ▶ Sample Pleadings
- ▶ Sample Discovery



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THE SAFE ACT

West's Annotated Code of Maryland
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Title 13. Protection of Minors, Disabled Persons, Susceptible Adults, and Older Adults (Refs & Annos)
Subtitle 6. Financial Exploitation of Susceptible Adults and Older Adults (Refs & Annos)

MD Code, Estates and Trusts, § 13-601

§ 13-601. Definitions

Effective: October 1, 2021

[Currentness](#)

In general

(a) In this subtitle the following words have the meanings indicated.

Activities of daily living

(b) “Activities of daily living” means basic activities of daily living and instrumental activities of daily living.

Basic activities of daily living

(c) “Basic activities of daily living” means the routine activities that people do every day without assistance that include:

- (1) Eating;
- (2) Bathing;
- (3) Dressing;
- (4) Toileting;
- (5) Mobility; and
- (6) Continence.

Deception

(d) “Deception” means a misrepresentation or concealment of a material fact relating to services rendered, disposition of property, or the use of property intended to benefit a susceptible adult or older adult.

Financial exploitation

(e)(1) “Financial exploitation” means an act taken by a person who:

(i) Stands in a position of trust and confidence with a susceptible adult or older adult and who knowingly obtains or uses, or endeavors to obtain or use, a susceptible adult's or older adult's funds, assets, or property with the intent to temporarily or permanently deprive the susceptible adult or older adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the susceptible adult or older adult, in such a manner that is not fair and reasonable;

(ii) By deception, false pretenses, false promises, larceny, embezzlement, misapplication, conversion, intimidation, coercion, isolation, excessive persuasion, or similar actions and tactics, obtains or uses, or endeavors to obtain or use, a susceptible adult's or older adult's funds, assets, or property with the intent to temporarily or permanently deprive the susceptible adult or older adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the susceptible adult or older adult; or

(iii) Knows or should know that a susceptible adult or older adult lacks capacity to consent and who obtains or uses, or endeavors to obtain or use, the susceptible adult's or older adult's funds, assets, or property with the intent to temporarily or permanently deprive the susceptible adult or older adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the susceptible adult or older adult.

(2) “Financial exploitation” includes:

(i) Breach of a fiduciary relationship resulting in the unauthorized appropriation, sale, or transfer of property;

(ii) Unauthorized taking of personal assets;

(iii) Misappropriation, misuse, or transfer of assets belonging to a susceptible adult or older adult from a personal or joint account; and

(iv) Intentional failure to effectively use a susceptible adult's or older adult's income and assets for the necessities required for the susceptible adult's or older adult's support and maintenance.

(3) “Financial exploitation” does not include an individual's good-faith use of a susceptible adult's or older adult's assets, including for the purposes of establishing and implementing an estate plan intended to reduce taxes or to maximize eligibility for public benefits in order to preserve assets for an identified or identifiable person.

Instrumental activities of daily living

(f) “Instrumental activities of daily living” means the skills and abilities needed to perform day-to-day tasks associated with an independent lifestyle, including:

- (1) Using the telephone;
- (2) Doing laundry and dressing;
- (3) Shopping and running errands;
- (4) Securing transportation;
- (5) Preparing meals;
- (6) Managing medications;
- (7) Housekeeping; and
- (8) Managing finances.

Intimidation

(g) “Intimidation” means a communication, by word or act, that a susceptible adult or older adult will suffer physical violence or emotional injury or will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, social interaction, or emotional or financial support.

Obtains or uses

(h) “Obtains or uses” means any manner of taking or exercising control over property or making any use, disposition, or transfer of property.

Older adult

(i) “Older adult” means an individual who is at least 68 years old.

Position of trust and confidence

(j) “Position of trust and confidence” means a relationship, whether formed by a formal or informal agreement between a susceptible adult or older adult and another person or recognized by a formal declaration or court order, in which:

- (1) A person is entrusted with the use or management of the property or assets of the susceptible adult or older adult, or the susceptible adult's or older adult's care; or

(2) There is a special confidence or trust placed in a person who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the susceptible adult or older adult.

Susceptible adult

(k) “Susceptible adult” means an adult who is unable to perform, without prompting or assistance, one or more activities of daily living, is unable to protect the adult's rights, or has diminished executive functioning, due to:

- (1) Advanced age;
- (2) Mental, emotional, sensory, or physical disability or disease;
- (3) Impaired mobility;
- (4) Habitual drunkenness;
- (5) Addiction to drugs; or
- (6) Hospitalization.

Credits

Added by [Acts 2021, c. 311, § 1](#), eff. Oct. 1, 2021.

MD Code, Estates and Trusts, § 13-601, MD EST & TRST § 13-601

Current with all legislation from the 2021 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

West's Annotated Code of Maryland
Estates and Trusts (Refs & Annos)
Title 13. Protection of Minors, Disabled Persons, Susceptible Adults, and Older Adults (Refs & Annos)
Subtitle 6. Financial Exploitation of Susceptible Adults and Older Adults (Refs & Annos)

MD Code, Estates and Trusts, § 13-602

§ 13-602. Purposes of subtitle

Effective: October 1, 2021

[Currentness](#)

The purposes of this subtitle are to:

- (1) Establish a separate and distinct civil cause of action by a victim, or a representative of the victim, of financial exploitation;
- (2) Provide a path to redress financial exploitation through the recovery of property and assets taken from victims while discouraging protracted litigation;
- (3) Provide access to justice for victims and their families who are otherwise unable or unwilling to retain competent legal assistance due to cost; and
- (4) Strongly deter individuals seeking to take advantage of susceptible adults or older adults.

Credits

Added by [Acts 2021, c. 311, § 1, eff. Oct. 1, 2021](#).

MD Code, Estates and Trusts, § 13-602, MD EST & TRST § 13-602

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MD Code, Estates and Trusts, § 13-603

§ 13-603. Scope of subtitle

Effective: October 1, 2021

[Currentness](#)

This subtitle does not apply to an act taken by:

- (1) Any state or federal bank, trust company, credit union, or savings and loan association; or
- (2) A subsidiary or affiliate of an institution described in item (1) of this section.

Credits

Added by [Acts 2021, c. 311, § 1](#), eff. Oct. 1, 2021.

MD Code, Estates and Trusts, § 13-603, MD EST & TRST § 13-603

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Subtitle 6. Financial Exploitation of Susceptible Adults and Older Adults (Refs & Annos)

MD Code, Estates and Trusts, § 13-604

§ 13-604. Action to recover damages or other appropriate relief

Effective: October 1, 2021

[Currentness](#)

A susceptible adult or older adult who has been subjected to financial exploitation in the State or, in accordance with § 13-605 of this subtitle, a person acting on the susceptible adult's or older adult's behalf may bring a cause of action against a person who has committed financial exploitation against the susceptible adult or older adult to recover damages and obtain other appropriate relief as set forth under this subtitle.

Credits

Added by [Acts 2021, c. 311, § 1, eff. Oct. 1, 2021](#).

MD Code, Estates and Trusts, § 13-604, MD EST & TRST § 13-604

Current with all legislation from the 2021 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

West's Annotated Code of Maryland

Estates and Trusts (Refs & Annos)

Title 13. Protection of Minors, Disabled Persons, Susceptible Adults, and Older Adults (Refs & Annos)

Subtitle 6. Financial Exploitation of Susceptible Adults and Older Adults (Refs & Annos)

MD Code, Estates and Trusts, § 13-605

§ 13-605. Who may bring action; action in addition to other actions

Effective: October 1, 2021

[Currentness](#)

Who may bring action

(a) An action may be brought under this subtitle by a susceptible adult or older adult or by a person serving in one or more of the following representative capacities for a susceptible adult or older adult:

- (1) An attorney in fact, guardian, trustee, or other fiduciary acting on behalf of the susceptible adult or older adult, or a successor named in an instrument providing such authorization;
- (2) A person authorized to make health care decisions for the susceptible adult or older adult, or a successor named in an instrument providing the authorization;
- (3) A spouse, parent, or descendent of the susceptible adult or older adult;
- (4) An individual who would qualify as the susceptible adult's or older adult's presumptive heir;
- (5) A person named as a beneficiary to receive any property, benefit, or contractual right on the susceptible adult's or older adult's death, including a person who would be a beneficiary but for the financial exploitation;
- (6) The personal representative or special administrator of an estate of a deceased susceptible adult or older adult; or
- (7) A government agency that otherwise has authority and jurisdiction, including:
 - (i) The Division of Consumer Protection in the Office of the Attorney General; and
 - (ii) The Securities Commissioner of the Division of Securities in the Office of the Attorney General.

Action in addition to and cumulative with other criminal or administrative claims, causes of action at law or in equity, or remedies

(b) A cause of action authorized under this subtitle:

(1) Is in addition to and cumulative with any other criminal or administrative claims, causes of action at law or in equity, or remedies otherwise available to the susceptible adult or older adult, including an action under [§ 13-204 of the Commercial Law Article](#) and [§ 11-209 of the Corporations and Associations Article](#); and

(2) Shall survive the death of the susceptible adult or older adult.

Credits

Added by [Acts 2021, c. 311, § 1](#), eff. Oct. 1, 2021.

MD Code, Estates and Trusts, § 13-605, MD EST & TRST § 13-605

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MD Code, Estates and Trusts, § 13-606

§ 13-606. Compensatory damages and other appropriate relief

Effective: October 1, 2021

[Currentness](#)

Compensatory damages

(a)(1) A plaintiff in an action brought under this subtitle is entitled to recover compensatory damages.

(2) The damages awarded under this section are in addition to and cumulative with other lawful and administrative damages available to a party.

Additional monetary award

(b) A party who brings an action under this subtitle to recover for injury or loss and is awarded compensatory damages may also seek and the court may award an amount not exceeding three times the compensatory damages and prejudgment interest.

Additional appropriate relief

(c)(1) In addition to monetary damages, a party who brings an action under this subtitle is also entitled to:

(i) Any other appropriate relief, including emergency, preliminary or permanent injunction, rescission, restitution, accounting, unjust enrichment, declaratory relief, and constructive trust; and

(ii) Emergency or interim injunctive relief to preserve the assets of the susceptible adult or older adult, without the requirement of a bond in the discretion of the court.

(2) The remedies provided in this subsection are in addition to and cumulative with other legal, equitable, and administrative remedies available to a party.

Attorney's fees and expenses

(d) The court may award reasonable attorney's fees and expenses to any person who brings an action under this subtitle for injury or loss and is awarded damages or any other remedy.

Action brought in bad faith or of a frivolous nature; attorney's fees and expenses

(e) If it appears to the satisfaction of the court, at any time, that an action is brought in bad faith or is of a frivolous nature, the court may order the offending party to pay to the other party reasonable attorney's fees and expenses.

Credits

Added by [Acts 2021, c. 311, § 1](#), eff. Oct. 1, 2021.

MD Code, Estates and Trusts, § 13-606, MD EST & TRST § 13-606

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Subtitle 6. Financial Exploitation of Susceptible Adults and Older Adults (Refs & Annos)

MD Code, Estates and Trusts, § 13-607

§ 13-607. Statute of limitations

Effective: October 1, 2021

[Currentness](#)

In general

(a) Except as provided in subsection (b) of this section, an action under this subtitle shall be commenced within 5 years after the susceptible adult or older adult, or the susceptible adult's or older adult's representative discovers or, through the exercise of reasonable diligence, should have discovered the facts constituting financial exploitation.

Criminal prosecution affect on statute of limitations

(b)(1) If a criminal prosecution is commenced that arises out of the same facts as an action under this subtitle, the time during which the prosecution is pending shall not be computed as part of the period within which the action under this subtitle may be brought.

(2) After the conclusion of the criminal prosecution described under paragraph (1) of this subsection, the action under this subtitle may be brought within the later of:

(i) The remainder of the period specified under subsection (a) of this section; or

(ii) 1 year.

Credits

Added by [Acts 2021, c. 311, § 1](#), eff. Oct. 1, 2021.

MD Code, Estates and Trusts, § 13-607, MD EST & TRST § 13-607

Current with all legislation from the 2021 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

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Subtitle 6. Financial Exploitation of Susceptible Adults and Older Adults (Refs & Annos)

MD Code, Estates and Trusts, § 13-608

§ 13-608. Construction and application of subtitle

Effective: October 1, 2021

[Currentness](#)

In general

(a) This subtitle shall be construed and applied liberally to promote its purpose of deterring and remedying the financial exploitation of susceptible adults and older adults.

Scope of subtitle

(b) This subtitle is not intended to alter or amend the burdens of proof or presumptions required by law.

Credits

Added by [Acts 2021, c. 311, § 1](#), eff. Oct. 1, 2021.

MD Code, Estates and Trusts, § 13-608, MD EST & TRST § 13-608

Current with all legislation from the 2021 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

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Subtitle 6. Financial Exploitation of Susceptible Adults and Older Adults (Refs & Annos)

MD Code, Estates and Trusts, § 13-609

§ 13-609. Short title

Effective: October 1, 2021

[Currentness](#)

This subtitle may be cited as the Maryland Statute Against Financial Exploitation (SAFE) Act.

Credits

Added by [Acts 2021, c. 311, § 1, eff. Oct. 1, 2021](#).

MD Code, Estates and Trusts, § 13-609, MD EST & TRST § 13-609

Current with all legislation from the 2021 Regular Session of the General Assembly. Some statute sections may be more current, see credits for details.

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**SAMPLE COMPLAINT
FOR FINANCIAL EXPLOITATION**

**ROBERT SMITH, Individually &
on Behalf of Mother D. Jones
123 Concerned Street
Baltimore MD 21222**

Plaintiff,

v.

**DEFENDANT DOE
Individually & as Attorney-in-Fact
for Mother D. Jones
1001 Sketchy Way
Baltimore MD 21222**

Defendant.

* * * * *

COMPLAINT

Plaintiff, Robert Smith, Individually & on behalf of Mother Jones, by Adam M. Spence, Elizabeth H. Johnson, and SPENCE | BRIERLEY, P.C., her attorneys, for his Complaint against Defendant, Defendant Doe, Individually and as Attorney-in-Fact for Mother D. Jones.

PARTIES

1. Plaintiff, Robert Smith (“Plaintiff”), is an adult resident of Baltimore County, Maryland. Robert is the son of Mother Jones (“Mother”), and the late Jack Jones (“Father”).

2. Defendant, Defendant Doe (“Defendant”), is an adult resident of Baltimore County, Maryland. Defendant is the daughter of the Jones, and the brother of Mr. Smith.

FACTS COMMON TO ALL COUNTS

3. Mother turned 78 on January 1, 2017.

4. In the years leading up to 78th birthday, Mother suffered from age based cognitive decline.

5. At some point prior to her 78th birthday Mother was no longer able to manage her finances and keep up with bills. She often forgot to pay her bills or when she did pay them, she paid the wrong amounts or bounced checks when she did.

6. As a result, on January 1, 2017, Mother executed a Power of Attorney naming Defendant as her Attorney-in-Fact to allow Defendant to assist her with her finances.

7. Although Defendant was Mother’s Attorney-in-Fact, Mother lived with Plaintiff. Plaintiff provided Mother with considerable care.

8. After execution of the Power of Attorney, Defendant was added to Defendant’s account ending in ****2478 held at M&T Bank (the “Bank Account”) as a matter of convenience.

9. At the time Defendant was named as attorney-in-fact, Mother had ample assets for her long-term medical needs.

10. However, Defendant thereafter abused her fiduciary duty to Mother and failed to use the Bank Account monies for Mother. Indeed, Defendant heavily drew down upon the Bank Account for the apparent purpose of pursuing her own desire to

rehabilitate and rent houses.

11. Defendant also appears to have withdrawn substantial monies from the Bank Account for own personal use including gambling, traveling, and other assorted purposes.

12. Alongside the withdrawal of monies from the Bank Account, Defendant also forged checks out of one or more accounts and deposited them into her own personal account.

13. Moreover, Defendant also liquidated Mother's large life insurance policy with Life Insurance Company A and directed the proceeds to the Bank Account. Defendant immediately thereafter used those proceeds to purchase two separate rental properties in Defendant's own name.

14. While renting out those houses, Defendant has never accounted for and has failed to deposit substantial rental monies from those properties into the accounts held for Mother.

15. Meanwhile, Defendant applied with the Social Security Administration – unbeknownst to Plaintiff - to be appointed as the Representative Payee for Mother's Social Security checks. Despite her fiduciary duty to use those funds for Mother, Defendant has failed and continues to fail to use those funds for Mother's care and welfare.

16. In the meantime, Defendant has taken numerous vacations, gambled considerably, and paid off the mortgage on her house, presumably from monies unlawfully taken from Mother.

17. In November, Mother suffered several strokes and was also diagnosed

with dementia. Because of her strokes and increasing cognitive decline, Plaintiff was no longer able to care for Mother. Indeed, Mother had become so aggressive and difficult to manage that Plaintiff had no choice but to move her to an Assisted Living Facility for care.

18. At some point, Plaintiff received notice that his mother's invoices for the Assisted Living Facility were not being paid.

19. When Plaintiff called Defendant to ask why she wasn't paying for their Mother's care, Defendant stated that there were no longer any monies to pay for Mother's care.

20. Unaware of the monies taken by Defendant, Plaintiff believed that his Mother should had more than sufficient funds to pay for her long-term care for many years to come.

21. When Plaintiff confronted Defendant with this belief, Defendant became hostile and "informed" Plaintiff that he "does not understand anything, does not understand the finances, that he should not get involved, and that she, Defendant, is managing the funds."

22. Meanwhile, the assisted living facility in which Mother resides has threatened to discharge Mother for lack of payment, which necessitated this lawsuit.

COUNT I
(Accounting of Defendant's Use of the Power of Attorney)

23. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

24. Plaintiff is a "beneficiary" as contemplated by §17-103(6) of the Estates & Trust Article of the Maryland Code (the "E&T Code") and has standing to seek this

Court's review and accounting of Defendant's actions as Attorney-in-Fact for Mother.

25. Plaintiff seeks this Court's review of Defendants actions using the Power-of-Attorney and require a full accounting from her.

WHEREFORE, Plaintiff respectfully requests that this Court (a) enter an Order requiring Defendant, as Attorney-in-Fact for Mother, to fully and completely account to this Court for all financial transactions she has undertaken for Mother pursuant to the Power of Attorney; (b) review such transactions for their propriety and appropriateness; (c) enter judgment in favor of Plaintiff, on behalf of Mother, pursuant to § 17-103 for any damages arising from any self-dealing, waste or other fiduciary breaches by Defendant of her fiduciary duties as Attorney-in-Fact for Mother; (e) grant Plaintiff his legal fees and expenses incurred in prosecuting this matter; (f) remove Defendant as Attorney-in-Fact for Mother; and (g) grant such other and further relief as this Court deems proper.

COUNT II
(Financial Exploitation – The SAFE Act)

26. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

27. As a result of her age, Mother is an older adult, as contemplated by § 13-601(i) of the Statute Against Financial Exploitation in the Estates and Trust Art. (the "SAFE Act")

28. As a result of her cognitive condition and inability to manage her finances, Mother is a susceptible adult, as contemplated by § 13-601(k) of the "SAFE Act."

29. Plaintiff has standing to bring this action on behalf of his Mother under §13-605(2), (3), & (4) of the SAFE Act.

30. As Mother's attorney-in-fact, Defendant stood in a position of trust and

confidence as contemplated by § 13-601(e) of the SAFE Act.

31. Defendant knowingly obtained and used Mother's funds with the intent to deprive Mother of such funds temporarily or permanently.

32. This action is brought under the SAFE Act to recover those funds unlawfully taken by Defendant by her financial exploitation of Mother.

WHEREFORE, Plaintiff respectfully request that this Honorable Court (a) grant judgment in favor of Plaintiff, on behalf of Mother for compensatory damages in an amount in excess of \$75,000; (b) grant Mother up to treble damages for Defendant's financial exploitation; (c) grant Mother her legal fees incurred in prosecuting this matter under the SAFE Act; and (d) grant such other and further relief as this Court deems proper.

COUNT IV

(Injunctive Relief – Injunction Against Further Financial Exploitation)

33. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

34. Defendant knowingly obtained and used Mother's funds with the intent to deprive Mother of such funds temporarily or permanently.

35. Defendant continues to maintain control over Mother's on-going social security payments.

36. Because Mother requires such funds to pay for her long-term care, any loss or misuse of those funds will cause irreparable harm to Mother.

37. Section 13-606 of the SAFE Act provides this Court with the ability to provide emergency or injunctive relief to preserve the assets of the susceptible adult or older adult, without bond.

WHEREFORE, Plaintiff respectfully request that this Honorable Court (a) issue an emergency injunction enjoining Defendant from any use of Mother's funds (in her possession or to come into her possession) except for the care and well-being of Mother; (b) compelling Defendant to use such funds to pay for Mother's care and well-being as determined by her medical providers; (c) without the imposition of any bond; and (d) grant such other and further relief as this Court deems proper.

COUNT III
(Unjust Enrichment)

38. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

39. Defendant has taken monies not properly belonging to her.

40. Defendant has used those monies for her own benefit such as paying off the mortgage on her house.

41. The circumstances render it inequitable for Defendant to retain those monies.

42. Defendant, cannot, in good conscience, retain the beneficial interest of those monies without payment of their value back to Defendant.

WHEREFORE, Plaintiff respectfully request that this Honorable Court (a) grant judgment in favor of Plaintiff, on behalf of Mother; (b) grant judgment in favor of Plaintiff on behalf of Mother and against Defendant for the amount of monies she has taken unlawfully misappropriated, in an amount in excess of \$75,000; (c) require Defendant to deliver to Plaintiff such sum of the monies Defendant has taken in violation of her breach of fiduciary duty; (d) impose a constructive trust on any assets acquired through Defendant's unlawful use of Mother's assets; and (e) grant such other and further

relief as this Court deems proper.

COUNT IV
(Immediate Removal of Defendant as Attorney-in-Fact)

43. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

44. As Attorney-in-Fact, Defendant owed Mother a fiduciary duty.

45. By unlawfully misappropriating Mother's money, Defendant breached that fiduciary duty.

46. Section §15-112(1) of the Estates and Trusts Article states that "[a] court shall remove a fiduciary who has: . . . (iv) Breached [her] duty of good faith or loyalty in the management of property of the fiduciary estate."

47. Defendant deliberately and willfully withdrew and used Mother's funds for her own personal benefit and gain.

48. Defendant should be immediately removed by this Court and Plaintiff or guardian ad litem be substituted in her place.

WHEREFORE, Plaintiff, on behalf of Mother, respectfully request that this Honorable Court enter an Order (a) removing Defendant as Power-of-Attorney and as the Representative Payee of Mother's social security, (b) granting Plaintiff her attorney's fees incurred in prosecuting this action; and (c) granting such other and further relief as this Court deems proper.

Respectfully submitted,

Adam M. Spence, Esq. CPF# 9806240230
Elizabeth H. Johnson, Esq. CPF# 1512150348
SPENCE | BRIERLEY, P.C.
409 Washington Avenue, Suite 1000
Towson MD 21204
(410) 823-5003
Telecopier: (443) 836-9181
Counsel for Plaintiff

JURY DEMAND

Plaintiff demands trial by jury as to all issues so triable.

Respectfully submitted,

Adam M. Spence, Esq. CPF# 9806240230
Elizabeth H. Johnson, Esq. CPF# 1512150348
SPENCE | BRIERLEY, P.C.
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(410) 823-5003
Telecopier: (443) 836-9181
Counsel for Plaintiff

**SAMPLE DISCOVERY
FOR FINANCIAL EXPLOITATION
COMPLAINT
UNDER THE SAFE ACT**

ROBERT SMITH

*

IN THE

Plaintiff,

*

CIRCUIT COURT FOR

v.

*

BALTIMORE COUNTY,

JANE L. DOE, et al.

*

MARYLAND

Defendant.

*

* * * * *

**PLAINTIFF’S FIRST SET OF INTERROGATORIES
TO DEFENDANT, JANE DOE**

TO: JANE DOE

Plaintiff, Robert Smith, Individually and as Attorney-in-Fact for Mother Jones, by Adam M. Spence, Elizabeth H. Johnson, and SPENCE | BRIERLEY, his attorneys, requests that Defendant, Jane Doe, answer the following Interrogatories, under oath, and in accordance with Maryland Rule 2-421.

INSTRUCTIONS

(a) In accordance with Rule 2-421(b), your response shall set forth the Interrogatory, and shall set forth the answer to the Interrogatory “separately and fully in writing under oath” or “shall state fully the grounds for refusal to answer any Interrogatory.” The response shall be signed by you.

(b) Also in accordance with Rule 2-421(b), your answers “shall include all information available” to you “directly or through agents, representatives, or attorneys.”

(c) Pursuant to 2-421, these Interrogatories are continuing in character. If you obtain further or different material information before trial, you are required to supplement your answers promptly.

(d) If, pursuant to 2-421, you elect to specify and produce business records of yours in answer to any Interrogatory, your specification shall be in sufficient detail to enable the Interrogating party to locate and identify the records from which the answer may be ascertained.

(e) If you perceive any ambiguities in a question, instruction, or definition, set forth the matter deemed ambiguous and the construction used in answering.

(f) If you assert any privilege, protection, or exemption from disclosure in refusing to answer all or part of any Interrogatory below, identify the privilege, protection, or exemption claimed, and describe the communication allegedly protected by the privilege, in each case with sufficient particularity to permit Defendant to independently evaluate the applicability of the claimed privilege, protection, or exemption.

(g) Unless otherwise indicated, these Interrogatories refer to the time, place, and circumstances of the occurrence mentioned or complained of in the Complaint.

DEFINITIONS

In these interrogatories, the following definitions apply:

A. “Document(s)” includes a writing, drawing, graph, chart, photograph, recording, e-mail, and other data compilation from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form.

B. “Identify,” “identity,” or “identification,” (1) when used in reference to a natural person, means that person’s full name, last known address, home and business telephone numbers, and present occupation or business affiliation; (2) when used in reference to a person other than a natural person, means that person’s full name, a description of the nature of the person (that is, whether it is a corporation, partnership, etc.) under the definition of person below, and the person’s last known address, telephone number, and principal place of business; (3) when used in reference to any person after the person has been properly identified previously means the person’s name; and (4) when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee and the type of document (e.g., letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the document to your answer, appropriately labeled to correspond to the Interrogatory.

C. “Person(s)” includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated in association, limited liability partnership, limited liability company, the state, an agency or political subdivision of the state, a court, and any other governmental entity.

D. “State all facts” means to state those facts (a) to the extent of your present knowledge, (b) which you or your agents can ascertain by diligent search as required by Rule 2-421 of the Maryland Rules or (c) whose probable existence is known to you.

E. The pronoun “you” and the possessive “your” refer to the party to whom these Interrogatories are addressed. Because these Interrogatories are addressed to you both as an Individual and as a representative of the Estate, you should answer these questions as directed to both entities. You may feel it necessary to differentiate between your answer as an individual and as a representative of the estate. To the extent that you believe it necessary, you should designate in your Answer the capacity in which you are answering any such Interrogatory.

F. “Plaintiff” or “Robert” means Robert Smith, his agent(s), or representative(s), or any one or more of them.

G. “Defendant” means, Jane L Doe (“Jane”), her agent(s), or representative(s), or any one or more of them.

H. “Father” means Jack Jones.

I. “Mother” means Mother Jones.

J. “Complaint” refers to the Complaint and any amendments thereto filed by the Plaintiffs in this action.

K. “Answer” and “Counterclaim” refers to the Answer and Counterclaim that one or more Defendants have filed in these proceedings.

L. Your “Family” refers to any one or more of you, your husband, and your children.

M. "Relating" means referring to, being evidence of, memorializing, or concerning in any way all or any portion of the specified facts or contentions.

N. "Each" shall include the terms "each and every."

O. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all", "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine or neuter form shall include each of the other genders.

P. Unless otherwise stated, a defined term (as indicated by initial capitalization, e.g., the “Property”) shall refer to those terms as defined by Plaintiffs in their Complaint.

Q. The term “Communication” means any conversation, discussion, meeting, agreement, or other exchange or transmittal of information, whether written or oral, and whether by electronic, telephonic, or other means (including by means of electronic mail, facsimile, or cellular telephone).

INTERROGATORIES

INTERROGATORY NO. 1: Identify the name, address, and telephone number of each person(s) who has personal knowledge of facts which are relevant to the claims and your defenses, stating the basis or the subject matter of their knowledge and their relationship to you.

INTERROGATORY NO. 2: Set forth in detail, your version and description of the events which are the subject of the Complaint, including all of your personal observations. Please provide all relevant times, dates, names and locations. As part of your answer please also produce any and all documents identified therein.

INTERROGATORY NO. 3: Identify all facts upon which you base your Counterclaim.

INTERROGATORY NO. 4: Have you ever used any Power-of -Attorney (including but not limited to that certain Power of Attorney) to act on Mother's behalf or at her direction? If so, for each such act, set forth in detail (a) the date of use, (b) the purpose of use; (c) the result of the use, (d) the circumstances giving rise to such use including any communications and discussions regarding same and (e) any persons with knowledge or information regarding such use. If you have not used any Power-of-Attorney, then so state in your Answer.

INTERROGATORY NO. 5: Identify each and every asset in which Mother held any interest whatsoever since January 2015, whether held individually or jointly with any other person and whether owned previously or obtained as a result of Father's death or other transaction. Include, without limitation, savings accounts, checking accounts, cash, stocks, bonds, mutual funds, certificates of deposit, life insurance policies (whether whole or term), retirement accounts, any interest in real estate, partnerships, corporations, LLCs, limited partnerships or any other similar entity, furniture, jewelry, furs, and any interest in a lawsuit or pending action. (For bank and other accounts, provide the name of the institution that held the account, and the account number. For tangible assets, describe such assets in full detail, including any serial numbers or other identifying marks, logos, or numbers. For real property, provide the full postal address of the property. For other Assets, describe them to the best of your ability). Identify all documents relating to any Asset identified in your answer to this interrogatory.

INTERROGATORY NO. 6: For each Asset identified in your above answer, state all facts and identify all documents relating to any assignment, sale, transfer, gift, retitling or encumbrance of Robert's right, title or interest in and to such Asset. In your answer, describe the interest transferred by any such transaction, the recipient of any such interest, any consideration given or paid by such recipient; the date on which the transaction took place, and identify any other individuals aware of the transfer.

INTERROGATORY NO. 7: Identify each and every asset, financial or otherwise, your Family obtained as a result of Father's death, whether held jointly or coming into your Family's possession as a result of his death. As part of your answer, identify whether the asset was acquired as a beneficiary, joint owner, or otherwise, where the asset was (or is) located, the amount of the asset at the time of Jack's passing, and the current whereabouts of that asset.

INTERROGATORY NO. 8: Identify any and all credit cards, bank accounts, and other financial assets, held by your Family, individually or jointly, from January 2013 through present. As part of your answer, identify the person(s) having custody or control over each such item.

INTERROGATORY NO. 9: Set forth in detail the facts and circumstances surrounding any and all use of Mother's assets for investment, expenses, gifts, distributions or otherwise. As part of your answer, set forth (a) the date of payment; (b) the amount of payment; (c) the payee; (d) the manner of payment; (e) the purpose for such payment; and (f) any communications related to same.

INTERROGATORY NO. 10: Set forth in detail the facts and circumstances surrounding each and every deposit or use of monies made payable to Mother or paid on her behalf. As part of your answer, identify the money payable by date, payee, manner of payment, amount of payment, reason for payment, and any account where such payment was deposited.

INTERROGATORY NO. 11: Set forth in detail the facts and circumstances surrounding any checks or monies received by your Family from Mother's assets paid on her behalf or from the account held jointly by you and Mother. As part of your answer identify where this check was deposited, whether it was spent and if so, provide an accounting of those monies. Please also identify any person(s) involved or nearby during any and all communication(s)

INTERROGATORY NO. 12: Set forth in detail any payments or monies received by your Family from the rental of [address]. As part of that answer, state the date of such payment, the person making such payment, the amount of such payment, the manner of payment, and whether you deposited those monies into a bank account (and if so, state the bank and holder of such account).

INTERROGATORY NO. 13: There are various savings, checking and investment accounts that are held in the name of Mother, Plaintiff, and/or you, whether jointly or individually between one or more of you. Please identify with particularity each such account as to which you are aware and state which persons you believe the monies in the respective accounts belonged to and belong to and the reason for such belief.

INTERROGATORY NO. 14: Set forth in detail the facts and circumstances surrounding any monies your Family received from any life insurance policies held by Mother, including, but not limited to, the Life Insurance Company A. As part of your answer, state the policy, its

owner, the date and manner your Family received such money, the reason your Family received such money, where such money was deposited, and how such money was used.

INTERROGATORY NO. 15: Set forth in detail the facts and circumstances surrounding any and all negotiations, communications and discussions related to the decision to purchase and later sell the 456 Main Street Property and the 789 Main Street Property, including the source of funds for the purchase and the later distribution of sale proceeds.

INTERROGATORY NO. 16: Set forth in detail the facts and circumstances surrounding each and every expense of any type paid related to the 456 Main Street Property and 789 Main Street Property. As part of your answer, identify the type of expense, the purpose of such expense, its costs, how it was paid for and with what monies and identify all documents supporting such expense.

INTERROGATORY NO. 17: If you contend you are entitled to reimbursements and/or compensation for your work acting on Mother's behalf, state accurately and in detail the facts upon which you rely (including any eyewitnesses) and itemize the nature and amount of all reimbursements and/or compensation you allege to be owed. If you do not so contend, or if you do so contend but have no facts to support your contention, state either fact in your answer.

INTERROGATORY NO. 18: Set forth in detail the facts and circumstances surrounding your application for, appointment of and actions taken pursuant to your appointment as Representative Payee for Mother's Social Security benefits. As part of your answer, set forth in detail any person(s) involved or nearby during the communication(s), and the result of the communication(s), and identify any documents associated with your actions as Mother's Representative Payee.

INTERROGATORY NO. 19: Is Mother entitled to Social Security benefits? If so, set forth in detail the facts and circumstances surrounding same. If not or you do not know, set forth same in your answer.

INTERROGATORY NO. 20: Describe in detail each and every conversation you had with Plaintiff regarding your management of Mother's assets for her health, maintenance, support and medical care. As part of your answer, set forth in detail the substance of such communication, any person(s) involved or nearby during the communication(s), and the result of the communication(s).

INTERROGATORY NO. 21: Describe all instances when you visited with Mother, administrators or care providers at Assisted Care Facility while Mother resided. As part of your answer, set forth the date of such visit(s), the length of such visit(s), the purpose of such visit(s), any person(s) you met with during such visit and the substance of any communications you had with anyone during such visit(s).

INTERROGATORY NO. 22: Set forth in detail the facts and circumstances surrounding the payoff of the mortgage for real property 1001 Side Street, MD. As part of your answer, identify the originating source of monies used for such payoff and any documents related to the payoff of this property.

INTERROGATORY NO. 23: Identify any and all financial institutions where you or your Family has cashed, deposited or used any monies received (a) from Mother, (b) on Mother's behalf, (c) for Mothers' benefit and/or (d) related to Mother's assets or the use, sale or transfer thereof. As part of your answer, identify the financial institution, the accounts held there, their account numbers, and the names on the accounts.

INTERROGATORY NO. 24: Set forth in detail the facts and circumstances surrounding the numerous checks paid to you, individually from Bank Account ****1234, account titled in Mother and your name, which were deposited elsewhere.

INTERROGATORY NO. 25: Identify any oral or written admission or statement relating to the subject matter of the Complaint and Counterclaim made at any time by you and/or any other party or third party related to this action, state the substance of each such statement or admission, state the place where and date when each such statement or admission was made, identify the person who made each such statement or admission, identify all persons who were present at the making of each such statement or admission, state whether each such statement or admission was oral or written, and, if written, identify the documents containing it and the custodians thereof.

INTERROGATORY NO. 26: Identify each person whom you expect to call as an expert witness at trial, state the areas of expertise and qualifications of each such expert, state: the subject matter on which the expert is expected to testify; the substance of the findings and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the date of each expert's retention; the full details of any agreement for compensation of any such expert; and the date(s) of any written report(s) of such expert(s).

INTERROGATORY NO. 27: If you intend to rely upon any documents or other tangible things which support, detract from or relate to a position that you have taken or intend to take in the action, including any claim for damages, provide a brief description, by category and location, of all such documents or other tangible things, and identify all persons having possession, custody or control of them. As part of your answer please also produce any and all documents identified therein.

Respectfully Submitted,

Adam M. Spence, Esq.
Elizabeth H. Johnson, Esq.
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409 Washington Avenue, Suite 1000
Towson, MD 21204
(410) 823-5003
Telecopier: (443) 836-9181
Attorneys for Plaintiff

ROBERT SMITH

*

IN THE

Plaintiff,

*

CIRCUIT COURT FOR

v.

*

BALTIMORE COUNTY,

JANE L. DOE.

*

MARYLAND

Defendant.

*

* * * * *

**PLAINTIFF’S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT, JANE DOE**

TO: Jane Doe
1001 Side Street, MD

Plaintiff, Robert Smith, Individually and as Co-Attorney-in-Fact for Mother D. Jones, by Adam M. Spence, Elizabeth H. Johnson, and SPENCE | BRIERLEY, P.C., his attorneys, requests that Defendant, Jane Doe, produce the below designated documents for inspection and copying at SPENCE | BRIERLEY, 409 Washington Avenue, Suite 1000, Towson, MD 21204, in accordance with Maryland Rule 2-422. In lieu thereof, Defendant may produce and deliver to the undersigned counsel copies of such documents.

INSTRUCTIONS AND DEFINITIONS

A. If any designated document was, but is no longer in your possession or subject to your control, state what disposition was made of each such document.

B. These requests include the production of all non-identical copies, including drafts and copies upon which notes have been made.

C. These requests include the production of all computer or electronically generated matter or information of any kind, whether or not currently existing in printed form, including that generated by an electronic mail system or otherwise.

D. To the extent that any request is objected to, set forth in detail all reasons for said objection in the manner prescribed by the applicable rules. If you object in part to any Request, produce all documents included in the remainder of such Request.

E. If you claim privilege(s) as grounds for failing to produce any document herein

requested, describe the factual basis for the claim of privilege in sufficient detail so as to permit the court to adjudicate the validity of that claim. In addition, for each document withheld on a claim of privilege set forth the following information:

- (i) the name of sender(s);
- (ii) the name of author(s);
- (iii) the name(s) of the person(s) to whom copies were sent or by whom they were at any time received;
- (iv) the job title of every person named in (i), (ii) and (iii) above;
- (v) date of document;
- (vi) nature of document (e.g., letter, memorandum, telegram, etc.); and
- (vii) a brief description of the subject matter of the document.

F. “Communication(s)” includes any oral utterance made, heard or overheard, whether in person or by telephone or otherwise, as well as every document and other mode of intentionally conveyed meaning.

G. “Document” shall mean the original and all drafts and all copies, including copies with notations or marks not found on the original, of any writing or printed, graphic or electronic materials of any nature whatsoever, including, but not limited to, records, reports, memoranda, notes, calendar or diary entries, letters, envelopes, telegrams, telexes, e-mails, electronic mail messages, telephone bills, checks, other written communications, messages (including, but not limited to, reports of telephone conversations and conferences), studies, summaries, tabulations, analysis, printed matter, minutes, photographs, tapes, tape recordings, correspondence, financial statements, worksheets, other communications, contracts, agreements, other official documents and legal instruments, journals, manuals, technical releases, employment applications and agreements, orders, statements, bills, receipts, vouchers, notebooks, data sheets and records kept by any other means. In all cases where originals and/or non-identical copies are not available, the term “document” also means identical copies of original documents and copies of non-identical copies.

H. “Related to”, “relate to”, and “relating to” are defined as having any relationship or connection to, concerning, being connected to, commenting on, responding to, containing, evidencing, showing, memorializing, describing, analyzing, reflecting, pertaining to, compromising, constituting, identifying, discussing or otherwise establishing a reasonable, logical or causal connection.

I. The word “or” is used in the inclusive sense. For example, an interrogatory seeking information about either A or B, calls for all information about A, and all information about B, as well as all information about both A and B.

J. While some requests may arguably seek documents sought by other requests herein, narrower requests should in no way be construed to limit in any way the broader request.

K. "Plaintiff" means Robert Smith, his agent(s), or representative(s), or any one or more of them.

L. "Defendant" means Jane Doe, her agent(s), or representative(s), or any one or more of them.

M. "Decedent" or "Father" means Father Jones.

N. "Mother" means Mother Jones.

O. "Complaint" refers to Complaint and any amendments thereto filed by Plaintiff in this action.

P. "Answer" and "Counterclaim" refers to any Answer and/or Counterclaim that the Defendant(s) has filed in this matter.

Q. "Assets" refers to any item of value including, but not limited to, cash, stocks, bonds, mutual funds, certificates of deposit, life insurance policies (whether whole or term), retirement accounts, any interest in partnerships, corporations, LLCs, limited partnerships or any other similar entity or real property, furniture, jewelry, furs, and any interest in a lawsuit or pending action.

R. "Relating" means referring to, being evidence of, memorializing, or concerning in any way all or any portion of the specified facts or contentions.

S. "Each" shall include the terms "each and every."

T. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all", "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both "and" and "or." Words in the masculine, feminine or neuter form shall include each of the other genders

U. Unless otherwise stated, a defined term (as indicated by initial capitalization, e.g., the "Property") shall refer to those terms as defined by Plaintiffs in their Complaint.

DESIGNATED DOCUMENTS

REQUEST NO. 1. All documents that relate to the matters raised in the Complaint, Counterclaim and/or your Answer.

REQUEST NO. 2. All documents possessed, gathered, prepared, or received by you relating to your defenses that are the subject of this action, including the manner of receipt, the date of receipt, and from whom such documents were received.

REQUEST NO. 3. All documents that were identified in, were relied upon by you in preparing, or relate to your answers to the Interrogatories.

REQUEST NO. 4. All documents that relate to, support or detract from a position that you have taken or intend to take in this matter.

REQUEST NO. 5. All documents that relate to any defenses that you have in this matter.

REQUEST NO. 6. Any documents related to any admissions against interest by any party in this action.

REQUEST NO. 7. All statements of any party to this action related to the subject matter of Complaint, Counterclaim, and/or Answer.

REQUEST NO. 8. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any communication between you and Plaintiff or anyone known or believed by you to have been acting under the authority of the Plaintiff (including their agents and/or attorney), at any time, concerning the occurrences which are the subject matter in the Complaint.

REQUEST NO. 9. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any communication between you and Mother or anyone known or believed by you to have been acting under the authority of Mother (including her agents and/or attorney), at any time, concerning the occurrences which are the subject matter in the Complaint.

REQUEST NO. 10. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any communication between you and any third party or other entity related to the facts and circumstances set forth in the Complaint and/or Answer.

REQUEST NO. 11. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any communication between Plaintiff and any third party or other entity related to the facts and circumstances set forth in the Complaint and/or Answer.

REQUEST NO. 12. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any communication between Mother and any third party or other entity related to the facts and circumstances set forth in the Complaint and/or Answer.

REQUEST NO. 13. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any communication between Mother and the Defendant related to the facts and circumstances set forth in the Complaint and/or Answer.

REQUEST NO. 14. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any communication between Plaintiff and the Defendant related to the facts and circumstances set forth in the Complaint and/or Answer.

REQUEST NO. 15. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any communication between Defendant and any third party related to the facts and circumstances set forth in the Complaint and/or Answer.

REQUEST NO. 16. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any agreement, occurrences or facts which are the subject matter of the Complaint and/or Answer.

REQUEST NO. 17. Any documents you have obtained from any third party through request, informal discovery, subpoena or otherwise related to the facts and circumstances alleged in the Complaint.

REQUEST NO. 18. All documents, photographs, films, videotapes, audiotapes or other mechanical transcription of or relating to the subject matter of this litigation.

REQUEST NO. 19. Any and all documents relating to any oral or written statement given by a witness or person with personal knowledge or discoverable information relating to any fact in dispute in the Complaint and/or Answer.

REQUEST NO. 20. Any and all documents which refer or relate to the Power of Attorney executed by Mother.

REQUEST NO. 21. All documents related to transfers, payments, distributions, gifts or otherwise of any assets previously owned by, held by or in which Mother had an interest, arising from or related to any use of Mother's Power of Attorney.

REQUEST NO. 22. All documents related to any assets previously owned by, held by or in which Father had any interest ("Father's Assets"), which the Defendant obtained as a result of Father's death, whether held jointly or coming into your possession as a result of his death.

REQUEST NO. 23. All documents related to any of Father's Assets that Mother obtained as a result of Father's death, whether held jointly or coming into her possession as a result of his death.

REQUEST NO. 24. All documents related to any of financial assets which is still held or titled solely in Father's name.

REQUEST NO. 25. Any and all documents related to or referring to any and all financial records, monthly statements, checks written or received related to any checking, savings, securities, investment or similar accounts titled in Father's name, individually and/or jointly with any other person or entity, from January 2015 through present.

REQUEST NO. 26. All monthly statements and copies of cancelled checks for any checking, savings, securities, investment or similar accounts held in the name of Father, individually and/or jointly with any other person or entity, from January 2015 through present.

REQUEST NO. 27. Any and all documents related to or referring to any and all debit accounts, credit accounts, credit-card accounts (including charges incurred and payments made), checking accounts, savings accounts, money market accounts, certificates of deposit, or other assets or accounts held by or in the name of Father, individually and/or jointly with any other person or entity, from January 2015 through present.

REQUEST NO. 28. Any and all documents related to or referring to any and all financial records, monthly statements, checks written or received related to any checking, savings, securities, investment or similar accounts titled in Mother's name, individually and/or jointly with any other person or entity, from January 2015 through present.

REQUEST NO. 29. Any and all documents related to or referring to any and all debit accounts, credit accounts, credit-card accounts (including charges incurred and payments made), checking accounts, savings accounts, money market accounts, certificates of deposit, or other assets or accounts by or in the name of Mother, individually and/or jointly with any other person or entity, from January 2015 through present.

REQUEST NO. 30. Any and all beneficiary designation forms, whether or not superseded or no longer operative, related to any of Father or Mother's assets.

REQUEST NO. 31. All documents related to any sale, transfer, gift, retitling or encumbrance of any interest in Mother's Assets.

REQUEST NO. 32. All documents related to any payment made by you on behalf of Mother, whether for her care, health, maintenance, or support.

REQUEST NO. 33. All documents related to the maintenance of any real properties which are the subject of this dispute or otherwise held on Mother's behalf, including proposals, invoices, and payments.

REQUEST NO. 34. All documents related to any personal benefit obtained by you or your spouse from the use of Mother's assets at any time from and after January 2015.

REQUEST NO. 35. All documents received from the IRS on behalf of Mother.

REQUEST NO. 36. Any and all tax returns or drafts of tax returns to be filed by you on behalf of Mother from January 2015 through the present.

REQUEST NO. 37. Copies of all federal and state income tax returns for Mother, for the tax years 2015 through present together with the schedules (including depreciation schedules) and worksheets thereof, and all other papers, documents and memoranda referring to any audit or adjustments made in connection therewith, past and pending.

REQUEST NO. 38. Copies of all federal and state income tax returns for Defendant, for the tax years 2015 through present together with the schedules (including depreciation schedules) and worksheets thereof, and all other papers, documents and memoranda referring to any audit or adjustments made in connection therewith, past and pending.

REQUEST NO. 39. All documents pertaining to your application to be Mother's social security Representative Payee.

REQUEST NO. 40. All documents pertaining to receipt of and use of payments you received on behalf of Mother, as her social security Representative Payee (including, but not limited to, all documents pertaining to what was received, where the monies were deposited, and what were the monies used for or where the monies are today).

REQUEST NO. 41. All documents received from and sent to Social Security Administration on behalf of Mother by Defendant.

REQUEST NO. 42. All documents associated with any and all hearings held related to Mother's Social Security benefits.

REQUEST NO. 43. All documents which concern, refer or relate to any agreements, arrangements or understandings (written or oral) between the parties.

REQUEST NO. 44. Any and all documents related to any purported partnership held by you and Plaintiff.

REQUEST NO. 45. All documents relating to any and all professional services rendered on behalf of Mother from January 2015 through present.

REQUEST NO. 46. All documents relating to any accounting documents prepared or provided on behalf of Mother from January 2015 through present.

REQUEST NO. 47. All documents pertaining to any and all dividends, distributions, interest or disbursements for securities, bonds, and other investments received from any financial institution.

REQUEST NO. 48. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any

agreement, occurrences or facts pertaining to the purchase of the real property 789 Main Street, MD (“789 Main Property”).

REQUEST NO. 49. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any agreement, occurrences or facts pertaining to the sale of the 789 Main Property.

REQUEST NO. 50. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any agreement, occurrences or facts pertaining to the purchase of the real property 456 Main Avenue, MD (“456 Main Property”).

REQUEST NO. 51. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any agreement, occurrences or facts pertaining to the improvements made to the 456 Main Property and/or the 789 Main Property.

REQUEST NO. 52. All documents (including, but not limited to, correspondence, notes, memoranda, and journal entries) which relate to, describe, summarize, or memorialize any agreement, occurrences or facts pertaining to the rental/leasing of the 456 Main Property and/or the 789 Main Property.

REQUEST NO. 53. All documents evidencing receipt of rental monies made payable to you, Robert Smith, Mother, or any other entity from the 456 Main Property and/or the 789 Main Property.

REQUEST NO. 54. All documents related to the policy and transfer of monies received by you from Life Insurance Company A in the amount of \$200,000 or any other insurance policy.

REQUEST NO. 55. All documents pertaining to the payments towards the mortgage on the real property known as 1001 Side Street, MD, including any payoff thereof.

REQUEST NO. 56. The resume or curriculum vitae of any expert you intend to call at trial of this matter.

REQUEST NO. 57. Any and all expert reports, memos, notes, concerning experts contacted, employed or retained by you in connection with this matter.

REQUEST NO. 58. The written reports, including drafts, of any expert that you intend to call at the trial or hearing in this matter.

REQUEST NO. 59. All documents that refer, relate, or pertain to any communications that you or your counsel have had with any expert that is expected to testify at the trial or any hearing in this matter.

REQUEST NO. 60. All documents which have been supplied to each expert witness whom you plan to call at trial and at any hearing.

REQUEST NO. 61. All documents provided to you by any individual that you intend to call as a witness, expert and/or fact, at the trial of this action.

REQUEST NO. 62. Any and all documents constituting tangible evidence, including but not limited to, documents, correspondence, letters, tape recordings, photographs, videos, emails or prepared exhibits which you intend, or may decide, to introduce as an exhibit at the trial of this matter, whether on direct examination, cross examination, rebuttal or otherwise.

REQUEST NO. 63. All documents that you intend to introduce as exhibits in the trial or hearings in this action.

REQUEST NO. 64. Any and all documents which refer or relate to any governmental benefits (either federal, state, or local), insurance benefits, or charitable benefits applied for, paid to, or for the benefit of Mother, under the authority contained in the November 2003 Power of Attorney as executed by Mother.

REQUEST NO. 65. Any and all documents which refer or relate to any present, past, contingent, vested, or non-vested interests (including, but not limited to bank and financial accounts and holdings, real estate interests, lawsuits, insurance policies), held by or for the benefit of Mother under the authority contained in the Power of Attorney as executed by Mother.

REQUEST NO. 66. Any and all documents which refer or relate to any amount, financial account, government benefit, insurance proceed, realty, real estate interest received by you from Mother, or derived from properties owned by or for the benefit of Mother, from January 2015, through present.

REQUEST NO. 67. Any and all documents which refer or relate to any amount, financial account, government benefit, insurance proceed, realty, real estate interest received by Defendant, Jane Doe, from Mother, or derived from properties owned by or for the benefit of Mother, from January 2015 through present.

REQUEST NO. 68. Any and all documents which refer or relate to any payment, transfer or assignment of any amount, financial account, government benefit, insurance proceed, held by or for the benefit of Mother to any person or entity from January 2015 through the present.

REQUEST NO. 69. Any and all documents which refer or relate to any transfer or assignment of any real estate interest held by or for the benefit of Mother to any person or entity from January 2015 through the present.

REQUEST NO. 70. All document related to any other businesses associated with the care and/or management of Mother, or any financial asset, real estate property or otherwise held on behalf of Mother or acquired through the use of funds in which she held any right, title or interest.

REQUEST NO. 71. For the years 2015 through 2018 the following documents relating to you and any entity in which you have an interest:

- a. Income Tax Returns, Federal and State
- b. Financial Statements (Consolidated/Regular)
- c. Budgets
- d. Financial Forecasts & Projections
- e. Personal bank statements
- f. Schedule of Related Parties and Related Party Transactions
- g. Corporate or Organizational Record Book including, but not limited to by-laws, minutes of shareholder meetings, minutes of directors' meetings including those of all committees and of all executive meetings.
- h. All written or other recorded memoranda reflecting income, receipts and expenses.

Respectfully submitted,

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Counsel for Plaintiff

SELECTED LEGISLATIVE HISTORY OF THE SAFE ACT

To: Members of Maryland House Judiciary
Committee

From: Adam M. Spence, Member
Susceptible Adult Exploitation Joint Task

Hearing Date: **March 31, 2021**

Subject: **SB 327:** Civil Actions – Financial Exploitation of Susceptible
Adults (Maryland SAFE Act)

Position: **Support**

As both an individual citizen and a member of the Maryland State Bar Association's Susceptible Adult Exploitation Task Force, I SUPPORT SB 327: Civil Actions – Financial Exploitation of Susceptible Adults (The Maryland SAFE Act).

THE HEART-BREAKING REALITY

I am providing this testimony from personal experience as a trial attorney involved in cases involving financial exploitation. The common theme in these cases is families' heart break, emotional and physical distress and monetary loss as their lives are upended by such exploitation.

Clients come to me regularly where a susceptible or elderly adult has been financially exploited at the hands of the client's family, "friends" or caretakers. Such exploitation ranges from (i) liberally taking monies during an elder's life through manipulation or deception, (ii) having them execute Powers of Attorney so as to access the "keys to the [financial] castle" and (iii) even "wheel-chairing" an elder to the bank so as to change the beneficiaries on bank accounts (and life insurance policies) to favor the perpetrator.

The cases of financial exploitation that I encounter are predictable in both pattern and methodology of exploitation. When reviewing a new matter with a client, I can generally sense what has already happened before even being told all the facts. A Susceptible adult has been manipulated or defrauded into trusting someone who then exploits that trust to causing considerable financial loss to the exploited or others in their family. In my career I have seen millions of dollars shifted to perpetrators through exploitation of those who, because of age or infirmity, are no longer able to protect themselves.

REAL PEOPLE EXPLOITED

Victims of exploitation can be well-educated and affluent or illiterate and impoverished, living solely on social security. Regardless of economic circumstance, cognitive and physical decline coupled with money and greed can easily result in exploitation.

Here are but a few instances of exploitation, without exaggeration, for which I sued on behalf of victims, siblings, children, and others:

- A daughter bullied an elderly mother, into agreeing to invest all of an even older grand-mother's savings into home renovation schemes, resulting in considerable liquidity difficulties in being able to afford long-term medical care and only partial repayment after nearly a year of litigation. When the mother raised her concerns about the use of funds, the daughter threatened to move the grandmother out of long-term care and into the mother's house. This was an abhorrent threat, as the mother was both physically and emotionally unable to care for the substantial needs of the grandmother, who would likely die under her care.
- A daughter used a power-of-attorney to divert over \$800,000 from her father's bank accounts while he suffered from severe dementia. The daughter used those monies to make considerable profits off of house renovations, without giving those profits to her father, as required by law and the Power of Attorney she used.
- Two former co-workers (who previously did not even know each other) conspired to divert over \$1,000,000 of monies from an adult in a hospital having long-term medical issues. They did so by using a power-of-attorney and changing beneficiaries to various accounts. A person who was best friends with the adult for over 30 years, -- regularly playing poker and fishing with him, -- had never heard of nor met these two co-workers who became collective millionaires.
- Two caregivers diverted over \$500,000 of monies of an individual on her deathbed through change of beneficiaries on accounts. Notably, these caregivers destroyed all morphine administration records which would have shown how much morphine the susceptible adult was on at the time the changes were effectuated.
- A mother used undue influence to effectuate the execution of a Power-of-Attorney by her daughter to deprive, her susceptible and disabled daughter in her twenties of \$150,000 in life insurance monies from her father's passing. The mother used those monies to buy a beach house. The loss of these monies resulted in the daughter's need for soup kitchen assistance and a stay in a homeless shelter.

- A daughter with financial problems who kidnapped an elite socialite's husband of 50 years after a stroke, solely to take advantage of his substantial pension.

A POWDER KEG READY TO EXPLODE

Regrettably, these stories are legion, both from personal experience and society at large. The National Adult Protective Services Association states that "APS programs report that the number and complexity of reports involving financial abuse of Susceptible and older adults has grown significantly over the past decade. Recent research has found that elder financial exploitation is widespread..." The MetLife seminal study described elder exploitation as the "*Crime of the 21st Century*." A recent Huffington Post article even described it as "*a powder keg ready to explode as older adults become a proportionately larger share of the total population*."

As part of the Task Force, in addition to numerous other materials I researched, I compiled the attached summary of fifteen published academic studies on financial exploitation related just to the elderly. Findings from those studies state that:

- Elderly Abuse is an Epidemic
- More than 50% of all victims needed assistance with activities of daily living
- Abuse is associated with significant morbidity and premature mortality
- Structural issues in society continue to allow the predictable and common financial exploitation of older adults to occur
- Encouragingly, all 50 states have now passed legislation relating to elder abuse

THE SAFE ACT GIVES ACCESS TO JUSTICE

The Safe Act has been carefully drafted to encompass existing Maryland law governing financial exploitation, while providing the additional remedies of fee-shifting and trebling of damages. By doing so, the SAFE Act provides a mechanism for victims, families, and attorneys to work together to obtain justice for victims of exploitation.

Please **SUPPORT SB 327**.

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To: Members of Senate Judicial Proceedings

From: Vulnerable Adult Exploitation Joint Task Force

Date: January 19, 2021

Subject: **SB 327:** Civil Actions – Financial Exploitation of Vulnerable Adults (Maryland SAFE Act)

Position: **Support**

The Vulnerable Adult Exploitation Task Force SUPPORTS SB 327: Civil Actions – Financial Exploitation of Vulnerable Adults (The Maryland SAFE Act)

VULNERABLE ADULT EXPLOITATION TASK FORCE

In 2019, the Section Councils of the Estate & Trust Law Section and the Elder Law and Disability Rights Section of the Maryland State Bar Association organized the Vulnerable Adult Financial Exploitation Task Force in order to provide an interdisciplinary approach to tackling the vexing concerns around such financial exploitation. As part of its purpose, the Task Force seeks to provide input and insight supportive of criminal and civil legislation to redress the abuse of vulnerable adults. A full listing of the Task Force’s members and their MSBA Section affiliations is provided at the end of this testimony.

VULNERABLE ADULT FINANCIAL EXPLOITATION – THE CRIME OF THE 21ST CENTURY

We believe that financial exploitation of vulnerable adults is endemic in our society today. As attorneys and family counselors, we too often hear allegations of deception, intimidation, and undue influence to defraud vulnerable adults of their property. Our experiences were reflected in the 2009 report that is commonly referred to as the MetLife Study.¹ This was an extensive study conducted about elder physical and emotional abuse and financial exploitation. With its authors characterizing financial elder abuse as **the crime of the 21st Century**, the MetLife Study states that up to 1,000,000 older Americans may be targeted, and that related costs like health care, social services, investigations, legal fees, prosecution, lost income and assets can reach tens of millions of dollars annually.

The current pandemic caused by the COVID-19 virus has highlighted the financial fragility of vulnerable adults. Our legal system must be able to provide access to justice in a variety of ways so that the financial security of vulnerable adults can be protected. We believe that The Maryland SAFE Act will help us achieve this goal.

¹ MetLife and VPI Mature Market Institute, the National Committee for the Prevention of Elder Abuse (NCPEA) and Virginia Polytechnic Institute and State University, entitled *Broken Trust: Elders, Family and Finances*. Spence - *Eligibility of SAFE Act* 75

SB327 PROVIDES ACCESS TO JUSTICE TO REDRESS CASES OF VULNERABLE ADULT FINANCIAL EXPLOITATION

Under current Maryland law, remedies for financial exploitation are mostly limited to criminal actions, which have been largely ineffective² for the following reasons:

- (1) There is a strong reluctance of victims to involve the police in family matters;
- (2) There is a very high burden of proof necessary to obtain a conviction (beyond reasonable doubt); and
- (3) There are only limited resources available to handle these cases by state-funded agencies charged with doing so, such as the Offices of the State's Attorney, the Attorney General's Office, and Adult Protective Services.

The Task Force, after reviewing what other states were doing to address this crisis, determined that a different approach would be needed – a civil cause of action. The Task Force reviewed the statutes of many states, but focused on the laws of Delaware, California and Florida, as well as guidelines that were provided by the American Bar Association³, and after six months of diligent work, developed the Maryland SAFE Act.

The Maryland SAFE Act creates a new civil cause of action for financial exploitation that provides remedies similar to those provided in wage payment and collection statutes, including allowing the victim to be awarded treble damages, attorney's fees, and equitable relief, in addition to recovering the value of the loss. Maryland law currently provides no such civil remedy; rather, a victim of financial abuse must rely on the criminal statutes, with its heavy burden of proof, or on actions taken by government agencies on their behalf to get back only the property that was stolen, if that is even possible. As a civil cause of action with enhanced remedies, the Maryland SAFE Act will provide a path for victims to recover their property with an easier burden of proof.

The Maryland SAFE Act contains broad definitions of "financial exploitation" and "vulnerable adults" and expands the list of parties who may bring suit to recover assets lost by the vulnerable adult. With the law more clearly defined and applied, and with a reasonable burden of proof, litigation against a perpetrator of financial abuse should be easier to pursue with better results. The broad scope of this Act will also serve as a deterrent to would-be perpetrators of financial abuse.

THE VULNERABLE ADULT EXPLOITATION TASK FORCE SUPPORTS SB347

We urge you to SUPPORT this bill and to vote favorably to have it submitted to the full Senate for approval.

² Maryland's Legislative Services stated in its Fiscal & Policy Analysis for HB320 in 2020 that during 2019, Maryland's Judiciary reported 47 violations of Section 8-801 of the Criminal Law Article in the District Court regarding financial exploitation, which resulted in two guilty dispositions, and 55 violations in the Circuit Court, which resulted in 8 guilty dispositions

³ *The Model Civil Provisions of Elder Financial Exploitation* (April 2017), by ABA Commission on Law and Aging and the National Center for Victims of Crime. **Spence - Litigation of SAFE Act 76**

FOR MORE INFORMATION

Please contact Michael W. Davis, Chair, Vulnerable Adult Exploitation Task Force, if you have any questions.

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MEMBERS OF THE MSBA VULNERABLE ADULT EXPLOITATION TASK FORCE

ESTATE & TRUST
SECTION COUNCIL

ELDER LAW AND
DISABILITY RIGHTS
SECTION COUNCIL

OTHER

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Jeffrey Glaser

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