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Financial Abuse of the Elderly in California

Jeanne Finberg

FINANCIAL ABUSE OF THE ELDERLY IN CALIFORNIA

*Jeanne Finberg**

I. INTRODUCTION

Financial abuse of the elderly is a serious and common crime perpetrated throughout the United States.[1] This Article provides a brief survey of the common types of systemic financial abuse perpetrated against elderly persons in California, and it highlights the laws that help protect against elder abuse. Most financial abuse against elderly persons is perpetrated by one individual, usually a family member or other trusted person with access to financial information.[2] In contrast, this Article focuses on systemic financial abuse or scams, usually perpetrated by strangers, against numerous elderly people. Special focus will be made on living trust and annuity scams, a volume sales scam that is perhaps the most prevalent form of financial scam. Other scams will also be described and addressed, including Internet fraud, sweepstakes and telemarketing fraud, predatory lending, identity theft, and scams on funerals and burial plots.

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* Staff attorney specializing in financial abuse and health law, National Senior Citizens Law Center, a non-profit public interest law firm representing poor elderly persons.

1. *See* Carolyn L. Dessin, *Financial Abuse of the Elderly*, 36 IDAHO L. REV. 203 (2000); *see generally* NAT'L CTR. ON ELDER ABUSE, TYPES OF ELDER ABUSE IN DOMESTIC SETTINGS 2 (Mar. 1999) (finding that of the 293,000 cases of domestic elder abuse reported in 1996, 12.3% of the substantiated reports involved financial or material exploitation), *available at* http://www.elderabusecenter.org/basic/fact1.pdf.

2. *See* Dessin, *supra* note 1, at 203; *see generally* NAT'L CTR. ON ELDER ABUSE, NAT'L ELDER ABUSE INCIDENCE STUDY; FINAL REPORT (1998) (study included financial abuse within the general category of elder abuse and concluded that, where the perpetrator of elder abuse and neglect was known, ninety percent were family members), *available at* http://www.aoa.gov/abuse/report/main-pdf.htm.

II. LIVING TRUSTS AND ANNUITIES SALES

"Without a living trust you will not believe what probate will cost!" "Do not let nursing home bills devour your estate!" "Avoid costly probate or estate fees!" "Come to a free estate-planning seminar and learn how to obtain a living trust, save money and plan for long term care." These are some of the typical "come-ons" used to draw seniors in to so-called "estate planning seminars," where living trusts are sold.[3] Living trusts are trusts that take effect during the lifetime of the creator of the trust, as opposed to a testamentary trust that becomes effective after death. A living trust can be an appropriate estate-planning tool, especially when a qualified estate planner or elder law attorney examines an individual's assets and goals and determines the person's unique estate planning needs.[4] The problem with living trusts is not the document itself, but the way living trusts are used, abused, and mass marketed by sales people, who often use scare tactics or other unscrupulous methods to sell a "one size fits all" living trust kit, which may be totally unsuitable for the particular individual purchaser.[5]

The come-ons are in the form of postcards, e-mails, telephone calls, door-to-door solicitations, and advertising.[6] Newspapers and radios have spots promoting living trust operators.[7] Churches and

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3. *See Death Planning Made Difficult: The Danger of Living Trust Scams, Hearing Before the S. Spec. Comm. on Aging*, 106th Cong. 51-52 (2000) [hereinafter Kolish] (statement of Elaine Kolish, Associate Director, Division of Enforcement, Bureau of Consumer Protection, U.S. Federal Trade Commission, Washington, D.C.), *available at* http://www.ftc.gov/os/2000/07/livingtrustscams.htm (July 11, 2000); Deric James Barnes, *Attorney Association with Living Trust Marketing Firms: Examining the Legal Issues*, 51 S.C. L. REV. 1003, 1005-06 (2000).

4. *See Death Planning Made Difficult: The Danger of Living Trust Scams, Hearing Before the S. Spec. Comm. on Aging*, 106th Cong. 21 (2000) [hereinafter Canja] (testimony of Esther "Tess" Canja, President, 2000-2002, AARP, Port Charlotte, FL), *available at* http://www.aarp.org/press/testimony/2000/071100.html (July 11, 2000); Kolish, *supra* note 3, at 54.

5. *See* Canja, *supra* note 4, at 25; Kolish, *supra* note 3, at 52 n.7.

6. *See* Memorandum from Harry W. Low, California Insurance Commissioner, to Life Insurers and Life Agents (Dec. 12, 2001) [hereinafter Low Memorandum], *at* http://www.insurance.ca.gov/LGL/Life_Insurers.htm; Kolish, *supra* note 3, at 52.

7. *See* Better Business Bureau, *What You Need to Know About Living Trusts* [hereinafter Better Bus. Bureau], *at* http://www.newyork.bbb.org/seniorsolutions/pdfs/bbb_srs01_trusts.pdf (last visited Sept. 19, 2002).

senior centers often sponsor presentations to their members.[8] People giving these seminars typically offer a free one-on-one consultation as a follow up.[9] The follow up sessions are often excuses for ascertaining the extent of an individual's assets for the purpose of selling the person something else, usually an annuity.[10]

The scam artists often call themselves "certified trust advisors" or estate planning experts, but they are not experts and usually not certified by anyone.[11] At best, these people are insurance salespeople. Often they have only attended a two-hour sales seminar on how to sell living trusts, but they call themselves estate-planning experts. In fact, estate planning is a very complex field. To conduct estate planning properly it is necessary to have knowledge of probate law, trust and estate law, state and federal tax law, Medicaid, Medi-Cal in California, and long-term care issues and options.[12]

Unlike attorneys who specialize in elder law or estate planning, these so-called "experts" have no fiduciary relationship or statutory ethical responsibility to their clients.[13] Often they are completely unregulated.[14] If they are considered insurance salespeople, some regulation does apply to them. However, oversight tends to be loose and is at least looser than the State Bar, which regulates attorney conduct.[15]

Many of the promises of these seminars or consultations, including promises that one can avoid estate taxes, expensive probate, unnecessary creditors, and excessive attorneys fees, are simply not true.[16] Buying a living trust is not a shield to estate

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8. *See* About Me, *at* http://sycamoregroupinc.com/about_me.htm (last visited Sept. 19, 2002).

9. *See* Barnes, *supra* note 3, at 1005; Kolish, *supra* note 3, at 52.

10. *See* Kolish, *supra* note 3, at 52.

11. *See* Low Memorandum, *supra* note 6, at 1.

12. *See* RICHARD S. AIELLO ET AL., CALIFORNIA ESTATE PLANNING § 1 (2002).

13. *See id.* § 2.

14. *See* Kolish, *supra* note 3, at 52-53.

15. *See* AIELLO, *supra* note 12, § 2.

16. *See* Ken Salazar, Attorney General of the State of Colorado, Living Trust Scams, *at* http://www.ago.state.co.us/consprot/lvtrust.htm (last visited Sept. 21, 2002); Better Business Bureau, *supra* note 7; Kolish, *supra* note 3, at 54.

taxes.[17] Moreover, only the very largest estates—more than one million dollars—are subject to estate taxes anyway, with that figure increasing every year until the year 2000.[18] It is possible to avoid probate fees if planning is done properly.[19] Actual probate fees are often grossly exaggerated, as is the difficulty and length of the process.[20] Attorney bashing is particularly popular, and exorbitant attorneys' fees are often mentioned.[21] Charges for a one-size-fits-all living trust kit vary, but they can be as much as fifteen hundred dollars or more.[22] These amounts would likely buy several hours of time of an attorney who has the required expertise and who could focus on a particular individual's estate.[23]

Low-income seniors are the least likely to consult an attorney.[24] They are also the least likely to benefit from a living trust purchase.[25] According to the AARP, many seniors purchase living trusts that have no value to them.[26] Some paid for something potentially dangerous to them.[27] The Federal Trade Commission (FTC) warns against cookie-cutter living trusts, and attorney generals in several states have warnings on their Web sites or have initiated litigation to stop trust mill and annuity salespeople.[28] Some of the sleaziest scam artists quote AARP or the Better Business Bureau and state, or imply that these organizations sponsor or approve their product.[29]

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17. *See* Better Business Bureau, *supra* note 7; A Warning From the *Wall Street Journal* About Living Trusts, *at* http://www.kelly-law.com/probate.html (warning that advertisements often erroneously claim that the trusts will let heirs avoid estate taxes).

18. *See* Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38.

19. *See* Better Business Bureau, *supra* note 7; Kolish, *supra* note 3, at 51.

20. *See* Better Business Bureau, *supra* note 7.

21. *See* Salazar, *supra* note 16.

22. *See* Better Business Bureau, *supra* note 7.

23. *See* Salazar, *supra* note 16.

24. *See* Canja, *supra* note 4, at 22.

25. *See id.* at 23.

26. *See* Canja, *supra* note 4, at 23 (testifying that an AARP study showed that there was a 125% rate of growth in purchases of living trusts among lower income persons between 1991 and 2000, which far outpaces the 53% growth rate for moderate to higher income seniors).

27. *See id.* at 18.

28. *See* Kolish, *supra* note 3, at 52; Low Memorandum, *supra* note 6.

29. *See* Canja, *supra* note 4, at 24.

In addition to all of the above, other problems with living trusts abound. First, seniors who are encouraged to buy a living trust do not know how to utilize it to help their estate.[30] They do not fund the trust, so it ends up being a worthless piece of paper.[31] Seniors who do fund the trust do not pay attention to assets that are acquired later and end up not getting the advantage of the trust by, for example, still needing to probate their estates.[32] Other elders are advised to use IRAs or retirement accounts to fund their living trusts when it is financially imprudent to do so.[33] As a result, these elders incur penalties or tax consequences that could be avoided.[34]

Finally, the most insidious problem of all is when the living trust sale or promotion is merely used as a guise for collecting personal financial information from an elder.[35] Once obtained, the information is used to sell another product, usually a tax-deferred annuity, whereby the salesperson obtains a high commission and the annuitant gets a poor investment.[36] Less frequently, the information is totally abused by individual theft or fraud.[37] Because the annuity sales situation is so common, this scenario will be discussed in some detail.

People in the sales industry commonly encourage preying on the fears of seniors to sell them annuities.[38] In fact, there is even an "Annuity University" where budding sales people are trained in a two day seminar how to sell annuities to seniors.[39] Special sales techniques, which prey on the fears and emotions of elderly people, are promoted.[40] "You'll waste time if you think you can impress

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30. *See* Canja, *supra* note 4, at 18.

31. *See id.*; Kolish, *supra* note 3, at 4-5 (stating that, unless the trust is properly drafted and the assets are properly transferred to the trust, it will not achieve its purpose of avoiding probate).

32. *See* Salazar, *supra* note 16.

33. *See id.*

34. *See id.* (stating that unless the trust is properly drafted and the assets are properly transferred to the trust, the nature and purpose of the living trust is not served).

35. *See* Kolish, *supra* note 3, at 2; Low Memorandum, *supra* note 6, at 1.

36. *See* Kolish, *supra* note 3, at 52.

37. *See* Better Business Bureau, *supra* note 7.

38. *See* Ellen E. Schultz & Jeff D. Opdyke, *Annuities 101: How to Sell to Senior Citizens*, WALL ST. J., July 2, 2002, at C1.

39. *See id.*

40. *See id.*

them with charts, graphs, printouts or use sophisticated words . . . [t]hey buy based upon emotions! Emotions of fear, anger and greed."[41] These words come from the manual used at Annuity University.[42] Thousands of agents have been trained at Annuity University,[43] which is just one of the sources for this type of sales technique information.

Salespeople like to sell annuities because the commission for selling annuities tends to be higher than for other types of insurance or sales.[44] Although investing in annuities can be complex, the salespeople make it simple. "There's the technical answer," says Mr. Clark, the "professor" at Annuity University, and "there's the senior answer. Tell them it's like a CD—it's safe, it's guaranteed."[45] The overeager salespeople in this business either do not mention the disadvantages that come with purchasing an annuity at all or gloss over them quickly and dismiss them.[46] Many investment experts believe that annuities are rarely an appropriate investment for seniors, and even Mr. Clark at Annuity University admits that, while he believes annuities to be the best investment for seniors, there are some negative points to annuities, and they will not always be appropriate.[47] While he concedes that he presents them to the agents at his training, he maintains that he cannot be held responsible if not all of the agents are ethical in their sales techniques.[48]

Marketers selling annuities make any number of claims. Many revolve around planning for long-term care, and salespeople frequently promise that the purchaser will be Medicaid eligible in the event that they need long-term care.[49] However, the Medicaid eligibility rules are very complex. It is possible for someone to be eligible for Medicaid after purchasing an annuity, but only if the purchaser complies with very specific provisions dictated by the

41. *Id.*
42. *See id.*
43. The *Wall Street Journal* reports that Annuity University has trained 7,000 agents in the past thirteen years. *See id.* at C10.
44. *See id.* at C1.
45. *Id.*
46. *See id.*
47. *See id.*
48. *See id.* at C10.
49. *See id.*

federal government.[50] The term of the annuity must be less than or equal to the annuitant's life expectancy, and the total payments must be greater than or equal to the amount invested.[51] Seniors purchasing annuities that do not fit within these parameters will be found ineligible for Medicaid long-term care.[52] These details are rarely communicated to elder investors, and those who invest without meeting the parameters often have no recourse against the scoundrel who sold them the annuity and must suffer the consequences.[53]

III. LEGAL PROTECTIONS

There are numerous legal protections in California for victims of misleading salespeople.[54] Unfortunately, they are rarely invoked, and when they are, relief may be difficult to come by. The panoply of statutory remedies is briefly enumerated here along with their restrictions and potential pitfalls.

California Business and Professions Code section 6126 prohibits the unauthorized practice of law and makes a person holding him/herself out as an attorney guilty of a misdemeanor.[55] Unauthorized practice of law is defined by case law,[56] and it includes the preparation of legal documents.[57] Thus, many of the sellers of living trusts are violating section 6126 because they are preparing legal documents or holding themselves out as attorneys. A major problem with utilizing this provision is that it is not enforceable by

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50. *See* 42 U.S.C. § 1396p(d)(6); HCFA, now CMS, Transmittal No. 64 § 3258-9B.

51. *See id.*

52. *See id.*

53. *See* Canja, *supra* note 4, at 23.

54. *See* CAL. BUS. & PROF. CODE § 17500 (West 1997 & Supp. 2002) (providing a penalty for false or misleading statements made by any person, firm, corporation, or association with respect to the disposal of real or personal property, the performance of services, or any inducement of the public to enter into an obligation with respect thereto); CAL. CIV. CODE § 1770 (West 1998) (listing proscribed practices in the sale or lease of goods or services on the ground they are "unfair methods of competition" or "unfair or deceptive acts").

55. *See* CAL. BUS. & PROF. CODE § 6126 (West 1990 & Supp. 2002).

56. *See* Estate of Condon, 65 Cal. App. 4th 1138, 76 Cal. Rptr. 2d 922 (Ct. App. 1998); Agran v. Shapiro, 127 Cal. App. 2d 807, 273 P.2d 619 (Ct. App. 1954).

57. *See* Farnham v. State Bar, 17 Cal. 3d 605, 522 P.2d 445 (1976) (holding that mere preparation of legal instruments constitutes practice of law).

private parties.[58] The Code only authorizes enforcement by the district attorney, attorney general, or city attorney.[59] Although there are occasional enforcement actions brought by these law enforcement agencies, resources are limited.

California Business and Professions Code sections 6450 to 6456, which define and regulate the conduct of paralegals, allow a consumer to file a complaint. The provisions also provide for restitution and for attorneys fees to be awarded to the prevailing party.[60] Under the statute, paralegals are not permitted to provide legal advice.[61] Many of the living trust salespeople provide legal advice, and thus violate the statute. Education and training requirements for paralegals have been specifically defined in recent years.[62]

The Insurance Code provides for regulation of insurance agents who are licensed by the state. Insurance Code section 785 provides for a duty of honesty, good faith, and fair dealing.[63] Section 789 provides for an action for damages and/or injunctive relief to be brought by the attorney general, district attorney, or city attorney.[64] Although the living trust salespeople are often totally unregulated, annuity salespeople are usually insurance salespeople. Redress can be taken by filing a complaint with a state agency or with local law enforcement.

California Business and Professions Code section 17200 prohibits unfair competition, as well as unlawful, unfair, or deceptive acts, and is a commonly used private enforcement tool by private attorneys in civil actions acting for the interests of the general public.[65] Section 17500 of the Code specifically prohibits false or misleading statements.[66] These sections are probably the most useful to attorneys wishing to pursue living trust and annuity scams. Moreover, in addition to the general civil penalties provided under

58. *See* CAL. BUS. & PROF. CODE § 6126.5 (West Supp. 2002).
59. *See id.*
60. *See* CAL. BUS. & PROF. CODE §§ 6450–6456 (West 1990 & Supp. 2002).
61. *See id.* § 6450(b)(1).
62. *See* CAL. BUS. & PROF. CODE § 6450(c) (West 1990 & Supp. 2002).
63. *See* CAL. INS. CODE § 785 (West 1993 & Supp. 2002).
64. *See id.* § 789.
65. *See* CAL. BUS. & PROF. CODE § 17200 (West 1997).
66. *See id.* § 17500.

the statutory scheme, acts of unfair competition perpetrated against senior citizens are subject to additional penalties.[67]

The California Civil Code provides for protection against those operators who falsely use AARP or the Better Business Bureau to legitimize their product.[68] California Civil Code section 3344 provides for specific penalties and attorneys fees for prevailing parties when false names are used in merchandizing.[69] Section 3345 provides for treble damages when seniors are the victims of misrepresentations.[70]

The Elder and Dependent Adult Civil Protection Act,[71] which is California's extensive statutory scheme protecting elders from abuse by caretakers and others, specifically includes financial abuse as part of the definition of abuse, which is defined as "tak[ing] . . . real or personal property . . . with [an] intent to defraud."[72] Civil Protection Orders may be available under some circumstances for abuse[73] or for civil harassment.[74]

The California Consumer Legal Remedies Act,[75] which can be used in conjunction with all other available legal remedies,[76] specifies unfair methods of competition and unfair or deceptive acts and practices in the sale of goods or services to consumers, and includes specific enhanced penalties and protections for seniors.[77]

Criminal sanctions are, of course, also available against perpetrators of financial abuse crimes. The California Penal Code specifically provides that crimes against elders are deserving of special consideration,[78] and applies additional sanctions against theft or embezzlement crimes against the elderly[79] and against those who

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67. *See id.* § 17206.1.
68. *See id.* § 17500.
69. *See* CAL. CIV. CODE § 3344 (West 1997).
70. *See id.* § 3345.
71. CAL. WELF. & INST. CODE § 15600 (West 2001).
72. *Id.* § 15610.30(a).
73. *See id.* § 15657.03.
74. *See* CAL. CIV. PROC. CODE § 525 (West 1979).
75. CAL. CIV. CODE § 1750 (West 1998).
76. *See id.* § 1752.
77. *See id.* § 1770(a)(23) (applying to home solicitations and secured loans); § 1780(b) (applying an extra $5,000 in damages for misrepresentation against a senior or disabled person).
78. *See* CAL. PENAL CODE § 368(a) (West 1999).
79. *See id.* § 368(d).

inflict unjustifiable mental suffering on an elder or dependent adult.[80] Special staff to prosecute elder abuse cases are becoming more common in local district attorneys' offices.[81]

IV. SWEEPSTAKES

Mail and telemarketing fraud is perpetrated against people of all ages, and complaints are rapidly rising annually.[82] People over the age of sixty account for twenty-six percent of telemarketing fraud victims, but account for sixty percent of the victims in certain categories, such as prizes and sweepstakes.[83]

Examples of common lead-ins are "You've just won $500!" and "Congratulations, it's your lucky day!"[84] We have all received postcards or letters in the mail which start out with words like these. They promise us millions of dollars in sweepstakes winnings, and many of us are tempted to respond. Seniors, in particular, are susceptible to these promotions. Unfortunately, most of us have not won a million dollars. In fact, these are mostly fraudulent sweepstakes promotions which, rather than paying out big prizes, end up swindling seniors out of thousands of dollars everyday. The FTC receives more than ten thousand complaints each year from

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80. *See id.* § 368(b).

81. *See, e.g.*, Elder Abuse Unit Protecting Senior Citizens, *at* http://da.co.la.ca.us/seniors/ (last visited Oct. 25, 2002); County of Marin District Attorney's Office, *Financial Elder Abuse*, *at* http://www.co.marin.ca.us/depts/DA/main/dist/fincelderabuse.cfm (last visited Oct. 25, 2002); Norfolk District Attorney's Office, *Seniors—Abuse and Neglect*, *at* http://www.state.ma.us/da/norfolk/seniors_abuse.html (last visited Oct. 25, 2002); San Diego District Attorney's Office, *Helping Victims: Elder Abuse*, *at* http://www.sdcounty.ca.gov/cnty/cntydepts/safety/da/helping_victims/elderabuse.html (last visited Oct. 25, 2002); San Francisco Office of the District Attorney, *Elder Abuse*, *available at* http://www.ci.sf.ca.us/da/elderab.htm (last visited Oct. 25, 2002).

82. Mail fraud complaints are up twenty-seven percent according to the Postal Inspection Service. *See* Senior Citizens Targeted in National Fraud Awareness Campaign, *at* http://www.usps.com/postalinspectors/NRsenior.htm (Aug. 26, 2002).

83. *See id.* (reported by the Alliance Against Fraud and Telemarketing and Electronic Commerce); Federal Trade Commission, *Prize Offers: You Don't Have to Pay to Play!* [hereinafter *Prize Offers*], *at* http://www.ftc.gov/bcp/conline/pubs/tmarkg/prizes.htm (July 2002).

84. *Prize Offers*, *supra* note 83.

consumers about phony gifts, sweepstakes, and prize promotions.[85] Many of these scams start out with a phone call or a postcard telling someone that he or she has won a big prize.[86] To claim the prize, however, the "winner" needs to pay certain fees or buy something.[87] Once someone pays, additional promotions and solicitations are relentless.[88]

Many state consumer laws protect seniors from these types of scams.[89] Two federal laws also provide important protections for consumers. The Telemarketing Sales Rule[90] prohibits many of these fraudulent telemarketing practices.[91] The regulations require telemarketers to inform the consumer of the accurate odds of winning a prize, or the factors used to calculate the odds if the odds cannot be determined in advance.[92] They are also required to disclose to a consumer who asks how he or she can participate in the contest without buying anything or paying anything.[93] Telemarketers who call to pitch a prize must tell the consumer that they do not have to buy anything or pay anything to enter or win *before* they describe the prize.[94] Finally, if money is required, the solicitor must tell the consumer exactly what he or she must pay, or what conditions must be met to receive or redeem a prize.[95] None of these facts may be misrepresented without violating federal law.

The Deceptive Mail Prevention and Enforcement Act regulates written solicitations.[96] This law prohibits claims that you are a

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85. *See id.*
86. *See id.*
87. *See id.*
88. *See id.*
89. *See id.;* CAL. BUS. & PROF. CODE § 17206.1 (West 1997) ("In addition to any liability for a civil penalty . . . any person who violates this chapter . . . against one or more senior citizens . . . may be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation . . . .").
90. 16 C.F.R. § 310 (2002) (enacted to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101–08 (2001)); *see also* 16 C.F.R. § 310.3 (2002).
91. *See, e.g.*, 16 C.F.R. § 310.3(a)(1)(iv) (2002) (describing deceptive telemarketing acts or practices in prize promotions).
92. *See id.*
93. *See id.* § 310.4(d)(4).
94. *See id.*
95. *See* 16 C.F.R. § 310.3(a)(1)(i)–(v) (2002).
96. *See* 39 U.S.C. §§ 3001, 3017 (2001).

winner unless you have actually won a prize,[97] and it specifically outlaws requirements that you buy something to enter a contest or to receive future sweepstakes mailings.[98] It also prohibits the mailing of fake checks that are not clearly identified as non-negotiable and without cash value.[99] Finally, it outlaws terms, seals or names that imply an endorsement of or affiliation with the federal government.[100]

If you suspect that your client has been a victim of this type of financial scam, report it to the local district attorney, attorney general or United States Attorney's office. The odds are your client is not the only person who was subject to this fraud, and an investigation may already be underway. Common schemes may be easier to prove when there are many reported victims. Private rights of action by individuals are specifically authorized by 39 U.S.C. § 3017(e) for the violation of these federal laws.[101]

V. THE CANADIAN LOTTERY SCAM

The Canadian Lottery scam has swindled Americans out of millions of dollars.[102] "Winners" receive telephone calls or postcards alerting them to their lottery winnings.[103] Actual checks for large sums of money—often hundreds of thousands of dollars—arrive in the mail immediately afterwards.[104] The individual must merely pay a small amount of money in taxes or other charges upon receipt of the check.[105] The money is to be sent to a specified Canadian post

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97. *See id.* § 3001(k)(3)(A)(ii)(VIII).
98. *See id.* § 3001(k)(3)(A)(ii)(II).
99. *See id.* § 3001(k)(3)(C).
100. *See id.* § 3001(h)–(i)(2)(A).
101. *See id.* § 3017(e); *see also* CAL. BUS. & PROF. CODE § 17206.1 (West 1997) (establishing a civil right of action).
102. *See* FTC Consumer Alert!, *International Lottery Scams*, *at* http://www.ftc.gov/bcp/conline/pubs/alerts/intlalrt.htm (last visited Sept. 17, 2002).
103. *See* Federal Trade Commission—Facts for Consumers, *Hang Up On Cross-Border Phone Fraud*, *at* http://www.ftc.gov/bcp/conline/pubs/tmarkg/crossbrdr/htm (last visited Sept. 19, 2002) [hereinafter *Cross-Border Phone Fraud*].
104. *See id.*
105. *See id.*; *see also* Federal Trade Commission, *U.S., Canadian Law Enforcers Target Cross-Border Telemarketers* (June 10, 2002) *at* http://www.ftc.gov/opa/2002/06/crossborder.htm. [hereinafter *U.S., Canadian Law Enforcers*] (describing common lottery scams).

office box.[106] The problem is that the checks representing the "winnings" never clear the bank.[107] The victim's checks are cashed immediately. Since the perpetrators are out of the country, legal recourse is difficult, but not impossible.[108]

VI. NIGERIAN MONEY SCAM

"Someone has contacted you from Nigeria or another African country and offered you millions of dollars. All you have to do is help transfer money, diamonds, or other riches to your bank account for safekeeping. It sounds like a dream come true, but it's really a nightmare."[109] These money scams are well known and becoming increasingly popular.[110] Referred to as the Nigerian money scam because the requests originally came from Nigeria,[111] they now come from various different countries,[112] by email, airmail, phone, fax, and letter, and they are very enticing.[113] Surprisingly, a number of people are enticed into believing that they have been selected by a stranger to share in a multi-million dollar windfall, for doing practically nothing.

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106. *See* PR Newswire Association, *New York Man Pleads Guilty to Telemarketing Fraud, Reports U.S. Attorney*, Aug. 10, 2001, LEXIS, Nexis Library.

107. *See Cross-Border Phone Fraud, supra* note 103.

108. *See, e.g., U.S., Canadian Law Enforcers, supra* note 105 (discussing cooperation of U.S. and Canadian authorities).

109. This description of this increasingly popular money scam was put out by the National Fraud Information Center in Washington, D.C. National Consumers League's National Fraud Information Center, *Nigerian Money Offers, at* http://fraud.org/tips/telemarketing/nigerian/htm (last visited Sept. 19, 2002).

110. *See* Nigeria—The 419 Coalition Website, *at* http://home.rica.net/alphae/419coal/ (last visited Oct. 19, 2002).

111. *See* National Consumers League's National Fraud Information Center, *supra* note 109. They are also known as Advance Fee Fraud (AFF) or "4-1-9" after the name of the section of the Nigerian penal code which addresses fraud schemes; *see also* United States Secret Service: Financial Crimes Division, *Nigerian Advance Fee Fraud "OPERATION 4-1-9", at* http://www.secretservice.gov/financial_crimes.shtml (last visited Sept. 17, 2002) [hereinafter Secret Service].

112. Examples include the Republic of Congo, Cuba, India, the Ivory Coast, Sierra Leone, and Angola (collected emails). *See Nigeria—The 419 Coalition Website, supra* note 110.

113. *See* Secret Service, *supra* note 111.

The individual receives an e-mail, letter, or fax from another individual claiming to be some type of official representing a foreign country.[114] An offer is made to transfer millions of dollars into the person's personal bank account.[115] Although the "official" typically offers to put large sums of money for safekeeping into a bank account that you set up and to share the funds with you, typically on a generous basis,[116] in reality money is siphoned away from the victim.[117] A never-ending series of payments for transfer fees, legal expenses, and other bogus costs are requested.[118] Official looking documents with fancy stamps, seals and logos are often sent to add authenticity to the transactions. Advise clients to never provide bank account or other financial information, or to travel anywhere to meet these people. Sometimes these hardened criminals lure victims to meet them in Africa where the victim is then robbed or murdered.[119] "According to the Secret Service, these crooks use the money they make on this scam to finance other illegal activities such as drug dealing and credit card fraud."[120] Efforts against these scam artists have not been successful since they remain outside of the United States. Reporting actual or attempted scams to law enforcement is helpful, however, as a preventative measure for others.

The Internet Fraud Watch statistics show that the Nigerian money offers comprised nine percent of the fraud for the first ten months of 2001.[121] The average loss to an individual as a result of the scam is $6,542, the highest by far of all of the Internet fraud schemes.[122] Although consumers are using credit cards online more

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114. *See id.*

115. *See id.*

116. Commonly a 50/50 split is offered for smaller sums, and a 20/80 split for large sums, so that the person can expect to keep a million dollars for simply assisting in a transaction concerning five million dollars. *See* Secret Service, *supra* note 111.

117. *See id.*

118. *See id.*

119. *See id.* An American was murdered in Lagos, Nigeria in 1995 and numerous other victims have been reported missing. *See id.*

120. National Consumers League's National Fraud Information Center, *Telemarketing Fraud Tips*, *at* http://www.fraud.org/tips/telemarketing/nigerian.htm (last visited Sept. 23, 2002).

121. *See* Internet Fraud Watch, *2001 Internet Fraud Statistics*, *at* http://www.fraud.org/internet/2001stats10mnt.htm (last visited Sept. 23, 2002).

122. *See id.*

frequently, money orders are still the most common way Internet fraud victims pay for their products or services.[123] Bank account debits and wire services are the most common ways to pay for the Nigerian money offer scams.[124]

VII. SLAVE REPARATIONS

Flyers with these headlines, "Apply for Newly Approved Slave Reparations! Claim $5,000 in Social Security Reimbursements" are being distributed to many elderly African Americans.[125] These flyers, distributed in churches or placed on the windshields of parked cars or bulletin boards in senior centers, are a total hoax.[126] They claim that African Americans that were born before 1928 may be eligible for slave reparations under the "Slave Reparation Act," and those born between 1917 and 1926 can apply for social security funds due to a "fix" in the system.[127] Law enforcement officials report finding these flyers containing false claims throughout African American communities in the South and the Midwest. A rash of phony flyers recently appeared in senior centers and churches in Oakland offering slave reparations and tax breaks.

The people perpetrating this hoax are skilled identity thieves who ask people to reveal their names, addresses, phone numbers, birth dates, and social security numbers in order to access their credit cards, or to open new accounts in the assumed names without permission.[128] Identity theft generally is discussed in more detail below. If you or your clients receive one of these flyers promoting slave reparations or social security reimbursements, call the FTC at its toll-free Identity Theft Hotline, 1-877-IDTHEFT or 1-800-438-4338.[129] You can also report it to your local police, the district attorney's office or the state attorney general.[130]

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123. *See id.*
124. *See id.*
125. Federal Trade Commission, *Federal Trade Commission Consumer Alert, Hoax Targets Elderly African Americans, at* http://www.ftc.gov/bcp/conline/pubx/alerts/hoaxalrt.htm (last visited Oct. 25, 2002).
126. *See id.*
127. *See id.*
128. *See id.*
129. *See id.*
130. *See id.*

VIII. IDENTITY THEFT

Identity theft is quickly becoming a common crime,[131] and seniors are among those vulnerable to these hoaxes.[132] According to the FTC, identity theft is the fastest growing white-collar crime in the United States, increasing an average of nearly forty percent per year for the last several years.[133] Five to seven hundred thousand people in the United States are victims of identity theft every year.[134] Older people make appealing financial targets because they typically have better credit, higher home equity, and more financial resources than younger people.[135] Reporting of incidents of identity theft of people over sixty increased by 218% in 2001 (5,802 victims) over 2000 (1,821 victims).[136]

Identity theft occurs when someone uses personal information of another, such as a social security number or credit card to perpetrate a theft crime.[137] Usually the necessary personal information is obtained from a stolen wallet, or discarded credit card or bank information.[138] Pre-approved credit card offers are a common source of personal information and an easy way for someone to get a new credit card without your knowledge.[139] People are hired to go through trash or recycling bins to retrieve this type of information.[140]

131. *See* Prepared Statement of the Federal Trade Commission on Identify Theft: The Impact on Seniors, *at* http://aging.senate.gov/events/hr87hb.htm (July 18, 2002).

132. *See id.*; *Identity Theft: The Nation's Fastest Growing Crime Wave Hits Seniors, Hearing Before the S. Spec. Comm. on Aging*, 107th Cong. (2002) [hereinafter *Identity Theft*] (opening statement of Chairman John Breaux), *at* http://aging.senate.gov/events (hearing publication unavailable as of Oct. 2002).

133. *See id.* (opening statement of Chairman John Breaux and Senator Craig).

134. *See id.* (opening statement of Senator Craig and statement of Alice S. Fisher, Deputy Assistant Attorney General, Criminal Division Before the Special Committee on Aging).

135. *See id.* (statement of James G. Huse, Jr., Hearing on Identity Theft and America's Senior Citizens, Senate Special Committee on Aging).

136. *See id.*

137. *See id.* (opening statement of Chairman John Breaux and statement of Alice Fisher).

138. *See id.* (statement of Alice Fisher and Douglas Coombs).

139. *See id.* (statement of Alice Fisher).

140. *See id.* (statement of Douglas Coombs).

Sometimes corrupt bank or store employees are used to pass on information.[141]

To minimize the risk of identity theft, the FTC recommends:

1) Never reveal personal information unless you are sure you know who you are dealing with and how they will use the information.
2) Verify details with any government agency that appears to be involved in a solicitation. Get the phone number from the phone book or directory assistance.
3) Read your bills carefully. Call about any charge of which you are unsure.
4) Order a copy of your credit report *every year* to verify your credit information. The three major credit reporting agencies are Equifax, 1-800-685-1111, www.equifax.com; Experian, 1-888-397-3742, www.experian.com; and Trans Union, 1-800-888-4213, www.tuc.com.[142]

I suggest that you carefully rip and dispose of all credit card offers you are not going to use. Also, do not carry your social security card around in your wallet where you keep your credit cards. It is an identity theft kit.[143] Unless you are applying for a job or going to the social security office, leave it at home. Make it just a little harder for identity thieves to access all of your personal information in one place.

Suspected identity theft should be reported immediately. Congress passed a law in 1998 making it a federal crime to steal someone's identity.[144] To file a complaint with the FTC, or to get free information on numerous consumer topics, call the FTC[145] or

141. *See id.*

142. *See* The Center for Debt Management, *How and Where to Obtain Your Credit Report*, *at* http://center4debtmanagement.com/MiscDocs/GetReport.shtml (last visited Sept. 16, 2002); Federal Trade Commission, *ID Theft: Minimize Your Risk*, *at* http://www.consumer.gov/idtheft/risk.htm (last revised Nov. 28, 2001) [hereinafter *ID Theft*].

143. Of course, so many health insurance cards, including Medicare cards, use social security numbers for identification. Leaving the social security card at home may not be effective in keeping your number private anymore either.

144. *See* 18 U.S.C. § 1028(a)(7) (2000).

145. The toll-free number is 1-877-FTC-HELP (1-877-382-4357).

look on its Web site on the Internet.[146] The FTC shares information with other civil and criminal law enforcement agencies throughout the United States and abroad by way of an online database (that they claim is secure!).[147] Hundreds of law enforcement agencies investigate and prosecute identity theft crimes.[148]

Ordering credit reports every year ensures that any unusual activity resulting from identity theft is discovered before the statute of limitation runs. In a harsh ruling for victims of identity theft, the United States Supreme Court unanimously ruled that consumers must sue within two years of any harm to their credit rating, even if they do not find out about the harm until later.[149] The decision interpreted the Fair Credit Reporting Act in the case of a California woman whose identity was stolen in a doctor's office.[150] The Act requires suit within two years of the date "on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under [the Act] to be disclosed [to the plaintiff]."[151]

The Ninth Circuit applied the "discovery rule" to extend the statute of limitations beyond the two year period for the plaintiff who discovered the harm to her credit after the two year period had expired. Despite the apparently favorable language in the Fair Credit Reporting Act,[152] and five appellate court decisions interpreting similar language that tolled the statute,[153] the Supreme Court held that the discovery rule does not apply to the statute and that the plaintiff's claims were barred.[154]

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146. *See* Federal Trade Commission, *at* http://www.ftc.gov (last visited Sept. 19, 2002).

147. *See id.*; Federal Trade Commission, *A Brief Overview of the Federal Trade Commission's Investigative and Law Enforcement Authority*, *at* http://www.ftc.gov/ogc/brfovrvw.htm (last revised Apr. 1998).

148. *See* U.S. GENERAL ACCOUNTING OFFICE, IDENTITY THEFT, GREATER AWARENESS AND USE OF EXISTING DATA ARE NEEDED 02-766 (2002).

149. *See* TRW, Inc. v. Andrews, 534 U.S. 19, 23 (2001).

150. *See id.* at 23-25.

151. 15 U.S.C. § 1681p (2000).

152. *See* 15 U.S.C. §§ 1681–1681u (2000).

153. *See* Andrews v. TRW, Inc., 225 F.3d 1062, 1067 (9th Cir. 2000); Clark v. State Farm Fire & Cas. Ins. Co., 54 F.3d 669, 672 (10th Cir. 1995); Rylewicz v. Beaton Servs. Ltd., 888 F.2d 1175, 1181 (7th Cir. 1989); Houghton v. Ins. Crime Prevention Inst., 795 F.2d 322, 325 (3d Cir. 1986); Clay v. Equifax, Inc., 762 F.2d 952, 961 (11th Cir. 1985).

154. *See TRW, Inc.*, 534 U.S. at 22–23.

IX. FUNERALS AND BURIAL PLOTS

Americans spend billions of dollars every year on funerals and burial plots. Funeral costs typically range from $6,000 to $12,000. Although this ranks among the most expensive purchases that consumers make in their lives, people rarely comparison shop or bargain for a good price when it comes to burial arrangements. When a loved one dies, family and friends are confronted with decisions about arrangements and often make them under duress. Being thrifty at such a sensitive time seems inappropriate and callous. As a result, the industry is replete with abuses, and people are especially vulnerable to scams and overcharges by cemeteries, undertakers, and burial insurance salespeople.

Many seniors try to relieve their families of the burden and expense of making funeral arrangements by engaging in "preneed" planning. Millions of Americans have entered into contracts to prearrange their funerals and prepay some or all of the expenses involved, and misspending or misappropriation of the funds results in the loss of millions of dollars every year. A little education or advance planning may go a long way towards avoiding costly mistakes. Legal services and elder law attorneys, who advise their clients to invest in assets that will be exempt for SSI or Medicaid eligibility computations,[155] encourage the purchase of burial plots or prepaid burial expenses and may unintentionally contribute to the problem.

Consumer protections vary widely from state to state, with some states offering little or no effective protection from prepayment scams. The FTC promulgated rules in 1984 which require funeral providers to give consumers accurate itemized price information and other specific disclosures about funeral goods and services.[156]

The "Funeral Rule" prohibits the industry from:

1) misrepresenting legal, crematory, and cemetery requirements;[157]
2) embalming for a fee without permission;[158]

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155. *See, e.g.*, 42 U.S.C. § 1382b(a)(2)(B) (2000) (listing examples of assets that are exempt from inclusion in personal resources for benefit eligibility computations).

156. *See* 16 C.F.R. § 453.2(a) (2002).

157. *See id.* § 453.3.

158. *See id.* § 453.5(a)(2).

3) requiring the purchase of a casket for cremation;[159]

4) requiring the purchase of certain goods or services as a condition of furnishing others;[160]

5) engaging in "deceptive or unfair practices" generally.[161]

Passage of the Funeral Rule cleaned up the industry considerably, but many abuses remain and attorneys should enforce the law through civil actions, reporting problems to the FTC,[162] or local law enforcement. Unfortunately, the federal rule does not cover many of the features contained in the preneed contract, which is governed solely by state law.[163] "[E]very state except Alabama regulates preneed contracts,"[164] but the state laws vary widely.[165] Moreover, many cemeteries are virtually exempt from state regulation because a religious organization or municipality runs them.[166] Problems arise when the provider mishandles, mismanages or embezzles the funds. Some providers merely go out of business before the need arises. Others sell policies that are virtually worthless and do not give consumers the benefit of their bargain. The Unfair and Deceptive Acts and Practices (UDAP) laws provide some relief to these abuses, but only a handful of states explicitly specify that UDAP statutes apply to the sale of preneed arrangements.[167] California licenses and regulates the funeral

159. *See id.* § 453.4(a).

160. *See id.* § 453.4(b)(i).

161. *See* Federal Trade Commission, *Complying with the Funeral Rule*, *at* http://www.ftc.gov/bcp/conline/pubs/buspubs/funeral.htm (last visited Oct. 19, 2002).

162. One can use the Internet to contact the FTC. *See* Federal Trade Commission, *FTC Consumer Complaint Form*, *at* http://rn.ftc.gov.

163. *See* AARP, *Preneed Funeral and Burial Agreements*, *at* http://research.aarp.org/consume/fs76_preneed.html (last visited Oct. 19, 2002).

164. SANDRA B. ESKIN, PRENEED FUNERAL AND BURIAL ARRANGEMENTS: A SURVEY OF STATE STATUTES 3 (1999), *available at* http://www.research.aarp.org/consume/di17093_preneed.html.

165. *See id.*

166. *See* U.S. GENERAL ACCOUNTING OFFICE, FUNERAL-RELATED INDUSTRIES: COMPLAINTS AND STATE LAWS VARY, AND FTC COULD BETTER MANAGE THE FUNERAL RULE REPORT TO CONGRESSIONAL REQUESTERS 23 (1999).

167. *See, e.g.*, JONATHAN SHELDON & CAROLYN L. CARTER, NATIONAL CONSUMER LAW CENTER, UNFAIR AND DECEPTIVE ACTS AND PRACTICES (4th ed. & Supp. 2000) (summarizing and analyzing state UDAP practices).

industry, including preneed contracts.[168] Violations can bring civil or criminal penalties.[169]

Demanding standardized price information and being willing to ask questions about any service charges or other requirements will help avoid most problems. Most states have a licensing board that regulates the funeral industry, which may be helpful, and the FTC has considerable information, including a consumer guide to funerals, which is available on its Web site.[170]

X. PREDATORY LENDING

Elderly homeowners are easy prey to unscrupulous sub-prime lenders. These lenders secure their property with a loan that the borrower cannot possibly afford. Often the lenders make major misrepresentations about the transaction or charge unreasonably high interest rates and finance charges. They base a loan on a borrower's home equity rather than their ability to repay it. Seniors with a modest amount of consumer debt can be convinced to take a second mortgage on their homes that they cannot really afford when a high-pressure salesperson convinces them that it is better to consolidate their debts. Because the payments are too high for a low or moderate-income person on a fixed income, they often get behind on the payments. Once the loan goes into default, these lenders frequently raise the interest rate or refinance the home at an even more disadvantageous rate to the consumer. The end result is devastating: the senior loses the home and its equity.

Predatory home loans are found primarily in the sub-prime market, which has grown more than 100% in the last ten years. Sub-prime loans come with higher interest rates and fees than in the prime or "first" market. Although sub-prime loans, often granted to low income and elderly people, supposedly reflect the impaired credit of the borrowers. Industry figures estimate that more than thirty-five percent of sub-prime borrowers could have qualified for an "A" loan with considerably better terms. Even borrowers with poor credit often receive loans with unreasonably high fees and

168. *See* CAL. BUS. & PROF. CODE §§ 7735–45 (West 1995).

169. *See id.*

170. *See, e.g.*, Federal Trade Commission, *Business Guidance*, *at* http://www.ftc.gov/ftc/business.htm (last visited Oct. 19, 2002) ("business guidance" is an icon on the homepage).

penalties. Payments are often higher than the person's income, practically guaranteeing a default and loss of home equity.

Federal statutes offer some relief. Under the Truth in Lending Act of 1994,[171] a homeowner often has "the right to rescind the transaction until midnight of the third business day following the consummation of the transaction."[172] Under the Home Ownership and Equity Protection Act[173] certain high interest rate loans give rise to certain disclosure requirements. Violations give rise to civil damages. The Real Estate Settlement Procedures Act of 1974[174] prohibits unearned fees and kickbacks. Violations can bring treble damages as well as attorneys fees.[175]

In 2002, California enacted into law a predatory lending bill, which offers consumers some modest protections against those predatory lending practices that often result in seniors losing their homes. Last year, Assembly member Carole Migden introduced and the legislature passed California's bill, AB 489.[176] The law prohibits a series of common lending practices that make it difficult for consumers to manage loan repayment. The law applies to a mortgage or deed of trust with a loan balance of up to $250,000. The protections of the bill are triggered when the annual percentage rate of the loan is more than eight percentage points over the yield on U.S. Treasury securities, or if the total points and fees payable by the consumer exceed six percent of the total loan amount. Significantly, the new law bars lenders from basing a loan strictly on the borrower's home equity, rather than the ability to repay the loan.[177] It also prohibits the lender from increasing the loan's interest rate upon default, outlaws some balloon payments, and does not allow refinancing of a covered loan that does not result in an identifiable benefit to the consumer.[178] There are civil and administrative remedies for violations of the statute.[179]

171. 15 U.S.C. § 1635 (2000).
172. *Id.*
173. 15 U.S.C. § 1639 (2000).
174. 12 U.S.C. § 2601(b)(2) (2000).
175. *See id.* § 2607.
176. CAL. FIN. CODE §§ 4970–4979.8 (West 2002).
177. *See id.*
178. *See id.*
179. *See id.*

All fifty states and the District of Columbia have enacted some type of consumer protection statutes that attempt to protect consumers against unfair, deceptive, and abusive business practices.[180] Several have specific protections against predatory lending, including New York, Nevada, West Virginia, Louisiana, New Jersey and Minnesota.[181] Few states, however, have enacted statutes even as broad as California's law,[182] which regulates lending practices defined as predatory and affects loans secured by real property that are the result of such practices.

The City of Oakland has additional protection from predatory lenders. On October 2, 2001, at the urging of consumer groups, the Oakland City Council unanimously approved an ordinance designed to protect Oakland residents from predatory lending practices.[183] Many consider the ordinance, which was scheduled to go into effect on November 1, 2001, to be the toughest anti-predatory lending law in the nation. Although the ordinance was temporarily restrained from going into effect, the Superior Court of Alameda County recently upheld it as a result of a challenge by an association of lenders.[184]

The Oakland ordinance defines home loans to include all loans secured by a primary residence, including open ended-loans, when the total amount of the loan is below the Fannie Mae conforming loan limit, which is currently set at $275,000, adjusted annually for inflation. For all home loans, the Oakland law prohibits financing of credit insurance, limits prepayment penalties on loans below certain thresholds, and prohibits encouragement of default. For high cost loans, the ordinance limits the financing of points and fees, prohibits prepayment penalties on loans above the threshold, requires loan counseling, prohibits lending where the borrower receives no benefit, prohibits refinancing of special low-rate mortgages, prepaid payments, call provisions, interest rate changes upon default and modification or deferral fees, except in special cases. The ordinance

180. *See* SHELDON & CARTER, *supra* note 167, at app. A (summarizing all state UDAP statutes).

181. *See id.* at 764–74.

182. *See id.* at 760.

183. *See* OAKLAND, CAL., MUNICIPAL CODE ch. 5.33 (2001).

184. *See* American Fin. Servs. Ass'n v. Oakland, No. 2001-027338, slip op. at x (Sup. Ct. Alameda County 2001) (preliminary injunction denied, Dec. 12, 2001; summary judgment granted, June 21, 2002).

specifically provides for a private right of action to enforce the ordinance, as well as civil actions by the city attorney. A three-year statute of limitations exists, which does not run until the borrower discovers the violation. Moreover, all purchasers or assignees of the loan are liable for violations. The city attorney must file a claim within six years of the violation itself.[185]

The state law covers any home loan earning at least eight percent above the prime rate and prohibits fees in excess of six percent of the loan amount.[186] The Oakland law has more teeth and regulates mortgage loans three percent or more above the prime rate and caps fees at five percent. It requires borrowers to receive counseling before they take out such loans, whereas the state statute merely suggests counseling. Attorneys for the American Financial Services Association argued that the state law preempted the ordinance, and that it would hurt low-income consumers because it would create a patchwork of lending laws and a "Balkanization of home loan regulation."[187]

Judge James Richmond, of the Alameda Superior Court, was not persuaded. He found that the ordinance does not conflict with the state statute and granted summary judgment in favor of the city. The ordinance will not take effect immediately because the City Attorney's office took the unusual step of agreeing to stay the effectiveness of the ordinance until a final appeal.

XI. CONCLUSION

Financial abuse against the elderly, like other forms of elder abuse, is commonplace and is becoming even more common each day. Numerous legal options are available in California to bring redress to financial abuse victims. Unfortunately, though, some of the most effective of the civil remedies, particularly for the living trust and annuity scams are not available for private enforcement. Therefore, victims must still rely on the stretched resources of law enforcement officers for these particular enforcement mechanisms.

Education, particularly surrounding the complex issues of long-term care and estate planning, including Medi-Cal, living trusts,

185. *See* OAKLAND, CAL., MUNICIPAL CODE ch. 5.33 (2001).
186. *See supra* text accompanying notes 175–78.
187. *American Fin. Servs.*, No. 2001-027338, slip op. at x.

and annuities will go a long way towards making seniors less vulnerable to scam artists that prey on elderly people's fears about needing nursing home care. Prevention, or at least a significant reduction in the incidence of other elderly victims of systemic scams, can be obtained by increased discussion and education of the elderly about common scams and why elderly people are easy prey. For those who do become victims, this Article presents some remedies.